Policy Coherence in the Emerging International Business and Human Rights Regime:

Lessons from Canada.

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Submission Date: 24th March, 2015

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Abbreviations

(ACTA) Alien Claims Tort Act
(B&HR) Business and Human Rights
(CCSRC) Canadian Centre for the Study of Resource Conflict
(CDDH) Steering Committee for Human Rights
(CEDHA) The Centre for Human Rights and Environment
(CIDA) Canadian International Development Agency
(CIM) Canadian Institute of Mining, Metallurgy and Petroleum
(CoCs) Corporate Codes of Conduct
(CoE) Council of Europe
(CoEU) Council of the European Union
(CSEC) Communications Security Establishment Canada
(CSR) Corporate Social Responsibility
(DIHR) Danish Institute for Human Rights
(DFAIT) Department of Foreign Affairs and International Trade
(EC) European Commission
(ECCJ) European Coalition for Corporate Justice
(ECHR) European Court of Human Rights
(ECHRFF) European Convention on Human Rights and Fundamental Freedoms
(ECOSOC) Economic and Social Council of the United Nations
(ECJ) European Court of Justice
(EDC) Export Development Canada
(EP) The European Parliament
(EU) European Union
(FDI) Foreign Direct Investment
(FEMA) Foreign Extraterritorial Measures Act
(FuCI) Fundacion Ciudadanos Independientes
(G8) Group of Eight
(GRI) Global Reporting Initiative
(ICAR) International Corporate Accountability Roundtable
(IFC) International Finance Corporation
(IFC PS) International Finance Performance Standards
(IFIs) International Financial Institutions
(ILO) International Labour Organization
(KPCS) Kimberley Process Certification Scheme
(MAC) Mining Association of Canada
(MCM) Mauritanian Copper Mines
(MNC) Multinational Corporation
(MNE) Multinational Enterprise
(NAP) National Action Plan
(NBA) National Baseline Assessment
(NCP) National Contact Point
(NDP) National Democratic Party
(NGOs) Non-Governmental Organizations
(NIEO) New International Economic Order

(NRCan) Natural Resources Canada
(NSA) National Security Administration
(OAS) Organization of American States
(OAU) Organization of African Unity
(OECD) Organisation for Cooperation and Economic Development
(OIC) OECD Investment Committee
(PAC) Partnership Africa Canada
(PDAC) Prospectors and Developers Association of Canada
(PMSCs) Private Military and/or Security Companies
(PPPs) Public-Private Partnerships
(ProDESC) Proyecto de Derechos Economicos, Sociales y Cultural A.C.
(SCFAIT) Standing Committee on Foreign Affairs and International Trade
(SRSG) Special Representative to the Secretary General
(TNC) Transnational Corporation
(TSX) Toronto Stock Exchange
(UN) United Nations
(UNCHR) United Nations Commission on Human Rights
(UNDHR) United Nations Declaration of Human Rights
(UNGPs) United Nations Guiding Principles on Business and Human Rights
(UNHRC) United Nations Human Rights Council
(UNWGBHR) UN Working Group on Business and Human Rights
(VPs) Voluntary Principles on Security and Human Rights

Abstract

Once a leader on international human rights, Canada's response to the emerging international business and human rights regime has seen it lose its leadership status with Canadian corporations being labelled as some of the worst corporate human rights offenders in the world. The Canadian Government has largely dismissed calls to regulate Canadian corporations (namely in the mining and extractive sectors) operating abroad and to develop a comprehensive business and human rights framework (pointing to the United Nations Guiding Principles on Business and Human Rights [UNGPs]). Instead, the Conservative Harper Government has pursued a more traditional and less comprehensive corporate social responsibility strategy which does not regulate corporations' adequately through necessary punitive measures nor provide important adjudicative redress mechanisms for victims of corporate abuse. Canada is intentionally pursuing a policy of protecting corporate interests that align with their own Governmental values and in doing so, perpetuated the continuation of corporate human rights abuse abroad. Whilst regions such as Europe and countries like the U.S. are working towards implementing the UNGPs into their national frameworks, Canada's November 2014 announcement of a newly enhanced CSR strategy illustrates little promise of seeking policy coherence with the internationally endorsed UNGPs business and human rights framework. A handful of Canadian Members of Parliament have tried to pass Private Member Bills that seek to regulate corporations operating abroad to address human rights issues, however none have yet been successful. Whilst such failed attempts may initially appear futile, some private member bills have only been defeated by a narrow margin. Given that the Canadian Government is showing little signs of aligning with the emerging international business and human rights regime and so long as it values corporate profit over human rights, prospects of a future private member bill being passed through Parliament appears to be Canada's only immediate prospect of critically changing its stance towards the development of a comprehensive business and human rights strategy and framework.

Declaration

I certify that this thesis does not incorporate without acknowledgment any material previously submitted for a degree or diploma in any university; and that to the best of my knowledge and belief it does not contain any material previously published or written by another person except where due reference is made in the text.

Acknowledgements

First and foremost, I would like to express my gratitude to my mother, Rose for supporting me throughout my candidature. Thank you for always encouraging me and teaching me both the value and importance of education. Similarly, I would like to thank my husband Eric for his understanding and patience throughout the final stages of the thesis. The support of my family has been integral to the completion of this project. I also give thanks to my former supervisor Dr. Alexandra Guaqueta and current supervisor Anthony Langlois for their guidance and mentoring throughout various stages of the project. I greatly appreciate the understanding and patience of the Research Higher Degree Committee, and give thanks to the Scholarships Office and Faculty of Social and Behavioural Sciences at Flinders University for awarding me a scholarship to undertake RHD studies.

Policy Coherence in the Emerging International Business and Human Rights Regime:

Lessons from Canada.

- INTRODUCTION -

To the casual observer, Canada may seem like a leader on human rights issues and "enjoys a global reputation as a defender of human rights".[1] However, if one delves deeper beyond such surface level perceptions, Canadian mining and extractive corporations are one of the worst human rights violators in operations abroad, and as this thesis will examine, the Canadian Government has done little to prevent the continuation of such abuse. The emerging international business and human rights (B&HR) regime is an important and topical issue for Canada as it seeks to ensure that corporations (particularly in the mining and extractive sectors) and governments operate in a manner which does not impinge upon nor violate the rights of others. The creation of United Nations Guiding Principles on Business and Human Rights (UNGPs) in 2008 and their subsequent endorsement by the United Nations Human Rights Council (UNHRC) in 2011 makes the UNGPs the first and most comprehensive framework on B&HR to be endorsed by the United Nations (UN). The UNGPs *Protect, Respect and Remedy* framework consists of three key pillars: 1.) the state duty to protect human rights, 2.) corporate responsibility to respect human rights, and 3.) access to remedy for victims of corporate abuse.[2] The UNHRC has also adopted a resolution that seeks to "establish an inter-governmental process to work toward the development of a treaty to address the human rights obligations of transnational corporations".[3] As a consequence, the Canadian Government must seriously reconsider its approach and attitude towards B&HR issues to ensure that it fulfills its state duty to protect, as well as ensuring that Canadian mining and extractive corporations fulfil their duty to respect human rights.

Canada's current approach – *Building the Canadian Advantage* is based upon corporate social responsibility (CSR) norms and ideologies, which, whilst valuable in their own right, are ultimately less comprehensive than the UNGPs B&HR framework.[4] CSR norms are selective by nature by allowing one

[1] *Human Rights Watch Canada*, 'Human Rights in Canada', no date specified, [URL: http://www.hrw.org/americas/canada], consulted 23 October 2013.
[2] *United Nations Office of the High Commission*, 'Guiding Principles on Business and Human Rights – Implementing the United Nations "Protect, Respect and Remedy" Framework', 2011, [URL:http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf], consulted 09 August 2013, Pp 1 – 42.
[3] *The Danish Institute For Human Rights*, 'National Action Plans on Business and Human Rights – A Toolkit for the Development, Implementation, and Review of State Commitments to Business and Human rights Frameworks', International Corporate Accountability Roundtable, June 2014, p. 1.
[4] *Department of Foreign Affairs and International Trade Canada*, 'Corporate Social Responsibility – Building the Canadian Advantage: A Corporate Social Responsibility (CSR) strategy for the Canadian International Extractive

to pick and choose which human rights norms should or shouldn't be applied. In order for Canada to implement a comprehensive B&HR framework, it must reflect upon its current CSR strategy to ensure that it addresses a range of policy, procedural and legal gaps that allow the proliferation of corporate abuse and prevent victims' access to legal redress. However, as this thesis will explore, this is dependent upon how Canada perceives the emerging international B&HR regime and its attitude towards regulating its mining and extractive sectors operating abroad in ensuring respect for human rights. States implement norms for a range of reasons based on their national values and attitudes, which then determines the level of norm compliance. This thesis seeks to describe how Canada has responded to the emerging international B&HR regime by examining how it has designed and organised itself according to its CSR strategy and draw inferences about why it may have gone about it in such ways. In doing so, this helps draw valuable analysis about what, why, and how Canada perceives international B&HR norms and what lessons Canada can learn from other state and/or regional approaches and attitudes when placed in an international context.

Sector', March 2009, [URL: http://www.international.gc.ca/trade-agreements-accords-commerciaux/ds/csr-strategy-rse stategie.aspx?view=d], consulted 28 October 2012.

CHAPTER ONE

Literature Review

This Literature Review is comprised of three key sections which seek to explain and illustrate state uptake of the emerging international B&HR regime. Whilst this is not a theoretical thesis, the concept of norms and norms diffusion are important to define and explain in order to understand references to human rights norms and how they relate to the emerging international B&HR regime. Further, discussing the diffusion of human rights norms will help provide necessary context when drawing inferences about why Canada has developed a national Corporate Social Responsibility (CSR) strategy and how it has implemented such, and assist in understanding Canada's response to the emerging B&HR regime. The Literature Review will articulate from a broader funnel model of norms and norms diffusion theory and the international human rights framework, to the rise of globalization and corporate bodies and the emergence of CSR which paved a way for the emerging B&HR regime and the current UNGPs, and Canada's uptake of international B&HR norms. More specifically, the Literature Review will: first, provide necessary context on norms and norms diffusion theory, and a broad outline of the international human rights framework; second, discuss the international rise of Transnational Corporations (TNCs)/Multinational Corporations (MNCs) actors, explain how this led to the development of CSR which ultimately, paved the way towards the international B&HR regime and examine the current UNGPs; and lastly, detail Canada's burgeoning extractive sector and provide context on the socialization of international human rights norms to better understand Canada's uptake of international B&HR norms. This thesis will primarily focus on how states such as Canada have responded, and organised themselves accordingly, to the emerging international B&HR regime.

1. Norms and norms diffusion theory: context

A norm can be defined as a principled idea about the standard of appropriate behaviour. Risse and Sikkink note that norms originate from principled ideas about what is right and what is wrong and collective agreement and endorsement about how actors should behave.[5] Due to the moral assessment of a norm, norms can be identified when a party feels the need to justify its actions. Finnemore and

[5] Risse, T., & Sikkink, K., 'The socialization of international human rights norms into domestic practices: introduction', in Risse, T., Ropp , S.C., & Sikkink, K., *The Power of Human Rights – International Norms and Domestic Change*, Cambridge University Press, Cambridge, 1999, Pp 1-38.

Sikkink note that norms and institutions are often confused due to contextual similarities.[6] However, this is easily clarified by noting that norms deal with one single issue area, whereas institutions are comprised of multiple norms that interrelate.[7]

There are numerous types of norms ranging from the regulative which seek to regulate and limit behaviour; to constitutive norms which establish new ideas, players and achievements; and prescriptive norms which are based on moral ideologies about why identities *should* act in a particular way.[8] Norms can function within legal and non-legal frameworks. For instance, a norm may exist purely as an ideal that seeks to promote and influence the actions of actors (i.e. state or non-state entities such as transnational corporations) without legal regulation. Whilst other norms, may have legal terms of conditions which actors agree upon in their uptake of the norm, whereby they may be legally liable should they violate such terms of agreement. Norms can also be entrenched in international law through treaties. Whilst obligatory in nature, regulation through international law can either be "soft" (i.e. public statements of opposition, trade sanctions, etc) or "hard" (i.e. trade boycotting and embargos, international condemnation, etc).[9] State actors are only legally accountable given that they have ratified such treaties. Law is not the be all and end all of norms diffusion and as Simmons notes, the current hurdle within the social sciences and law discourse has been to examine the impact of international law on state actions, yet there is a need to examine larger issues "on the normative consequences of [norm] violation and compliance".[10] Themes of norms compliance and norms violation are explored later in this literature review.

Whilst norms exist as ideas, often located within institutional frameworks, norms are then spread via what social scientists call the concept of 'diffusion'. Norms diffusion is when the norm (or collective idea) is dispersed amongst a population or social system whereby there are many *similar* adoptions based around the same norm (i.e. in the case of this thesis, the norm topic is that of international

[6] Finnemore, M., & Sikkink,K., 'International norm dynamics and political change', *International Organization*, Volume 52, No. 04, 1998, Pp. 887-917.
[7] Finnemore, M. & Sikkink, K., p.891.
[8] Finnemore, M. & Sikkink, K., Pp. 603-605.
[9] Shelton, D., 'Compliance with international human rights soft law', in EB Weiss *International Compliance with Nonbinding Accords* (eds) , Pp. 119-43, Washington DC 1997 cited in Simmons, B., 'Treaty Compliance and Violation' in *The Annual Review of Political Science*, No 13, 2010, p. 274.
[10] Simmons, B., 'Treaty Compliance and Violation', *Annual Review of Political Science*, Volume 13, 2010, p. 293.

B&HR).[11] States choose to adopt norms for a range of reasons, those of which can affect the probability of another entity's consideration of adopting the same measure either directly or non-directly, and in either in a positive or negative manner.[12] Whilst the decisions of one state may have an impact on another actor's diffusion behaviour, (what Elkins & Simmons refer to as 'interdependence') this is un-coordinated. The study of diffusion has been divided into two methods of examining influences on diffusion – that of domestic, and external (or international) factors. Elkins & Simmons point out that often domestic and external influences blur and it is imprudent to define diffusion influences into one category or the other without consideration of overlapping.[13] Also, Simmons believes that diffusion is not an outcome as others suggest (as diffusion may not necessarily reach full socialisation or can stall in any given stage) but rather a *process* of diffusion through various stages and differing mechanisms.[14]

Having examined the theoretical insight of norms diffusion mechanisms, Finnemore and Sikkink offer a domestic conceptual insight into the "life cycle" of norms whereby different stages of their creation, promotion and internalisation can be traced.[15] The life cycle consists of three stages: *norm emergence, norm cascade,* and *internalization.* The first two stages revolve around how norms are created and institutionalised. Norm entrepreneurs will create and dramatize ideas and use international organisations or non-government organisations as a platform to promote the norm on the international agenda. If the norm gains significant attention, the authors claim that it eventually reaches a tipping point where states will willingly begin to implement the norm. Either this is done based on moral grounds, but often it can be influenced by *legitimation* (to ensure that they are not labelled a rogue state and do in fact possess domestic legitimacy), and *conformity* and *esteem* (they want others to think well of them, they care about their international image, and can feel embarrassed for violating norms). The final stage of the norm life cycle is internalization whereby if a norm cascade gains immense popularity, norms may become a common expectation of the international community.[16] Whilst Finnemore and Sikkink note internalization as the final phase of the norm life cycle, the manner in which international norms work their way down into domestic practices and structures will often create

[11] Elkins, Z., & Simmons, B., 'On Waves, Clusters and Diffusion: A Conceptual Framework', *The Annals of the American Academy*, March, Volume 598, 2005, Pp 34 – 36.
[12] Elkins Z., & Simmons, B., p. 38.
[13] Elkins Z., & Simmons, B., p. 38.
[14] Elkins Z., & Simmons, B Z., p. 37.
[15] Finnemore, M. & Sikkink, K., Pp 895 – 901; and Sikkink, K., 'Transnational Politics, International Relations Theory, and Human Rights', *Political Science and Politics*, Volume 31, No 3, 1998, Pp 518-520.
[16] Finnemore, M. & Sikkink, K., Pp. 904 – 905.

differing types of compliance and interpretation of such norms. Risse and Sikkink argue that state motives and identity shapes the degree to which states implement norms and the nature of differing levels of compliance. Similar to having differing outcomes of norm interpretation, the differing motives of a state will often depend on the identity of actors, appearance in the international system and potential gains. Signatories or members of norm groups help distinguish identities in the international system, creating a social collective ("we") and an opposition ("them").[17]

2. The international human rights framework: context

(a) International human rights institutions:

The rise of human rights norms has led to laws which have led to institutions.[18] The largest human rights institution is the United Nations, which is the epicenter of the international human rights regime. The 1948 UN Declaration of Human Rights (UDHR) and the UN Charter (adopted June 26, 1945) has enabled international human rights laws to transpire with the numerous intergovernmental institutions and mechanisms tasked with the necessary oversight and implementation functions. Consequently, two key international treaties cultivated from the UDHR are the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights which were opened for signature and ratification in 1966 and came into force in 1976. Both act as binding international treaties to UN signatories and ratifying member states regarding core civil, political, economic and cultural rights obligations to their citizens. Since the development of the two key covenants, a range of single issue treaties regarding issues such as genocide, torture, racial minorities and women's rights have also been created. As Clohesy states, the UN and its mechanisms do not constitute a world government (as membership is completely voluntary), but rather a pledge of national governments to international human rights norms that can potentially be integrated into domestic governmental legal systems and structures as will be illustrated later on in the literature review by Risse and Sikkink's 'spiral model'.[19] The two covenants and UDHR finally spurred the establishment of an overarching International Bill of Human Rights – the most comprehensive to date, human rights ideology and law that exists today.

[17] Risse, T., & Sikkink, K., p. 9.
[18] Buergenthal, T.,'The Normative and Institutional Evolution of International Human Rights', *Human Rights Quarterly*, Volume 19, 1997, Pp. 703-711.
[19] Clohesy, W., 'Interrogating Human Rights: What Purpose? Whose Duty?', *Business and Society Review*, Volume. 109, No. 1, 2004, Pp. 43-65.

(b) Regional human rights mechanisms:

Whilst the United Nations has been the nerve centre of international human rights, Janis, Kay, and Bradly note that the UN lacks significant enforcement mechanisms or 'teeth'.[20] Regions such as Europe, the Western Hemisphere, have implemented their own regional human rights laws and mechanisms that aimed to create more effective enforcement instruments.[21] Since the beginnings of European regionalism in the 1940s, European governments have openly advocated the importance of promoting political and economic rights and the need to vehemently protect these rights. Forsyth states that human rights have since been the epicenter of regional advancements.[22] The foundations of European human rights were laid-down in the 1940s following the establishment of the Council of Europe's (CE) charter on human rights – the European Convention on Human Rights and Fundamental Freedoms (ECHRFF). Nowadays, 'the Charter' covers a variety of rights ranging from civil, political, property, education, social and economic. Not long after the creation of the Charter, the European Social Charter was created to complement the CE Charter in regards to social and economic rights, labour, torture, and national minorities.[23] Similarly, the European Convention for the Prevention of Torture was established in addition to the CE Charter. According to Janis, Kay and Bradly, the European Convention on Human Rights has been the "most successful system of international law for the protection of human rights".[24]

In terms of enforcement mechanisms, the CE contains a Commission on Human Rights, and a supranational European Court of Human Rights whereby all 47 member states are subject to the jurisdiction and authority of the court. Similarly, the European Union (EU) is a signatory of the ECHRFF and has played a major role in the regionalisation of human rights in Europe.[25] This is built into the EU through a variety of human rights measures such as the Maastricht Treaty, its own Charter of Human Rights and supranational court – the European Court of Justice (ECJ).[26] Like the CE Court, the ECJ declares the supremacy of community law over that of national law and is able to hold states

[20] Janis, M.W., Kay, R.S., & Bradley, A.W., *European human rights law: text and materials* (3rd edn), Oxford University Press, New York, 2008, p. 12.
[21] Green, S., & Gregory, H.J., 'The Ripple Effect', Internal Auditor, February, 2005, Pp. 48 – 60.
[22] Forsythe, D.P., Human rights in International Relations, Cambridge University Press, Cambridge, 2006, Pp. 01 – 279.
[23] Forsythe, D.P., Pp. 122 & 133.
[24] Janis, M.W., Kay, R.S. & Bradley, A., p. 12.
[25] Baudenbacher, C., 'Judicialization: Can the European Model be Exported to Other Parts of the World?', *Texas International Law Journal*, Volume 39, No. 3, Spring, 2004, Pp. 381-397.
[26] L.F.H., Enneking, 'Crossing the Atlantic? The Political and Legal Feasibility of European Foreign Direct Liability Cases', *The George Washington International Law Review*, Volume 40, 2009, Pp. 903 – 938.

accountable through its extraterritorial jurisdiction. Outside of the European system, other regional frameworks exist, such as the Organization of American States (OAS), Inter-American Commission on Human Rights and Inter-American Convention and Africa's Charter on Human and Peoples' Rights and the African Court on Human and People's rights that has replaced the now defunct Organization of African Unity (OAU). Both regional mechanisms have been less efficient and comprehensive than their European counterpart and some authors are skeptical about the future of regional human rights mechanisms, with some suggesting that such band aid solutions are insufficient due to a range of political, economic and social factors.[27] Despite the varying degrees of success in the three regions (Europe, the western hemisphere, and Africa), regional human rights systems have contributed to the growth of the international human rights regime and helped disperse human rights values down to national systems.[28]

3. Globalization and the rise of Corporate Social Responsibility – paving the way towards the business and human rights agenda

TNC/MNC actors have been responsible for abusing a range of social, political and economic human rights, notably in the developing world due to their abundance of resources and corporate growth in the extractive sectors.[29] The increase of Multinational Corporations (MNCs) and Transnational Corporations

[27] Udombana, N.J., 'Can the Leopard Change Its Spots-The African Union Treaty and Human Rights', *American University International Law Review*, Volume. 17, 2001, p. 1177 & Simmons, B., *Mobilizing for Human Rights – International Law in Domestic Politics*, Cambridge University Press, New York, 2009, Pp 90 – 96. For further discussion see Udombana, N.J., 'African Human Rights Court and an African Union Court: A Needful Duality or a Needless Duplication', *Brookings. Journal of International Law*, Volume 28, 2002, p. 811, and Manby, B., 'The African Union, NEPAD, and Human Rights: The Missing Agenda', *Human Rights Quarterly*, 2004, Pp. 983-1027.

[28] Note – as the evidence provided suggests, the European human rights system contains a more comprehensive and cooperative regional system which has allowed it to develop effective human rights regulation. Donnelly, J., 'International human rights: a regime analysis', *International Organization*, Volume 40, No. 03, 1986, p. 623 argues that the Western Hemisphere's and African regions human rights systems "are precisely what is lacking in the international regime – strong international procedures" which rests "ultimately on national commitment".

[29] Haas, R.D., 'Business's Role in Human Rights in 2048', *Berkeley Journal of International Law*, Volume 26, 2008, Pp 400 – 409; Greathead, S., 'The Multinational and the "New Stakeholder": Examining the Business Case for Human Rights', *Vanderbilt Journal of Transnational Law*, Volume 35, 2002, Pp 719 – 727; Campagna, J., 'United Nations Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises With Regards to Human Rights: The International Community Asserts Binding Law on the Global Rule Makers', *The John Marshall Law Review*, Volume 37, Issue 04, Summer 2004, Pp 1205 – 1252; Haufler, V., 'International Diplomacy and the Privatization of Conflict Prevention', *International Studies Perspectives*, Volume 05, Number 02, 2004, Pp 158 – 163; Forsythe, D.P., Human Rights in International Relations; Bratspies, R. M., ' "Organs of Society": A please for Human Rights Accountability for Transnational Enterprises and Other Business Entities', *Michigan State University College of Law Journal of International Law*, Volume 13, Number 09, 2005, Pp 9 – 37; Clough, J., 'Punishing the Parent: Corporate Criminal Complicity in Human Rights', *Brooklyn Journal of International Law*, Volume 33, Number 03, October 2009, Pp 899 – 2008; Glyn, A., *Capitalism Unleashed*, Oxford University Press, UK, 2006; Pinto, P.M., & Zhu, B., 'Fortune or Evil? The Effect of Inward Foreign Direct Investment on Corruption',

(TNCs) and the power, capital and resources that they wield at both a state and international level during the 1960/1970s (and the increasing human rights violations that accompanied corporate ventures) has resulted in many international institutions seeking to control/regulate their influence. Essentially, these international corporate regulations laid the path for the emerging B&HR regime.[30] The emergence and growth of B&HR norms has transcended into a 'norms cascade', and in turn, norms diffusion at the state level.[31]

As noted, due to the strong financial position of western TNCs and MNCs, many companies began investing and moving their operations to cheaper and resource rich developing states. As Hawes notes, many of these states began to complain at the United Nations General Assembly about the imbalance of the international finance, trade and business system that largely favoured Western developed economies and proposed a New International Economic Order (NIEO) in 1974 that worked in favour of Third World states.[32] Whilst their attempts ultimately failed, Haufler notes that the impact of TNCs and MNCs in the developing world created an impetus for the international community to begin regulating corporate activities through international law from the 1970s.[33] Three of the first significant efforts by international institutions to regulate corporations during this era included: a United Nations sponsorship of negotiations over a proposed voluntary Code of Conduct on Transnational Corporations, the development of the Organisation for Cooperation and Economic Development's (OECD)Guidelines for Multinational Enterprises, and the International Labour Organization's (ILO) adoption of its tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy.[34] Further, in 1972 the

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Saltzman Institute of War and Peace Studies (SIWPS) Working Paper, No. 10, 2008; Freeman, B., Pica, M.B., & Camponovo, C.N., 'A New Approach to Corporate Responsibility: The Voluntary Principles on Security and Human Rights', *Hastings International and Comparative Law Review*, Volume 24, Number 423, Spring 2001, Pp 423 – 449.

[30] Haas, R.D., cites from the Kassandra Project that "44 of the largest economic entities in the world are corporations" and that some corporations such as Toyota Motor's annual profit is nearly as large as Thailand's GDP- 'Business's Role in Human Rights in 2048', *Berkeley Journal of International Law*, Volume 26 , 2008, p. 400. Further, Campagna J., 'United Nations Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regards to Human Rights: The International Community Asserts Binding Law on the Global Rule Makers', *Marshall Law Review*, Volume 37, no 1205, 2003/04, p. 1220 cites Stephens, B., 'The Amorality of Profit: Transnational Corporations and Human Rights' *Berkeley Journal of International Law*, No 20, Volume 45, 2002, p. 57 that "Only seven national economies are larger than General Motors" (Campagna 2003/04 p. 1220).

[31] Finnemore, M. & Sikkink, K.,; The IO Foundation and the Massachusetts Institute of Technology Pp 887 – 917.

[32] Hawes, M.W., 'Assessing the World Economy: The Rise and Fall of Bretton Woods', in Haglund, D., & Hawes, M., (eds) *World Politics: Power, Interdependence and Dependence*, Harcourt Brace Jovanovich, Toronto, 1990, Pp 154-155.

[33] Haufler, V., 'A Survey of International Regulation of Multinational Corporations', A public role for the private sector: industry self-regulation in a global economy, Carnegie Endowment, 2001, p. 15.

[34] Haufler, V., p. 15.

Economic and Social Council of the United Nations (ECOSOC) implemented a resolution to create actions "on the role of multinational corporations and their impact on the development process and on international relations".[35] This was followed by the 1974 establishment of the Commission on Transnational Corporations to negotiate a code of conduct for TNCs.[36] Whilst many developing states in the General Assembly and proponents of the NIEO insisted that these guidelines become mandatory not only to TNCs but also the government host, developed countries opposed this and supported a voluntary code that addressed both TNC and government conduct and were successful in such attempts.[37]

Whilst the apparent rise of TNC and MNC power, investment and influence in developing countries is reflected in these treaties and non-binding initiatives of the 1970s, tensions (over international finance, trade and business regulations) between developing and developed states continued to increase during the 1980s. Both the United Kingdom and the United States continued to promote free market economic policies and opposed the regulation of private corporations. As Stiglitz writes, many developing states have suffered from the deleterious influxes of TNCs which was being spurred by the agenda of promoting free market policies by the IMF and WB.[38] As Payer points out, due to the debt crisis (namely in Africa) occurring at the time, IMF bailout packages forced borrowing states to deregulate (causing harmful adverse effects from neoliberal Structural Adjustment Programs [SAPs] through austerity measures) and open up their economies to mass foreign direct investment (FDI) and in turn, TNCs.[39] It is widely held that FDI can have deleterious consequences for host (and often developing) states and the connections to human rights violations as well as detrimental impacts on civil, political, social and economic human rights.[40] Although the noted growth and consequential concerns of FDI, TNCs and

[35] United Nations, 'United Nations: Reports on the impact of multinational corporations on the development process and on international relations', *International Legal Materials*, Volume 13, Number 4, July, 1974, Pp 791 – 869.
[36] Haufler, V., p. 16.
[37] Haufler, V., p. 16.
[38] Stiglitz, J.E., *Globalization and its Discontents*, WW Norton & Company, New York, 2002, Pp. 7-22 & 67-88.
[39] Payer, C., *The debt trap: the IMF and the Third World*, Monthly Review Press, New York, 1974. Note – for further discussion see Hoogvelt, A., *Globalization and the postcolonial world: The new political economy of development*, Johns Hopkins University Press, Baltimore, 2001, Pp. 248 – 257.
[40] Stiglitz, J.E., Pp. 7-22 & 67-88; Chomsky, N., & Herman, E.S., 'The Washington connection and third world fascism', South End Press, Volume. 1, 1979, Pp. 32-60; Smith, J.W., 'The world's wasted Wealth 2: Save our wealth, save our environment', Institute for Economic Democracy, 1994, Pp. 63-66; Blanton, S.L., & Blanton, R.G., 'Human Rights and Foreign Direct Investment: A Two-Stage Analysis', *Journal of Business and Society*, Volume 45, 2006, Pp. 464 – 485.

MNCs during this decade are significant, the growth of TNCs/MNCs substantially increased in the 1990s which created further impetus for international corporate human rights norms to grow.[41]

Due to the promotion of privatization during this time period, companies began to realise that business costs could be cut significantly by moving production costs to the developing world where manufacturing and labour costs were significantly lower to that of developed states to ensure higher profit maximization. This phenomenon is known as "off-shoring". It was during the mid-1980s-1990s that many large apparel industries decided to move their manufacturing factories to South East Asia whereby the company could employ a larger workforce with significantly lower wages due to the weak currencies of developing economies. Moreover, they did not have to adhere to the same labour standards (such as minimum and maximum hours, occupational health and safety, healthcare etc) as required in their home states. Often developing states had very little labour regulations and those that did exist, were incredibly lax. Well-known companies such as Nike, Rolex, Wal-Mart, Gap, Levi Strausse and more, moved manufacturing factories to places in Asia (namely Indonesia) and set-up sweatshops demanding extremely long hours, little or no breaks, and poor working place conditions for employees.[42]

In the extractive sector, raw materials such as oil, minerals, timber, palm oil and diamonds were considered a valuable commodity on the global market to support the growing demands of newly industrialised 'BRIC economies' (otherwise known as Brazil, Russia, India and China) and the global shortage of resources such as oil.[43] Due to the worsening of the debt crisis in the developing world during the 1980s-1990s, IMF austerity packages that forced developing states to embrace neoliberal economic policies by reducing trade barriers and opening up their economies to foreign direct investment increased significantly.[44] As a consequence, developing regions like Africa that are resource rich in raw materials made them a perfect target for TNC and MNC investment in their extractive sectors. Zarsky argues that the increase of globalization and trade liberalization has seen a significant

[41] Mantilla, G., 'Emerging International Human Rights Norms for Transnational Corporations', *Global Governance*, Issue 15, 2009, Pp 282 – 298.
[42] Frey, B.A., 'Legal and Ethical Responsibilities of Transnational Corporations in the Protection of International Human Rights', *The Minnesota. Journal of. Global Trad*e, Volume. 6, 1997, p. 177-180; Shah., A., 'Corporations and Workers Rights', *Global Issues*, 28 May 2006, [URL:http://www.globalissues.org/article/57/corporations-and-workers-rights], consulted 25 February 2012.
[43] Haufler, V., 'Foreign Investors in Conflict Zones: New Expectations', Department of Government and Politics, University of Maryland, 2005, p. 9.
[44] Soros, G., *The crisis of global capitalism: Open society endangered*, Public Affairs, New York, 1998, p. xvi.

increase of FDI into developing states.[45] For example, in 1990, fifty per-cent of the world's capital into developing states came from public sources, whereas by 1995, 77 per-cent originated from private bases.[46] In real terms, capital flows to developing states in 1990 equaled US$25 billion and by 1995 this had quadrupled to US $96 billion.[47] The swell in FDI was a result of a global economy that hailed trade liberalisation and investment as a means to increasing market competition. Whilst many developing states underwent economic reform during this time period, such states encouraged foreign investors and in fact vied against one another in hope of increasing capital gains, technology transfer and trading links.[48] Due to the lack of state regulatory controls in many developing states, FDI raised concern about the environmental and social impacts of TNCs and MNCs in host countries.

As Haufler notes, the literature of the detrimental impact TNCs and MNCs were having on the environment and indigenous communities spurred many activists and NGOs to criticise corporations and organize coalitions which created an anti-corporate sentiment throughout the 1990s.[49] Due to weak labour, environmental and social laws in developing states, TNCs/MNCs were directly or inadvertently violating human rights abuses, but not being held accountable by any laws that they would traditionally be subjected to in their home states. Due to weak governance, high debt levels and corruption, governments of host states allowed foreign companies to extract raw materials at basement prices in a manner that was incredibly lax on environmental and social controls and/or allow the privatization of national industries by foreign companies.[50] It was here that highly publicized horror stories emerged in the 1990s about the direct or adverse impacts TNCs and MNCs were having upon the degradation of forests, pollution of water sources, health complications for indigenous communities, the financing of militias responsible for committing gross human rights abuses, employing child and slave labour.[51] As a result of the increased activities of TNCs/MNCs in developing states since the beginnings of the post

[45] Zarsky, L., 'Haven, Halos and Spaghetti: Untangling the Evidence about Foreign Direct Investment and the Environment', OECD Foreign Direct Investment and the Environment, Paris, 1999, p. 50.
[46] Zarsky, L., p. 50.
[47] Zarsky, L., p. 50.
[48] Haufler, V., 'Foreign Investors in Conflict Zones', p. 1.
[49] Haufler, V., 'New forms of governance: certification regimes as social regulations of the global market', *Social and political dimensions of forest certification*, 2003, p. 240.
[50] Haufler, V., 'Foreign Investors in Conflict Zones',Pp. 1 – 21; Drimmer, J., 'Human rights and the extractive industries', Pp. 121-39.; Pinto, P.M., & Zhu, B., 'Fortune or Evil? The Effect of Inward Foreign Direct Investment on Corruption', *Saltzman Institute of War and Peace Studies (SIWPS)* Working Paper, No. 10, 2008.; Hoogvelt, A.,*Globalization and the postcolonial world*; Stiglitz, J.E., *Globalization and its Discontents*; Soros, G., *The crisis of global capitalism*, 1998.
[51] Note – there are thousands of published reports on human rights violations or abuse on a range of topics available, however two of the leading NGOs since the 1990s have been Amnesty International and Human Rights Watch.

WW2 and Cold War era, the subsequent human rights violations of host states has resulted in methods that aim to regulate transnational activities through: voluntary codes of conduct, private (corporate) self-regulation, and more authoritative international law mechanisms.[52]

Norms that sought to regulate the adverse impacts of corporate ventures began to develop which eventually created a stepping stone for the emergence of the current B&HR regime. The rise of corporate and human rights norms begun gaining significant attention in the media in response to the corporate activities of TNCs and MNCs as operations begun spreading into developing countries notably during the 1970s. As a result, CSR norms were born out of the application of socially aware models and mechanisms into company business plans in order to self-regulate their own activities to maintain societal expectations regarding labour standards, the environment, labour standards and other areas in which such stakeholders could be affected. According to Haufler, the beginnings of international efforts to use law to regulate corporations (such as the OECD Guidelines and ILO tripartite) "laid the groundwork for later efforts" such as the continued development of CSR strategies, and in turn, the emerging B&HR regime.[53] The following section will illustrate how key CSR norms developed and cascaded internationally eventually creating the onset of the current B&HR regime which is the key theme of this thesis.

Haufler notes that the CSR movement originated from the anti-apartheid movement and the 1970s Sullivan Principles.[54] Reverend Leon Sullivan sat on the General Motors board and was a well-known anti-apartheid advocate in South Africa. Sullivan created principles that sought to advise corporations on how to conduct their business ventures in South Africa in the hope of using the private sector to induce political change via internal means.[55] By 1984 a large number of US companies operating in South Africa agreed to adhere to Sullivan's recommendations. However, many other companies failed to follow the guidelines (due to the apartheid regime being so ingrained into industry) so Sullivan began to persuade companies to divest from South Africa. Many companies did so. Whilst the Sullivan Principles and divestment movement were not wholly responsible for the end of the apartheid regime, they used the

[52] Cragg, W., 'Human Rights and Business Ethics: Fashioning a New Social Contract', *Journal of Business Ethics*, No 27, 2000, Pp. 205 – 214.
[53] Haufler, V., 'A public role for the private sector', Carnegie Endowment, p. 17 and Feeney, P., 'Business and Human Rights: The Struggle for Accountability in the UN and the Future Direction of the Advocacy Agenda', *International Journal on Human Rights*, Volume 6, No 11, 2009, Pp. 161-169.
[54] Haufler, V., 'Foreign Investors in Conflict Zones', p. 6.
[55] Haufler, V., 'A Public Role for the Private Sector', p.18.

regulation of corporations as a tool to achieve political goals.[56] As Haufler states, the Sullivan Principles were an efficient way to influence the behaviour of MNCs, but that the 'real' CSR regime begun to take place during the 1990s.[57]

The end of the Cold War and subsequent democratisation of newly self-sovereign nation states saw an increase of TNCs/MNCs now operating in conflict zones. Many corporate operations were based in Africa as it was very resource rich in things like minerals, diamonds, oil, etc where many states like Angola, Sierra Leone, Rwanda, Liberia, DRC, and Cote d'Ivoire were undergoing bloody civil wars. With many human rights activist eyes already upon these conflicts, the exacerbation of suffering in these states by the adverse (or sometimes direct) impacts of corporate activities led many human rights groups to begin publishing how corporations were complicit (or assisting) in the violation of human rights. Highly respected activist group, Global Witness, released a string of reports which highlighted how oil companies and banks helped facilitate long-term conflict in Angola.[58]

Another key CSR mechanism that was developed in response to norms that do not support commercial activities that are linked to deleterious impacts of corporate activities in the extractive sector is the Kimberley Process. The Kimberley Process is a mechanism which seeks to regulate 'conflict diamonds' whereby the mining of diamonds in Africa have been linked with slavery, the disfigurement of adolescents in Sierra Leone and many more gross acts of human rights abuse.[59] Labelled as 'blood diamonds', debate regarding how corporations abetted (directly, indirectly, or through complicity) human rights violations, spread into the international community. The UNSC and UN General Assembly used a range of legal and non-legal mechanisms such as: passing a resolution which denounced the relationship between the mining of diamonds and conflict, applying sanctions to the diamond trade in Sierra Leone, and hosted negotiations between interested parties including diamond producing states, representatives from the World Diamond Council and civil society at Kimberley, South Africa in 2000 which led to the UNGA creating a resolution in support of a diamond certification scheme and two years later the Kimberley Process Certification Scheme (KPCS). [60] The Kimberley Process played a significant

[56] Haufler,V., 'A Public Role for the Private Sector', p.18.
[57] Haufler, V., 'Foreign Investors in Conflict Zones', p. 6.
[58] Haufler., V., 'Innovations in the Institutional Environment: The Kimberley Process Certification Scheme', *Journal of Business Ethics*, Volume 89, issue 4, p. 408.
[59] Haufler, V., 'Innovations in the Institutional Environment', p. 409.
[60] Haufler, V., 'Innovations in the Institutional Environment', Pp. 409 - 411.

role in contributing to the emerging international B&HR regime which aims to encourage the regulation of business through the rule of both domestic law and international human rights norms.[61] The Kimberley Process illustrates how norms emerge and then begin to diffuse or 'cascade' down into various bodies and achieving internalization. Whilst the Kimberley Process was successful in its own right, issues concerning the impact of foreign investment, globalisation and neoliberal policies continued throughout the 1990s and extensive global debate about the regulation of business continued before the B&HR regime could emerge. Some other key international corporate regulative norms that have also been developed include: the Voluntary Principles on Security and Human Rights (VPs), Extractive Industries Transparency Initiative (EITI), the IMF voluntary Code of Good Practices on Fiscal Transparency and the OECD Guidelines for Multinational Enterprises among others.[62]

Whilst international human rights norms and mechanisms have provided one avenue to regulating corporate activities and promoting corporate social responsibility, transnational private self-regulation of environmental and labor conditions has contributed to the growth of corporate human rights norms diffusion and socialization.[63] As Brown, Vetterlein, and Roemer-Mahler point out, corporations have moved beyond their traditional role of being an 'economic actor', to assume a much more broader role by engaging in social and political matters that may assist local communities and affected stakeholders.[64] A range of transnational private regulations have been utilized such as Corporate Codes of Conduct (CoCs) and Public-Private Partnerships (PPPs). CoCs can be developed by TNCs, implemented globally and attempted to be passed through their subsequent supply chains. They are created by industry in an attempt to promote adherence or even compulsory and non-compulsory labelling and certification schemes. Similarly, PPPs between business, government and international organizations often unite upon single issue matters to effectively combat such with combined finance, skill, information and capability.[65]

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[61] Kantz, C., 'The Power of Socialization: Engaging the Diamond Industry in the Kimberley Process', *Business and Politics*, Volume 09, Issue 03, 2007, Pp 1 – 20.

[62] Carasco, E.F., Singh, J.B., 'Human Rights in Global Business Ethics Codes', *Business and Society Review*, Volume 113, No 3, 2008, Pp. 347-374 and Armis, L., 'Business and Human Rights: the risk of being left behind', *New Academy Review*, Volume 2, No 1, Spring, 2003, p. 102.

[63] Kantz, C., p. 8.

[64] Brown, D.L., Vetterlein, A., & Roemer-Mahler, A., 'Theorizing Transnational Corporations as Social Actors: An Analysis of Corporate Motivations', *Business and Politics*, Volume. 12, No. 1, 2010, p. 5.

[65] Brown, D.L.,et al, Pp. 4-5; Kantz, C., Pp. 6 – 9; and Cuesta, M., 'Irresponsibility through Corporate Eyes: Reporting of Human Rights Compliance by Spanish Listed Companies', *International Journal of Business and Management*, Volume 7, No 4, February, 2012, Pp. 69-83; and Kolk, A., & Tulder, R.V., 'The Effectiveness of Self-

There are a wide range of reasons as to why corporations seek to engage in socially and environmentally aware policies, procedures and practices. Some include social demands for more socially and environmentally sustainable practices and products, political contestation and appearing to be proactive on CSR issues.[66] Like the state adoption of human rights norms, the sincerity of such motivations has often been called into question. It is widely assumed that businesses are predominantly driven by profit and that their engagement in social activities will further increase business output. Brown et al argues that corporate involvement in social and economic activities can be influenced by a range of other factors (as mentioned above) other than profit increase.[67] For instance, Canadian company Talisman Energy is now one of the most CSR aware and practicing corporations in the world as a result of being tied to a major human rights controversy in Sudan 1998. Having been accused of indirectly funding the government of Sudan's civil war through its FDI and business operations, Talisman faced not only an international media crisis, but serious divestment from shareholders who were shocked by Talisman's connection to the horrors of civil war and ultimately their indirect complicity.[68] What this information and the Talisman case illustrates is that there are differing motivations for corporations regulating their own activities (whether it be a positive or negative influence), and the rise of private regulation in light of social, environmental and political awareness has contributed to norms dialogue, expectations, regulative mechanisms and differing levels of norms diffusion which has contributed to the eventual development of the current emerging international B&HR regime.

4. CSR and the UN Global Compact – the pathway to the UNGPs on Business and Human Rights

As we have seen, in conjunction with international human rights norms institutions and instruments (such as the OECD Guidelines and ILO tripartite), CSR strategies have also played a major role in paving the way for the emergence of a B&HR regime. The final CSR initiative, which will be considered that played a significant role in spurring on the UN B&HR agenda and contributing to the eventual endorsement of the UNGPs by the Human Rights Council has been the UN Global Compact. As more

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regulation: Corporate Codes of Conduct and Child Labour', *European Management Journal*, Volume 20, No 3, 2002, Pp. 260-271.

[66] Bartley, T., 'Institutional Emergence in an Era of Globalization: The Rise of Transnational Private Regulation of Labor and Environmental Conditions', *American Journal of Sociology*, Volume. 113, No. 2, 2007, Pp. 297-351.

[67] Brown, D. L., et al, Pp 1 – 37

[68] Idahosa, P., 'Business ethics and development in conflict (zones): The case of Talisman Oil', *Journal of Business Ethics*, Volume. 39, No. 3, 2002, Pp. 227-46.

media attention, civil protests, academic and political criticism, and development of international human rights norms, principles and initiatives in regards to corporate practices began to emerge over the 1990s, the emerging B&HR regime reached the international community's agenda by capturing the attention of the UN Secretary General of the time – Kofi Annan. In an address to The World Economic Forum on the 31st January 1999, Annan announced the United Nations Global Compact, which aimed to institutionalise the idea of corporate social responsibility. Launched the following year, the Compact is made up of ten (originally nine upon its announcement but has been updated recently) principles that mostly deal with human rights, labour, environment and anti-corruption.[69] The Compact is a voluntary and non-binding initiative that focuses on norm diffusion and supplying businesses with information and tools to monitor their actions in regards to international norms on corporate social responsibility whilst encouraging business to "align their operations and strategies with the ten universally accepted principles".[70]

Whilst the Global Compact helped further the B&HR regime that we see today, the voluntary initiative focuses heavily on CSR principles and self-monitoring codes of conduct and there has been a consensus that the Compact insufficiently addresses key issues including a lack of enforcement, self-policing, accountability and questions over whether the state should play a role.[71] According to David Kinley, Justine Nolan and Natalie Zerial "[a] bottom up incremental approach to accountability was being pushed often simply at the level of what can and should be done by individual companies".[72] The introduction of the United Nations Norms on the Responsibilities on Transnational Corporations and

[69] *United Nations Global Compact*, 'Overview of the UN Global Compact', 01 December, 2011, [URL:http://www.unglobalcompact.org/AboutTheGC/index.html], consulted, 01 March 2012.
[70] *United Nations Global Compact*, consulted 01 March 2012.
[71] Deva, S., 'The UN Global Compact For Responsible Corporate Citizenship: Is it still too compact to be global?', *Corporate Governance Law Review*, Volume 02, Issue 02, 2006, Pp 146 – 151; Campagna, J., 'United Nations Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises With Regards to Human Rights: The International Community Asserts Binding Law on the Global Rule Makers', *The John Marshall Law Review*, Volume 37, Issue 04, Summer 2004, Pp 1205 – 1252; Bratspies, R. M., ' "Organs of Society": A please for Human Rights Accountability for Transnational Enterprises and Other Business Entities', *Michigan State University College of Law Journal of International Law*, Volume 13, No 09, 2005, Pp 9 – 37; Irwin A, 'UN: One Year Later Global Compact Has Little to Show', *CorpWatch*, July 27, 2001, [URL: http://www.corpwatch.org/article.php?id=51], consulted 01 March 2012; Lim, A., & Tsutsui,K., 'Globalization and Commitment in Corporate Social Responsibility: Cross National Analyses of Institutional and Political Economy Effects', *American Sociology Review*, No 69, 2011, Pp. 69-88; Taylor, M.B., 'The Ruggie Framework: Polycentric regulation and the implications for corporate social responsibility, *Nordic Journal of Applied Ethics*, Volume 05, No 1, 2011, Pp. 9-30;
[72] Kinley, D.,Nolan, J.,& Zerial, N.,'The politics of corporate social responsibility: Reflections on the United Nations Human Rights Norms for Corporations', *Company and Securities Law Journal*, Volume. 25, No. 1, 2007, p. 31.

Other Business Enterprises (more commonly known as 'the Norms'), was created as a 'top down' approach by the UN to provide a speedier development of human rights safeguards and a more authoritative guide to corporate social responsibility and B&HR norms diffusion.[73] Whilst the Norms were ultimately dismissed by the UNCHR shortly after their inception, they eventually led to a much larger and detailed set of UN norms regarding B&HR which over the space of seven years has now become the most detailed and advanced set of non-binding international B&HR norms to date – the UNGPs.

In response to the rise of corporate ventures and their associated human rights violations, a range of international and domestic self-regulating CSR norms were developed, and diffused mostly through non-binding or voluntary principles, as well as varying levels of authoritative mechanisms over the past five or so decades. These CSR norms have paved the way towards a new set of international norms and cascaded to the extent that a new subfield of human rights known as the B&HR agenda has emerged. As many of these initiatives have depended on voluntary adoption with little legal capacity, there has been a push to move beyond relying on the goodwill of corporations to voluntarily adopt standards with weak enforcement mechanisms, towards a more international set of authoritative rules which comment more broadly on the role of corporations and their human rights obligations in the international system. As John Ruggie succinctly puts it, "it proposes a strategy for building on existing momentum in order to reduce human rights protection gaps in relation to corporate activities".[74] The development of the UN Norms and the subsequent creation and UNHRC endorsement of the UNGPs has resulted in the most comprehensive set of principles on B&HR to date and thus may be seen as a guiding 'manual' as to how states go about undergoing B&HR socialization.

5. The business and human rights regime: Ruggie's Guiding Principles

The UNGPs begun with the draft Norms which were created in 2003 by the UN Working Group on Multinational Corporations (established in 1998; the decision to create a code of conduct occurred in 1999 following the creation of the first draft of the Norms in 2000).[75] The Norms included a

[73] Kinley, D., et al., p. 31 and Buhmann, K., 'Regulating Corporate Social and Human Rights Responsibilities at the UN Plane: Institutionalizing New Forms of Law-making Approaches', *Nordic Journal of International Law*, Volume 78, 2009, Pp. 1 – 52.
[74] Ruggie, J.G., 'Business and human rights: the evolving international agenda', *American Journal of International Law*, Working Paper of the Corporate Social Responsibility Initiative, Harvard University John F. Kennedy School of Government, June 2007, Volume. 101, No. 38, p. 4.
[75] Kinley, D., et al, p. 31.

comprehensive set of international human rights principles that were aimed specifically at transnational corporations and business enterprises and that outlined the responsibilities of businesses in regards to human and labor rights as well as parameters for those operating in conflict zones.[76] Having reflected on the voluntary deficiencies the Global Compact suffered from, the Working Group decided that voluntary initiatives were insufficient and opted for more authoritative and binding rules. The Working Group submitted the Draft Norms to the Sub-Commission on the Promotion and Protection of Human Rights who adopted them in 2003. The Sub-Commission then submitted them to the United Nations Commission on Human Rights (UNCHR) to be considered and adopted however they refused to approve them citing that they possessed "no legal standing".[77] Also, the Commission expressed concern over grey areas that they thought had not been adequately considered. For instance, Justice expresses his concern that the draft Norms could be interpreted as if the state and business sector had the same obligations and functioned in similar manner, when it is common knowledge that the nature of the state is not the same as that of business.[78] Thus, the draft Norms were debated and questions relating to whether in fact states and businesses should have the same obligations towards human rights, who interprets the Norms, legal responsibilities and capacities etc needed to be clarified before the Commission could endorse their further development.[79] Further, the draft Norms were worded in treaty-like language that sought to impose the same responsibilities of states upon companies in terms of human rights obligations under international human rights law.[80] Whilst the Commission rejected the Norms, debate still continued around the need to address the increasing influence of corporations in the international system upon human rights and further development of the Draft Norms was required.[81] As

[76] Hillemanns, C., 'UN Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights', *German Law Journal*, Volume. 4, No. 10, 2003, p. 1066.
[77] Ruggie, J.G., p. 7.
[78] *Friedrich Ebert Foundation*, 'Panel discussion: Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights', Report: Side event to the 60th session of the UN-Commission on Human Rights, March 25th, 2004, Geneva, p. 2.
[79] Ruggie, J.G., Pp. 819-840; Kinley, D., & Chambers, R., 'The UN Human Rights Norms for Corporations: The Private Implications of Public International Law', *Human Rights Law Review*, Volume 6, No 3, 2006, Pp. 447 – 497; Knox, J.H., 'Horizontal Human Rights Law', SelectedWorks, September 2007,[URL: http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=john_knox], Pp. 1-75; and Clapham, A., Gillard E.C., & Weissbrodt, D., 'Business and Humanitarian and Human Rights Obligations', *American Society of International Law*, Volume 100, 2006, Pp. 129 – 139.
[80] *Business & Human Rights Resource Centre*, 'Introduction - Introductory description of the Special Representative's mandate and the UN "Protect, Respect and Remedy" Framework', July 2009, [URL: http://www.business-humanrights.org/SpecialRepPortal/Home/Introduction], consulted 01 March 2012.
[81] Deva, S., 'UN's Human Rights Norms for Transnational Corporations and Other Business Enterprises: An Imperfect Step in Right Direction?'*ISLA Journal of International Comparative Law*, Volume 10, 2004, Pp. 1-40 and Backer, L.C., 'Multinational corporations, transnational law: the United Nations', Norms on the Responsibilities of

a result, the UN Commission on Human Rights requested that the UN Secretary General of the time – Kofi Annan, to appoint a Special Representative on the issue of B&HR.[82]

In 2005, Professor John G. Ruggie from Harvard's John Kennedy School of Government was appointed as the Special Representative to the Secretary General (SRSG) on Human Rights and Transnational Corporations and Other Business Enterprises.[83] Over this time period, the SRSG conducted extensive information gathering and engagements with stakeholders and sought to produce a report that encapsulated and represented all major stakeholder opinions on the B&HR regime. In June 2008 nearing the completion of his mandate, the SRSG submitted the "Protect, Respect and Remedy" Framework to the UN Human Rights Council. The report is based upon three major pillars:

> "1.the state duty to protect against human rights abuses by third parties, including including business;
> 2. the corporate responsibility to respect human rights; and
> 3. greater access by victims to effective remedy, both judicial and non-judicial.".[84]

Following the submission, Ruggie was charged with "ensuring the operationalization and promotion of the Framework".[85] This constitutes the SRSG's third phase of its mandate. The Council requested that the SRSG further develop the scope of CSR to ensure all human rights are respected and develop more comprehensive frameworks for businesses to follow; and to work with the Global Compact human rights group to further educate on the effects of TNCs and promote good working policies, practices and procedures.[86] On 24th March 2011, the SRSG submitted his final report to the UNHRC which presented the Guiding Principles for the Implementation of the Protect Respect and Remedy framework. The

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Transnational Corporations as a Harbinger of Corporate Social Responsibility in International Law', *Columbia Human Rights Law Review*, Volume 37, 2006, Pp. 287-389.

[82] *United Nations Council of Human Rights*, 'Resolution 2005/69 Human Rights and Trans-national Corporations and Other Business Enterprises', 20 April 2005, [URL: http://www.ohchr.org/EN/Issues/Business/Pages/SRSGTransCorpIndex.aspx], consulted 03 March 2012.

