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## Introduction: Corporate Social Responsibility in the Pacific Rim Corporate Social Responsibility in the Pacific Rim: Preface

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## PREFACE

### INTRODUCTION: CORPORATE SOCIAL RESPONSIBILITY IN THE PACIFIC RIM

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In April 2009, the Institute of Asian Research (IAR) launched the second phase of the research project “Asia Pacific Dispute Resolution: Understanding Coordinated Compliance with International Trade and Human Rights Standards in Comparative Perspective”, funded by the Social Sciences and Humanities Research Council (SSHRC) of Canada under its Major Collaborative Research Initiative (MCRI) Program. Whereas the initial MCRI project generated an explanatory model that enabled reliable forecasting of local compliance with international trade and human rights standards as separate and distinct discourses,<sup>1</sup> the Phase II project expands its research on the dynamic relationships between trade and human rights policies and practices in Canada and Asia and builds an expanded model to forecast conditions for coordinating compliance with these standards.<sup>2</sup> Predictable coordination can in turn facilitate stronger co-operation in trade and human rights relations, such that expanded trade connections can be demonstrated to contribute to improved human rights conditions and vice versa.

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<sup>1</sup> See “Welcome to the Asia Pacific Dispute Resolution Project Phase I” *Asia Pacific Dispute Resolution*, online: <<http://archive.apdr.iar.ubc.ca/phase1>>.

<sup>2</sup> See “Asia Pacific Dispute Resolution Programme Phase II Now Underway” *Asia Pacific Dispute Resolution*, online: <<http://apdr.iar.ubc.ca>>.

The project aims to produce research that will enable interdisciplinary scholars and policy-makers in Canada and internationally to better understand the requirements for effective cross-cultural dispute resolution, thus strengthening efforts to build a community of trade and human rights compliance in the Asia-Pacific region. The research results will also enable Canadian policy-makers to address the needs of cross-cultural dispute-resolution practice in our multicultural environment. The project's key activities support a fully integrated program of research, student training, knowledge-transfer activities, and publications, as well as policy seminars and a public lecture series.

This collection of articles is the product of an international conference on corporate social responsibility (CSR) in the Pacific Rim, held in cooperation with the National Centre for Business Law (NCBL) at the University of British Columbia and the Canadian Business Ethics Research Network (CBERN). Professor Ljiljana Biuković coordinated the NCBL participation, while Simon Handelsman coordinated CBERN's role. The conference drew upon the concepts of "Coordinated Compliance", the central issue for our current MCRI project, as well as the paradigms of "Selective Adaptation" and "Institutional Capacity" developed in our initial MCRI project.

### THE DILEMMA OF COORDINATED COMPLIANCE<sup>3</sup>

International trade regimes are centred on normative principles associated with liberalism in the European and North American tradition. Building on tenets about human equality and natural law, the liberal tradition of political ideology asserts that government should be an agency of popular will and should be restrained from active intervention in socio-economic relations.<sup>4</sup>

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<sup>3</sup> See Pitman B Potter, "Co-ordinating Corporate Governance and Corporate Social Responsibility" (2009) 39:3 Hong Kong LJ 675. Also reprinted in Japanese, see (2011) 5:1 Tsinghua Law Journal 43.

<sup>4</sup> Classic works include Will Kymlicka, *Liberalism, Community, and Culture* (New York: Oxford University Press, 1989); Roger Cotterrell, *The Politics of Jurisprudence: A Critical Introduction to Legal Philosophy* (Philadelphia: University of Pennsylvania Press, 1992); Agnes Heller, "On Formal Democracy" in John Keane, ed, *Civil Society and the State: New European Perspectives* (New York: Verso, 1988) 129; and Charles E Lindblom,

