

SPEAKING NOTES

Canadian Bar Association
May 6, 2010

**Confronting Corporate Complicity in International
Human Rights Abuses**

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One of the problems with globalization is that the law lags behind commerce.

Transnational companies have achieved a geographic and economic reach greater than the countries they operate in, creating a governance gap.

In the last few years there have been enormous strides in developing a legal framework to facilitate international business. These include multilateral conventions, model laws, codifications of customs and usages, international trade arrangements, model contracts [models for arbitration and other modes of extrajudicial dispute resolution] and restatements of the applicable laws. Organizations active in this process include Uncitral¹, Unidroit² and the International Chamber of

¹E.g., on arbitration, the 1985 Model Law on International Commercial Arbitration, with amendments (adopted in 2006); on matters relations to the international sales of goods, its 1992 Legal Guide on International

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Commerce³. Equivalent machinery to deal with allegations of human right abuses has not enjoyed the same priority.

In 2003 there was a ground swell of support in the United Nations to attribute to transnational corporations the same duties and responsibilities as states under public international law.⁴

There was an equally strong reaction from corporations operating across several jurisdictions, particularly in the third world, who pointed out that a corporation is an economic vehicle and is not a state and does not have the same powers as a state and should not be treated as a state under international law.

As complaints of corporate misconduct mounted, however, a consensus emerged that the problems of corporate complicity in human rights abuses had to be addressed, particularly in extractive industries – particularly in the third world – and particularly in areas of conflict. The

¹(...continued)

Countertrade Transactions, its 1983 Uniform Rules on Contract Clauses for an Agreed Sum Due upon Failure of Performance, its 1980 Convention on Contracts for the International Sale of Goods (CISG) or its 1974 Convention on the Limitation Period in the International Sale of Goods; on electronic commerce, the 2005 United Nations Convention on the Use of Electronic Communications in International Contracts, as well as various model laws on procurement.

² From the 1964 Convention relating to a Uniform Law on the International Sale of Goods to the 2009 Convention on Substantive Rules for Intermediated Securities, including a few recent initiatives on models law (franchise disclosure (2002), leasing (2008).

³The 1992 Code de la CCI sur le parrainage, the 1997 International customs guidelines or the 2010 Framework for Responsible Environmental Marketing Communications

⁴*Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights* - UN Doc. E/CIV. 4/Sub. 2/2003/12/Rev. 2; David Kinley & Rachel Chambers, “The UN Human Rights Norms for Corporations: The Private Implications of Public International Law” (2006) 6:3 Hum.R.L.Rev. 447

United Nations appointed a Harvard professor, John Ruggie⁵, to be its Special Reporter on Human Rights and Transnational Corporations. Much valuable work in this area has also been done by non-governmental human rights organizations such as the International Commission of Jurists based in Geneva, an organization whose mission is the promotion of the rule of law and judicial independence. Its 3 volume report entitled “Corporate Complicity and Human Rights Abuses” is a valuable contribution to work in this area.

Nevertheless the legal and theoretical work lags behind practical realities on the ground.

In the *Unocal*⁶ case, for example, a major US company was alleged to have made knowing use of forced labour coerced through murder and other violence for a gas pipeline joint venture in Myanmar (Burma).

In the *Rio Tinto*⁷ case, a large mining company was alleged to have made use of military assistance to brutally quell an uprising at its mine in circumstances where it knew or ought to have known of the risk that war crimes would be committed.

⁵John Ruggie, “Protect, Respect and Remedy: a Framework for Business and Human Rights” Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises to the Human Rights Council, 8th session, agenda item 3. A/HRC/8/5 (April 7, 2008), at p. 7.

⁶*Doe v. Unocal*, 248 F.3d 915 (9th Circ. 2001); 395 F.3d 932 (9th Circ. Cal., 2002)

⁷*Sarei v. Rio Tinto PLC*, 487 F.3d 1193 (9th Circ. 2007) superseding 456 F.3d 1069, 1099 (9th Circ. 2006) see Michael D. Ramsey, “International Law Limits on Investor Liability in Human Rights Litigations”, (2009) 50:2 Harv. Intl. L.Rev. 271, at fn. 33-37, at p. 280

In the *Wiwa*⁸ and *Bowoto*⁹ cases, there were allegations of brutality committed by government security forces in Nigeria, allegedly acting with material assistance and at the behest of two large oil companies, Shell Oil and Chevron.

