CORPORATE LAW TOOLS PROJECT

Summary Report

Expert Meeting on Corporate Law and Human Rights: Opportunities and Challenges of Using Corporate Law to Encourage Corporations to Respect Human Rights

Toronto, 5 – 6 November 2009

On 5 – 6 November 2009, York University's Osgoode Hall Law School (the Nathanson Centre on Transnational Human Rights, Crime and Security; and the Hennick Centre for Business and Law) convened an expert meeting in support of the Corporate Law Tools Project of the Special Representative of the UN Secretary-General (SRSG) on Business and Human Rights Professor John Ruggie, titled "Corporate Law and Human Rights: Opportunities and Challenges of Using Corporate Law to Encourage Corporations to Respect Human Rights". The consultation was also supported by the Office of the UN High Commissioner for Human Rights and further assistance was provided by Export Development Canada and PricewaterhouseCoopers.

The SRSG is grateful to Osgoode Hall Law School for its support, as well as the other sponsors. He would also like to thank Professors Aaron Dhir (Osgoode Hall Law School) and Sara Seck (University of Western Ontario) in particular for their work in convening the event. This summary report presents the SRSG's record of the consultation bearing in mind the Chatham House Rule of non-attribution under which each consultation session was held.

BACKGROUND

The SRSG's mandate and the Protect, Respect and Remedy Framework

The SRSG was appointed in 2005 by then UN Secretary-General Kofi Annan with a broad mandate to identify and clarify standards of corporate responsibility and accountability regarding human rights, including the role of states. In June 2008, after extensive global consultation with business, governments and civil society, the SRSG proposed a policy Framework to the United Nations Human Rights Council (Council) for managing business and human rights challenges. The Council was unanimous in welcoming the Framework.

The UN "Protect, Respect and Remedy" Framework rests on three differentiated yet complementary pillars: the **state duty to protect** against human rights abuses by third parties, including business, through appropriate policies, regulation, and adjudication; the **corporate responsibility to respect** human rights, which in essence means to act with due diligence to avoid infringing on the rights of others; and greater **access for victims to effective remedy**, judicial and non-judicial.

The Council also extended the SRSG's mandate by another three years to June 2011, tasking him with "operationalizing" the Framework—that is, to provide "practical recommendations" and

"concrete guidance" to states, businesses and others on the Framework's implementation. There has already been considerable support of the Framework by all relevant stakeholders: unanimous backing in the Council; strong endorsements by international business associations and individual companies; and positive statements from civil society. You can read more about the UN Framework as well as its uptake at the SRSG's website: http://www.business-humanrights.org/SpecialRepPortal/Home.

The Corporate Law Tools Project

A core aspect of the Framework's first pillar, the **state duty to protect**, is that states should foster corporate cultures respectful of rights both at home and abroad, through all available avenues. Key tools for doing so include corporate and securities law and policy.

Corporate law directly shapes what companies do and how they do it. Yet its implications for human rights remain poorly understood. The two are often viewed as distinct legal and policy spheres, populated by different communities of practice.

Thus in early 2009 the SRSG announced his Corporate Law Tools (CLT) Project. It involved 19 leading corporate law firms from around the world helping him to identify whether and how corporate and securities law in over 40 jurisdictions currently fosters corporate cultures respectful of human rights. The firms were asked to follow a research template exploring subjects such as incorporation and listing; directors' duties; reporting; and stakeholder engagement. A press release describing the project, the research template and completed law firm reports are available at:
http://www.business-humanrights.org/SpecialRepPortal/Home/Materialsbytopic/Corporatelaw/CorporateLawTools. An overarching trends paper is forthcoming.

The CLT Project forms just one part of the SRSG's work under the **state duty to protect.** It intentionally focuses on corporate and securities law in order to explore the challenges and opportunities for states in creating and implementing policy and legal reform in that area. The SRSG felt that a designated project was important given the relatively unexplored nature of the corporate and securities law arena vis-à-vis business and human rights.

As the law firm "mapping" draws to a close and through continued consultation with all relevant stakeholder groups, the SRSG will consider what, if any, recommendations to make to states with respect to corporate and securities law and policy.

Aims of the consultation

The Osgoode Hall Consultation was designed as a first step in providing the SRSG with diverse viewpoints on what recommendations may be feasible. It created an expert platform for discussing the preliminary findings of the law firms' mapping, as well as brainstorming concrete and practical recommendations for legal and policy reform in this area.

To this end, participants were invited from stakeholder groups such as civil society; government regulators; the socially responsible investment community; companies; corporate law firms; and academia. An effort was also made to ensure broad geographic representation. A full participants' list is contained in Appendix A of this report.

The consultation had 8 sessions over two days, focusing on the subject areas included in the law firm mapping. The last session enabled participants to discuss those subject areas in more detail with a view to providing the SRSG with broad recommendations on what legal and policy tools might be further explored.

SESSION 1 - PROTECT, RESPECT, REMEDY: UNDERSTANDING THE UN FRAMEWORK AND HOW THE CORPORATE LAW TOOLS PROJECT FITS IN

This session aimed to unpack the UN "Protect, Respect and Remedy" Framework, highlighting how corporate and securities law and policy fits into the SRSG's work on the state duty to protect, as well as its relevance to the corporate responsibility to respect and access to remedy. The session was intended to help contextualize the rest of the consultation, so that any suggestions related to corporate and securities law and policy would be provided in light of operationalizing the UN Framework.

The SRSG explained the events that lead to his mandate and introduced the Framework. He then elaborated on each Framework pillar, spending the most time on the state duty to protect and its relevance to the CLT Project.

The SRSG emphasized that the state duty to protect includes the need for states to foster corporate cultures respectful of human rights, whether at home or abroad. However, governments currently lack adequate policies and regulatory arrangements for fully managing the complex business and human rights agenda. The SRSG's work suggests that although some states are moving in the right direction, overall their practices exhibit substantial legal and policy incoherence. The most widespread is what he has called "horizontal" incoherence, where economic or business-focused departments and agencies that directly shape business practices—including corporate law, and securities regulation—conduct their work in isolation from and largely uninformed by their government's human rights agencies and obligations, and vice versa.