As expressed in international trade standards associated with the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO), norms of liberalism are manifest in part through provisions on transparency (e.g., GATT Article X: government responsibility to publish trade laws and regulations); national treatment and non-discrimination (e.g., GATT Articles III and XIII: responsibility to avoid protection of local industries); as well as the requirements on reducing and eliminating tariffs and trade subsidies.<sup>5</sup> These derive from liberal principles that accept the theory of comparative advantage, which essentially relegates the role of government to promoting efficiency through maximizing the utility of a state's existing or acquired economic attributes, and limiting state actions to inhibit the economic activities of other states through mercantilism and protectionism.<sup>6</sup>

International human rights standards reflect a normative orientation toward socio-economic justice, combining liberal norms with ideals associated with socialism. Human rights standards articulated in the *Universal Declaration of Human Rights*,<sup>7</sup> as well as the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*<sup>8</sup> and the

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*Politics and Markets: The World's Political-Economic Systems* (New York: Basic Books, 1977).

- <sup>5</sup> See text of the General Agreement on Tariffs and Trade (GATT), *Basic Instruments and Selected Documents (BISD)* (Geneva: World Trade Organization, 1953–94) vol 1–42. Among the many useful treatises on the GATT are John H Jackson, *World Trade and the Law of GATT: A Legal Analysis of the General Agreement on Tariffs and Trade* (Charlottesville: Michie Company, 1969); Frank Stone, *Canada, the GATT and the International Trade System* (Montreal: Institute for Research on Public Policy, 1984).
- <sup>6</sup> For a skeptical review, see generally Bartram S Brown, "Developing Countries in the International Trade Order" (1994) 14:2 N Ill UL Rev 347. For a discussion of the role of governments in directing foreign trade policy, see Benjamin J Cohen, *Crossing Frontiers: Explorations in International Political Economy* (Boulder: Westview Press, 1991).
- <sup>7</sup> *Universal Declaration of Human Rights*, GA Res 217 A (III), UNGAOR, 3d Sess, Supp No 13, UN Doc A/810 (1948) 71.
- <sup>8</sup> *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 993 UNTS 3, Can TS 1976 No 46 (entered into force 3 January 1976).

*International Covenant on Civil and Political Rights* (ICCPR),<sup>9</sup> combine priorities of civil and political rights with protection of economic, social, and cultural rights. Despite efforts to present these as a unified and undifferentiated set of norms, political discourses on rights enforcement reveal conflicts over priorities and timing.<sup>10</sup> Yet underlying commonalities about socio-economic justice remain, even if complicated by questions about implementation.

Despite their apparent differences in normative priorities regarding efficiency and justice, international trade and human rights discourses have multiple related contexts and mutual influences. For example, trade liberalization rules restricting government assistance to nascent industries have potential impacts on human rights issues over labour standards in developing economies. As well, human rights imperatives on issues of health and environmental protection can affect multilateral efforts to entrench efficiency priorities in trade relations. Coordination also affects the policy-making context within which trade and human rights matters are considered and decided. Linkages between trade and human rights outcomes merit intensive research on conditions for coordinated compliance with international trade and human rights standards. Research-driven policy proposals on coordinated compliance with international trade and human rights standards can offer a range of best practices to facilitate international co-operation in a wide array of socio-economic and political relationships.

While there is emerging recognition of the need to explore coordinated compliance with international trade and human rights standards,<sup>11</sup> empirical

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<sup>9</sup> *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 17, Can TS 1976 No 47 (entered into force 23 March 1976).

<sup>10</sup> *C.f. Vienna Declaration and Programme of Action*, UNHCHR, 1993, UN DocA/CONF157/23 with “Final Declaration of the Regional Meeting for Asia of the World Conference on Human Rights of 2 April 1993” (1993) 14:9–10 HRLJ 370 (known as “The Bangkok Declaration”).