The scope of the governance gap continues to increase by virtue of the combined effect of several related factors, including the ever-expanding reach of global trade, concomitant global economic interdependency, the increasing economic influence of transnational companies, and the increasing political influence of such companies in war-torn and economically depressed countries in which the latent risk of human rights abuse is highest.¹⁰

The media have recently reported allegations of human rights abuses against a Canadian company operating in Costa Rica, and a further allegation of the complicity of Blackfire Mining Company of Calgary in the murder of a protestor at its mine in Mexico.¹¹

Unlike manufacturing companies, geography dictates where the mine exists or where the oil

⁸*Wiwa v. Royal Dutch Petroleum, et al.* 226 F.3d 88 (2nd Cir. 2000); 96 Civ. 8386 (S.D.N.Y. Feb. 28, 2002, 2002 US Dist. Lexis 3293, 2002 UL 319887

⁹*Bowoto v. Chevron Texas Corp.* 312F. Supp. 2d 1229 (ND Cal. 2004)

¹⁰John Ruggie, "Protect, Respect and Remedy: a Framework for Business and Human Rights" Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises to the Human Rights Council, 8th session, agenda item 3. A/HRC/8/5 (April 7, 2008), at para. 3: "The root cause of the business and human rights predicament today lies in the governance gaps created by globalization - between the scope and impact of economic forces and actors, and the capacity of societies to manage their adverse consequences. These governance gaps provide the permissive environment for wrongful acts by companies of all kinds without adequate sanctioning or reparation."

¹¹Nicolas Bérubé, « Une entreprise minière canadienne au coeur d'une controverse », *La Presse*, December 16, 2009

can be found. Opening up mining and petroleum development and the running of processing facilities inevitably creates the potential for environmental damage as well as a human costs. There will often be communities displaced by development. Beyond that, the government of a developing country is often anxious to attract foreign investment, and sometimes goes overboard in clearing populations from a location that impedes development. Protestors are often harshly dealt with.

“Corporate complicity” by definition does not engage the corporation as the perpetrator of international human rights abuses or environmental offences, but complicity in the sense of actively aiding and abetting generally attracts joint and several liability for the resulting losses.

Perhaps best known is the *Rio Tinto* case arising from events in Bougainville in Papua, New Guinea. Development of the mine in the 1960s was alleged to have created environmental devastation. There was an uprising at the mine site that was brutally suppressed by the government forces and this brutality eventually led to a 10-year “civil conflict” between the government and the local population between 1990 and 2000.

It was *not* alleged that Rio Tinto itself violated the human rights of the protestors. Rather, Rio Tinto was accused of corporate complicity in encouraging the government to use whatever force became necessary to allow the project to proceed, either with foresight of the human consequences or willful blindness to what happened. Implicit in the allegation is the applicable definition of “complicity” which requires “practical assistance, encouragement or moral support which has a

substantial effect on the perpetration of the crime”.¹² It is not enough that the transnational corporation had knowledge. Nor is it enough that it benefitted from the human rights abuses of the local country against its own people. On the other hand, the corporate assistance need not be indispensable. It is enough if the transnational corporation’s conduct amounted to a contributing cause of the human rights abuse.

As a result of various jurisdictional hurdles and barriers, most of the compensation claims against corporations, wherever located, are litigated in the United States under the *Alien Tort Claims Act*. The statute was enacted shortly after American independence to deal principally with piracy. It was used successfully for the first time in the modern era in the *Unocal* litigation. In that case Union Oil Company of California [Unocal] was accused of utilizing forced labour in Burma [Myanmar] to clear a right of way for its Yadana Pipeline to carry gas across the border from Myanmar to Thailand. The project necessitated clearing whole communities along the right of way, and it was alleged in the claim that the protestors were met with “large scale arrests, violent beatings to disperse gatherings, midnight raids by the police and unmitigated violence on women and children”. Despite a dogged procedural defence by Unocal, the case was ultimately cleared to proceed, at which time it settled.