Accordingly, the SRSG argued that governments cannot adequately discharge their human rights duties if they segregate business and human rights into a narrow conceptual and institutional box and ignore the issue in other business-related policy domains. Their duty to protect requires a more comprehensive understanding and coherent application. This applies as much to corporate and securities law as it does to other domains. Accordingly, the SRSG sought to better understand what corporate and securities law around the world had to say about human rights, whether directly or indirectly. He wanted to explore how corporate and securities law currently encourages or requires companies to respect human rights but also the extent to which it might impede them from doing so. The law firm mapping highlighted that such impediments do exist but so too do examples of corporate law requiring or encouraging companies to respect rights. During the consultation the SRSG hoped for a robust discussion of these trends, but also for participants' recommendations as to how to better manage links between corporate law and human rights. Such recommendations, whether focused on policy or law reform, could help to strengthen a key avenue states may use to foster corporate cultures respectful of human rights.

The SRSG then opened the floor to general questions about his mandate; the Framework; and the CLT Project. Questions touched on subjects such as the need to look at corporate law in the context of other national laws such as criminal law and competition law; the ability of corporate law to provide a remedy for corporate-related abuse in addition to playing a preventative role; how small and medium sized enterprises may best act to respect rights; and the impact of the global financial crisis on the business and human rights debate. Given the breadth of questions, the SRSG will not attempt to summarize them in this report. Suffice to say that a common theme was the issue of policy coherence, and the SRSG encouraged participants to offer as many insights as possible on this challenge throughout the consultation.

SESSION 2 – INCORPORATION AND LISTING

In some jurisdictions the corporate form, including its related benefits such as limited liability and separate legal personality, historically was viewed as a privilege in exchange for serving a public purpose. Some have argued that this expectation should be revived, with incorporation as well as listing dependent on a commitment towards respecting societal values, including human rights. Aiming to explore this contention, this session discussed the advantages and disadvantages of linking incorporation and listing to respect for human rights. The implications of increasingly complex corporate forms were also part of the debate. Participants were asked to consider the following discussion questions:

1. Should the act of incorporation require or encourage any recognition of a duty to society, including respect for human rights; and if so how could this be applied and enforced?
2. Should the act of listing require or encourage any recognition of a duty to society, including respect for human rights; and if so how could this be applied and enforced?
3. Are there other considerations that apply in relation to complex corporate forms such as joint-venture companies, state-owned enterprises and multinational groups?

The first speaker highlighted that historically, at least in the **United States**, only entities contributing to the public good could be incorporated, such as those providing a public utility like electricity or gas services. Each company required a separate legislative act to be created and such acts generally imposed restricted purposes as well as limited life spans. This practice was designed to avoid concentration of economic power in any one company, especially without a corresponding contribution to the public interest. Incorporation restrictions however were gradually diluted over the 20th century and today, incorporation statutes are seen more as enabling statutes than regulatory instruments.

It was suggested that incorporation could once again be deemed a privilege linked to the public interest, including respect for human rights. However, several challenges exist. First, would incorporating companies need to promise to respect all human rights or just a sub-set more relevant to their business and what would that promise entail? Would companies need to show that they have a human rights policy or that they have conducted human rights impact assessments of their proposed activities before they are granted incorporation status? Second, would new incorporation requirements apply retrospectively to all incorporated companies and how would this work in practice? Third, what incentive would a particular national or provincial government have to institute such requirements given that it may lead to companies incorporating elsewhere, and taking valuable investments with them? This was termed the "jurisdictional competition" dilemma.

The second speaker focused on the ways in which corporate law might *implicitly* encourage incorporating companies to pay attention to human rights. For example, in **South Africa**, the new Companies Act entitles any person to incorporate a company and indeed includes as one its purposes "creating flexibility and simplicity in the formation and maintenance of companies". But any incorporation privileges should be read in light of another of the Act's purposes: promoting compliance with South Africa's Bill of Rights in the application of company law. Any constitutive documents created pursuant to the Act should be interpreted with that purpose in mind. Thus, it is feasible that a court could interpret any ambiguities in a company's Memorandum of Incorporation in favor of corporate respect for human rights. In some instances incorporation rules may be clearer for not-for-profit companies – for instance, the South African Companies Act also requires that an object for non-profits be the promotion of social interests. Moreover, other aspects of incorporation may also encourage the formation of rights-respecting companies, such as prohibitions on offensive company names, including those that incite racial hatred.

The final speaker emphasized implementation, and questioned how incorporation requirements linked to respect for human rights could be enforced, including who would have standing to impose penalties for non-compliance and what they would be. It was also suggested that incorporation requirements would do nothing to encourage respect for human rights in the informal sector. There should be less barriers to incorporation so that more informal sector entities can be brought within the ambit of corporate law.

The speaker was also concerned that adding human-rights duties as a pre-condition to incorporation could blur already confused state and business responsibilities – effectively setting up private bodies with public duties. Rather, human rights-related responsibilities sit better within other laws such as labor and criminal laws. The speaker concluded that incorporation was not the appropriate stage or mechanism to begin imposing human rights duties on companies. However, there was an indication that if such requirements were to apply they might make more sense for state-owned enterprises.

Question time turned to listing, with participants debating whether requiring listing companies to evidence a human rights policy may incentivize them to consider their human rights impacts, or list elsewhere. The participants were divided on this issue, with many saying that the answer would depend on enforcement. Some argued that it is not as easy to incorporate or list away from one's home base or operations as some may believe. Nevertheless, stock exchanges are sensitive to listing competition and therefore may be reluctant to bring in and enforce new requirements. One participant suggested it would be helpful to look at the anti-corruption domain, as some exchanges do have listing rules linked to showing a tough stance on bribery and corruption.

The issue of foreign subsidiaries was raised in relation to incorporation, with some participants arguing that requirements in the parent company's state of incorporation would not impact on foreign subsidiaries incorporated elsewhere, especially in states without a developed corporate law. And even more basic may be the issue that parent companies may not be incorporated where they are headquartered so that they may not be subject to certain rules in places where they are making key decisions. Other participants returned to the "jurisdiction competition" challenge and hypothesized that for countries without a unified corporate law such as the **United States**, more federally based requirements could discourage companies shopping around for the least invasive sub-national environment. This of course would not stop the problem of companies moving their business overseas if those federal requirements are seen as too onerous.

One participant advocated greater creativity. He compared corporate law to constitutional law, arguing that the latter is often ambiguous yet is an acceptable form of regulation. Why should we therefore be overly concerned about broad provisions in corporate law or indeed companies' constitutive documents, provided their purpose is clear? In that vein, it was suggested that companies should be required to insert recognition of sustainability, including human rights, into their articles or memoranda of incorporation, or at the very least into their by-laws or operational policies at incorporation. Several participants argued that just as national constitutions are meant as foundational documents to deal with future dilemmas, so too incorporation is the right time to cement respect for human rights, so that the company has existing guidance when problems occur. Others countered that the incorporation stage is too early for companies to fully appreciate their likely human rights impacts and therefore such pre-emptive guidance may be unhelpful in the long-run.

