

# “SULLIVAN-TYPE” PRINCIPLES FOR U.S. MULTINATIONALS IN EMERGING ECONOMIES

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## 1. INTRODUCTION

The high rate of crime in Russia and the prominence of the Russian Mafia are well known and publicized in the West. President Yeltsin has called crime, which is choking the emerging market economy, Russia's biggest problem.<sup>1</sup> An article in *U.S. News & World Report* describes Russia as “a vast bazaar in which the easiest way to get rich is to steal.”<sup>2</sup> The government has shown itself ineffective in combating crime and in establishing a rule of law. Consequently, many ordinary Russians, who are experiencing a decline in their standard of living,<sup>3</sup> are more ambivalent about the march towards capitalism than they were in 1991. Many Western businesses are understandably reluctant to enter an area in which corruption is rampant and the future uncertain. However, the reasons behind the present conditions are too often inadequately understood. As a result, the remedy and the appropriate role of Western companies in the developing market of countries of the former Soviet Union are not clearly

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<sup>1</sup> He has frequently called fighting crime his top priority. See Jack F. Matlock, *Russia: The Power of the Mob*, NY REVIEW OF BOOKS, July 13, 1995, at 12, 13; see also Julie Corwin et al., *The Looting of Russia*, U.S. NEWS & WORLD REPORT, Mar. 7, 1994, at 36 (noting the many ways in which crime is undermining Yeltsin's reforms).

<sup>2</sup> Corwin et al., *supra* note 1, at 36; see also Erin Arvedlund, *Murder in Moscow*, FORTUNE, Mar. 3, 1997, at 128 (describing the business environment in Russia as “gangland brutality passing for commerce”); Craig Mellow, *Russia's Robber Barons*, FORTUNE, Mar. 3, 1997, at 120 (noting that the emerging class of Russian bankers attained their power and wealth through illegal ties).

<sup>3</sup> See *Russia's Standard of Living Is Declining*, MOSCOW NEWS, May 12, 1995, at 9.

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### 1.1. *Soviet History*

The transition from the Russian social and economic structures of 1917 to the socialist structures of the Soviet Union took about fifteen years.<sup>4</sup> During the ensuing period until 1991, the government, under the Communist Party, held complete sway over all aspects of Soviet life. The state was the only employer and the only owner of the productive resources of the country. The state controlled education, outlawed almost all religion, and provided all social services. Such state control resulted in the breakdown and virtual disappearance of, in the language of Hegel and Marx, a "civil society."<sup>5</sup> According to Hegel and Marx, a "civil society" consists of the informal structures that grow up together with the rise of free enterprise or capitalism and the spread of democracy. These informal structures include private businesses, clubs, non-governmental organizations, and private groups of all sorts that are independent of government control. During the eighteenth and nineteenth centuries in Europe and the United States, civil society and its institutions were and continue today to be the bearers of the values, including the ethical and moral values, of the society. Civil society includes myriad structures and groups that reinforce the values necessary for a free and reasonably efficient functioning society. These various groups and structures tend to police or rein in abuses by other groups. Business transmitted and reinforced a work ethic; labor organized and stood up to industry to curb gross exploitation and injustice; consumers gained a voice when they felt abused; environmentalists organized to defend interests that they felt were being threatened, and so on.

In the Soviet Union, the state eliminated all such initiatives, and private groups and the state assumed all the functions previously performed by civil society. The ethics and morality of pre-Soviet days were labeled "bourgeois," and there was a

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<sup>4</sup> By 1933, when Stalin had put an end to Lenin's New Economic Policy and the forced collectivization of farms, the last step in state ownership, had been completed. See GEORGE VERNADSKY, *A HISTORY OF RUSSIA* ch. 14 (5th ed. 1961).

<sup>5</sup> See, e.g., KARL MARX, *Bruno Bauer*, "Die JUDENFRAGE," in KARL MARX: *EARLY WRITINGS* 22-31 (T.B. Bottomore ed. & trans., McGraw-Hill 1964).

systematic attempt to replace bourgeois values with socialist values and to promote a communist morality that was developed and preached by the state.<sup>6</sup> The Soviet Union was more successful in destroying civil society than in inculcating allegiance to communist morality. Corruption was evident in the Soviet system in which influence and connections were often necessary to obtain goods and services, in which the idea of service was equated with inequality and hence, suspect, and in which the *nomenklatura*, or the functionaries in power, controlled what got done and how.