While the extractive industries generally generate the headline cases, there is also a growing

¹²*Prosecutor v. Anto Furundzija* (Trial Judgement), IT-95-17/1-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 10 December 1998; (Appeal Judgement) IT-95-17/1-A, ICTY, 21 July 2000; see also John Gerard Ruggie, *Business and Human Rights: The Evolving International Agenda*, 101 A.J.I.L. 819 (2007), at 832

body of complaints related to manufacturing industries¹³, largely the result of globalization.¹⁴ The World Trade Organization estimates that there are now about 80,000 transnational corporations (TNC's) operating in developing countries, with something in the order of 770,000 subsidiaries, affiliates or suppliers.¹⁵ A company like Wal-Mart is said to make use of thousands of suppliers in the developing world.¹⁶

The key to first world corporate investment in the third world generally lie in investment agreements between the TNC and the host country. The host country will make the best bargain it can get but as I was told as a young lawyer working for the Government of Tanzania and attempting

¹³E.g., the Saipan cases, about sweatshops in the Commonwealth of the North Mariana Islands. Many suits were launched between 1999 and 2001 (*Doe v. Gap*: Civ. 99-329 (filed C.D. Cal. January 13, 1999), *Union of Needletrades Industrial and Textile Employees v. The Gap*, 300474, *Doe v. Advanced Textile Corp.*), and most settled in late September 2002. See www.business-humanrights.org/LegalPortal/Site/Categories/Lawlawsuits/Lawsuitsregulatoryaction/LawsuitsSelectedcases/USapparelcoslawsuitreSaipan.

¹⁴For lawsuits filed according to industry, see www.business-humanrights.org/LegalPortal/Home/Industry, e.g. pharmaceutical/health (*Abdullahi v. Pfizer* (S.D.N.Y., filed Aug. 29, 2001): thirty Nigerian families sued Pfizer for conducting an unethical clinical trial of an antibiotic (Trovan) on their children in 1996. Claim dismissed on FNC grounds (2002 U.S. Dist. LEXIS 17436), settled in August 2009.

¹⁵ John Gerard Ruggie, *Business and Human Rights: The Evolving International Agenda*, 101 A.J.I.L. 819 (2007), at p. 822 "According to the most recent figures, seventy-seven thousand transnational firms span the global economy today, with some 770,000 subsidiaries and millions of suppliers--Wal-Mart alone is reported to have more than sixty thousand suppliers.", with a footnote to "The overall figures are taken from UNCTAD, WORLD INVESTMENT REPORT 2006, UN Sales No. E.06.II.D.11 (2006), available at <http://www.unctad.org/en/docs/wir2006_en.pdf>. The number of Wal-Mart suppliers comes from the announcement of a lecture by Wal-Mart's CEO. H. Lee Scott, CEO, Wal-Mart, London Lecture of the Prince of Wales's Business and the Environment Programme, University of Cambridge Programme for Industry (Feb. 1, 2007), available at <www.admin.cam.ac.uk/news/dp/2007013101>." Jim Redden, "Introduction", in Andrew L. Stoler, Jim Redden and Lee Ann Jackson (ed.), *Trade and Poverty Reduction in the Asia-Pacific Region - Case Studies and lessons from low-income communities* (Cambridge, CUP, 2009), at p. 18 speak of 60,000-80,000 TNCs.

¹⁶Numbers vary greatly and estimates range from 7,000 to 100,000. Emmanuel Gobillot, *The Connected Leader: Creating Agile Organizations for People, Performance and Profit* (London: Kogan 2006), at 36 and Robert A. Schultz, *Contemporary Issues in Ethics and Information Technology* (Hershey (PA): IRM, 2006), at 80 speaks of 21,000 suppliers but Zhanping Cheng, *Value-Based Management of Supplier Relationships and Supply Contracts* (Loumar (Germany): Eul Verlag, 2009), at 69 refers to a 2008 Wal-Mart document and speaks of 61,000 suppliers from 55 countries.

to negotiate an investment agreement with the General Tire Company of Akron, Ohio, “Tanzania needs General Tire more than General Tire needs Tanzania”. This was probably true and it underlies the lack of bargaining power available to many third world countries.¹⁷ Where the host state exercises greater bargaining power the TNC may be prepared as part of the investment agreement to build schools and hospitals and provide some infrastructure such as roads as part of the deal. From its point of view, of course, the TNC might well feel that it was being pushed to fulfill socio-economic functions that were really none of its business.

Courts, sensing the needs of international business, have facilitated arbitration not only by a purposeful interpretation of such instruments as the New York Convention but facilitating the wish of the parties in relation to, for example, choice of law.¹⁸ The growth in business law has been both encouraged by and made possible by the growth of international organizations such as the World Trade Organization. The question that arises is why in this burst of activity to facilitate international business so little attention has been paid to providing an appropriate forum for the resolution of claims of people adversely affected by these developments including claims of human rights abuses in which transnational corporations are alleged to be complicit.