Finally, the discussion turned briefly to the relevance of the concepts of separate legal personality and limited liability to corporate respect for human rights. It was accepted that this is an extremely complex discussion linked to all three pillars of the Protect, Respect and Remedy Framework and

therefore required more in-depth debate. However examples were provided from **Brazil** and **India** as to when corporate law can prescribe exceptions to these legal rights in the event of abuse of certain laws that protect human rights, including environmental and labor laws.

SESSION 3 – DIRECTORS' DUTIES

Directors play a key oversight role and must regularly make challenging decisions regarding their company's business activities, including those related to human rights. In some jurisdictions environmental, labor or even criminal law may impose personal liability on directors for their acts and omissions with respect to human rights related issues. However, the SRSG has found that the law surrounding directors' duties under corporate law provides far less guidance, both in terms of what directors are *allowed* and *required* to do. This session aimed to shed light on existing laws and their implementation and also to explore reform opportunities by considering the following discussion questions:

1. Should directors' duties under corporate law be clarified or extended to **require** directors to take into account the human rights impacts of their company's operations, whether at home or abroad, including the operations of its subsidiaries and other business partners?
2. Should laws relating to directors' duties explicitly **permit** directors to take into account the human rights impacts of their operations?
3. If directors' duties are to be clarified or extended vis-à-vis human rights, how should they be constructed and how should competing interests be balanced?

The first speaker focused on section 172(d) of the **UK** Companies Act which provides that a director "must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in so doing have regard (amongst other matters) to – (d) the impact of the company's operations on the community and the environment." It was emphasized that section 172 is an example of the enlightened shareholder approach to directors' duties, not the stakeholder approach and thus any consideration of community or environmental impacts, including human rights, must occur within the context of acting in the company's best interests.

Moreover, only shareholders have a right to complain of breach of the duty – the law relies on shareholders recognizing their financial interests are best served by avoiding human rights abuses. Indeed, section 172 was described as inherently "permissive". It guides directors in what they should consider in the boardroom (and in doing so explicitly enables directors to consider community and environmental impacts) but does not prescribe how they should do so and does not hold them to account for any impacts that might result if they decide not to act on them. It was contended that section 172 thus codified what was already implied in the common law, and did not amount to a significant change in the status quo.

Nevertheless, the speaker suggested that section 172 was a positive development in that it created an environment in which directors could make decisions with reference to human rights issues with greater certainty that they would not be sued for doing so. This is because community and environmental impacts along with other considerations in section 172 are now expressly linked to the company's success – in other words, the legislature recognized that shareholders may be concerned that the company's interests could be harmed by negative social impacts.

The second speaker focused on the situation in the **Asia-Pacific**, highlighting **Hong Kong** company law in particular, which is currently being reviewed. In that jurisdiction, an express codification of the enlightened shareholder approach as set out in the **UK** Companies Act was recently rejected, likely due to strong opposition from the business community, which expressed concern about overly-

burdensome requirements for directors. However, a general codification of directors' duties is likely to be accepted, which may pave the way for further reform down the track. For instance, judges could be encouraged to incorporate the need to consider human rights impacts when interpreting the general duty of care – a duty that may be codified in Hong Kong's revised company law.

The final speaker emphasized the differences between the duties of ordinary directors and pension fund trustees. It was argued that recently, the general maxim that trustees should not consider environmental, social and governance issues, including human rights, has been shifting. Pension funds are increasingly considering these issues as part of their investment decisions, and are being encouraged by governments to do so. Nevertheless, trustees' duties still remain less codified than directors' duties and there remains uncertainty about whether a trustee can consider an investment's potential human rights impacts, let alone be required to do so.

The plenary discussion focused mainly on section 172 of the **UK** Companies Act as a potential example of best practice. Some participants viewed the provision as a positive development given its normative value. One participant highlighted the organic nature of fiduciary duties and the fact that section 172 showed how duties were evolving in the 21st century. It was argued too that the provision, while not perfect, provides directors and shareholders with a negotiating framework for more responsible corporate behavior. Several participants argued that other jurisdictions should adopt similar provisions, at the very least to give directors' greater protection against being sued for considering human rights impacts in the first place.

Others expressed concern over implementation, particularly whether there is any evidence of section 172 encouraging directors to pay more than lip service to human rights related issues. It was suggested that while overall section 172 was a step in the right direction, it was not the only option in reforming directors' duties. In particular, some participants remained sceptical of the ability of shareholder-centric provisions to bring about any real change in directors' accountability for human rights-related abuses, because only shareholders may take action for breach.

Continuing the focus on section 172, there was concern from other participants that given the need for shareholders to enforce the duty, it may have no real scope of changing laggards' behavior, and would simply place more scrutiny on those directors already following best practice. Moreover, where would the line be drawn? Would directors be expected to assess every human rights impact across their operations, including those of their subsidiaries and broader value chain? There was a sense that directors should have broad flexibility to consider human-rights related issues in order to properly balance competing interests, and do not need new laws telling them how to do so.

One participant suggested a directors' duty structured along the lines of the SRSG's due diligence principle as part of the corporate responsibility to respect. A similar standard appears in the **US** Sentencing Guidelines and has already been incorporated generally by the US Supreme Court into common law directors' duties. It was argued that a due diligence standard would both give directors' flexibility in considering human rights issues while also sending a strong message that directors should be taking all reasonable steps to consider and act on human rights impacts. Again though, the question was raised as to whom this duty would be owed, and thus whether non-shareholders would be allowed to enforce it?

Also brainstorming the different forms human rights-focused directors' duties could take, one participant emphasized the links between section 172 and the **UK** Companies Act's reporting requirements, suggesting that participants consider how directors' consideration of human rights issues could be linked to other requirements which may encourage greater transparency and preventative action. More generally, participants discussed the need to strengthen other areas of the law which prohibit direct or indirect corporate involvement in human rights abuses – this would

then necessitate directors to take into account these laws as part of general duties to act with due care and ensure the company's legal compliance.

There followed some discussion of qualifications for directors, including whether it should be necessary for directors to be natural persons. Some participants also suggested that directors should have to show knowledge of particular areas before being appointed a director, including an understanding of environmental, social and governance issues such as human rights. One participant noted that this type of provision was contemplated in the **UK** company law reform process but was rejected.