[83] *United Nations*, 'Secretary-General Appoints John Ruggie of United States Special Representative on Issue of Human Rights, Transnational Corporations, Other Businesses Enterprises', July 28th 2005, United Nations Doc SGA/A/934), [URL: http://www.un.org/News/Press/docs/2005/sga934.doc.htm], consulted 02 March 2012.

[84] *Business & Human Rights Resource Centre*, consulted 04 March 2012.

[85] *Business & Human Rights Resource Centre*, consulted 04 March 2012.

[86] *United Nations Global Compact*, 'UN Framework: Guiding Principles for the Implementation of the UN "Protect, Respect and Remedy" Framework', 22 December 2011, [URL:http://www.unglobalcompact.org/issues/human_rights/The_UN_SRSG_and_the_UN_Global_Compact.html], consulted 04 March 2012.

UNGPs seek to provide "an authoritative global standard for preventing and addressing the risk of adverse human rights impacts linked to business activity".[87] Following the submission of the UNGPs, the UNHRC unanimously endorsed the "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework" on June 16 2011.[88] Although Ruggie's mandate ended with the UNHRC endorsement of the UNGPs, the UNHRC proceeded to establish a Working Group on B&HR charged with a range of tasks including the dissemination and implementation of the UNGPs and to give guidance to all parties about the development of the UNGPs into domestic legislation and policies pertaining to B&HR.[89]

The UNGPs are by no means a full-fledged one size fits all model, but given their comprehensive composition and legitimization through their endorsement by the UNHRC, they are the most advanced set of guidelines regarding B&HR that exist today. This is not to say that the UNGPs are flawless and some still question limitations of the framework. For example, issues relating to further clarification of judicial interpretation & implementation at differing state levels and questions regarding the likelihood of the UNGPs reaching treaty status.[90] Despite such criticisms, since the SRSG begun his work in 2006, the UNGPs have undergone diffusion and the recent UNHRC endorsement may just have been the 'tipping point' and impetus states were waiting for before willingly beginning to implement them.[91] This

[87] *Business and Human Rights Resource Centre*, 'Special Representative Ruggie first issues the final text of the Guiding Principles for the Consideration of the UN Human Rights Council in March 2011 announcement', 24th March 2011, p. 1, [URL:http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-press-release-24-mar-2011.pdf], consulted 03 March 2011.

[88] *Business & Human Rights Resource Centre*, 'UN action following end of mandate', no date specified, [URL: http://www.business-humanrights.org/SpecialRepPortal/Home/UNactionfollowingendofmandate], consulted 03 March 2012.

[89] *Business & Human Rights Resource Centre*, 'United Nations Working Group on business and human rights – Members & mandate', 01 March 2012, [URL: http://www.business-humanrights.org/Documents/UNWorkingGrouponbusinesshumanrights/Membersmandate], consulted 03 March 2012.

[90] Aaronson, S., 'How Policymakers Can Help Firms Get Rights Right', George Washington University Working Paper for the Heirich Boll Stifung Institute North America, 2012, Pp. 1-10; Kaur, A., 'Ruggie's legal legacy: could human rights become the biggest investor ESG risk?', Responsible Investor, 2012, March 8 2012; Hoffman, M.W., & McNulty, R., 'International Business, Human Rights, and Moral Complicity: A Call for a Declaration on the Universal Rights and Duties of Business', Business and Society Review, Volume 114, No 4, 2009, Pp. 559- 560; Bilchitz, D., 'The Ruggie Framework: an adequate rubric for corporate human rights obligations?', Sur International Journal on Human Rights, Volume 7, No 12, 2009, Pp. 199-229; Clough, J., 'Pushing the Parent: corporate criminal complicity in human rights abuses', Brookings Journal of International Law, Volume 33, No 3, 2008, Pp 899-931.

[91] Duruigbo, E., 'Corporate Accountability and Liability for International Human Rights Abuses: Recent Changes and Recurring Challenges', *Northwestern Journal of International Human Rights,* Volume 6, No 2, Spring, 2008, Pp. 222-261.

is evidenced by many countries including (Canada, the Netherlands, Australia, and the European Union region etc) openly declaring their support and/or endorsing the UNGPs.[92]

6. Canada's burgeoning extractive sector and links to human rights abuse

Canada's burgeoning extractive industry has made it one of the key leaders in today's international extractive sector. Canada "account(s) for 43 percent of global exploration expenditure; over 75 percent of the world's exploration and mining companies are headquartered in Canada; and mining and energy is the third largest component of Canadian direct investment abroad".[93] In 2012, Canada's extractive sector (mining, oil and gas) exports totaled $124 billion and more than 28 percent of gross domestic exports.[94] Given that Canadian extractive companies are increasingly searching for new resources abroad (notably in developing states such as those in Africa, Latina America) their subsequent connection to human rights abuse and environmental harm has been well documented.[95] Canadian MNCs/TNCs complicity in the violation of human rights and environmental abuse has become increasingly evident to the extent that Canada's current day Prime Minister - Stephen Harper, has acknowledged the increased social and environmental dilemmas associated with such ventures, that

[92] *Mennonite Central Committee Canada*, 'UN Human Rights Council endorses Guiding Principles on Business and Human Rights', 23 June 2011, [URL:http://mccottawa.ca/stories/news/un-human-rights-council-endorses-guiding-principles-business-and-human-rights], consulted 01 September 2012; *Business and Human Rights Resource Centre* 'Contribution by the Government of the Netherlands to the renewed EU-strategy for CSR', 01 July 2012, [URL: http://business-humanrights.org/en/pdf-contribution-by-the-government-of-the-netherlands-to-the-renewed-eu-strategy-for-csr], consulted 01 October 2012; *Australian Permanent Mission and Consulate-General Geneva, Switzerland*, 'Human Rights Council – 17th Session Interactive dialogue with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Representative of the UN Secretary General on the issue of human rights and transnational Corporations and other business enterprises, and the Special Rapporteur on the independence of judges and lawyers, Statement by Australia', [URL:http://www.geneva.mission.gov.au/gene/Statement208.html], consulted 01 October 2012; *European Commission*, 'Sustainable and responsible business – corporate social responsibility – New European policy', 14 September 2011, [URL:http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/index_en.htm], consulted 01 October 2012.

[93] *Department of Foreign Affairs and International Trade Canada*, 'Corporate Social Responsibility – Building the Canadian Advantage: A Corporate Social Responsibility (CSR) strategy for the Canadian International Extractive Sector', March 2009, [URL: http://www.international.gc.ca/trade-agreements-accords-commerciaux/ds/csr-strategy-rse stategie.aspx?view=d], consulted 28 October 2012.

[94] *Government of Canada*, 'Harper Government Launches Cross-Country Extractive Sector Consultations', 18/09/2013, [URL:http://news.gc.ca/web/article-eng.do?nid=772939], consulted 22 October 2013.

[95] Coumanns, C., 'Alternative Accountability Mechanisms and Mining: The Problems of Effective Impunity, Human Rights, and Agency', *Canadian Journal of Development Studies*, Volume 30, No's 1 – 2, 2010, Pp 27 – 48; Keenan, K., 'Canadian Mining: Still Unaccountable', NACLA Report on the Americas, May/June, 2010, Pp 29 – 42; Seck, S., 'Collective Responsibility and Transnational Conduct' in Isaacs, T.V., & Richard., V., *Accountability For Collective Wrongdoing*, Cambridge University Press, 2011; Seck, S., 'Conceptualizing the Home State Duty to Protect Human Rights', in Buhmann, K., Roseberry, L., & Morsing, M., *Corporate Social and Human Rights Responsibilities: Global Legal and Management Perspectives*, Palgrave Macmillan, New York, 2010.

irresponsible extractive companies "cause harm to communities abroad and undermine the competitive position of other Canadian companies" and accepts that more needs to be done to avoid such risks.[96]

Canadian mining companies' substantive environmental and human rights abuse was well documented in a 2009 global study conducted by the Canadian Centre for the Study of Resource Conflict (CCSRC) - an independent think tank which was commissioned by Canada's industry association – Prospectors and Developers Association of Canada (PDAC). In the report Canadian companies were cited as "the most significant group involved in unfortunate incidents in the developing world" and that they "have played a greater role than their peers from Australia, the United Kingdom and the United States".[97] Although the report was completed in October 2009, which included damning allegations of community conflict, protests and physical violence made against Canadian mining businesses and their operations abroad, mining industry leader PDAC never made the report public.[98] Outside of this report, the detrimental impacts of Canadian extractive companies' operations abroad have been widely reported across a range of published academic literature, NGO, civil society and Union reports, and as the CCSRC report noted - regions that have been most affected include Latin America (with the most incidents), followed by Africa and Southeast Asia.[99] The key sectors involved in reported incidents include gold, copper and coal.

One of the most widely referred to Canadian extractive ventures that was associated with human rights abuse thrusting Canadian mining activities into the international spotlight was the case of Talisman and its adverse involvement in Sudan's Second Civil War during 1998. During the civil war, the Sudanese government had been accused of war crimes, human rights violations and genocide with most of its revenue to fund the war effort originating from its oil industry. Talisman came under fire by its shareholders and the international media for contributing to the indirect funding of the Sudanese government's civil war through its oil operations and "alleging that Talisman had helped Sudanese government officials bomb churches, kill church leaders and attack villages in an effort to clear the way

[96] *Department of Foreign Affairs and International Trade Canada*, consulted 28 October 2012.
[97] *Canadian Centre for the Study of Resource Conflict*, unpublished report, cited in Whittington, L., 'Canadian mining firms worst for environment, rights: Report', *Toronto Star*, 19 October 2010, [URL: http://www.thestar.com/news/canada/2010/10/19/canadian_mining_firms_worst_for_environment_rights_report.html], consulted 23 October 2013.
[98] *Canadian Centre for the Study of Resource Conflict*, consulted 23 October 2013.
[99] *Canadian Centre for the Study of Resource Conflict*, consulted 23 October 2013.

for oil exploration".[100] Further, the Sudanese government was accused of "attacking civilians from an air field that's supposed to be used for oil-related air traffic..." and that "Talisman turned a blind eye to the situation and acquiesced in allowing the military to use the airstrip".[101] As a result, there was a mass shareholder exodus backlash against Talisman, international uproar by the international community and churches and a subsequent lawsuit by a Sudanese church which eventuated in Talisman divesting from its Sudanese project and selling it in full.[102]

Whilst Talisman developed a strong CSR reporting process in response to such events, and nowadays is often referred to as a corporate leader in responsible corporate conduct, many Canadian extractive companies continue to garner negative attention relating to environmental and human rights abuse in their projects and operations abroad. Two such companies that have garnered significant criticism include Hudbay Minerals Inc and Barrick Gold Corp. Hudbay has had three lawsuits submitted against it by Guatemalan nationals in 2010 and 2011 alleging that it has been negligent in the running of its Fenix Mine operations with particular reference to the company's security personnel. The first of the lawsuits – *Choc v. Hudbay Minerals Inc.* alleges that Hudbay security personnel at the Fenix Mine operation were responsible for the murder of an indigenous Guatemalan national activist Adolfo Ich.[103] The second lawsuit *Chub v. Hudbay Minerals Inc.* alleges that the same security personnel from the Adolfo Ich case shot Guatemalan national German Chub who was left a paraplegic among suffering other complications to his lungs.[104] Lastly, the third case *Caal v. Hudbay Minerals Inc.* alleges that 11 women from the Lote Ocho community were gang raped by security personnel, police and military powers.[105] Hudbay has responded in court to such allegations that its head offices cannot be held responsible through its

[100] Maharaj, A., 'Canada leads global interests in CSR', *Corporate Secretary*, 22 August 2011, [URL:http://www.corporatesecretary.com/articles/compliance-ethics-csr/11972/canada-leads-global-interest-csr/], consulted 23 October 2013.
[101] *CBC News Canada*, 'Talisman oil operations prolong Sudan civil war', 1 November 2000, [URL:http://www.cbc.ca/news/canada/talisman-oil-operations-prolong-sudan-civil-war-1.219016], consulted 23 October 2013.
[102] Maharaj, A., consulted 23 October 2013.
[103] *United Steelworkers Canada*, 'Getting Serious with Corporate Accountability for Canadian Mining Companies', 2012, p. 11, [URL: http://www.usw.ca/community/global/resources?id=0003], consulted 29 October 2013.
[104] *United Steelworkers Canada*, p. 11.
[105] *United Steelworkers Canada*,, p. 11.

subsidiaries or supply chain, however an Ontario Superior Court Justice ruled in July 2013 that this was not a sufficient defense and that a trial can proceed in Canada.[106]

Similarly, Barrick Gold Corp. has been heavily criticised by the media, activists, NGOs and academics alike for posing environmental risks in South America and violating human rights in Papua New Guinea. In South America, Barrick has maintained that it can extract gold sources from under three glaciers on the Chile-Argentina border known as the Pascal Lama project but has been challenged by Chilean opponents who have lobbied the Export-Import Bank of the United States and Export Development Canada (EDC) to not loan Barrick many millions of dollars to fund the project. Barrick withdrew its application for funding and many speculated that this was because Barrick "decided not to risk a rejection of financing…which would have made raising private banking funding more difficult".[107] Barrick's joint venture with Porgera Joint Venture in Papua New Guinea has been criticised for the last two decades whereby locals have alleged that PJV security personnel have carried out serious human rights violations including "killings and beatings of local Ipili men, rapes, including gang rape of Ipili women" and providing poor living conditions for workers which are alleged to be inconsistent with OECD health and safety standards.[108]

Hudbay and Barrick do not stand alone in terms of Canadian extractive enterprises having been cited as engaging in poor corporate conduct and human rights abuse in their projects abroad –others include Anvil Mining Ltd, Excellon Resources Inc, Blackfire Exploration Ltd, Goldcorp Inc, Cambior Inc and Copper Mesa Mining Corp.[109] Given that Canadian mining and extractive corporations have been thrust into the international spotlight for their engagement and complicity in corporate misconduct as (such as the 1998 Talisman case to the current lawsuits against Hudbay etc), such criticisms and allegations encouraged the Canadian Government to develop a national CSR Strategy – *Building the Canadian Advantage*. This was also influenced by an internal demand for the Government to regulate the activities of Canadian enterprise operating abroad to ensure human rights were respected and protected. Canada's national CSR Strategy will be detailed and analysed in greater detail in Chapter Two of this thesis.

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[106] Collenette, P., 'After HudBay ruling, Canadian firms on notice over human rights', *The Globe and Mail*, 24 July 2013, [URL: http://www.theglobeandmail.com/commentary/after-hudbay-ruling-canadian-firms-on-notice-over-human-rights/article13386168/], consulted 30 October 2013.
[107] *United Steelworkers Canada*, p. 13.
[108] *United Steelworkers Canada*, p. 13.
[109] *United Steelworkers Canada*, Pp. 10-14.

Whilst the Canadian Government has developed a national CSR Strategy that seeks to address corporate human rights violations, two key themes that underline Canada's shortcomings are evident in the academic literature - that of its voluntary nature and limitations of its national legal framework. Coumans review of key voluntary CSR instruments finds that they are inadequate in ensuring that human rights norms are respected nor do they provide accountability mechanisms that respect human rights or that provide necessary sanctions and remedy. Due to the lack of an internationally binding instrument and regulatory mechanisms, there is a "governance gap" and without sufficient CSR instruments, there is a need for governments to play a greater part in regulating the activities of their corporations abroad.[110] Similarly, Keenan notes the lack of an effective policy framework and believes that the Canadian Government's CSR policy is "unlikely to have a positive impact".[111] Keenan also notes Canada's lack of an effective legal framework whereby existing barriers make it incredibly difficult for non-national victims of corporate abuse in accessing the Canadian legal system. In spite of such limitations, she believes that legal and judicial routes are "the only viable option to avoid the abuse" suffered by victims.[112]

Imai (et al) also states that Canada's CSR policies and mechanisms do not provide necessary binding measures to hold extractive companies accountable and similarly cites the limitations of legal channels. Seck argues that domestic, conditionality, and/or international human rights laws are limited and contrary to Keenan, argues that they will have a limited effect on the development of international human rights norms and state obligations to protect such rights. Seck states that improved legal mechanisms and access for victims of corporate abuse will not be 'forthcoming' and that whilst the involvement of corporations and corporate lawyers in domestic B&HR functions is 'pragmatic' they detract from achieving legally binding and adjudicative measures.[113]

This thesis seeks to further detail Canada's development of its national CSR Strategy and legal frameworks to better analyse these arguments and draw inferences about why Canada designed its CSR

[110] Coumans, C., 'Alternative Accountability Mechanisms and Mining: The Problem of Effective Impunity, Human Rights, and Agency', *Canadian Journal of Development Studies*, 2010, Volume 30, No's 1-2, p. 30.
[111] Keenan, K., 'Canadian Mining: Still Unaccountable', *NACLA Report on the Americas*, May/June, 2010, p. 31, [URL: https://nacla.org/article/canadian-mining-still-unaccountable], consulted 05 November 2012.
[112] Keenan, K., p. 34.
[113] Seck, S., 'Canadian Mining Internationally and the UN Guiding Principles for Business and Human Rights', *The Canadian Yearbook of International Law*, Volume 49, 2011, Pp. 51 - 116.

policy the way that it did, whilst identifying shortcomings associated with the two key themes identified as means to considering ways in which Canada may be able to establish a more effective CSR/B&HR strategy.

7. International human rights norms socialization

Simmons argues that international human rights law has played an important role in the global progression and realization of human rights. Simmons provides two theories which explain why states sign up to human rights treaties, and why (and to what extent) they comply with such treaties. The first theory known as 'rationally expressive commitment', purports that "Governments are more likely to ratify rights treaties they believe in and with which they can comply at a reasonable cost than those they oppose or find threatening".[114] Simmons believes that liberal democracies adopt human rights treaties whilst authoritarian regimes do not. The second theory follows the question of why not all liberal democratic states adopt human rights treaties and conversely why not all authoritarian states have avoided such treaties. It is from here that Simmons explains why governments adopt or avoid international human rights treaties for a range reasons which are divided into three groups: *sincere ratifiers*, *false negatives*, and *strategic ratifiers*.[115]

Sincere ratifiers are highly concerned with their image and how they are perceived in the international system and thus seek to join norms on genuine grounds for self-improvement as well as contributing to the promoted norms or treaty.[116] Also, ratification is a way of ensuring that they are regarded with legitimacy and respect by other liberal states. *False negative* states may agree with the promoted international human rights norm, covenant, or treaty and the values such represents, but do not ratify.[117] A common example which illustrates this contradiction can be seen in the USA's open dialogue about the value of international human rights and it being a champion of freedom and democracy, yet till this day it refuses to ratify the Rome Statute and lacks participation and relations with the International Criminal Court (ICC). Further, the US has ratified the International Covenant on Civil and Political Rights but has not ratified the International Covenant on Economic, Social and Cultural Rights. States who are considered to be supportive of an international human rights treaty may face political

[114] Simmons, B., *Mobilizing for Human Rights – International Law in Domestic Politics*, Cambridge University Press, New York, 2009, p. 64.
[115] Simmons, B., p. 58; Risse, T., & Sikkink, K., p. 58.
[116] Simmons, B., *Mobilizing for Human Rights,* p. 58; Risse, T., & Sikkink, K., p. 58.
[117] Simmons, B., *Mobilizing for Human Rights,* p. 58.

and institutional barriers in their domestic systems which can serve as a challenge in achieving ratification. According to Simmons, such challenges "can influence the ratification decision by raising the political costs of ratifying, even for governments generally supportive of a treaty's purposes".[118] For instance, if an external treaty is implemented it has the ability to empower citizens to take action against the state through the national legal system. It is because of such challenges that some rights-respecting governments may refrain from ratification. The last group *strategic ratifiers* will often sign up to international human rights agreements and norms based on self-serving of strategic motives for immediate short terms rewards.[119] The very tentative and in-sincere nature of this group can lack dependability and performance output. The degree of exclusivity and in turn access to such groups also varies in the adherence to norms. For instance, the European Union has very strict rules in regards to norm adherence to gain membership, whereas in organisations such as the OAS such norms have been slower to develop.[120] The level of norm standards, expectations and compliance in these organisations may reflect state signatories that have weak human rights policies and values. Ultimately, insincere intentions, inaction, and rhetoric create illegitimacy that not only lies with the state, but standards to which the norm institution holds signatories accountable.

Whilst Simmons's work has been widely received with praise and referred to as "one of the most important books in decades on the effectiveness of international law in affecting human rights practices", authors such as Posner remain skeptical about some of Simmons claims.[121] Posner believes that Simmons's theory does not explain the reasons for why a liberal state would want to ratify a human rights treaty and what it gains in doing so. Given that there are political costs in signing up to treaties as well as the potential risks for a state that may seek to reduce its human rights commitment in the future due to unforeseen circumstances, Posner believes that Simmons theory suggests that "no liberal democracy should enter a treaty".[122] Moreover, Posner questions Simmons's theory as to why not all liberal states enter human rights treaties, and why not all authoritarian regimes reject entering these treaties. However, Simmons does in fact provide reasons as to why states seek to enter human rights treaties, whether it is to improve its global image or short term or long term goals, many of which

[118] Simmons, B., *Mobilizing for Human Rights,* p. 58.
[119] Simmons, B., *Mobilizing for Human Rights,* p. 58; Risse, T., & Sikkink, K., p. 58.
[120] Risse, T., & Sikkink, K., p. 9.
[121] Cingranelli, D;, 'Mobilizing for Human Rights: International Law in Domestic Politics (review)', *Human Rights Quarterly*, volume 32, number 3, August 2010, Pp 761 – 764.
[122] Posner, E.A., 'Some Sceptical Comments on Beth Simmons's *Mobilizing for Human Rights*', *New York University Journal of International Law and Politics*, 2012, Volume 44, Issue 2, p. 820.

translate into tangible gains (which vary depending on each state's individual circumstances). Posner goes on to analyse the role of common law however such critiques do not relate to Simmons's specific three categories which are used for contextual purposes throughout this thesis. Also, whilst Chilton commends Simmons' work and credits it as "the most thorough empirical analysis of the effect of human rights treaties to date", he does admit there are a handful of 'shortcomings'.[123] Chilton believes that due to limitations on causal inferences and statistical analysis, Simmons can only explicitly outline correlations rather than causations. Also, Chilton believes that Simmons's work cannot "guarantee that the theory provided by the book will continue to be valid as international institutions evolve and the density of international commitments continues to increase".[124] As we will explore in the following paragraph, Risse and Sikkink's socialization theory and spiral model seek to account for changes in a state's practices and identity over time. Simmons' categorisations may similarly be considered to change over time. For instance, as we will explore later in this chapter, Canada can be considered both a false negative and a strategic ratifier in its response to B&HR issues and its current CSR strategy.

Despite the sincerity of their motivations, the process of how a state starts to engage in the adoption of norms and treaties through dialogue, to internalisation and the *continuation* to seek comprehensive compliance can be conceptualised as a process known as *socialization*. To paraphrase Risse and Sikkink, socialization is a process in which principled ideas, create a collective understanding or agreement about what is appropriate behaviour which then creates changes in identities (acknowledging there is a link between norms and the identity of a state), interests and behaviours and ultimately domestic practices, procedures, and structures.[125] Risse and Sikkink focus on state behaviours in relation to norms and socialization, rather than that of individuals. The overall objective of socialization is for actors to reach a level of internalization whereby no additional dialogue or criticism regarding compliance in necessary. The socialization of human rights norms is described by Risse and Sikkink's 'spiral model' which outlines five phases in which a state will undergo socialization from beginning to completion.[126]

Phase 1 – repression and activation of network: the beginning phase is often defined by a tyrannical regime whereby human rights violations are rampant and specific details of the severity of such abuse

[123] Chilton, A., 'Book Review (reviewing Beth Simmons, Mobilizing for Human Rights: International Law in Domestic Politics', *Harvard Human Rights Journal*, 2011, No. 243, p. 244.
[124] Chilton, A., p. 244.
[125] Risse, T., & Sikkink, K., Pp. 5, 11 & 33.
[126] Risse, T., & Sikkink, K., Pp 19 – 20.

are unknown to human rights activists. This is due to the regime restricting media and other ways in which such repression could become known to outside states. It is only when human rights groups collect sufficient evidence and facts about internal abuse that they can begin to campaign against the violating state and cast it into the international spotlight.[127]

Phase 2 - denial: once a state has been put on the international agenda, various advocacy groups may begin campaigning and distributing information to the media, human rights groups and the international community of the violations and the severity of such occurring in that state. It is during this phase that the violating state will deny the allegations and refute the legitimacy of international human rights norms.[128] This may cause some nationalistic support and resentment within the state that foreigners are interfering in national political matters and such interference may initially appear fruitless. However, this is in fact one of the first indications that socialization is underway because the state feels compelled to defend its actions. The more the violating state engages in dialogue with the international community the more they "entangle themselves in the moral discourse".[129] It is here that the international community begins to assert soft power pressures such as public condemnation or trade sanctions to try and convince the violating state to stop repressive action within the state.

Phase 3 – tactical concessions: if the international community continues to criticise the violating state it may make "tactical concessions" to try and patch up their poor image on the surface and satiate the international community. In doing so, the state may try and regain aid donations and lift economic and trade embargos. Such concessions will give legitimacy to internal opposition groups and human rights advocacy groups who may be protected by the international community (in light of such concessions) who will assist in echoing their demands on the international stage.[130] It is also important to note that this can also cause the government to recoil and carry out further repressive action against domestic groups to silence their criticism.

Phase 4 – prescriptive status: it is during this phase that the state involved is now familiar and comfortable to an extent on human rights issues and norms having increasingly engaged in tactical concessions as described above, and no longer rejects the notion of human rights or that such claims are

[127] Risse, T., & Sikkink, K., p. 22.
[128] Risse, T., & Sikkink, K., Pp. 22 – 24.
[129] Risse, T., & Sikkink, K., p. 16.
[130] Risse, T., & Sikkink, K., Pp. 25 – 28.

illegitimate, take up the international human rights language and make claims of compliance. They will specifically use the human rights norm discipline to reflect on their actions and no longer see the situation as contentious. This is not to say that the state is still not violating those very rules.[131] However, it is one thing to churn out rhetoric and another thing to start enacting the necessary foreign and domestic policies that actually reflect functioning systems reflected in such rhetoric. According to Risse and Sikkink, governments and their rhetoric of values and compliance with international norms are only valid if and when (a) "they ratify international human rights conventions including optional protocols", (b) "the norms are institutionalized in the constitution and/or domestic law", (c) "there is some institutionalized mechanism for citizens to complain about human rights violations", (d) "the discursive practices of the government acknowledge the validity of the human rights norms irrespective of the audience, no longer denounce criticism as 'interference in internal affairs' and engage in a dialogue with their critics".[132]

Phase 5 – rule consistent behaviour: during this phase, whilst governments may have adopted norms or principles on human rights as outlined in the previous stages, they may continue to carry out inhumane policies and behaviour. As a result, it is important that local groups, the international community and transnational advocacy groups continue to work together to pressure the government's adherence to the principles they have committed themselves to. Sustainable human rights can only be achieved once human rights norms are entirely internalized into domestic law and regulated in a manner which norm compliance becomes routine.[133] As the reader is aware, no utopian state exists today – all are imperfect and suffer from a range of procedural, political and policy related and problems which can be fluid in nature due to changing variables, political, governmental and societal views or issues of any given time. Whilst a state may undergo tactical concessions, or no longer challenge international human rights norms, and may in fact openly support and promote these rights, whether a state is capable of completely integrating all human rights related norms into their domestic and legal structures so that compliance becomes routine in nature, remains to be seen. However, this is not to say that this phase is not possible, but rather acknowledging the reality that complete international human rights norm compliance is something which is achieved over a sustained period of (unknown) time.

[131] Risse, T., & Sikkink, K., Pp.29 – 31.
[132] Risse, T., & Sikkink, K., p. 29.
[133] Risse, T., & Sikkink, K., Pp. 31 – 33.

Whilst Risse and Sikkink's 'spiral model' illustrates the various stages from the beginnings of norm emergence to full socialization, it is recognised that not all states may reach full socialization which correlates with the state's attitude about international human rights, subsequently impacting on its level of norm compliance. As we noted at the beginning of this Chapter, norms can exist in either legal (i.e. treaties) or non-legal instruments (self-enforcing/regulating agreements). Simmons argues that external human rights mechanisms (whether they are treaties *or* self-regulating) are "weak" (as they often lack enforcement and ignore human rights violations) and "undersupplied" and are not ideal ways of achieving (high) international human rights norms compliance.[134] However, she does acknowledge the value of international human rights institutions promoting the dispersion of international human rights and their value in "define(ing) meaning, make(ing) rights demands, and bargain(ing) from a position of greater strength than would have been the case in the absence of their government's treaty commitment".[135] Despite Simmons pessimistic opinions about the ability of international institutions to influence norm compliance, the rise of international human rights norms from international institutions with varying levels of legal capacity, has created a rigorous international human rights *regime* which has furthered international human rights norms and their subsequent diffusion.[136]

8. Canada - norms diffusion and socialisation

False negative states may agree with the promoted international human rights norm, covenant, or treaty and the values such represents, but do not ratify. The last group strategic ratifiers will often sign up to international human rights agreements and norms based on self-serving or strategic motives and for immediate short terms rewards.[137]

Having considered Simmons three differing governmental groups (*sincere ratifiers*, *false negatives*, and *strategic ratifiers),* when ascertaining which group Canada can be placed into, it is difficult to discern whether Canada is a *false negative* or a *strategic ratifier*.[138] In terms of the *false negative* group– the

[134] Simmons, B., *Mobilizing for Human Rights*, p. 125 – 126.
[135] Simmons, B., *Mobilizing for Human Rights*, p. 126.
[136] Mantilla, G., 'Emerging International Human Rights Norms for Transnational Corporations', Pp. 279-298 and Donnelly, J., Pp 599 – 642.
[137] Simmons, B., *Mobilizing for Human Rights'*, p. 58.
[138] Note – whilst Simmons categorisations focus on the reasons why states ratify international human rights treaties, the same categorisation are equally useful in explaining why states adopt and respond to human rights norms. Simmons categorisations will be applied to emerging B&HR and CSR norms in Canada as well as the UNGPs which are currently undergoing a means to reaching treaty status.

Harper Government has openly stated that it believes Canada needs to do more to ensure that its mining and extractive companies act in an ethical manner that is consistent with CSR norms. Similarly, it has openly declared its support for, and the noted the importance of the emerging UNGPs. Despite Canada's verbal support for the UNGPs, nowhere in *Building the Canadian Advantage* are the UNGPs explicitly referred to. Domestically, it has pursued a more traditional and less comprehensive CSR route that does not endorse nor act on a majority of previous recommendations made by official committees and advisory groups (Standing Committee on Foreign Affairs and International Trade [SCFAIT] and Advisory Group reports – both of which are detailed in greater depth in Chapter Two of this thesis). In this regard, Canada can be placed within the *false negative* group given that it supports the further regulation of its mining and extractive sector in accordance with CSR norms and acknowledges the importance of the UNGPs, yet has failed to put into place the necessary and recommended frameworks that are needed to ensure a comprehensive and effective national B&HR policy.

That being said, one can also argue that Canada fits within the *strategic ratifier* group as well. Whilst Canada has engaged in and promoted some international B&HR norms (such as the Voluntary Principles on Security and Human Rights [VPs], the Kimberley Process etc), it has been slow to do so and demonstrated resistance in its uptake of such norms (see Chapter Two for greater detail and analysis). Domestically, it has pursued a more traditional and less comprehensive CSR route that does not endorse a majority of previous recommendations made by official committees and advisory groups (Standing Committee on Foreign Affairs and International Trade [SCFAIT] and Advisory Group reports – both of which are detailed in greater depth in Chapter Two of this thesis). As it will be demonstrated in the Third Chapter of this thesis, it is apparent that the Canadian Government is not sincere about B&HR matters given that it has intentionally designed a less comprehensive CSR strategy. Further, the current Harper Government responded to key recommendations to create an independent Ombudsman with investigative and authoritative powers with a CSR Counsellor that did not embody any of these necessary qualities to ensure that Canadian mining and extractive companies were held accountable for their actions. Instead, a CSR Office under the strict control of the Department of Foreign Affairs and International Trade (DFAIT) was delegated a mandate with a voluntary process resulting in an impotent Office that had no ability to investigate or report human rights breaches.

Building the Canadian Advantage is a means to paying lip service to B&HR issues by appearing to be acting upon such matters, yet intentionally pursuing a soft approach that does not enforce hard

regulative policies as a means to maintaining the international competitive advantage of its mining and extractive sector, which reflects the broader interests and values of the Harper Government (which is explored in greater detail in Chapter Three). Its rewards are that it appears to be seen as acting on B&HR issues in response for calls to develop a national strategy that addresses corporate human rights violations (particularly in extractive industries operating abroad) and appeasing the rising trend of the international B&HR regime.

In sum, despite the fact that Canada may say that it agrees with B&HR norms yet has failed to ratify many key and necessary recommendations when designing its CSR Strategy (which is consistent with *false negative* types), such behaviour is also a broader symptom of Canada's insincerity towards B&HR issues (this is detailed further in Chapter Three) and the Harper Government's self-serving interests. Therefore, it can be justified that in terms of B&HR norms, Canada is in fact, both a *false negative* and a *strategic ratifier.* This finding will be used for contextual purposes only to help explain and analyse how and why the Canadian government has responded to the emerging international B&HR regime and its current CSR strategy.

Identifying a Research Niche

As the Literature Review suggests, there is a niche for studies that comprehensively detail and analyse Canada's attitude and response to the emerging international B&HR regime and examine how it has organised itself accordingly. Further, this creates a niche to place Canada in an international context when considering how other states and/or regions have responded to the emerging international B&HR regime and what lessons Canada can learn from their experiences. Together, this is the research niche that this thesis aims to occupy.

Research Questions

The Literature Review revealed two key concepts that require further examination through the thesis. The first, relates to how governments have adjusted to reach policy coherence on the emerging international B&HR regime. Whilst Canada has traditionally been a leader on human rights issues, the literature illustrates that Canadian mining and extractive sectors operating abroad have led to Canada being labelled as one of the worst corporate violators of human rights abuse abroad. This raises a range of questions about the Canadian Government's approach towards B&HR. For instance, how is the Canadian Government preventing and regulating its corporations' activities abroad through B&HR

policies to ensure that it is fulfilling its obligation to protect the rights of individuals and their human rights? Further, what does this say about Canada's attitude and approach towards B&HR norms and how such negative labels impact on its reputation as a leader on human rights? Given that many Canadian mining and extractive corporations are not respecting human rights abroad, this raises questions about why the Canadian Government allowed such abuse to occur to the extent that it is now labelled one of the worst violators. In respects to the third 'remedy' pillar of the UNGPs, if the Canadian Government was providing sufficient remedy mechanisms through both adjudicative and non-adjudicative mechanisms, why is the proliferation of human rights abuse by Canadian corporations abroad still occurring?

The second relates to Risse and Sikkink socialization theory, and Simmons norm compliance literature, about how and why states implement human rights norms and differing levels of norms compliance. These theories can applied in a contextual manner towards Canada's experience in order to determine the extent of Canada's compliance with the emerging B&HR regime which will help draw inferences about Canada's approach and values towards B&HR and in turn, its position in an international context.

These two concepts give rise to three primary research questions to be explored throughout this thesis:

1) Is Canada still a leader on human rights?
2) Is Canada sincere about protecting human rights from corporate abuse and serious about the emerging international B&HR regime?
3) How does Canada sit within an international context? Will Canada follow suit and develop comprehensive B&HR strategies through implementing the UNGPs, or continue to isolate itself and reject B&HR norms, regulation and adjudicative accountability mechanisms?

Clearly there must be some relationship between the Canadian Government's attitude towards international B&HR norms and the continuation of Canadian corporations' human rights abuse occurring abroad. The goal of this thesis is to describe and draw inferences about the nature of the relationship and how they relate in a contextual manner to norms socialisation and compliance.

Methodology

This thesis seeks to use descriptive inference to describe Canada's response to and application of the international B&HR regime and norms. In turn, this assists in drawing inferences about its attitude towards B&HR norms and how Canada can be analysed in an international context. It is important to stress the fact that this is *not* a theoretical thesis. Whilst Risse and Sikkink's socialization theory and 'spiral model' provides useful context as to why and how states like Canada apply B&HR norms to their internal structures, and assists in analysing the differing levels of compliance and reasons for such, it will *not* be used as the theoretical framework for this thesis. Rather, the scope of discussions relating to Risse and Sikkink's spiral model are only intended to provide important context as to how and why states, like Canada, respond to emerging human rights norms. Further, this scope includes discussions relating to the spiral model and how a state reaches full socialization of a human rights norm for contextual purposes. This will help to identify and analyse ways in which Canada can progress in order to implement a fully functional and effective B&HR strategy whereby B&HR norm compliance becomes routine. Any further discussions, analysis or theory relating to Rise and Sikkink's socialization theory and spiral model is beyond the scope of this thesis. Similarly, Simmons categorisations (sincere and strategic ratifiers and false negatives) of why states adopt and ratify international human rights treaties is used for contextual purposes only. In turn, this will assist in explaining why and how Canada has responded to the emerging international B&HR regime. Having categorised Canada as both a strategic ratifier and false negative in the first chapter of this thesis, Simmons categories help provide further context in discerning how Canada can improve its current CSR strategy and approach to B&HR issues.

The scope of this thesis encapsulates the initial emergence of international B&HR norms discussion and dialogue in Canada originating from the SCFAIT report, extends through to the Governmental development and announcement of *Building the Canadian Advantage* and ends at the Government's announcement of its newly enhanced CSR Strategy in November 2014. An in-depth analysis of the newly enhanced November 2014 CSR Strategy is beyond the scope of this thesis, however analysis of the updated Strategy opens new avenues for future research. This thesis provides a sound basis of Canada's response to the emerging international B&HR regime. It has drawn upon primary data largely comprised of governmental documents and official information obtained online. Where primary data is limited, this thesis draws upon secondary sources in peer reviewed books and articles, non-government oganisations (NGOs), institute reports and expert commentaries. Also, attempts have been made to corroborate

primary data and secondary sources with interview testimony from academics (Hevina Dashwood – Brock University, Sara Seck – Western University, and Shin Imai – York University) and a solicitor (Cory Wanless from Klippensteins Barristers and Solicitors) within Canada. Where interview testimony has been used, a description of the interviewee is provided in the footnotes to establish their credibility as a source of information. Securing interviews with any official member of the Canadian Government was unsuccessful despite numerous attempts at contacting Canada's Department of Foreign Affairs and International Trade. While I was able to organise a potential interview with the CSR Counsellor at the time (Ms. Marketa Evans), this was later cancelled due to the policy nature of my interview questions and the constrained mandate of the Counsellor. Upon learning that Ms. Evans had resigned as the CSR Counsellor, I attempted to contact her and the CSR Counsellor's Office again to request an interview but received no response.

Thesis Argument

The argument of this thesis derives directly from the research questions identified above. First, whilst Canada has traditionally been a leader on human rights, its failure to align with the emerging international B&HR regime and norms and regressive policies that allow for corporate abuse means that it is no longer a leader on [business] human rights.[139] Whilst international B&HR norms were progressing and the eventually announcement of the UNGPs, calls within Canada recommended that the Canadian Government put into place appropriate regulatory policies and frameworks that would ensure that Canadian corporations operated in a manner that was consistent with international B&HR norms. Instead, Canada has continued to skirt such recommendations and created a national framework that was based on CSR – a less comprehensive and more traditional concept, and voluntary in nature. Canada's strategic design of *Building the Canadian Advantage* is explored and analysed in greater detail in Chapter Two and is flagged throughout the remaining Chapters of this thesis when further supporting evidence is found to support this argument. Second, Canada is not sincere about B&HR issues and despite minimal rhetoric cited in *Building the Canadian Advantage* referring to human rights and the

[139] Bristol, C., 'Is Canada Still a Leader when it comes to human rights?, *The Centre for International Governance Innovation (CIGI),* 15 December 2009, [URL: https://www.cigionline.org/articles/2009/12/canada-still-leader-when-it-comes-human-rights], consulted 23 October 2012; *Human Rights Watch Canada*, 'Human Rights in Canada', no date specified, [URL: http://www.hrw.org/americas/canada], consulted 23 October 2013. Note – Upon signing the Universal Declaration of Human Rights 1948, Canada has pursued a range of mechanisms in an attempt to make human rights a key component of Canadian Law. These mechanisms include: the Canadian Human Rights Act, Canadian Charter of rights and Freedoms and the Canadian Human Rights Commission. For further information please see *Department of Foreign Affairs and International Trade Canada*, 'Canada's International Human Rights Policy', no date specified, [URL: http://www.international.gc.ca/rights-droits/policy-politique.aspx?lang=eng], consulted 23 October 2013.

UNGPs, it has pursued a CSR framework that allows corporations to continue business as usual without appropriate punitive measures.

Canada's close relationship with its mining and extractive sectors and how this influenced the Government's CSR Strategy is illustrated and analysed in greater detail in Chapter Three. Moreover, the Canadian Government's intentional design of a CSR Counsellor that has no authoritative, investigative or prescriptive powers further supports the argument of its lack of insincerity towards B&HR issues. A case study of the Office of the CSR Counsellor is conducted in Chapter Four of this thesis. Also, as illustrated in Chapter Five, Canada suffers from a range of legal impediments which prevents it from providing necessary adjudicative redress mechanism for victims of corporate abuse and punitive/accountability measures for corporate offenders. In light of this, a range of private member bills that seek to overcome these issues were introduced to Parliament but were rejected. This further supports the argument that Canada is neither sincere about protecting human rights from corporate abuse nor serious about B&HR issues. Lastly, in an international context, Canada has fallen behind other states/regions and has isolated itself from the uptake of the UNGPs and development of a sound B&HR framework. Whilst its U.S. neighbour already possesses adjudicative mechanisms that allow (to a certain extent) for corporate accountability and legal redress it has additionally announced plans to develop its own National Action Plan (NAP) which seeks to implement the UNGPs into national policies and frameworks. Canada however, has failed to follow suit and upon announcing a newly enhanced CSR strategy in November 2014, there is still little evidence of it addressing many of the gaps (whether it be policy related or legal) that prevent the implementation of a comprehensive B&HR framework.

Chapter Outline

Following on from this introduction, Chapter Two provides an outline of Canada's relationship with the emerging international B&HR regime. This is achieved through examining its foreign and domestic policies and identifying a dichotomy between its international and domestic image and persona(s). It then describes the key pillars of *Building the Canadian Advantage* and provides context on the national roundtables which prompted the governmental response and CSR strategy. By outlining the origins of Canada's national CSR strategy, useful insight and context is provided to help discern the Government's response and attitude towards B&HR which is further built upon in Chapter Three. Further, it assists in drawing inferences about the Canadian Government's close relationship with the mining and extractive sectors and how this influenced the governmental response.

Chapter Three explores the close relationship between the Canadian Government and its mining and extractive sectors to assist in drawing inferences about the Canadian Government's values and approach towards B&HR issues. It is comprised of three key sections: examining Canada's historical resistance towards the uptake of B&HR norms; considering industry's attitudes towards B&HR regulation and how this influenced the Governmental CSR strategy; and lastly considers support the Canadian Government has extended to Canadian corporations who have been linked to human rights abuse abroad.

Chapter Four conducts a case study of the Office of the CSR Counsellor given that it is the main pillar of *Building the Canadian Advantage* that attempts to directly address B&HR issues. It seeks to comprehensively describe the Office's functions and activities and draw analysis about how effectively the Office manages B&HR issues. Comprised of two key sections, the first details the Counsellor's role, processes and activities that it has engaged in to provide a necessary understanding and context of how the Office operates. The second section analyses the efficiency of the Office and outlines its limitations which prevent it from ensuring that Canadian corporations conduct their operations in a socially responsible manner, respecting human rights abroad. It considers the Office's key conflict resolution mechanisms known as the 'Review Process' and outlines the cases that the CSR Counsellor has dealt with thus far which helps develop further analysis and inferences about Canada's attitudes, values and response towards the emerging international B&HR regime.

Chapter Five discusses Canada's judicial system and legal frameworks as a means for considering how Canada could implement international B&HR norms that provide better access to legal redress for victims and punitive measures for corporations who breach human rights. Canada's legal system suffers from three key legal conventions related to issues of extraterritoriality which it must overcome in order to ensure that it fulfills its state duty to protect and that corporations are regulated in a manner that ensures they respect the rights of others. The Chapter is comprised of three key sections. The first provides an outline of the inability of foreigners to seek legal redress against Canadian corporations who violate human rights. This will also demonstrate Canada's lack of an effective CSR strategy whereby adjudicative redress is a vital component of an effective B&HR strategy. Second, three legal 'blocks' of jurisdiction, *forum non conveniens* and duty of care are discussed in order to understand how they impair access to legal redress and punitive measures. Lastly, it explores the rising trend of private

member bills introduced by Canadian MPs in an attempt to legislate tougher regulation of the Canadian mining and extractive sectors operating abroad as a means of ensuring greater respect for human rights.

Chapter Six seeks to briefly survey how other regions and/or states have sought to implement emerging international B&HR norms and the UNGPs. It serves as a counterpoint to the previous discussion about Canada's attitude and approach towards B&HR. In turn, this assists in developing analysis and inferences about Canada's attitude and approach and what lessons it can learn from others to better develop its national CSR strategy so that it addresses B&HR in a more effective and comprehensive manner. Comprised of seven key sections, the first will examine the EU's current CSR strategy ('The Communication') and how it was developed. It seeks to develop B&HR policies and the implementation of the UNGPs in EU member states as well as the further regulation of corporations in the region. Its definition of CSR reflects the UNGPs ideology on B&HR and it is developing a soft law instrument to assist in the facilitation of their implementation. Second, recommendations, resolutions and soft law instruments of developing its CSR strategy are discussed and parallels between Canada's experience with recommendations and private member bills are developed. Third, EU National Action Plans (NAPs) are detailed to explore how *The Communication* seeks to implement the UNGPs in member states. Fourth, Europe's judicial frameworks and avenues that allow for greater access to legal redress for victims of corporate abuse are examined. Europe has pro-actively attempted to overcome legal impediments as a means to implementing a comprehensive and effective B&HR framework. Fifth, the United States Alien Claims Tort Act (ACTA) is analysed to provide further context on how another state holds corporations accountable for human rights abuse and violations. A brief comparative analysis between Europe's legislative and adjudicative systems and ACTA is developed which assists in considering ways in which Canada can better improve upon its CSR strategy in the sixth and final section of the Chapter. This final section draws together the previous five sections to consider broader lessons Canada can take from Europe's and the United States approach and experience if it wishes to implement a comprehensive B&HR strategy.

CHAPTER TWO

Business and Human Rights Norms Diffusion: Canada's Experience

Historically, Canada has been at the forefront of contributing to the development of international human rights norms and institutions in terms of norms creation, institutional participation, and development and thus was selected as an appropriate and relevant state to conduct a case study upon in this thesis. As far back as being a key player in the drafting of the 1948 UN Universal Declaration of Human Rights, Canada maintained its reputation as a champion of human rights norms development and is a "party to seven major international human rights conventions, as well as many others, and encourages all countries which have not made these commitments to do so".[140] These key international human rights treaties which Canada has ratified include: the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the Convention on the Elimination of All Forms of Discrimination Against Women; the Convention Against Torture; the Convention for the Elimination of Racial Discrimination; the Convention on the Rights of the Child; and the Convention on the Rights of Persons with Disabilities.[141] Canada is also well known for its participation and contribution to UN peacekeeping dialogue and forces in many civil conflicts over the years. Canada also led efforts in the creation of the Office of the United Nations High Commissioner for Human Rights and has engaged in a range of human rights field operations for the Office. It remains an active participant in the annual meetings of the UN Human Rights Council and frequently sponsors a range of resolutions.

More importantly, Canada was a primary actor in the promotion and adoption of the theoretical concept of human security as "an alternative to the conceptualization of security as national security" which was the dominant theory until the end of the Cold War in 1992.[142] Human Security has been defined by the UN as "safety from chronic threats such as hunger, disease and repression...and

[140] *Government of Canada*, 'Canada's International Human Rights Policy', consulted 25 September 2012.
[141] *Government of Canada,* 'Canada's International Human Rights Policy', consulted 17 October 2013.
[142] Girshick, R., 'Canada and Human Security: Examining the Trajectory of an Idea in Domestic and International Politics', *Midwest Political Science Association Annual Conference*, Chicago, April, 2009, Pp. 1-3.

protection from sudden and hurtful disruptions in the patterns of daily life".[143] Seven categories of threats to human security have been recognized including: economic security, food security, health security, environmental security, personal security, community security, and political security.[144] Between the years of 1996 to 2000 Canada's foreign minister Lloyd Axeworthy was a key entrepreneur in the promotion and diffusion of human security norms both domestically and internationally. During his years in office, Mr Axeworthy "drew explicitly on Canada's historic involvement in UN peacekeeping and use of multilateral institutions, such as the UN, to promote new policy ideas".[145] Canada's advocacy of human security resulted in many successful campaigns (both domestic and international), some of which included: the Ottawa Treaty of the international banning of land mines which contains 160 state parties, the Lysoen Declaration between Canada and Norway, meeting with multilateral institutions such as ASEAN, NATO and the OAS and putting human security on the international agenda for discussion, and the launch of the Human Security Network.[146]

Given that Canada has been a key player in the international system in the promotion, development and diffusion of international human rights norms, it has actively developed, implemented and promoted B&HR norms through its foreign policies, but as discussed later in this Chapter (and throughout the remainder of this thesis) to a lesser extent in its domestic policies. The following Chapter argues that whilst Canada has traditionally been a leader on international human rights and has played a key role in its contribution, and promotion of key B&HR norms through its foreign policies, its domestic B&HR policies are less progressive resulting in a dichotomy between promoting best practices internationally, yet being heavily criticised as one of the worst countries for human rights abuses in extractive projects abroad. This double standard raises broader questions for this thesis about Canada's sincerity towards human rights; indicates that Canada's B&HR policies may in fact be regressive; and whether Canada is still an international 'leader' on human rights.

This Chapter will begin by, first examining Canada's involvement in the international B&HR regime through its foreign policies and domestic policies in order to identify the dichotomy between its international image and domestic practices; it will also highlight how Canadian mining and extractive

[143] *United Nations Human Development Report Office*, 'Human Security', February 2008, issue 17, p. 1. [URL:http://hdr.undp.org/en/media/hdinsights_feb2008.pdf], consulted 05 November 2012.
[144] Girshick, R., Pp. 5 – 6.
[145] Axeworthy, L. cited in Girshick, R., p. 9.
[146] Girshick, R., Pp. 10 – 11.

corporations have been involved in a range of human rights abuse in the developing world to provide context as to why B&HR practices are an important and current issue for Canada. Second, the origins of Canada's current CSR Strategy will be explored in order to understand why and how its CSR framework came about and what was originally intended; and lastly an outline will be provided of the formal multistakeholder national roundtables which led to a Government response and Canada's subsequent current CSR Strategy. By tracing the origins and understanding the original intent of developing a B&HR framework for Canada, a contrast between national pressure and Government action and uptake provides useful insight and context on national values and attitudes - which will assist in drawing inferences about the Canadian government's relationship with its extractive sector and its attitude towards the push for a national B&HR framework in the Third Chapter of this thesis.

1. Canada and B&HR – foreign policies

In terms of Canada's participation in the international B&HR regime, Canada has been a key player in the development of three key international B&HR norms and voluntary corporate codes of conduct – the VPs, the Kimberley Process Certification Scheme (KPCS), and the Supplement on Gold for the OECD Due Diligence for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas.[147] The VPs are a set of voluntary guidelines designed for extractive companies to "manage their security practices" in a way which is consistent with human rights norms and values and a multistakeholder initiative including eight government participants (including Canada), companies and NGOs.[148] The VPs guide companies in human rights risk assessment with public and private security providers to anticipate and mitigate human rights risks and ensure that human rights are respected and promoted when protecting company facilities and sites.[149] Whilst Canada was resistant to joining the VPs in its early days it joined the VPs in March 2009, became a full member in 2010, and succeeded the United States as Government Chair of the VPs in 2011. Further in 2011, Canada hosted an Extraordinary Plenary Meeting of the VPs in Ottawa with seven governments, twenty companies and ten civil society groups in attendance.[150] The Meeting finalised key projects which sought to strengthen the VPs, strengthen

[147] Johnson, M.P., 'File No. DF – Other Initiatives', *Department of Foreign Affairs and International Trade*, [URL: http://www.sec.gov/comments/s7-40-10/s74010-444.htm], consulted 05 October 2012.
[148] *The Voluntary Principles on Security Human Rights*, 'Governments and The Voluntary Principles on Security and Human Rights', [URL: http://www.voluntaryprinciples.org/for-governments/], consulted 18 October 2013.
[149] *U.S. Department of State,* 'Voluntary Principles on Security and Human Rights', 20 December 2012, [URL: http://www.state.gov/j/drl/rls/fs/2012/202314.htm], consulted 18 October 2013.
[150] *Department of Foreign Affairs and International Trade Canada*, 'Corporate Social Responsibility 2012 E-Bulletin', Issue 15, 2012, (note – web address has been removed and archived).

Governance rules, established a legal entity for the Initiative and launched the Implementation on Guidance Tools.[151] According to DFAIT – "Canada is committed to helping the VPs grow as an organisation and is looking forwards to working with the VPs membership. Canadian stakeholders, and the international community to strengthen and broaden the reach of the VPs".[152]

Canada has also been a key leader in the promotion and development of the KPCS through Partnership Africa Canada (PAC), a registered non-profit NGO organisation that "undertakes investigative research, advocacy and policy dialogue on issues relating to conflict, natural resource governance and human rights in Africa".[153] The Kimberley Process developed an international certification scheme in response to the emergence of conflict diamonds in war fueled states such as Angola, Sierra Leone and the Democratic Republic of the Congo and sought to align market incentives with human rights norms regarding corporate responsibility in conflict zones.[154] PAC played an important role in publishing key reports which gained significant attention in the media which was later endorsed by the UN Sanctions Committee on Angola. It also took part in the first meeting of what would later become the Kimberley Process. Key members of PAC such as Ian Smillie – PACs Research Coordinator at the time participated in United Nations Security Council Expert Panels examining the relationship between weapons and diamonds in Africa, has negotiated in all KP meetings, and participated in KP monitoring, statistics, rules, procedures and membership working groups.[155]

The Gold Supplement to the OECD Due Diligence Guidance on Responsible Supply Chains on Minerals from Conflict-Affected and High-Risk Areas was led by a Drafting Committee who hosted a working group, which was chaired by the Government of Canada, DFAIT employee - Mora Johnson.[156] The Gold Supplement seeks to encourage risk-based due diligence on gold and its subsequent supply chain. The

[151] *Department of Foreign Affairs and International Trade Canada*, 'Corporate Social Responsibility 2011 E-Bulletin, Issue 13, 2011, (note – web address has been removed and archived).
[152] *Department of Foreign Affairs and International Trade Canada*, 'Corporate Social Responsibility 2011 E-Bulletin, Issue 11, May, 2011.
[153] *Partnership Africa Canada*, 'PAC and the Kimberley Process: A History', [URL: http://www.pacweb.org/en/pac-and-the-Kimberley-process], consulted 18 October 2013.
[154] *Partnership Africa Canada*, consulted 18 October 2013.
[155] *Partnership Africa Canada*, consulted 18 October 2013.
[156] *Organisation for Economic Co-operation and Development*, 'Forum on due diligence in the gold supply-chain', not date specified, [URL: http://www.oecd.org/daf/inv/corporateresponsibility/forumonduediligenceinthegoldsupply-chain.htm], consulted 18 October 2013.