## 2. RUSSIA'S TRANSITION TO CAPITALISM

With the fall of the communist system many Westerners and Western businesses assumed that privatization of industry was all that was necessary for business in the newly-formed post-Soviet states to become similar to business in the West. They, however, were mistaken. Western businesses failed to realize that, in the West, countries have not only developed a system of laws that govern the operation of business and that keep the "playing field" reasonably level, but that Western countries also have governments that are able and willing to enforce the law. In contrast, when the Soviet Union disintegrated, its laws and structures were replaced inadequately. Former functionaries took advantage of their positions, as they had in the past. The government did not act and, because of internal reasons, could not act to establish the required laws.

The tax system is in disarray and almost non-functioning. The police are ineffective and many former KGB members use their training in a newly emerged mafia. Most basic of all, with the breakdown of central control, there were no organs of civil society to replace the vacuum that appeared. Added to this, the population had been taught that capitalist society was exploitative, unjust, and a society of "dog-eat-dog." When such a society emerged, many Russians imagined that this was, in fact, the kind of society they had now chosen and that they had the choice either of this or of their former unacceptable condition.

Russia's transition to capitalism is shaky and uncertain, in part, because of a reliance on what I have called "scientific capitalism."<sup>7</sup>

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<sup>6</sup> See RICHARD T. DE GEORGE, *SOVIET ETHICS AND MORALITY* 6 (1969).

<sup>7</sup> See Richard T. De George, *Scientific Capitalism: The Stage After Communism*, *PROBLEMS OF POST-COMMUNISM*, May-June 1995, at 15-16.

The doctrine of "scientific capitalism" consists of a belief that the way to the new stage of society is through immediate and full privatization of industry with heavy emphases on the economy and the development of free enterprise. Western economic advisors have advocated this strategy, and the Russian leadership has followed. "Scientific capitalism," however, has several flaws. One is the dubious belief that a successful free market economy can develop without an adequate set of political and social background conditions: a rule of law, legally binding contracts that are enforced, a stable and rational tax system, and basic respect for those with whom one does business. None of these conditions exists in Russia today. However, many ordinary Russians, Russian leaders, and Western advisors rationalize their absence and the concomitant conditions of crime and corruption as simply a necessary stage through which incipient capitalism historically went and through which Russian capitalism must also go.

Although it is arguably true that Western capitalism progressed through such a stage, the belief that any society that wishes to be capitalist must go through that same stage is false. It is a myth supported by those who believe that getting the economy "jump started" by private individuals regardless of whether they are criminals or former government officials who continue to exploit the workers and the people is immaterial. It is a view held by those in the West who believe ethics has no role in an economy, and who wrongly believe that once the Russian economy is privatized, it is immune from political domination or from a reversion to a repressive system. Ironically, this view is an application of the discredited view of Marx that the economic conditions or base of a society determine the political and social superstructure of a society. Other aspects of the now otherwise discredited teachings of Karl Marx also bolstered this myth.

Marx stressed the corruption that accompanied the early accumulation of capital.<sup>8</sup> Many Russians who rejected Marxism-Leninism nonetheless believe Marx's description of capitalism as inherently exploitative and predatory. They accept Marx's notion of necessary stages, wild capitalism being the necessary precursor to the developed capitalism with its high standard of

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<sup>8</sup> See KARL MARX, CAPITAL 713-16 (Samuel Moore & Edward Aveling trans., Foreign Languages Publ'g House 1959) (1887).

living that many Russians desire. They also adopt the Marxist view that historical inevitability justifies the immorality they are witnessing. All three of these tenets, however, are false with respect to Russia today. Corruption is not a necessary or inevitable concomitant of incipient capitalism. Even Marx held that one country can and should learn from another and thus ease the birth pangs that accompany the move from one economic system to another.

Clearly, corruption fuels corruption. If it is tolerated and accommodated, it grows. If it becomes part of the way of doing business, it is increasingly difficult to uproot and eradicate. Business on a large scale, however, does not flourish amidst corruption. Business requires trust, the honoring of contracts, and basic honesty if it is to function smoothly and efficiently. Otherwise, the transaction and monitoring costs undermine fruitful development. Bribery hinders rather than spurs economic development and tends to keep inefficient markets inefficient. Recent issues of both *Business Week* and *Transparency International*<sup>9</sup> reported on the significant cost of corruption in international business. Given this background, and the unsettled political, legal, and economic conditions in Russia, the question has arisen of whether or not U.S. companies should adopt local practices that they consider necessary to remain competitive, even if this means engaging in corrupt practices.