Finally, moving back to enforcement, the participants spoke about the obstacles that might face shareholders in bringing derivative actions against directors for breach of section 172 type provisions. Some participants spoke of the need to increase awareness of shareholders of their rights in relation to such provisions. Others raised the concept of extended derivative actions. Section 165 of the new **South African** Companies Act allows any person to launch a derivative action even if they are not a shareholder provided they have the court's leave to do so, which will depend on them showing that the action is necessary to protect their legal rights. In **Hong Kong's** company law reform process it was proposed that regulators be empowered to bring derivative actions but this was rejected amid concerns of uncapped regulatory power. While participants accepted the need to think through the pros and cons of such provisions, several agreed that extended derivative actions could be an effective compromise between allowing non-shareholders the right to sue for breach of duty outright, and keeping enforcement power solely in shareholders' hands.

SESSION 4 – REPORTING

The SRSG has spoken of the importance of companies tracking as well as reporting their human rights impacts under the corporate responsibility to respect. Reporting can be essential for the company in knowing itself whether its policies are being effectively implemented. It can also facilitate stakeholders (shareholders and non-shareholders alike) to better engage with individual companies, assess risk and compare performance within and across industries. This session aimed to explore the role of state-based regulation and guidance in encouraging more transparent reporting by companies on their human rights impacts, including the implications of mandatory reporting and the different forms it may take. Participants were asked to consider the following questions:

1. Where companies are required to report on "material" impacts in financial or other reporting, should they be encouraged or required to include human rights impacts within such reporting, including those that occur abroad?
2. What are the arguments for and against stand-alone reporting regimes on environmental and social impacts, including human rights impacts?
3. Where stand-alone regimes are contemplated, should all companies be subject to the same reporting obligations, regardless of their size; ownership structures; and whether they are members of international or sectoral voluntary initiatives?

The first speaker made general remarks about social disclosure, questioning whether it is really long-term financial disclosure by another name, as some suggest. It was argued that if reporting on human rights risks was necessary as part of reporting on the company's long-term financial risks then companies would include such information of their own accord, and there would be no need for specific rules to incorporate such information. Moreover, similar to the incorporation discussion, the issues of "institutional competence" was raised – by imposing reporting obligations on companies with respect to human rights are we placing too much responsibility for the public good in institutions designed for private profit maximization?

Nevertheless, it was also recognized that social reporting could have an important educative function. It was suggested that in the **United States** certain reporting provisions in the Sarbanes-Oxley Act were intended to encourage officers to do more in order to know more. However, it was also argued that proponents of mandatory disclosure do need to think about where such disclosure would best fit, including within financial reporting. It was highlighted that in **Canada** there are two materiality tests: (a) the market impact test; and (b) the reasonable investor test. The latter may be more easily used to bring in social, including human rights, considerations into materiality decisions.

The second speaker focused on the role of regulators in developing new reporting rules with respect to human rights. It was emphasized that regulators will carefully consider whether such rules will impact on all types of companies in the same way, erring on the side of less invasive rules if one group is likely to be disproportionately affected, such as smaller market players. International expectations also play a significant role – in other words, does the jurisdiction need to "step up" to follow international best practice? This is so particularly in emerging economies with investment from transnational companies that may expect certain standards to be in place. Finally, enforceability is also a key consideration.

Materiality again came up, with examples provided from **South America** as to whether materiality would generally include human rights risks. For example, it was suggested that in **Brazil**, human rights impacts are generally not considered when making materiality determinations. However, in 2010 **Brazil** will introduce new non-financial reporting requirements, moving from a quantitative to a qualitative approach so that companies will have to say whether they have corporate social responsibility (CSR) policies. Here too it is hoped that such rules will have a proactive effect in that companies will opt to create a CSR policy rather than report that they do not have one. This will in part of course also depend on investors encouraging companies to pay attention to these issues and holding them to account when they fail to do so.

The third speaker brought examples from **Africa**, specifically focusing on the recommendations of the King Commission of Corporate Governance in **South Africa**. The recent third report of the King Commission suggests integrated financial and sustainability reports, which should record how the company has positively and negatively impacted the communities in which it operates. They should also include recommendations on how the board can mitigate negative impacts and facilitate positive impacts. The contention is that by issuing integrated reports, companies increase trust and confidence amongst both their shareholders and other stakeholders about the financial and social legitimacy of their operations. The King recommendations apply to all companies, including state-owned enterprises and small and medium sized companies.

It was explained that the various King reports inform reporting regulations and guidelines in South Africa. The reports contribute to a Code of Corporate Practices which is voluntary in and of itself but which has been incorporated into more mandatory avenues. For example companies listed on the Johannesburg Stock Exchange must explain if they are deviating from the Code. Thus the speaker also used the King reports as an example of the potential flow-on effects of soft law guidelines, particularly in the reporting domain. It was suggested that soft law guidelines may help pave the way for more concrete provisions, including legislation, once companies, regulators and other stakeholders help to mould those guidelines into workable and well accepted norms.

The plenary discussion turned back to materiality and what it might mean in the context of human rights impacts. It was argued that one issue might be whether an impact would be material if it was likely to cause reputational harm rather than certain legal risk. Another would be the relevant time-frame – for example, would a human rights impact be material if it was likely to lead to reputational or legal risk for the company in one year, five years, fifty years? And in order to decide if a human

rights impact passes the materiality threshold, regulators would need to be clearer on what they mean by "human rights" – at a basic level some companies, particularly but not exclusively in emerging markets, may not appreciate what is meant by a human rights risk. Along similar lines, it was suggested that more progress may be made by including only egregious abuses in explanations of materiality, such as alleged complicity in international crimes, rather than suggesting that all human rights risks should be included – in part because of the greater likelihood that the former will lead to criminal or civil penalties for the company.

However, other participants suggested that materiality in any case may not be a helpful construct when it comes to companies following a rights-based approach. Companies should report on human rights impacts in an effort to be transparent as to how they may affect the rights of others, not simply because such impacts may cause legal, reputational or other business risks.

One participant expressed concern that even companies that report on human rights risks may do little on the ground to address them. Reporting thus may not help to safeguard rights if not accompanied by other changes in behavior, including those outlined in the SRSG's due diligence process for the corporate responsibility to respect, and should not be prioritized above other corporate and securities law tools that may encourage more operational change. Again, the point was made that it is generally up to regulators or shareholders to raise reporting failures. Regulators may lack the capacity or will to do so, yet those who are most affected by corporate-related human rights abuses may not have the right (or are not accorded the ability) to complain about missing information or misrepresentations.

Continuing with the theme of enforcement, other participants contended that even shareholders may have difficulty in taking action, particularly where there is no obvious impact on the share price from the company's reporting failures. However another stressed that enforcement should not only be measured in legal actions - lack of disclosure may dilute investor confidence in a company, which may eventually prompt management changes. It was accepted that this means investors themselves must do more to encourage greater transparency - regulators may only be able to take reporting rules so far.