OECD adopted the Gold Supplement in 2012.[157] Further, Canada's International Code of Ethics for Canadian Business inspired the Global Compact reference to corporate complicity which has been important in defining corporate human rights obligations in the international literature.[158] Canada has also endorsed and/or promoted a range of international B&HR norms, voluntary corporate codes of conduct and performance standards.

Canada's important contribution to the development and/or promotion of key international B&HR and CSR norms such as the VPs, the Kimberley Process, and the Supplement on Gold for the OECD Due Diligence for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas has helped further the development of today's B&HR regime. Further, its participation, promotion and endorsement of a range of key voluntary corporate codes of conduct through its foreign policies (such as the International Finance Corporation's (IFC) Performance Standards, the OECD Guidelines for MNEs, the Equator Principles, the ILO Tripartite Declaration, and institutions which seek to promote B&HR norms like the GRI, UN Global Compact and the UN Guiding Principles on Business and Human Rights) has resulted in Canada being perceived as a leader on B&HR. However, although Canada has been proactive in promoting B&HR norms and standards through its foreign policies, the following section will demonstrate how it has been *less* active and progressive in pursuing and incorporating B&HR norms and values into its domestic policies.

2. Canada and B&HR – domestic policies

Whilst Canada has traditionally been a champion of international human rights and a leader in the promotion and development of international B&HR norms (often implemented and endorsed through its foreign policies), it has also been heavily criticised for its involvement and complicity in un-ethical, environmentally detrimental and direct human rights abuses in its extractive sector and through Canadian mining businesses and their operations abroad. Some critics have gone as far as labelling Canadian mining companies as "the worst offenders in environmental, human rights and other abuses

[157] *Organisation for Economic Co-operation and Development*, 'Gold Supplement to the OECD Due Diligence Guidance', no date specified, [URL: http://www.oecd.org/daf/inv/investmentfordevelopment/goldsupplementtotheduediligenceguidance.htm], consulted 18 October 2013.

[158] Clapham, A., 'Corporations and Criminal Complicity' in Nystuen G., Follesdal A., Mestad O. eds, *Human Rights, Corporate Complicity and Disinvestment*, Cambridge University Press, Cambridge, 2011, Pp. 222-242.

around the world".[159] Although Canada has played a key role in its contribution, and promotion of key B&HR norms through its foreign policies, the domestic policies it has put into place in response to criticisms and concerns relating to corporate human rights abuse are *less* progressive than its international persona and foreign policy counterparts. This is because Canada has pursued a more traditional CSR strategy that is less comprehensive than the B&HR frameworks centered around the UNGPs. This begs the question as to why Canada would choose to pursue a less comprehensive CSR strategy given the emergence of a more widely acknowledged comprehensive B&HR regime. This dichotomy of promoting best practices internationally, yet being heavily criticised as one of the worst countries for human rights abuses in extractive projects abroad, in conjunction with pursuing less progressive CSR domestic policies in response to such criticisms and concerns not only points to questions of double standards but also Canada's sincerity about human rights. The following section will explore the origins of Canada's current CSR Strategy – 'Building the Canadian Advantage' to provide context as to why the Strategy was designed the way that it was. This will help to identify key factors which influenced its policies and in turn, draw inferences about the Canadian Government's uptake of the international B&HR regime in the following chapters of this thesis.

3. Origins of Canada's current Corporate Social Responsibility Strategy

The Canadian Government's current CSR Strategy originates from June 2005 when the Standing Committee on Foreign Affairs and International Trade adopted a report of the Parliamentary Subcommittee on Human Rights and International Development which noted the increasing number of incidents and the adverse impacts related to the activities of Canadian mining and petroleum companies operating abroad. The Subcommittee's report was ground-breaking because its recommendations called for the Canadian Government to take legal and regulatory steps to ensure that Canadian mining companies respect and adhere to human rights standards and norms in their operations abroad.[160] Essentially, it was this Subcommittee report that offset a chain of national events from 2005 – 2009 that would see the Government of Canada announce its new CSR Strategy for its extractive sector, and its subsequent desire to establish the Office of the CSR Counsellor.

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[159] Whittington, W.L., 'Canadian mining firms worst for environment, rights: Report', 19th October 2010, *Toronto Star*, [URL:http://www.thestar.com/news/canada/2010/10/19/canadian_mining_firms_worst_for_environment_rights_report.html], consulted 21 October 2013.

[160] *Parliament of Canada*, '38th Parliament 1st Session Committee Report', House of Commons Ottowa Canada K1A0A6, cited in Coumans, C.,'Alternative Accountability Mechanisms and Mining: The Problem of Effective Impunity, Human Rights, and Agency', *Canadian Journal of Development Studies*, 2010, Volume 30, No 1-2, p. 30.

In light of the increasing number of reports the Subcommittee was receiving about abuses in countries such as the Philippines, Colombia, Sudan and the Democratic Republic of the Congo, it began conducting hearings about the activities of Canadian extractive companies operating abroad. It specifically focused on allegations relating to grave accusations against Canadian company TVI Pacific Inc's activities in the Philippines, in particular its mining project in Mindanao. TVI Pacific's activities had previously been reported upon and presented to the United Nations Working Group on Indigenous Populations in 2001, 2002, 2004, and 2005.[161] Reported human rights abuses included the activities of paramilitary guards (relating to violence, preventing access to homes, forced evictions), indigenous rights abuses (operating without having gained prior consent from indigenous communities, defiling a sacred mountain, and undermining traditional leadership and processes) were documented. Environmental damage was further documented including the contamination of water systems through acid mine outlets, metal leaching and their subsequent detrimental impacts upon drinking water and agriculture for communities living downstream in the town of Siocon.[162] During these hearings several witnesses presented their views, these included Canadian experts, NGO representatives, and two members of the Subanon community in Mindanao, as well as written documents from individuals from the community and local organizations.[163] Representatives from TVI Pacific Inc, the Siocon Subano Association, and a body of indigenous individuals from the Subanon area also provided testimony's to the Subcommittee supporting such claims.[164]

As a result of this hearing, the Subcommittee tabled a report where it identified the core problem stemming from the impunity of Canadian extractive companies operating abroad in weak governance zones and thus the need to stem such in Canada. The report specifically asks that the Canadian Government "establish clear legal norms in Canada, to ensure that Canadian companies and residents are held accountable when there is evidence of environmental and/or human rights violations associated with activities of Canadian mining companies".[165] Lastly, the Subcommittee recognised the role of government support of Canadian companies operating abroad and proposed that it be "conditional on companies meeting clearly defined corporate social responsibility and human rights

[161] Coumans, C., p. 28.
[162] Coumans, C., p. 28.
[163] *Parliament of Canada*, '38th Parliament 1st Session Committee Report', consulted 09 October 2012.
[164] *Parliament of Canada*, '38th Parliament 1st Session Committee Report', consulted 09 October 2012.
[165] Coumans, C., p. 29.

standards, particularly through the mechanism of human rights impact assessments".[166] Upon receiving the Subcommittee's report, SCFAIT endorsed the report and in turn, produced its own report entitled - *Mining in Developing Countries and Corporate Social Responsibility* which commented on the investigative process and findings of the Subcommittee expressing its concern that "Canada does not yet have laws to ensure that the activities of Canadian mining companies in developing countries conform to human rights standards".[167] In turn, SCFAIT argued that "more should be done to ensure that Canadian mining companies operating overseas conduct their activities in a socially and environmentally responsible manner and in conformity with international human rights standards".[168] Further, SCFAIT went a step further calling for legal reform in Canada as well as the implementation of legal norms "to ensure that Canadian companies and residents are held accountable when there is evidence of environmental and/or human rights violations associated with the activities of Canadian mining companies".[169] Specifically, the report made 10 resolution recommendations to the Government of Canada, which are listed below in Figure 1.

1. Put in place a process involving relevant industry associations, non-governmental organizations and experts, which will lead to the strengthening of existing programs and policies in this area and, where necessary, to the establishment of new ones;
2. Put in place stronger incentives to encourage Canadian mining companies to conduct their activities outside of Canada in a socially and environmentally responsible manner and in conformity with international human rights standards. Measures in this area must include making Canadian government support – such as export and project financing and services offered by Canadian missions abroad – conditional on companies meeting clearly defined corporate social responsibility and human rights standards, particularly through the mechanism of human rights impact assessments;
3. Strengthen or develop new mechanisms for monitoring the activities of Canadian mining companies in developing countries and for dealing with complaints alleging socially and environmentally irresponsible conduct and human rights violations. Specifically, the government must clarify, formalize and strengthen the rules and the mandate of the Canadian National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises, and increase the resources available to the NCP to enable it to respond to complaints promptly, to undertake proper investigations, and to recommend appropriate measures against companies found to be acting in violation of the OECD

[166] Coumans, C., p. 29.
[167] *Parliament of Canada*, '38th Parliament 1st Session Committee Report', consulted 09 October 2012.
[168] *Prospectors and Developers Association Canada*, 'National Roundtables on Corporate Social Responsibility (CSR) and the Canadian Extractive Industry in Developing Countries', 1 May 2007, p. 1.
[169] *Parliament of Canada*, '38th Parliament 1st Session Committee Report', consulted 09 October 2012.

Guidelines. The government shall develop specific rules for companies operating in conflict zones;
4. Establish clear legal norms in Canada to ensure that Canadian companies and residents are held accountable when there is evidence of environmental and/or human rights violations associated with the activities of Canadian mining companies;
5. Increase and improve services offered to Canadian mining companies operating in developing countries to ensure they: (a) are aware of their obligations under Canadian and international law and the law of the country where they operate, as well as international corporate social responsibility norms and human rights standards; (b) are aware of the local political, social and cultural context in which they intend to operate; and (c) have the capacity to conduct their activities in a socially and environmentally responsible manner, in particular by developing and promoting a specific toolkit to help Canadian companies evaluate the social, environmental and human rights impacts of their operations.
6. Make the building of governance capacity in the area of corporate social responsibility a priority in its efforts to promote good governance and private sector development in developing countries, as outlined in the April 2005 International Policy Statement;
7. Work with like-minded countries to strengthen the OECD Guidelines for Multinational Enterprises, first, by clearly defining the responsibilities of multinational enterprises with regard to human rights, second, by making compliance with international human rights standards obligatory, and third, by working towards establishing common rules of evidence;
8. Work with like-minded countries to integrate and mainstream international human rights standards in the work of international financial institutions (IFIs) such as the World Bank and the International Monetary Fund – as outlined, for example, in the final report of the Extractive Industries Review (December 2003) – to ensure that projects and investments funded by IFIs conform to international human rights standards.
9. Conduct an investigation of any impact of TVI Pacific's Canatuan mining project in Mindanao on the indigenous rights and the human rights of people in the area and on the environment, and table a report on this investigation in Parliament within 90 days;
10. Ensure that it does not promote TVI Pacific Inc. pending the outcome of this investigation.

Figure 1: SCFAITs ten recommendations to the Canadian Government.[170]

[170] *Parliament of Canada*, '38th Parliament 1st Session Committee Report', consulted 09 October 2012.

In October 2005, The Government responded with its own report which noted that whilst the SCFAIT report raised many valuable and valid points, there were a range of "practical policy challenges in translating many of the Committee's recommendations into practice".[171] Under the Liberal Government of Paul Martin only one of SCFAIT's recommendations was adopted – that of a multistakeholder process to discuss policy and programming issues further".[172] In SCFAIT's report it recommended that the Government hold multistakeholder public consultations including "industry associations, non-governmental organizations and experts which will lead to the strengthening of existing programs and policies in this area and, where necessary, to the establishment of new ones".[173] Further, this would ensure that SCFAIT would receive recommendations not only from the Canadian Government but from other important and affected parties from industry, labour, business and NGO associations. In turn, the Government announced it would begin consultations by holding 5 national roundtables to further explore and address issues that were identified in the SCFAIT report.[174] More specifically the themes and sub-themes for the roundtables were established from the SCFAIT report which included "standards, reporting and compliance, tools and incentives, and resource governance".[175]

Four roundtables (one less than originally planned) were organised by a Steering Committee comprised of Canadian officials from DFAIT as well as eight representatives from various other governmental departments. They took place in Toronto, Montreal, Vancouver and Calgary during June to November 2006. The Steering Committee also worked closely with an Advisory Group which was comprised of persons from industry, labour, the socially responsible investment community, civil society and academia.[176] Members of the Advisory Group provided their own individual expertise rather than in a capacity that represented the specific bodies by which they were employed. According to the Government, the overall objective of the Roundtables were to produce a report for Parliament which

[171] *Parliament of Canada*, 'Government Response to the Fourteenth Report of the Standing Committee on Foreign Affairs and International Trade: Mining in Developing Countries – Corporate Social Responsibility', October 2005, [URL: http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=2030362&Language=E&Mode=1], consulted 09 October 2012.

[172] Keenan, K., p. 31, [URL: https://nacla.org/article/canadian-mining-still-unaccountable], consulted 05 November 2012 p. 32; Coumans, C., p. 39.

[173] *Parliament of Canada*, '38th Parliament 1st Session Committee Report', consulted 09 October 2012.

[174] *Parliament of Canada*, 'Government Response to the Fourteenth Report of the Standing Committee on Foreign Affairs and International Trade – Mining in Developing Countries – Corporate Social Responsibility', consulted 09 October 2012.

[175] Coumans, C., p. 59.

[176] *Canadian Roundtable National Advisory Group*, 'National Roundtables on Corporate Social Responsibility (CSR) and the Canadian Extractive Industry in Developing Countries – Advisory Group Report', March 29 2007, [URL: http://www.pdac.ca/pdac/misc/pdf/070329-advisory-group-report-eng.pdf], p. i, consulted 09 October 2012.

provided "recommendations for government, NGOs (non-governmental organizations), labour organizations, businesses and industry associations on ways to strengthen approaches to managing the external impacts of international business activities to benefit both businesses and the communities within which they work".[177] In particular, the Roundtables sought to explore methods over one-to-three years that would allow Canadian companies operating abroad to meet and even surpass CSR standards.[178]

At the end of the Roundtables, the Government Steering Committee decided that the Advisory Group would be responsible for producing a report of the proceedings, whilst providing recommendations which would then be passed on to government. It was also acknowledged that both the report and recommendations were to reflect the consensus of the Advisory Group to favour a more positive response from the Government.[179] However, as Catherine Coumans –a member of the Advisory Group notes, reaching consensus in the report was not an easy task and there were many areas of disagreement (notably between government and industry, and civil society and academia), which she argues created many "fault lines" in Canada's current CSR Strategy.[180] According to Coumans, civil society pushed for mandatory standards and accountability measures, whereas government Steering Committee members and industry members would only accept non-regulatory mechanisms. Ultimately civil society groups declared that they would not support any roundtable outcome which failed to progress beyond simply advising Canadian companies about their uptake voluntary CSR measures and contain viable accountability mechanisms.[181] Further, civil society groups were convinced that legal reform would need to be undergone in Canada "to better facilitate access to sanction and remedy through the courts in Canada for people from overseas who alleged damages as a result of Canadian companies' operations".[182] Government and industry opposed any such legal reform measures and cited constitutional complications such as issues revolving around the sensitive topic of extraterritoriality and the damage this would inflict upon Canada's foreign policy, international trade and investment.

[177] *Prospectors and Developers Association of Canada*, 'Corporate Social Responsibility in the Mineral Industry – Issues & Advocacy', 2012, [URL: http://www.pdac.ca/pdac/advocacy/csr/], consulted 09 October 2012.
[178] *Prospectors & Developers Association of Canada*, 'Corporate Social Responsibility in the Mineral Industry – Issues & Advocacy', consulted 09 October2012.
[179] Coumans, C., p. 40.
[180] Coumans, C., p. 40.
[181] Coumans, C., p. 40.
[182] Coumans, C., p. 40.

As a result of disagreement over these matters of regulation and legal reform, the Advisory Group's report was tasked with designing an accountability mechanism that appeased both viewpoints balancing somewhere in between voluntarism and regulation. The middle ground which was reached was the creation of an independent 'Ombudsperson' who could investigate complaints and report subsequent findings, and 'Compliance Review Committee' which could "make recommendations with regard to the withdrawal of financial and/or non-financial services by the Government of Canada".[183] Basically meaning to impose sanctions upon companies who failed to comply with the agreed standards.[184] However, the advisory group report failed to outline any means of remedy, something which could have been achieved through legal measures. Another area of debate between advisory group members revolved around what norms and standards Canadian companies operating abroad would be expected to comply with. Industry participants wished only to be regulated according the International Finance Performance Standards (IFC PS), whereas civil society participants felt that the IFC PS failed to mirror a larger and broader spectrum of human rights norms. When measuring the IFC PS in regards to human rights with the HRCA tool created by the Danish Institute for Human Rights "of 335 points considered by the HRCA, the IFC PS are only in full compliance with two, in partial compliance with four, and in complete failure to comply with the remaining 329 issues considered by the HRCA".[185] The group could not meet a consensus on a combination of international norms and instead said "the application and interpretation of these standards shall observe and enhance respect for principles of the *Universal Declaration of Human Rights* and other related instruments that are within the sphere of control of companies. Specific guidelines related to the application and interpretation of human rights principles will be developed".[186]

On the 29th of March 2007, the Roundtable's Advisory Group released their final report – *National Roundtables on Corporate Social Responsibility (CSR) and the Canadian Extractive Industry in Developing*

[183] *Canadian Network for Corporate Accountability Advisory Group*, 'National roundtables on corporate social responsibility (CSR) and the Canadian extractive industry in developing countries', 2007. p. vii – as cited in Coumans, C., p. 41.
[184] Coumans, C., p. 41.
[185] Coumans, C., referencing Steven, H., et al, 'The International Finance Corporation's performance standards and the Equator Principles: Respecting human rights and remedying violations?', August 2008, Center for International Law, Bank Information Center, BankTrack, Oxfam Australia, World Resources Institute; Andrea, D., 'One step forward, one step back: An analysis of the International Finance Corporation's sustainable policy, performance standards and disclosure policy', Halifax Initiative, Ottowa, 2006.
[186] *Canadian Network for Corporate Accountability Advisory Group*, p. vii – as cited in Coumans, C., p. 42.

Countries.[187] The Advisory Group believed the Canadian Government needed to take the report and its 27 recommendations related to different aspects of CSR into strong consideration when the Government chose to design their own strategy in order to "enhance CSR performance of Canadian extractive-sector companies working in developing countries". [188] It included a range of factors – some of which focused on the "ongoing development of CSR standards; CSR performance reporting requirements; an ombudsman to provide advisory and fact finding services and to review and report on complaints; a compliance committee; development of appropriate sanctions for under-performance, including withdrawal of government financial and diplomatic support; and the creation of a multi-stakeholder advisory group to develop the framework further".[189] It took the Canadian Government two years to respond to the Advisory Group's report – and in March 2009 under Prime Minister Stephen Harper's Conservative Government, Stockwell Day, Minister of International Trade unveiled the Government's CSR policy entitled 'Building the Canadian Advantage: A Corporate Social Responsibility (CSR) Strategy for the Canadian International Extractive Sector' (otherwise referred to throughout the remainder of this thesis as 'Canada's CSR Strategy' or 'the Strategy'.

4. Building the Canadian Advantage

Building the Canadian Advantage is comprised of four key pillars: 1) "support host country resource governance capacity-building initiatives"… "to manage the development of minerals and oil and gas, and to benefit from these resources to reduce poverty"; 2) "Promotion of widely recognised international CSR performance guidelines"; 3) "Creation of an Office of the Extractive Sector CSR Counsellor to assist [stakeholders] in the resolution of CSR issues pertaining to the activities of Canadian extractive sector companies abroad"; and 4) "Support the development of a CSR Centre of Excellence within an existing institution outside of government to encourage the Canadian international extractive sector to implement these voluntary performance guidelines by developing and disseminating high-quality CSR information, training and tools".[190] The primary governmental department that has led the Canadian

[187] *Canadian Roundtable National Advisory Group*, 'National Roundtables on Corporate Social Responsibility', consulted 09 October 2012.

[188] For the full list of recommendations please see Appendix 1. *Canadian Roundtable National Advisory Group*, 'National Roundtables on Corporate Social Responsibility', consulted 09 October 2012.

[189] Lindsay, N.M., 'Structural Dynamics of Corporate Social Irresponsibility: The Case of the Canadian Mining Industry' in Tench, R., Sun, W., and Jones, B., 'Corporate Social Irresponsibility: A Challenging Concept', Critical Studies on Corporate Responsibility, *Governance and Sustainability*, Volume 4, United Kingdom, Emerald Books, 2012, p. 213.

[190] *Department of Foreign Affairs and International Trade Canada*, 'Corporate Social Responsibility – Building the Canadian Advantage', consulted 28 October 2012;

Government's CSR strategy has been DFAIT which has largely been in charge of operationalizing pillars two and three (promotion of widely recognised international CSR performance guidelines; the creation of an Office of the Extractive Sector CSR Counsellor). However DFAIT has done so in cooperation with Natural Resources Canada (NRCan) and the Canadian International Development Agency (CIDA) who have led the remaining two pillars.

a.) Host Country Capacity-Building:

As many developing countries are resource rich, Canada believes that this can be used as an appropriate avenue to sustaining long-term economic development, job creation and reduced poverty levels. However, it also recognises that many of these states face capacity challenges in ensuring that their extractive sectors operate in an ethical manner. Such challenges include: social and environmentally responsible operations, respect and protect human rights and provide social investment back into local communities and economies[191]. According to this first pillar, "improving resource governance, transparency and accountability in developing countries is critical to ensuring that the extractive sector contributes to poverty reduction, and creates a business and investment environment conducive to responsible corporate conduct in countries where Canadian companies operate".[192]

CIDA has been the key department in working with host countries to develop governmental capacities to best manage environmental and social issues that arise from extractive operations. CIDA operates a range of multilateral and bilateral projects as a means to control the development of natural resources which it believes will provide the opportunity for developing to benefit from its own natural resource industries and economic development.[193] NRCan has also been an important department in promoting and operationalizing the first pillar of Canada's CSR Strategy. NRCan has worked alongside CIDA to assist with the development and management of natural resources in developing states in order to "help optimize the economic and social benefits of their extractive sector".[194] Thus far, NRCan does not have anything listed on their website specifically relating to B&HR or CSR, but rather commentary and policies relating to sustainable development which covers more broader environmental matters (such as climate

[191] *Department of Foreign Affairs and International Trade Canada*, 'Corporate Social Responsibility – Building the Canadian Advantage', consulted 11 November 2012.
[192] *Department of Foreign Affairs and International Trade Canada*, 'Corporate Social Responsibility – Building the Canadian Advantage consulted 28 October 2012.
[193] *Department of Foreign Affairs and International Trade Canada*, 'Corporate Social Responsibility – Building the Canadian Advantage', consulted 11 November 2012.
[194] *Department of Foreign Affairs and International Trade Canada*, 'Corporate Social Responsibility – Building the Canadian Advantage', consulted 11 November 2012.

change, water and air quality, and Canada's environmental footprint) for the Federal Government and its subsequent departments.[195]

Whilst this pillar demonstrates the use of multi or bilateral initiatives to address governmental, developmental, poverty, transparency and human rights issues, the CSR Strategy states that more still needs to be done, which can be achieved through Canada's continued and further involvement in multilateral development banking boards and international groups such as the Group of Eight (G8), the Asia-Pacific Economic Cooperation, and La Francophonie.[196]

b.) Promotion of International CSR Performance Guidelines:

The Government's 2009 CSR Strategy listed numerous international CSR initiatives that it supported however its primary focus had consistently rested with the OECD Guidelines for Multinational Corporations which it has been a signatory to since its foundation in 1976.[197] Building upon Canada's commitment to the OECD Guidelines, the 2009 CSR Strategy outlined that the Canadian government vowed to promote and/or endorse three other CSR performance guidelines/initiatives including: 1.) endorsing the IFC Performance Standards on Social and Environmental Sustainability concerning operations that pose risks to social and environmental factors; 2.) the VPs focusing on private security forces and human rights risks in which it had applied to join during the time of publication; 3.) and promoting the Global Reporting Initiative (GRI) which focuses upon CSR reporting to increase transparency whereby good CSR performance is praised and rewarded with market-based incentives which in turn encourages the increased promotion of CSR practices to other corporations. It cited that a 2005 survey reported that 35 percent of Canadian companies were already reporting on their CSR activities based on the GRI Guidelines and that Canadian government had agreed to work with the GRI to develop "supplements for oil and gas junior mining companies".[198] Since the 2009 publication of *Building the Canadian Advantage*, the Canadian Government has maintained its commitment to the four

[195] *Natural Resources Canada*, 'Sustainable Development – Federal Context', [URL:http://www.nrcan.gc.ca/sustainable-development/federal-context/2386], consulted 12 June 2013.
[196] *Department of Foreign Affairs and International Trade Canada*, 'Corporate Social Responsibility – Building the Canadian Advantage', consulted 28 October 2012.
[197] *Department of Foreign Affairs and International Trade Canada*, 'PROTOCOL – The Office of the Corporate Social Responsibility Counsellor for the Extractive Sector and National Contact Point for OECD Guidelines for Multinational Enterprises', 04 October 2010, [URL: http://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/counsellor_protocol_conseiller.aspx?lang=eng&view=d], consulted 11 November 2012.
[198] *Department of Foreign Affairs and International Trade Canada*, 'Corporate Social Responsibility – Building the Canadian Advantage', consulted 28 October 2012.

international CSR guidelines by continuing to engage with and build upon such initiatives.[199] Canada's Government has again charged DFAIT with implementing the second pillar and carrying out a range of measures to increase the "quantity and quality of voluntary CSR reporting by Canadian companies".[200]

c.) Creation of an Office of the Extractive Sector CSR Counsellor:

As the Office of the Extractive Sector CSR Counsellor is the case study central to this thesis, further detail and analysis about the Office will be provided later on in Chapter Four.

d.) Development of a CSR Centre of Excellence:

As the fourth pillar of the *Building Canadian Advantage*, the CSR Centre of Excellence was designed in a manner where it would operate outside of government whereby the secretariat would be placed within the Canadian Institute of Mining, Metallurgy and Petroleum (CIM). The Centre was launched in 2009, but is still in the process of developing its operations via multistakeholder procedures and is basing the process around three international norms – the UNGPs; the OECD Multinational Enterprise Guidelines; and the VPs. Despite the fact that Centre is still in a procedural and policy development phase, it has clarified a range of formalities over the past two years. According to its '2011 Progress Report and 2012 Priorities', the Centre has (a) formalised its multistakeholder Executive Committee (consisting of an even divide between 10 representatives from industry and 10 representatives from non-industry i.e. indigenous, civil society, NGOs, and academia); (b) refined it governance structures and strategic orientation by establishing a series of working and *ad hoc* committees that address program, strategy and governance, funding, and nominating issues; (c) has built capacity by promoting leading CSR practices by developing its website to include a range of information about the Centre, current Canadian CSR practices, links to CSR tools, documents and links to further information, international CSR awards, country profiles and links to organizations and groups who are involved in CSR management; (d) promoted dialogue and communication through establishing a learning network via consultations and outreach programs with stakeholders, investor organisations, research bodies, consulting companies,

[199] *Department of Foreign Affairs and International Trade Canada*, 'Corporate Social Responsibility – Building the Canadian Advantage', consulted 11 November 2012.
[200] *Department of Foreign Affairs and International Trade Canada*, 'Corporate Social Responsibility – Building the Canadian Advantage', consulted 28 October 2012.

civil society and governmental bodies; (e) creating multiple proposals about how to best engage international communities, but no particular best approach has been determined as of yet.[201]

5. Analysis

Upon announcing its response, the Government's CSR Strategy failed to adopt many of the Advisory Report's recommendations. Out of the 27 recommendations made to government, only three have been implemented (for further details on the implementation status of each of these recommendations, please refer to Appendix 1).[202] Some factions of industry groups and associations argued that the Government's response had gone too far and were quick to criticise the Government's CSR strategy. The Prospectors and Developers Association of Canada (PDAC) stated that it "reflects an underlying bias against the Canadian mining industry" and that it could put mining companies at a "competitive disadvantage".[203] Similarly, the Canadian Chamber of Commerce as well as a range of Canadian extractive companies including Kinross, Barrick and Nexcen have criticised the Government's CSR Strategy and are particularly unimpressed with the creation of the Office of the CSR Counsellor and its ability to inspect their operations.[204] On the other side of the coin, civil society groups, NGOs and some Advisory Group Members were quick to criticise the Government's response claiming that it had not gone far enough in terms of protecting human rights. For instance, two Advisory Members went as far as suggesting that the Government of Canada had abandoned "the key human rights and accountability provisions in the report effectively turning back the clock to "voluntarism as usual", whilst others declared that the "woefully inadequate policy was hardly worth the lengthy wait…[and that] it disregards virtually all of the advisory group recommendations, shifting the focus of accountability from Canada to the countries where Canadian companies invest".[205]

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[201] *Centre for Excellence in CSR*, '2011 Progress Report and 2012 Priorities', 2011, [URL: http://web.cim.org/csr/documents/Block118_Doc145.pdf], Pp 4-8, consulted 17 January 2013.
[202] Lipsett, L., Hohn. M., and Thomson, I., 'Recommendations of the National Roundtables on Corporate Social Responsibility and the Canadian Extractive Industry in Developing Countries – Current Actions, Stakeholder Opinions and Emerging Issues', Report for the Mining Association of Canada's International Social Responsibility Committee, On Common Ground Consultants, January 2012, [URL:http://oncommonground.ca/wp-content/uploads/2012/07/Final-MAC-Roundtables-Report-_December-21-2011_-_3_5.pdf], p. 4, consulted 29 March 2013.
[203] *OAS*, Informe de la Mision de Observacion Electoral sobre el Referndum Revovatorio del Mandato Popular celebrado en Bolivia el 10 de Agosto de 2008 (CP/doc. 4429/09, September 1, 2009, as cited in Keenan, K., 'Canadian Mining: Still Unaccountable' p. 33.
[204] Keenan, K., consulted p. 33.
[205] Coumans, C., p. 42 and Keenan, K., p. 32.

Given that Canadian mining and extractive companies have demonstrated a poor human rights record in their operations abroad, there is a legitimate need for the Canadian Government to formulate a response that prevents the continuation of such abuse with impunity. Despite the Canadian Government's good intent in calling for continued dialogue through the National Roundtables and the subsequent call for recommendations by the Advisory Group, its CSR Strategy falls substantially short of a comprehensive human rights framework which can regulate Canadian mining and extractive companies through any kind of hard punitive measures. *Building the Canadian Advantage* is a 'soft' regulatory approach which focusses on promoting existing or new CSR norms and by offering a dispute resolution through its CSR Counsellor that is wholly voluntary. Given that Canada's CSR Strategy was spurred by SCFAITs call to establish clear legal norms to ensure that Canadian mining companies were held accountable for any human rights or environmental abuses that occurred in operations abroad, which was followed up by the strong consensus of opinions at the National Roundtables and subsequent Advisory Group report, the Government's CSR Strategy does not reflect or mirror these ideologies. This brings to light questions about its own agenda, and more broadly its sincerity and attitude towards developing an effective and comprehensive B&HR strategy. A voluntary CSR framework without any punitive or investigative measures falls very far from the SCFAIT recommendations on establishing clear legal norms on B&HR. Whilst it is unrealistic to expect any organisation or governmental body to implement recommendations without consideration to existing policies and frameworks in a cut and paste manner, Canada's minimal implementation of 3 out of the 27 recommendations and choice to adopt international guidelines and norms that do not canvas a more comprehensive set of human rights does "not reflect or assure respect for all international human rights norms and practices that may be affected by Canadian extractive companies operating abroad".[206]

Further, the international guidelines and norms that the Canadian Government chose to adopt (including the IFC PS, the VPs, and the GRI) were criticised by civil society, academics and NGO groups because they do not canvas a much larger scale of human rights, and in turn "do not reflect or assure respect for all international human rights norms and practices that may be affected by Canadian extractive companies operating abroad".[207] Also, the Government's CSR Strategy was criticised because in place of the proposed Ombudsperson and Compliance Review Committee as recommended by the Advisory Group report, a CSR Counsellor was created which possessed no "binding recommendations or

[206] Coumans, C., p. 43.
[207] Coumans, C., p. 43.

policy or legislative recommendations, create new performance standards, or formally mediate between parties" but rather "*assist"* stakeholders who are wishing to resolve CSR disputes.[208] One Advisory Group Member declared that "the Office of the Ombudsman has been stripped of its independence and power".[209] Given that the CSR Counsellor has no mandate to make recommendations or impose sanctions, another key element of the Advisory Group's report was eliminated. This was key to the Advisory Group's report as it would ensure that the Canadian Government could restrict or support Canadian companies through financial and political means depending on company compliance with human rights norms. This was also key to the SCFAIT report which called for the Canadian Government to support companies on matters relating to political and environmental human rights when operating abroad.[210] Also, despite the Advisory Report noting the need to create a new separate dispute resolution mechanism that was separate to the OECD NCP, the CSR Counsellor position "closely mirrors the NCP function and its shortcomings, creating a duplicate office; the main distinction is that the CSR Counsellor will be involved only with extractive industry cases".[211]

As stated, Canada has traditionally been a leader on international human rights and has played a key role in its contribution and promotion of key B&HR norms through its foreign policies, however, this Chapter has demonstrated Canada's domestic CSR Strategy has fallen short in providing a comprehensive B&HR framework with clear legal norms which in turn allows for necessary punitive measures, and compulsory compliance. This begs the question of why has Canada chosen to pursue a less comprehensive CSR strategy given the emergence of a more widely acknowledged and UNHRC endorsed comprehensive B&HR regime? Is Canada really sincere about valuing and protecting human rights, or is this just rhetoric? Given that Canada's CSR Strategy has largely negated most of the ideology and suggestions from the SCFAIT report, a broader consensus built upon through the National Roundtables and finally the Advisory Group recommendations, is Canada truly committed to protecting human rights abuses occurring at the hands of its own mining and extractive sectors abroad?

Conclusion

This Chapter has examined Canada's involvement in the international B&HR regime through its foreign policies and domestic policies and identified a dichotomy of its international image and domestic

[208] Coumans, C., p. 43.
[209] Keenan, K., p. 33.
[210] Coumans, C., p. 43.
[211] Coumans, C., Pp. 43-44.

practices; it then highlighted how Canadian mining and extractive corporations have been involved in a range of human rights abuse in the developing world to provide context as to why B&HR practices are an important and current issue for Canada; the origins of Canada's current CSR Strategy were discussed in order to understand why and how its CSR framework came about and what was originally intended; followed by an outline of the formal multistakeholder national Roundtables which led to a Governmental response and Canada's subsequent CSR Strategy. By tracing the origins and understanding the original intent of developing a B&HR framework for Canada, a contrast between national pressure and Government action and uptake has provided useful insight and context on national values and attitudes towards B&HR expectations. This will assist in drawing inferences about the Canadian government's relationship with its extractive sector and how this may have influenced its response to national calls for a comprehensive B&HR framework, and in turn, an understanding its decision to go down a more traditional CSR route in the following third chapter of this thesis.

CHAPTER THREE

The Government and Extractive Industry relationship – close bedfellows

As Risse and Sikkink argue, state identity and motives shape the extent to which they implement norms and the extent of compliance. In light of such, the purpose of this Chapter is to explore the Canadian Government's motives and interests in pursuing a more traditional CSR route which is less comprehensive than B&HR norms, standards and the UNGP framework. This will be achieved by examining the Canadian Government's close relationship with its mining and extractive sectors to help draw inferences about how this may have influenced the Government's response and CSR Strategy. This Chapter demonstrates that the Harper Government's identity is largely shaped by its desire to maintain the international competitive advantage and overall interests of its mining and extractive sectors which has resulted in weak B&HR norms compliance. Given that the Canadian Government will pursue these interests even at the cost of (directly or indirectly) violating human rights, it has strategically developed a diluted national CSR strategy that is seen to be acting on international B&HR issues and appeasing the Advisory Group recommendations whilst continuing to serve its own self interests. Therefore, and in light of Simmons norms compliance theory, Canada can be placed in the *strategic ratifier* group.

This Chapter is comprised of three key sections – first, it will briefly discuss Canada's historical stance in facilitating industry's self-regulation and its resistance to directly regulate its extractive industry. Second, it will examine the varying attitudes and concerns of how the extractive sector perceives a national B&HR agenda and how such opinions are divided in relation to direct and self-regulation. This will help to understand how such opinions influenced the Canadian Government whilst it was formulating its response. Last, it will analyse how the Canadian government has interacted with industry when human rights issues have arisen in operations abroad as a means to further illustrate their close relationship. In exploring these issues I will argue that the mining and extractive industries' resistance to a comprehensive B&HR strategy that called for their direct regulation was a significant factor in influencing the Government's response to formulate a less comprehensive and non-binding CSR strategy. Further, the Government's close relationship with industry and shared interests of maintaining

the extractive sector's international competitive advantage further influenced the government's response.

1. Canada's preference for facilitating industry self-regulation and its reluctance to pursue a comprehensive B&HR strategy

Historically, Canada has demonstrated resistance to implementing B&HR norms and pressures relating to extraterritoriality issues placed on it by its U.S. neighbour. For instance, Canada has a strong trading relationship with Cuba whilst the U.S. placed a trade embargo on Cuba and has attempted to force Canada to do the same. As far back as 1985 Canada has resisted U.S. extraterritoriality laws whereby it introduced the *Foreign Extraterritorial Measures Act* (FEMA) which sought to block attempts by the U.S. of applying anti-Cuba extraterritorial laws to Canadian corporations and subsidiaries. This resistance is clearly evidenced in one of FEMAs provisions which states "No Canadian corporation…director…manager…or employee in a position of authority of a Canadian corporation shall, in respect of any trade or commerce between Canada and Cuba, comply with an extraterritorial measure of the United States".[212] As many B&HR norms and initiatives have been led by the U.S. which encourages their application and uptake by other states, Canada has demonstrated a similar attitude of resistance to such initiatives. For example, in 2000 the VPs were established and spearheaded by the U.S. and the U.K. – it is comprised of a complex approval process which requests states to demonstrate competency in their ability to apply due diligence in human rights measures. Canada was slow to endorse the VPs and resisted doing so for many years despite being under pressure to comply. In 2006, six years after the establishment of the VPs it had still not signed on to the Principles.

Instead, Canada has historically played a facilitating role of encouraging self-regulation and softer optional CSR approaches rather than going down a regulatory route with more comprehensive B&HR measures. For example, the Whitehorse Mining Initiative was an initiative started by industry and considered as an innovative approach at the time due to stakeholder consultation and with mining affected communities as opposed to academics, NGOs and government.[213] Part of the thinking behind it

[212] *Department of Foreign Affairs and International Trade Canada*, 'Order requiring persons in Canada to give notice of communications relating to, and prohibiting such persons from complying with, an extraterritorial measure of the United States that adversely affects trade or commerce between Canada and Cuba' cited from *The Nova Scotia-Cuba Association,* January 18, 1996, No. 8, [URL:http://www.chebucto.ns.ca/ccn/info/CommunitySupport/NSCUBA/FEMA96.html], consulted 26 July 2014.
[213] *Natural Resources Canada*, 'Whitehorse Mining Initiative', [URL: http://www.nrcan.gc.ca/mining-materials/policy/government-canada/8698], consulted 27 July 2014.

was that mining executives were realising that a societal shift was taking place in relation to B&HR issues and expectations, and their subsequent acceptance that they would eventually encounter problems in relation to such. Industry's concerns were further amplified by the growing public pressures society was placing upon the Government of the day. In turn, the Canadian Government began to strengthen industry relations which further amplified industry concerns about environmental issues relating to their operations. As a result of both societal and governmental concerns, the idea of engaging in stakeholder consultations originated from industry.[214] The Canadian Government has also funded a range of other industry led initiatives in relation to CSR issues such as the CSR centre of Excellence and the Canadian International Development Agency (CIDA) – the most recent initiative to explore ways to enhance government capacity in developing countries where Canadian businesses are operating in. This is due to a mutual desire of the Government and the mining and extractive industry's to remain internationally competitive and the belief that Canadian mining companies are good performers across a lot of standards. Further, the Canadian government and the mining and extractive industries are currently working with Revenue Watch in an attempt to produce better transparency in terms of royalties and taxes – another example of the Canadian government wanting to play an encouraging role but letting industry and MAC facilitate.[215]

Politically, both liberal and conservative Canadian governments have been hesitant in pursuing a comprehensive and regulatory B&HR framework, however, the Harper Government's national CSR Strategy originates from the precedents made from the previous Liberal Government (by Paul Martin). For instance, the National Roundtables took place as a result of NGOs and parliamentary process relating back to the Talisman case in 2000. During this period, foreign minister of the time Lord Axeworthy was a proponent of holding companies such as Talisman accountable if they were found to be complicit in human rights abuse. However, Lord Axeworthy was quick to back-down following pressure applied by the Treasury, despite a subsequent publication citing Talisman's complicity in such activities. In 2004 the Parliamentary Subcommittee on Human Rights and International Development investigated and held hearings against the Canadian company TVI in relation to alleged activities in the

[214] Dashwood, H., Brock University, Department of Political Science, interview conducted on Tuesday 22 October 2013, [Online Interview: Skype].
[215] *Natural Resource Governance Institute*, 'Canada's Mining Industry Joins Forces with NGOs to Improve Transparency', 6 September 2012, [URL: http://www.resourcegovernance.org/news/press_releases/canada%E2%80%99s-mining-industry-joins-forces-ngos-improve-transparency], consulted 27 July 2014.

Philippines and links between its operations and human rights abuse.[216] Whilst the Government did not act immediately, enough pressure was exerted upon it and the subsequent Roundtable process under Paul Martin's Liberal Government which began and continued as a lengthy process. This was a key factor in explaining why B&HR dialogue was able to advance as far as it did, prior to the 2006 election of the Conservative Harper government. Following its election, the Harper Government was quick to eradicate many existing liberal initiatives. Whilst the B&HR process continued to move forward in good faith, there was a widespread perception that the Harper government was not whole heartedly behind it and was responsible for 'putting the brakes' on further B&HR development. The political stance of the Conservative Party and Canada's current Conservative administration is pro-business orientated and protective of its booming and lucrative mining and extractive sectors.[217] However, whilst the Canadian Government may be genuine when expressing concerns about efforts to improve the behaviour and processes of Canadian extractive corporations operating abroad, it also has a strategic interest in ensuring that Canada's mining brand is not tarnished either.[218]

Since announcing its CSR Strategy, the Canadian Government has remained largely silent to criticisms about its response (as evidenced in the previous chapter) and simply stated in the announcement of the Strategy that in formulating its response it had taken into account the recommendations of the SCFAIT report.[219] As discussed in the previous chapter, Canada's CSR Strategy does not closely mirror these recommendations and it has implemented a much softer and voluntary framework that does not reflect a serious attitude towards ensuring that companies are held accountable for their actions. What is curious is that the Government did not also mention in its response that it had taken into similar account, the more recent and detailed Advisory Group recommendations which were lent credibility by being achieved through a multistakeholder consensus, especially given that the Government was the very body that called for the Roundtables and requested the subsequent Advisory Group Report. Rather, it gave thanks for their "many months of hard work" but did not cite the Advisory Group Report and recommendations as a contributing factor when designing its national CSR Strategy as it did with the

[216] *Parliament of Canada*, '38th Parliament 1st Session Committee Report', consulted 27 July 2014.
[217] *The Economist*, 'Reputation Management', 22 November 2014, [URL: http://www.economist.com/news/business/21633871-government-promises-keep-promoting-miners-and-energy-firms-interests-abroad-if-they], consulted 19 May 2014; Engler, Y., 'The Canadian Extractive Industry in Context', *Stop The Institute*, [URL: http://stoptheinstitute.ca/concerns/the-canadian-extractive-industry-in-context/], consulted 19 May 2014.
[218] Dashwood, H., Tuesday 22 October 2013, [Online Interview: Skype].
[219] *Department of Foreign Affairs and International Trade Canada*, 'Building the Canadian Advantage', consulted 20 May 2014.

SCFAIT recommendations.[220] Failure to draw from the more recent and detailed Advisory Group recommendations when designing its national CSR Strategy begs the questions as to why Canada chose to omit these recommendations when designing a governmental response and CSR Strategy. In turn, this raises bigger questions about how seriously Canada views the UNGPs, the current pinnacle of the emerging international B&HR regime which can be pointed to when a company is operating below the global standard. It has not been listed in many official Governmental documents relating to Canada's CSR Strategy, and there has been no updating of the key four endorsed norms in *Building the Canadian Advantage*.

2. The emerging international business and human rights regime – industry concerns and division

As noted above, in the lead up to the formulation of a national CSR strategy, the mining and extractive sectors were concerned about encountering problems relating to environmental issues and their operations abroad due to growing public pressure society was placing upon Government, and the subsequent strengthening of government and industry relations. Since these issues have arisen, mining companies and the extractive sector have been largely divided over the best approach to address such concerns. On one side of the coin, a large proportion of industry who opposed tightened regulation and the possibility of sanctions (as recommended in the Advisory Group report), individual mining companies, the Chamber of Commerce and PDAC pressured and lobbied the government to dilute its response.[221] Further, mining and extractive companies are concerned that tighter regulations will put them at an international competitive disadvantage when other countries such as China are not required to adhere to the same regulations.

On the other side of the coin, mining and extractive companies that are more open to the idea of CSR regulation are uncertain about how to go about such as they are not familiar with B&HR norms, practices and terminology. Seck believes that the mining and extractive industries are opposed to stricter governmental regulation as they are often not sure what to make of B&HR norms.[222] They are often unsure of what they need to do legally and associate such terminology with detrimental cases like

[220] *Department of Foreign Affairs and International Trade Canada*, 'Building the Canadian Advantage', consulted 20 May 2014.
[221] *Mining Watch Canada*, 'Corporate Accountability in Canada – A Mining Watch Archive', 25 March 2011, [URL:http://www.Mining Watch.ca/article/corporate-accountability-canada-Mining Watch-archive], consulted 20 May 2014.
[222] Seck, S., Western Law University, conducted Monday 12 August 2013, [Online Interview: Skype].

those of Talisman and TVI, however they are undoubtedly familiar with cases. These cases thrust such companies into the international spotlight and are often very costly in legal fees and court cases. Such cases are reported upon in the media, often jeopardising the reputation of the company. Also, industry has played an active role in lobbying the Government to water down regulatory efforts whilst formulating its response to the Advisory Group's Recommendations so they must be aware of what B&HR norms entail otherwise they would not have so vigorously opposed them. Therefore, my argument is that industry are exactly sure what to make of B&HR norms, indeed there is a national framework which provides advice and support to companies as to how/what to CSR norms adopt, so it is not a matter of industry not knowing what is required of them but rather that they do not like CSR, B&HR norms and the regulation that is required.

Industry has only recently started developing codes of conduct and as they progress there may be more certainty than concern. Industry has to have the capacity to be responsive to human rights obligations and some are better at managing them than others. For instance, mining giant Barrick has its own CSR Charter and CSR Advisory Board, with the SRSG John Ruggie acting as a special consultant to the board.[223] However, often these policies do not seem to translate into practice with mining/extractive companies citing organisational difficulties. Despite corporations developing CSR policies, they are often still willing to invest in risky projects in countries with low environmental and human rights standards and this when problems can occur.[224] Therefore, I argue that some mining/extractive companies do not want a bad reputation or to be associated with human rights abuses, so they create CSR policies that do not translate into practice as they are not genuinely intended to be followed but rather for show. Indeed, this is not to argue that all companies within the MAC want to avoid industry regulation. Seck gets the sense that some want to be in a position where they can be part of a process that leads to improved company performance and being directly involved in such a process.[225] She also believes that quasi-regulatory processes allow for more flexibility in applying particular human rights norms and

[223] *Barrick Gold*, 'Corporate Social Responsibility Charter', [URL:http://www.barrick.com/files/responsibility/Barrick-CSR-Charter.pdf], consulted 01 August 2014; *Barrick Gold*, 'CSR Advisory Board', no date specified, [URL:http://www.barrick.com/responsibility/csr-advisory-board/], consulted 01 August 2014.

[224] Note – in 2014, violence and human rights related abuse has been reported at Barrick's mining sites in Papua New Guinea and in Tanzania where there have been confirmed reports of 'deaths and serious injuries of villagers from the surrounding area' – Mining Watch Canada, 'Barrick Gold', June 11 & August 5 2014, [URL:http://www.Mining Watch.ca/home/company/barrick-gold], consulted 18 August 2014.

[225] Seck, S., Western Law University, conducted Monday 12 August 2013, [Online Interview: Skype].

standard and that some companies prefer a degree of regulation because they need a greater level of consistency – and would benefit from stronger regulation in developing countries where human rights risks are high.[226] Whether regulation alone is purely sufficient is unknown however there is clearly a need for engagement so that industry is better informed and educated about B&HR issues and investing in countries with poor human rights records.

3. Governmental support of mining companies connected to human rights abuse abroad

As I have illustrated thus far in this Chapter, the Canadian Government has been slow in its uptake of the emerging B&HR regime and has resisted designing a comprehensive B&HR strategy. Similar attitudes of resistance by Canadian mining companies and its extractive sector towards human rights and increased regulation of their activities and operations abroad demonstrates closely aligned attitudes towards the emerging B&HR regime and calls for further regulation. This final section of the Chapter will examine how the Canadian Government's has created conditions which favour mining/extractive companies operating abroad over local processes and rights through bilateral investment treaties; provided embassy support to mining companies embroiled in human rights scandals when operating abroad; and discuss allegations against the Government relating to industrial espionage and allegedly spying on Brazil's Mines Ministry. In doing so, the close relationship between Government and the mining sector is further detailed to support the argument that these close 'bedfellows' are not sincere about B&HR or upholding the ethical CSR values stated in the Government's CSR Strategy.

The Canadian Government has provided support to its mining/extractive companies abroad through pursuing bilateral investment treaties that favour their interests often over the interests and rights of local citizens. Such treaties "allow companies to challenge environmental, public health or other resource-related policies that affect mining profits" and "allow companies to sue governments when they feel their investments or profits have been undermined by public policies, including public health or environmental measures, or by delays to energy and resource projects".[227] These treaties are particularly beneficial to mining companies as it enables them to sue governments when facing opposition to existing or potential mining projects. The threat of potential lawsuits is often exercised as

[226] Seck, S., Monday 12 August 2013, [Online Interview: Skype].
[227] *The Council of Canadians Acting for Social Justice*, 'Action Alert: Harper must tear up the Canada-China investment treaty', [URL: http://www.canadians.org/tear-up-FIPA], consulted 03 August 2014.

a form of leverage by mining companies against Governments as a means of the Government finding solutions to appease protestors and communities. Often mining companies use these treaties to "claim damages from community opposition to unwanted mega-projects".[228] Evidence of Canadian mining companies exploiting these treaties as a means to gaining approval for projects in the following statement:

> Vancouver-based Pacific Rim – which describes itself on its website as "an environmentally and socially responsible exploration company whose business plans and management talent focus on high grade, environmentally clean gold deposits in the Americas" – is suing El Salvador through a World Bank trade tribunal for $315m (£207m) for refusing permits for a gold mine in the Department of Cabanas. Canada is pursuing a trade agreement with El Salvador that would further entrench the rights of mining corporations and make a mining ban virtually impossible. A similar battle is being played out in neighbouring Costa Rica where Calgary-based Infinito Gold is threatening to sue for $1bn if two supreme court rulings affirming the country's ban on opencast mining are not overturned. And in Chile, the battle continues as Barrick Gold evaluates its legal options.[229]

By pursuing bilateral investment treaties the Canadian Government is providing mining companies access to projects that they might traditionally have not had access to without the threat of legal action against local government and communities. This also means that Canadian mining companies can often override legitimate forms of community protest and environmental and human rights issues by pressuring Governments to take action in order to make way for future mining projects. This can also risk perpetuating human rights violations in developing countries where human rights enforcement mechanisms are already lax and may serve as an impetus for further violence by the government of the day in favour of avoiding a potential lawsuit. Despite such allegations, the Canadian Government's pursuit of such investment treaties does not favour or further Canada's respect for human rights issues, but rather has facilitated Canadian companies in bypassing such concerns. This does not align with the Advisory Group Report nor the UNGPs that encourage states to hold their mining companies responsible for their actions, but rather negotiates a pathway for the mining/extractive industries to threaten their way out of human and environmental responsibilities. Once again, this raises doubts about Canada's

[228] *The Council of Canadians Acting for Social Justice*, consulted 03 August 2014.
[229] *Popular Resistance*, 'UN Must Challenge Canada's Complicity in Lining's Human Rights Abuses', 10 December 2013, [URL: http://www.popularresistance.org/un-must-challenge-canadas-complicity-in-minings-human-rights-abuses/], consulted 07 August 2014.

sincerity towards the emerging B&HR regime as well as questions about whether Canada is still an international leader of human rights.

Canada has also been accused of providing support to mining companies involved in scandals relating to the murder of local activists through its embassies. For instance, in 2013, Mining Watch published a report detailing secret diplomatic emails that infer that Canadian Embassy in Mexico was aware of mining company Blackfire's involvement in the 2009 murder of a local activist Mario Abarca by a former Blackfire employees in Chiapas, as well as accusations of Blackfire compensating the Chiapas Major to deliver protection from anti-mining activists. Despite knowing this, the Canadian embassy in Mexico continued to provide strong support to the company during and after such allegations. In this report, it was further found that the embassy also lobbied the Chiapas government as it was "essential to the company's success in starting the mine".[230] The Embassy continued to support Blackfire with information on how to sue the Chiapas government for shutting down the mine. Similarly, in 2010, the former Ambassador to Guatemala, Kenneth Cook, and the Canadian Government were sued by PhD student and videographer Steven Schnoor for "making false statements about a documentary video that Schnoor made that was critical of the practices of a Canadian mining company".[231]

The documentary showed footage of local Mayan farmers being violently evicted from their homes by police and military at the request of Skye Resources. In the footage, one woman is seen to be vigorously protesting the eviction and still images of homes being burnt to the ground were published. Former Canadian Ambassador Cook claimed the photos and videos were staged as well as the use of pre-existing and unoriginal photographs. Upon contacting the Embassy about such statements, Mr Schnoor received little response and after filing an Access to Information request to access documents that would shed further light on the situation, he was sent a heavily censored document one year later.[232] Presiding judge Justice Pamela Thomson stated that the "dead silence" that Schnoor received in

[230] Sher, J., 'Canadian mining company got embassy help amid controversy in Mexico: Advocacy group', *The Star*, 05 May 2013, [URL:http://www.thestar.com/news/world/2013/05/05/canadian_mining_company_got_embassy_help_amid_controversy_in_mexico_advocacy_group.html], consulted 08 August 2014.
[231] *Schnoor v. Canada*, 'Judge Rules that Canadian Ambassador Slandered Documentary Video Maker', no date specified, [URL: http://www.schnoorversuscanada.ca/],consulted 08 August 2014.
[232] Mining Watch Canada, 'Canadian Ambassador Sued for Defaming Documentary Film Maker Steven Schnoor', 29 April 2010, [URL:http://www.Mining Watch.ca/canadian-ambassador-sued-defaming-documentary-film-maker-steven-schnoor], consulted 09 August 2014.

response to his request for an exploration, retraction and apology, was 'spiteful and oppressive'".[233] These two cases illustrate the poor quality of embassy support provided to victims of corporate abuse and are reflective of the Canadian government's lack of sincerity in its attitude towards human rights issues. The Government's choice to protect the interests and image of its mining and extractive companies in these incidents over upholding human rights and whilst failing to hold its companies accountable for their actions does not align with its supposed ethical values expressed in its CSR Strategy.