### 2.1. *A Corrupt System*

Arguably, Russian entrepreneurs are caught in a corrupt system. Because there is no rational or ethically justifiable allocation of resources, the rules of the economic game are not clear. Much of the economy is, in fact, if not quite in theory, operating along the lines of the former Soviet economy. Some industries are still state subsidized. Raw materials, machinery, and most productive resources tend to be earmarked for the large factories to which they were previously sent, to the disadvantage of small entrepreneurs. There is little in the way of a truly free market of resources and goods. Hence, small entrepreneurs feel that they must get their supplies where, when, and how they can.

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<sup>9</sup> See Karen Pennar, *The Destructive Costs of Greasing Palms*, BUS. WK., Dec. 6, 1993, at 136; *How Much Corruption Costs*, TRANSPARENCY INT'L NEWSL. (Transparency Int'l, Berlin, F.R.G.), Mar. 1994, at 5.

They cannot be too choosy about how their sources obtained the goods they are offered. In a corrupt system, they plausibly argue, the ethical rules are not always clear. The only way to ensure that one's hands are clean is to abstain from entering the market. However, that would leave all entrepreneurial activity to the Russian mafia and to former Soviet bureaucrats. Operating as they can within the emerging system is the lesser of two evils for such entrepreneurs. Similarly, many small entrepreneurs claim they must pay bribes and extortion to be able to function. This is less bad than demanding bribes or extortion, and once again this is the lesser of two evils.

Assuming that this justification for the way small Russian entrepreneurs operate is accepted,<sup>10</sup> does not, however, justify the murder of one's competitors, the exploitation of one's workers, or the cheating of one's customers. The justification extends only to those actions necessary to remain in business in a corrupt environment, where the alternative is to cede the field entirely to the corrupt. This argument also does not justify bribery, extortion, or other forms of corruption.

## 2.2. *Approaches to Facing Corruption*

No country openly argues that bribes to government officials are ethically justifiable, even when they are demanded as necessary, or held to be customary. Extortion payments, even when imposed, also are not openly justified. Nonetheless, the issues of bribery, extortion, and other forms of corruption continue to be of concern for multinationals. One alternative, an ethically unacceptable one, is to adopt local custom and pay bribes. Some Western companies have accepted the local conditions and work within the existing framework, paying bribes and extortion, and reaping available short term gains. Doing so cannot be justified for multinationals the way it might be justified for local entrepreneurs.<sup>11</sup> Moreover, legally, the Foreign Corrupt Practices Act

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<sup>10</sup> For a more complete discussion, see Richard T. De George, *International Business Ethics: Russia and Eastern Europe*, 19 SOC. RESP.: BUS., JOURNALISM, LAW, MED. 5 (1993).

<sup>11</sup> For a more fully developed argument, see Richard T. De George, *Business Ethics in Primitive Capitalism: What Rules for Russia?*, 1994 INT'L ASS'N FOR BUS. & SOC'Y 1994 PROC. 32.

("FCPA")<sup>12</sup> prevents U.S. corporations from paying bribes to government officials.<sup>13</sup>

A second alternative is to abide by the provisions of the FCPA, which allows facilitating payments, but requires abstention from paying bribes to government officials. The FCPA does not forbid paying extortion or, as the local entrepreneurs do, getting one's goods where, when, and how one can. However, the justification for so doing, even if it applies to local entrepreneurs, does not apply to U.S. multinationals. The justification of choosing the lesser of two evils does not apply to multinationals because they are not forced to operate in Russia; they have hard currency that is in great demand; and they have the power and resources to withstand the graft, violence, and corruption that surround them.

Too many U.S. multinationals believe the claim that they must cooperate with corrupt elements to operate in Russia. Some also take advantage of the chaos and use it to their financial benefit. In both cases, they add to the problem. However, U.S. and other foreign multinationals can and should be part of the solution. Foreign companies may need a cultural broker to negotiate the shoals of Russian bureaucracy. They do not need a moral broker in the sense that they shift responsibility to their broker to do whatever is necessary in the way of bribes, payoffs, and extortion.

A third approach is to adopt circumventionist practices, such as substituting so-called charitable contributions to the favorite charity of the government official in question. In some societies, this technique has worked.<sup>14</sup> The aim of the government officials in some societies is not to gain personally but to share their bribes with their extended family. Some U.S. companies, understanding this aim, have sought to realize it directly and

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<sup>12</sup> Foreign Corrupt Practices Act of 1977, 15 U.S.C. §§ 78dd-1 to 78dd-2 (1994).