In relation to the role of regulators, it was suggested that collective action may be more successful in order to maintain a level playing field. In this respect it was suggested that international organizations such as IOSCO (International Organization of Securities Commissions) could be encouraged to provide guidance to their members on sustainability reporting, including how human rights might fit in.

In terms of the standards that regulators may wish to apply, the Global Reporting Initiative (GRI) was mentioned several times as a potential Framework, as well as other international initiatives such as the UN Global Compact (UNGC) and the UN Principles for Responsible Investment (UNPRI). The example of **Sweden** was provided, where state-owned enterprises are required to use the GRI Framework in their non-financial reporting, as well as **Denmark** where companies that are members of the UNGC or UNPRI have lesser reporting obligations, incentivizing them to stay engaged with international standards. The GRI and UNGC were seen as particularly useful in terms of human rights reporting as they specifically encompass human rights considerations.

Finally, the question was raised as to the synergies between the SRSG's work on the state duty to protect and the corporate responsibility to respect in the area of reporting. For instance, given the SRSG's support of assessing and monitoring human rights impacts, and reporting the same as part of the corporate responsibility to respect, what could governments do to encourage or require such action? At one end of the spectrum are requirements to include human rights risks in financial

reporting, in the middle are integrated comprehensive sustainability reports which include human rights impacts, and at the other end may simply be guidance materials on what constitutes effective human rights reporting. As the King III report discussion highlighted, such so-called "soft-law" guidelines can play a dual role in helping companies on the ground while setting the stage for more prescriptive measures down the track.

SESSION 5 – STAKEHOLDER ENGAGEMENT

This session considered the role, if any, of corporate and securities law and policy in facilitating effective dialogue between companies and the spectrum of so-called "stakeholders": from shareholders (including institutional investors) to employees, individuals and communities who claim their human rights are affected by company actions, and consumers. Earlier sessions highlighted how other aspects of corporate governance, such as directors' duties and reporting rules, may help stakeholders, particularly shareholders, to understand more about a company's human rights impacts and request that they address them. This session aimed to explore other tools such as shareholder proposals; speaking rights at annual general meetings; bilateral dialogue; stakeholder panels or committees; and divestment. Participants were asked to consider the following discussion questions:

1. What role, if any, should corporate and securities law and policy play in regulating or facilitating shareholder engagement on company-related human rights impacts, including engagement via shareholder proposals; bilateral dialogue; and divestment?
2. Should institutional investors, including pension funds, be required, or at least expressly permitted, to consider human rights impacts in their investment decisions?
3. How might corporate and securities law and policy facilitate dialogue between the company and non-shareholders on human rights issues, including employees and affected communities? For example, what are the pros and cons of expressly empowering non-shareholders to address annual general meetings; or requiring companies to establish multi-stakeholder committees or grievance mechanisms to deal with human rights related issues?

The first speaker focused on the role of pension funds in engaging with companies on human rights issues, and how the government may facilitate this engagement, particularly for state-owned pension funds. One way is through governments setting management frameworks for funds which include policies for responsible investment. In this vein, it was suggested that the UN PRI can play a key role in encouraging investors to think about social issues, including human rights, and could be further promoted by government bodies. In particular, further guidance may be needed on the "S" aspect of environmental, social and governance considerations in the UNPRI, as it is often the least well understood and the factor that most often may include human rights. It was argued that promotion of tools such as the UNPRI would be preferable to *requiring* investors to consider social issues, as this might impact on flexibility in decision-making.

The point was also made that in some situations pension funds, like other investors, may be constrained by limitations around shareholder activism, particularly when they seek to act collectively. It was argued that it is important to have improved proxy access in some countries so that shareholders, including pension funds, have the ability to exercise their full rights as owners.

The second speaker continued with this line of thought, suggesting that the regulatory environment in which investors operate can be critical to opportunities to promote respect for human rights. It was suggested that regulators should make it more difficult for companies to block shareholder resolutions dealing with human rights, including by clarifying the requirements for acceptable and unacceptable proposals.

The speaker noted that there was still some confusion amongst investors as to whether they were even allowed to consider social issues, including human rights, and thus government declarations could be helpful in assuring investors that such considerations need not conflict with their fiduciary duties. A 2008 statement by the **UK** Government in this regard was highlighted as a positive development. More information about companies' human rights impacts and an appreciation that such impacts may be material would also be important. This would be greatly facilitated by shaping materiality tests such that social and environmental impacts, including human rights impacts, are explicitly identified as areas of risk to be disclosed. Finally, on the issue of non-shareholders attending annual general meetings, it was suggested that there may be far more effective channels for engagement, particularly given the often limited time in such meetings to discuss issues in detail.

The final speaker focused on shareholder proposals, raising concerns that they may bear little consideration to the interests of the communities they purport to be advancing. An example was provided of a shareholder resolution which requested a human rights impact assessment of a mining project. A committee was established to carry out the assessment, including company and shareholder representatives, but no representatives from the affected community. The speaker argued that affected individuals and communities are rights holders, not merely "stakeholders", and that socially responsible investment firms are companies that have a responsibility to respect rights too. Thus more should be done by regulators to require or encourage shareholders, including socially responsible investment firms, to recognize the agency of affected communities by consulting with them before devising human rights-focused shareholder proposals.

The speaker also noted various current and prospective tools in **Canada** which may promote greater coherence between state policies to promote human rights and the decisions of government-owned investors. One is the new Bill C-300 which if adopted may limit the support of government-owned pension funds for extractive projects which fail to show respect for human rights.

The plenary discussion continued to focus largely on the role of shareholders, in not only ensuring that they fully understand the causes they are promoting, but also in making their views known in a coherent and productive way. In particular, one participant suggested that bilateral dialogue may be a better first step than shareholder proposals, which may put the company on the defensive and in any case fail to truly address an affected community's concerns. This is especially the case when a proposal is developed after a controversial project is already operational. On community representation it was acknowledged that there are no easy answers, although several participants noted that what constitutes good community engagement would depend on the type of community or marginalized group, as well as on the type of zone of operations (conflict affected area; weak governance zone). It was suggested that shareholders at least act with due diligence to assess what is happening on the ground, and take particular care that community "representatives" truly represent the community's interests.