Lastly, in 2013 former United States National Security Administration (NSA) employee Edward Snowden leaked documents evidencing that the Communications Security Establishment Canada (CSEC) had been spying on Brazil's Mines Ministry to reporter Glenn Greenwald. According to Mr Greenwald, these documents alleged that CESC hacked into the Brazilian Mines Ministry and in a later interview stated that CESC was spying to "bestow economic and industrial advantage onto Canadian industry".[234] A Brazilian television program reported that "the metadata of phone calls and emails from and to the Brazilian ministry were targeted by the CESC, to map the ministry's communications, using a software program called Olympia".[235] Prime Minister Stephen Harper remained relatively tight lipped on the issue citing it as a national security concern and that if there were any truth to the report he would be "very concerned".[236] Further revelations claimed that CESC has also held secret meetings with energy corporations consisting of "federal ministries, spy and police agencies,…representatives from scores of companies" to discuss "threats to energy infrastructure…and…challenges to energy projects from environmental groups".[237] Given Canada's support that it has offered to its mining companies operating abroad, the economic importance of Canada's extractive sector to the Conservative Government and Stephen Harper's limited response on this spying the issue, there is a strong possibility of truth to such allegations. It demonstrates what lengths the Canadian government will go to preserve and further the interests of its mining sector. Jamie Kneen of Mining Watch best sums it up by stating "We've already

[233] *Schnoor v. Canada*, consulted 08 August2014.
[234] *Mining Technology*, 'Canada's mining industry rocked as NSA leaks allege illegal espionage', 15 October 2013, [URL: http://www.mining-technology.com/features/featurecanadas-mining-industry-rocked-as-nsa-leaks-allege-illegal-espionage/], consulted 08 August 2014.
[235] *Huffington Post*, 'Snowden Leaks Show Canada Spied on Brazil: Report', 10 June 2013, [URL:http://www.huffingtonpost.ca/2013/10/07/brazil-canada-spying_n_4055396.html], consulted 08 August 2014.
[236] Cheadle, B., 'Harper 'Very Concerned' By Reports Of Canada Spying on Brazil', *Huffington Post*, 10 August 2013, [URL: http://www.huffingtonpost.ca/2013/10/08/brazil-canada-spying_n_4062385.html], consulted 09 August /2014.
[237] *Mining-technology*, consulted 09 August 2014.

seen how Canadian embassies around the world essentially act as agents for Canadian companies - even when they're implicated in serious human rights abuses…"We just had no idea how far they were willing to go".[238]

Conclusion

This chapter has examined three key matters in order to better understand why the Canadian Government chose to pursue a more traditional and less comprehensive CSR route in response to the emerging B&HR regime and calls for a national strategy that enabled mining companies to be held accountable for their actions. Firstly, Canada's historical resistance to the uptake of international B&HR norms and the complexities of extraterritoriality illustrated that it prefers to facilitate soft voluntary industrial self-regulatory initiatives over hard regulatory measures. Politically, the origins of Canada's CSR strategy were able to advance as far as it did under the previous liberal government, and that the Conservative Harper Government was more reluctant to design a comprehensive B&HR strategy that would enable companies to be held legally accountable for their actions. Instead, a more traditional and less comprehensive CSR strategy was created that did not reflect the values or address the concerns expressed in Advisory Group Report. Whilst there is no clear or official response from the Government as to why it chose to ignore many of the recommendations made in the report and implement a softer CSR strategy, it was inferred that this may be a result of broader pro-business values of the Conservative Party.

Secondly, mining and industry perspectives of Canada's CSR Strategy and the broader emergence of B&HR norms were considered in order to understand how these attitudes may have influenced the Government's response. It was argued that mining and extractive companies are aware of their CSR obligations, but are concerned that tighter regulations will put them at an international competitive disadvantage given that other countries such as China are not required to adhere to the same regulations. Further, industry has recently begun developing its own codes of conduct and as they progress, perhaps industry concerns will lessen in turn. However, despite the good intentions of such codes, often these do not translate into practice and that there is a need for increased education and engagement on B&HR matters. Finally, it became clear that some quasi-regulatory processes allow for more flexibility in applying particular human rights norms and standard which is important in achieving a greater degree of consistency particularly in developing countries where human rights risks are high.

[238] *Mining-technology*, consulted 09 August 2014.

Thirdly, Canada's support of mining companies abroad was examined to further demonstrate that these close 'bedfellows' are not sincere about B&HR or upholding the ethical CSR values stated in the government's strategy. Canada's pursuit of bilateral investment treaties has paved the way for Canadian mining and extractive companies to access projects that they might not have originally had access to through the threat of legal action. This risks bypassing legitimate forms of community protest and environmental and human rights issues by pressuring Governments to take action in order to make way for future mining projects. Lastly, the support of Canadian embassies to mining companies in breach of human rights norms such as in the case of the Blackfire incident and alleged CSEC spying incident over Brazil's Mining Ministry raises serious concerns about how far Canada is willing to go to further industrial advantage even when human rights abuses are involved.

As explored in the Literature Review at the beginning of the thesis, Risse and Sikkink argue that state motives and identity shapes the degree to which states implement norms and the nature of differing levels of compliance. It is clear that mining is an important part of Canada's national psyche, but more particularly, of the Harper Government's identity and interests and Canada will go to great lengths to not only preserve their international competitive advantage but to also further mining companies interest, even when human rights abuse is present. Given such, it is understandable why Canada chose to resist implementing a more comprehensive B&HR strategy and instead chose to pursue a more softer and traditional CSR Strategy. Furthermore, as we explored in the First Chapter of this thesis Simmons explains that states adopt international human rights norms for a range reasons and can be divided into three groups: *sincere ratifiers*, *false negatives*, and *strategic ratifiers*. Given that Canada has resisted the uptake of emerging B&HR norms, implemented a less comprehensive and more traditional CSR Strategy, and echoes international dialogue about the importance of human rights to Canada's national identity yet as demonstrated will favour mining interests over the human rights of victims of corporate abuse, I argue that in this instance, Canada can be categorised as a 'false' negative – a state that *may* agree with the promoted international human rights norm, covenant, or treaty and the values such represents, but do not ratify.[239]

[239] Simmons, B., *Mobilizing for Human Rights*, p. 58.

CHAPTER FOUR

Case Study – The Office of the CSR Counsellor

As mentioned in the previous chapter, the third pillar of *Building the Canadian Advantage* was the creation of the Office of the CSR Counsellor, which was developed in response to the Advisory Group's recommendation for the Government to create an independent Ombudsman. The Advisory Group recommended that the ombudsmen should "provide advisory services, fact finding and reporting regarding complaints with respect to the operations in developing countries of Canadian extractive companies".[240] Further, support for an ombudsman with investigative powers to probe and if necessary address complaints relating to Canadian mining activities abroad was expressed.[241] However, as I will demonstrate in this Chapter, the Government's creation of the Office of the CSR Counsellor and the positions mandate did not align with these recommendations. Instead, a CSR Office was created that was not independent, but rather received its mandate from and housed within DFAIT under the Honourable Ed Fast, Minister for International Trade. Further, the CSR Officer was not given any investigative, authoritative or prescriptive powers in respect to probing into the activities of Canadian mining and extractive companies abroad nor able to directly address complaints due to the voluntary nature of engaging in any discussions with Canadian extractive companies.

This Chapter is a case study of the Office of the CSR Counsellor. The Office is the main pillar of Canada's CSR Strategy that attempts to directly address B&HR issues relating to Canadian extractive companies and their operations abroad. This Chapter is comprised of two key sections: the first provides an outline of the CSR Office and CSR Counsellor's role, processes and activities. It will detail what the Office has done thus far, its dispute resolution process, the Review Process and Review cases that it has dealt with thus far in order to gain a necessary understanding of the Office itself. Second, an analytical summary that seeks to critique the limitations of the Office and its ability to effectively address B&HR issues will be developed. Also, Canada's National Contact Point (NCP) functions, processes and how it aligns with the Office of the CSR Counsellor will be analysed to further consider draw conclusions about the effectiveness of the third pillar of *Building the Canadian Advantage*. I will argue that the Government's

[240] *Canadian Roundtable National Advisory Group*, p.iii, consulted 18 November 2012.
[241] *Canadian Roundtable National Advisory Group*, p.vi, consulted 18 November 2012.

Office of the CSR Counsellor does not adequately provide a means of resolving complaints related to B&HR issues due to its voluntary nature and lack of authoritative powers. As a result, these limitations amount to a fundamental flaw of not only the Office itself but the Canadian Government's CSR Strategy.

This will further support the theoretical notion of Risse and Sikkink that state motives and identity shapes the degree to which states implement norms and nature of differing levels of compliance. In the case of Canada, the Government's response to the Advisory Group's recommendations to create an independent ombudsman with investigative and authoritative powers was not followed due to the importance Canada places upon maintaining the interests of its mining and extractive sectors over human rights issues as a means to ensuring its continued international competitive advantage and furthering the interests of the Harper Government. This supports Simmons theory that states adopt international human rights norms for a range reasons -one of which (*false negatives)* means that states may agree with the promoted international human rights norm, covenant, or treaty and the values such represents, but do not ratify.[242] This is evidenced by the Canadian Government's lack of uptake of a majority of the Advisory Group Recommendations when designing its national CSR strategy and the Office of the CSR Counsellor. While the Canadian Government accepted the need to ensure that its mining and extractive companies operated in an ethical manner consistent with CSR norms, it failed to endorse the Advisory Group's recommendations and key attributes that were necessary (independence and investigative and authoritative powers) to produce an ombudsman or Counsellor that could effectively hold mining and extractive companies accountable for human rights violations.

1. What the Government produced – The Office of the CSR Counsellor

The Office of the CSR Counsellor was formally opened on March 8th 2010 in Toronto as the third pillar of *Building the Canadian Advantage* to "assist stakeholders in the resolution of CSR issues pertaining to the activities of Canadian extractive sector companies abroad".[243] The mandate of the CSR Office was defined by the Order-in-Council and "has a mandate to review CSR practices of Canadian companies operating outside of Canada and to advise stakeholders on recognised best practices and endorsed

[242] Simmons, B., *Mobilizing for Human Rights*, p. 58.

[243] *Government of Canada*, 'Office of the Extractive Sector Corporate Social Responsibility Counsellor Annual Report to Parliament', October 2009 – October 2010, [URL: http://www.international.gc.ca/csr_counsellor-conseiller_rse/index.aspx?lang=eng], p. 8, consulted 20 November 2012; *Department of Foreign Affairs and International Trade Canada*, 'Corporate Social Responsibility – Building the Canadian Advantage', consulted 28 October 2012.

performance standards". [244] It does not have policy making authority. The CSR Office consists of two roles – that of an advisory role, and as a dispute resolution role. The advisory role seeks to encourage Canadian extractive companies operating abroad to implement the endorsed performance standards in order to manage environmental and social risks. These include: the IFC Performance Standards on Social and Environmental Sustainability, the VPs, the GRI, and the OECD Guidelines for Multinational Enterprises.[245] The role also includes dispute reduction and prevention role which seeks to promote the resolution of disputes through facilitating dialogue between Canadian companies and individuals and/or communities affected by corporate activities. In doing so, the CSR Counsellor uses a resolution mechanism known as the 'Review Process'.[246]

The Dispute Resolution Process

When dealing with conflict resolution, the CSR Office takes a neutral stance by being a third party which does not side with one group over the other, and acts as a non-adjudicative non-judicial grievance mechanism by assisting parties in discovering their own suitable resolutions. This allows the parties to tailor the resolution so that it is more flexible to their circumstances and needs. The CSR Office has employed an interest-based dispute resolution methodology which seeks to find the core reason(s) surrounding the dispute and to identify the values of each party in order to reach a mutually agreeable resolution.[247] According to the CSR office, this 'joint problem-solving approach' is beneficial for a range of reasons including: sustainable solutions that allow parties to manage the agreement themselves; build confidence and relationships; create more faith around scientific facts produced by a neutral third party to overcome existing beliefs or bias; contribute to more knowledge about the situation at hand whilst identifying the origins of the cause of the conflict; and helping parties understand how to apply

[244] *Department of Foreign Affairs and International Trade Canada*, 'Privacy Impact Assessment for Extractive Sector Corporate Social Responsibility (CSR) Counsellor – Executive Summary', 06 June 2012, [URL: http://www.international.gc.ca/about-a_propos/atip-aiprp/responsibility-responsabilite.aspx?view=d], consulted 20 November 2012. Note – the Order-in-Council is the Queen's Privy Council – a majority of members belong to the Cabinet and gains its legislative legitimacy (for any of its initiatives) by the approval of the Governor General. Library and Archives Canada, 'By Executive Decree', Collections Canada, 20 September 2005, [URL:http://www.collectionscanada.gc.ca/decret-executif/023004-3010-e.html], consulted 20 November 2012.
[245] *Department of Foreign Affairs and International Trade Canada* – Office of the Corporate Social Responsibility Counsellor, 'About Us', 27 November 2012, [URL: http://www.international.gc.ca/csr_counsellor-conseiller_rse/About-us-A-propos-du-bureau.aspx?lang=eng&menu_id=7&view=d], consulted 20 November 2012.
[246] *Department of Foreign Affairs and International Trade Canada* ,'About Us', consulted 20 November 2012.
[247] *Department of Foreign Affairs and International Trade Canada*, 'Office of the Extractive Sector Corporate Social Responsibility: Review Process', [URL:http://www.international.gc.ca/csr_counsellor-conseiller_rse/assets/pdfs/review_process-processus_examen-eng.pdf], consulted 21 November 2012.

performance standards, and with mutually shared interests and benefits.[248] The interest based approach is not the only dispute resolution approach that exists – it has long been contrasted against the 'rights based' approach. This approach is often an adjudicative process which takes place through the court system whereby "disputants present evidence and arguments to a neutral third party who has the power to hand down a binding decision".[249] Traditionally, both approaches have been polarized and largely painted as incompatible or at odds with one-another, however, authors such as Caroline Rees have argued that they are not only compatible but mutually beneficial when combined. Rees surmises:

> The interplay of rights and interest in dispute resolution is not a zero-sum equation. Rather they may be mutually supportive, with interests closely informing the experience of human rights in practice and suggesting how balances between competing rights can best be struck. While mediation processes must take care not to produce outcomes that set back human rights, they offer constructive ways to navigate the open spaces that exist within the parameters of basic human rights standards. The capacity of mediation to support inclusion, participation, empowerment and attention to vulnerable individuals and groups represents a further contribution towards the advancement of human rights.[250]

Given that rights and interest based dispute resolution processes are mutually supportive, choosing an interest based dispute resolution is consistent with the non-authoritative and voluntary mandate DFAIT charged the CSR Counsellor with. This is illustrative of Simmons theory of *strategic ratifiers* whereby in the case of Canada, its strategy has been to pursue a softer CSR strategy that avoids directly regulating mining and extractive companies as a means of maintaining their international competitive advantage and serving the Harper Government's policy interests. Thus, DFAIT strategically prescribed the CSR Office with a mandate that adopted the interest based approach due to its lack of adjudicative process and inability to legally hold companies accountable for their actions, as a means to ensuring that the interests of the Harper Government and mining and extractive sectors are maintained.

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[248] *Department of Foreign Affairs and International Trade Canada* – Office of the Corporate Social Responsibility Counsellor, 'What We Do', 25 September 2012, [URL: http://www.international.gc.ca/csr_counsellor-conseiller_rse/what-we-do-ce-que-nous-faisons.aspx?lang=eng&menu_id=57&view=d], consulted 21 November 2012.

[249] Ury, W.L. et al., (eds), *Getting Disputes Resolved: Designing Systems to Cut the Costs of Conflict*, Jossey-Bass, San Francisco. 1988, p. 7.

[250] Rees, C., 'Mediation in Business-Related Human Rights Disputes: Objections, Opportunities and Challenges', Working Paper for the Corporate Social Responsibility Initiative, *Harvard University*, February 2010, No. 56, p. 22.

The Review Process

The Review Process provides a means for affected individuals, groups or communities to resolve any issues that pertain to the operations of Canadian corporations abroad. Also, "any Canadian oil, gas or mining company, whether major or junior, publicly or privately held, whether funded through equity, debt or private placement, in any operations outside of Canada, can be subject of a review".[251] Canadian companies who believe they have been subjected to unjust or false allegations about their operations abroad can request assistance from the CSR Office.[252] Any companies that apply for resolution assistance through the Review Process must be "connected with endorsed performance standards".[253] The CSR Office accepts requests from Canadian mining, oil or gas companies domiciled in Canada and individuals, groups or communities that are located abroad that are affected from Canadian ventures.[254] The Review Process will not deal with issues concerning violations of international law, but rather only laws pertaining to Canada's endorsed performance guidelines; or matters concerning corruption or bribery as Canadian law deems bribery of a foreign public official as being illegal.[255] Following the Counsellor's consultations and review of existing global review mechanisms, a set of draft rules of procedures were created. After extensive revision, the rules were approved by the Minister of International Trade on 20 September 2010, and subsequently officially launched on 20 October 2010.[256]

The Review Process consists of five steps to reach resolution outcomes:[257]

Step 1: A request for Review is submitted to the CSR Office.

Step 2: Within 24 hours of receiving the request, the CSR Officer notifies that other party and provides them with their own duplicate of the request. Within 5 business days, the CSR Counsellor provides a receipt of request to the submitting party acknowledging their submission.

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[251] *Government of Canada*, 'Office of the Extractive Sector Corporate Social Responsibility Counsellor Annual Report to Parliament', p. 18.

[252] *Department of Foreign Affairs and International Trade Canada* ,'The Review Process', consulted 22 November 2012.

[253] *Department of Foreign Affairs and International Trade Canada* , 'About Us', consulted 20 November 2012.

[254] *Department of Foreign Affairs and International Trade Canada*, 'Office of the Extractive Sector Corporate Social Responsibility: Review Process', consulted 21 November 2012.

[255] *Department of Foreign Affairs and International Trade Canada*, 'Office of the Extractive Sector Corporate Social Responsibility: Review Process', consulted 21November 2012.

[256] *Government of Canada,* 'Office of the Extractive Sector Corporate Social Responsibility Counsellor Annual Report to Parliament', p. 22.

[257] *Department of Foreign Affairs and International Trade Canada* , 'The Review Process', consulted 22 November 2012.

Step 3: A process known as 'intake screening' occurs, whereby the CSR Office determines whether requests are eligible in accordance with the CSR Counsellor's legal mandate. This process does not determine whether information in the request is valuable or not nor draw any conclusions from the request itself. This step is finished within 40 business days.

Step 4: This step works on developing communication and trust between the disputing parties. The CSR Counsellor visits the business site to carry out a 'situational assessment'. The assessment does not seek to criticise operations but to help parties better understand the context, issues and determining whether the CSR Office will in fact be suitable or likely to assist in resolving a dispute.[258] The CSR Counsellor may have reservations about the likeliness of success if parties lack incentive and enthusiasm to partake in the process, if a better alternative exists that may appear to be a more suitable option, or it is unlikely that parties share conflicting values which may impede on the likelihood of reaching a resolution.[259] This step can take up to 6 months and can be extended providing parties agree to such.

Step 5: This step revolves around the CSR Officer facilitating discussion between the parties. Like the previous step, this can take up to six months and be extended beyond this providing all parties agree to such.

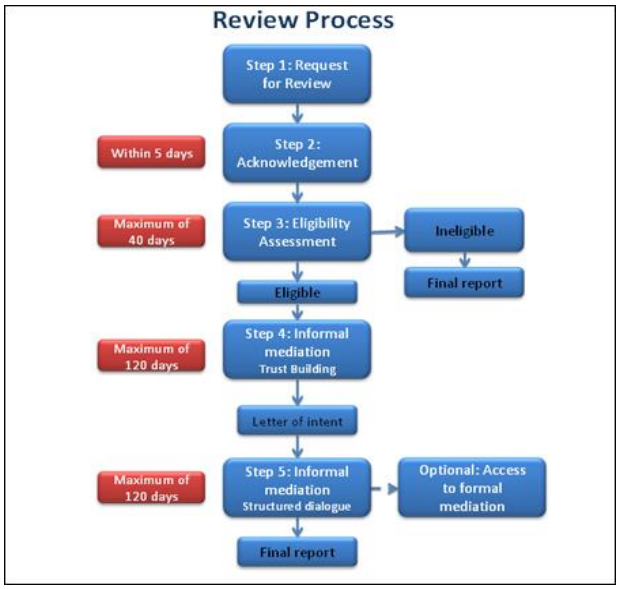

Figure 2: The CSR Officer's formal Review Process.[260]

[258] *Department of Foreign Affairs and International Trade Canada*, 'Office of the Extractive Sector Corporate Social Responsibility: Review Process in Brief', [URL:http://www.international.gc.ca/csr_counsellor-conseiller_rse/assets/pdfs/review_process-processus_examen-eng.pdf], consulted 21 November 2012.
[259] *Department of Foreign Affairs and International Trade Canada*, 'Office of the Extractive Sector Corporate Social Responsibility: Review Process in Brief', consulted 22 November 2012.
[260] *Government of Canada*, 'Office of the Extractive Sector Corporate Social Responsibility Counsellor Annual Report to Parliament', p. 25.

The CSR Officer may also choose to implement a range of other tools including: "information sharing, convening, facilitation, process design and joint fact-finding".[261] Ultimately, if either party does not find the Process useful, it is free to discontinue its involvement in the Review Process as well as seek other alternative options outside of the CSR Office. There is no cost to either party seeking to use the Review Process tool, however the Office expects that the parties have made previous efforts and resolution and dialogue, visited the project site, and make use of any existing company grievance mechanism (providing such exists) prior to submitting a request to the CSR Office.[262]

Review cases thus far

In terms of applying the Review Process, the CSR Office has received three requests, two of which have failed due to withdrawal from the process or not being deemed viable for continuation, and the remaining in a state of limbo as to whether the process will continue. The first request for review was submitted on the11th of April 2011 by (a) Excellon workers: Jorge Luis Mora, Secretary General, Section 309 Executive Committee, National Mining Union representing workers at the Platosa mine site; (b) National Mining Union; and (c) Proyecto de Derechos Economicos, Sociales y Cultural A.C. (ProDESC) against Excellon Resources Inc. regarding a mining project in Mexico.[263]

The CSR Officer and Senior Advisor conducted a field trip to Mexico City from the 18th-21st of May 2011. The CSR Officer and Senior Advisor were unable to visit the mine site (located near Torreon, United States of Mexico) as it was not possible at the time due to a travel warning by DFAIT.[264] Upon the completion of the field trip, the CSR Counsellor produced its first report providing information about how the Office had acknowledged the request, therefore moving to Step Three whereby it found the request appropriate on the 14th of April 2011. The report then detailed that it had moved to Step Four of the Review Process by facilitating "a number of face-to-face meetings and telephone calls between the

[261] *Department of Foreign Affairs and International Trade Canada*, 'Office of the Extractive Sector Corporate Social Responsibility: Review Process in Brief', consulted 22 November 2012.
[262] *Department of Foreign Affairs and International Trade Canada*, 'Office of the Extractive Sector Corporate Social Responsibility: Review Process in Brief', consulted 22 November 2012.
[263] *Department of Foreign Affairs and International Trade Canada – Office for the Corporate Social Responsibility (CSR) Counsellor*, 'Field Visit Report Mexico May 2011', May 2011, [URL:http://www.international.gc.ca/csr_counsellor-conseiller_rse/assets/pdfs/Field%20visit%20report%20Mexico%20May%202011.pdf], consulted 28 November 2012.
[264] *Department of Foreign Affairs and International Trade Canada – Office for the Corporate Social Responsibility (CSR) Counsellor*, 'Field Visit Report Mexico May 2011', p. 5, consulted 28 November 2012.

parties to discuss the issues, the request, and the company's response".[265] The report summarised: the objectives of the field trip, noted discussions and meetings that had taken place during the trip, highlighted important themes that had become evident, and concluded that it would continue with the agreed parties in perusing Step Four of the Review Process.[266]

In July 2011, the CSR Office published a secondary field visit report whereby it visited the mine site and community at La Platosa Mexico in July 2011. During the visit the CSR Officer and her Senior Advisor met with Excellon supervisory and managerial members, workers from the mine, members of the community, and various other stakeholders. The report details activities that occurred during the field trip to the mine site, meetings that occurred with the requesters and concluded that the Office would use the new information to evaluate the next steps to be taken.[267] In fulfilling to meet their "statutory reporting requirements and our commitment to our key guiding principles of transparency and effectiveness" the CSR Office published a closing report for the Mexico case.[268] In sum, the 21 page report details the previous two field trips that had occurred, the issues that had arisen, and ultimately stated that Excellon Inc had withdrawn from the final step of the Review Process as it did not "provide value to the company" and that Excellon believed it was already up to par with its responsibilities and undertaking necessary conversation and dialogue with stakeholders to that of a satisfactory level.[269] The Counsellor expressed her regrets that she was "unable to fulfil her mandate" and offered to remain open to any further cooperative efforts should Excellon change its mind in the future.[270]

The second request was received by the CSR Office on the 14th of August, 2011 by Maitre Ahmed Mohamed Lemine against Mauritanian Copper Mines (MCM) (a subsidiary of First Quantum Minerals

[265] *Department of Foreign Affairs and International Trade Canada – Office for the Corporate Social Responsibility (CSR) Counsellor*, 'Field Visit Report Mexico May 2011', May 2011, p. 4, consulted 28 November 2012.
[266] *Department of Foreign Affairs and International Trade Canada – Office for the Corporate Social Responsibility (CSR) Counsellor*, 'Field Visit Report Mexico May 2011', Pp. 4-6, consulted 28 November 2012.
[267] *Department of Foreign Affairs and International Trade Canada – Office for the Corporate Social Responsibility (CSR) Counsellor*, 'Field Visit Report #2 Mexico July 2011', July 2011, Pp 1-6, consulted 28 November 2012.
[268] *Department of Foreign Affairs and International Trade Canada – Office for the Corporate Social Responsibility (CSR) Counsellor*, 'Closing report – Request for review file #2011-01-MEX', October 2011, [URL:http://www.international.gc.ca/csr_counsellor-conseiller_rse/assets/pdfs/Closing_report_MEX.pdf], consulted 28 November 2012.
[269] *Department of Foreign Affairs and International Trade Canada – Office for the Corporate Social Responsibility (CSR) Counsellor*, 'Closing report – Request for review file #2011-01-MEX', p. 3, consulted 28 November 2012.
[270] *Department of Foreign Affairs and International Trade Canada – Office for the Corporate Social Responsibility (CSR) Counsellor*, 'Closing report – Request for review file #2011-01-MEX', p. 3, consulted 28 November 2012.

Ltd.) in regards to a mining project in Mauritania.[271] Whilst this request proceeded to Step Four of the Review Process – 'informal mediation', it became evident to the CSR Counsellor that information exchange and dialogue was deficient between the two parties which was found to be the root cause for the submission in the first place. As a result, the CSR Officer believed that a suitable business grievance mechanism existed and had not been used appropriately prior to the Review application. MCM offered to consider hiring an independent local convener to educate applicants about the existing business grievance mechanism that existed. In response, the CSR Counsellor closed the file.[272]

The latest Review Process application lodged with the CSR Office was received on July 9th 2012. The lodgers have been identified as The Centre for Human Rights and Environment (CEDHA) and Fundacion Ciudadanos Independientes (FuCI), and the responding party is Canadian company, McEwen Mining Inc.[273] It concerns a mining project in Argentina. The CSR Office accepted the request on July 10 2012, to which it then progressed and passed the intake screening on July 25,2012. The report identified that the Office responded to the intake screening step with a letter dated August 9, 2012, that highlighted some concerns that needed to be identified including issues such as local and national judicial matters in Argentina are not within the CSR Office's mandate.[274] In response to this letter, the report states that the parties involved in the request had acknowledged and agreed to such constraints however in October 2012 McEwen Mining Inc withdrew from the Review Process prematurely and the file is now closed. [275] For a full description of the activities that the CSR Counsellor has engaged in please see Appendix 2.

[271] *Department of Foreign Affairs and International Trade Canada – Office for the Corporate Social Responsibility (CSR) Counsellor*, 'Closing report – Request for review file #2011-01-MEX', p. 3, consulted 28 November 2012.
[272] *Department of Foreign Affairs and International Trade Canada – Office for the Corporate Social Responsibility (CSR) Counsellor*, 'Closing report – Request for review file #2011-01-MEX', p. 3, consulted 28 November 2012.
[273] *Department of Foreign Affairs and International Trade Canada* – Office for the Corporate Social Responsibility (CSR) Counsellor, 'Closing report – Request for review file #2011-01-MEX', p. 4, consulted 29 November 2012.
[274] *Department of Foreign Affairs and International Trade Canada* – Office for the Corporate Social Responsibility (CSR) Counsellor, 'Request for review #2012-03-ARG Interim Report #1', August 2012, [URL: http://www.international.gc.ca/csr_counsellor-conseiller_rse/assets/pdfs/interim_report-rapport_provisoir_01-eng.pdf], Pp. 4-5, consulted 29 November 2012.
[275] *Department of Foreign Affairs and International Trade Canada* – Office for the Corporate Social Responsibility (CSR) Counsellor, 'Request for review #2012-03-ARG Interim Report #1', p. 5, consulted 29 November 2012; *Department of Foreign Affairs, Trade, Development Canada*, 'Closing Report: Request for Review File Number 2012-03-ARG', October 2012, [URL: http://www.international.gc.ca/csr_counsellor-conseiller_rse/publications/2012-03-ARG_closing_report-rapport_final.aspx?lang=eng], consulted 05 January 2014.

As the three cases above demonstrate, the voluntary nature of the Review Process has proven to be problematic. In terms of applying the Review Process, all three requests for review have failed due to premature withdrawal from the process or not being deemed viable for continuation. The ability of companies being able to withdraw at any stage of the review is a major flaw in that it does not ensure that grievances are able to be remedied, particularly if a company does not agree with any of the advice that the Counsellor has to offer. As a result, the company can withdraw at any given stage simply return to business as usual. This is not an effective way of ensuring that Canadian mining and extractive companies adhere to B&HR norms nor does it provide an effective or guaranteed way of achieving non-judicial remedy for affected persons or communities. Another limitation of the Review Process is that if the CSR Counsellor deems that a company possesses its own suitable grievance mechanisms, then it is not a suitable candidate for the Review Process, as was the case with Mauritanian Copper Mines in Mauritia. Whilst a company may possess such mechanisms, there is no guarantee that a mutually agreeable resolution can be achieved or ensuring that the process will be seen through from begging to end.

2. Analytical summary: limitations of the Office of the CSR Counsellor

Apart from the apparent problems with the Review Process, the very mandate and functions of the Office of the CSR Counsellor have been heavily criticised by members of the Advisory Group. In place of the proposed Ombudsperson and Compliance Review Committee as recommended by the Advisory Group report, an Extractive Sector CSR Counsellor was created that possessed no "binding recommendations or policy or legislative recommendations, no ability create new performance standards, or formally mediate between parties".[276] Rather the Office created intended to "*assist"* stakeholders who are wishing to resolve CSR disputes. Further, the placement of the Office of the CSR Counsellor under DFAIT has been criticised as the Advisory Group report showed general support for housing an independent ombudsman outside the influence of Government. The Advisory Group expressed fears that "housing the office within government would impair its ability to operate independently if confronted with potentially competing government policy objectives".[277] Further, the Advisory Group report expressed concerns that by housing such an ombudsman within Government ran

[276] Coumans, C., p. 43.

[277] *Canadian Roundtable National Advisory Group*, 'National Roundtables on Corporate Social Responsibility (CSR) and the Canadian Extractive Industry in Developing Countries – Advisory Group Report', 29 March 2007, P. 22, [URL: http://www.pdac.ca/pdac/misc/pdf/070329-advisory-group-report-eng.pdf], p. i, consulted 09 October 2012.

the risk of potentially jeopardising diplomatic affairs when reviewing incidents that occurred in other states.[278] One Advisory Group member declared that "the office of the ombudsman has been stripped of its independence and power".[279] As evidenced in the first section of this Chapter, no review case handled by the Office has successfully been completed, due the voluntary nature of the Office, which allows companies to prematurely withdraw from the process at any given stage. To claim that the Office has been stripped of its independence and power is a reasonable assessment. Had the Office been designed in an independent manner as recommended its mandate would not have been influenced by the national interests of the Harper Government. As argued in the previous chapter of this thesis, the current Conservative Government favours the interests of mining and extractive companies over B&HR issues. Therefore, these interests constrain the Office as the Government does not want to create an Office that had the power to limit the actions of or impose obligations upon the very industries that the Government wishes to nurture and protect. Given that the CSR Counsellor has no mandate to make recommendations or impose sanctions, another key element of the Advisory Group's report was eliminated. This was pivotal to the Advisory Group's report as it would ensure that the Government could restrict or support Canadian companies through financial and political means depending on company compliance with human rights norms. This was also essential to the SCFAIT report, which called for the Canadian Government to support companies on matters relating to political and environmental human rights when operating abroad.[280]

Indeed, the concerns expressed by the Advisory Group are very much real and legitimate issues that have prevented the Office of the CSR Counsellor functioning in an effective manner. As noted previously in the Second Chapter of this thesis, during the Roundtables there was disagreement over matters of regulation and legal reform, and the Advisory Group's report was "tasked with designing an accountability mechanism that appeased both viewpoints balancing somewhere in between voluntarism and regulation. The middle ground which was reached was the creation of an independent 'Ombudsperson' who could investigate complaints and report subsequent findings, and a 'Compliance Review Committee' which could "make recommendations with regard to the withdrawal of financial and/or non-financial services by the Government of Canada".[281] Basically, impose sanctions upon

[278] *Canadian Roundtable National Advisory Group*, p. i, consulted 09 October 2012.
[279] Keenan, K., p. 33.
[280] Coumans, C., p. 43.
[281] *Canadian Network for Corporate Accountability Advisory Group*, 'National roundtables on corporate social responsibility (CSR) and the Canadian extractive industry in

companies who failed to comply with the agreed standards".[282] However, the Government chose to design a CSR Counsellor that is wholly voluntary in nature which has demonstrated to be problematic in its inability to ensure that not only companies engage in the Review Process but also do so until the process is complete. Instead, the voluntary nature of the CSR Counsellor has resulted in companies withdrawing from the Process at any given stage, often when they are unwilling to negotiate a resolution any further. In sum, the conflict is left unresolved with no assurance of resolution for affected groups and communities. This does not create an effective non-adjudicative mechanism for addressing B&HR issues. Further, the Government has created a CSR Officer that has no investigative or prescriptive powers despite the Advisory Group recommendations. This is problematic as Canadian companies who have been accused of human rights abuse are able to continue business as usual as the CSR Counsellor does not have the ability to investigate any complaints or allegations which could then be used to alert the appropriate Governmental or industry bodies which could enact disciplinary measures. Also, due to the CSR Counsellor not possessing any prescriptive or recommendatory powers, prescriptions that could be valuable for companies in reaching an appropriate solution cannot be made. This also means that companies are at liberty to choose whatever solution they deem appropriate to resolve the dispute which does not ensure that an appropriate resolution that adheres to a spectrum of human rights norms and standards is achieved.

These apparent faults of the Government's CSR Counsellor have been supported by legal experts in the field such as Toronto -based lawyer Murray Klippenstein who is renowned for his work with aggrieved communities affected by Canadian mining and extractive companies operating abroad.[283] In an interview with CBC Canada, Klippenstein openly criticised the Office of the CSR Counsellor as being "toothless" and "…a bogus PR job as a cover for business as usual".[284] The CSR Counsellor of the time Marketa Evans dealt with such criticisms by simply stating that she ''implements the mandate she has been given".[285] On October 18, 2013, after four years of being the CSR Counsellor, Ms. Evans resigned. No formal Governmental press release explaining the reasons for Ms. Evans resignation was issued. The author of

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developing countries', 2007. p. vii – as cited in Coumans, C., p. 41.

[282] Coumans, C., p. 41.

[283] Wanless, C., *Klippensteins Barristers and Solicitors*, conducted Wednesday 14 August 2013, [Online Interview: Skype].

[284] Klippenstein, M., quoted by *CBC Canada* in 'Mining watchdog agency called 'bogus PR job', 31 October 2011, [URL: http://www.cbc.ca/news/canada/mining-watchdog-agency-called-bogus-pr-job-1.978674], consulted 15 September 2014.

[285] *CBC Canada*, accessed 15 September 2014.

this thesis had spoken with Ms. Evans about the possibility of her participation in an interview, however Ms. Evans cited that due to the limitations of her mandate she was unable to answer my interview questions and instead recommended that it contact someone from the Government who could discuss policy issues relating to the design and mandate of the Office. Despite such requests DFAIT declined to provide a contact or representative who could answer my questions. Ms. Evans was also approached again, after her resignation from the post, but no response was forthcoming.

Canada's National Contact Point

Whilst participants of the National Roundtable's called upon the Government to create an independent ombudsman office (which would eventually become the Office of the CSR Counsellor), they also called for further strengthening of Canada's National Contact Point (NCP).[286] NCPs handle enquiries about the OECD *Guidelines for Multinational Enterprises* – the most inclusive set of voluntary government endorsed guidelines on the responsible conduct of multinational enterprises. According to the OECD, the role of NCPs are to: "handle enquiries about the Guidelines; discuss matters related to the Guidelines and assist(s) in solving problems that may arise in this connection; and gather information on national experiences with the Guidelines and report(s) annually".[287] NCPs remain as mediators and have not been allocated any adjudicative powers to pass judgments regarding corporate activities. Whilst NCPs do not have any adjudicative powers, it is important to note that NCPs have the ability to publish a report publicly online which can detail proceedings including the actions and attitudes of each of the involved parties.[288] This is significant because publicly available reports could potentially state that an enterprise has been in breach of the Guidelines, and this in turn could create a snowball effect relating to bad press and/or even investor/shareholder knowledge of such could have detrimental financial impacts for the enterprise, similar to the case of Talisman. The ability of NCPs to publicly state breaches of the Guidelines in such reports is currently being discussed across many international spheres and

[286] *Advisory Group report*, Pp. 22 – 23.

[287] *Organisation for Economic Co-operation and Development*, 'The OECD Guidelines for Multinational Enterprises: Frequently Asked Questions', [URL:http://www.oecd.org/daf/inv/mne/theoecdguidelinesformultinationalenterprisesfrequentlyaskedquestions.htm], consulted 06 May 2013.

[288] Note – there can be confidentiality constraints on details of the report if "preserving confidentiality would be in the best interests of effective implementation of the Guidelines (e.g. to protect sensitive business information or the identity of individuals with a view to ensuring continued cooperation)" *Department of Foreign Affairs and International Trade Canada,* 'Procedures Guide for Canada's National Contact Point for the Organisation of Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises', modified 02 February 2012, [URL: http://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp pcn/procedures_guide_de_procedure.aspx?lang=eng&menu_id=31], consulted 13 May 2013.

Canada's NCP is continually developing its policies, so whether its NCP will carry out such actions is yet to be determined.[289]

Whilst the Advisory Group Report noted the need to create a new separate dispute resolution mechanism that was separate to the OECD NCP, the CSR Counsellor position has been criticised for closely mirroring "the NCP function and its shortcomings, creating a duplicate office; the main distinction is that the CSR Counsellor will be involved only with extractive industry cases".[290] One component of the CSR Counsellor's mandate is to review CSR practices of Canadian MNCs operating outside of Canada and to advise stakeholders about the four key performance guidelines one of which includes OECD Guidelines for MNEs. Therefore, there is an overlap between the CSR Counsellor's mandate regarding the OECD Guidelines and Canada's NCP as its NCP also seeks to promote, raise awareness and respond to enquiries about the Guidelines. Due to this overlap, the OECD's Investment Committee (OIC) has clarified that the NCP has the primary authority relating to any issues concerning the OECD Guidelines; if the CSR Counsellor receives a request for review that refers only to the Guidelines, the Counsellor will pass the request over to the NCP; and if either the NCP or CSR Counsellor receives a request for review that relates to the Guidelines and *other* performance guidelines, the CSR Counsellor has the primary authority to lead the review, but in consultation with the NCP.[291] In sum, the key differences between the CSR Counsellor's office and the NCP is that (a) the CSR Office only focuses on Canada's extractive sector whereas the NCP focuses on all industries, and (b) whilst the CSR Officer has the ability to publish reports on review cases, none of the reports illustrate attitudes of parties, but rather provide simple (and somewhat limited) insight without providing explanations or reasoning as to why a party has chosen to perhaps cease cooperation. Whereas, NCPs have the ability to publish reports which explain the action of parties, reasoning behind such actions, and whether an enterprise is in fact in breach of the OECD Guidelines. Whether or not Canadian NCPs will choose to do so is unknown, but if they do, it could be suggested that a public statement identifying breaches could provide more 'teeth' in

[289] *Department of Foreign Affairs and International Trade Canada*, 'What's New', 03 December 2012, [URL:http://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/new-neuf.aspx?lang=eng&menu_id=2], consulted 03 May 2013.
[290] Coumans, C., Pp. 43-44.
[291] *Department of Foreign Affairs and International Trade Canada*, 'PROTOCOL – The Office of the Corporate Social Responsibility Counsellor for the Extractive Sector and National Contact Point for the OECD Guidelines for Multinational Enterprises', modified 04 October 2010, [URL:http://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/counsellor_protocol_conseiller.aspx?lag=eng&menu_id=33], consulted 07 May 2013. Note – for further detail on the communication between Canada's NCP and the Office of the CSR Counsellor when managing case files please see Appendix 3.

and accountability through transparency measures (and naming and shaming) than the Office of the CSR Counsellor.

Conclusion

This Chapter has conducted a Case Study of the Office of the CSR Counsellor – the third and key pillar of *Building the Canadian Advantage* which attempts to address B&HR issues relating to Canadian extractive companies and their operations abroad. An outline of the CSR Office and Officer's role and processes were provided as a necessary context for understanding how the Office functions. This was followed by an outline of the Review Process – the conflict resolution tool employed by the Office in managing B&HR issues. The CSR Counsellor employs an interest-based dispute resolution methodology as a means to finding a mutually agreeable solution for involved parties. However, it was noted that rights based dispute resolution process are also valuable and that together, both are mutually supportive of one another. This indicated in light of Simmons *strategic ratifiers* theory that Canada intentionally chose to pursue a softer CSR strategy by employing an interest based mechanism over a rights based mechanisms, as a means to avoiding direct regulation of its mining and extractive companies as a means to maintaining their international competitive advantage. This was followed by an outline of which cases the CSR Counsellor has dealt with thus far. Having outlined the CSR Counsellor's mandate, role and functions, this then allowed for an analysis of some of the key limitations of the CSR Counsellor's Office. It was found that the CSR Counsellor has a limited mandate whereby no investigative or authoritative powers – something which was strongly advised by the Advisory Group when providing recommendations to the Government about how to set up such a position. Failure to include these attributes in the Counsellor's mandate and employing a purely voluntary process has meant that the review cases that have been dealt with thus far have failed to undergo the full process often due to companies withdrawing prematurely during the process on their own accord.

Further, the Advisory Group recommended that such an ombudsman position should be independent and housed outside the influence of the Government to ensure that such an ombudsman could operate in a completely independent manner if confronted with competing government policy objectives. Also, this would also avoid jeopardising diplomatic affairs when reviewing incidents that occurred in other states. Instead, we see a CSR Office which functions in a limited manner under the strict instructions of DFAIT and a Government that does not place human rights issues over business interests. Therefore, it

has been argued that the Government's Office of the CSR Counsellor does not reflect an effective non-adjudicative mechanism for addressing B&HR issues due to the fundamental flaws of its voluntary nature and lack of authoritative powers. Canadian companies who breach human rights are able to continue business as usual as the CSR Counsellor does not have the appropriate tools to able to hold them accountable for their actions. Whilst Canada accepts that there is a need to ensure that its mining and extractive companies conduct their operations in an ethical manner and have taken steps such as creating the Office of the CSR Counsellor to achieve such, further strengthening of the Counsellor's mandate as originally advised by the Advisory Group Recommendations needs to occur. Given these limitations of Canada's non-adjudicative B&HR processes, the following chapter will examine adjudicative processes in Canada, which are a key component of a sound B&HR framework.

CHAPTER FIVE

Canada's legal system –Obstacles to adjudicative redress and the state duty to protect.

Canada's Office of the CSR Counsellor provides a non-adjudicative process as to remedy conflict between Canadian extractive companies and affected communities or individuals abroad. As explained in the previous Chapter, the Office's efficiency in resolving such conflict is constrained by its voluntary nature and limited mandate, whereby Canadian companies have withdrawn prematurely from the remedial process. As a result, there is no assurance for claimants (or companies alike) that such conflict can be resolved because non-adjudicative processes like that of the CSR Counsellor's Review Process do not seek to make and enforce formal binding decisions. In the UN *Guiding Principles on Business and Human* Rights – *"Protect, Respect and Remedy" Framework*, the SRSG says that under international human rights law, "States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises" and that this "requires taking appropriate steps to prevent, investigate, punish and redress such abuse through affective policies, legislation, regulations, and adjudication".[292] As evidenced in the previous Chapter, whilst Canada has taken appropriate steps to redress such abuse through non-adjudicative processes like the Office of the CSR Counsellor, it has not taken necessary steps to provide access to adjudicative processes which are important to prevent, investigate, punish and redress such abuse well. Whilst the CSR Officer and NCP offer remedy through mediation, more severe human rights abuse (i.e. execution) often call for, or require remedy at a court level. However, Canada's judicial system is largely constrained by a handful of key legal conventions, often relating to complex issues surrounding extraterritoriality which limits corporate abuse cases being heard within Canadian courts.

This Chapter will argue that Canada must overcome these legal shortcomings in order to ensure that it provides access to adjudicative processes for victims of Canadian enterprise seeking legal redress, as a means to implementing an effective B&HR framework. This will be achieved in two parts: first, exploring

[292] *United Nations Office of the High Commission*, 'Guiding Principles on Business and Human Rights – Implementing the United Nations "Protect, Respect and Remedy" Framework', 2011, [URL:http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf], consulted 09 August 2013, p. 3.

how Canadian mining and extractive corporations operate abroad in a largely un-checked manner and examine three legal 'blocks' including jurisdiction, a legal convention known as *forum non conveniens*, and matters relating to duty of care to understand why these types of adjudicative processes are inhibited; Second outline the rise of alternative private member bills introduced by Canadian Members of Parliament (MPs) which seek to hold Canadian companies accountable for their actions in order to analyse possible ways in which Canada can better develop its adjudicative remedial processes and move forwards. This Chapter reflects the theoretical framework of Risse and Sikkink, that state motives and identity shapes the degree to which states implement norms and the nature of differing levels of compliance. From Canada's experience, the Harper Government is vested in protecting its extractive sector and maintaining its international competitive advantage. In turn, it has created a less comprehensive national CSR strategy with a lower level of compliance to international B&HR norms, like the UNGPs. In the case of this Chapter, Canada chose to ignore calls for legal reform as well as the implementation of legal norms to "ensure that Canadian companies and residents are held accountable where there is evidence of environmental and/or human rights violations associated with the activities of Canadian mining companies".[293] This is also, illustrative of Simmons *false negative* theory of states not ratifying norms into their legal frameworks and in the case of Canada, pursuing a soft approach that does not focus on furthering adjudicative remedy. This reiterates the overarching argument of this thesis that Canada is no longer a global leader on human rights.

1. Extraterritoriality and judicial blocks

Whilst the U.S. has implemented domestic laws such as the Alien Tort Statute that can see American companies prosecuted for poor environmental and social practices , Canada has little exterritorial control over corporate conduct abroad, which causes 'potential for abuse'.[294] As explored in Chapter Three, Canada has a history of resisting pressures of extraterritoriality and B&HR developments originating from its U.S. neighbour. In fact, "Only two Canadian laws apply internationally to mining practices, and one is against having sex with children…The other is against bribery and corruption", laws which the Canadian Government claims are often hard to put into practice.[295] The Canadian

[293] *Parliament of Canada*, '38th Parliament 1st Session Committee Report', consulted 18 March 2013.
[294] *Mining Watch Canada*, cited in Lupick, T., 'How Canada Dominates African Mining', *Think Africa Press*, 18 April 2013, [URL:http://thinkafricapress.com/economy/canada-dominates-african-mining], consulted 23 October 2014.
[295] Kneen, J., cited by Paul, K., in 'When Canadian Mining Companies Take Over the World', *Global Journalist*, 12 October 2013, [URL:http://globaljournalist.org/2013/10/when-canadian-mining-companies-take-over-the-world/], consulted 23 October 2014.

Government claims that voluntary CSR standards work well and that legally binding policies are not necessary.[296] Lacking such legislation allows mining and extractive companies to operate in an un-checked manner and adhering to often lax domestic laws abroad. However, when in breach of domestic laws, Canadian mining and extractive companies have used bilateral investment treaties as a means to overcoming any resistance to the continuation of the project and in some cases sought financial compensation for any losses incurred during such periods. For instance, Pacific Rim, an exploration company based in Vancouver, is suing El Salvador for denying providing permits for a gold mine; also Canada is attempting to secure a trade agreement with El Salvador which would further cement mining company rights as a means to preventing any future bans upon Canadian mining operations in the country.[297] Similarly, Infinito Gold is threatening to sue Costa Rica if it does not over-turn bans on opencast mining.[298] Extraterritoriality – a law valid outside of a country's territory and exemption from local law jurisdictions is a global issue experienced by many states. There have a been a range of attempts by foreigners over the years to hold Canadian companies legally accountable for alleged human rights abuse and violations through Canadian courts. However, more often than not, judges have been quick to refuse to hear such cases and have been quick to dismiss them for three key reasons: 1.) issues relating to the appropriate jurisdiction, 2.) a legal convention known as *forum non conveniens*, and 3.) matters relating to duty of care. As a result, these judicial blocks prevent Canada from providing access to adjudicative remedy for victims of Canadian mining and extractive enterprise's and their operations abroad, which is a vital component of a comprehensive and effective national B&HR framework. I will examine each in turn.

(a) Jurisdiction

Often Canadian judges have dismissed court cases on the grounds that any grievances or offences that took place in a particular country do not have a sufficient connection to the headquarters of a Canadian enterprise. A good example of this is the 2010 class action brought forward by the Canadian Association Against Impunity against Canadian mining company – Anvil Mining Ltd in Quebec relating to a massacre in the Democratic Republic of the Congo. The massacre occurred in 2004 when ten armed individuals from Zambia crossed into Kilwa in the DRC and the Government instructed army officers to remove

[296] *Fair Whistleblower*, 'Canadian Mining Companies Lack Accountability', http://fairwhistleblower.ca/content/canadian-mining-companies-lack-accountability, consulted 23 October 2014.
[297] Karunananthan, M., 'UN must challenge Canada's complicity in mining's human rights abuses', *The Guardian*, 24 April 2014, [URL:http://www.theguardian.com/global-development/poverty-matters/2013/apr/24/un-canada-mining-human-rights], consulted 23 October 2014.
[298] Karunananthan, M., consulted 23 October 2014.

them. In the process, 73 civilians were killed, with the UN reporting mass graves, looting of local shops by soldiers and the financial extortion of civilians in exchange for their safety.[299] In the same report, it had been concluded that Anvil had provided the military with support such as transport, food, and fuel which were used in carrying out the massacre. Anvil's headquarters resided in Perth, Australia, and had opened a minor office in Quebec early 2005. In 2007, a class action representing the victims was filed in Australia but was ultimately shut down due to a break-down between the Australian firm and local legal entities being prevented from obtaining affidavits from the DRC Government and no other law firms in Australia were willing to take on their case. As a result, the 2010 Quebec class action was deemed a suitable avenue for legal redress by a judge at the Quebec Superior Court as neither the DRC nor the Australian legal systems would hear the case. The action also noted that the Anvil's DRC mine was its principle mining operation and thus was substantially related to mining operations in the DRC.[300] However, the crux of the 'jurisdiction' issue is evident when the Quebec Court of Appeal overturned the judge's ruling on the grounds that the Court did not in fact have jurisdiction. The Court stated that at the time of the massacre Anvil did not have an office in Quebec and thus there was not a strong enough linkage between the two. Further, the Court ruled that given that the head office was located in Australia, Australian or DRC courts possessed the appropriate jurisdiction to oversee such cases, despite previous unsuccessful attempts at doing so.