I do not mean to suggest at all that transnational corporations are blundering through the developing world like a herd of elephants. There are some real success stories. Recently the *New*

¹⁷John Ruggie, “Protect, Respect and Remedy: a Framework for Business and Human Rights” Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises to the Human Rights Council, 8th session, agenda item 3. A/HRC/8/5 (April 7, 2008).

¹⁸*Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, 330 U.N.T.S. 38 (NY, 10 June 1958; entry into force: 7 June 1959)

York Times reported on the activities of de Beer's diamond mines in Botswana where the company not only provided jobs but built hospitals and schools. De Beer's recently moved a major diamond sorting facility from London to Botswana.¹⁹ As a result the average *per capita* income in recent years from \$80 to approximately \$6,000. I have no idea how equitably this increase in income is spread, but by all accounts the project has served Botswana well. Despite such success stories, the fact remains that the global economy is not accompanied by a very effective legal system where human rights are concerned.

Transnational corporations also suffer from the governance gap and the lack of a proper forum to defend their reputations against unfounded allegations. A rather bizarre situation confronted the sports manufacturer Nike, for example, when it was on the receiving end of numerous complaints about working conditions in its manufacturing facilities in the third world.²⁰ When Nike attempted to respond by commissioning and publicizing an independent report by a respected U.S. official, Nike was sued in California by an activist who claimed that Nike's attempt to defend itself was nothing but puffery. He sued Nike in California under false advertising laws. Nike attempted to shelter under its First Amendment freedom of speech but it lost its case in the Supreme Court of California and a further appeal to the U.S. Supreme Court went nowhere when the Court (curiously) decided that leave had been improvidently granted. The fact remains that Nike was left without an adequate remedy, either domestically or internationally. It is not only the labourers of Myanmar or

¹⁹ Joe Nocera, "Diamonds are Forever in Botswana", *New York Times*, August 9, 2008

²⁰ *Kasky v. Nike, Inc.*, 79 Cal. App. 4th 165, 93 Cal. Rptr. 2d 854 (Cal.App. 2000), reversed in *Kasky v. Nike, Inc.*, 27 Cal. 4th 939, 45 P.3d 243 (Cal. 2002). Petition of certiorari granted by U. S. Supreme Court on January 10, 2003, and dismissed "as improvidently granted" on June 26, 2003. The case was settled out of court on September 12, 2003.

the villagers of Papua, New Guinea who would benefit from greater clarity in the legal order governing transnational corporations.

The Parliament of Canada has looked at these situations on at least two occasions. A few years ago, the NDP introduced Bill C-369 which would prohibit Canadian companies from doing abroad what they are not permitted to do at home.²¹ No one questioned the constitutionality of such a law were it to be passed, but corporations understandably protested that the extraterritorial imposition of Canadian standards on activities in the third world would place them at a considerable disadvantage.

There is presently pending before Parliament a private members bill that seeks a measure of accountability in Canada of Canadian companies doing business abroad by establishing complaint structures in the Department of Foreign Affairs which, on receipt of a complaint, would have the obligation to look into the facts and report.²² The merits of such a bill have proven to be controversial. It is not thought likely to pass.

²¹ Ed Broadbent proposed a bill to make the “Westray law” global, i.e. make companies liable for acts of cross negligence internationally as they are domestically. Bill C-369 made it to the first reading on April 22, 2005; elections were called; it was reintroduced as Bill C-331 by Pat Martin, first reading for the 39th parliament, 1st session, on June 29, 2006, and first reading for the 39th parliament 2nd session on October 16, 2007; elections were called again; and again by Mr. Martin as Bill C-260 in the 40th parliament, first reading: January 27, 2009.

²²On February 9, 2009, John McKay proceeded to the first reading of Bill C-3000, An Act respecting Corporate Accountability for the Activities of Mining, Oil or Gas in developing Countries. It made it to the Second Reading on April 22, 2009. It was then deferred to the Foreign Affairs and International Development Committee on October 21, 2009, which coincided with the adoption of a October 19, 2009 report recommending that more time be granted to the committee to pursue its examination of the bill. Parliament was then prorogued.