Socially responsible investment indices were also discussed. An example was provided from the **Netherlands** of a company making managerial and board remuneration dependent on the company's position on the Dow Jones Sustainability Index. It was suggested that regulators and stock exchanges could do more to promote such indices and tie certain benefits to positioning on those indices. A further example was noted from **China** of stakeholders having input in the listing process for companies likely to have environmental impacts – this is known as the Green IPO Policy and requires approval from the environment ministry, including a public comment process, before listing permission is given. Participants suggested exploring how this process might work in other jurisdictions, so that potential shareholders and other stakeholders could note their concerns before the company lists, thereby influencing its policies and practices moving forward.

Finally, there was a general sense that corporate law could do more to, at the very least, encourage investors to consider social issues, including human rights, in their investment decisions. It was argued that even more so than company directors, pension fund trustees are often at best confused as to whether they have the mandate to consider such issues, or at worst hostile to such considerations. Governments could do much to send the right messages that such considerations are encouraged rather than prohibited. As some **Northern European** countries, like Norway and Sweden, have already done, sovereign wealth funds or state-owned pension funds could be specifically mandated to act in a socially responsible manner.

SESSION 6 – BOARD COMPOSITION

Company boards are increasingly under the scrutiny of not only regulators, but also shareholders and the public at large. Some have argued that boards should comprise not only those that understand the company's business, but those who appreciate its broader societal impacts and who can bring a diverse viewpoint to dealing with such issues. Some also contend that boards may benefit from including the voices of those directly impacted by the company's activities, such as employees and community representatives. Accordingly, this session explored how board composition might encourage a company to respect human rights, and how laws and policies may be used to cement that role. The following discussion questions were posed:

1. What are the advantages and disadvantages of requiring particular constituencies to be represented on company boards? (e.g. employees, community representatives)
2. Should gender, geographic, racial or ethnic representation on company boards be mandated or encouraged? Should non-discrimination laws specifically apply to company boards?
3. What are the arguments for or against requiring or incentivizing boards to create "CSR" or "ethics" sub-committees designed to monitor social, environmental and governance issues, including human rights?

The first speaker focused on board composition trends in **East Asia**, noting for example that in **China**, there is a two-tiered board structure and that at least one third of the supervisory board, which acts as a check on the board of directors, must comprise employee representatives. It was suggested that this requirement may be easier to enforce in state-owned enterprises, and attention will need to be paid to whether it is being respected in substance by privatized companies.

The second speaker commenced with a discussion of employee representation on company boards, highlighting the situation in **France**. It was noted that while there is no formal co-determination (employee membership of the board) such as in **Germany**, representatives of the works council must be present at board meetings. While business was initially concerned about this arrangement, in practice it has not lead to significant change for large companies which already had formal board meetings. However, it has impacted smaller companies which must now have in-person board meetings so that works council representatives can attend.

On the issue of board sub-committees on corporate social responsibility, it was argued that such issues need to be considered as part of the board's ordinary business. The contention was that as soon as such issues move into a "sub"-committee, they lose prevalence and focus. In terms of gender representation, the speaker noted recent developments in **France** including lobbying for a new law which would in effect increase female representation on company boards by requiring that no gender should represent more than 80% of the board. It was noted however that such proposals are repeatedly subject to constitutional challenges on the basis that they amount to positive discrimination, which remains unconstitutional.

The final speaker focused on board composition in emerging markets in **North Africa**, discussing the situation in **Algeria**. The point was made that laws or policies regarding board composition, or even corporate and securities law more generally may not be as readily applicable to emerging markets where privately owned, family companies are far more prevalent than listed companies. Corporate governance initiatives therefore may need to be more creative in such markets, and take into consideration primary objectives to diversify the market and attract foreign investment. Moving back to the topic of employee and gender representation, it was highlighted that in order for such representation to be effective, it should be accompanied by guidance for those representatives of whose interests they are there to serve and what steps they may take to promote them.

The plenary discussion began with comments about employee representation. It was noted that in **South Africa**, the government rejected employee representation requirements for company boards in the new Companies Act but it is clear that companies' constitutive documents may recommend or require that certain groups be represented on the board. There followed a discussion about competency and expertise. Some participants argued that both employee and gender representation requirements may be counter-productive if there are no checks in place to ensure that such representatives have the same quality of expertise as other board members.

One participant suggested that rather than ensure that particular groups are present on company boards, it would be more beneficial to require that all board members have some training in human rights and can show that they understand the company's human rights issues. This could be tied to executive remuneration and again the **Netherlands** example arose of compensation being tied to the company's environmental, social and governance performance. Another argued that while it would be useful for all board members to have this knowledge, there should still be one designated person on the board to deal with human rights, to ensure greater focus and accountability. However it was also cautioned that the board, whether in its entirety or through an individual empowered to focus on human rights, cannot do much to safeguard human rights without strong managerial support and integrated respect for human rights throughout the company. In this respect, processes that ensure human rights information filters up to senior management may be most useful for influencing those making operational decisions.

On the issue of two-tiered board structures, there was a sense that such structures could assist corporate cultures respectful of rights by instituting further checks and balances for the acts of the managerial board. The supervisory board may also provide a safer space for key stakeholders, such as employees, to raise concerns. Requirements for independent directors may also be beneficial to help ensure social issues, including human rights, remain on the board's radar. However, there were concerns that in many jurisdictions, the true "independence" of such directors from majority shareholders may be questionable.

Finally, focusing on gender representation, several participants noted other examples of legislative developments in **Norway**, **Sweden** and **Denmark**. It was suggested that much could be done to increase international policy coherence in this area by encouraging governments to consider developments in other states when constructing their own policies and laws. Guidance from international human rights bodies may also be relevant in this area, particularly the commentaries of the Committee on the Elimination of Discrimination against Women, which has often recommended that states parties to the Convention on the Elimination of All Forms of Discrimination against Women take steps to increase female participation in private sector decision-making.

SESSION 7 – POLICY COHERENCE AND OTHER CORPORATE GOVERNANCE TOOLS

The SRSG has found that the business and human rights policy domain exhibits substantial legal and policy incoherence at the national level, often replicated internationally. As stated above, the most widespread is what he has called "horizontal" incoherence, where economic or business-focused departments and agencies that directly shape business practices conduct their work in isolation from and largely uninformed by their government's human rights agencies and obligations, and vice versa. Accordingly, this session aimed to discuss ways of addressing any incoherence in relation to corporate law and securities regulation, both at the national and international levels. It was also designed to explore the role that voluntary corporate governance codes may play in facilitating or supporting corporate and securities law and policy reform in this area. Participants were asked to consider the following discussion questions:

1. What steps could improve policy coherence between corporate and securities regulators, related government departments, and human rights focused agencies?
2. What role, if any, should voluntary corporate governance codes and guidelines play in encouraging companies to respect human rights and in supporting corporate and securities law and policy reform in this area?
3. Is there scope for international corporate governance mechanisms to increase guidance for, and consistency amongst, states in linking corporate governance with corporate respect for human rights?