Similarly, a Canadian judge shut down a two decade old lawsuit in May 2013. Ecuadorian locals were attempting to hold Chevron Corp accountable for 19 billion dollars as a result of Texco (which Chevron had purchased) severely polluting and contaminating a local rainforest during 1972 to 1990. Justice David Brown for the Ontario Superior Court believed that the case was brought against Chevron Corp, rather than Chevron Canada and in turn dismissed the case on the grounds that "the subsidiary's assets do not belong to the U.S. parent company".[301] A final example is that of a court appeal lodged in the Quebec whereby a suit lodged by Democratic Republic Of Congo citizens were pursuing Canadian Anvil Mining Limited for allegedly supporting the DRC army during a massacre that left 100 dead. The Court

[299] Imai,S., Maheandiran, B., & Crystal, V., 'Accountability Across Borders: Mining in Guatemala and the Canadian Justice System', Osgoode Hall Law School York University, Research Paper No. 26, 2012, p. 23.
[300] Imai,S., Maheandiran, B., & Crystal, V., Pp 24-25.
[301] Peters, A., 'Canadian judge dismisses lawsuit against Chevron', *Huffington Post*, 1 May 2013, [URL:http://www.huffingtonpost.com/huff-wires/20130501/cn-canada-ecuador-chevron/?utm_hp_ref=green&ir=green], consulted 25 October 2014.

rejected the case on the ground of jurisdiction stating that it had no authority over the company's activities in the DRC.[302]

(b) Forum Non Conveniens:

Forum Non Conveniens is a legal doctrine in the Quebec Civil Code whereby courts are able to refuse taking jurisdiction if they believe there is a more suitable arena in which the case can be heard. For example, in 1998 the Quebec Superior Court dismissed a case brought forward by Recherches Internationales Quebec representing some 23,000 Guyan nationals against Canadian mining company Cambior Inc. for dumping 2.3 billion litres of liquid containing cyanide which contaminated the Esequibo River.[303] The Court rejected jurisdiction over the incident citing that the incident occurred in Guyana, many of the victims were located in Guyana, and in turn, Guyanese law would be the suitable avenue for legal redress. Given that they plaintiffs did not have any alternative, their case was lodged in Guyana which was shut down by their High Court of the Supreme Court of Judicature in 2006. Given that this legal doctrine can prevent access to remedy and justice, Imai, Bernadetta and Crystal cite that regions such as Europe have sought to overcome issues related to the doctrine by simply removing it from their legal system.[304]

> …the European Union has removed the need to determine whether there is a connection between the forum and the claim or whether there is a more appropriate forum to adjudicate corporate human rights abuses, providing that courts have jurisdiction where a defendant business is domiciled within their jurisdiction, or if the harm occurred there.[305]

(c) Duty of Care:

When an enterprise conducts mining projects and operations it must operate in a manner that ensures measures are taken to avoid any direct or adverse human rights impacts. In Canadian law, duty of care is identified when a court rules that (1) any damage or potential cause for harm was "reasonably foreseeable" given the behaviour of the defendant, and (2) a connection of "proximity" between the two parties which would entail the consideration of the claimant's situation and values by the defendant

[302] Peters, A., consulted 25 October 2014.
[303] Imai,S., Maheandiran, B., & Crystal, V., p. 26.
[304] Note – lessons learned by Europe's experience with furthering adjudicative business and human rights mechanisms will be discussed in the final analysis chapter of this thesis.
[305]Imai,S., Maheandiran, B., & Crystal, V., p. 27.

when taking any action.[306] In the case of B&HR, duty of care can often be difficult to establish due to subsidiary companies operating in countries abroad and adhering to their local laws (often with lax environmental and labour laws) , rather than the laws of the parent company which is often housed in developed states with more strict legislation. Further, subsidiaries may employ local third party groups such as security firms which have been known to carry out human rights violations. As a result, it can be difficult to establish a connection between the Parent Company and subsidiaries and third parties which the employ. Claimant's attempts to sue a subsidiary may not be successful either due to the low capital of subsidiaries as opposed to the parent company resulting in little or low monetary compensation, as well as issues related to corruption, access to local court systems and a just trial.[307]

In the case of Canada, duty of care has prevented groups from accessing remedy and justice through its legal system and one example which illustrates such is two cases related to one another between Ecuadorian claimants' *campesinos* from Junin, against Canadian mining company Copper Mesa in 2008 and also the Toronto Stock Exchange (TSX).[308] Junin residents were aware that if Copper Mesa was listed on the TSX it would have the ability to raise finances to prevent any resistance to development of a mining project in the area. The county mayor (in which Junin is located) approached TSX and notified them of the community's concerns about potential violence and repression. The law suits claimed that in December 2006, security forces approached members of the Junin community and pepper sprayed one claimant in the eyes and then shot into a crowd injuring another. A member of the community met with Copper Mesa directors in 2007 to notify them of the violence, but despite this the violence continued, to the extent that one claimant received death threats later that year and later beaten by a group who was associated with the corporation.[309] In the case, the claimants alleged that the directors of Copper Mesa were aware of the violence but failed to implement policies to stop and prevent any further violence and thus felt that they should have been personally liable. Further, they felt that the TSX had been negligent in allowing Copper Mesa on the stock exchange when there was a foreseeable likelihood that the company would use funds from the TSX to fund potential repression and possible violence.[310] The case was thrown out by the Ontario motions judge who did not recognise a strong enough relationship between claimants and TSX to make TSX curb their business activities in light of the

[306] Imai,S., Maheandiran, B., & Crystal, V., Pp 28-29.
[307] Imai,S., Maheandiran, B., & Crystal, V., p. 29.
[308] Imai,S., Maheandiran, B., & Crystal, V., p. 30.
[309] Imai,S., Maheandiran, B., & Crystal, V., p. 30.
[310] Imai,S., Maheandiran, B., & Crystal, V., Pp. 30-31.

claimant's interests and that TSX could not have foreseen such violence via Copper Mesa's security forces, despite Junin's major directly informing TSX of their concerns over possible violence. To add salt to the wound, the Ontario Court of Appeal backed up the judge's decision – it too stating that there was no direct link between the directors of Copper Mesa and the violence that had occurred, bearing in mind that the Junin community had in fact informed the directors of escalating violence and incidents.[311]

As we can see Jurisdiction*, forum non conveniens*, and duty of care are preventing many victims of Canadian corporate abuse access to appropriate avenues of legal redress. This is due to Canadian courts not recognising jurisdiction or rejecting cases due to extraterritoriality issues and in turn foreign claimants are often unsuccessful in their attempts to pursue accountability and remedy through adjudicative avenues in their own home states due to corruption or inaccessibility to legal systems. In turn, Canadian companies are often not being held accountable through adjudicative processes. The examples given for each of the three legal clause's only touches the tip of a very large iceberg with many Canadian companies ranging from: Anvil Mining Ltd, Hudbay Minerals Inc., Excellon Resources Inc., Blackfire Exploration Ltd., Goldcorp Inc., Barrick Gold Corp, and Cambior Inc. being cited as having one or many more court cases filed against them relating to human rights abuse and complicity - most of which were overruled and closed by Canadian judges citing problems associated with the three legal impediments.[312]

2. Private Bills: alternatives to the Government's CSR Strategy

Given the legal blocks present in Canada's judicial system, a range of private member bills were introduced to Canadian Parliament as an alternative means to achieving legal redress for victims of corporate abuse and whilst waiting for a Governmental response. Introduced from 2007 through to 2013, these bills sought to address human rights issues associated with Canada's extractive sector by implementing rigorous national CSR standards and adjudicative processes. The following section will detail the four bills that were introduced during this period in order to provide necessary context of alternative private member bills relating to B&HR issues in Canada, and to understand why each bill failed to be voted in. This will help draw analysis as to why private member bills and legal enforcement

[311] Imai,S., Maheandiran, B., & Crystal, V., Pp 31-32.
[312] *United Steelworkers*, Pp. 9-14.

appear to be the most prospective avenues for developing Canada's B&HR agenda at this point in time.[313]

Bill C-492/ Bill C-354/ Bill C-323:

Bill C-492 (later to be reinstated as Bill C-354) was introduced at the 39th Parliament, second session 2007 as a Private Members' Bill by the Honourable Peter Julian of the NDP. Cited as *An Act to amend the Federal Courts Act (international promotion and protection of human rights)*, it proposed that the Federal Courts be amended so that it would allow non-Canadian citizens to lodge claims relating to violations against international human rights law that took place abroad.[314] The Bill was voted down at the first reading stage. Bill C-354 was reinstated and introduced at the 40th Parliament, second session 2007, as a Private Members' Bill by the Honourable Peter Julian of the National Democratic Party (NDP). Cited as *An Act to amend the Federal Courts Act (international promotion and protection of human rights)*, it proposed that the Federal Courts be amended so that it would allow non-Canadian citizens to lodge claims relating to violations against international human rights law that took place abroad.[315] Like its original C-492 predecessor, it was voted down at the first reading stage.

Once again, this bill has been re-introduced for a third time, known as Bill C-323 with its original title - *An Act to amend the Federal Courts Act (international promotion and protection of human rights*, Honourable Peter Julian introduced this bill to the 40th Parliament, third session in 2011. Described as Canada's own version of the US Alien Tort Claims Act, this bill pushes for non-citizens to lodge suits against Canadian companies in the Canada judicial system which would do-away with *forum non conveniens*. This is a loophole in the Canadian legal system whereby courts can rule against hearing a case if they believe it is not sufficiently within their jurisdiction or there is a more suitable avenue for such a hearing i.e. the home state. Often this is used as a common line of defence by companies as

[313] Note –Given the Conservative Governments interests of prioritizing its mining and extractive sectors over human rights issues it is unlikely that it will suddenly change such value systems and develop a more rigorous CSR strategy. This is not to say or guarantee that if there were a change in Government such would necessary result in or guarantee a more comprehensive B&HR strategy. Therefore, it is my opinion that Canada's best chance of developing a stronger CSR or B&HR strategy is by trying to push it through private member bills – some of which (as you read further) were not far off being voted in.

[314] *Parliament of Canada*, 'Bill C-354', 2nd Session, 40th Parliament, House of Commons of Canada, 2009, [URL:http://parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=3580365&File=27#1], consulted 02 April 2013.

[315] *Parliament of Canada*, 'Bill C-492', 2nd Session, 39th Parliament, House of Commons of Canada, 2007, [URL: http://parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=3197514], consulted 02 April 2013.

many developing countries do not have the capacity or resources to take on multi-billion dollar court cases against corporations among other factors.[316] Mr. Julian does not believe that the entire Canadian extractive industry is responsible for gross human rights violations, but rather a select few which are jeopardizing Canada's image on an international scale. Therefore, Mr. Julian's strategy is to "isolate the bad apples…and…turn the sector against the bad apples rather than have the mining industry unite around them".[317] Bill C-323 has passed the introduction and first reading stages and as a result, is still undergoing Parliamentary processes. Given that the Conservative Party are the majority and that the Bill is only in the preliminary stages, it is too early yet to speculate its ultimate success, however, if its predecessor (Bill -354) is anything to go by, there is a possibility that it may in fact be passed.

Bill C-565/ Bill C-298:

Bill C-565 (which would later be reinstated as Bill C-298) was introduced at the 39th Parliament, second session 2008, as a Private Members' Bill by the Honourable Alexa McDonough of the NDP. Cited as the *Corporate Social Responsibility of Mining Corporations Outside Canada Act*, the Bill sought to create an ombudsman - an independent officer of Parliament (similarly which was as recommended by the Advisory Group) that would create guidelines and require that all Canadian companies and corporations involved in mining activities in developing countries were in compliance with such guidelines. This Bill proposed that companies needed to report their activities to the Ombudsman and that the Ombudsman would then submit an annual report to Parliament. The Ombudsman would carry out this Act by:

> (a) prepare, compile, publish and distribute information and provide consulting services;
>
> (b) receive complaints concerning the mining activities of corporations in developing countries;
>
> (c) on his or her own initiative, at the request of the Minister or after deciding, based on a summary evaluation, that the complaint is well founded, conduct an inquiry to determine if the mining activities of a corporation comply with the guidelines issued under section 10;
>
> (d) advise the Government of Canada and Export Development Canada in order to help them ensure that corporations not in compliance with the requirements set out in this Act do not receive their support;

[316] Imai,S., Maheandiran, B., & Crystal, V., Pp 25-28.

[317] Honourable Julian, P. cited by Sydney, M., in 'Bill C-323: A tough on crime idea we actually like', *This Magazine*, 1 November 2011, [URL:http://this.org/blog/2011/11/01/corporate-accountability-bill-c-323/], consulted 07 April 2013.

(e) and inform the Minister of situations that may justify the Minister's invoking the Special Economic Measures Act or any other act against a company conducting activities in a foreign country.[318]

This Bill failed to pass the first reading stage on June 16, 2008 and was reinstated as Bill C-298 (40-2) and introduced in a subsequent session of the 40th Parliament, during its second session in 2009. The Bill was criticised for its need to obtain a royal recommendation and in doing so, require the spending of governmental money. According to MP John McKay it would thus be "dead on arrival".[319] Indeed the Bill did not become law and did not pass the first reading stages of discussion in Parliament on February 6, 2009.[320]

Bill C-300:

Bill C-300 was introduced at the 40th Parliament, second session 2009, as a Private Members' Bill by the Honourable John McKay of the Liberal Party. Cited as the *Corporate Accountability of Mining, Oil and Gas Corporations in Developing Countries Act*, its purpose was to ensure that all Canadian corporations involved in mining, oil or gas activities who received support from the Canadian Government must operate in a manner which respects international environmental standards and adheres with Canada's pledge to international human rights norms. Bill C-300 proposed creating a set of legally binding standards that companies must meet if they are seeking governmental support. Further, it proposed creating a complaints mechanism that had investigative powers regarding compliance with such standards without the consent of the company. If a company was found to be in breach they may be at risk of Government imposed sanctions of loss of financial and political support.[321] Naturally the bill was opposed by the mining industry citing that it would disadvantage Canadian companies and believed that they were in compliance with existing CSR standards, however received support from many members of civil society. Despite such support, Bill C-300 was defeated by a narrow vote of 140 to 134 during the

[318] *Parliament of Canada*, 'Bill C-565', 2nd Session, 39th Parliament, House of Commons of Canada, 2008, [URL:http://parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=3580365&File=27#1], consulted 02 April 2013.
[319] *Open Parliament Canada*, 'Bill C-298 (Historical) Corporate Social Responsibility of Mining Corporations Outside Canada Act', Private Members' Business, 3 April 2009, [URL:http://openparliament.ca/bills/40-3/C-298/], consulted 02 April 2013.
[320] *Open Parliament Canada*, 'Bill C-298', consulted 02 April 2013.
[321] *Parliament of Canada*, 'Bill C-300', 2nd Session, 40h Parliament, House of Commons of Canada, 2009, [URL:http://parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=3658424], consulted 09 April 2013.

third reading on 27 October, 2010.[322] Bill C-300 was criticised over its inability to prevent companies who did not receive Government support, nor did it provide any legal redress for those victims of Canadian companies.[323] Mining injustice activist Marie Sydney best summarises Bill C-300s shortcomings in the following statement: "There is prohibition, but no penalty. So the government can withdraw its funding, but then can only ask the mining company to stop…So in the off-chance that the Environment Minister actually decides to investigate and then finds human rights abuses, there is no provision here that says what the government can do if the company refuses to stop their operations. It's as if the government did something, but in effect, it didn't".[324]

Bill C-571/ C-486:

Bill C-486 was introduced at the 40th Parliament, third session 2010, as a Private Members' Bill by the Honourable Paul Dewar of the New Democratic Party. Cited as the *Trade in Conflict Minerals Act – an Act respecting corporate practices relating to the purchase of minerals from the Great Lakes Region of Africa*, it would require Canadian companies operating in the area (namely electronic companies mining Coltan – a common mineral used in computers, mobile phones etc) to exercise due diligence and monitor its supply chain for conflict minerals when purchasing minerals. Further, it proposed a corporate social responsibility officer to be created whereby an annual report to the Minister for International Trade would be submitted as well as identifying any Canadian companies involved in poor CSR practices in the region along with evidence of such.[325] The bill passed its first reading, but later died when Parliament was dissolved following an upcoming election.[326] Mr Dewar then proposed a new bill which would create a Conflict Minerals Act that would "require companies to reveal the mineral suppliers that contribute to violence in the African Great Lakes region".[327] The idea is that companies will have to account for their supply chain exposing any third party contracts or businesses that have

[322] Lipsett, L., Hohn, M., & Thomson, I., 'Recommendations of the National Roundtables on Corporate Social Responsibility and the Canadian Extractive Industry in Developing Countries – Current Actions, Stakeholder Opinions and Emerging Issues', p. 18, consulted 7 April 2013.
[323] Keenan, K., p. 34.
[324] Sydney, M., 'Bill C-323: A tough on crime idea we actually like', consulted 07 April 2013.
[325] *Parliament of Canada*, 'Bill C-571', 3rd Session, 40h Parliament, House of Commons of Canada, 2010, [URL:http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=4668098&Language=E&Mode=1&File=27#1], consulted 09 April 2013.
[326] Mahaney, B., 'Blood on your phone', *Capital News Online*, 1 April 2011, [URL:http://www.capitalnews.ca/index.php/news/conflict-in-the-congo-what-role-do-we-play], consulted 10 April 2013.
[327] Gough, K., 'Bill to hold companies responsible for conflict minerals', *Herald News*, 19 April 2013, [URL:http://thechronicleherald.ca/novascotia/1124331-bill-to-hold-companies-responsible-for-conflict-minerals], consulted 13 June 2013.

contributed (most likely directly, but also indirectly) to any human rights abuse (in this case often violent militias who profit from trade in conflict minerals). However, this too was defeated in September 2014.[328] Its defeat was largely a result of the Conservative Party's opposition – with only one such member voting in favour of the bill.[329]

3. Analysis

The proliferation of private member bills seeking to establish a comprehensive and effective national B&HR framework reflects a key argument of this thesis that Canada's current CSR strategy is insufficient in ensuring that enterprises are held accountable for their actions. Thus far, the private member bills that have been introduced have either sought to develop pre-existing practices such as overcoming legal blocks; reiterating pre-existing calls for an independent ombudsman with investigative and reporting powers; and to hold companies accountable through legally binding standards. However, in relation to Risse and Sikkink's theory about state motives and norms internalisation, the Canadian Government is not sincere or serious about B&HR issues and motivated by maintaining its mining/extractive sector's international competitive advantage. Instead of acknowledging previous calls to implement a comprehensive B&HR framework, the Canadian government has pursued a softer voluntary CSR approach as a means to appearing to align with the international collective that are projecting the emerging international B&HR norms regime, whilst appeasing internal calls to provide a national B&HR framework. Had the Government heeded many of these original recommendations from as far back as the SCFAIT report to the Advisory Group report, a more rigorous national B&HR approach that held companies accountable and which could provide access to adjudicative redress mechanisms could have been achieved.

Unfortunately, the passing of such bills have been unsuccessful – one of which (Bill C-300), was very close to being passed, but ultimately all private member bills relating to the Canada's extractive sector and human rights have failed to pass as of yet (although this could only be a matter of time). If Canada is unable to implement a more rigorous B&HR framework through private member bills, the remaining avenue is through Canada's legal system. However, as acknowledged by other states such as the UK, "*The law of Canada regarding corporate social responsibility for acts committed by Canadian*

[328] *Open Parliament Canada*, 'Bill C-486', [URL:http://openparliament.ca/bills/41-2/C-486/], consulted 26 October 2014.
[329] *Compliance and Risk*, 'Canada's Conflict Minerals Bill Defeated', 25 September 2014, [URL:http://www.complianceandrisks.com/canadas-conflict-minerals-bill-defeated/], consulted 26 October 2014.

corporations extraterritoriality is currently insufficient" and that *"more needs to be done to allow non-nationals to sue in Canada for acts committed by Canadian corporations abroad*".[330] Given that there is in-fact a gap in Canada's legal system that prevents justice and redress for victims of corporate human rights abuse, it is worthwhile considering whether Canadian courts have the ability to fill such a void. A recent study by members of the Osgoode Law School at York University, Toronto stated that this is in fact possible by using civil law avenues rather than criminal litigation as a means to providing legal redress for victims, and that lawyers for the Canadian government agreed with this stance stating the following to a Committee of Parliament:

> Legal remedies to address environmental of human rights violations can also arise from civil rather than criminal law. To the extent that crimes or wrongs, such as damage to the environment or personal injuries, committed outside Canada also constitute claims of the sort cognizable as a tort, civil law remedies may be available to the foreign plaintiff in Canadian courts. As such, Canadian corporations or their directors and employees may be pursued in Canada for their wrong doing in foreign countries.[331]

In conjunction with the concept that Canadian corporations *can* in-fact be pursued in Canadian courts for human rights abuses (although such attempts have often proved to be unsuccessful due to the three legal blocks addressed at the beginning of this Chapter), there is currently a court case that is set to move ahead in Canada by Guatamalan claimants seeking redress for abuse by Canadian enterprise Hudbay Minerals Inc. The plaintiffs allege that security staff from Hudbay's subsidiary are responsible for the gang rape, injuries and death of local Mayan villagers. Hudbay had been fighting for the law suit to be carried out in Guatemala, however has since changed its mind in February 2013 to have the case heard in Canada. Hudbay has cited expensive costs and lengthy trips to Guatemala as its reasoning for the voluntary switch. The case is to be heard by the Ontario Superior Court, but Canadian lawyer representing the plaintiff's - Murray Klippenstein, believes that the trial is still many years away.[332] The current lawsuit against Hudbay that is set to take place in Canada suggests a potential shift in attention to filling voids in Canada's legal system as a way of seeking remedy through adjudicative processes. Further, in light of Ruggie's *Protect, Respect, and Remedy* framework, it suggests that given Canada has

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[330] *Oxford Pro Bono Publico*, 'Obstacles to justice and redress for victims of corporate human rights abuse', 2008, [URL:http://www2.law.ox.ac.uk/opbp/Obstacles%20Executive%20summary.pdf], consulted 16 May 2013.
[331] Imai,S., Maheandiran, B., & Crystal, V., p. 44.
[332] Mills, C., 'Hudbay's Guatemalan lawsuits to proceed in Canada', *Toronto Star*, 25 February 2013, [URL:http://www.thestar.com/business/2013/02/25/hudbays_guatemalan_lawsuits_to_proceed_in_canada.html], consulted 16 May 2013.

put into place non-adjudicative remedial processes such as the Office of the CSR Counsellor and the NCP, this may indicate increasing attention and development towards Canada's adjudicative remedy mechanisms through criminal law.

People such as Hevina Dashwood do not think that legal enforcement and regulation alone is efficient.[333] Dashwood believes that there needs to be a greater focus on ensuring that industry is more aware about human rights issues and investing in countries with poor human rights records. Dashwood believes that not all companies within MAC want to avoid regulation and see B&HR norms as a means to improving company performance whilst being directly involved in the process of stricter adjudicative regulatory frameworks. Dashwood also believes that one could argue that in the global south, major players prefer a degree of regulation because they need a greater degree of consistency, which is important in understand what is driving major companies as they would benefit from stronger regulation in developing countries and they can't slip under the radar.[334] Dashwood believes it is not a clear cut case of whether government regulation is all it takes to improve human rights performance and that a range of both adjudicative and non-adjudicative processes and activities are necessary.[335] However, she does accept the need to establish a clear process whereby companies that abuse human rights do not benefit from government funding.

Conclusion

In sum, Dashwood is correct in that quasi regulatory processes allow for greater flexibility in applying B&HR standards. Indeed, as Ruggie's UNGPs demonstrate, non-adjudicative remedial processes are a vital component in establishing an effective national B&HR framework. However, as this Chapter has demonstrated, it is also important that Canada develops its adjudicative frameworks to ensure that victims of severe corporate human rights abuse are able to access legal address, whilst also ensuring that Canadian companies are being held accountable for their actions through punitive measures. This is further supported by Risse and Sikkink's socialisation process that claims that sustainable human rights can only be achieved once human rights norms are entirely internalised into domestic law and regulated in a manner which norm compliance becomes routine.[336] However, the Canadian Government has

[333] Dashwood, H., Brock University, Department of Political Science, conducted on Tuesday 22 October 2013, [Online: Interview Skype].
[334] Dashwood, H., Tuesday 22 October 2013, [Online Interview: Skype].
[335] Dashwood, H., Tuesday 22 October 2013, [Online Interview: Skype].
[336] Risse, T., & Sikkink, K., p. 31.

resisted calls to put into place such necessary adjudicative and legal tools that provide legal redress and punitive measures as far back as the SCFAIT report to the later Advisory Group recommendations. Given that the Canadian Government is strongly focused upon maintaining its mining and extractive sectors' international competitive advantage and views regulation as something that would detract from this, it is likely that it will continue to dismiss ongoing calls to develop legal redress and punitive measures for Canadian enterprise. In turn, the proliferation of private member bills seeking to regulate and hold extractive companies accountable through adjudicative measures may be a more likely avenue for achieving legal redress in the near future. Similarly, civil law cases may also pose an alternative to adjudicative remedy by setting precedents for future cases; however this is yet to be seen.

CHAPTER SIX

Europe and United States - B&HR Regulation

The rise of the international B&HR regime has seen a range of other state's implement national strategies and policies to address corporate human rights abuse. Currently, the most developed B&HR strategy that has sought to directly implement the UNGPs into its regional body has been led by the EU. The EU creation of a regional CSR initiative has seen a number of EU member states create their own national action plans to regulate their companies and industries in accordance with the UNGPs "Protect, Respect and Remedy" framework. The Council of Europe (CoE) has issued a declaration endorsing the UNGPs and charged the Steering Committee for Human Rights (CDDH) to create a non-binding mechanism that identifies any issues of their subsequent implementation throughout the European region. This Chapter of the thesis seeks to briefly survey how other countries and/or regions have responded to the emerging international B&HR regime and examine how they have applied B&HR norms such as the UNGPs into their national policies and structures. In doing so, this will serve as a counterpoint to the discussion of Canada in previous Chapters, placing Canada in an international context.

Comparative analysis between Canada's approach and other states and/or regions such as Europe and the United States will be drawn and in turn, help draw inferences about Canada's attitude towards B&HR issues and ways in which it could better improve its own national CSR Strategy. This will be achieved through the following steps: first, examine the origins and development of the European Union's CSR and B&HR policies in order to understand its current approach; second, consider what recommendations, resolutions and 'soft law instruments' Europe has adopted as a means of developing its CSR Strategy; third, discuss how E.U. Member States have created their own National Action Plans (NAPs) as a means to developing the regions CSR policies; fourth, detail Europe's judicial frameworks including: international law and extraterritorial corporate human rights abuse, the European Court of Human Rights (ECHR) and European Law, in order to understand how it approaches issues related to legal redress; fifth, explore the United States Alien Tort Claims Act (ACTA) to understand how the United States hold corporations accountable for human rights violations whilst providing avenues for legal redress; lastly, draw comparative analysis between Europe's CSR Strategy and the United States' ACTA

to understand the benefits and disadvantages of each approach; and, develop analysis in light of Canada's approach and lessons it can could learn from their methods.

1. Origins of Europe's current CSR Strategy

At the CoE meeting in Lisbon March 2000, it was evident that Europe was addressing emerging CSR and B&HR issues that would contribute towards the progression of its current B&HR strategy when it announced a strategic goal to "become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion".[337] The EU views CSR as an important tool in achieving this strategic goal. In 2001, The European Commission (EC) announced an initiative called the Green Paper (officially titled *Promoting a European framework on CSR*) which sought to bring together both public and private actors to encourage dialogue about how the EU could best promote CSR and develop both a European regional and international framework.[338] The Green Paper defined CSR as "a concept whereby companies integrate social and environmental concerns in their business operations and in their interactions with their stakeholders".[339] However, it stressed that this was to occur on a voluntary basis. The European Parliament (EP) responded to the EC paper later that year but encouraged the EU to implement mandatory rather than voluntary measures.

The UNGPs have played a key role in the EU's development of a regional CSR strategy over the years and have closely followed the works of the SRSG. In 2009, the Council of the European Union (CoEU) announced its support of the SRSGs "Protect, Respect and Remedy" framework with the Swedish Presidency of the EU at the time and Spanish President elect both citing the Framework as a "key element for the global development of CSR practices" that would provide "significant input to the CSR work of the European Union".[340] This was then followed in October 2011 with the European Commission (EC) adopting a newly updated CSR strategy known as the 'Communication' whereby the UNGPs are the defining feature of the new EU policy. The Communication provided a new definition of CSR as "the

[337] *European Parliament*, 'Lisbon European Council Presidency Conclusions', 23rd & 24th March, 2000, [URL::http://www.europarl.europa.eu/summits/lis1_en.htm], consulted 08 December 2014.
[338] *European Commission*, 'Green Paper promoting a European framework for corporate social responsibility', 18 July 2001, [URL:http:// europa.eu/rapid/press-release_DOC-01-9_en.pdf], consulted 20 December 2014.
[339] *European Commission*, consulted 20 December 2014.
[340] *Swedish Presidency of the European Union*, 'Protect, Respect, Remedy – Making the European Union take a lead in promoting Corporate Social Responsibility, November 2009, [URL: http://www.reports-and-materials.org/sites/default/files/reports-and-materials/EU-Presidency-statement-Protect-Respect-Remedy-Nov-2009.pdf.], p. 1, consulted 20 December 2014.

responsibility of enterprises for their impacts on society" which aligns with the UNGP ideology as well as expecting "all European enterprises to meet the corporate responsibility to respect human rights, as defined in the UN Guiding Principles".[341] Since the UNGPs endorsement by the CoEU and their future implementation through the Communication, the Committee of Ministers and CDDH have continued to promote dialogue on their implementation throughout the region. In June 2012 at the request of the Committee of Ministers, CDDH conducted a draft 'Preliminary Study' on CSR in the field of human rights analysing existing standards and outstanding issues of the CoE followed by its 'Feasibility Study' in November 2012. [342] Both documents preferred the notion for "soft law" instruments to be created in support of the UNGP implementation rather than a new legally binding instrument. In January 2013, the Committee of Ministers tasked CDDH with developing an official statement in support of the UNGPs and a complementary soft-law instrument that would facilitate their implementation throughout Europe and identify with any gaps associated with such. Come November 2013 CDDH-CORP's Declaration of the Committee of the Ministers was adopted.[343] CDDH continues to provide guidance and recommendations for the CoE's creation of a new non-binding tool that will assist in the UNGPs implementation.[344] Also, on the 3rd of March 2010 the Commission proposed the Europe 2020 Strategy – a 10 year economic strategy with the aim of creating a "smart, sustainable, inclusive" that creates growth and "greater coordination of national and European policy" with key strategic elements being adopted on the 17th

[341] *European Commission*, 'Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions – A renewed EU strategy 2011-14 for Corporate Social Responsibility', Brussels, 25 October, 2011, [URL:http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr/new-csr/act_en.pdf.], consulted 21 December 2014.

[342] *Council of Europe Steering Committee for Human Rights (CDDH)*, 'Draft Preliminary Study on Corporate Social Responsibility in the Field of Human Rights: Existing Standards and Outstanding Issues', Strasbourg, 4 June 2012, [URL: http://www.coe.int/t/dghl/standardsetting/cddh/CDDH-DOCUMENTS/CDDH_2012_012_en.pdf.], consulted 22 December 2014; *Council of Europe Steering Committee for Human Rights (CDDH),* 'Feasibility Study on Corporate Social Responsibility in the Field of Human Rights', Strasbourg, 30 November 2012, [URL: https://wcd.coe.int/ViewDoc.jsp?id=2015241&Site=CM], consulted 23 December 2014.

[342] *Council of Europe*, 'Corporate social responsibility in the field of human rights', [URL:http://www.coe.int/t/dghl/standardsetting/hrpolicy/other_committees/hr_and_business/default_EN.asp], consulted 21 December 2014.

[343] *Council of Europe*, 'Corporate social responsibility in the field of human rights', consulted 21 December 2014.

[344] Note – the CDDH-CORP has held three meetings in (14 – 16 October 2013, 12-14 February and 24-26 September 2014) in relation to the development of a non-binding instrument "which may include a guide of good practice, addressing gaps in the implementation of the Guiding Principles and the European level" Council of Europe, 'Corporate social responsibility in the field of human rights', consulted 21 December 2014.

June 2010.[345] The proposal vowed to "renew the EU strategy to promote Corporate Social Responsibility" and "is expected to include a stronger emphasis on business and human rights". [346]
The Communication consists of an agenda for action from 2011 – 2014 which seeks to:

(a) 'enhance(ing) the visibility of CSR and disseminate(ing) good practices' by creating multi-stakeholder platforms for industry and business to commit to CSR issues and collectively monitor progress; from 2012 establish a 'European (CSR) award scheme' for enterprise, (b) 'improve(ing) and track(ing) levels of trust in business' by tackling "green-washing" of misleading marketing initiatives through the Unfair Commercial Practices Directive; open a public debate on the role and contribution of modern business and conduct surveys on how citizens perceive CSR, (c) 'improve(ing) self-and co-regulation processes' by creating a code of good practice with enterprises and other stakeholders to develop the CSR process, (d) 'enhance(ing) market reward for CSR' through integrating social and environmental factors into the 2011 review of the Public Procurement Directives; make it requirement for investment funds and financial bodies to ensure that they inform their clients of any 'ethical or responsible investment criteria' that they are a part of, (e) 'improve(ing) company disclosure of social and environmental information' by creating a legislative proposal that would require companies to divulge any information about their performance in relation to social and environmental factors; create a new policy that supports companies in recording their environmental and social progress which also supports disclosure goals, (f) 'further integrate(ing) CSR into education, training and research' by providing funding to CSR training projects through the EU Lifelong Learning and Youth in Action Programmes and the introduction of a CSR campaign to better inform companies about value of CSR, (g) 'emphasise(ing) the importance of national and sub-national CSR policies' by establishing a "peer review mechanism for national CSR policies" for Member States; (h) and for Member States to establish and/or update their national plans to promote CSR in light of the Europe 2020 strategy and international CSR norms, principles and guidelines, (i) 'better aligning European and global approaches to CSR' by ensuring that companies with more than a thousand employees consider CSR guidelines and follow the ISO 26000 Guidance Standard on Social Responsibility; an invitation for large European enterprises to commit to at least one principle (UN Global Compact, OECD Guidelines for Multinational Enterprises, or the ISO 26000 Guidance Standard on Social Responsibility) when designing a CSR plan by 2012; and for all European enterprises to commit to the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy by 2014; (ii)

[345] *European Commission*, 'Europe 2020: Commission proposes new economic strategy', 03 March 2010, [URL:http://ec.europa.eu/news/economy/100303_en.htm], consulted 22 December 2014; *European Council*, 'Council Conclusions', 17 June 2010, [URL:http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/115346.pdf], consulted 22 December 2014.
[346] *European Commission*, 'Europe 2020 A European strategy for smart, sustainable and inclusive growth', p. 15; Augenstein, D., 'Study of the Legal Framework on Human Rights and the Environment Applicable to European Enterprises Operating Outside the European Union', 2009, The University of Edinburgh, p. 7, [URL: http://ec.europa.eu/enterprise/policies/sustainable-business/files/business-human-rights/101025_ec_study_final_report_en.pdf.], consulted 24 December 2014.

work with enterprises and industrial sectors to develop human rights direction in regards to the UNGPs; publish a report on the EU implementation of the UNGPs; European enterprises are expected to respect human rights as outlined in the UNGPs; and finally, invite EU Member States to create their own national action plans in order to implement the UNGPs.[347] In sum, *The Communication* is a more comprehensive and complex B&HR strategy than Canada's *Building the Canadian Advantage*.

Unlike Europe's approach, Canada has not been responsive to previous recommendations to develop a comprehensive B&HR regime. Whilst the EP encouraged the EU to uptake mandatory rather than voluntary CSR measures to which it was receptive to such recommendations, Canada has largely rejected similar recommendations made by SCFAIT and the Advisory Group recommendations. Also, Europe has been quick in its uptake of the UNGPs in its CSR policy advancements, whereas Canada's CSR Strategy does not extensively make reference to nor implement many key components on the UNGPs. In terms of Risse and Sikkink's socialization theory, Europe has demonstrated that its regional identity is greatly driven by human rights values which have influenced its strong degree of implementing B&HR norms – particularly the UNGPs. Whereas the Canadian Government places less value on B&HR issues and favours the continued development and maintaining of its mining and extractive sectors, resulting in a lesser level of compliance than Europe.

2. Recommendations, Resolutions and 'soft-law' instruments

Since the 2001 Green Paper, Europe has continued to undergo a range of developments which have contributed to its current and relatively robust CSR & B&HR framework. A key body which has significantly contributed towards such has been the Parliamentary Assembly, which has actively promoted the need to introduce laws to protect human rights as outlined in the European Convention on Human Rights and has adopted a range of CSR & B&HR recommendations and resolutions between 2009 and 2010. In 2009, the Assembly introduced (and later that year adopted) Recommendation 1858 on 'Private military and security firms and erosion of the state monopoly on the use of force', which noted the involvement of private military and/or security companies (PMSCs) in "human rights abuses by the personnel of these private companies and the difficulty of brining perpetrators to justice, with the ensuing risk of impunity".[348] The recommendations also note "a whole range of concerns related to

[347] *European Commission*, 'Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions – A renewed EU strategy 2011-14 for Corporate Social Responsibility', Pp 8 – 15.
[348] *Council of Europe Parliamentary Assembly*, 'Recommendation 1858 Private military and security firms and

the lack of democratic control, transparency and accountability, a higher risk of human rights violations, the growing influence of private business on polices choices and policy orientations, the blurred division of tasks between the military and the police, and the shift from crisis prevention to rapid reaction and from the civilian handling of crises to the use of force".[349] The Assembly acknowledged that the CoE had a responsibility to regulate PMSCs and made a list of recommendations which provided a set of minimum regulatory and self-regulatory standards and encouraged the Committee of Ministers and member states to endorse the Montreux Document on Private Military and Security Companies which set out legal obligations under international law.

In 2010 the Assembly adopted a report by the Committee on Legal Affairs and Human Rights by the Rapporteur Mr. Holger Haibach on 'Human Rights and Business' as well as Resolution 1757 and Recommendation 1936 - which identified legal gaps in the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) for victims of corporate abuse and considered "a complementary legal instrument, such as a convention or an additional protocol to the European Convention on Human Rights".[350] Recommendation 1757 (the more detailed of the two) noted the increasing criticism of MNCs for violations of human rights, particularly in developing states and in turn, the difficulty of bringing "extraterritorial abuses by companies before national courts or the European Court of Human Rights".[351] Further, it highlighted that whilst companies were able to take a state to court over alleged abuse or violation of rights under their protection of status in the European Convention on Human Rights, individuals alleging the same violations of their rights by MNCs were not granted the same courtesy of raising their claims before the court. The Assembly noted that whilst there has been a rise in the development of CSR frameworks and toolkits, they were essentially "'soft' law instruments" and that they "lacked effective judicial or other legally binding mechanisms to protect victims of abuse by businesses and do not provide adequate guidance to business on measure that should be taken to avoid human rights abuses".[352] As a result, the Assembly called upon member states

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erosion of the state monopoly on the use of force ', 2009, [URL: http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta09/EREC1858.htm], consulted 24 December 2014.

[349] *Council of Europe Parliamentary Assembly*, 'Recommendation 1858', consulted 24 December 2014.

[350] *Council of Europe Parliamentary Assembly*, 'Recommendation 1936 Human rights and business', consulted 26 December 2014.

[351] *Council of Europe Parliamentary Assembly*, 'Resolution 1757 Human rights and business' 2010, [URL: http://www.assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta10/ERES1757.htm], consulted 26 December 2014.

[352] *Council of Europe Parliamentary Assembly*, 'Resolution 1757', consulted 26 December 2014.

to implement a range of recommendations which promoted good corporate human rights conduct and "legislate, if necessary, to protect individuals from corporate abuses of rights enshrined in the Convention and in the revised European Social Charter".[353]

What is notable in regards to Europe's current endorsement of the UNGPs, was the specific recommendation that business implement the UN 'Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights' – the beginnings of B&HR norms and the emerging B&HR regime by the UN Sub-Commission on the Promotion and Protection of Human Rights. Whilst the Norms were dismissed, they did create an impetus for further dialogue and the eventual creation of the SRSG who would eventually create the current UNGPs. Moreover, the Assembly's criticism of the limitations of soft law CSR tools and approaches identifies the need for hard regulatory and legal mechanisms not only for punitive measures but also remedial mechanisms for victims of abuse. The CoE endorsed Recommendation 1757 shortly after its submission.

Whilst the European Parliament has been receptive of CSR and B&HR recommendations, most of Canada's private member bills concerning such issues have been voted down. Further, whilst the CoE was quick to endorse Recommendation 1757, SCFAITs calls for similar stricter regulatory and judicial mechanisms were dismissed. Whilst Canada's Advisory Group recommendations continued to echo SCFAITs calls for compulsory regulation containing adjudicative measures for punitive and legal redress measures, unlike Europe, Canada chose to ignore many of these recommendations. Despite the Advisory Group reaching a consensus on such recommendations, Canada has continued to dismiss these and pursued soft, non-binding and voluntary measures. Given that Europe has been open to recommendations (relating to B&HR issues) and continues to develop its CSR frameworks it would be a reasonable assessment in saying that the EU CSR strategy fits into Simmons *sincere ratifiers* group. They are concerned with their international image and internalise norms based on genuine grounds to better improve the region and contributing to the continued development of promoted B&HR and CSR norms. The continued development and diffusion of such norms within the EU means that it is undergoing a process of *socialization.* On the other hand, this thesis has argued that Canada's CSR strategy is not motivated by genuine grounds to improve upon national B&HR issues but rather for strategic purposes (*strategic ratifier)* to appear to be acting on the emerging B&HR regime, appease its international image and gains from engaging in CSR norms.

[353] *Council of Europe Parliamentary Assembly*, 'Resolution 1757', consulted 26 December 2014.

3. National Action Plans (NAPs)

The key component of the Communication was the Commission's invitation for EU Member States to "develop national plans for the implementation of the UN Guiding Principles" by the end of 2012.[354] Whilst Member States missed the 2012 deadline, the United Kingdom (September 2013), the Netherlands (December 2013), Denmark (March 2014), and Finland (October 2014) have implemented their own individual NAPs, whilst other states are in the process of preparing and/or soon to be launching NAPs as well. [355] Given at the time of the Communication, this was a broad invitation without a specific NAP framework for implementation, each of these country's NAPs differ from one another. However, in March 2013 the UN Working Group on Business and Human Rights (UNWGBHR) published a report which outlined key characteristics which NAPs should contain to align with the UNGPs. The UNWG recommended that NAPs should address each Principle and outline ways in which they would be implemented. According to Neglia, only the Danish NAP has analysed each Principle and presented measures for their implementation while "other Plans have a heterogeneous structure not always clear in the identification on the Principle's implementation.[356] However, state existing NAPs will continue to be developed and updated in accordance with the publication of new guidelines from the UNWG and key contributors such as the International Corporate Accountability Roundtable (ICAR) and the Danish Institute for Human Rights (DIHR). Both ICAR-DIHR and the UNWG have released publications this year that elaborate on ways in which states can design and implement effective NAPs.

In June 2014, ICAR – DIHR launched the 'National Action Plans on Business and Human Rights: A Toolkit for the Development, Implementation, and Review of State Commitments to Business and Human Rights Frameworks', which is comprised of three key components including: a National Baseline Assessment (NBA) Template, a NAP Guide, and a section providing guidance to states on how to monitor and review

[354] *European Commission*, 'Communication from the Commission to the European Parliament', p 14.

[355] *Business and Human Rights Resource Centre*, 'ICAR-DIHR National Action Plans Project', [URL:http://business-humanrights.org/en/un-guiding-principles/implementation-tools-examples/implementation-by-governments/by-type-of-initiative/national-action-plans/icar-dihr-national-action-plans-project], consulted 20 December 2014. It is worth noting that a range of EU and non-EU states such as Argentina, Azerbaijan, Belgium, Brazil, Colombia, France, Germany, Greece, Ireland, Italy, Jordan, Latvia, Lithuania, Mauritius, Mexico, Morocco, Mozambique, Norway, Portugal, Slovenia, Spain, Switzerland and the US are in the process of planning NAPs. *Business and Human Rights Resource Centre*, 'National Action Plans', [URL:http://business-humanrights.org/en/un-guiding-principles/implementation-tools-examples/implementation-by-governments/by-type-of-initiative/national-action-plans], consulted 20 December 2014.

[356] Neglia, M., 'The Implementation of U.N. Guiding Principles on Business and Human Rights: Some Reflections on European and US Experiences', Maastricht School of Management, Working Paper No. 2014/35, 4th September 2014, p. 6.

NAPs.[357] Further, in November 2014, ICAR and the European Coalition for Corporate Justice (ECCJ) published an 'Assessment(s) of Existing National Action Plans (NAPs) on Business and Human Rights' as a means to "assess best practice and suggest areas for improvement going forward...support the development and further review of NAPS" and "to provide a reference point for States that are on the path to developing NAPs.[358] Similarly, the UNWG published 'Guidance on National Action Plans on Business and Human Rights' December 2014, which serves as a reference guide for all stakeholders involved in NAP processes. Like the UNGPs, it does not provide step-by-step instructions on how to design and implement a NAP nor is there a one-size-fits-all model but rather an outline of a 'five-phase process' including "initiation, assessment and consultation, drafting of initial NAP, implementation, and updates".[359] The UN Human Rights Council (UNHRC) has acknowledged and supported the Communication and subsequent development of NAPs and "issued a call to all Member States in June 2014 to develop NAPs to support implementation of the UNGPs within their respective national contexts".[360]

As will be discussed later in this Chapter, Canada's neighbour – the United States recently announced that it will be developing its own NAP. NAPs are not the reserve of the EU and all states are invited to develop their own plans. Upon announcing its newly revised CSR Strategy in November 2014 (which will be discussed in greater detail later in the Epilogue), nowhere does the Canadian Government mention following Europe or its American neighbour's examples of developing its own NAP. By continuing to avoid more rigorous CSR policies that align with the emerging B&HR regime as reflected in the EU's approach, Canada is falling behind and is no longer a leader on human rights. Canada's avoidance behaviour and continued pursuit of national mining/extractive interests over human rights issues resonates with Simmons *strategic ratifier* theory. Canada strategically adopts CSR and/or B&HR norms only if they align with national interests or result immediate gains rather being motivated by sincerity like the EU.

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[357] *ICAR – DIHR*, 'National Action Plans on Business and Human Rights: A Toolkit for the Development, Implementation, and Review of State Commitments to Business and Human Rights Frameworks', June 2014, [URL:http://accountabilityroundtable.org/wp-content/uploads/2014/06/DIHR-ICAR-National-Action-Plans-NAPs-Report3.pdf], consulted 26 December 2014.

[358] *ICAR – ECCJ*, 'Assessments of Existing National Action Plans (NAPs) on Business and Human Rights', November 2014, p. 1, http://accountabilityroundtable.org/wp-content/uploads/2014/10/ICAR-ECCJ-Assessments-of-Existing-NAPs.pdf, consulted 27 December 2014.

[359] *ICAR – ECCJ*, 'Assessments of Existing National Action Plans', p. ii.

[360] *ICAR – DIHR,* 'National Action Plans on Business and Human Rights', p. 1.

4. Judicial frameworks and legal redress

Despite the implementation of the UNGPs by EU Member states through Europe's current CSR strategy, a coherent set of mandatory obligations on multinational corporations and enterprise relating to human rights does not exist. Consequently, individuals or communities of severe corporate abuse seeking legal redress must often operate within the differing laws, legal frameworks and legislation of individual states and/or through existing regional mechanisms such as the ECHR. Whilst the international community and states have been reluctant to establish a binding legal instrument that seeks to hold enterprise accountable, "there is a growing body of case law, which may ultimately have an impact on the way businesses operate within respect to human rights".[361] The following will examine current legal mechanisms and/or bodies within the EU framework that deal with corporate human rights abuse issues whilst exploring some of the strengths and challenges of addressing implementation gaps of the UNGPs.

International Law and extraterritorial corporate human rights abuse:

As explored throughout this thesis, MNCs have the ability to contribute to the development and sustainability of communities in the areas of which they operate, however they also have the ability to do great harm as well. According to Augenstein there are three key patterns to human rights and environmental violations which occur outside the EU. First, as most corporate human rights violations occur in resource rich developing states, there is a substantive connection between corporate activities and corruption and environmental and human rights violations. Many of these human rights violations have been committed by subsidiaries of European corporations domiciled in the state in which the violations occurred, and regulated by the domestic laws of that country. Second, European corporations profit from the activities of their subsidiaries but are not accountable for any human rights or environmental violations of their subsidiaries. This can be problematic as the subsidiaries operate under lower levels of regulation in developing states than that of the European home state. Victims of corporate abuse in Third World countries can find it difficult to obtain legal redress both in their home state and in the EU due to subsidiaries exercising pressure upon local authorities and communities which can prevent access to justice and the complex nature of the EU legal framework in holding EU domiciled parent companies accountable for violations of subsidiaries that occur internationally.[362]

[361] *Parliamentary Assembly – Committee on Legal Affairs and Human Rights*, 'Human rights and business', Doc. 12361, 27 September 2010, [URL: http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=12594&Language=EN], consulted 28 December 2014.
[362] Augenstein, D., p. 9.

Further, fact-finding and funding can be problematic. The task of going to the area where the supposed violation occurred can be difficult when in a country with weak infrastructure and may also be a place where violence is a common occurrence, especially if it is in a place where foreigners are banned from entering. Moreover, communication can be problematic if victims of abuse do not have access to modern means of communication methods such as phone and email or do not feel safe to speak out against violations. The collection of testimonials can vary from a few individuals to thousands which is a lengthy and in turn, expensive task in preparing claims against European corporations and often rely on financial and legal aid which can be limited.[363] Third, states in which subsidiaries or European corporations operate in are commonly indirectly involved in human rights and environmental violations. Failure of the state to ensure that corporations do not breach human rights and environmental rights can be in breach of "domestic, European, or international law by the European Union and/or the EU Member States".[364] Also, if the state indirectly finances or provides support to a corporation's operations and activities abroad without taking into consideration possible detrimental impacts of such business activities to the rights of individuals and communities as well as environmental considerations can illustrate "failures on the part of the European Union and the EU Member States to protect human rights and the environment through law in relation to extraterritorial activities of European corporations".[365]

As international human rights law and environmental law does not directly place obligations on MNCs and TNCs to protect, nor respect human rights, legal redress for extraterritorial corporate abuse and punitive measures for violations can be problematic. The international regime is founded upon the concept of the territorial sovereignty of states and jurisdiction is commonly awarded upon this basis. As a result, the pursuit of punitive measures or legal redress for human rights violations that occur in an extraterritorial manner result in legal and political obstacles. Attempts at exercising extraterritorial jurisdiction can be problematic if a state perceives such as interfering in the matters of "their sovereign rights to regulate corporations within their own borders and to pursue their own economic, social and cultural interests".[366] The concept of "interference" in the affairs of other states is referenced within the UN Charter and is often invoked as a legal protection by states. Also, home states will argue that they

[363] Van Dam, C., 'Tort Law and Human Rights: Brothers in Arms on the Role of Tort Law in the Area of Business and Human Rights', *Journal of European Tort Law*, 2011, p. 229,
[364] Augenstein, D., p. 10.
[365] Augenstein, D., p. 10.
[366] Augenstein, D., 'Study of the Legal Framework on the Human Rights and the Environment Applicable to European Enterprises Operating Outside the European Union', p. 12.

have no right to dictate what rights foreigners should enjoy under subsidiaries that are regulated under the local laws of a foreign state. Similarly, host states can reject extraterritorial jurisdiction on the basis that it is an attempt to impose Western ideology as a means of tightening labor and environmental regulations and limiting the growth of jobs in that country.[367] However, as the following section identifies, a range of regional conventions and laws exist which provide ways in which complex issues associated with extraterritoriality can be circumvented.

European Court of Human Rights (ECHR):

The European Convention for the Protection of Human Rights and Fundamental Freedoms is a regional international treaty created by the CE which came into effect in 1953 and namely concerns the protection of civil and political rights (but also considers socio-economic rights).[368] According to the European Convention, signatory states are obligated to "secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention" and to respect and protect human rights from corporate abuse.[369] More specifically, the Convention requires states to take necessary steps to ensure that they prevent non-state actors from breaching the human rights. States are obliged by both negative and positive obligations – negative obligations require states to protect human rights against corporations acting as state agents or third parties and positive obligations to protect rights under the Convention against corporations that act as third parties.[370] However, businesses also enjoy rights under the Convention as they are considered to be legal persons and the ECHR does not enforce requirements upon non-state actors. Whilst corporations are able to bring a case before the ECHR against a state claiming a violation of their rights, individuals alleging a violation of their rights by a private enterprise or business are unable to submit their claim before the Court of the ECHR.[371]

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[367] Broecker, C., ' "Better the Devil You Know" Home State Approaches to Promoting Transnational Corporate Accountability', New York University School of Law, February 2008, p. 36.

[368] Augenstein, D., 'State responsibilities to regulate and adjudicate corporate activities under the European Convention on Human Rights', Submission to the Special Representative to the United Nations Secretary General (SRSG) on the issue of Human Rights and Transnational Corporations and Other Business Enterprise, April 2011, p. 3, [URL:http://www.academia.edu/1366098/State_Responsibilities_to_Regulate_and_Adjudicate_Corporate_Activities_under_the_European_Convention_on_Human_Rights], consulted 29 December 2014.

[369] Council of Europe, 'Convention for the Protection of Human Rights and Fundamental Freedoms', Protocols No. 11 and No. 14, 1950, [URL: http://conventions.coe.int/treaty/en/treaties/html/005.htm], consulted 29 December 2014.

[370] D. Augenstein, 'State responsibilities to regulate and adjudicate corporate activities under the European Convention on Human Rights', p. 3.

[371] *Parliamentary Assembly – Committee on Legal Affairs and Human Rights*, 'Human rights and business', consulted 27 December 2014.

Although, national courts are not restricted by the same conditions – for instance, Germany's Constitution human rights are applied to both individuals and private enterprise alike.[372]

The development of case law has helped provide individuals access to legal redress through national law. For example, in *Siliadin* v. *France* the ECHR Court ruled that Article 4 (prohibition of servitude and forced labour) had been breached as the state had not met its positive obligations by failing to provide a law system capable of preventing, prosecuting and punishing non-state actors that had engaged in human trafficking and slavery. In light of the ruling, the United Kingdom amended its law system to ensure that such situations were deemed a criminal offence.[373] Also, in *Fadeyeva* v. *the Russian Federation; Lopez Ostra* v. *Spain;* and *Taskin and others* v. *Turley,* the Court claimed that Article 8 (right to a home, private and family life) had been violated whereby companies had polluted the environment and received licenses and subsidies by the state which enabled companies to pollute the local environment. Again, the Court found that the state had failed to fulfil its positive obligation to protect the rights of the community. In *Lopez Ostra* v. *Spain* the Court ruled that the state had failed to protect the rights of the claimant by providing a subsidy to a tannery company which polluted the environment and in turn, breaching the claimant's right to respect private and family life.[374]

European Union Law:

The European Union Law consists of regulations which are issued by the European Commission and/or in conjunction with the European Council and European Parliament, which directly impacts on the national laws of Member States of the EU. According to the European Parliament, "it is possible to make claims against multinational corporations registered or domiciled within the European Union, for violations of human rights under European Union Law".[375] Article 2 of EC Council Regulation on Jurisdiction in Civil and Commercial Matters (known as the Brussels Regulation) applies to EU member states whereby "any defendant corporation that is "domiciled" in an E.U. member state, could be sued in that member

[372] *Parliamentary Assembly – Committee on Legal Affairs and Human Rights*, 'Human rights and business', consulted 27 December 2014.
[373] *Parliamentary Assembly – Committee on Legal Affairs and Human Rights*, 'Human rights and business', consulted 27 December 2014.
[374] *Parliamentary Assembly – Committee on Legal Affairs and Human Rights*, 'Human rights and business', consulted 27 December 2014.
[375] *Parliamentary Assembly – Committee on Legal Affairs and Human Rights*, 'Human rights and business', consulted 27 December 2014.

state".[376] The Brussels Regulation allows any individual, regardless of their nationality (whether they belong to an EU or non-EU state) to take a corporation to court providing that it is headquartered in the EU. This is particularly valuable for claimants living in third countries who are often unable to access legal redress abroad due to matters of extraterritoriality and *forum non conveniens*. However, claimants lacking the funds to take a corporation to court may find it difficult to pursue legal redress through this avenue and violations that occur through subsidiaries (especially when they exist as their own entities) can often be a difficult. Cases such as claimants from the Ivory Coast against a UK shipping corporation Trafigura which was heard by the UK High Court in November 2006 shows promise that national courts of EU Member States are willing to hear such cases, a growing interest in the ability of foreign direct liability to hold companies accountable for extraterritorial corporate violations and circumventing the sensitive and complex nature of extraterritoriality.[377]

Whilst the EU and European courts benefit from a range of and more complex legal instruments that Canada does not possess, both suffer from similar legal blocks relating to extraterritoriality and *forum non conveniens*. Although Europe's approach to combatting such legal blocks to obtain legal redress and accountability for victims of corporate abuse have been pro-active and continue to seek ways to overcome such legal blocks. The Canadian Government has not made similar attempts to ensure that adjudicative measures are made available for victims, but rather cites its softer non-adjudicative Office of the CSR Counsellor counter-part. Given that the Canadian Government does not share similar interests of upholding B&HR values there is little incentive for it to take necessary action to overcome judicial blocks that prevent legal redress. As discussed in the Literature Review of this thesis, some aspects of Canadian policy can be placed into Simmons *false negative* category – in this instance, Canada has agreed to a range of B&HR norms and showed support for the UNGPs. Though, this appears to be rhetoric as it has done little to demonstrate that it will follow many key principles of the UNGPs (as Europe has done with its NAPs) or develop its adjudicative systems to overcome legal blocks that prevent victims of corporate abuse from seeking legal redress. This then articulates to Simmons *strategic ratifiers* group whereby Canada has signed up to a range of voluntary [business] human rights norms (such as the OECD Guidelines etc – see Chapter One) than the more comprehensive UNGPs.