<sup>13</sup> See 15 U.S.C. § 78dd-2(a).

<sup>14</sup> This is not dissimilar from U.S. corporations contributing to charitable and civic causes in the U.S. communities in which they are located. For examples of U.S. companies building schools, a mosque, and other community facilities, see Robert McClements, *Every Cloud Has a Zip-Out Lining*, in *ETHICS AND THE MULTINATIONAL ENTERPRISE: PROCEEDINGS OF THE SIXTH NATIONAL CONFERENCE ON BUSINESS ETHICS* 113, 115 (W. Michael Hoffman et al. eds., 1986).

legally. For instance, these companies have agreed to build a school or hospital or otherwise contribute to the welfare of the community as payment for a large contract. There is no evidence that this sort of approach is a viable one in Russia, where the aim of government officials appears not to help their community but to enrich the officials.

Doing business in Russia at the present time is fraught with difficulties and dangers. Those U.S. companies that are willing to take the chances necessary to gain a potentially profitable foothold can do so best by helping the ethical elements in the country fight the criminal element and the increasing economic chaos. If they use their moral imagination, they can be part of the solution instead of being an increasing part of the problem.

### 2.2.1. *Adoption of a United Front "Sullivan-Type" Approach*

Thus, a fourth approach is preferable. This approach is to adopt a united front vis-a-vis corruption. Transparency International has helped raise the issue of corruption to a visible level in Europe, and there is more support now than previously for some positive action against corruption rather than passive acquiescence. None of the firms appears to have realized that all of the strategies they have adopted thus far are short-term solutions and that the firms can best exert a significant and positive influence by joint activity. Foreign companies face systemic problems, and they attempt to solve and resolve them individually, at great expense, inefficiently, and ineffectually. Systemic answers are the only solution to systemic problems.

Faced with organized crime and corruption, the only answer is an organized counter force; faced with the lack of civil society, the only answer is the development of civil society — a task that individual foreign firms cannot accomplish but that organizations of such firms can help promote. The point is not to impose Western values on the Russian people, but to promote those values necessary for a functioning democratic, free enterprise society. Taking the initiative in this respect is for the foreign companies a matter of self-interest, but a self-interest of which the host country and its people are also beneficiaries. One can put the task in moral or ethical terms as the need to help establish an ethics of civil society; but such a task is part of the requirements for a successful and efficient market system. Thus, it is both an



ethical and altruistic and a self-interested task.

This Article proposes that Russia, Ukraine, and other countries that were part of the Soviet Union require something like a "Sullivan Code." This Article shall focus on Russia, because it is the largest of these countries, and in many ways, the most important of them on the world scene. Nonetheless, this Article applies equally well to Ukraine and to some other former Soviet states. The problem in those new states that are Muslim dominated are somewhat different, especially to the extent that Muslim fundamentalism is at odds with Western notions of civil society, and the goals, aspirations, and desires of the population are not necessarily to emulate the Western developed democracies.

First, a coalition of U.S. multinationals can send a strong message to the honest Russian entrepreneurs, workers, and government officials that they are valued and respected and that they, and not the shady or criminal elements, are the partners the multinationals seek. Second, they can show, by their example, the benefits of free enterprise to all if certain restraints are followed and if the good of all the stakeholders — shareholders, workers, customers, local neighborhoods where plants are located, and the general public — are considered in the firm's operations. Third, they can cooperate with the government, and, if necessary, encourage and induce it to pass and enforce legislation that protects small businesses and fosters honest entrepreneurship.

Some U.S. firms, such as McDonald's and Ben & Jerry's, refused to deal with the criminal element, by not paying bribes or extortion, and demonstrated concern for their employees and customers.<sup>15</sup> One consequence for both was considerable delay in being able to open their operations. However, they were able to locate honest and reliable suppliers and to avoid dealing with and becoming dependent on the criminal element.

Getting this message across individually, firm by firm, is costly in time, effort, and money, as Ben and Jerry's learned before it finally decided to withdraw from Russia.<sup>16</sup> Each business, however, need not reinvent the proverbial wheel. In South Africa, U.S. multinationals learned that adoption of and adherence to the

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<sup>15</sup> See, e.g., George Melloan, *Big Macs Yes, but Don't Wait Up for Russian Capitalism*, WALL ST. J., Feb. 5, 1990, at A15.