The first speaker discussed the adoption of the **UK** Companies Act. It was highlighted that there was a significant level of public consultation for most aspects of the Act, which provided a variety of stakeholders with the opportunity to note their concerns and ideas, including different government departments. It was also necessary to obtain the support of opposition political parties to the draft law, which added further complexity to the drafting process. Moving on to further corporate law reform in the future, it was noted that the primary brief of relevant government departments or regulators may be to reduce the cost of doing business, and any new policies or regulations will thus generally need to be reviewed in that light.

The second speaker focused on domestic policy coherence in the formulation of **Denmark's** national CSR policy, and the flow on effects of that policy for corporate law reform. A key element was the use of internationally recognized standards that different agencies could all incorporate into their practices, namely those set out in the UNGC and UNPRI. Moreover, there was wide stakeholder consultation in formulating the policy, which helped to ensure its continued relevance. In considering the role of different state agencies, the government looked at the example that should be set by the state in doing business with business – in other words, what standards should agencies respect themselves, and hold businesses to, so that they can legitimately ask businesses to do the same when dealing amongst themselves. Once again, the international standards in the UNGC and UNPRI among others were considered useful, including in setting out procurement standards. Moving forward a national CSR council has been established to ensure continued engagement between all stakeholders, as well as a standing inter-governmental group to coordinate all government activities in the field of CSR.

The third speaker highlighted issues related to international policy coherence in this area and the role that voluntary corporate governance guidelines might play in introducing more responsible company practices in emerging markets. In particular, the point was raised that emerging markets may learn the most from the practices of countries with similar cultures, legal systems and economies, rather than from highly sophisticated markets. In other words, a one-size fits all approach to corporate governance, including fostering corporate cultures respectful of rights, is

unlikely to be effective. And in some situations, emerging markets are still in the process of recognizing that corporate governance itself is a helpful construct, let alone worrying about socially responsible behavior. While we may see the two as inextricably linked, the connections may not always be as clear in markets just starting to deal with these concepts. And one should also be aware of the lack of enforcement capacity in many emerging economies – there may simply not be a stock exchange or company regulator to watch over even voluntary codes.

The plenary discussion began with concerns about the role of lobby groups, from all sides, in supporting or stonewalling new corporate and securities laws and policies which touch on human rights. There was a sense that consultation with such groups prior to law and policy formulation is vital, but that governments also need to ensure they take a balanced view of different perspectives, and are transparent in which groups they are listening to and to what extent.

Reference was made to the OECD Corporate Governance Principles and their possible application in the area of business and human rights. It was suggested by some that greater links be explored between the Principles and the OECD Guidelines for Multi-national Enterprises. However there was caution that any review of either document would likely not be connected to the other on an institutional level. And in any case it was noted that any further strengthening of the Principles was largely ruled out earlier in 2009 because some countries were not meeting existing requirements. Thus it may be more effective to look at how existing elements of the Principles can be interpreted so as to incorporate human rights considerations rather than suggesting new extended rules. Regional mechanisms were also discussed, such as forthcoming EU workshops on sustainability reporting, which may help to encourage member states to pay greater attention to these issues.

There was some discussion about extraterritoriality and the implications of imposing corporate and securities law obligations on foreign-owned companies as well as on companies registered in the state but operating overseas encouraging respect for human rights. Such provisions should be carefully thought through and there should be consideration of how they might interact with laws from other states, and the potential for international collaboration in enforcement.

Several participants encouraged participation beyond the "usual suspects" in company law reform in order to ensure human rights is on the agenda. For instances, national human rights institutions could play a role in law reform processes as well as in promoting new laws. And there could be greater cooperation between corporate regulators and agencies responsible for signing onto and implementing the state's human rights obligations.

Finally, there was some support amongst participants for the view that voluntary corporate governance codes are (a) rarely entirely voluntary, particularly when they are linked to listing rules or other regulations on a "comply or explain" basis; and (b) can play an important ground clearing role in raising comfort levels for new principles and eventually facilitating legislative change. State CSR policies and other guidance materials may play a similar role. For example, the **Danish** CSR policy may have helped to pave the way for new reporting obligations for Denmark's largest companies, based in part on the international standards promoted throughout the policy. In a similar vein, several participants spoke of the evolutionary nature of corporate law and noted that small steps may be needed to embed human rights consciousness into corporate law over time. For example, while an explicit reference to human rights in the **UK** Companies Act may not have made sense in 2006, it may be more acceptable today, and certainly in five to ten years from now.

SESSION 8 – BRAINSTORMING RECOMMENDATIONS FOR THE SRSG

This session asked participants to think of the key suggestions they would make to the SRSG in each subject area discussed during the consultation, focusing on what concrete and practical recommendations could be made to states. To facilitate the discussion, participants were divided into six breakout groups of 10 – 13 people, each with a rapporteur to report back to the plenary. Set out below are the key recommendations from each group – not all of which necessarily achieved consensus.

Subject Area	Key Recommendations
Incorporation and Listing	• States should think about the pros and cons of including human rights-related requirements as pre-conditions to incorporation or listing, including the possibility that such requirements may discourage companies from both actions and take them out of the regulatory web. • However, if states are considering such pre-conditions, they should think carefully about the consequences of non-compliance and how companies will be asked to show respect for human rights. • It may be preferable to have separate rules for different kinds of enterprises, including state-owned enterprises. • New exceptions to separate legal personality should be considered, such as where there has been an unconscionable abuse of the veil.
Directors' Duties	• Directors should at the very least be expressly permitted to take into account human rights considerations in their decision-making. • There should be consideration of the ways in which non-shareholders may hold directors accountable for breach of duties, including the pros and cons of specific statutory duties to respect human rights, owed to the public at large. • States should consider whether to link breach of directors' duties related to human rights to government benefits, such as procurement contracts and export credit insurance. • Provisions like section 172 of the UK Companies Act may have a normative function in highlighting that directors can and should consider human rights impacts, though section 172 should not necessarily be used as a model because of remaining ambiguities.
Reporting	• States must recognize the benefits of corporate human rights reporting, including accountability to shareholders and the general public, as well as the potential for such reporting to encourage behavioral changes. • The issue of how human rights might be material to a company needs to be further explored, for example elaborating when impacts to a company's reputation should be considered material. • Integrated financial and sustainability reporting is likely to be most effective. • Access to information statutes could also be used to gain more information about company activities with respect to human rights.
Stakeholder Engagement	• Governments should encourage shareholders to consult with affected communities before making them the subject of human rights-related shareholder activism. • There should be greater clarity around rules for company exclusion of shareholder proposals dealing with human rights. • There is a need for confirmation that pension fund trustees may consider human rights issues in making investment decisions.