[376] Wouters, J., Ryangaert, C., 'Litigation for overseas corporate human rights abuses in the European Union: the challenge of jurisdiction', *The George Washington International Law Review,* no date specified, Volume 40, p. 944.
[377] *Parliamentary Assembly – Committee on Legal Affairs and Human Rights*, 'Human rights and business', consulted 28 December 2014. Note – the case settled outside of court which demonstrates that often corporations would rather settle the dispute privately than draw attention to its activities and operations by going to court.

Therefore, the Canadian Government appears to be acting on and addressing B&HR issues, but to a lesser extent than EU Member States who have (or are) developing a more pro-active and comprehensive NAP to implement the UNGPs.

5. United States and ACTA

A key state outside of Europe, which contains extraterritorial litigation as a means to providing legal redress to victims of corporate human rights violations has been the United States. The United States has the highest global concentration of MNCs and has recently begun to enact a 200 year old statute (which had long remained dormant) as a means for holding US corporations accountable for human rights violations that have occurred abroad. The ACTA was decreed by Congress in 1789 however, it wasn't until 1980 that the Act was called upon in the well documented *Filatiga* v *Pena-Irala* case and the function of ACTA was thrust into the limelight. The case was filed on behalf Dr. Joel Filartiga by his wife Dolly Filartiga against a Paraguayan inspector general of the Department of Investagtion of the Police of Asunsion– Americo Pen-Irala for the torture and death of their son Joelito Filartiga.[378] ACTA allows foreign nationals to sue violators in federal court for actions that breach international law as a means of civil redress, even when the event occurs abroad. However, with ACTA this is only possible on the proviso that the court has "personal jurisdiction over the defending party, which requires that party to have certain associated with the United States.".[379] The courts deemed that the case could be heard within the US and opened up federal courts to claims by both aliens and citizens seeking legal redress for human rights violations. It set a precedent for a range of international human rights ranging from torture, slavery, genocide, cruel or inhumane treatment, excessive period of detainment, execution, war crimes, crimes against humanity, racial discrimination.[380] Mr. and Mrs. Filartiga were awarded and excess of $10 million in damages.[381]

Whilst ACTA has been hailed by human rights advocates as the most promising avenue for holding corporations liable for human rights violations that take place abroad, no corporation since *Filatiga* v *Pena* –Iralq has been held accountable under the Act. Although the Filartiga's were successful in their

[378] *Center for Constitutional Rights*, 'Filartiga v. Pena-Irala', [URL:http://ccrjustice.org/ourcases/past-cases/fil%C3%A1rtiga-v.-pe%C3%B1-irala], consulted 29 December 2014.
[379] Pigrau, A., Borras, S., Jordi;, Manzano, J.I., & Cardesa-Salzmann, A., 'Legal avenues for EJOs to claim environmental liability', p. 57, [URL:http://www.ejolt.org/2012/05/legal-avenues-for-ejos-to-claim-environmental-liability/], consulted 29 December 2014.
[380] Pigrau, A., et al, p. 57, consulted 29 December 2014.
[381] *Center for Constitutional Rights*, 'Filartiga v. Pena-Irala', consulted 29 December 2014.

claim, ACTA requires a range of complex factors to be met in order for a case to be permissible in court, and even then, a positive outcome for a claimant is not always guaranteed. Pigrau (*et al*) separates such difficulties into two categories: first, there are basic requirements that must be met in regards to admissibility of the issue at hand and the material aspects of the claim: be a foreigner or foreign resident, be a victim of a tort, such a tort must violate international law or a treaty that the US adheres to, and for the court to have jurisdiction over the defendant by having sound links to the US.[382] Second, consideration must be given to exceptions which can lead to the case being rejected by the judge prior to case even being heard. Often when a claim has met all of the previous criteria outlined in category one, some key exceptions of f*orum non conveniens*, State immunity and political questions relating to state doctrine are often cited as grounds for the case to be dismissed before a judge has even heard the matter.

As explored in Chapter Five of this thesis, the *forum non conveniens* exception is when a judge believes that a more suitable forum is more suitable for the case to be heard – often in the state where the violation has occurred or where the corporation is headquartered. The political question relates to whether the government or judicial branch is better suited to addressing issues of a political nature. Finally, the exception to the Act of State Doctrine relates to an idea that shall not criticise or judge the actions of another state in its own territory. For instance, if a corporation has worked with a home state government in its operations, the extent of direct and/or indirect involvement in human rights abuse by state agents can be attributed.[383] Whilst ACTA can be applied to corporate bodies for violations against international human rights norms, they cannot be held accountable for violations relating to torture, imprisonment or maltreatment as such cannot be applied to states. Corporations can, however, be persecuted for complicity or conspiracy. Overall, most ACTA claims have been unsuccessful as a result of the first category of complexities of being able to get the case heard by a judge and the secondary category relating to *forum non conveniens*, political questions and State immunity. In the few cases that have attempted to use the ACTA framework some claimants were able to come to a settlement before reaching court, whilst the vast majority of other cases the defendant corporation has 'prevailed'.[384]

[382] Pigrau, A., et al, p. 58, consulted 29 December 2014.
[383] Pigrau, A., et al, p. 59, consulted 29 December 2014.
[384] Pigrau, A., Borras, et al, p. 61, consulted 29 December 2014.

ACTA and European Foreign Direct Liability:

Whilst Europe's approach and ACTA differ greatly, both contain effective mechanisms and of course, limitations. ACTA can be applied perhaps more broadly in that it is not as constrained its jurisdiction framework as the Brussels I regime. ACTA has the ability to use its federal courts to exercise jurisdiction over any corporation so long that it is continuously and actively engaged in business activities located in the U.S. Whereas the Brussels I regime can only exercise jurisdiction if the parent corporation is registered and domiciled in an E.U. Member State. That being said, each EU. Member State has differing national legislation which may in fact have a broader scope than the Brussels I regime. Also, the Brussels I regime applies to all EU. Member States, which means that unlike its ACTA counterpart, national courts cannot foreclose a case from being heard prematurely on the grounds of *forum non conveniens.* This is a significant vantage for the European system given that this is a common problem for claimants who employ the ACTA process when seeking legal redress. However, EU foreign direct liability cases cannot be pursued if the parent company is not domiciled within the EU. Therefore, it is reasonable to argue that the Brussels I regime jurisdiction does not extend as far as the jurisdiction that US federal courts can implement under the ACTA.[385] As each Member State determines the jurisdictional rules for corporations in each case, jurisdiction can ultimately either be narrower, similar or broader than its U.S. counterpart.[386] Also, claims in both EU Member States and the ACTA function are dependent on how a tort claim is based on international customary law and how international law affects the legal system of each country. In this regard, ACTA claims have been largely unsuccessful in applying international law with only a small number of cases being accepted by US judges against individuals or corporations. Thus application of international law is limited and there is a greater chance for claimants achieving legal redress through tort law which "involve complaints of negligent behaviour by the multinational corporation's parent company, alleging that it owed individuals or communities in the house country a duty of care which it did not observe, resulting in personal, material or environmental damage in that country".[387] Ultimately, application of customary international law can be a double edged sword in that whilst it is comprised of internationally norms that are universal in nature and ideologically extend beyond jurisdictional borders; international law is based on a traditional state centric approach which requires a state response. It also depends on how each state integrates international law into their

[385] Enneking, L.F.H., p. 918.
[386] Enneking, L.F.H., p. 919.
[387] Enneking, L.F.H., p. 923.

domestic structures which is still limited by the fact that there are very few international norms that can be directly applied to corporations.

6. Lessons Canada might learn

Europe's CSR Strategy and the United States' ACTA mechanism for achieving corporate accountability through adjudicative redress differs greatly from Canada's CSR approach. The U.S. benefits from its own unique 200 year old statute built into its legal system that neither Europe nor Canada could realistically expect to duplicate. Regardless of how it came about, the fact remains that the U.S. is better equipped than Canada with adjudicative mechanisms to hold corporations legally accountable for human rights violations and offering legal redress for victims.[388] Despite this luxury, the U.S. has continued to pursue the development of a corporate social responsibility plan. On September 24, at the United Nations, President Obama announced that "The United States will develop a National Action Plan to promote and incentivize responsible business conduct, including with respect to transparency and anti-corruption, consistent with the U.N. Guiding Principles on Business and Human Rights and the OECD Guidelines Multinational Enterprises".[389] This raises serious questions and ramifications for Canada's soft approach towards B&HR and CSR. As explored in Chapter Three, Canada has a history of resisting global human rights initiatives often spearheaded by its U.S. neighbour. Whether it continues to resist the global rise of corporate accountability will remain to be seen, but with the U.S. announcing its plans to develop a NAP consistent with the Europe's CSR Strategy will no doubt place pressure upon and within Canada to develop a more rigorous B&HR approach that also provides avenues for legal redress.

[388] Note – ACTA originates from part of the Judiciary Act of 1798 and sought to provide assurance to foreign states that the U.S. would take action to prevent breaches of customary international law (particularly in regards to diplomats). ACTA remained largely un-used until the 1980s whereby courts begun interpreted the Act for breaches of human rights violations that occur abroad. For further detail on the origins and history of ACTA please refer to: Adamski, T.M., 'The Alien Tort Claims Act and Corporate Liability: A Threat to the United States' International Relations', *Fordham International Law Journal*, 2011, Volume 34, issue 06.

[389] Altschuller, S., 'United States to Develop National Action Plan on Responsible Business Conduct', *Corporate Social Responsibility and the Law*, 27 September 2014, [URL:http://www.csrandthelaw.com/2014/09/27/united-states-to-develop-national-action-plan-on-responsible-business-conduct/], consulted 30 December 2014.
Note – President Obama has also introduced soft law instruments on conflict minerals. In 2010 President Obama approved the Dodd-Frank Act on the law reform of financial markets which included a section (1502) on conflict minerals. The Act was developed before the endorsement of the UNGPs so it may not have been influenced directly by it but was mostly guided by the Kimberley Process which are specifically influenced by the UNGPs. 1502 seeks to "limit the exploitation and trade of conflict minerals originating in Democratic Republic of Congo (DRC) helping to finance conflict characterized by extreme levels of violence in the eastern DRC" by implementing a certification scheme of minerals originating from the DRC – cited in Neglia, M., p. 9.

In terms of Europe's development of a regional CSR Strategy, its attitude has evidently been more open and receptive to suggestions made to it than Canada. As far back as the Green Paper, Europe's origins of a CSR mechanism has progressed in a pro-active manner and meeting substantial less political opposition than what was seen in Canada. The SCFAITs 2005 report identified the need for Canada to develop a national CSR Strategy that provided adjudicative pathways to ensure that Canadian corporations were held accountable for their actions whilst also recognising the need for victims of corporate abuse to be able to access legal redress. However, Canada has not only been dismissive of the SCFAIT report, but also towards multistakeholder consensus reports like the Advisory Group Report recommendations. Further, whilst Europe's CSR Strategy was reflective of previous initiatives that lead to the eventual development of its current Strategy, Canada's CSR Strategy did not reflect the growing consensus and calls to create a comprehensive B&HR strategy with punitive and adjudicative measures. Europe has continued to update its definition of CSR which now aligns with the UNGPs view of B&HR. Canada, however, chose to pursue a more traditional and less comprehensive CSR approach rather than its more advanced and comprehensive B&HR European counterpart which ultimately reflects the Canadian Governments' disingenuous attitude towards regulating the activities of its extractive sector abroad to ensure that human rights are respected abroad.

Upon identifying legal gaps within its CSR Strategy, Europe has continued to call for further research and dialogue to overcome judicial complexities as a means to furthering avenues for legal redress and tackling issues of extraterritoriality. Canada on the other hand, has ignored its adjudicative shortcomings and created a CSR Counsellor which has no prescriptive or investigative powers to ensure that Canadian corporations act in socially responsible manner. Whilst a large portion of Canadian industry lobbied and pressured the Government to pursue a softer CSR approach that did not directly impose stricter regulations upon them, European enterprises have been pro-active in implementing and promoting CSR and B&HR policies through Enterprise 2020 and the European Alliance on CSR 2006 “which is an alliance of European enterprises or companies that express their support for CSR”.[390] As outlined by Risse and Sikkink’s 'spiral model', if Canada truly wishes to implement a more rigorous B&HR framework it must continue to develop its CSR Strategy as Europe continues to do. Sustainable human rights can only be achieved once human rights norms are entirely internalised into domestic law (something in which E.U. Member States are working towards) and regulated in a manner which norm compliance becomes

[390] *Parliamentary Assembly – Committee on Legal Affairs and Human Rights*, 'Human rights and business', consulted 29 December 2014.

routine. By failing to develop a more rigorous CSR strategy that deals with B&HR issues in a more comprehensive manner (such as the UNGPs) Canada is falling behind EU Member States and its U.S. neighbour and has lost its overall reputation as a leader on human rights. Whilst the Harper Government is isolating itself from the emerging international B&HR regime and falling behind, in doing so it is simultaneously getting ahead by pursuing its national interest of maintaining and supporting its mining and extractive industries. In this regard, the Harper Government is continuing to benefit from continuing to protect and support its mining and extractive corporations operating abroad, which as demonstrated throughout this thesis, can cause problems for local communities and governments.

Conclusion

The purpose of this final Chapter of the thesis was to survey how other countries and/or regions have responded to the emerging B&HR regime and to then place Canada in an international context to consider ways in which Canada could develop a more comprehensive national B&HR strategy. This purpose was fulfilled by discussing six key points: first, I examined the EU's development of CSR & B&HR policies to understand the regions response and approach to the emerging international B&HR regime and the UNGPs. The EU's approach – *The Communication* aligns with the UNGP ideology and expects all European enterprises to respect human rights as defined by the UNGPs. I argued that whilst Europe has been receptive to the recommendations made to it by official committees and groups to develop a more comprehensive B&HR strategy, Canada has much less receptive and dismissive of similar calls. Also, the EU has pursued more mandatory measures, whereas Canada has chosen to pursue more voluntary and soft measures. In turn, I made the assessment that Europe's identity is largely driven by human rights values which have resulted in a stronger level of norm compliance than Canada who places greater value on maintaining its mining and extractive sectors over human rights issues. Second, I considered what recommendations, resolutions and 'soft law instruments' Europe has adopted whilst developing its CSR strategy. Europe's Parliamentary Assembly has been key in introducing and adopting recommendations and resolutions which have sought to hold MNCs more legally accountable for their actions and identifying legal gaps with the EU's current framework in order for punitive and legal redress measures.

The Assembly has called upon EU Member States to legislate (if necessary) to protect individuals from corporate abuse and developed a more comprehensive CSR strategy (*The Communication*). In this section it was argued that whilst the EU has been receptive to such recommendations to implement

more rigorous B&HR policies and protocols, Canada's attitude towards Private Member Bills which seek to achieve similar objectives has been less receptive, with all bills having been voted down (with the exception of those currently pending). Similarly, Canada dismissed formal recommendations made to it by SCFAIT and its Advisory Group to develop stronger regulation and adjudicative measures for its mining and extractive companies. Therefore, an assessment that the EU is genuinely concerned with [business] human rights issues and therefore can be placed into Simmons *sincere ratifier* group and undergoing a process of *socialization*. Whereas Canada is not sincere about such matters and will pursue national interests of maintaining its mining and extractive sector over human right issues. In turn, Canada can be placed into Simmons *strategic ratifier* group.

The third part of this Chapter examined how EU Member States have created and implemented NAPs as a means to implementing Europe's CSR strategy and the UNGPs. Thus far four EU Member States have implemented their own NAPs with a range of other's are following suit. Whilst there is currently no official NAP template, the UNWG has published a guidance report which serves as a reference guide of key processes in designing and implementing a NAP. It was argued that Canada is falling behind the EU and the U.S. who recently announced future plans to develop a NAP, and as a result is no longer a leader on human rights issues and further reiterated the assessment that Canada is a *strategic ratifier*.

In the fourth part of this Chapter, Europe's judicial framework was discussed including international law, extraterritorial corporate human rights abuse, the ECHR and European Law to understand how it approaches issues related to legal redress. As no coherent set of mandatory obligations on B&HRs exist and both international human rights law and environmental law does not impose obligations upon MNCs to protect or respect human rights, human rights violations relating to extraterritoriality can be problematic. However Europe has a range of regional conventions and laws that provide ways in circumventing the issue of extraterritoriality. For instance, whilst the EC places obligations upon states to secure the rights of all individuals within their jurisdiction, and often national courts and the development of case law have helped individuals in seeking legal redress from corporate abuse. Also, EU Law and the Brussels Regulation allow individuals regardless of their nationality to take a MNC to court providing that its headquarters are located within the EU. Whilst both Canada and the EU suffer from the international problem of extraterritoriality, Europe has and continues to seek ways to overcome judicial blocks and develop further avenues of adjudicative redress for victims of corporate abuse. Canada however, has done little to overcome its legal impediments and provide adjudicative avenues of

redress for victims. Whilst the Canadian Government has signed up to a range of B&HR norms, it still ignored a key component of the UNGPs which is to provide appropriate avenues of legal redress for victims, particularly for foreign victims where the violation has occurred abroad. Again, this further supports the assessment that Canada is a *strategic ratifier*.

The fifth and final section of the Chapter sought to both comparative analysis between Europe's CSR strategy and the United States' ACTA, and place Canada in an international context as a means to exploring lessons Canada can learn from the European and U.S. approach to B&HR. Whilst both the EU and ACTA had range of complex differing strengths and weaknesses, ultimately both were better equipped than Canada in dealing with B&HR issues in an adjudicative manner. Whilst the U.S. benefits from a unique and historical statute that has allowed ways to pursue legal redress for corporate violations, it has continued to further develop its B&HR approach by announcing that it would be developing its own NAP to implement the UNGPs. This poses a range of questions and consequences for Canada and whether it will continue to reject calls to develop a more rigorous and regulative national B&HR strategy. Whilst Europe has been receptive of recommendations which have directed its CSR strategy, Canada has continually rejected similar calls to develop regulative CSR frameworks. Instead, Canada ignored many of the recommendations made by SCFAIT and the Advisory Group recommendations and pursued a softer and voluntary framework.

It has been argued that Canada's disingenuous attitude towards B&HR has resulted in a lower compliance than seen in Europe and U.S.. Further, it was argued that Canada is falling behind other regions and states which has damaged its international image and reputation as a leader on human rights. It was argued that whilst the Harper Government continues to resist the emerging B&HR regime and implementation of the UNGPs, it is also benefitting and 'getting ahead' by maintaining the interests and competitive advantage of its mining and extractive sectors. So long as Canada continues to benefit from continuing to protect and support its mining and extractive corporations abroad the continuation of human rights violations related to such operations will continue to occur.

- CONCLUSION -

Upon examining and analysing how and why Canada has responded to the emerging international B&HR regime and how it rests within an international context, the purpose of this final conclusion is to re-state and integrate all conclusions outlined in each of the six previous chapters of this thesis. This will assist in drawing concrete conclusions about Canada's attitude and approach towards B&HR and in turn provide parting inferences and/or suggestions about the future of B&HR in Canada.

Upon conducting the Literature Review and outlining the framework of the thesis, Chapter Two served as an introduction to Canada's relationship with the emerging international B&HR regime through examining its foreign and domestic policies. It argued that whilst Canada has traditionally been a key leader on international human rights and played an active role in the development and promotion of B&HR norms through its foreign policies, its domestic policies are less progressive resulting in it regressing as a leader on human rights. It found that a dichotomy exists between its promotion of B&HR issues at an international level and its domestic implementation of CSR policies which have resulted in Canada being labelled as one of the worst countries for human rights abuses in extractive projects abroad. By outlining how Canadian mining and extractive corporations have been involved in a wide range of human rights abuse in the developing world, it was understood why B&HR is an important and current issue for Canada. The origins of the Canadian Government's current CSR strategy (*Building the Canadian Advantage),* was detailed to provide an understanding about how and why it came about. In doing so, it provided important insight and context about the Government's national values and attitudes towards B&HR which assisted in building analysis and drawing inferences about B&HR in subsequent chapters of the thesis. Also, it found that whilst previous committees and group recommendations (such as SCFAIT and the Advisory Group recommendations) had encouraged the Government to implement a rigorous B&HR framework that sought to regulate the activities of mining and extractive corporations abroad and hold them accountable through adjudicative measures, the Canadian Government dismissed these notions and pursued a more traditional and less comprehensive CSR strategy than its B&HR counterpart. As a result, this raised questions (which would be evidenced and analysed in later Chapters of the thesis) about Canada's sincerity towards B&HR issues and norms implementation.

In Chapter Three, the motives and national interests that shaped the Canadian Government's response to the Advisory Group recommendations and its subsequent national CSR Strategy were analysed. I illustrated the strong relationship between the mining and extractive industries and Government by examining how a large portion of industry had heavily lobbied the Government whilst formulating its national CSR strategy. In turn, the influence that industry exercised upon the Government helped contribute to the creation of a CSR strategy that was a much softer and voluntary in its approach, rather than what had been recommended (by SCFAIT and the Advisory Group recommendations). Further, it became evident that the interests of industry closely aligned with the interests of the Conservative Harper Government – both parties wished to maintain the(ir) status and international competitive advantage of the Canadian mining and extractive sectors abroad. Also, I found that the Government had remained supportive of Canadian companies who had been accused of or linked (directly or indirectly) to human rights abuse abroad, which further built upon the assessment that the Government will choose to protect corporations over human rights. This assessment was built upon questions raised in the previous Chapter about Canada's sincerity towards B&HR issues.

This was achieved by examining three key matters in order to understand the Canadian Government's view of B&HR issues and how such influenced its national CSR Strategy. First, by exploring Canada's historical resistance to the uptake of international B&HR norms, it was identified that domestically, Canada prefers to facilitate softer, voluntary and/or self-regulatory approaches over more harder, regulative, adjudicative and punitive approaches. Whilst the Government has not issued an official statement explaining its reasons to pursue a more traditional and softer approach than what was recommended to it by SCFAIT and the Advisory Group, I inferred that this is the result of a broader pro-business attitude of the Conservative Party. Second, mining and extractive perspectives were explored to understand their attitude towards B&HR and increased regulation and how this in-turn influenced the Government's resistance in adopting a more comprehensive and rigorous national B&HR strategy. Whilst not all factions of PDAC and extractive/mining corporations are opposed to regulation, there is a large portion of these groups that oppose tighter regulation, punitive measures – two characteristics of the B&HR agenda. An assessment that whilst these corporations claim that they are unaware of what to make of B&HR norms, terminology and their legal obligations, they clearly knew enough about them to lobby the Government so rigorously to prevent their implementation. Cases such as Talisman and TVI thrust the issue of corporate human rights violations into the international limelight and the consequences of such cases would undoubtedly be familiar to Canadian industry. Therefore, I argued

that industry are aware of what B&HR norms entail and they do not wish to be constrained by increased regulation and possible punitive action. Lastly, the support the Government has extended to Canadian corporations (through embassy support) linked to human rights violations abroad illustrated that the Government and the mining/extractive sector are close 'bedfellows'. The Government's choice to support corporations linked to human rights abuse; pursuit of bilateral investment treaties which can further enable corporations to abuse local processes and rights; and the CSEC's alleged involvement in spying on Brazil's Mining Ministry demonstrates that the Canadian Government is not sincere about B&HR nor genuine about CSR values cited in *Building the Canadian Advantage*.

Having provided context on the reasons why the Canadian Government designed its national CSR strategy in the manner that it did (in spite of recommendations that advised otherwise), this Chapter helped further build upon an understanding about the Canadian Government's values and interests. As outlined in Chapter One, given that the Canadian Government dismissed recommendations to develop a more comprehensive and regulatory framework and has demonstrated that it values maintaining and protecting the international position of its mining and extractive sector, Canada is not sincere about B&HR. In light of Simmons's theory, Canada can be placed into both the *false negative* and *strategic ratifier* categories. In the case of Canada, *Building the Canadian Advantage* was a strategic move to be seen as acting on B&HR issues, an attempt to appease calls by SCFAIT and the Advisory Group to develop a national strategy, and to be seen as acting on human rights issues within the international community. As evidenced in this Chapter, the Government's CSR strategy is not motivated or driven by genuine concern for human rights and lacks the necessary regulative tools, adjudicative mechanisms and punitive measures necessary of a comprehensive and effective national B&HR framework.

In Chapter Four, a Case Study of the Office of the CSR Counsellor was conducted. Given that the Office is the main pillar of *Building the Canadian Advantage* that attempts to directly address B&HR issues, this Chapter sought to detail how the Office functioned and then draw analysis about how effectively the Office deals with B&HR matters. It was argued that Office of the CSR Counsellor does not effectively resolve complaints relating to corporate abuse by Canadian companies due to its voluntary nature, and lack of authoritative and investigative powers. The first part of the Chapter provided an outline of the Office and Counsellor's role, processes and activities that it has engaged in to provide necessary context for understanding how the Office functions. The second analysed potential shortcomings and limitations of the Office, which prevented it from effectively mitigating conflict and ensuring that Canadian

corporations operate in a manner consistent with international B&HR values. The key component of the Counsellor's function (the 'Review Process') was found to be flawed for a range of reasons. For example, for unknown reasons the Counsellor chose to utilise an interest-based dispute resolution methodology, however the rights based approach is also effective and together, both mechanisms are mutually supportive of one another. Moreover, an outline of the cases which the CSR Counsellor has dealt with thus far was detailed and it became apparent that due to the voluntary nature of the process, corporations have a tendency to withdraw prematurely from the process. The shortcomings of the Counsellor's Review Process spans from broader design problems of the Counsellor's mandate – namely relating to the voluntary nature of the Office.

In its recommendations to the Government, the Advisory Group noted the importance of two key issues relating to any formulation of an ombudsman. First, that such an ombudsman is housed outside of Government to ensure that it functioned in an independent and unbiased manner if confronted with conflicting or competing Governmental policy objectives. However, the Harper Government designed the Office of the Counsellor so that it was housed within DFAIT and aligned with Governmental policies, objectives and values. As a consequence, the Counsellor's mandate is dictated by the interests of the Government. Second, the Advisory Group recommended an ombudsman that possessed investigative and authoritative powers to greater enhance its ability to report upon human rights violations and hold corporations accountable for their actions. However, by housing the Office under DFAIT, its mandate has been limited where it lacks any of these key attributes. As a result, Canadian companies who violate human rights abroad can continue business as usual without being held accountable. Given that the Harper Government does not wish to constrain or regulate its mining and extractive sectors due to their mutually agreeable interests (as outlined in Chapter Three), the Government's decision to intentionally design a Counsellor with a limited mandate and role supports Risse and Sikkink's theory that state motives and identity shapes the extent to which states implement norms and the nature of norms compliance. In Canada's case, the Harper Government values the interests of its extractive and mining sectors over human rights issues, so it has dismissed SCFAIT and Advisory Group recommendations to create an ombudsman with 'teeth' that could truly have the power to help hold corporations accountable for their actions, and instead replaced it with a 'toothless' CSR Counsellor that has no powers to ensure that Canadian corporations respect international B&HR norms. This also aligns with Simmons *strategic ratifier* group – whereby the Canadian Government has strategically responded to

calls for an ombudsman as a means to be seen as acting on B&HR issues, yet intentionally designing it in a way that does not interfere with its values and interests in the name of human rights.

In the UNGPs, SRSG John Ruggie notes that states are bound under international law to protect human rights abuse and this requires ensuring that necessary measures are taken to investigate, punish and redress the violation of rights through legislation and adjudication. As evidenced in the First and Third Chapters of this thesis, *Building the Canadian Advantage* is a soft voluntary approach which lacks necessary regulation and a CSR Counsellor which only offers non-adjudicate processes. Chapter Five discussed Canada's judicial system and legal frameworks and considered how Canada could implement international B&HR norms that have the ability to provide adjudicative avenues of legal redress for victims which is currently lacking. This would also ensure punitive measures for corporations who breach human rights. It was argued that Canada suffers from three key legal conventions surrounding the issue of extraterritoriality and that it must overcome such shortcomings to ensure that it fulfills its state duty to protect and ensuring that corporations who violate the rights of others are held accountable. This was achieved by in three key sections: the first of which provided an outline of how cases lodged by foreigners seeking legal redress against Canadian corporations for alleged human rights abuse have failed which demonstrated Canada's lack of a comprehensive and effective B&HR regime whereby adjudicative redress mechanisms are a vital component; second, detailing the three legal 'blocks' of jurisdiction, *forum non conveniens* and duty of care to provide an understanding as to how they impair access to legal redress and punitive measures. Lastly, discussing the development of private member bills introduced by Canadian MPs in an attempt to legislate upon the regulation of Canadian mining and extractive corporations operating abroad to ensure that they respect human rights and can be held legally accountable for their actions.

The first section found that Canada has very little control over the conduct of its corporations abroad and only two Canadian laws apply internationally to mining practices – both of which do not canvas the full spectrum of human rights. As a result, Canadian mining and extractive corporations are able to operate in an un-checked manner, and often in developing states where environmental and human rights regulations are already quite low. When Canadian corporations breach domestic law they have used bilateral investment treaties to overcome any opposition to the continuation of projects. Whilst there have been a range of attempts seeking to hold corporations accountable for alleged violations through extraterritoriality (a law outside a home state that is free of local laws and jurisdiction) in

Canadian courts, they have mostly been unsuccessful due to: jurisdiction, *forum non conveniens* and duty of care. Issues relating to jurisdiction result in judges dismissing court cases as there is not a sufficient connection between the state in which the offence allegedly occurred and the headquarters of a Canadian corporation. *Forum non conveniens*, a legal doctrine, occurs when a court refuses to take responsibility over jurisdiction if they believe there is a more suitable jurisdiction in which the case can be heard (often in the place where the alleged abuse has occurred). Duty of care relates to when a court rules that potential harm was foreseeable. Often duty of care can be difficult to establish when an offence is carried out by a subsidiary operating in and adhering to local laws rather than the laws of the parent company which is often located in a developed state with firmer laws. Drawing strong enough connections between subsidiaries and the parent company can be difficult to prove. Together, these three legal functions have prevented many victims of corporate abuse by Canadian corporations from being able to access judicial remedy. Issues relating to extraterritoriality have meant that Canadian courts have been unwilling to hear cases which leave victims little access to judicial remedy in their home states where issues relating resources, accessibility and corruption are problematic.

The second section identified a range of private member bills introduced by Canadian MPs from 2007 – 2013 that attempted to hold corporations accountable for their actions. Most of these bills were introduced as an alternative to the Government's CSR strategy seeking to create more regulatory and legally binding measures in Canada. Thus far (besides Bill C-323 which is currently pending), such bills have been defeated and been heavily criticised by a majority of the Conservative Party. The assessment that legal enforcement and regulation alone is insufficient was made and that quasi-regulatory processes are valuable in that they allow for greater flexibility in applying B&HR norms. This is supported by the SRSG's UNGPs which states the importance of non-adjudicative remedial processes in an effective B&HR framework. Whilst the Canadian Government has implemented a range of such processes, it has neglected the other vital element of adjudicative mechanisms as well. It was argued that the Canadian Government's formulation of a national CSR strategy that is wholly voluntary in nature was intentional due to it not wanting to constrain its extractive and mining corporations through B&HR regulations. This further supports Simmons *false negative* theory that states, like Canada, pursue norms as a means to be seen as acting on B&HR but are in fact driven by insincere motives and strategic gains. Canada's avoidance of overcoming judicial blocks, designing a purely voluntary and non-adjudicative, regulatory framework and opposition to private member bills further reiterates the argument that Canada is insincere about human rights and is no longer the global leader on human rights.

The purpose of this final and Sixth chapter of this thesis sought to briefly survey how other regions and/or states have sought to implement the emerging international B&HR regime and the UNGPs. It served as a counterpoint to discussion on Canada in previous Chapters and placed it into an international context. By doing such, this helped draw inferences and analysis about Canada's attitude, approach and lessons it could learn from the experience of other states and/or regions. This Chapter argued Canada must further develop its national approach towards B&HR issues and implement the UNGPs so that it can deal with B&HR issues in an effective manner. This was achieved in seven key sections. The first, examined how Europe's current CSR strategy came about. The EU has been largely receptive to recommendations to implement a mandatory CSR/B&HR strategy and implementation of the UNGPs. In October 2011, the EU announced 'The Communication' a strategy from 2011 – 2014 which sought to develop B&HR policies and regulation of corporations in the region. It updated its definition of CSR to reflect the UNGPs ideology on B&HR. The EU has also endorsed the UNGPs and is currently in the process of developing a soft-law instrument that will facilitate their implementation throughout the region. Analysis between Europe's and Canada's approach towards B&HR was developed where it was found that Canada had been less responsive to similar calls for a more comprehensive CSR strategy with sound ties to the UNGPs. The assessment that (in light of Risse and Sikkink's socialization theory) this is because the EU is more sincere about human rights issues, and in turn, has a high degree of norm implementation and compliance. Whereas, as argued in previous Chapters, Canada places greater values in its extractive and mining sectors over human rights issues and in turn has resulted in a lesser degree of norm compliance.

The second component of the Chapter then discussed recommendations, resolutions and soft law instruments that Europe has been responsive to. The Parliamentary Assembly has played a key role in furthering the EU's CSR strategy and has endorsed two key recommendations/resolutions which help regulate the activities of EU mining/extractive corporations. Recommendation 1858 seeks to regulate the activities of PMSCs to ensure human rights are respected and protected through legal obligations set out under international law. Recommendation 1757 identified the lack of effective, legally binding mechanisms to protect victims of corporate human rights abuse, and called upon EU Member States to legislate if needed to ensure individuals were protected. In regards to Canada's experience, the EU has been more receptive to CSR and B&HR recommendations, whereas Canada's private member bills have a tendency to be voted down. Europe also seeks to continue to develop its legal instruments to ensure

victims have access to legal redress and corporations can be held accountable for their actions, whereas the Canadian Government has pursued a soft, voluntary and non-adjudicative strategy and as outlined in the previous Chapter, lacks in sufficient adjudicative mechanisms. The third component of this Chapter examined NAPs. Whilst there is no existing framework on how to create and implement a NAP, the UNWG has published a reference guide for states wishing to implement a NAP as well as information on further development for states that have already implemented their own NAPs. In 2014 the United States announced that it would be following Europe's lead and developing its own NAP. This poses a range of consequential questions for Canada as nowhere in its newly revised November 2014 CSR strategy does it make reference of developing a NAP. It was argued that by continuing to avoid the implementation of a more rigorous B&HR strategy, Canada is falling behind its European and U.S. counterparts. As a result, it is no longer a leader on human rights. The assessment that this further aligns with Simmons *false negatives* theory that Canada strategically adopts CSR norms only if they align with their own national interests and values (which strongly favour maintaining the position of its mining and extractive sectors) rather than being motivated by sincerity as seen in the case of the EU.

The fourth component of this Chapter outlined Europe's judicial frameworks and avenues of legal redress for victims of corporate abuse. It examined international human rights law, the European Court of Human Rights and European Union law – each containing a range of complex limitations. In sum, it was found that whilst the EU has more legal tools available to seek legal redress and hold corporations accountable for their actions than Canada yet both suffered from similar legal blocks relating to the issue of extraterritoriality and *forum non-conveniens*. However, Europe has approached such legal blocks with pro-active research and processes to overcome such blocks in attempts to achieve greater access to adjudicative remedy for victims of corporate abuse whilst the Canadian Government has ignored this issue. Once again, this supports the parallels I draw between Simmons *false negative* and Risse and Sikkink's socialization theory's where I argue that whilst Canada has stated its support of the UNGPs, it has failed to implement them as it is not sincere about human rights issues and will only strategically implement B&HR norms if they do not detract from the Government's national interests of maintaining its extractive and mining sectors and/or if they provide any immediate gains.

The fifth component of this Chapter examined the United States Alien Claims Tort Act (ACTA) to provide further context on how another state holds corporations accountable for human rights abuse and violations. ACTA is a 200 year old statute which over the past three decades and allows foreign nationals

to take corporations to court over allegations of human rights abuse which breaches international law, even when this takes place abroad. ACTA is not a perfect system and requires a range of factors to be met before a claim can be lodged. A claimant must be a foreigner or a foreign resident, and a victim of a tort which violates international law to which the US adheres to such a treaty for the Federal Court to agree that it has jurisdiction over the defendant which must have sufficient links to the U.S. Also, a judge may dismiss the grounds of *forum non conveniens* if they believe there is a more suitable territory to hear the case (i.e. the place where the violation occurred or where the headquarters of a corporation are domiciled). Since the *Filatiga* v *Pena-Irala* case, no corporation has been held accountable under the Act (some cases have been settled privately prior to Court) and most of the cases that have attempted to utilise the ACTA framework have been dismissed by judge's on the grounds of the such complexities or the defending corporation has triumphed. In spite of this, human rights advocates hail ACTA as one of the most promising avenues for holding corporations accountable for human rights abuse that occurs abroad. Upon comparing the benefits and shortcomings of both Europe's and ACTA's approach, it was found whilst ACTA can be applied more broadly as it had greater jurisdictional flexibility than Europe's approach, Europe's Brussels I regime benefitted from preventing national courts from rejecting cases prematurely on the grounds of *forum non conveniens*. Also, because EU foreign direct liability cases cannot be heard if the parent company is not domiciled in the EU, the scope of the Brussels I Convention jurisdiction does not extend as far as the U.S. Federal Court's under ACTA. That being said, as each EU Member State possesses differing legislation on corporate abuse, jurisdiction varied on an individual state basis which could be either narrower or broader than ACTA. Because state ratification of international customary law into jurisdictional frameworks differs per state, the success of torts claims in Europe and the U.S. are dependent on a state's extent of compliance/ratification of international law. In sum, an assessment that customary international law can be a 'double edged sword' as it consists of international human rights norms based on ideologies that extend beyond borders yet operate in a state-centric manner dependent on how state's implement international law into their own domestic legislative bodies and processes.

The final and sixth component of this Chapter sought to draw all five previous sections together to draw analysis about lessons Canada can learn from other states/regions approach towards implementing international B&HR norms. It was found that both the EU and the United States are better equipped with adjudicative mechanisms that can hold corporations legally accountable for human rights abuse and adjudicative redress for victims. Europe has been more receptive to internal demands for more

rigorous and mandatory B&HR norms, whereas Canada has resisted similar recommendations from SCFAIT and the Advisory Group. Further, Canada has negated such recommendations and pursued a soft, voluntary approach which does not provide adequate adjudicative processes for punitive and redress purposes. The EU has continued to develop upon its current strategy and finding ways to address gaps within its system, whereas the Canadian Government has remained largely silent on criticisms of its CSR strategy. Whilst the U.S. already benefits from ACTA, it is still actively seeking to improve its approach towards B&HR by announcing its plans to develop a NAP. In order for Canada to develop an effective B&HR framework, it must do as the EU has and ensure that it works to overcome judicial blocks which prevent victims of corporate abuse access to legal redress whilst also ensuring that corporations can in fact be held legally accountable for their actions. Further, the Canadian Government needs to reassess its national values to ensure that respect for human rights and its key role in protecting such rights are held in the highest esteem.

In conclusion, *Building the Canadian Advantage* is not an effective policy in ensuring that the Canadian Government and corporations protect and respect the full spectrum of international human rights, nor does it provide necessary adjudicative mechanisms for corporate abuse victims seeking legal redress. The Harper Government's choice to dismiss multiple recommendations to implement a comprehensive B&HR strategy and active pursuit of a soft approach demonstrates that Canada is not sincere about respecting or protecting human rights, and is no longer an international leader on human rights. As explained in Chapter One of this thesis, Risse and Sikkink's 'spiral model' theorizes that a state goes through a range of phases and processes when responding to the emergence and implementation of norms. In order for a state to reach full socialization, (human rights) norms must be entirely internalised into domestic law. However, Risse and Sikkink acknowledge that not all states may reach full socialization which is often directly connected to the State's attitude about international human rights, which in turn, reflects the level of norm compliance. As explored in Chapter Three of this thesis, the success of Canada's mining and extractive sector's is key in maintaining its economy and Canada's international competitive advantage, so much so that the Canadian Government has extended support to corporations embroiled in corporate abuse abroad. The Harper Government has mutually agreeable shared interests with its mining and extractive sector's and as a result chose to pursue a more traditional and softer CSR strategy in favour of Governmental and corporate interests over human rights issues. As a result, Canada has a low level of norm compliance, especially when compared with the EU and U.S. approaches. Similarly, in light of Simmons 'strategic ratifier' group, states will often sign up to

international human rights norms based of self-serving and strategic motives and that due to the insincere nature of this group, it can lack performance output. Given that the Harper Government is not sincere about human rights issues, it is reasonable to make the assessment that *Building the Canadian Advantage* was designed in response to appear to be proactively acting upon calls for Canada to implement a national B&HR framework, yet intentionally designed in a soft and 'toothless' manner which did not constrain nor bind corporations or the Government for that matter. If by chance the Harper Government had a change in heart (or values), or a new government who was sincere about B&HR issues was to be elected, it would need to develop its regulatory, adjudicative, punitive and redress measures, as sustainable human rights can only be achieved once B&HR norms have been internalized into domestic law, and norms compliance becomes routine.

Epilogue

Whilst completing this thesis and fine-tuning during the editing process, on the 14th of November 2014, the Canadian Government released an updated version of its CSR Strategy. It is apparent that the updated Strategy does not dramatically deviate from its original form. Upon announcing the updated Strategy, International Trade Minister Ed Fast noted vowed to protect Canada's "brand" as a key member in the international resource sector. Upon announcing the new enhancements, Minister Fast stated that "Our message is clear: If you don't play ball by doing business the Canadian way, then we won't go to bat for you".[391] The updated Strategy appears to take a firmer stance with Canadian corporations than its predecessor in two key ways: a supposed enhanced mandate for a newly appointed CSR Counsellor which includes a metaphorical 'hammer' for companies that do not work with the Counsellor or align with the Government's strategy values and whereby it can notify the Government which vows to withdraw governmental support to corporations in foreign markets.[392] Whilst it is positive that the Government is appearing to take a firmer stance towards regulating the activities of its corporations abroad by threatening the withdrawal of Governmental support which acts as both a deterrent to poor behavior and serves as a punitive purpose, it still falls short of a full-fledged B&HR strategy.

First and foremost, the fact that Minister Fast refers to protecting Canada's brand reveals that Canada is still very much concerned and focused on maintaining the reputation of its mining and extractive sector's over human rights issues. There is little mention of human rights, the emerging B&HR regime and UNGPs or the development of a NAP. Had human rights been the key driver of the enhanced Strategy it would have been evident in the text. This is consistent with my argument that the Canadian Government is not sincere about B&HR issues. I would suggest that the enhanced Strategy is another strategic ploy by the Government to be seen by the international community and domestic communities as updating and developing its CSR Strategy to maintain its mining and extractive sector's "brand" and

[391] McCarthy, S., 'Ottowa vows to protect 'Canada brand' with social responsibility policy', *The Globe and Mail*, [URL:http://www.theglobeandmail.com/report-on-business/industry-news/energy-and-resources/ottawa-vows-to-protect-canada-brand-with-social-responsibility-policy/article21579511/], consulted 05 February 2015.
[392] *Foreign Affairs, Trade and Development Canada*, 'Canada's Enhanced Corporate Social Responsibility Strategy to Strengthen Canada's Extractive Sector Abroad', 14 November 2014, [URL:http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/csr-strat-rse.aspx?lang=eng], consulted 05 February 2015. Note – for a full list of the enhancements to Canada's CSR Strategy please see Appendix 4.

further delaying serious policies on B&HR. Further, whilst the updated Strategy now provides the CSR Counsellor the ability to report uncooperative corporations it still lacks the necessary and recommended investigative and prescriptive powers outlined throughout this thesis. The most concerning element of the enhanced Strategy is that nothing has been done to address legal gaps that prevent adjudicative redress for victims of corporate abuse and punitive measures for corporations who violate human rights. Whilst a comparative analysis of the original and enhanced strategies is beyond the scope of this project, this thesis serves as a sound base for future research and comparative analysis between Canada's original CSR Strategy on how Canada's enhanced Strategy and potential integration of further B&HR norms will develop in the following years.

While Canada continues to avoid the uptake of a more rigorous B&HR framework, the UNHRC continues to promote the uptake of and development of the UNGPs. On the 26th of June 2014, it adopted a resolution to "establish an inter-governmental process to work toward the development of a treaty to address the human rights obligations of transnational corporations".[393] Whilst both of Canada's original and enhanced CSR strategies have been developed for strategic gains and to placate demands for increased regulation, the potential development of a future B&HR treaty will force Canada to publicly choose between committing itself to protecting victims of corporate abuse or whether it continues to isolate itself from the international community and continue to prioritise corporations which breach human rights. Until such a treaty exists, and given the context of Canada's 'enhanced' yet still voluntary CSR Strategy, it is a fair assessment to assume that Canada will continue business as usual and resist the adoption of harder and regulatory B&HR norms, especially whilst it profits from the activities of its mining and extractive sectors operating abroad. As leadership on B&HR and CSR issues are advancing at an international and EU level, Canada has lost its position and reputation as a leader on human rights. Unfortunately, for Canadian corporations who have gone to lengths to adopt sound CSR policies and support the notion of further regulation, they must labour to separate themselves from the negative public perception of Canada's mining and extractive sectors.[394]

[393] *The Danish Institute For Human Rights*, 'National Action Plans on Business and Human Rights – A Toolkit for the Development, Implementation, and Review of State Commitments to Business and Human rights Frameworks', p. 1.
[394] Lipsett, L. Hohn.M, & Thomson, I., Pp 11 – 12.

Bibliography:

Primary Sources:

Official Reports and Publications:

Zarsky, L., 'Haven, Halos and Spaghetti: Untangling the Evidence about Foreign Direct Investment and the Environment', *Foreign Direct Investment and the Environment*, OECD, Paris, 1999, Pp 1 – 25.

OAS, 'Informe de la Mision de Observacion Electoral sobre el Referndum Revovatorio del Mandato Popular celebrado en Bolivia el 10 de Agosto de 2008' (CP/doc. 4429/09, September 1, 2009.

The Danish Institute For Human Rights, 'National Action Plans on Business and Human Rights – A Toolkit for the Development, Implementation, and Review of State Commitments to Business and Human rights Frameworks', International Corporate Accountability Roundtable, June 2014, p. 1.

United Steelworkers Canada, 'Getting Serious with Corporate Accountability for Canadian Mining Companies', United Steelworkers Mining Conference, June 11 – 13, 2012, Pp 1 – 19.

Ruggie, J.G, 'Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises', Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, 21 March 2011, Pp 1 – 27.

Ruggie, J.G., 'Presentation of Report to the United Nations Human Rights Council', Special Representative of the Secretary-General for Business and Human Rights, Geneva, 30 May 2011, Pp 1 – 7.

United Nations Sub-Commission on the Promotion and Protection of Human Rights resolution, 'Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, Doc. E/CN.4/Sub.2/2003/12/Rev.2, 2003, Pp 1 – 5.

United Nations Sub-Commission, 'Responsibilities for transnational corporations and other business enterprises with regards to human rights', resolution 2003/16, U.N. Doc. E/CN.4/Sub.2/2003/L.11 at 52, 2003, Pp 1 – 2.

United Nations, 'Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human rights', E/CN.4/Sub.2/2003/12, 2003, Pp 1 – 6.

United Nations Human Rights Council, 'Mandate of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises', Resolution 8/7, 18 June 2008, Pp 1 – 4.

United Nations Human Rights Council, 'The UN "Protect, Respect and Remedy" Framework for Business and Human Rights, September 2010, Pp 1 – 4.

United Nations Office of the High Commission, 'Implementing the United Nations "Protect, Respect and Remedy" Framework, New York and Geneva, 2011, Pp 1 – 42.

Journal Articles:
Evans, M., 'CSR in the Extractive Sector: the Canadian Stamp', *GREAT Insights*, Volume 01, Issue 05, July 2012.

Ruggie, J.G., 'Business and human rights: the evolving international agenda', *American Journal of International Law*, Working Paper of the Corporate Social Responsibility Initiative, Harvard University John F. Kennedy School of Government, June 2007, vol. 101, no. 38, p. 7.

Interviews:
Dashwood, H., Brock University, Department of Political Science, conducted on Tuesday 22 October 2013, [Online: Skype].

Imai, S., Osgoode Hall Law School, York University, Toronto, conducted Tuesday 05 November 2013, [Online: Skype].

Seck, S., Western Law University, conducted Monday 12 August 2013, [Online: Skype].

Wanless, C., Klippensteins Barristers and Solicitors, conducted Wednesday 14 August 2013, [Online: Skype].

Electronic sources:
Australian Permanent Mission and Consulate-General Geneva, Switzerland, 'Human Rights Council – 17th Session Interactive dialogue with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Representative of the UN Secretary General on the issue of human rights and transnational Corporations and other business enterprises, and the Special Rapporteur on the independence of judges and lawyers, Statement by Australia', no date specified, [URL: http://www.geneva.mission.gov.au/gene/Statement208.html], consulted 01 October 2012.

Barrick Gold, 'Corporate Social Responsibility Charter', no date specified, [URL: http://www.barrick.com/files/responsibility/Barrick-CSR-Charter.pdf], consulted 01 August 2014.

Barrick Gold, 'CSR Advisory Board', no date specified, [URL: http://www.barrick.com/responsibility/csr-advisory-board/], consulted 01 August 2014.

Business and Human Rights Resource Centre 'Contribution by the Government of the Netherlands to the renewed EU-strategy for CSR', 01 July 2012, [URL: http://business-humanrights.org/en/pdf-contribution-by-the-government-of-the-netherlands-to-the-renewed-eu-strategy-for-csr], consulted 01 October 2012.

Business and Human Rights Resource Centre, 'ICAR-DIHR National Action Plans Project', no date specified, [URL: http://business-humanrights.org/en/un-guiding-principles/implementation-tools-examples/implementation-by-governments/by-type-of-initiative/national-action-plans/icar-dihr-national-action-plans-project], consulted 20 December 2014.

Business & Human Rights Resource Centre, 'Introduction - Introductory description of the Special Representative's mandate and the UN "Protect, Respect and Remedy" Framework', July 2009, [URL: http://www.business-humanrights.org/SpecialRepPortal/Home/Introduction], consulted 01 March 2012.

Business and Human Rights Resource Centre, 'National Action Plans', no date specified, [URL: http://business-humanrights.org/en/un-guiding-principles/implementation-tools-

examples/implementation-by-governments/by-type-of-initiative/national-action-plans], consulted 20 December 2014.

Business and Human Rights Resource Centre, 'Special Representative Ruggie first issues the final text of the Guiding Principles for the Consideration of the UN Human Rights Council in March 2011 announcement', 24th March 2011, p. 1, [URL: http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-press-release-24-mar-2011.pdf], consulted 03 March 2011.

Business & Human Rights Resource Centre, 'UN action following end of mandate', no date specified, [URL: http://www.business-humanrights.org/SpecialRepPortal/Home/UNactionfollowingendofmandate], consulted 03 March 2012.

Business & Human Rights Resource Centre, 'United Nations Working Group on business and human rights – Members & mandate', 01 March 2012, [URL: http://www.business-humanrights.org/Documents/UNWorkingGrouponbusinesshumanrights/Membersmandate], consulted 03 March 2012.

Canadian Roundtable National Advisory Group, 'National Roundtables on Corporate Social Responsibility (CSR) and the Canadian Extractive Industry in Developing Countries – Advisory Group Report', 29 March 2007, [URL: http://www.pdac.ca/pdac/misc/pdf/070329-advisory-group-report-eng.pdf], p. i, consulted 09 October 2012.

Center for Constitutional Rights, 'Filartiga v. Pena-Irala', no date specified, [URL: http://ccrjustice.org/ourcases/past-cases/fil%C3%A1rtiga-v.-pe%C3%B1-irala], consulted 29 December 2014.

Centre for Excellence in CSR, '2011 Progress Report and 2012 Priorities', 2011, [URL: URL: http://web.cim.org/csr/documents/Block118_Doc145.pdf], Pp 4-8, consulted 17 January 2013.

Collections Canada, 'By Executive Decree', 20 September 2005, [URL: http://www.collectionscanada.gc.ca/decret-executif/023004-3010-e.html], consulted 20 November 2012.

Council of Europe, 'Corporate social responsibility in the field of human rights', no date specified, [URL: http://www.coe.int/t/dghl/standardsetting/hrpolicy/other_committees/hr_and_business/default_EN.asp], consulted 21 December 2014.

Council of Europe Parliamentary Assembly, 'Resolution 1757 Human rights and business' 2010, [URL: http://www.assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta10/ERES1757.htm], consulted 26 December 2014.

Council of Europe Parliamentary Assembly, 'Recommendation 1858 Private military and security firms and erosion of the state monopoly on the use of force ', 2009, [URL: http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta09/EREC1858.htm], consulted 24 December 2014.

Council of Europe Parliamentary Assembly, 'Recommendation 1936 Human rights and business', 2010, [URL: http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta10/EREC1936.htm], consulted 26 December 2014.

Council of Europe Steering Committee for Human Rights, 'Draft Preliminary Study on Corporate Social Responsibility in the Field of Human Rights: Existing Standards and Outstanding Issues', Strasbourg, 4 June 2012, [URL: http://www.coe.int/t/dghl/standardsetting/cddh/CDDH-DOCUMENTS/CDDH_2012_012_en.pdf.], consulted 22 December 2014.

Council of Europe Steering Committee for Human Rights, 'Feasibility Study on Corporate Social Responsibility in the Field of Human Rights', Strasbourg, 30 November 2012, [URL: https://wcd.coe.int/ViewDoc.jsp?id=2015241&Site=CM], consulted 23 December 2014.

Department of Foreign Affairs and International Trade Canada, 'Canada's International Human Rights Policy', no date specified, [URL: http://www.international.gc.ca/rights-droits/policy-politique.aspx?lang=eng], consulted 23 October 2013.

Department of Foreign Affairs and International Trade Canada, 'Canada's Enhanced Corporate Social Responsibility Strategy to Strengthen Canada's Extractive Sector Abroad',14 November 2014, [URL: http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/csr-strat-rse.aspx?lang=eng], consulted 05 February 2015.

Department of Foreign Affairs and International Trade Canada, 'Corporate Social Responsibility – Building the Canadian Advantage: A Corporate Social Responsibility (CSR) strategy for the Canadian International Extractive Sector', March 2009, [URL: http://www.international.gc.ca/trade-agreements-accords-commerciaux/ds/csr-strategy-rse-stategie.aspx?view=d], consulted 28 October 2012.

Department of Foreign Affairs and International Trade Canada, 'Canada's International Market Access Report 2009 – Chapter 11 Corporate Social Responsibility', 2009, [URL: http://www.international.gc.ca/trade-agreements-accords-commerciaux/cimar-rcami/2009/11_corporate-entreprise.aspx?view=d], consulted 01 October 2012.

Department of Foreign Affairs and International Trade Canada, 'Canada's International Human Rights Policy', no date specified, [URL: http://www.international.gc.ca/rights-droits/policy-politique.aspx?view=d], consulted 25 September 2012.

Department of Foreign Affairs and International Trade Canada, 'PROTOCOL – The Office of the Corporate Social Responsibility Counsellor for the Extractive Sector and National Contact Point for OECD Guidelines for Multinational Enterprises', 04 October 2010, [URL: http://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/Counsellor_protocol_conseiller.aspx?lang=eng&view=d], consulted 11 November 2012.

Department of Foreign Affairs and International Trade Canada, 'Corporate Social Responsibility – What's New', 2012, [URL: http://www.international.gc.ca/trade-agreements-accords-commerciaux/ds/csr.aspx?view=d], consulted 28 October 2012.