Nothing prevents Canada or other states from imposing legal responsibilities for human rights abuses directly on corporations domiciled here. However, as is pointed out by Professor John Ruggie²³, this has not been done to any appreciable extent anywhere in the world.

At this stage, accordingly, corporations are left with such voluntary measures as performance standards (including industry codes and guidelines), a due diligence process, an internal complaints process, the Equator principles²⁴, the OECD's national contact points²⁵ or industry efforts (e.g., Kimberley Process Certification Scheme²⁶ to stop the sale of "blood diamonds" that fuel civil wars in Central Africa) and performance standards (e.g., those adopted by the World Bank's International Finance Corporation, or some government procurement policies such as Norway's pension fund restrictions).

The United States has been more aggressive. As mentioned, its *Alien Tort Claims Act* (1789)²⁷, was originally enacted to deal with piracy and diplomatic issues and largely laid dormant²⁸

²³John Ruggie, "Protect, Respect and Remedy: a Framework for Business and Human Rights" Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises to the Human Rights Council, 8th session, agenda item 3. A/HRC/8/5 (April 7, 2008), at p. 7.

²⁴www.equator-principles.com/documents/Equator_Principles.pdf (July 2006)

²⁵ www.oecd.org/document/3/0,3343,en_2649_34889_1933116_1_1_1_1,00.html

²⁶S.C. 2002, c. 25

²⁷28 USC § 1350

²⁸Gary Clyde Hufbauer & Nicholas K. Mitrokostas, "International Implications of the Alien Tort Statute", (2004) 16 St. Thomas L. Rev. 607, at p. 60 fns. 13-14 (also (2004) 7:2 J. of Intl Econ L. 24) suggest it had been invoked only 21 times and ruled on twice before the 80s. There is little historical record on the *ATCA*. However, in
(continued...)

until the 1980s when it was invoked by foreign claimants seeking compensation for environmental or human rights abuses and found a sympathetic ear in some of the U.S. courts, particularly in New York and California. Resort had also been had to the *Torture Victims' Protection Act*²⁹ and the *Racketeer-Influenced and Corrupt Organizations Act*.³⁰

There is presently pending before the Ontario Superior Court a claim by some Ecuadorian citizens against the Copper Mesa Mining Corporation³¹. The case has so far escaped the threat of summary dismissal, but serious logistical issues remain to be solved. A prime example, perhaps, is the judicial resistance against “piercing the corporate veil”. It is fundamental, of course, that a corporation is a different legal personality from its shareholders. Typically the transnational corporation will do business in the foreign state through a subsidiary or network of subsidiaries that effectively distances home office from the work in the field. It is the subsidiary (or affiliate in the field) against whom the allegations of complicity are likely to be made. In the circumstances, head office might quite plausibly deny any involvement or encouragement of the abuses, even though it

²⁸(...continued)

Sosa v. Alvarez-Machain, (2004) 542 US 692 and William R. Casto, “The Federal Courts' Protective Jurisdiction Over Torts Committed in Violation of the Law of Nations” (1985-1986) 18 Conn. L. Rev. 467 (though arguable the former draws a lot from the latter) suggest the statute was first and foremost enacted with offences to ambassadors in mind, though in practise, they might have proven more relevant re piracy (which more “superficial” accounts indeed usually suggest is the reason for the enactment of the *ATCA*). A third offence that was probably contemplated by the First Congress was the violation of safe-conduct. These three infractions are listed by William Blackstone, *Commentaries on the Laws of England*, book IV (Chicago: Callaghan & Co., 1876), at 66, as “the offences against the law of nations”.

²⁹1991 Pub. L. 102-256, 106 stat. 73

³⁰18 USC § 1961-68

³¹ *Ramirez Piedra v. TSX Inc.*, 2009 CanLII 69783 (Ont. SCDC)

is the principle beneficiary. In the *Presbyterian Church of the Sudan v. Talisman*³², for example, Talisman Energy was sued in New York under the *Alien Tort Claims Act* but the court held that there was insufficient proof of any direct link between Talisman itself and the human rights abuses in the Sudan.

In a case in Quebec involving the Cambior mine³³ in Guyana, where 1.2 billion litres of cyanide had escaped from a tailing pond and done great environmental damage, it was similarly held that there was insufficient proof to connect head office to the operating subsidiary.