Subject Area	Key Recommendations
	• More consideration should be given to stakeholder consultation prior to listing as occurs in China's Green IPO policy.
Board Composition	• Governments should encourage companies to aim for diversity in expertise and perspective on company boards, leaving companies with the discretion to decide how this should apply to their business. • How companies have fulfilled this goal should be included in reporting. • Domestic and international corporate governance commissions and institutions should also strive for such diversity.
Policy Coherence and Other Corporate Governance Tools	• There should be greater interaction between human rights focused agencies and corporate and securities regulators, including departments drafting and administering new corporate laws. • Governments should make a baseline statement that they expect companies to take reasonable steps to avoid human rights abuses – this may help to send the right message from the top level down. • Guidance notes and other promotional material should accompany legislation to ensure that companies understand their legal obligations. • It would be helpful for international institutions to publish best practice examples of governments integrating human rights into corporate law. • Voluntary corporate governance guidelines should be encouraged to include human rights considerations and opportunities should be explored for incorporating such guidelines into government policies and regulations dealing with CSR and human rights. • Consideration should be given to whether it is necessary to use the language of human rights when developing domestic and international policy coherence in this area, or whether it is sufficient to incorporate human rights considerations within ESG or CSR discourse.

SUMMING UP

The SRSG concluded the consultation by thanking Osgoode Hall Law School for its assistance in hosting the event, as well as his team and the two co-convenors for their efforts. He again noted his appreciation for the level of expertise in the room and the willingness of so many people from different parts of the world, as well as walks of life, to attend the consultation and contribute to the debate. He explained that all points of view would be considered as he decides what practical recommendations to make to states in this area, and that in particular he would further explore the legal and policy reform proposals made throughout the consultation. One of his tasks in doing so would be to develop guiding principles in this area that make sense to all governments, while not being so abstract as to be meaningless. And as he commented at the outset, while corporate law would remain a priority, he would also continue to look at how to drive human rights considerations into various other areas of policy and law that affect business operations.

APPENDIX 1: ATTENDEES

Aizawa, Motoko	International Finance Corporation
Armstrong, Philip	Global Corporate Governance Forum
Bader, Christine	Advisor to SRSG on Business and Human Rights
Chan, Michelle	Friends of the Earth
Chen, Ying	Beijing Rong Zhi Institute of Corporate Social Responsibility; Member of Board, UN Global Compact
Chivers, David	Erskine Chambers (QC)
Condon, Mary	Osgoode Hall Law School
Coumans, Catherine	Miningwatch Canada
Davis, Rachel	Legal Advisor to SRSG on Business and Human Rights
Dethomas, Arthur	Cotty Vivant Marchisio & Lauzeral
Dhir, Aaron	Osgoode Hall Law School
Dias, Luciana	Brazilian Securities and Exchange Commission
Dube, Indrajit	Indian Institute of Technology Kharagpur
Eijsbouts, Jan	Business Law & Conflict Management
Ellis, Hannah	The Corporate Responsibility Coalition (CORE)
Evans, Marketa	Canadian CSR Counselor for the Extractives Sector
Forbes, Guilherme	Souza, Cescon, Barrieu & Flesch
Ford, Craig	Inmet Mining Corporation
Fransen, Aaron	Stikeman Elliott
Garcia-Mingo, Alfonso	Creel, García-Cuéllar, Aiza y Enríquez
Goo, Say	University of Hong Kong; Standing Committee on Company Law Reform (Hong Kong)
Greene, Adam	United States Council for International Business
Greenfield, Kent	Boston College Law School
Gregor, Filip	European Coalition for Corporate Justice
Hamilton, Ashley	Shareholder Association for Research and Education
Horrigan, Bryan	Monash University
Hutchinson, Allan	Osgoode Hall Law School
Jesseman, Christine	South African Human Rights Commission
Jiangyu, Wang	National University of Singapore
Johnson, Mora	Canadian Department of Foreign Affairs and International Trade
Johnson, Peter	PricewaterhouseCoopers
Joshi, Seema	Global Witness
Karlsson, Michael	Mannheimer Swartling
Katz, Michael	Edward Nathan Sonnenbergs
Khan, Bilal	Osgoode Hall Law School
Kjær, Victor	Danish Commerce and Companies Agency
Koetsier, Kees	Nauta Dutilh
Li, Jinyan	Interim Dean, Osgoode Hall Law School
Lie, Valborg	Norwegian Ministry of Finance
Lindsay, Rae	Clifford Chance LLP
Martin, Shanta	Amnesty International
McArdle, Jim	Export Development Canada
Millon, David	Washington and Lee University School of Law
Mongalo, Tshepo	University of Cape Town
Myklebust, Trude	Norwegian Ministry of Finance
Nicholls, Christopher	University of Western Ontario
Nicolson, Rachel	Allens Arthur Robinson

Paradis, Pascal	Lawyers without Borders Canada
Penry, Michael	United Kingdom Department for Business, Innovation and Skills
Pitts, Chip	Stanford University
Puri, Poonam	Osgoode Hall Law School
Ranney, Kevin	Jantzi-Sustainalytics
Rudolfsson Goyer, Pia	Norwegian Government Pension Fund
Ruggie, John	UN Special Representative on Business and Human Rights (SRSG)
Schneider, Signi	Export Development Canada
Scott, Craig	Osgoode Hall Law School
Seck, Sara	University of Western Ontario
Sherman, John	Center for Business and Government Harvard Kennedy School
Tapper, Meredith	Research Assistant to SRSG on Business and Human Rights
Therel, Pierre	Total
Travis, Chad	Osgoode Hall Law School
Triponel, Anna	Jones Day LLP
Veenman, Sybil	Barrick Gold Corporation
Wai, Robert	Osgoode Hall Law School
Waitzer, Edward	Stikeman Elliott
Wallace, Mike	Global Reporting Initiative
Watchman, Paul	QWC Consultancy
Williams, Cynthia	University of Illinois College of Law
Wise, Thomas	Chevron Corporation
Zahzah, Tarik	Ghellal & Mekerba
Zimmerman, Vanessa	Legal Advisor to SRSG on Business and Human Rights
Zumbansen, Peer	Osgoode Hall Law School