Department of Foreign Affairs and International Trade Canada, 'Order requiring persons in Canada to give notice of communications relating to, and prohibiting such persons from complying with, an extraterritorial measure of the United States that adversely affects trade or commerce between Canada and Cuba' cited from The Nova Scotia-Cuba Association, January 18, 1996, No. 8, [URL: http://www.chebucto.ns.ca/ccn/info/CommunitySupport/NSCUBA/FEMA96.html], consulted 26 July 2014.

Department of Foreign Affairs and International Trade Canada – Office of the Corporate Social Responsibility Counsellor, 'About Us', 27 November 2012, [URL:

http://www.international.gc.ca/csr_Counsellor-conseiller_rse/About-us-A-propos-du-bureau.aspx?lang=eng&menu_id=7&view=d], consulted 20 November 2012.

Department of Foreign Affairs and International Trade Canada – Office for the Corporate Social Responsibility (CSR) Counsellor, 'Closing report – Request for review file #2011-01-MEX', October 2011, [URL: http://www.international.gc.ca/csr_Counsellor-conseiller_rse/assets/pdfs/Closing_report_MEX.pdf], consulted 28 November 2012.

Department of Foreign Affairs and International Trade Canada – Office for the Corporate Social Responsibility (CSR) Counsellor, 'Request for review #2012-03-ARG Interim Report #1', August 2012, [URL: http://www.international.gc.ca/csr_Counsellor-conseiller_rse/assets/pdfs/interim_report-rapport_provisoir_01-eng.pdf], Pp. 4-5, consulted 29 November 2012.

Department of Foreign Affairs and International Trade Canada, 'Office of the Extractive Sector Corporate Social Responsibility: Review Process', no date specified, [URL: http://www.international.gc.ca/csr_Counsellor-conseiller_rse/assets/pdfs/review_process-processus_examen-eng.pdf], consulted 21 November 2012.

Department of Foreign Affairs and International Trade Canada, 'Office of the Extractive Sector Corporate Social Responsibility: Review Process in Brief', no date specified, [URL: http://www.international.gc.ca/csr_Counsellor-conseiller_rse/assets/pdfs/review_process-processus_examen-eng.pdf], consulted 21 November 2012.

Department of Foreign Affairs and International Trade Canada – Office for the Corporate Social Responsibility (CSR) Counsellor, 'Field Visit Report Mexico May 2011', May 2011, [URL: http://www.international.gc.ca/csr_Counsellor-conseiller_rse/assets/pdfs/Field%20visit%20report%20Mexico%20May%202011.pdf], consulted 28 November 2012.

Department of Foreign Affairs and International Trade Canada – Office of the Corporate Social Responsibility Counsellor, 'What We Do', 25 September 2012, [URL: http://www.international.gc.ca/csr_Counsellor-conseiller_rse/what-we-do-ce-que-nous-faisons.aspx?lang=eng&menu_id=57&view=d], consulted 21 November 2012.

Department of Foreign Affairs and International Trade Canada, 'Privacy Impact Assessment for Extractive Sector Corporate Social Responsibility (CSR) Counsellor – Executive Summary', 06 June 2012, [URL: http://www.international.gc.ca/about-a_propos/atip-aiprp/responsibility-responsabilite.aspx?view=d], consulted 20 November 2012.

Department of Foreign Affairs and International Trade Canada, 'Procedures Guide for Canada's National Contact Point for the Organisation of Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises', February 2012, [URL: http://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/procedures_guide_de_procedure.aspx?lang=eng&menu_id=31], consulted 13 May 2013.

Department of Foreign Affairs and International Trade Canada, 'PROTOCOL – The Office of the Corporate Social Responsibility Counsellor for the Extractive Sector and National Contact Point for the OECD Guidelines for Multinational Enterprises', October 2010, [URL: http://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/Counsellor_protocol_conseiller.aspx?lag=eng&menu_id=33], consulted 07 May 2013.

Department of Foreign Affairs and International Trade Canada, 'What's New', December 2012, [URL: http://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/new-neuf.aspx?lang=eng&menu_id=2], consulted 03 May 2013.

European Commission, 'Europe 2020: Commission proposes new economic strategy', 03 March 2010, [URL: http://ec.europa.eu/news/economy/100303_en.htm], consulted 22 December 2014.

European Commission, 'Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions – A renewed EU strategy 2011-14 for Corporate Social Responsibility', Brussels, 25 October, 2011, [URL: http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr/new-csr/act_en.pdf.], consulted 21 December 2014.

European Commission, 'Sustainable and responsible business – corporate social responsibility – New European policy', 14 September 2011, [URL: http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/index_en.htm], consulted 01 October 2012.

European Commission, 'Green Paper promoting a European framework for corporate social responsibility', 18 July 2001, [URL: http:// europa.eu/rapid/press-release_DOC-01-9_en.pdf], consulted 20 December 2014.

European Council, 'Council Conclusions', 17 June 2010, [URL: http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/115346.pdf], consulted 22 December 2014.

European Parliament, 'Lisbon European Council Presidency Conclusions', 23rd & 24th March, 2000, [URL: http://www.europarl.europa.eu/summits/lis1_en.htm], consulted 08 December 2014.

Evans, M.., 'Lessons learned from CSR Counsellor', Foreign Affairs, international trade and development-Op Ed Embassy, January 2012, [URL:http://www.international.gc.ca/csr_Counsellor-conseiller_rse/publications/lessons_learned-lecons_tirees-2012-01.aspx?lang=eng].

Government of Canada, 'Harper Government Launches Cross-Country Extractive Sector Consultations', 18 September 2013, [URL: http://news.gc.ca/web/article-eng.do?nid=772939], consulted 22 October 2013.

Government of Canada, 'Office of the Extractive Sector Corporate Social Responsibility Counsellor Annual Report to Parliament', October 2009 – October 2010, [URL: http://www.international.gc.ca/csr_Counsellor-conseiller_rse/index.aspx?lang=eng], p. 8, consulted 20 November 2012.

Halifax Initiative, 'An Important Step Forward: The Final Report of the National Roundtables on Corporate Social Responsibility and the Canadian Extractive Industry in Developing Countries', no date specified, [URL: http://www.halifaxinitiative.org/updir/CNCAStatement-english-2.pdf], consulted 16 September 2014.

ICAR – DIHR, 'National Action Plans on Business and Human Rights: A Toolkit for the Development, Implementation, and Review of State Commitments to Business and Human Rights Frameworks', June 2014, [URL: http://accountabilityroundtable.org/wp-content/uploads/2014/06/DIHR-ICAR-National-Action-Plans-NAPs-Report3.pdf], consulted 26 December 2014.

ICAR – ECCJ, 'Assessments of Existing National Action Plans (NAPs) on Business and Human Rights', November 2014, p. 1, http://accountabilityroundtable.org/wp-content/uploads/2014/10/ICAR-ECCJ-Assessments-of-Existing-NAPs.pdf, consulted 27 December 2014.

International Monetary Fund, 'About the IMF: The end of the Bretton Woods System (1972-81', no date specified, [URL: http://www.imf.org/external/about/histend.htm], consulted 08 August 2012.

Johnson, M.P., 'File No. DF – Other Initiatives', Government of Canada, Foreign Affairs and International Trade', no date specified, [URL: http://www.sec.gov/comments/s7-40-10/s74010-444.htm], consulted 05 October 2012.

Mennonite Central Committee Canada, 'UN Human Rights Council endorses Guiding Principles on Business and Human Rights', 23 June 2011, [URL: http://mccottawa.ca/stories/news/un-human-rights-council-endorses-guiding-principles-business-and-human-rights], consulted 01 September 2012.

Mining Watch Canada, 'National roundtables on corporate social responsibility (CSR) and the Canadian extractive industry in developing countries – Advisory Group Report', 29 March 2007. Pp 1 – 91, [URL: http://www.Mining Watch.ca/files/RT_Advisory_Group_Report_0.pdf], consulted 09 October 2007.

Natural Resources Canada, 'Sustainable Development – Federal Context', no date specified, [URL: http://www.nrcan.gc.ca/sustainable-development/federal-context/2386], consulted 12 June 2013.

Natural Resources Canada, 'Whitehorse Mining Initiative', no date specified, [URL: http://www.nrcan.gc.ca/mining-materials/policy/government-canada/8698], consulted 27 July 2014.

Natural Resource Governance Institute, 'Canada's Mining Industry Joins Forces with NGOs to Improve Transparency', 06 September 2012, [URL: http://www.resourcegovernance.org/news/press_releases/canada%E2%80%99s-mining-industry-joins-forces-ngos-improve-transparency], consulted 27 July 2014.

Open Parliament Canada, 'Bill C-298 (Historical) Corporate Social Responsibility of Mining Corporations Outside Canada Act', Private Members' Business, 3 April 2009, [URL: http://openparliament.ca/bills/40-3/C-298/], consulted 02 April 2013.

Open Parliament Canada, 'Bill C-486', no date specified, [URL: http://openparliament.ca/bills/41-2/C-486/], consulted 26 October 2014.

Organisation for Economic Co-operation and Development, 'Forum on due diligence in the gold supply-chain', not date specified, [URL: http://www.oecd.org/daf/inv/corporateresponsibility/forumonduediligenceinthegoldsupply-chain.htm], consulted 18 October 2013.

Organisation for Economic Co-operation and Development, 'Gold Supplement to the OECD Due Diligence Guidance', no date specified, [URL: http://www.oecd.org/daf/inv/investmentfordevelopment/goldsupplementtotheduediligenceguidance.htm], consulted 18 October 2013.

Organisation for Economic Co-operation and Development, 'The OECD Guidelines for Multinational Enterprises: Frequently Asked Questions', [URL: http://www.oecd.org/daf/inv/mne/theoecdguidelinesformultinationalenterprisesfrequentlyaskedquestions.htm], consulted 06 May 2013.

Oxford Pro Bono Publico, 'Obstacles to justice and redress for victims of corporate human rights abuse', 2008, [URL: http://www2.law.ox.ac.uk/opbp/Obstacles%20Executive%20summary.pdf], consulted 16 May 2013.

Parliament of Canada, 'Bill C-300', 2nd Session, 40h Parliament, House of Commons of Canada, 2009, [URL: http://parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=3658424], consulted 09 April 2013.

Parliament of Canada, 'Bill C-354', 2nd Session, 40th Parliament, House of Commons of Canada, 2009, [URL: http://parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=3580365&File=27#1], consulted 02 April 2013.

Parliament of Canada, 'Bill C-492', 2nd Session, 39th Parliament, House of Commons of Canada, 2007, [URL: http://parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=3197514], consulted 02 April 2013.

Parliament of Canada, 'Bill C-565', 2nd Session, 39th Parliament, House of Commons of Canada, 2008, [URL: http://parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=3580365&File=27#1], consulted 02 April 2013.

Parliament of Canada, 'Bill C-571', 3rd Session, 40h Parliament, House of Commons of Canada, 2010, [URL: http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=4668098&Language=E&Mode=1&File=27#1], consulted 09 April 2013.

Parliament of Canada, 'Government Response to the Fourteenth Report of the Standing Committee on Foreign Affairs and International Trade – Mining in Developing Countries – Corporate Social Responsibility', October 2005, [URL: http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=2030362&Language=E&Mode=1&Parl=38&Ses=1], consulted 09 October 2012.

Partnership Africa Canada, 'PAC's Work', no date specified, [URL: http://www.pacweb.org/en/about-us/pac-work], consulted 18 October 2013.

Partnership Africa Canada, 'PAC and the Kimberley Process: A History', no date specified, [URL: http://www.pacweb.org/en/pac-and-the-Kimberley-process], consulted 18 October 2013.

A. Pigrau, S. Borras, Jordi J.I. Manzano & A. Cardesa-Salzmann, 'Legal avenues for EJOs to claim environmental liability' Ejold report, No 4, June 2012, p. 57, [URL: http://www.ejolt.org/2012/05/legal-avenues-for-ejos-to-claim-environmental-liability/], consulted 29 December 2014.

Prospectors and Developers Association of Canada, 'Corporate Social Responsibility in the Mineral Industry – Issues & Advocacy', 2012, [URL: http://www.pdac.ca/pdac/advocacy/csr/], consulted 09 October 2012.

Prospectors and Developers Association Canada, 'National Roundtables on Corporate Social Responsibility (CSR) and the Canadian Extractive Industry in Developing Countries', 1 May 2007, p. 1,

[URL: http://www.pdac.ca/pdf-viewer?doc=/docs/default-source/public-affairs/csr-national-roundtables-pdac-response.pdf], consulted 09 October 2012.

Swedish Presidency of the European Union, 'Protect, Respect, Remedy – Making the European Union take a lead in promoting Corporate Social Responsibility, November 2009, [URL: http://www.reports-and-materials.org/sites/default/files/reports-and-materials/EU-Presidency-statement-Protect-Respect-Remedy-Nov-2009.pdf.], p. 1, consulted 20 December 2014.

The Voluntary Principles on Security Human Rights, 'Governments and The Voluntary Principles on Security and Human Rights', no date specified, [URL: http://www.voluntaryprinciples.org/for-governments/], consulted 18 October 2013.

United Nations Council of Human Rights, 'Resolution 2005/69 Human Rights and Trans-national Corporations and Other Business Enterprises', 20 April 2005, [URL: http://www.ohchr.org/EN/Issues/Business/Pages/SRSGTransCorpIndex.aspx], consulted 03 March 2012.

United Nations Global Compact, 'UN Framework: Guiding Principles for the Implementation of the UN "Protect, Respect and Remedy" Framework', 22 December 2011, [URL: http://www.unglobalcompact.org/issues/human_rights/The_UN_SRSG_and_the_UN_Global_Compact.html].

United Nations Global Compact, 'Overview of the UN Global Compact, 1 December 2011, [URL: http://www.unglobalcompact.org/AboutTheGC/index.html], consulted 14 March 2014.

United Nations Human Development Report Office, 'Human Security', February 2008, issue 17, p. 1. [URL: http://hdr.undp.org/en/media/hdinsights_feb2008.pdf], consulted 05 November 2012.

United Nations Office of the High Commission, 'Guiding Principles on Business and Human Rights – Implementing the United Nations "Protect, Respect and Remedy" Framework', 2011, [URL: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf], consulted 09 August 2013, Pp 1 – 42.

United Nations Office of the High Commissioner of Human Rights, 'Responsibilities of transnational corporations and related business enterprises with regard to human rights', 2004/116. no date specified, [URL:http://www.business-humanrights.org/Documents/UNNorms].

United Nations, 'Secretary-General Appoints John Ruggie of United States Special Representative on Issue of Human Rights, Transnational Corporations, Other Businesses Enterprises', 28 July 2005, United Nations Doc SGA/A/934), [URL: http://www.un.org/News/Press/docs/2005/sga934.doc.htm], consulted 02 March 2012.

United Nations, Secretary-General Appoints John Ruggie of United States Special Representative on Issue of Human Rights, Transnational Corporations, Other Businesses Enterprises, 28 July 2005, United Nations Doc SGA/A/934), [URL: http://www.un.org/News/Press/docs/2005/sga934.doc.htm].

United Nations Office of the High Commissioner for Human Rights, 'Working Group on the issue of human rights and transnational corporations and other business enterprises', no date specified, [URL: http://www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx].

United Nations, 'The Human Rights Council', no date specified, [URL: http://www2.ohchr.org/english/bodies/hrcouncil/], consulted 13 February 2012.

United Nations, 'Office of the United Nations High Commissioner for Refugees – About Us', no date specified, [URL: http://www.unhcr.org/pages/49c3646c2.html], consulted 09 April 2012.

United Steelworkers Canada, 'Getting Serious with Corporate Accountability for Canadian Mining Companies', 2012, p. 11, [URL: http://www.usw.ca/community/global/resources?id=0003], consulted 29 October 2013.

U.S. Department of State, 'Voluntary Principles on Security and Human Rights', 20 December 2012, [URL: http://www.state.gov/j/drl/rls/fs/2012/202314.htm], consulted 18 October 2013.

International Labour Organization, 'About the ILO', no date specified, [URL: http://www.ilo.org/global/about-the-ilo/lang--en/index.htm], consulted 13 February 2012.

Secondary Sources:

Books:

Cernic, J.L., *Human Rights Law and Business: Corporate Responsibility for Fundamental Human Rights*, Europa Law Publishing, Groningen, 2010.

Forsythe, D.P., *Human Rights in International Relations*, Cambridge University Press, New York, 2006.

Glyn, A., *Capitalism Unleashed*, Oxford University Press, UK, 2006.

Haufler, V., *A Public role for the Private Sector: Industry Self-Regulation in a Global Economy*, The Brookings Institute Press, USA, 2001.

Hawes, M., *Assessing the World Economy: The Rise and Fall of Bretton Woods, 'World Politics: Power, Interdependence and Dependence*, Harcourt Brace Jovanovich, Toronto, 1990.

Hoogvelt, A., *Globalization and the postcolonial world: The new political economy of development*, Johns Hopkins University Press, Baltimore, 2001.

Janis, M.W., Kay, R.S., & Bradley, A.W., *European human rights law: text and materials* (3rd edn), Oxford University Press, New York, 2008.

Mares, R., *The UN Guiding Principles on Business and Human Rights – Foundations and Implementation*, Martinus Nijhoff Publishers, Boston 2012.

Nystuen G., Follesdal, A., & Mestad, O. eds, *Human Rights, Corporate Complicity and Disinvestment*, Cambridge University Press, Cambridge, 2011.

Payer, C., *The debt trap: the IMF and the Third World*, Monthly Review Press, New York, 1974.

Simmons (2009), B., *Mobilizing for Human Rights – International Law in Domestic Politics*, Cambridge University Press, New York, 2009.

Soros, G., *The Crisis of Global Capitalism*, Public Affairs, New York, 1998.

Stiglitz, J.E., *Globalization and its Discontents*, WW Norton & Company, 2002, Pp 7-22, 67-88.

Ury W.L., et al eds, *Getting Disputes Resolved: Designing Systems to Cut the Costs of Conflict*, Jossey-Bass, San Francisco. 1988, p. 7.

Chapters in Edited Books:

Clapham, A., 'Corporations and Criminal Complicity' in Nystuen G., Follesdal A., & Mestad, O. eds, *Human Rights, Corporate Complicity and Disinvestment*, Cambridge University Press, Cambridge, 2011, Pp 222-242.

Karin, L., 'Human Rights in the Supply Chain: Influence and Accountability', in Mares, R., (ed) *The UN Guiding Principles on Business and Human Rights: Foundations and Implementation*, Koninklijke Brill, Netherlands, 2012.

Lindsay, N.M., 'Structural Dynamics of Corporate Social Irresponsibility: The Case of the Canadian Mining Industry' in Tench, R., Sun, W., & Jones, B., *Corporate Social Irresponsibility: A Challenging Concept - Critical Studies on Corporate Responsibility, Governance and Sustainability*, Volume 4, United Kingdom, Emerald Books, 2012.

Schmitz, H.P., & Sikkink, K., 'International Human Rights', in Carlsnaes, W., Risse, T., & Simmons (2009), B., *Handbook of International Relations (2nd edition)*, London, Sage, 2002.

Risse, T., & Sikkink, K., 'The socialization of international human rights norms into domestic practices: introduction', in *The Power of Human Rights: international norms and domestic change*, Ropp, S.C. & Sikkink, K., Cambridge University Press, Cambridge,1999.

Risse., T., & Ropp, S.C., 'International human rights norms and domestic change: conclusions', in Ropp, S.C., & Sikkink, K., *The Power of Human Rights: international norms and domestic change*, Cambridge University Press, Cambridge,1999.

Schmitz, H.P., & Sikkink, K., 'International Human Rights', in Carlsnaes, W., et al *The Handbook of International Relations*, Sage, 2002.

Seck, S., 'Collective Responsibility and Transnational Conduct' in Isaacs, T.V., & Richard., V., *Accountability For Collective Wrongdoing*, Cambridge University Press, 2011.

Seck, S., 'Conceptualizing the Home State Duty to Protect Human Rights', in Buhmann, K., Roseberry, L., & Morsing, M., *Corporate Social and Human Rights Responsibilities: Global Legal and Management Perspectives*, Palgrave Macmillan, New York, 2010.

Journal Articles:

Adamski, T.M., 'The Alien Tort Claims Act and Corporate Liability: A Threat to the United States' International Relations', *Fordham International Law Journal*, 2011, Volume 34, issue 06, Pp 1502 – 1543.

Amis, L., 'Business and Human Rights – the risk of being left behind', *New Academy Review*, Volume 02, Number 01, Spring 2003, Pp 101 – 103.

Bachmann, S.D.., 'Civil Liability and Non-state Aiders and Abettors of International Terrorism as an Evolving Notion and International Law', *Journal of International Commercial Law and Technology*, Volume 06, Issue 01, 2011, Pp 1 – 10.

Backer, L.C., 'Multinational corporations, transnational law: the United Nations' Norms on the Responsibilities of Transnational Corporations as a Harbinger of Corporate Social Responsibility in International Law', *Columbia Human Rights Law Review*, Volume 37, 2006, Pp 287-389.

Backer, L., 'Rights and Accountability in Development ('RAID') v Das Air and Global Witness v Afrimex', *Melbourne Journal of International Law*, Volume 10, June 2009, Pp 258 – 307.

Backer, L., 'From Institutional Misalignments to Socially Sustainable Governance: The Guiding Principles for the Implementation of the United Nation's "Protect, Respect and Remedy" and the Construction of Inter-Systemic Global Governance', *Pacific McGeorge Global Business & Development Law Journal*, 2011, Pp 101 – 216.

Bartley, T., 'Institutional Emergence in an Era of Globalization: The Rise of Transnational Private Regulation of Transnational Private Regulation of Labor and Environmental Conditions, *American Journal of Sociology*, Volume 113, Number 2, September 2007, Pp 297 – 351.

Baudenbacher, C., 'Judicialization: Can the European Model be Exported to Other Parts of the World?', *Texas International Law Journal*, Volume 39, Number 03, Spring 2004, Pp 381 – 399.

Bellamy, C., 'Focussing on the European Perspective of Judicial Dialogue: Issues in the Area of Competition Law', *Texas International Law Journal*, Volume 39, Issue 03, Spring 2004, Pp 461 – 465.

Benner, T., Reinicke, W.H., & Witte, J.M., 'Multisectoral Networks in Global Governance: Towards a Pluralistic System of Accountability', *Government and Opposition*, Volume 39, Issue 02, January 2004, Pp 191 – 210.

Bilchitz, D., 'The Ruggie Framework: An Adequate Rubric for Corporate Human Rights Obligations', *International Journal on Human Rights*, Volume 12, 2009, Pp 1 – 87.

Bismuth, R., 'Mapping A Responsibility of Corporations For Violations Of International Humanitarian Law Sailing Between International and Domestic Legal Orders', *Denver Journal of International Law & Policy*, Volume 38, Number 02, 2010, Pp 203 - 226.

Blanton, S.L., & Blanton, R. G., 'Human Rights and Foreign Direct Investment: A Two-Stage Analysis', *Business and Society*, Volume 45, Number 04, December 2006, Pp 464 – 485.

Boon, K. E., ' "Open for Business": International Financial Institutions, Post Conflict Economic Reform, and the Rule of Law', *NYU Journal of International Law and Politics,* Volume 39, 2006, Pp 513 – 581.

Bratspies, R. M., ' "Organs of Society": A please for Human Rights Accountability for Transnational Enterprises and Other Business Entities', *Michigan State University College of Law Journal of International Law*, Volume 13, Number 09, 2005, Pp 9 – 37.

Broecker, C. L., 'Better the Devil You Know: Home State Approaches to Promoting Transnational Corporate Accountability', *New York University Journal of International Law and Politics*, Volume 41, 2008, Pp 1- 70.

Brown, D. L., Vetterlein, A., & Roemer-Mahler, A., 'Theorizing Transnational Corporations as Social Actors: An Analysis of Corporate Motivations', *Business and Politics*, Volume 12, Issue 01, 2010, Pp 1 – 37.

Buergenthal, T., 'The Normative and Institutional Evolution of International Human Rights', *Human Rights Quarterly*, Number 19, no volume listed, The John Hopkins Press, 1997, Pp 704 – 723.

Buhmann, K., 'Regulating Corporate Social and Human Rights Responsibilities at the UN Plane: Institutionalising New Forms of Law and Law-making Approaches?', *Nordic Journal of International Law*, Volume 78, Issue 01, 2009, Pp 1 – 52.

Campagna, J., 'United Nations Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises With Regards to Human Rights: The International Community Asserts Binding Law on the Global Rule Makers', *The John Marshall Law Review*, Volume 37, Issue 04, Summer 2004, Pp 1205 – 1252.

Carasco, E.F., & Singh J. B., 'Human Rights in Global Business Ethics Codes', *Business and Society Review*, Volume 113, Number 03, 2008, Pp 347 – 374.

Cassel, D., 'Corporate Aiding and Abetting of Human Rights Violations: Confusion in the Courts', *Northwestern Journal of Internal Human Rights*, Volume 06, Issue 02, Spring 2008, Pp 304 – 326.

Chesterman, S., 'The Turn to Ethics: Disinvestment from Multinational Corporations for Human Rights Violations – The Case of Norway's Sovereign Wealth Fund', *American University International Law Review*, Volume 23, 2008, Pp 577 – 615.

Chomsky, N., & Herman, E.S., The Washington connection and third world fascism, vol. 1, 1979, South End Press, Pp 32-60.

Clapham, A., 'Business and Humanitarian and Human Rights Obligations', *American Society of International Law*, Proceedings 129, 2006, Pp 129 – 139.

Clohesy, W. W., 'Interrogating Human Rights: What Purpose? Whose Duty?', *Business and Society Review*, Volume 109, Number 01, 2004, Pp 43 – 65.

Clough, J., 'Punishing the Parent: Corporate Criminal Complicity in Human Rights', *Brooklyn Journal of International Law*, Volume 33, Number 03, October 2009, Pp 899 – 2008.

Coumans, C., 'Alternative Accountability Mechanisms and Mining: The Problems of Effective Impunity, Human Rights, and Agency', *Canadian Journal of Development Studies*, Volume 30, Numbers 1 – 2, 2010, Pp 27 – 48.

Cragg, W., 'Human Rights and Business Ethics: Fashioning a New Social Contract', *Journal of Business Ethics*, Issue 27, 2000, Pp 205 – 214.

Cuesta, M., Valor, C., & Holgado, P., 'Irresponsibility through Corporate Eyes: Reporting of Human Rights Compliance by Spanish Listed Companies', *International Journal of Business and Management*, Volume 07, Number 04, February 2012, Pp 69 – 83.

Deva, S., 'The UN Global Compact For Responsible Corporate Citizenship: Is it still too compact to be global?', *Corporate Governance Law Review,* Volume 02, Issue 02, 2006, Pp 145 – 190.

Deva, S., 'UN's Human Rights Norms for Transnational Corporations and Other Business Enterprises: An Imperfect Step in Right Direction', *ILSA Journal of International Comparative Law,* Volume 10, 2004, Pp 493 – 523.

Deva, S., 'Guiding Principles on Business and Human Rights: Implications for Companies', *European Company Law,* Volume 09, Number 02, 2012, Pp 101 – 109.

Dhir, A. A., 'Realigning the Corporate Building Blocks: Shareholder Proposals as a Vehicle for Achieving Corporate Social and Human Rights Accountability', *American Business Law Journal*, Volume 43, Issue 02, Summer 2006, Pp 365 – 412.

Donnelly, J., 'International human rights: a regime analysis', *International Organization,* Volume 30, Number 03, Summer 1986, Pp 599 – 642.

Drimmer, J., 'Human rights and the extractive industries: Litigation and compliance trends', *Journal of World Energy Law & Business,* Volume 03, Number 02, 2010, Pp 121 – 139.

Dubinsky, P.R., 'Human Rights Law Meets Private Law Harmonization: The Coming Conflict', *Yale Journal of International Law,* Volume 30, 2005, Pp 212 – 291.

Duruigbo, E., 'Corporate Accountability and Liability for International Human Rights Abuses: Recent Changes and Recurring Challenges', *Northwestern Journal of International Human Rights,* Volume 06, Issue 02, 2008, Pp 222 – 261.

Elkins, Z., & Simmons (2009),B., 'On Waves, Clusters and Diffusion: A Conceptual Framework', *The Annals of the American Academy*, March, Volume 598, 2005, p. 34.

Elliott, T., 'Risky Business: The Alien Tort Claims Act and the Foreign Corrupt Practices Act Expand the Reach of U.S. Courts in a Global Economy', *Rutgers Law Review*, Volume 62, Number 01, 2009 – 2010, Pp 211 – 239.

Enneking, L.F.H., 'Crossing the Atlantic? The Political and Legal Feasibility of European Foreign Direct Liability Cases', *George Washington International Law Review*, Volume 40, Number 04, 2009, Pp 903 – 938.

Ewing, K.D., 'Constitutional Reform and Human Rights: Unfinished Business?', Edinburgh *Law Review,* Volume 5, 2001, Pp 297 – 324.

Feeney, P., 'Business and Human Rights: The Struggle for Accountability in the UN and the Future Direction of the Advocacy Agenda', *International Journal on Human Rights*, Volume 06, Number 11, December 2009, Pp 161 – 169.

Finnemore, M. & Sikkink, K., 'International Norm Dynamics and Political Change', *International Organization*, Volume 52, Number 04, Autumn 1998, The IO Foundation and the Massachusetts Institute of Technology Pp 887 – 917.

Freeman, B., Pica, M.B., & Camponovo, C.N., 'A New Approach to Corporate Responsibility: The Voluntary Principles on Security and Human Rights', *Hastings International and Comparative Law Review*, Volume 24, Number 423, Spring 2001, Pp 423 – 449.

Frey, B., 'The Legal and Ethical Responsibilities of Transnational Corporations in the Protection of International Human Rights', *Minnesota Journal of Global Trade*, Volume 6, 1997, Pp 153 – 188.

Gambino, A., & Cahn, N., 'Towards a typology of corporate responsibility in different governance contexts: what to do in the absence of responsible country governance', *Georgetown Journal of International Law*, Volume 39, Summer 2008, Pp 655 – 678.

Gallhofer, S., Haslam, J., & Walt, S., 'Accountability and transparency in relation to human rights: A critical perspective reflecting upon accounting, corporate responsibility and ways forward in the context of globalisation, *Critical Perspectives on Accounting*, Volume 22, 2011, Pp 765 – 780.

Greathead, S., 'The Multinational and the "New Stakeholder": Examining the Business Case for Human Rights', *Vanderbilt Journal of Transnational Law*, Volume 35, 2002, Pp 719 – 727.

Guaqueta, A., 'Harnessing corporations: lessons from the voluntary principles on security and human rights in Colombia and Indonesia', *Journal of Asian Public Policy*, Volume 6, Issue 02, 2003, Pp 129 – 146.

Haas, R.D., 'Business's Role in Human Rights in 2048', *Berkeley Journal of International Law*, Volume 26, 2008, Pp 400 – 409.

Haufler, V., 'International Diplomacy and the Privatization of Conflict Prevention', *International Studies Perspectives*, Volume 05, Number 02, 2004, Pp 158 – 163.

Haufler, V., 'The Kimberley Process Certification Scheme: An Innovation in Global Governance and Conflict Prevention', *Journal of Business Ethics*, Volume 89, Supplement 04, 2009, Pp 403 – 416.

Hillemanns, C., 'UN Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights', *German Law Journal*, vol. 4, no. 10,2003, p. 1066.

Hoffman, M. W., & McNulty R. E., 'International Business, Human Rights, and Moral Complicity: A Call for a Declaration on the Universal Rights and Duties of Business', *Business and Society Review*, Volume 114, Number 04, 2009, Pp 541 – 570.

Holzmeyer, C., 'Human Rights in an Era of Neoliberal Globalization: The Alien Tort Claims Act and Grassroots Mobilization in Doe v. Unocal', *Law & Society Review*, Volume 43, Number 02, 2009, Pp 271 – 304.

Idahosa, P., 'Business ethics and development in conflict (zones): The case of Talisman Oil', *Journal of Business Ethics*, Volume. 39, no. 3, 2002, Pp. 227-46.

Kantz, C., 'The Power of Socialization: Engaging the Diamond Industry in the Kimberley Process', *Business and Politics*, Volume 09, Issue 03, 2007, Pp 1 – 20.

Kinley, D., Nolan, J., & Zerial, N., 'The politics of corporate social responsibility: Reflections on the United Nations Human Rights Norms for Corporations', *Company and Securities Law Journal*, Volume 25, Number 01, 2007, Pp 30 – 42.

Kinley, D., & Chambers, R., 'The UN Human Rights Norms for Corporations: The Private Implications of Public International Law', *Human Rights Law Review*, Volume 06, Number 03, 2006, Pp 447 – 497.

Knox, J. H., 'Horizontal Human Rights Law', *American Journal of International Law*, Volume 102, Number 01, 2008, Pp 1 – 75.

Kolk, A., & Van Tulder, R., 'The Effectiveness of Self-regulation: Corporate Codes of Conduct and Child Labour', *European Management Journal*, Volume 20, Number 03, June 2002, Pp 260 – 271.

Kyte, R., 'Balancing Rights with Responsibilities: Looking for the Global Drivers of Materiality in Corporate Social Responsibility & the Voluntary Initiatives That Develop and Support Them', *American University International Law Review*, Volume 23, Number 03, 2007, Pp 559 – 576.

Lim, A., & Tsutsui, K., 'Globalization and Commitment in Corporate Social Responsibility: Cross-National Analyses of Institutional and Political-Economy Effects', *American Sociology Review*, Volume 77, Number 69, December 2011, Pp 69 – 98.

Mantilla, G., 'Emerging International Human Rights Norms for Transnational Corporations', *Global Governance*, Issue 15, 2009, Pp 279 – 298.

Miretski, P.P., & Bachman, S.D., 'Global Business and Human Rights - the UN "Norms on the Responsibility of Transnational Corporations and Other Business Enterprises with Regard to Human Rights" - A Requiem', *Deakin Law Review*, Volume 17, Issue 01, 2012, Pp 1 – 33.

Ruggie, J.G., 'Business and Human Rights: The Evolving International Agenda', *American Society of International Law*, Volume 101, Number 04, October 2007, Pp 819 – 840.

Seck, S., 'Canadian Mining Internationally and the UN Guiding Principles for Business and Human Rights', *The Canadian Yearbook of International Law*, Volume 49, 2012, Pp 51 – 116.

Seck, S., 'Home State Responsibility and Local Communities: The Case of Global Mining', *Yale Human Rights and Development Journal*, Volume 11, Issue 01, Article 11, 2008, Pp 1 – 10.

Seck, S., 'Environmental Harm in Developing Countries Caused by Subsidiaries of Canadian Mining Corporations: The Interface of Public and Private International Law', *The Canadian Yearbook of International Law*, Volume 37, 1999, Pp 139 – 221.

Sikkink, K., 'Transnational Politics. International Relations Theory, and Human Rights', *Political Science and Politics*, Volume 31, Number 03, September 1998, Pp 516 – 523.

Simmons, B., 'Treaty Compliance and Violation', *Annual Review of Political Science*, Volume 13, 2010, Pp 273 – 296.

Stephens, B., 'The Amorality of Profit: Transnational Corporations and Human Rights' *Berkeley Journal of International Law*, no 20, Volume 45, 2002, p. 57.

Taylor, M. B., 'The Ruggie Framework: Polycentric regulation and the implications for corporate social responsibility', *Nordic Journal of Applied Ethics*, Volume 05, Number 01, 2011, Pp 9 – 30.

Udombana, N.J., 'Can the Leopard Change Its Spots-The African Union Treaty and Human Rights', American University International Law Review, Volume 17, 2001, p. 1177.

Udombana, N.J., 'African Human Rights Court and an African Union Court: A Needful Duality or a Needless Duplication', *Brookings. Journal of International Law*, Volume. 28, 2002, p. 811,

Van Dam, C., 'Tort Law and Human Rights: Brothers in Arms On the role of Tort Law in the Area of Business and Human Rights', *Journal of European Tort Law*, Volume 02, Issue 03, November 2011, Pp 221 – 254.

Weissbrodt, D., 'Keynote Address: International Standard-Setting on the Human Rights Responsibilities of Business', *Berkeley Journal of International Law,* Volume 26, 2008, Pp 373 – 391.

Wouters, J., & Ryangaert, C., 'Litigation for overseas corporate human rights abuses in the European Union: the challenge of jurisdiction', *The George Washington International Law Review*, no date specified, Volume 40, p. 944.

Working and Research Papers:

Aaronson, A., 'How Policymakers Can Help Firms Get Rights Right', The George Washington University – The Elliot School of International Affairs, no date specified, Pp 1- 12.

Borzel, T.A., and Honke, J., 'From Compliance to Practice – Mining Companies and the Voluntary Principles on Security and Human Rights in the Democratic Republic of Congo', SFB-Governance Working Paper, Series 25, October 2011, Pp 1 – 40.

Brimmer, E., 'The United States, the European Union and International Human Rights Issues', Center for Transatlantic Relations, Washington D.C., 2002, Pp 1 – 32.

Haufler,V.,' Foreign Investors in Conflict Zones: New Expectations', Department of Government and Politics, University of Maryland, 2005, p. 9.

Haufler, V., 'A Survey of International Regulation of Multinational Corporations: A public role for the private sector: industry self-regulation in a global economy', Carnegie Endowment, 2001, p. 15.

Girshick, R., 'Canada and Human Security: Examining the Trajectory of an Idea in Domestic and International Politics', Midwest Political Science Association Annual Conference, Chicago, April 2009, Pp 1 – 24.

Green, S., & Gregory, H. J., 'The Ripple', International Auditor, February 2005, Pp 48 – 60.

Haufler, V., *New Forms of Governance: Certification Regimes As Social Regulations of the Global Market*, in Meidinger, E., Elliott, C., and Oesten, G., 'Social and Political Dimensions of Forest Certification', Buffalo Legal Studies Research Paper, Number 2015-007, New York, 2003, Pp 237 – 247.

Haufler, V., 'New forms of governance: certification regimes as social regulations of the global market', Social and political dimensions of forest certification, 2003, p. 240.

Haufler, V., 'Foreign Investors in Conflict Zones: New Expectations', Ridgeway Working Group on the Political Economy of International Security, 2006-13, Pp 1 – 22.

Imai, S., Maheandiran, B., Crystal, V., 'Accountability Across Borders: Mining in Guatemala and the Canadian Justice System', Osgoode Hall Law School York University, Research Paper Number 26, 2012, Pp 1 – 45.

Keenan, K., 'Canadian Mining: Still Unaccountable', NACLA Report on the Americas, May/June, 2010, Pp 29 – 42.

Neglia, M., 'The Implementation of U.N. Guiding Principles on Business and Human Rights: Some Reflections on European and US Experiences', Maastricht School of Management, Working Paper No. 2014/35, 4th September 2014, p. 6.

Pinto, P.M., & Zhu, B., 'Fortune or Evil? The Effect of Inward Foreign Direct Investment on Corruption', Saltzman Institute of War and Peace Studies (SIWPS) Working Paper, no. 10, 2008.

Rees, C., 'Mediation in Business-Related Human Rights Disputes: Objections, Opportunities and Challenges', Harvard Kennedy School, Working Paper of the Corporate Social Responsibility Initiative, Number 56, February 2010, Pp 1 – 22.

Simmons (2009), B., & Elkins Z., 'On Waves Clusters and Diffusion: A Conceptual Framework', Annals of the American Academy of Political and Social Science, March 2005, Pp 33 – 51.

Steven, H., et al, 'The International Finance Corporation's performance standards and the Equator Principles: Respecting human rights and remedying violations?', August 2008, Center for International Law, Bank Information Center, BankTrack, Oxfam Australia, World Resources Institute.

Taylor, M. B., Zandvliet, L., and Forouhar, M., 'Due Diligence for Human Rights: A Risk-Based Approach', Social Responsibility Initiative, Working Paper Number 23, October 2009, Pp 1 – 23.

Reports:

Andrea, D., 'One step forward, one step back: An analysis of the International Finance Corporation's sustainable policy, performance standards and disclosure policy', *Halifax Initiative*, Ottowa, 2006.

Friedrich Ebert Foundation, 'Panel discussion: Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights', *Report: Side event to the 60th session of the UN-Commission on Human Rights*, March 25th, 2004, Geneva, p. 2

Girshick, R., 'Canada and Human Security: Examining the Trajectory of an Idea in Domestic and International Politics, *Midwest Political Science Association Annual Conference*, Chicago, April, 2009, Pp 1-3.

Institute for Human Rights and Business, 'Investing the Rights Way- A Guide for Investors on Business and Human Rights', London, 2013, Pp 1 – 77.

Mann, H., 'International Investment Agreements, Business and Human Rights: Key Issues and Opportunities', *International Institute for Sustainable Development - OECD Global Forum on International Investment VII*, 27 – 28 March 2008, Pp 1 – 42.

Moore, J., and Colgrove, G., 'Corruption, Murder and Canadian Mining in Mexico: The Case of Blackfire Exploration and the Canadian Embassy', *United Steeleworkers, Common Frontiers and Mining Watch Canada*, May 2013, Pp 1 – 38.

Pigrau, A., Borras, S., Jaria I.M., J., & Cardesa-Salzmann, A., 'Legal avenues for EJOs to claim environmental liability', *EJOLT Report*, Number 04, 2012, Pp 1 – 96.

Can, O., and Seck, S., 'The Legal Obligations With Respect To Human Rights And Export Credit Agencies', ECA-Watch, *Halifax Initiative Coalition and ESCR-Net*, Final Legal Discussion Paper, July 2006, Pp 1 – 24.

Smith, J.W., 'The world's wasted Wealth 2: Save our wealth, save our environment', *Institute for Economic Democracy*, 1994, Pp 63-66.

Electronic Sources:

Altschuller, S., 'United States to Develop National Action Plan on Responsible Business Conduct', *Corporate Social Responsibility and the Law*, 27 September 2014, [URL:http://www.csrandthelaw.com/2014/09/27/united-states-to-develop-national-action-plan-on-responsible-business-conduct/], consulted 30 December 2014.

AP, 'Canadian judge dismisses lawsuit against Chevron', *Huffington Post*, 1 May 2013, [URL:http://www.huffingtonpost.com/huff-wires/20130501/cn-canada-ecuador-chevron/?utm_hp_ref=green&ir=green], consulted 25 October 2014.

Arieff, I., 'UN: One Year Later Global Compact Has Little to Show', *CorpWatch*, July 27, 2001, [URL: http://www.corpwatch.org/article.php?id=51], consulted 01 March 2012.

Augenstein, D., 'State responsibilities to regulate and adjudicate corporate activities under the European Convention on Human Rights', *Submission to the Special Representative to the United Nations Secretary General (SRSG) on the issue of Human Rights and Transnational Corporations and Other Business Enterprise*, April 2011, p. 3, http://www.academia.edu/1366098/State_Responsibilities_to_Regulate_and_Adjudicate_Corporate_Activities_under_the_European_Convention_on_Human_Rights, consulted 29 December 2014.

Augenstein, D., 'Study of the Legal Framework on Human Rights and the Environment Applicable to European Enterprises Operating Outside the European Union', 2009, *The University of Edinburgh*, p. 7, [URL: http://ec.europa.eu/enterprise/policies/sustainable-business/files/business-human-rights/101025_ec_study_final_report_en.pdf.], consulted 24 December 2014.

Business & Human Rights Resource Centre, 'Introduction', Introductory description of the Special Representative's mandate and the UN "Protect, Respect and Remedy" Framework, July 2009, [URL: http://www.business-humanrights.org/SpecialRepPortal/Home/Introduction], consulted 06 April 2014.

Business and Human Rights Resource Centre, 'Special Representative Ruggie first issues the final text of the Guiding Principles for the Consideration of the UN Human Rights Council in March 2011 announcement, Special Representative of the United Nations Secretary-General for business & human rights, 24th March 2011, [URL: http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-press-release-24-mar-2011.pdf], consulted 09 November 2012.

Business and Human Rights Resource Centre, 'UN "Protect, Respect and Remedy" Framework', no date specified, [URL: http://www.business-humanrights.org/SpecialRepPortal/Home/Protect-Respect-Remedy-Framework]. consulted 09 February 2014.

Business & Human Rights Resource Centre, 'UN action following end of mandate', no date specified, [URL: http://www.business-humanrights.org/SpecialRepPortal/Home/UNactionfollowingendofmandate], consulted 18 August 2013.

Business & Human Rights Resource Centre, 'United Nations Working Group on business and human rights – Members & mandate', 01 March 2012, [URL: http://www.business-humanrights.org/Documents/UNWorkingGrouponbusinesshumanrights/Membersmandate], consulted 18 August 2013.

Canadian Centre for the Study of Resource Conflict –'unpublished report', cited in Whittington, L., 'Canadian mining firms worst for environment, rights: Report', *Toronto Star*, 19 October 2010, [URL: http://www.thestar.com/news/canada/2010/10/19/canadian_mining_firms_worst_for_environment_rights_report.html], consulted 23 October 2013.

CBC News Canada, 'Mining watchdog agency called 'bogus PR job', 31 October 2011, [URL: http://www.cbc.ca/news/canada/mining-watchdog-agency-called-bogus-pr-job-1.978674], consulted 15 September 2014.

CBC News Canada, 'Talisman oil operations prolong Sudan civil war', 1 November 2000, [URL:http://www.cbc.ca/news/canada/talisman-oil-operations-prolong-sudan-civil-war-1.219016], consulted 23 October 2013.

Cheadle, B., 'Harper 'Very Concerned' By Reports Of Canada Spying on Brazil', *Huffington Post*, 10 August 2013, [URL: http://www.huffingtonpost.ca/2013/10/08/brazil-canada-spying_n_4062385.html], consulted 09 August 2014.

Chetty, K., 'Soft law, hard edge?', *The Journal – the Law Society of Scotland*, 19 May 2008, [URL:http://www.journalonline.co.uk/Magazine/53-5/1005273.aspx#.VKeGBdY0w_4], consulted 11 August 2013.

Collenette, P., 'After HudBay ruling, Canadian firms on notice over human rights', *The Globe and Mail*, 24 July 2013, [URL: http://www.theglobeandmail.com/commentary/after-hudbay-ruling-canadian-firms-on-notice-over-human-rights/article13386168/], consulted 30 October 2013.

Compliance and Risk, 'Canada's Conflict Minerals Bill Defeated', 25 September 2014, [URL:http://www.complianceandrisks.com/canadas-conflict-minerals-bill-defeated/], consulted 26 October 2014.

Engler, Y., 'The Canadian Extractive Industry in Context', *Stop The Institute*, no date specified, [URL: http://stoptheinstitute.ca/concerns/the-canadian-extractive-industry-in-context/], consulted 19 May 2014.

Evans, M. D., & MacDonald, G., 'Extracting the risk from mining – Current market gives Canadian companies the opportunity to put fair and effective policies in place', *Canadian Mining Journal*, 27th April 2012, [URL: http://www.canadianminingjournal.com/issues/de.aspx?id=11823], consulted 09 May 2013

Fair Whistleblower, 'Canadian Mining Companies Lack Accountability', no date specified, [URL: http://fairwhistleblower.ca/content/canadian-mining-companies-lack-accountability], consulted 23 October 2014.

Gough, K., 'Bill to hold companies responsible for conflict minerals', *Herald News*, 19 April 2013, [URL:http://thechronicleherald.ca/novascotia/1124331-bill-to-hold-companies-responsible-for-conflict-minerals], consulted 13 June 2013.

Huffington Post, 'Snowden Leaks Show Canada Spied on Brazil: Report', 10 June 2013, [URL:http://www.huffingtonpost.ca/2013/10/07/brazil-canada-spying_n_4055396.html], consulted 08 August 2014.

Karunananthan, M., 'UN must challenge Canada's complicity in mining's human rights abuses', *The Guardian*, 24 April 2014, [URL:http://www.theguardian.com/global-development/poverty-matters/2013/apr/24/un-canada-mining-human-rights], consulted 23 October 2014.

Keenan, K., 'Canadian Mining: Still Unaccountable', *NACLA Report on the Americas*, May/June, 2010, p. 31, [URL: https://nacla.org/article/canadian-mining-still-unaccountable], consulted 05 November 2012.

Lipsett, L., &, Hohn, M., & Thomson, I., 'Recommendations of the National Roundtables on Corporate Social Responsibility and the Canadian Extractive Industry in Developing Countries – Current Actions, Stakeholder Opinions and Emerging Issues', *Report for the Mining Association of Canada's International Social Responsibility Committee, On Common Ground Consultants*, January 2012, [URL:http://oncommonground.ca/wp-content/uploads/2012/07/Final-MAC-Roundtables-Report-_December-21-2011_-_3_5.pdf], p. 4, consulted 29 March 2013.

Lupick, T., 'How Canada Dominates African Mining', *Think Africa Press*, 18 April 2013, [URL:http://thinkafricapress.com/economy/canada-dominates-african-mining], consulted 23 October 2014.

Mahaney, B., 'Blood on your phone', *Capital News Online*, 1 April 2011, [URL:http://www.capitalnews.ca/index.php/news/conflict-in-the-congo-what-role-do-we-play], consulted 10 April 2013.

Maharaj, A., 'Canada leads global interests in CSR', *Corporate Secretary*, 22 August 2011, [URL:http://www.corporatesecretary.com/articles/compliance-ethics-csr/11972/canada-leads-global-interest-csr/], consulted 23 October 2013.

McCarthy, S., 'Ottowa vows to protect 'Canada brand' with social responsibility policy', *The Globe and Mail*, [URL:http://www.theglobeandmail.com/report-on-business/industry-news/energy-and-resources/ottawa-vows-to-protect-canada-brand-with-social-responsibility-policy/article21579511/], consulted 05 February 2015.

Mills, C 'Hudbay's Guatemalan lawsuits to proceed in Canada', *Toronto Star*, 25 February 2013, [URL:http://www.thestar.com/business/2013/02/25/hudbays_guatemalan_lawsuits_to_proceed_in_canada.html], consulted 16 May 2013.

Mining Technology, 'Canada's mining industry rocked as NSA leaks allege illegal espionage', 15 October 2013, [URL: http://www.mining-technology.com/features/featurecanadas-mining-industry-rocked-as-nsa-leaks-allege-illegal-espionage/], consulted 08 August 2014.

Mining Watch Canada, 'Canadian Ambassador Sued for Defaming Documentary Film Maker Steven Schnoor', 29 April 2010, [URL: http://www.Mining Watch.ca/canadian-ambassador-sued-defaming-documentary-film-maker-steven-schnoor], consulted 09 August 2014.

Mining Watch Canada, 'Corporate Accountability in Canada – A Mining Watch Archive', 25 March 2011, [URL: http://www.Mining Watch.ca/article/corporate-accountability-canada-Mining Watch-archive], consulted 20 May 2014.

Mining Watch Canada, 'Barrick Gold', June 11 & August 5 2014, [URL:http://www.Mining Watch.ca/home/company/barrick-gold], consulted 18 August 2014.

Paul, K., 'When Canadian Mining Companies Take Over the World', *Global Journalist*, 12 October 2013, [URL:http://globaljournalist.org/2013/10/when-canadian-mining-companies-take-over-the-world/], consulted 23 October 2014.

Popular Resistance, 'UN Must Challenge Canada's Complicity in Lining's Human Rights Abuses', 10 December 2013, [URL: http://www.popularresistance.org/un-must-challenge-canadas-complicity-in-minings-human-rights-abuses/], consulted 07 August 2014.

Shah, A., 'Corporations and Workers Rights', *Global Issues*, 28 May 2006, [URL: http://www.globalissues.org/article/57/corporations-and-workers-rights], consulted 08 April 2013.

Shah, A., 'WTO Protests in Seattle, 1999', *Global Issues*, 18 February 2001, [URL: http://www.globalissues.org/article/46/wto-protests-in-seattle-1999], consulted 08 June 2013.

Schoemaker, D., 'Ruggie's legal legacy: could human rights become the biggest investor ESG risk?', *Responsible Investor*, 08 March 2012, [URL:http://www.responsible-investor.com/home/article/daan_s/], consulted 22 October 2013.

Sydney, M., 'Bill C-323: A tough on crime idea we actually like', *This Magazine*, 01 November 2011, [URL:http://this.org/blog/2011/11/01/corporate-accountability-bill-c-323/], consulted 07 April 2013.

The Council of Canadians Acting for Social Justice, 'Action Alert: Harper must tear up the Canada-China investment treaty', no date specified, [URL: http://www.canadians.org/tear-up-FIPA], consulted 03 August 2014.

The Economist, 'Reputation Management', 22 November 2014, [URL: http://www.economist.com/news/business/21633871-government-promises-keep-promoting-miners-and-energy-firms-interests-abroad-if-they], consulted 19 May 2014.

Whittington, W.L., 'Canadian mining firms worst for environment, rights: Report', 19th October 2010, *Toronto Star*, [URL:http://www.thestar.com/news/canada/2010/10/19/canadian_mining_firms_worst_for_environment_rights_report.html], consulted 21 October 2013.

Magazines and Newspaper Articles:

Aaronson, S.A., 'Courting International Business', *The Magazine of International Economic Policy*, Spring 2003, Pp 63 – 64.

Kaur, A., 'Ruggie's legal legacy: could human rights become the biggest investor ESG risk?', *Responsible Investor*, 2012, March 8 2012, Pp 1 – 2.

Manby, B., 'The African Union, NEPAD, and Human Rights: The Missing Agenda', *Human Rights Quarterly*, 2004, Pp. 983-1027.

Green, S., & Gregory, HJ., 'The Ripple Effect', *Internal Auditor*, February, 2005, Pp 48 – 60.

APPENDICES

Appendix 1 – March 2007 Roundtable Advisory Group's final report recommendations[395]

2.4.2.1. Independent Ombudsman and Tripartite Compliance Review Committee

It is recommended that the Government of Canada fund as the compliance component of the Canadian CSR Framework the establishment of an independent ombudsman office, mandated to provide advisory, fact-finding and reporting functions, including:

- The provision of general information related to the implementation of Canadian CSR Standards through an advisory role;
- Initial screening of complaints against Canadian companies to determine whether the complaint should be dismissed on the grounds that the nature of the complaint is spurious, and/or whether the complaint is relevant to the Canadian CSR Standards;
- For cases that merit additional consideration, secondary investigation and fact-finding efforts to assess in more detail the material facts related to complaints;
- The publication of the results of the fact-finding process; and
- Public reporting on an annual basis on:
-Complaints that have been dismissed, and why;
-Complaints that have been dealt with and have reached conclusion; and
-Complaints that have not been resolved.

The ombudsman should develop rules of procedure that govern investigations, including the treatment of confidential information. Complaints submitted to the ombudsman by both Canadians and non-Canadians will be expected to include: a clear description of the complaint; an indication of those aspects of the Canadian CSR Standards that the complainant believes have not been met; and the proposed remedy the complainant wishes should flow from the complaint. It is further recommended that the Government of Canada establish a standing tripartite Compliance Review Committee that shall determine the nature and degree of any

[395] *Parliament of Canada,* '38th Parliament 1st Session Committee Report', 29 March 2007, House of Commons, Ottowa, Canada, K1A0A6, [URL: http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=1901089&Language=E&Mode=1&Parl=38&Ses=1], consulted 09 October 2012.

company non-compliance with the Canadian CSR Standards, and may make recommendations with regard to:

- A referral to external dispute-resolution processes;
-Measures to be taken by the company to return to compliance and the monitoring of those measures; and
- A determination that no further action is required.