<sup>16</sup> See Betsy McKay, *Ben & Jerry's Post-Cold War Venture Ends in Russia with Ice Cream Melting*, WALL ST. J., Feb. 7, 1997, at A14.

Sullivan Principles ("Principles") allowed them to exert public pressure against apartheid as well as avoid discriminatory practices in their own plants.<sup>17</sup> These actions neither constituted an importation of U.S. morality nor an imposition of it on another country. Rather, these actions simply respected the rights of the blacks who were unjustly treated by the apartheid laws.

U.S. companies in Russia may serve a like purpose. The similarity between the two cases is that U.S. companies find themselves operating in an arguably corrupt environment. The nature of the corruption, however, is different. Apartheid was an officially sanctioned policy of the government. In contrast, the corruption in Russia is not officially sanctioned, even when the corruption is within the government. When Reverend Sullivan proposed his Principles, he saw them as a temporary justification for U.S. companies investing in South Africa.<sup>18</sup> The justification was contingent on the Sullivan Principles' eradication of apartheid from within.<sup>19</sup> After ten years, Sullivan declared the experiment a failure.<sup>20</sup> Many U.S. companies became signatories of the Sullivan Principles because of pressure from stockholders, church groups, universities, and others.<sup>21</sup> Many of the U.S. companies were already in South Africa and adopted the Principles as an alternative to disinvestment in South Africa. The climate was favorable to business in South Africa: the government was stable, if repressive; law and order prevailed; contracts were enforced; and profits were secure. None of these factors is applicable with respect to U.S. companies in Russia. Nonetheless, the example of joint action is the part of the lesson that can be fruitfully adopted and adapted.

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<sup>17</sup> See Leon H. Sullivan, *The Role of Multinational Corporations in Helping to Bring About Change in South Africa*, in ETHICS AND THE MULTINATIONAL ENTERPRISE: PROCEEDINGS OF THE SIXTH NATIONAL CONFERENCE ON BUSINESS ETHICS, *supra* note 14, at 379, 382-83.

<sup>18</sup> On May 7, 1985, Sullivan announced a 24-month deadline after which, if apartheid was not abolished, U.S. companies should withdraw. See Leon H. Sullivan, *A Deadline for Ending Apartheid*, PHILA. INQUIRER, May 7, 1985, at 23A; Sullivan, *supra* note 17, at 382-83.

<sup>19</sup> See Sullivan, *supra* note 17, at 381-82.

<sup>20</sup> For more details, see RICHARD T. DE GEORGE, BUSINESS ETHICS 504-11 (4th ed. 1995).

<sup>21</sup> For a detailed account of U.S. corporations and the Sullivan Principles, see OLIVER F. WILLIAMS, THE APARTHEID CRISIS: HOW CAN WE DO JUSTICE IN A LAND OF VIOLENCE 66-67, 70-76, 93-97 (1986).

Because independent action is so difficult in Russia, the time is ripe for cooperative corporate action. A possible approach is for leading businesses interested in doing business in Russia to formulate and publicly promulgate and follow a set of guiding principles for operating in Russia. Signatories can go on record that they oppose working with corrupt elements. The contents of the code need not be elaborate and, in fact, may be relatively simple. Five items are obvious candidates for inclusion:

1. Signatories will not pay bribes or extortion.
2. Signatories will honor and demand that those with whom they do business honor contracts.
3. Signatories will respect the environment.
4. Signatories will follow standards of truth in advertising.
5. Signatories will not exploit workers.

The list is in no way exceptional and states what most companies in the United States would consider the routine way of doing business. They include items that would be present in many corporate codes. They are also norms that most U.S. citizens, whether consumers or stockholders, would support. Yet, despite their unexceptional sound, they are norms that are regularly violated as business is transacted in Russia.

As stated, the guidelines are vague. With respect to the first item, would companies wish to distinguish between bribes and facilitating or "grease" payments, as the FCPA does, or would signatories refuse to pay bribes not only to government officials but to everyone — to suppliers and to members of the mafia? Clearly, the latter is the preferable line to take. The FCPA already prohibits bribes to government officials.<sup>22</sup> The problem in Russia is also the mafia and other criminal elements. Hence, the code should address that issue directly and forcefully if it is to be an effective tool. Like other business people in Russia, U.S. companies may have to provide protection for their executives and their premises. It is better, however, to provide that protection oneself and in conjunction with others and the government than to pay the criminal element for such protection.