<sup>11</sup> See Frederick M Abbott, Christine Breining-Kaufmann & Thomas Cottier, eds, *International Trade and Human Rights: Foundations and Conceptual Issues* (Ann Arbor: University of Michigan Press, 2006); Thomas Cottier, Joost Pauwelyn & Elisabeth Bürgi, eds, *Human Rights and International Trade* (New York: Oxford University Press, 2005).

research and policy analyses are lacking.<sup>12</sup> One important reason for this is that the “interpretive communities”<sup>13</sup> of officials, legal specialists, and business and political elites that are at the heart of local interpretation and implementation of international trade and human rights regimes are often composed of very different groups of specialists and stakeholders, who neither share conceptual perspectives nor interact organizationally.<sup>14</sup> These entrenched institutional arrangements often inhibit development of alternative approaches that might support coordinated compliance. The lack of consensus over the meaning and purpose of trade and human rights goals has compromised local efforts at coordinated compliance.<sup>15</sup> For example, compliance with international trade standards on production tends to privilege consumption,<sup>16</sup> local business models,<sup>17</sup> and reliance on financial and regulatory incentives for private behaviour,<sup>18</sup> but frequently is unconnected with local human rights conditions and policies. International discourses on private property and trade liberalization often work to limit the range of approaches available locally to promote human rights.<sup>19</sup> Similarly, human rights discourses often tend to confront the norms and

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<sup>12</sup> See John H Jackson, “Reflections on the Possible Research Agenda for Exploring the Relationship between Human Rights Norms and International Trade Rules” in Abbott, Breining-Kaufmann & Cottier, *supra* note 11 at 19.

<sup>13</sup> See Stanley Fish, *Is There a Text in This Class? The Authority of Interpretive Communities* (Cambridge, MA: Harvard University Press, 1980).

<sup>14</sup> See Ernst-Ulrich Petersmann, “Multilevel Judicial Governance of International Trade Requires a Common Conception of Rule of Law and Justice” (2007) 10:3 J Int’l Econ L 529.

<sup>15</sup> See Henry J Steiner & Philip Alston, *International Human Rights in Context: Law, Politics, Morals*, 2d ed (Oxford: Oxford University Press, 2000) at 1306–61.

<sup>16</sup> See Jeffrey Barber, “Production, Consumption and the World Summit on Sustainable Development” (2003) 5:1–2 Environment, Development and Sustainability 63.

<sup>17</sup> See Ian Barney, “Business, Community Development and Sustainable Livelihoods Approaches” (2003) 38:3 Community Development Journal 255.

<sup>18</sup> See Bob Frame & Rhys Taylor, “Partnerships for Sustainability: Effective Practice?” (2005) 10:3 Local Environment 275; Douglas A Kysar, “Sustainable Development and Private Global Governance” (2005) 83:7 Texas L Rev 2109.

<sup>19</sup> See Ernst-Ulrich Petersmann, “Human Rights and International Trade Law: Defining and Connecting the Two Fields” in Cottier, Pauwelyn & Bürgi, *supra* note 11 at 29.

institutions of international trade as obstacles rather than potential contributors to human rights conditions.<sup>20</sup>

Better coordination of trade and human rights practices will support efforts to build more effective international institutions for coordinated implementation of trade and human rights standards, a critical requirement to enable international law reform.<sup>21</sup> It is useful, therefore, to examine conditions for coordinated compliance with international trade and human rights standards, paying particular attention to underlying norms of efficiency and justice. Coordination in trade and human rights compliance can in turn facilitate stronger co-operation in trade and human rights relations more broadly, such that expanded trade connections can be demonstrated to contribute to improved human rights conditions and vice versa. Coordinated compliance also has implications for performance of international treaty standards in areas such as security, climate change, and resource and technology policy. Thus, building understanding about coordinated compliance with international trade and human rights standards has intrinsic value for its potential to prevent and avoid disputes over trade and human rights, and thus reduce the costs of international co-operation.