This determination of compliance—or the nature and degree of non-compliance with regard to the specific aspects of the complaint—and any recommendations will be made public.
In cases of serious non-compliance where the Compliance Review Committee determines that remedial steps have not been or are unlikely to be successful, the Compliance Review Committee will make recommendations with regard to the withdrawal of financial and/or non-financial services by the Government of Canada. The compliance mechanism would apply to all Canadian companies, i.e., those incorporated in Canada and those that have their principal place of management (siège social) in Canada.

Appendix 2 – Full list of CSR Counsellor's activities:

Since the CSR Office's opening on March 2010, it has engaged in a wide range of activities over the past two years many of which are publicly listed and reported upon made available through DFAIT and the Counsellor's website, and others which have occurred without official reporting of what the event entailed.[396] Therefore, for those activities which have been reported upon and made publicly available, such activities can be split into two broad categories - administrative, and educational/informative activities as a means to ordering extensive activities in a clear and simple to understand manner.
The first category – *reporting and application* includes the following activities - each of which will be discussed individually at further length: official documents; review process inquiries and applications, official parliamentary reports and mid-year updates, advisory panel reports, discussion notes, external media publications, and online e-bulletins and electronic updates. The second category –

[396] Note – for a list of all CSR Counsellor's activities during 2009 – 2011, please see 'Office of the Extractive Sector Corporate Social Responsibility (CSR) Counsellor Annual Report to Parliament' for October 2009 – October 2010, and October 2010- October 2011. As there is yet to be any similar report to Parliament for 2012-2013, there is no such similar list available yet for this time period.

educational/informative activities includes the following (which like the first category, will be discussed individually at further length): public consultations, interviews and dialogue sessions with international stakeholders abroad, webinars and webcasts, learning partnerships, public presentations.

Reporting and application:

As the first function of the CSR Officer's mandate requires of them to review CSR practices of Canadian industry projects abroad, the Office has produced several documents about its formal Review Process which has been made publicly available on the CSR Officer's website.[397] These documents seek to inform, guide and educate individuals or stakeholders about why the process exists, what it entails, and subsequent benefits and expected outcomes. Documents ranging from stating rules of procedures and subsequent applications, to cover forms for those seeking to lodge applications for the Review Process have also been created.[398]

In terms of applying the Review Process, the CSR Office has received three requests, two of which have failed due to withdrawal from the process or not being deemed viable for continuation, and the remaining in a state of limbo as to whether the process will continue. The first request for review was submitted on the11th of April 2011 by (a)Excellon workers: Jorge Luis Mora, Secretary General, Section 309 Executive Committee, National Mining Union representing workers at the Platosa mine site; (b) National Mining Union; and (c) Proyecto de Derechos Economicos, Sociales y Cultural A.C. (ProDESC) against Excellon Resources Inc. regarding a mining project in Mexico.[399]

The CSR Officer and Senior Advisor conducted a field trip to Mexico City from the 18th-21st of May 2011. The CSR Officer and Senior Advisor were unable to visit the mine site (located near Torreon, United States of Mexico) as it was not possible at the time due to travel warning by DFAIT.[400] Upon the completion of the field trip, the CSR Counsellor produced its first report providing information about how the Office had acknowledged the request, therefore moving to step three whereby it found the

[397] Note – All of these can be found under the 'Publications' section at [URL: http://www.international.gc.ca/csr_counsellor-conseiller_rse/index.aspx?lang=eng&menu_id=1&view=d.].
[398] *Foreign Affairs and International Trade Canada – Office of the Corporate Social Responsibility (CSR) Officer*, 'Publications', 21 November 2012, [URL: http://www.international.gc.ca/csr_counsellor-conseiller_rse/publications-publications.aspx?lang=eng&view=d], consulted 28 November 2012.
[399] *Foreign Affairs and International Trade Canada – Office for the Corporate Social Responsibility (CSR) Counsellor*, 'Field Visit Report Mexico May 2011', consulted 2 November 2012.
[400] *Foreign Affairs and International Trade Canada – Office for the Corporate Social Responsibility (CSR) Counsellor*, 'Field Visit Report Mexico May 2011', p. 5, consulted 28 November 2012.

request appropriate on the 14th of April 2011. The report then detailed that it had moved to step four of the Review Process by facilitating "a number of face-to-face meetings and telephone calls between the parties to discuss the issues, the request, and the company's response".[401] The report summarised: the objectives of the field trip, noted discussions and meetings that had taken place during the trip, highlighted important themes that had become evident, and concluded that it would continue with the agreed parties in perusing step four of the Review Process.[402]

In July 2011, the CSR Office published a secondary field visit report whereby it visited the mine site and community at La Platosa Mexico in July 2011. During the visit the CSR Officer and her Senior Advisor met with Excellon supervisory and managerial members, workers from the mine, members of the community, and various other stakeholders. The report details activities that occurred during the field trip to the mine site, meetings that occurred with the requesters and concluded that the Office would use the new information to evaluate the next steps to be taken.[403] In fulfilling to meet their "statutory reporting requirements and our commitment to our key guiding principles of transparency and effectiveness" the CSR Office published a closing report for the Mexico case.[404] In sum, the 21 page report details the previous two field trips that had occurred, the issues that had arisen, and ultimately stated that Excellon Inc had withdrawn from the final step of the Review Process as it did not "provide value to the company" and that Excellon believed it was already up to par with its responsibilities and undertaking necessary conversation and dialogue with stakeholders to that of a satisfactory level.[405] The counsellor expressed her regrets that she was "unable to fulfil her mandate" and offered to remain open to any further cooperative efforts should Excellon change its mind in the future.[406]

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[401] *Foreign Affairs and International Trade Canada – Office for the Corporate Social Responsibility (CSR) Counsellor*, 'Field Visit Report Mexico May 2011', p. 4, consulted 28 November 2012.
[402] *Foreign Affairs and International Trade Canada – Office for the Corporate Social Responsibility (CSR) Counsellor*, 'Field Visit Report Mexico May 2011', Pp. 4-6, consulted 28 November 2012.
[403] *Foreign Affairs and International Trade Canada – Office for the Corporate Social Responsibility (CSR) Counsellor*, 'Field Visit Report #2 Mexico Pp 1-6, consulted 28 November 2012.
[404] *Foreign Affairs and International Trade Canada – Office for the Corporate Social Responsibility (CSR) Counsellor,* 'Closing report – Request for review file #2011-01-MEX', October 2011, [URL: http://www.international.gc.ca/csr_counsellor-conseiller_rse/assets/pdfs/Closing_report_MEX.pdf], consulted 28 November 2012.
[405] *Foreign Affairs and International Trade Canada – Office for the Corporate Social Responsibility (CSR) Counsellor*, 'Closing report – Request for review file #2011-01-MEX', p. 3, consulted 28/11/2012.
[406] *Foreign Affairs and International Trade Canada – Office for the Corporate Social Responsibility (CSR) Counsellor*, 'Closing report – Request for review file #2011-01-MEX', p. 3, consulted 28/11/2012.

The second request was received by the CSR Office on the 14th of August, 2011 by Maitre Ahmed Mohamed Lemine against Mauritanian Copper Mines (MCM) (a subsidiary of First Quantum Minerals Ltd.) in regards to a mining project in Mauritania.[407] Whilst this request proceeded to step four of the Review Process – 'informal mediation', it became evident to the CSR Counsellor that information exchange and dialogue was deficient between the two parties which was found to be the root cause for the submission in the first place. As a result, the CSR Officer believed that a suitable business grievance mechanism existed and had not been used appropriately prior to the Review application. MCM offered to consider hiring an independent local convener to educate applicants about the existing business grievance mechanism that existed. In response, the CSR Counsellor closed the file.[408]

The latest Review Process application lodged with the CSR Office was received on July 9th 2012. The lodgers have been identified as The Centre for Human Rights and Environment (CEDHA) and Fundacion Ciudadanos Independientes (FuCI), and the responding party is Canadian company, McEwen Mining Inc.[409] It concerns a mining project in Argentina. The CSR Office accepted the request on July 10 2012, to which it then progressed and passed the intake screening on July 25, 2012. The report identifies that the Office responded to the intake screening step with a letter dated August 9, 2012, that highlighted some concerns that needed to be identified including issues such as local and national judicial matters in Argentina are not within the CSR Office's mandate.[410] In response to this letter, the report states that the parties involved in the request have acknowledged and agreed to such constraints, but does not specify any further action to proceed with the Review Process as of yet.[411]

Annual reports and mid-year updates:

[407] *Foreign Affairs and International Trade Canada – Office for the Corporate Social Responsibility (CSR) Counsellor*, 'Closing Report – Request for Review File Number 2011-02-MAU', February 2012, [URL: http://www.international.gc.ca/csr_counsellor-conseiller_rse/assets/pdfs/2011-02-MAU_closing_report-rapport_final-eng.pdf], p. 3, consulted 28 November 2012.
[408] *Foreign Affairs and International Trade Canada – Office for the Corporate Social Responsibility (CSR) Counsellor*, 'Closing Report – Request for Review File Number 2011-02-MAU', p. 3, consulted 28 November 2012.
[409] *Foreign Affairs and International Trade Canada – Office for the Corporate Social Responsibility (CSR) Counsellor*, 'Request for review #2012-03-ARG Interim Report #1', August 2012, [URL: http://www.international.gc.ca/csr_counsellor-conseiller_rse/assets/pdfs/interim_report-rapport_provisoir_01-eng.pdf], p. 4, consulted 29 November 2012.
[410] *Foreign Affairs and International Trade Canada – Office for the Corporate Social Responsibility (CSR) Counsellor*, 'Request for review #2012-03-ARG Interim Report #1', Pp. 4-5, consulted 29 November 2012.
[411] *Foreign Affairs and International Trade Canada – Office for the Corporate Social Responsibility (CSR) Counsellor*, 'Request for review #2012-03-ARG Interim Report #1', Pp. 5, consulted 29 November 2012.

Due to the very nature of Canadian law, there is a certain degree of obligation that Governmental agencies, bodies or departments provide reports of records collected or produced under the *Access to Information Act* and the *Privacy Act*.[412] As the CSR Office is part of the Government of Canada these laws apply to their treatment and production of information and the CSR Counsellor is "committed to Transparency as one of its key guiding principles".[413] This legal obligation has required that the Office report its annual activities to Parliament which are then published on its website, along with Mid-year updates, and Advisory Panel meeting reports.

The CSR has submitted two annual reports to Parliament thus far- one for the October 2009 – October 2010 period, and the other for October 2010 – October 2011. Given that the 2009/10 report is the first of its kind, much of the information provided concentrates on background information about the Government's 2009 CSR Strategy such as why the Strategy was created, its four pillars and where the CSR Officer's mandate rests within the pillars, Canada's historical foundations in supporting corporate social responsibility, Canadian industry in a global perspective, Canadian leadership, the three key performance standards endorsed at the time pertaining to the CSR Strategy and so on. It is expected that a first report would provide such needed background and context for all Members of Parliament (MPs) who are not familiar with the Government's CSR Strategy or expertise lies within out areas of interest. However what is more noteworthy in the report is the CSR Officer detailing what it has achieved over the past year. According to the report, the CSR Officer's priorities over the 2009/10 year were:

> to build a robust understanding, from a variety of perspectives, of the issues related to CSR and Canada's mining, oil and has companies overseas; to establish the Office (opened in Toronto on 8 March 2010); to collaboratively build the review process, including the rules of procedure and supporting users for potential users; and to sharpen the Office's value proposition.[414]

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[412] *Government of Canada – Office of the Extractive Sector Corporate Social Responsibility Counsellor*, 'Guidance Note No.1: Transparency and Confidentiality: A Guidance
Note for Participants in the Review Process of the Office of the Extractive Sector Corporate Social Responsibility (CSR) Counsellor', September 2012, [URL: http://www.international.gc.ca/csr_counsellor-conseiller_rse/assets/pdfs/guidance_note_orientation_1-eng.pdf], consulted 27 November 2012.
[413] *Government of Canada – Office of the Extractive Sector Corporate Social Responsibility Counsellor*, 'Guidance Note No.1', consulted 28 November 2012.
[414] *Government of Canada – Office of the Extractive Sector Corporate Social Responsibility (CSR) Counsellor*', 'Annual Report to Parliament October 2009 – October 2010', February 2011, [URL: http://www.international.gc.ca/csr_counsellorconseiller_rse/assets/pdfs/CSR%20Counsellor%27s%20annual%20rep

The report moves on to list a range of achievements of the CSR Office over the year including: key dates of the evolution of the Office, the launch of the dispute resolution process on 20 October 2010, extensive engagement in consultations in determining the review process, the publication of a range of public consultation reports on the Office's website, examination of existing review mechanisms as means to gaining a better understanding of current practices and the lessons to be learned from such, and its participation in three key CSR legal workshops which was also reported upon and published on its online website.[415]

The CSR Officer then moves on to forecast a range of objectives over the following year however noting the developing the advisory mandate of the office would be key.[416] Some of the other objectives include:

> increasing awareness of this Office and of the CSR Strategy among companies,
> Communities and other interested parties; increasing number of companies aware of and implementing the endorsed performance guidelines; increased awareness of best practices; increasing number of communities, companies and civil society organizations aware of the review mechanism; a richer public dialogue and more opportunities for cross sector dialogue and partnerships; improved Office capacity to respond to requests for review; and use of the review process.[417]

Each annual report to Parliament is then followed up with a short mid-year update published on the CSR website which provides updates on the Office's activities, highlights and future activities. The first of two such publications entitled *Office of the Extractive Sector CSR Counsellor, Government of Canada – A Mid-Year Update* specifically addresses what the Office has done since the launch of the Review Process on 20 October 2011.[418] It reports that the office has focused on two key areas – (a) spreading the word about Canada's CSR Strategy and the Office's Review Process and ensuring host-countries and their

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ort%20Oct%202009-2010%20FINAL%20FOR%20DIS%E2%80%A6.pdf], p. 2, consulted 29 November 2012.
[415] *Government of Canada – Office of the Extractive Sector Corporate Social Responsibility (CSR) Counsellor'*, 'Annual Report to Parliament October 2009 – October 2010', Pp. 7,18, 19, 22, consulted 29 November 2012.
[416] *Government of Canada – Office of the Extractive Sector Corporate Social Responsibility (CSR) Counsellor'*, 'Annual Report to Parliament October 2009 – October 2010', p. 2, consulted 29 November 2012.
[417] *Government of Canada – Office of the Extractive Sector Corporate Social Responsibility (CSR) Counsellor'*, 'Annual Report to Parliament October 2009 – October 2010', p. 26, consulted 29 November 2012.
[418] *Government of Canada – Office of the Extractive Sector CSR Counsellor*, 'Mid-Year Update 2011', May 31 2011, [URL: http://www.international.gc.ca/csr_counsellor-conseiller_rse/assets/pdfs/Mid-year-update-2011.pdf], consulted 04 December 2012.

communities are aware of the CSR Office through outreach programs; (b) strengthening knowledge on the Review Process and potential recourse applications to ensure the Office functions in a more efficient manner by creating more documents and publications that provide further information for those parties interested in such action.[419] It then provides a brief list of some eight dot-points highlighting activities in the last six months which range of meetings, information dispersion, events and seminars, to official reports, publications and the first request for review.

The second Annual Report to Parliament summarises the activities of the CSR Office during October 2010-October 2011 year, which largely focuses on the development of the Review Process in the lead up to its subsequent launch in 2011. The report sums up four areas that were the key focus of the Office during the year including: "1.Launching the Review Process and beginning work on requests for review, 2.Engaging with stakeholders and enhancing accessibility of the Office, 3. Building the expertise and credibility of the Office, 4. Implementing the advisory mandate".[420] The report then moves on to cite six key achievements during the year including: the launch of the Review Process, building relationships with constituents and raising awareness, maintaining contact with stakeholders, producing 10 publications about the Review Process, establishing an Advisory Panel, and establishing a learning partnership with Ryerson University.[421] As the launch of the Review Process tool was considered the biggest achievement for the Office over the year, a lot of attention is given in the remainder of Report to explaining the Review Process to Parliament such as the Office's mandate, understanding the review mandate, construction of the review mechanism, what the Review Process does, what the Office does and does not do, benefits of the process, how it works and the involved mechanics and information about and how to implement the advisory mandate. In terms of other activities and the specifics of such, a range of appendices and lists of specific activities and milestones are supplied in the report.[422]

The latest official report of the CSR Office was its secondary Mid-year update in May 2012. This report summarises many more, and many different types of activities undertaken by the office from its

[419] *Government of Canada – Office of the Extractive Sector Corporate Social Responsibility (CSR) Counsellor,* 'Mid-Year Update 2011', consulted 04 December 2012.
[420] *Government of Canada – Office of the Extractive Sector Corporate Social Responsibility (CSR) Counsellor*, '2011 Annual Report to Parliament', November 2011, [URL: http://www.international.gc.ca/csr_counsellor-conseiller_rse/assets/pdfs/2011_report_to_parliament-eng.pdf], p. 2, consulted 04 December 2012.
[421] *Government of Canada – Office of the Extractive Sector Corporate Social Responsibility (CSR) Counsellor*, '2011 Annual Report to Parliament', November 2011, p. 3, consulted 04 December 2012.
[422] *Government of Canada – Office of the Extractive Sector Corporate Social Responsibility (CSR) Counsellor*, '2011 Annual Report to Parliament', November 2011, Pp. 24-25, and 33, consulted 04 December 2012.

predecessor Mid-year update in May 2011. Namely, the update specifically notes the growth of interest in the Office as well as its relationships with stakeholders in raising awareness about the Office and its review mechanism tool. Some of its listed highlights over the past six months include: increasing inquiries and engagement with stakeholders, the conclusion of a second request for review, a number of published opinion pieces, hosting numerous roundtables domestically and abroad, the secondary meeting of its Advisory Panel, continued learning partnership with Ryerson University, the Counsellor presenting at a range of seminars and events, and hosting the World Bank Group's Compliance Advisor Ombudsman recent visit in Toronto.[423]

Advisory Panel reports

The Advisory Panel of the CSR Office was created in November 2010 and served to provide advice and contribution to the Office. "The panel serves as a regular engagement forum for understanding, from a variety of perspectives, the challenges, best practices and emerging issues related to corporate social responsibility and Canadian resource companies operating overseas".[424] The panel does not make recommendations or provide input about any requests for review as a means to avoiding any potential conflict or clash of interests, nor is any specific information about specific review cases divulged to panel members. The panel members are comprised of a range of experts on CSR matters and an understanding of Canadian mining and serve in a personal capacity rather than representing any specific group or constituency. Board members include: Ian Smillie (co-chair), William McGuinty (co-chair), Caroline Marrs, Nathan Monash, Glenn Sirgudson, Ugochukwu Ukpabi, and Luc Zandvliet.[425]

Since the Panel's creation in 2010, they have met on two occasions – 7 January 2011, and 25 & 26 January 2012 and the findings of each meeting were reported and published on the CSR Officer's website. The report of the first annual meeting discusses key points of discussion that occurred during

[423] *Government of Canada – Office of the Extractive Sector Corporate Social Responsibility (CSR) Officer*, 'Office of the Extractive Sector CSR Counsellor Mid-year update May 2012', May 2012, [URL: http://www.international.gc.ca/csr_counsellor-conseiller_rse/assets/pdfs/midyear_update-misajour_miannee_2012_05-eng.pdf], consulted 04 December 2012.
[424] *Government of Canada – Office of the Extractive Sector Corporate Social Responsibility (CSR) Officer*, 'Report of the first meeting of the Advisory Panel of the Office of the Extractive Sector Corporate Social Responsibility (CSR) Counsellor', 7 January 2011, Toronto, [URL: http://www.international.gc.ca/csr_counsellor-conseiller_rse/assets/pdfs/Report%20of%20the%20advisory%20panel%20meeting%20Jan%202011.pdf], consulted 05 December 2012.
[425] *Government of Canada – Office of the Extractive Sector Corporate Social Responsibility (CSR) Officer*, 'Report of the first meeting of the Advisory Panel of the Office of the Extractive Sector Corporate Social Responsibility (CSR) Counsellor', 7 January 2011, p. 3, consulted 05 December 2012.

the meeting which included further clarification on the potential role of panel members, how the CSR Officer's six key guiding principles could be operationalized in the CSR Office, ways to maximize the CSR Officer's remaining 1.5 years left in her term through defining indicators of success of the office and future objectives, outcomes and activities during the remaining time, and discussion occurring around how to design the participant guide for the review process.[426]

The secondary report summarises the discussions occurring at the second annual meeting whereby the two-fold mandate of the CSR Counsellor was revisited along with the subsequent roles of the Office. Milestones of the CSR Counsellor and her Office were discussed namely around the success of increasing outreach programs and dialogue with the public and stakeholders, facilitating review process applications, and its participation in varying events, publications and learning partnerships.[427] The report then moves on to discuss concerns addressed by panel members about possible barriers involved in the review process which may prevent parties from participating, whereby the CSR Counsellor clarifies such queries in light of her mandate to address such queries.[428] During the annual meeting, a half day workshop with the World Bank Group's Compliance Advisor Ombudsman (CAO), Meg Ryan and her associates was held in order to learn from CAOs experience in "collaborative problem solving and complex dispute resolution between companies and communities".[429] The remainder of the report notes topics that the CAO discussed during the half day workshop with the Advisory Panel which included topics including: 'making a "judgment"; providing a predictable process; importance of the "neutral assessment"; facilitating a collaborative process; and outreach'.[430]

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[426] *Government of Canada – Office of the Extractive Sector Corporate Social Responsibility (CSR) Officer*, 'Report of the first meeting of the Advisory Panel of the Office of the Extractive Sector Corporate Social Responsibility (CSR) Counsellor', 7 January 2011, Pp 4-7, consulted 05 December 2012.

[427] *Government of Canada – Office of the Extractive Sector Corporate Social Responsibility (CSR) Offic*er, 'Report of the second annual meeting of the Advisory Panel of the Office of the Extractive Sector Corporate Social Responsibility (CSR) Counsellor 25 & 26 January 2012, Toronto, Ontario', March 2012, Pp 3-4, [URL: http://www.international.gc.ca/csr_counsellor-conseiller_rse/assets/pdfs/2012-01_ap_report-rapport_gc-eng.pdf], consulted 06 December 2012.

[428] *Government of Canada – Office of the Extractive Sector Corporate Social Responsibility (CSR) Officer*, 'Report of the second annual meeting of the Advisory Panel of the Office of the Extractive Sector Corporate Social Responsibility (CSR) Counsellor', consulted 06 December 2012.

[429] *Government of Canada – Office of the Extractive Sector Corporate Social Responsibility (CSR) Officer*, 'Report of the second annual meeting of the Advisory Panel of the
Office of the Extractive Sector Corporate Social Responsibility (CSR) Counsellor', p. 3, consulted 06 December 2012.

[430] *Government of Canada – Office of the Extractive Sector Corporate Social Responsibility (CSR) Officer*, 'Report of the second annual meeting of the Advisory Panel of the Office of the Extractive Sector Corporate Social Responsibility (CSR) Counsellor, Pp. 6-8, consulted 06 December 2012.

The CSR Office has also published a separate report of the CAOs visit in which the Office invited the CAO to present a two-day outreach program involving a range of stakeholders including representatives from the mining sector and civil society and the public.[431] The CSR Office is connected to CAO through having identified CAOs conflict resolution mechanism as the best practicing tool (out of a range of other third party mechanisms) in its backgrounder of June 2010. As a result, the CSR Office's approach has and continues to be influenced and informed by CAO.[432] The report is informative about CAO and its three functions, the role of the Ombudsman, how the role of the Ombudsman acts as dispute resolution mechanism, a summary of key lessons that the CAO has learned over the past 10 years, the benefits of the Ombudsman's approach, and information on some selected case studies that the CAO has engaged in to illustrate how the Ombudsman function can be an effective conflict resolution mechanism.

Discussion notes:

The CSR Office has created a new discussion note series which "highlights research studies or global good practice" which reflects the Office's mandate of promoting conflict resolution and prevention between Canadian extractive companies and local project-affected communities abroad. So far, two discussion notes have been published – the first discussion note entitled *Discussion note #1 Focus on a research paper on the costs of community conflict in the extractive industries*, was published in June 2012 and seeks to recap on Rachel Davis and Daniel M. Franks *"The cost of conflict with local communities in the extractive industry"* and discuss how this is relative to Canada's CSR Strategy and informative to the CSR Office and its subsequent practices.[433] The secondary discussion note – *Discussion note #2 Video Series: Corporate Social Responsibility Initiative, Harvard University* explores a collection of recent videos published by the Corporate Social Responsibility Initiative at Harvard University on behalf of the former UN Special Representative on Business and Human Rights, John Ruggie.[434] According to the discussion notes, the CSR Counsellor believes that the three case studies of

[431] *Government of Canada – Office of the Extractive Sector Corporate Social Responsibility (CSR) Officer*, 'A report on the visit of the World Bank Group's Compliance Advisor Ombudsman (CAO) to Toronto, January 2012, February 2012, [URL: http://www.international.gc.ca/csr_counsellor-conseiller_rse/assets/pdfs/2012-01_ap_report-rapport_gc-eng.pdf], consulted 07 December 2012.
[432] *Government of Canada – Office of the Extractive Sector Corporate Social Responsibility (CSR) Officer*, 'A report on the visit of the World Bank Group's Compliance Advisor Ombudsman (CAO) to Toronto', p. 2, consulted 07 December 2012.
[433] *Government of Canada – Office of the Extractive Sector Corporate Social Responsibility (CSR) Officer*, 'Discussion note #1 Focus on a research paper on the costs of community conflict in the extractive industries', June 2012, p. 2, [URL: http://www.international.gc.ca/csr_counsellor-conseiller_rse/assets/pdfs/discussion-note-1-FINAL-English.pdf], consulted 05 December 2012.
[434] *Government of Canada – Office of the Extractive Sector Corporate Social Responsibility (CSR) Officer*, 'Discussion note # 2 Video series: Corporate Social Responsibility Initiative, Harvard University', October 2012,

project conflict illustrates how mediation and dialogue (as used by the Office) can produce positive outcomes and possible resolution.[435]

External media publications:

The CSR Officer has published a range of publications in external media publications as means to spread the word about the office, its mandate and its services as well as inform audiences about corporate social responsibility issues and how this relates to Canadian companies and their business operations. CSR Counsellor, Marketa Evans has so far, published nine CSR articles in the Canadian Mining Journal (CMJ) which granted her a column in each monthly edition beginning in December 2011. To gain an understanding of some of the CSR topics addressed in Marketa's CMJ column headings include: 'Canadian interests and values are aligned', 'Lessons learned from the CSR Counsellor', 'A new problem-solving tool for Canadian companies overseas', 'CSR is now a really hot topic', 'Setting the CBC straight about the CSR Office', 'Extracting a risk from mining', 'Plenty of work done, plenty more to do', 'Resolving company and community conflict', and 'Preventing a resolving social conflicts'.[436]

The CSR Officer has also had four individual publications in various magazines all of which occurred in 2012 including: 'Lessons learned from CSR Counsellor' in Embassy Magazine January, 2012; 'Extracting the risk from mining – Current market gives Canadian companies the opportunity to put fair and effective policies in place' in the Vancouver Sun co-authored with Gary MacDonald April 27, 2012; 'CSR in the Extractive Sector: the Canadian Stamp' in Great Insights in July, 2012; and the third is an article in Canada Now (Colombia) which is not publicly available.[437] Like the CMJ articles, all these articles discuss similar topics of what CSR is, how Canadian companies are increasingly growing in extractive sectors abroad, and how the CSR Office can help inform communities, assist business, and help resolve potential conflict associated with communities and projects abroad.

Online bulletins, subscriptions and updates:

[URL: http://www.international.gc.ca/csr_counsellor-conseiller_rse/assets/pdfs/discussion_note_discussion_02-eng.pdf], consulted 05 December 2012.

[435] *Government of Canada – Office of the Extractive Sector Corporate Social Responsibility (CSR) Officer*, 'Discussion note # 2 Video series: Corporate Social Responsibility Initiative, Harvard University', October 2012, consulted 05 December 2012.

[436] *Canadian Mining Journal*, 'Archives', 2011 – 2012, December 2011 – October 2012 editions, [URL: http://www.canadianminingjournal.com/issues/archives.aspx], consulted 09 December 2012.

[437] *Government of Canada – Office of the Extractive Corporative Social Responsibility (CSR) Officer*, 'Publications', 28 November 2012, [URL: http://www.international.gc.ca/csr_counsellor conseiller_rse/publications-publications.aspx?lang=eng&view=d], consulted 09 December 2012.

Lastly, the CSR Office has created an online subscription mechanism open to the public whereby subscribers receive online updates from the CSR Counsellor. Known as an 'Eblast', some sixteen plus updates have been sent out from October 2011 – November 2012, however the current online Archive of Eblast's remains to be updated and the last update entry is for June 2012.[438] Eblast's contain updates about recent or upcoming events, and/or publications to stakeholders who are interested in staying up to date with information and activities occurring within the CSR Office. Information that is provided in the updates are not exclusive to subscribers only, but rather information that is already publicly available on the CSR Officer's website. According the CSR Officer's 2012 Mid-year update, this mailing list has doubled over the past year.[439]

educational/informative activities:

Public consultations:

Between 7 June and 13 August 2010, the CSR Office held five public consultations across Canada regarding the establishment and designing of a dispute resolution process for Canadian operations operating abroad. More specifically (and in order of events), the workshops occurred in Calgary June 7; Ottawa June 21; Montreal July 8; Vancouver July 20; and Toronto August 5. In fulfilling the CSR Officer's section review section of its mandate as an impartial advisor, the workshops created a legitimate and neutral space for parties to discuss and negotiate disputes in a transparent manner. Attendees consisted of more than 300 stakeholders, 20% of which were comprised of individuals from domestic industry and civil society, and a significantly larger proportion from overseas industry and civil society groups.[440] The purpose of the consultations was twofold – first, due to potential impacts upon such stakeholders the Office thought it necessary to consult with parties that may be affected and to enable such parties to express any ideas or concerns. The Office states that when designing a dispute resolution mechanism it

[438] *Government of Canada – Office of the Extractive Corporative Social Responsibility (CSR) Officer*, 'updates from the CSR Counsellors Office – Eblast Archive', 09 December 2012, [URL: http://www.international.gc.ca/csr_counsellor-conseiller_rse/Updates-from-Office-Nouvelles-du-bureau-du-conseiller.aspx?view=d], consulted 09 December 2012.
[439] *Government of Canada – Office of the Extractive Sector Corporate Social Responsibility (CSR) Officer*, 'Office of the Extractive Sector CSR Counsellor Mid-year update May 2012', May 2012, [URL: http://www.international.gc.ca/csr_counsellor-conseiller_rse/assets/pdfs/midyear_update misajour_miannee_2012_05-eng.pdf], consulted 09/12/2012.
[440] *Government of Canada – Office of the Extractive Corporative Social Responsibility (CSR) Officer*, 'Public Consultations Summary Report', September 2010, p. 2, [URL:http://www.international.gc.ca/csr_counsellor-conseiller_rse/assets/pdfs/Consultations%20Summary%20Report%20Sept%202010.pdf], consulted 03 January 2013.

"must be adaptable to diverse cultural, social, economic and political realities" and that "…the views from international stakeholders were considered particularly critical".[441] Second, the Office believed that such dialogue would ultimately help shape a better informed and diverse result.[442]

Public consultations were comprised of five separate but related activities:1.) full day workshops facilitated by the Office held across Canada, as mentioned above; 2.) a 90 minute interactive webinar; 3.) formal and informal interviews and dialogue activities with stakeholders from Mexico, Mali, and Senegal; 4.) an invitation to stakeholders to offer feedback about the draft rules of procedures and 5.) three legal workshops.[443] According to the final *Public Consultations Summary Report*, four key themes emerged from the consultations. The first being that there is high interest in the CSR Office both domestically and abroad, which was reflected by participant endorsement of the Canadian Governments CSR strategy, high expression of interest in the success of the CSR Officer's objectives, and extensive participation and stakeholder turn out.[444] The second theme that emerged was strong stakeholder support of the participatory approach that the Office is taking. According to the report, many participants appreciated the facilitation of creating space for open dialogue, as well as the impartial stance taken by the Office when mediating between conflicting parties. Third, there is a strong desire to continue to focus on conflict prevention and that the Office will increasingly serve as an informative tool for communities and companies alike in educating parties about social responsible corporate activities abroad. Lastly, the report cites 'articulation of value proposition' whereby the Office has examined the relationship between judicial and non-judicial redress activities and found that if the Office were to take on a more investigative or ___ role, it would be likely that parties would be discouraged from the activities of strong judicial investigation and evidence and ultimately participation.[445] Therefore the Office states that it is important to develop what it describes as 'value of proposition' – where to best place its resources to maximize outcomes and benefits for parties involved.

<u>Interviews and dialogue sessions with international stakeholders abroad:</u>

[441] *Government of Canada – Office of the Extractive Corporative Social Responsibility (CSR) Officer*, 'Public Consultations Summary Report', September 2010, p. 4, consulted 03 January 2013.
[442] *Government of Canada – Office of the Extractive Corporative Social Responsibility (CSR) Officer*, 'Public Consultations Summary Report', p. 4, consulted 03 January 2013.
[443] *Government of Canada – Office of the Extractive Corporative Social Responsibility (CSR) Officer*, 'Public Consultations Summary Report', p. 4, consulted 03 January 2013.
[444] *Government of Canada – Office of the Extractive Corporative Social Responsibility (CSR) Officer*, 'Public Consultations Summary Report', p. 6, consulted 03 January 2013.
[445] *Government of Canada – Office of the Extractive Corporative Social Responsibility (CSR) Officer*, 'Public Consultations Summary Report', p. 8, consulted 03 January 2013.

As part of its public consultations, the CSR Counsellor has visited five countries abroad – Colombia, Tanzania, Mexico, Mali, and Senegal in 2010 as a means to seeking input from communities, civil society, industry and governments in which Canadian extractive companies are present.[446] Three individual reports have been produced for the Counsellor's visits to Mexico, Mali, and Senegal reporting on events, activities and outcomes that occurred as a result of the Counsellors trips. However, no such similar reports or further details detailing the Counsellor's visits to either Colombia or Tanzania have been produced and/or been made available online, but rather only mentioned in the Office's Mid-year update for May 2012 as "we held roundtable sessions in Colombia, Tanzania…since October".[447] Similarly, it was made evident that the Counsellor had also convened a range of roundtables in Peru and Burkina Faso in the Counsellor's 2010-2011 annual report to parliament though any reports of what such visits entailed have either not been produced, or at least been made publicly available through the Counsellor's website.[448]

The first report details the Counsellor's visit to Mexico City during the 17th and 18th of June 2010, whereby four key events took place as part of the Counsellor's official visit. The first, consisted of a roundtable with Canadian Embassy officials on June 17, whereby Canada's CSR Strategy and the CSR Counsellor's subsequent role was discussed to ensure that officials were familiar with the Office's role and help assist the Counsellor's office in accomplishing its mandate. The roundtable also allowed embassy officials to share their views about local issues relating to mining and state authorities and the importance of developing good relationships with communities.[449] The second event - a dinner which took place on the June 17 between the Counsellor, Canada's Ambassador to Mexico, His Excellency Guillermo Rishchynski, Embassy employees and organisations from civil society, provided the opportunity for parties to discuss their thoughts about Canadian extractive companies and their operations in Mexico and issues relating to CSR.[450] According to the CSR Office, the purpose of this event

[446] *Government of Canada – Office of the Extractive Corporative Social Responsibility (CSR) Officer*, 'Meeting Summary Report – Mexico City, June 17 and 18, 2010', June 2010, Pp 3-4, [URL: http://www.international.gc.ca/csr_counsellor-conseiller_rse/assets/pdfs/Mexico%20report%20English.pdf], consulted 28 January 2013.
[447] *Government of Canada – Office of the Extractive Corporative Social Responsibility (CSR) Officer*, 'Office of the Extractive Sector CSR Counsellor Mid-year update May 2012', May 2012, [URL: http://www.international.gc.ca/csr_counsellorconseiller_rse/assets/pdfs/midyear_updatemisajour_miannee_2012_05-eng.pdf], consulted 18 February 2013.
[448] *Government of Canada, 'Office of the Extractive Sector Corporate Social Responsibility Counsellor*, '2011 Annual Report to Parliament', October 2010 – October 2011, Toronto, p. 3.
[449] *Government of Canada – Office of the Extractive Corporative Social Responsibility (CSR) Officer*, 'Meeting Summary Report – Mexico City, June 17 and 18, 2010', June 2010, p.3 , consulted 28 January 2013.
[450] Note – civil society groups included: PRODESC, Universidad Autonoma Metropolitana, Centro Juridico de los

was to "illuminate the sorts of social, environmental and human rights issues that Mexican groups are dealing with on-the-ground".[451] The third event was another roundtable that took place the following day on the 18th of June between the Mining Task Force (MTF) of the Canadian Chamber of Commerce, approximately 20 Canadian mining and exploration companies (all members of MTF) operating in Mexico and the Counsellor. The purpose of the roundtable was to inform and advise such companies on their sustainable development practices. This was achieved by allowing parties to come together to discuss key areas of concern around the complexity of on the ground operations and community expectations and how the CSR Office's role could be given further consideration in light of such concerns.[452] The last of the Counsellor's activities consisted of meeting with officials from the Mexican federal industry ministry Economia with Canadian Embassy officials (including the Ambassador) in attendance on 18 June. This meeting allowed the Counsellor to inform the Mexican government about its role and mandate whilst providing Mexican officials the opportunity to their growing interest in ensuring sustainable development through responsible corporate practices.[453]

The second report summarises the activities of the Counsellor following her visit to Bamako in Male during the 12th and 13th of July 2010. During this visit, the Counsellor facilitated two roundtable sessions and met embassy officials. The first roundtable took place on July 12 and was comprised largely of Canadian companies, but also local communities and industry. Like the previous roundtables in Mexico, the CSR Counsellor explained Canada's CSR Strategy and the mandate of the Office and its wishes to build a conflict resolution mechanism. However, the report cites a range of concerns voiced from participants, namely relating to challenges of proximity, awareness, and sovereignty.[454] There was also a call by communities for Canadian companies to be more aware and sympathetic to the local environments in which they were operating, as well as questioning the likelihood of host country governments seeing the Counsellor's process as an incursion upon their authority.

Derechos Humanos, and the United Nations High Commission for Human Rights.

[451] *Government of Canada – Office of the Extractive Corporative Social Responsibility (CSR) Officer*, 'Meeting Summary Report – Mexico City, June 17 and 18, 2010', June 2010, p. 3, consulted 28 January 2013.

[452] *Government of Canada – Office of the Extractive Corporative Social Responsibility (CSR) Officer*, 'Meeting Summary Report – Mexico City, June 17 and 18, 2010', June 2010, p. 4, consulted 28 January 2013.

[453] *Government of Canada – Office of the Extractive Corporative Social Responsibility (CSR) Officer*, 'Meeting Summary Report – Mexico City, June 17 and 18, 2010', June 2010, p. 4, consulted 28 January 2013.

[454] *Government of Canada – Office of the Extractive Corporative Social Responsibility (CSR) Officer*, 'Meeting Summary Report – Bamako, Mali, July 12 and 13, 2010', June 2010, p. 4, [URL: http://www.international.gc.ca/csr_counsellor-conseiller_rse/assets/pdfs/Mali%20%20report.pdf], consulted 28 January 2013.

The final public consultation abroad reported on the CSR Officer's trip to Senegal during the 13-14th of July 2010. The Office reports that West Africa is an important focus because it is "the largest non-African investor in the African mining sector" and more specifically, Senegal's bilateral import/export relationship has grown substantially over recent years.[455] This report dedicates more time to background information about Senegal's growing mining sector and Canadian investment, including Senegalese efforts to build their own regulatory and legal institutional frameworks. The report praises Senegal's devotion to contributing to the global development of CSR principles as well its role in furthering CSR dialogue in West Africa.[456] The report then moves on to describe four specific activities that the CSR Officer engaged in during her visit – including three roundtable sessions and one official meeting.

The first of these roundtables' occurred on July 14th between the CSR Officer and civil society organizations. It was moderated by Senior Trade Commissioner Nicolas Lepage and Canada's Ambassador to Senegal his Excellency Jean Pierre Bolduc opened the roundtable with his views on Canada's commitment to CSR principles and the subsequent responsibility of Canadian companies follow such principles whilst operating in Senegal.[457] Overall the Counsellor reports that Canada's CSR strategy and the Office's conflict resolution mechanism was well received and seven key themes/recommendations emerged as means to tailoring the mechanism to the Senegalese experience. The included: engaging with local powers and government to avoid an incursion into Senegalese authority; to give Senegalese their own role/missions to increase accessibility to communities which would also help enhance their continued future development; develop preventative tools to ensure that companies and communities alike are aware of operating context; consider developing post-agreement monitoring to ensure parties continue their commitments after conflict resolution; for the Office to let go of any legalistic language and focus namely on communication in order to find local solutions and leadership; ensure the process of review is clear and each step transparently communicated to all

[455] *Government of Canada – Office of the Extractive Corporative Social Responsibility (CSR) Officer*, 'Meeting Summary Report, Senegal, July 13 and 14, 2010', September 2010, Pp 2-3, [URL: http://www.international.gc.ca/csr_counsellor-conseiller_rse/assets/pdfs/Senegal%20ReportFINAL.pdf], consulted 31 January 2013.
[456] *Government of Canada – Office of the Extractive Corporative Social Responsibility (CSR) Officer*, 'Meeting Summary Report, Senegal, July 13 and 14, 2010', p. 4, consulted 31 January 2013.
[457] *Government of Canada – Office of the Extractive Corporative Social Responsibility (CSR) Officer*, 'Meeting Summary Report, Senegal, July 13 and 14, 2010', p. 4, consulted 31 January 2013.

parties; questions concerning the constraints of the Office and how they operate within pre-existing norms or rules such as the Global Compact.[458]

The second roundtable took place on July 14 with ten private sector industry representatives including both Canadian and non-Canadian companies – namely Senegalese industry associations and business groups. Like many of the other Counsellor's previous roundtables, a broad discussion about the Canadian government's CSR strategy and the Counsellor's subsequent mandate was discussed along with the importance of industry discussion and input when developing a review mechanism.[459] Some key themes that emerged from roundtable discussions included: 1.) that Canada's CSR strategy is valuable in furthering better CSR standards and conditions in Senegal and potential to prevent conflict and thus should be encouraged; 2.) it is a formal process entering into an informal country and thus it is important for the office and local authorities and communities alike to work together. Concerns over a conflict resolution mechanism and its potential to detract from local authority, as well as the importance of enhancing community benefits and education were discussed.[460]

The third roundtable took place on July 13, 2010 between the Counsellor and Canadian Embassy officials. The purpose of the meeting was to educate staff about the Canadian Government's CSR Initiative as well as update officials on the progress and mandate of the Counsellor's Office. The Roundtable allowed embassy officials to share their insight about how there might be a role of localized missions that could support the office as well any potential barriers in doing so.[461]

The last activity of the Counsellor's visit consisted of meeting with Senegalese federal officials including the Minister of Mining and Industry and his advisors on July 13. Naturally, the Counsellor discussed the Canadian Government's CSR strategy as well as the Counsellor's mandate, but also allowed Senegalese officials the opportunity to discuss the state of mining, examples of community engagement and possibly creating a more thorough and modern mining code that takes CSR issues into consideration.

[458] *Government of Canada – Office of the Extractive Corporative Social Responsibility (CSR) Officer*, 'Meeting Summary Report, Senegal, July 13 and 14, 2010', Pp. 5-6, consulted 31 January 2013.
[459] *Government of Canada – Office of the Extractive Corporative Social Responsibility (CSR) Officer*, 'Meeting Summary Report, Senegal, July 13 and 14, 2010', p. 7, consulted 05 February 2013.
[460] *Government of Canada – Office of the Extractive Corporative Social Responsibility (CSR) Officer*, 'Meeting Summary Report, Senegal, July 13 and 14, 2010', Pp 7-8, consulted 05 February 2013.
[461] *Government of Canada – Office of the Extractive Corporative Social Responsibility (CSR) Officer*, 'Meeting Summary Report, Senegal, July 13 and 14, 2010', p. 8, consulted 05 February 2013.

Overall, Senegalese officials expressed a strong support for the Office and the desire to work with the Counsellor as a means to improve Senegalese CSR performance in the extractive sector.[462]

Webinars and webcasts:

In May 2012 the CSR Counsellor's Office launched a series of webinar discussions consisting of a 60 minute online interactive webinar. The webinars are free to the public and individuals will receive notifications of upcoming webinars providing that they are subscribed to the Office's updates and E-bulletins and must have possess a computer and internet connection in order to access the webinar. The purpose of the webinars are to educate the public "…about the work of the Office and its conflict resolution tool, designed to promote dialogue and problem solving between project-affected communities and Canadian mining, oil and gas companies outside of Canada". During the webinar, users have the opportunity to ask the Counsellor questions via chat.[463]

The Office has also provided a live webcast whereby the Counsellor and Ryerson University hosted an outreach event with the World Bank's Compliance Officer (CAO) Meg Taylor in Toronto on January 26, 2012.[464] The webcast has been recorded and made available on the Ryerson University's website.[465] As noted previously, the CSR Office is connected to CAO through having identified CAOs conflict resolution mechanism as the best practicing tool (out of a range of other third party mechanisms) in its backgrounder of June 2010. The webcast discussed a range of subjects relating to the CAOs objectives, how the office works with two case studies as illustrative examples, and what it has learned over the past ten years including: emerging trends, accessibility and outreach, and current cases.[466]

Learning partnerships:

[462] *Government of Canada – Office of the Extractive Corporative Social Responsibility (CSR) Officer*, 'Meeting Summary Report, Senegal, July 13 and 14, 2010', p. 9, consulted 05 February 2013.
[463] *Government of Canada – Office of the Extractive Corporative Social Responsibility (CSR) Officer*, 'Updates from the CSR Counsellors Office – Eblast Archive', no date specified, [URL: http://www.international.gc.ca/csr_counsellor-conseiller_rse/Updates-from-Office-Nouvelles-du-bureau-du-conseiller.aspx?view=d], consulted 06 February 2013.
[464] *Government of Canada – Office of the Extractive Corporative Social Responsibility (CSR) Officer*, 'Updates from the CSR Counsellors Office – Eblast Archive', consulted 06 February 2013.
[465] *Ryerson University*, 'Ryerson CSR Institute Public Seminar: Dialogue with the World Bank Compliance Advisor/Ombudsman', Toronto, 26 January 2012, [URL: https://ryecast.ryerson.ca/12/watch/1680.aspx], consulted 07 February 2013.
[466] *Ryerson University*, 'Ryerson CSR Institute Public Seminar: Dialogue with the World Bank Compliance Advisor/Ombudsman', consulted 07 February 2013.

The CSR Office has two learning partnerships with Ryerson University and Simon Fraser University. The first of these partnerships was announced in 2010 when the CSR Counsellor established a learning partnership with Ryerson's Institute for the Study of CSR housed in the Ted Rogers School of Management in 2010. The purpose of the partnership is to "build(s) a neutral platform to contribute to informed public discussions of important issues related to corporate social responsibility of mining, oil and gas companies, and enhances cross-sector networking opportunities for those interested in these questions".[467] So far, as part of the learning partnership between the University and the Counsellor's Office, six public seminars have occurred in-between October 2010 to May 2012.[468] One of these six seminars included a special public seminar featuring the World Bank's CAO. Also, the CSR Counsellor's Office and Ryerson University hosted a book launch in December 2011 of "Governance Ecosystems: CSR in the Latin American Mining Sector". Co-editor Julia Sagebien provided a summary of the book and research questions revolving around conflict in the mining sector, current issues with existing literature, and the efficiency of CSR.[469]

The second partnership with Simon Fraser University and the Beedie School of Business was announced in May 2012. Due to the success of the Office's learning partnership with Reyerson, this new partnership seeks to open up an additional avenue with an academic institution that seeks the same goals as the Ryerson partnership (i.e. discussion regarding CSR and mining, oil and gas companies, and enhancing cross sectoral networking opportunities etc). Housed within the Beedie School of Business, the primary contact between the CSR Counsellor's Office occurs with the Responsible Mineral Sector Initiative (RMSI) which seeks to "bring together people and organizations from diverse perspectives and experiences to share insights and concepts, develop strategies and tools, and build networks and relationships for effective leadership and responsible management in the mineral sector".[470]

Public Presentations:

[467] *Government of Canada – Office of the Extractive Corporative Social Responsibility (CSR) Officer,* 'Learning Partnerships', 27 September 2012, [URL: http://www.international.gc.ca/csr_counsellor-conseiller_rse/Learning-parternership-parteneriat-apprentissage-Ryserson.aspx?view=d], consulted 07 February 2013.
[468] Government of Canada – Office of the Extractive Corporative Social Responsibility (CSR) Officer, 'Learning Partnerships', consulted 07 February 2013.
[469] *Government of Canada – Office of the Extractive Corporative Social Responsibility (CSR) Officer*, 'Updates from the CSR Counsellors Office – Eblast Archive', consulted 09 February 2013.
[470] *Government of Canada – Office of the Extractive Corporative Social Responsibility (CSR) Officer*, 'Learning Partnerships', consulted 09 February 2013.

Lastly, the CSR Officer has publicly presented at a range of events around Canada. According to the Office, the legal community plays an important role in CSR dialogue and thus has spoken at a range of legal centric events. These include presenting at: the Ottawa Faculty of Law, York University's Osgoode Law School's new Certificate in Mining Law program, and a Canadian Bar Association meeting. Further, the CSR Counsellor has spoken at many prestigious events such as: the Nexy-Gen Corporate Social Responsibility Forum, Prospectors and Developers Association Canada (PDAC) conference, the Canadian Council for Aboriginal Business, the Inter-Governmental Forum, and the Voluntary Principles on Security and Human Rights plenary.[471]

APPENDIX 3 – Communication and procedures between Canada's NCP and the Office of the CSR Counsellor when managing case files[472]:

(a) When the Counsellor or the NCP receive a request for review, they shall inform each other in writing (i.e. by email or mail) within a week (seven calendar days) of receipt. The notice shall contain the names of the parties named in the submission (i.e. notifier(s) and the company(ies)), as well as a summary of the submission (what issues are raised and which sections of which standards are referenced).
(b) If a question should arise as to which office would be the most appropriate one to deal with a request for review, the Counsellor and the NCP shall communicate with a view to resolving the matter.
(c) In cases identified in OIC subsection 5.(4) where the Counsellor has the lead on the review of a case involving the OECD Guidelines for Multinational Enterprises and any other performance guideline, the Counsellor shall consult with the NCP by sharing the request for review and subsequent materials received from both parties with the NCP. Then the Counsellor will request in writing the NCP's views with respect to the elements of the request for review that deal with the OECD Guidelines. The NCP will respond in writing in a timely fashion taking into consideration the timelines of the respective offices' procedures. The NCP shall provide the corresponding assistance as it considers appropriate with respect to the OECD Guidelines portion of the review.
(d) In cases identified in OIC subsection 5.(4) where the Counsellor has the lead on the review of a case involving the OECD Guidelines for Multinational Enterprises and any other performance guideline, the Counsellor shall keep the NCP informed of material developments in the review of the case, and further consult when warranted by new information or developments as appropriate.
(e) In cases identified in OIC subsection 5.(4) where the Counsellor has the lead on the review of a case involving the OECD Guidelines for Multinational Enterprises and any other performance guideline, the Counsellor shall keep the NCP informed of any decision the Counsellor should make with respect to the review process and procedures or substantive issues in the review of any case

[471] *Government of Canada – Office of the Extractive Sector Corporate Social Responsibility (CSR) Officer*, 'Office of the Extractive Sector CSR Counsellor Mid-year update May 2012', consulted 09 February 2013.
[472] *Foreign Affairs and International Trade Canada*, 'PROTOCOL – The Office of the Corporate Social Responsibility Counsellor for the Extractive Sector and National Contact Point for the OECD Guidelines for Multinational Enterprises', last modified 04/10/2010, [URL: http://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/counsellor_protocol_conseiller.aspx?lag=eng&menu_id=33], consulted 07 May 2013.

involving the OECD Guidelines within three days of making the decision or informing the parties (whichever is earlier).
(f) In cases identified in OIC subsection 5.(4) where the Counsellor has the lead on the review of a case involving the OECD Guidelines for Multinational Enterprises and any other performance guideline, the Counsellor shall inform the NCP of the results of any review involving the OECD Guidelines and consult with the NCP regarding the wording prior to informing the parties (OIC 6.(7)).
(g) In cases identified in OIC subsection 5.(4) where the Counsellor has the lead on the review of a case involving the OECD Guidelines for Multinational Enterprises and any other performance guideline, the Counsellor shall consult with the NCP prior to issuing any written public statement following the conclusion of a review of the activities of a Canadian extractive sector company operating outside Canada that involves the OECD Guidelines (OIC 6.(8)).
(h) The Counsellor shall advise the NCP regarding the provisions in any report, including annual reports, that refer to the OECD Guidelines and/or the NCP (OIC 7.(3)). Similarly, the NCP shall advise the Counsellor regarding provisions in any report, including annual reports, which refers to the Counsellor.

Appendix 4: Key elements of Canada's newly enhanced CSR strategy[473]

Key elements of the enhanced CSR strategy include:

- Strengthened support for CSR initiatives at Canada's diplomatic network of missions abroad, aimed at ensuring a consistently high level of CSR-related service to the Canadian business community around the world, building networks and local partnerships with communities, and reinforcing Canadian leadership, excellence, and best practices in the extractives sector;
- Increased support and additional training for Canada's missions abroad to ensure Trade Commissioners and staff are equipped to detect issues early on and contribute to their resolution before they escalate;
- Re-focusing the role of the Office of the CSR Counsellor, including strengthening its mandate to promote strong CSR guidelines to the Canadian extractive sector and advising companies on incorporating such guidelines into their operating approach. The CSR Counsellor will also build on the work conducted at missions abroad by refocusing efforts on working to prevent, identify and resolve disputes in their early stages;
- In situations where parties to a dispute would benefit from formal mediation, the CSR Counsellor will encourage them to refer their issue to Canada's National Contact Point

[473] *Canadian Government*, 'Canada's Enhanced Corporate Social Responsibility Strategy to Strengthen Canada's Extractive Sector Abroad', Foreign Affairs, Trade and Development Canada, 14 November 2014, [URL : http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/csr-strat-rse.aspx?lang=eng], accessed 12 December 2014.

(NCP), the robust and proven dispute resolution mechanism, guided by the OECD Guidelines for Multinational Enterprises on responsible business conduct, and active in 46 countries;

- Companies are expected to align with CSR guidelines and will be recognized by the CSR Counsellor's Office as eligible for enhanced Government of Canada economic diplomacy. As a penalty for companies that do not embody CSR best practices and refuse to participate in the CSR Counsellor's Office or NCP dispute resolution processes, Government of Canada support in foreign markets will be withdrawn;
- Inclusion of benchmark CSR guidance released since 2009, namely the United Nations' *Guiding Principles on Business and Human Rights*, and the OECD *Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*; and
- Flexibility to build awareness of a broader range of extractive sector-specific CSR guidance, including those developed in Canada, e.g., the Mining Association of Canada's *Towards Sustainable Mining*, and the Prospectors and Developers Association of Canada's *e3 Plus*.