The honoring of contracts, the second item, is at the heart of

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<sup>22</sup> See 15 U.S.C. § 78dd-2(a)(2).

business transactions in a free market system. Unless contracts are honored, the transaction costs necessary to safeguard one's investment frequently make the transaction unprofitable. By making the honoring of contracts part of the code, U.S. companies commit themselves to acting as they should and put their Russian partners on notice about the importance of living up to a contract and fulfilling its terms. One result may be to encourage the Russian government to pass and enforce legislation concerning contracts. Even without this, U.S. firms can use publicity to expose gross breaches of contract whether they be by the government or by Russian firms. Publicity will also identify those firms that do not live up to their contracts so others can avoid dealing with them.

It is difficult to specify exactly what respect for the environment, the third item, entails. There are few laws in Russia that protect the environment, and the standards of accepted pollution are much lower than those tolerated anywhere in the United States. Should signatories only come up to standards specified by law? How far beyond those should they go? Ethics demands that corporations not harm people. However, exactly what ethics demands beyond that with respect to the environment is not always clear. There are trade-offs in many decisions about acceptable levels of pollution. It is possible for one society to choose a higher level of pollution than another society that is not ready or willing to bear the cost of cleaner air, water, or land. The ethical level of producing no harm is the one to which U.S. firms should commit themselves. That will be higher than the level demanded, much less enforced, by the Russian government. How much beyond the ethical minimum U.S. companies may wish to go will depend on a great many factors. Nonetheless, U.S. companies in Russia already have the environmental-protecting technology they have developed in their operations in the United States, and frequently that can be transferred. The final acceptable level to which they commit themselves and on which they agree to be audited should be set by the companies involved, conscious of the fact that the level will be made public, and hence that it must be defensible at home as well as in Russia.

The other items in the list are subject to a similar analysis. With respect to the fourth item, for example, signatory companies must decide whether puffery is allowable in advertising, and, if so, what degree of puffery is permissible. In determining precisely

how to interpret truth in advertising, the participating companies should realize that the Russian population does not have the experience of U.S. consumers, even though they have learned not to believe everything they are told. Determining what actually deceives people and what is and is not acceptable in advertising will necessarily involve some research and discussion among the signatories. The norm of truth in advertising, however, is one that must be interpreted in the U.S. context as well. That does not make it any less a norm to which companies hold themselves and to which consumers hold companies.

It also is difficult to state explicitly what constitutes exploitation of workers, item five. Are workers exploited if they are paid by U.S. firms the going wage — even if it is the equivalent of \$100.00 a month — for someone like a computer engineer who would earn \$75,000 a year for the same work in the United States? The answer is arguably no. A fair wage is not necessarily the same wage paid for similar work in the United States.<sup>23</sup> The cost of living is higher in the United States, and the competitive market, at least in part, is an important factor in determining how high wages go. It is much easier to discuss the minimum below which wages should not go. That minimum is the amount necessary to keep a worker as far above subsistence as is consistent with human dignity in the culture and society in question. U.S. companies that pay very high comparative wages can skew wages to the detriment of local firms by attracting all the best workers or by driving wages up beyond what local firms are able to pay. Under the Soviet system, employers frequently supplied workers with their social entitlements — vacations, education, medical care, and retirement.<sup>24</sup> Should U.S. firms supply these while Russian firms frequently no longer do so? Does failure to do so imply exploitation? The answer to both questions appears to be no; but how this norm is to be implemented and the conditions of work and remuneration to which the U.S. firms commit themselves should be worked out by them, once again conscious of the fact that this will be made public. Unless the level to which U.S. firms

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<sup>23</sup> For a discussion of exploitation of workers, see DE GEORGE, *supra* note 20, at 370-75, 479-81.

<sup>24</sup> For a brief discussion of social entitlements under the Soviet system and of the problems the system has caused under privatization, see JOSEPH R. BLASI ET AL., *KREMLIN CAPITALISM: PRIVATIZING THE RUSSIAN ECONOMY* 142-43 (1997).

commit themselves is obviously ethically justifiable, the exercise will be a futile one.

The principles can be as broad or as specific as the signatories agree upon before they are promulgated. Nevertheless, even at their simplest and broadest, as listed in the items above, stating and abiding by the norms at least sends the message that there are norms in business that U.S. companies are willing to be held to and agree to abide by. Other norms might be added, such as not practicing gender or racial discrimination. The intent is not to change ethically acceptable local practices but to commit oneself to ethical norms that cross borders.