Of course even if a domestic court finds it has jurisdiction, the foreign victims of abuses will still confront the doctrine of *forum non conveniens*. Home office will argue that the foreign country where the offences occurred is the “natural forum” for the resolution of the dispute, and that there is no reason the case should not be resolved in the country where the acts occurred according to the law of that country.³⁴ As mentioned, however, the laws of the host country may offer no real relief

³²Motion to dismiss for lack of personal jurisdiction denied on August 27, 2004 *Presbyterian Church of Sudan v. Talisman Energy, Inc.*, No. 01 Civ. 9882(DLC), 2004 WL 1920978 (S.D.N.Y.). Motion to dismiss on jurisdictional grounds denied in March 2003 (*Presbyterian Church of Sudan v. Talisman Energy, Inc.*, 244 F. Supp. 2d 289 (S.D.N.Y. 2003)).

³³*Recherches internationales Québec c. Cambior inc.*, J.E., 98-1905. A thoughtful case comment on the decision (and indeed, quoted by the SCC in *Spar Aerospace Ltd. v. American Mobile Satellite Corp.*, 2002 SCC 78, [2002] 4 S.C.R. 205), can be found in Jeffrey A. Talpis and Shelley L. Kath, “The Exceptional as Commonplace in Quebec *Forum Non Conveniens* Law : *Cambior*, a Case in Point” (2000), 34 *R.J.T.* 761, online: <http://www.themis.umontreal.ca/pdf/rjtv0134num3/talpis.pdf>

³⁴In the US, these two high-profile ATC cases were dismissed on *forum non conveniens* grounds: In *Re: Union Carbide Corp. Gas Plant Disaster at Bhopal*, 634 F. Supp. 842 (1984), 54 USLW 2586 (S.D.N.Y. May 12, 1986); *Aguinda v. Texaco Inc.* 142 F. Supp. 2d (S.D.N.Y. 2001) (destruction of the rainforest in Ecuador). However, the following two cases proceeded in the US: *Wiwa v. Royal Dutch Petroleum and Shell Transport* (2000) (human rights abuses on part of the Nigerian authorities); and *The Presbyterian Church of Sudan v. Talisman Energy* (continued...)

to victims.

Even if the court decides that there is jurisdiction and denies a stay of proceedings or dismissal on the basis of *forum non conveniens*, it may still have to deal with common law arguments barring its intervention such as the Act of state doctrine. In the mining cases, for example, the foreign state clearly authorized under its own legal system the creation of a mine or pipeline and, by necessary implication, the dislocation of villagers living on the site. The Act of state doctrine quite understandably discourages (and will often prevent) our courts from adjudicating the effect of official action by a foreign sovereign.³⁵

The legal community is awakening to the reality that beneath and beyond the legal jousting, there are human problems in search of a legal solution. In the manufacturing sector, low cost production in developing countries has in some cases been done at the expense of child labour, community dislocation, workplace safety or environmental damage. If abuses occur, and the victims do not have proper recourse for compensation, the cost of third world production is to that extent understated. Not only is the first world benefitting from a lower wage structure in the third world, but uncompensated injuries are not reflected in the cost because there is an imperfect match between

³⁴(...continued)

Inc., supra.

The most recent Canadian case on the topic is *Bil'In (Village Council) c. Green Park International Inc.*, 2009 QCCS 4151, currently on appeal, which rejected jurisdiction on the basis of *forum non conveniens*. The English courts have begun to look more closely at what constitutes an effective alternate forum, taking into account, inter alia, financial means and access to justice; see *Connelly v. RTZ Corporation*, [1997] UKHL 30.

³⁵The brief can be accessed here:
www.humanrightsusa.org/index.php?option=com_docman&task=doc_download&gid=68&Itemid=80

the price paid by the first world for the products and the real costs incurred by the third world.³⁶ It would be both desirable and rational to create a forum in which these claims can be adjudicated properly so that the prices we pay match the costs of delivering the products from which we benefit.

It is beyond question that transnational companies have the ability to significantly influence human rights around the world for good or for ill. Sometimes influence implies obligation. In light of mounting evidence of corporate complicity in human rights abuses, there is, at the very least, an obligation upon the legal community to clarify the human rights-related duties of transnational companies as a matter of both civil and criminal law, both nationally and internationally. The work of Professor John Ruggie and such organizations as the International Commission of Jurists points the way forward.

³⁶Paul R. Krugman and Maurice Obstfeld, *International economics: theory and policy*, 6th ed. (Harlow, Pearsons, 2004), at pp. 23-25