This approach has particular relevance in Asia, where commitments to trade liberalization and human rights performance mandate a broader understanding of conditions that can support coordinated compliance with international standards. By building a better understanding of the potential for coordination of local trade and human rights standards in Asia, we can hope to strengthen understanding of a crucial policy challenge in a significant region of the world. Understanding the potential for unifying contending policy and political constituencies associated with trade and human rights in Asia can also help to overcome competition for influence and resources that can be counterproductive to efforts to build common

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<sup>20</sup> See Radu Mares, "Introduction" in Radu Mares, ed, *Business and Human Rights: A Compilation of Documents* (Leiden: Brill Academic, 2004) at xv; Steiner & Alston, *supra* note 15 at 1306–61.

<sup>21</sup> See Agata Fijalkowski, ed, *International Institutional Reform: Proceeding of the Seventh Hague Joint Conference held in The Hague, The Netherlands, 30 June–2 July 2005* (The Hague: TMC Asser Press, 2007); Steiner & Alston, *supra* note 15 at 555–983.

purposes and co-operation domestically and internationally. Such an approach would strengthen the ability of economies in Asia to respond to different kinds of trade and human rights compliance challenges, and to encourage coordination of trade and human rights policies and practice.

### RESULTS FROM THE CSR CONFERENCE

The papers and panel presentations at the CSR conference were organized according to three themes: regulatory regimes, dispute resolution, and business ethics. A student panel also offered papers on corporate governance. The NCBL panel combined legal analysis with attention to the challenge of coordinated compliance in the context of local norms and institutions. Issues of CSR in Japan were addressed in “*Kigyō no Shakai-teki Sekinin: Challenges for Corporate Social Responsibility in Japan*” by Janis Sarra and Masafumi Nakahigashi. Cynthia Williams addressed the challenge of regulating transnational firms in her paper, “An Essay on American Multinational Corporations: Increased Power, Decreased Accountability?” Each of these papers invites consideration of how regulatory regimes and corporate social responsibility programs complement and contradict each other.

Whereas the papers in the NCBL panel drew primarily on law and policy discourses, the second panel organized by the MCRI project focused mainly on local country studies viewed from policy and social science perspectives. Links between CSR and social capital in a comparative context were addressed by Victor Chui and Ilan Vertinsky in their paper “Corporate Social Responsibility and Social Capital Development in the Workplace: Evidence from Canada and China”. This paper was augmented by Hao Yiding’s piece on CSR in China. Shifting to Japan, Masao Nakamura drew on his extensive experience with research on Japanese corporate governance in his paper (co-authored by Sven Tommi Rebien), “Corporate Social Responsibility and Corporate Governance: Japanese Firms and Selective Adaptation”.

The CBERN panel focused particularly on issues of business ethics and human rights in the extractive sector. Catherine Coumans’ paper, “Mining and Access to Justice: From Sanction and Remedy to Weak Non-Judicial Grievance Mechanisms”, explored the processes and outcomes of civil-society complaints about mining projects. Alistair Macleod’s piece on “Human Rights and International Trade” offered a broad treatment of some



of the conceptual issues underlying the challenge of coordinating trade and human rights compliance.

The graduate student panel focused particularly on CSR and corporate governance in China. Nadira Lamrad examined the challenge of linking CSR and corporate governance in China in her “Transnational Business, CSR, and Governance in China” paper, while Jing Lu addressed the issue of “Corporate Social Responsibility Reporting in China”. Both of these papers combined conceptual foundations for CSR with the operational challenges of corporate governance in China.

Taken together, the conference papers and presentations revealed the rich diversity of perspectives and issues emerging from the discourse of coordinated compliance with regard to specific issues of CSR in the Pacific Rim. The papers combined the energy and dynamism of early-career scholars with the experience and polish of more established specialists. They revealed a fundamental concern over human well-being, as well as an abiding commitment to scholarly rigour. I was privileged to participate in the conference and to work with these outstanding scholars.

We are very pleased to present a selection of papers from the conference in this special issue of the *UBC Law Review*. I would like to thank the *Review* and its editorial board for their steadfast support. I would also like to thank Simon Handelsman for collaborating on this project and Rozalia Mate for her continuing assistance and support.