To be effective, the agreed-upon code must be broadly publicized in Russia, and the participating firms must be publicly identified. Adhering firms might adopt an identifying symbol that can be placed on official stationery, business cards, and advertisements. Signatories should submit to an audit of their practices, and the results should be disclosed to the public.

Adoption of such a code will help set standards of doing business for Russian firms; it will lend moral support to the large numbers of ethical Russian entrepreneurs and workers; it will help promote the laws, customs, and expectations that support free economic activity in a free, but not exploitative, market economy. Signatories can also reassure their stockholders at home that they are willing to have their business conduct in Russia audited.

### 2.2.2. *Arguments for Adoption of a "Sullivan-Type" Code*

A joint effort removes the onus from any particular company. A joint effort, moreover, takes advantage of the strength available in presenting a united front. Joint refusal of payment of bribes or extortion lessens the necessary courage, cost, and difficulty of refusal to do so individually. Such a joint stand offsets the power of the mafia or of government officials with comparable strength on the other side.

The corporations' public adoption of a code would bring out in the open the problems of doing business in Russia. Corruption thrives best in the shadows. When exposed to the glare of publicity, however, corruption tends to recede. Publicity has a number of other positive effects. Russians will be informed that U.S. companies do not consider corruption part of the way of doing business. Companies that wish to engage in business with

honest Russian entrepreneurs will become known. Publicity will lend support to attempts by government reformers who wish to legislate and enforce legislation against corruption. Finally, U.S. consumers will be assured that U.S. companies are operating ethically despite the many reports of corruption in Russia that appear in the U.S. media.

As in the case of the Sullivan Principles, an independent accounting firm can be given the task of investigating and certifying compliance with the code. Accounting that reflects what a company has not done, for example, pay bribes, is more difficult than accounting that reflects what a company has done, for example, hiring or promoting blacks. But in order for the code to work, some form of public accountability is necessary. Each company's voluntary compliance can be expected to generate pressure on all other signatories to also comply as agreed. Violators should not and usually would not be tolerated by those who comply.

Adoption of such a code might shine a spotlight on the lack of efficient background institutions — laws, enforcement of contract, rational tax structures — in the Russian system and both encourage and promote the development of such institutions.

### 2.2.3. *Arguments Against Adoption of a "Sullivan-Type" Code*

First, companies may behave ethically without being signatories to a code. Subscription to the code involves incurring costs that are arguably unnecessary. Moreover, if there is a code, companies that act ethically and do not subscribe may unfairly be considered to be acting unethically. Although both of these arguments are true, the cost of allowing an audit is worthwhile and far less than the cost of paying bribes and extortion. Companies that are ethical, but choose not to sign, will not be considered unethical automatically. However, such refusal may raise questions. Additionally, non-subscribing companies will have one less reason for rejecting demands for bribery and extortion. The code and its auditing component, moreover, would not be permanent. The auditing function would be dropped when the society is stabilized and the crime and corruption are controlled.

Second, in the case of South Africa, U.S. opposition to apartheid was vocal and provided an impetus for companies to

subscribe to the Sullivan Principles. There is no groundswell of opposition to corruption in Russia, in part, because the same kind of corruption is found in so many other countries across the globe. Moreover, in South Africa, the popular U.S. pressure was to disinvest and leave South Africa. In Russia, there is no pressure to invest there in the first place. In the absence of pressure from U.S. consumers or stockholders to adopt such a code, why should companies take the initiative and thereby expose themselves to various kinds of damage and costs? The answer is that companies need not be only reactive in their pursuit of ethical action, especially when such pursuit, as in this case, is also good business. No one forces any company to operate in Russia. However, if a company decides to do so, it will protect itself, to some extent, both at home and in Russia by becoming a signatory to such a set of principles.

A third objection is that the FCPA already goes far enough; some would say it already goes too far, and makes U.S. companies less competitive than multinationals from other countries. Arguably, by signing such a code, U.S. companies would voluntarily shackle themselves to a further competitive disadvantage. The time is ripe to gain a foothold in Russia, however one does it. Why leave that opportunity to less scrupulous companies from other countries?

