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KEYNOTE SPEECH

CORPORATE SOCIAL RESPONSIBILITY IN THE PACIFIC RIM: DRAWING THE BOUNDARIES

INSTITUTE OF ASIAN RESEARCH, UNIVERSITY OF
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The dialogue at this conference will cause us to cross many boundaries. We will explore the extent to which corporations operating in the different cultures, economies, and political systems of Pacific Rim countries share a common understanding of corporate social responsibility (CSR). We may examine how corporations adapt general principles of CSR to particular circumstances when they cross boundaries from one country to another. Not only do the priorities of concern differ from country to country, but the strategic analyses and practical approaches to responding to those concerns are shaped by different countries' legal, political, social, economic, and environmental circumstances. Our discussion will touch on many specific issues of corporate social and environmental performance in the different countries of the region and the manner in which corporations are addressing those issues.

The basic question we are asking at this conference is whether the boundaries of CSR itself are drawn differently under the influence of varying

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national characteristics. What, in fact, do we mean when we speak of the boundaries of CSR? This is a question I have wrestled with for many years.

During the decades that I was responsible for managing political risk and strategizing social performance for a major international mining company (now retired), I, along with some colleagues in the global mining industry, came to feel a certain discomfort with the term “corporate social responsibility”. On a practical level, the term CSR seems far too open-ended, in fact totally lacking any well-defined boundaries. The result is that numerous expectations or demands directed at corporations find expression as matters of CSR, sometimes far exceeding what the corporation would normally consider the proper scope and delimitation of its role as a business enterprise.

CSR inspires a single-minded focus on the role of the corporation in providing goods and services to the benefit of society—everything from protecting the environment to promoting human rights. CSR ignores the complementary responsibilities of other actors in society, such as governments, civil society organizations, and international institutions. In effect, CSR drives the corporation either to accept responsibilities that go beyond its proper role and mandate, or to take the publicly awkward stance of denying that certain demands and expectations of society should be corporate responsibilities. To make CSR a tool and not a trap for corporate managers, a stricter demarcation of the boundaries of corporate responsibility is needed.

In the quest for appropriate boundaries of CSR two approaches appear possible, which I shall refer to as the maximalist and the minimalist. My assumption is that the appropriate boundaries lie somewhere in-between the view that corporations should do virtually everything possible and the view that corporations should do only what is absolutely necessary.

The most comprehensive statement of the scope of CSR (the maximalist view) is the recently finalized *ISO 26000*.¹ This document addresses the full range of conceivable corporate responsibilities relating to organizational governance, human rights, labour practices, the environment, fair operating

¹ International Organization for Standardization, *ISO 26000* (Geneva: ISO, 2010) [*ISO 26000*].

practices, consumer issues, and community involvement and development. Unfortunately, *ISO 26000* contributes little to drawing boundaries around corporate responsibilities, as is evident in the following quote:

In addition to being responsible for its own decisions and activities, an organization may, in some situations, have the ability to affect the behaviour of organizations/parties with which it has relationships. Such situations are considered to fall within an organization's sphere of influence. . . . An organization does not always have a responsibility to exercise influence purely because it has the ability to do so. . . . However, there will be situations where an organization will have a responsibility to exercise influence.²

Such words reinforce the perception of CSR as a concept that is open-ended and unbounded. As such, CSR becomes difficult to integrate into corporate management systems.

Management systems are governed by standards of performance, and standards require targets against which performance can be evaluated and benchmarks against which progress can be measured. In the business world, it is said that what cannot be measured does not get done. One might have expected that *ISO 26000* would provide guidance for measuring CSR performance, but in fact it explicitly refrains from doing so. In the words of *ISO 26000*, "This International Standard provides guidance to users and is neither intended nor appropriate for certification purposes. Any offer to certify to *ISO 26000* or any claim to be certified to *ISO 26000* would be a misrepresentation of the intent and purpose of this International Standard."³ So a maximalist definition of CSR renders the concept weak as a management tool, with respect to limiting the scope of reasonable expectations for corporate social and environmental performance, and with respect to driving corporate performance through the achievement of measurable objectives.

Despite the management shortcomings of CSR as a comprehensive concept, certain issue areas included under the umbrella of CSR have considerably advanced in defining boundaries of corporate responsibility and

² *Ibid* at 16.