The answer is that by joining forces with other companies, all are better off than any one company attempting to live up to its norms on its own. The code sets the standard to which other companies, and not only U.S. companies, can be held. Those companies that get a foothold by paying bribes and extortion can expect to continue making such payments indefinitely. Those who demand such payments cannot be expected to stop doing so. Once a company pays a bribe, it will become known as a company that accedes to such payment pressures. It is highly dubious that such payments give a company a competitive edge in the long run.

Fourth, the people of South Africa clearly opposed apartheid and supported implementation of the Sullivan Principles. In contrast, the Russian people have not clearly voiced such a call for action. This argument may be countered by the fact that the Russian people do not favor corruption. They do not have the experience to know about corporate codes or exemplary companies. They expect capitalists, and foreign capitalists would be no



exception, to exploit them. This is all the more reason for adopting a public set of principles.

A fifth objection is that Russia is not yet an attractive place for U.S. companies to do business. While this is true, enough U.S. companies are starting to make initial forays into Russia. It is preferable for those companies considering entry into the Russian market to have a public code or set of norms to guide them, rather than to become caught up in the rampant Russian corruption and only later react to it.

Sixth, the Sullivan Principles were proposed by Leon Sullivan who was a member of the board of directors of General Motors, the company that sponsored the Principles.<sup>25</sup> To be successful, a large U.S. corporation would similarly have to take the initiative in Russia. So far, no company has taken the initiative. Although this is true, the objection only urges that some company or group of companies should take the lead. The incentive to sponsor a code is not only that it would be a good thing to do, but also that sponsorship would make competing in the Russian market easier for the company that takes the initiative. Instead of bearing the brunt of resisting corruption by itself, a leading company would garner the benefit of concerted effort. In addition, although the idea for adopting such a code can come from anyone, those companies that will be the signatories should draft the contents of the code. The idea is not to impose norms on U.S. companies, but for the signing companies to publicly commit themselves to norms that they intend to follow.

A final objection to the proposal may be that Russia is no different from a great many other countries, and the norms that should be followed there are no different from those that companies should follow anywhere else. Why should there be a special code for Russia? Why not simply follow the Caux<sup>26</sup> or Minnesota Principles,<sup>27</sup> or some other set of principles applicable internationally?

The answer is that conditions in Russia are in some ways special, although a similar code would probably be appropriate for

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<sup>25</sup> See WILLIAMS, *supra* note 21, at 6.

<sup>26</sup> *The Caux Round Table Principles for Business*, BUS. ETHICS: THE MAG. OF SOCIALLY RESPONSIBLE BUS., May/June 1995, at 26-27.

<sup>27</sup> MINNESOTA CTR. FOR CORPORATE RESPONSIBILITY, *THE MINNESOTA PRINCIPLES* (1992).

doing business in China, especially if and when the present regime is replaced by a more democratic one and the command economy gives way to free enterprise. The code specifies nothing special for U.S. companies. The widespread corruption and crime in Russia, however, necessitate such a code. The Russian situation is special because there is a great deal at stake in Russia's future. Historically, a turn towards a repressive government is frequently the counter to widespread corruption and popular discontent. Moreover, Russia is a nuclear power. The dangers of the corruption and crime reaching to nuclear weapons and of a repressive regime holding those weapons make the stakes very high. Neither the degree of corruption nor the potential threat to other countries is present in the other former communist states, or in the many other countries in which corruption is present in significant forms.

### 3. CONCLUSION

The Sullivan Principles, which prohibited discrimination, did not call for any extraordinary ethical conduct on the part of U.S. companies, and did not ask them to act with respect to discrimination any differently than they do in the United States and elsewhere. The Sullivan Principles, however, were a response to a specific need. A code for operating in Russia and the other former Soviet states similarly would be a solution to a specific problem. The absence of civil society and of the norms and values that are part of it make Russia and the former Soviet states different from such former socialist countries as Poland and the Czech Republic in which civil society was not destroyed.

The situation in Russia demands an imaginative response by U.S. firms. Hence, there is a need for something visible in Russia, for a defense of ethics in capitalism, and for large U.S. companies to take the lead in concert. U.S. firms at least share the benefits and the burdens of being required to abide by the Foreign Corrupt Practices Act, and so have a special incentive to take the lead in attempting to establish similar conditions of competition for all. Once U.S. firms have taken the lead, they may well hope that European and other firms will follow their lead and be willing and anxious to join the coalition as well. There is a great deal more at stake than just ethics in business. A "Sullivan-type" code for U.S. companies operating in Russia is an idea whose time has come.