³ *Ibid* at vii.

establishing benchmarks against which corporate performance can be measured. This is the case most notably with environmental performance and labour practices, both of which have well-developed standards with the potential for certification.⁴ By contrast, the weakest issue area with respect to boundaries and benchmarks would appear to be human rights, and not surprisingly, this is the area where public criticism of corporate performance appears to be increasingly focused, particularly with respect to activities in the extractive sector.⁵

The concept of rights has expanded significantly beyond the civil and political rights, and the economic, social, and cultural rights that were articulated in the International Bill of Human Rights.⁶ The content of the term “human rights” is evolving, and today it includes indigenous rights, environmental rights, and the rights of all creatures.⁷ In fact, there is probably no complaint that can be lodged against an activity of a company that cannot be expressed in terms of rights. All the issue areas covered by *ISO 26000* could in fact be reworded in terms of rights.

⁴ See e.g. International Organization for Standardization, *ISO 14001* (Geneva: ISO, 2004) (environmental-management-systems-certification standard); Social Accountability International, *SA8000* (New York: SAI, 2008) (labour-practices-certification standard).

⁵ See e.g. Foreign Affairs and International Trade Canada, *Building the Canadian Advantage: A Corporate Social Responsibility (CSR) Strategy for the Canadian International Extractive Sector*, online: <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/ds/csr-strategy-rse-strategie.aspx?view=d>>.

⁶ The International Bill of Human Rights includes: *Universal Declaration of Human Rights*, GA Res 217 (III), UNGAOR, 3d Sess, Supp No 13, UN Doc A/810, (1948) 71; *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171, Can TS 1976 No 47, 6 ILM 368 (entered into force 23 March 1976); *International Covenant on Economic, Social and Political Rights*, 19 December 1966, 993 UNTS 3, 6 ILM 368 (entered into force 3 January 1976).

⁷ See e.g. *United Nations Declaration of the Rights of Indigenous Peoples*, GA Res 295, UNGAOR, 61st Sess, Supp no 49, UN Doc A/RES/61/295, (2007); Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Review of Further Developments in Fields with which the Sub-Commission Has Been Concerned: Human Rights and the Environment*, UNESCOR, 1994, UN Doc E/CN.4/Sub.2/1994/9, (Annex I, 1994).

The work of John Ruggie, Special Representative to the UN Secretary General on Business and Human Rights, has helped to circumscribe the rights responsibilities of corporations. Ruggie's policy ("Protect, Respect and Remedy" Framework) limits the responsibilities of corporations to respecting rights within the sphere of their activities and direct impacts:

The responsibility to respect human rights requires that business enterprises:

- (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
- (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.⁸

By this definition, the scope of corporate responsibilities related to rights is no longer open-ended and unbounded, and corporations have a rationale for resisting the demands of advocacy groups to use all the resources within their sphere of influence to support and promote rights in their countries of operation. From the outer fringes of the maximalist view of CSR, Ruggie has pulled us inwards, drawing a boundary around CSR by containing responsibilities within the sphere of direct linkages to corporate activities.

So the boundary of corporate responsibility related to rights is the area of direct corporate control or impact. But what are the rights to which this circumscribed responsibility of corporations applies? The term "rights" seems also to lack boundaries. In common parlance, rights imply entitlements that are absolute, which cannot or should not be infringed in any manner or traded away. In fact, however, the denotations and connotations of rights are far less precise. Some rights purport to be absolute and infeasible, the right to life for example, while other rights are sometimes classified as progressive or aspirational, for example the right to employment. In some jurisdictions, rights are interpreted as relating essentially to individuals, while in other jurisdictions collective rights are deemed pre-eminent.

⁸ John Ruggie, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, UNHRCOR, 17th Sess, UN Doc A/HRC/17/31. (2011) at 14, online: <<http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf>> [emphasis removed].

Not all rights are equal, yet there is no clearly defined hierarchy of rights. Moreover, there are no benchmarks for measuring corporate progress in addressing issues of rights, and no clear targets for setting corporate objectives in terms of rights. Such deficiencies complicate the ability of corporate management to deal effectively with social challenges and conflicts once they are defined and understood as issues of rights.

To effectively analyze and address the issue of social responsibility, we need first to use the right terminology. This is an age-old challenge. Confucius was asked, “What is the key to good governance?” and he responded, “One must first name things correctly!”⁹ In other words, use the right terms! He went on to say, “If the terms are not correct, discussions will not be reasonable, and if discussions are not reasonable, affairs will not succeed.”¹⁰

If the terminology of CSR and the language of rights are not particularly helpful to corporations in addressing social and environmental issues, is there a more effective set of terms? This question inspires me to approach an understanding of CSR from the minimalist perspective.

The most succinct formulation of the minimalist view of CSR was articulated by Milton Friedman in an article published in *The New York Times Magazine*, about 40 years ago, entitled “The Social Responsibility of Business Is to Increase Its Profits.”¹¹ The most frequently quoted part of that article is:

In a free-enterprise, private-property system, a corporate executive is an employee of the owners of the business. He has direct responsibility to his employers. That responsibility is to conduct the business in accordance with their desires, which generally will be to make as much money as possible while conforming to the basic rules of the society, both those embodied in law and those embodied in ethical custom.

⁹ *Analects*, Ch 13 [Translated by the author].

¹⁰ *Ibid* [Translated by the author].

¹¹ Milton Friedman, “A Friedman Doctrine: The Social Responsibility of Business Is to Increase Its Profits”, *The New York Times Magazine* (13 September 1970) 32 & 122.

Friedman stated that if the manager of a corporation invests in social expenditures (such as environmental enhancement or poverty reduction), he is in effect depriving the owners of the corporation, whose agent he is, of a share of the profits they are entitled to. For Friedman, such social investments are expenditures beyond what is required for the benefit of the firm. He argues that expenditures for environmental or community purposes that are directly linked to bolstering the economic performance of the firm are wrongly referred to as CSR or “social expenditures”, as they are in reality simple business expenses.

This view of CSR, while somewhat hard-edged in Friedman’s formulation, is almost certainly the view held intuitively if not explicitly by managers of publicly owned corporations in North America. Any corporate expenditure that is purported to be for the good of society in general (such as charitable donations to hospitals or cultural events) must also be linked to the best interest of the firm, even if only for reputational advantage in a competitive marketplace.

Would the same understanding prevail in the minds of corporate management in the Asian countries of the Pacific Rim? Friedman’s analysis applies to publicly traded corporations, but what about corporations that are wholly or partly owned by the state? What, for example, are the boundaries of CSR for transnational Chinese oil, gas, and mining companies, which are mostly parastatals or state-owned? What are the boundaries of CSR if a company’s primary objective is not to maximize shareholder value but to secure resources for China? Would the business case for social expenditures be different for such companies? I do not have an answer for this question, but I think it may be worth exploring, given the implications for understanding the nature of competition or collaboration between companies with different CSR orientations.

The boundaries of CSR for companies that operate in the extractive sector (oil, gas, and mining) are not, it seems to me, determined strictly in accordance with Friedman’s criterion of maximizing profits for investors. In my view, extractive-sector companies can be said to have two classes of investors that are entitled to returns on their investment: investors of financial capital and investors of natural capital (the resources owned by the nation, sometimes called the “national endowment”). The return to the nation from the extraction of non-renewable resources by responsible

companies is, or should be, a contribution to economic growth, social progress, environmental protection, and good governance. In other words, extractive-sector companies have a particular responsibility to contribute to sustainable development.

Boundaries are an essential characteristic of sustainable development, which is a process of continuous trade-offs among the priorities of economic growth, environmental protection, social progress, and good governance, in an ongoing quest for the optimal integration of all four dimensions. The responsibilities of corporations are bounded by the responsibilities of other institutional actors in society, notably civil-society organizations and governments, none of which can independently “deliver” sustainable development, but each of which can and should contribute to sustainable development. As *ISO 26000* rightly says, “The objective of social responsibility is to contribute to sustainable development.”¹² What *ISO 26000* fails to say is that corporations are operating outside of their proper boundaries of responsibility if their CSR activities overlap or encroach on the proper responsibilities of civil-society organizations and governments. The terminology of sustainable development provides boundaries to corporate responsibilities and also suggests benchmarks and targets against which corporate progress toward achieving objectives can be measured.

So during this conference, I suggest that we listen carefully to the terms used to describe the responsibilities of corporations. Are the terms open-ended, or are they clearly bounded? Do the terms accommodate benchmarking, so that increments of corporate progress in a certain direction can be measured? Do the terms indicate or imply roles and responsibilities for non-corporate actors in society that complement those of corporations? As Confucius would have us ask: Are we naming things correctly?

¹² *ISO 26000*, *supra* note 1 at vi.