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Abstract

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Keywords

trade, international labor rights, fair labor standards, statutes, agreements, codes of conduct, Levi Strauss & Co., Reebok Corporation

Disciplines

International and Comparative Labor Relations | Labor and Employment Law | Labor Relations

Comments

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Enforcing International Labor Rights through Corporate Codes of Conduct

LANCE COMPA* AND TASHIA HINCHLIFFE-DARRICARRÈRE**

This article first reviews initiatives by the international community to address the "linkage" between trade and international labor rights and fair labor standards through domestic trade statutes, regional trade agreements and other governmental approaches. It then examines several private sector efforts embracing "codes of conduct" for labor and employment practices in international commerce. Some are proposed by sources external to multinational corporations as codes by which they can pledge to abide. Others are initiated by individual companies themselves. The authors focus their treatment on codes of conduct issued by Levi Strauss & Co. and Reebok Corporation as examples of the challenges in formulating, auditing and enforcing labor rights and labor standards by private corporations engaged in international trade.

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I. INTRODUCTION

Codes of conduct for international business operations are proliferating as investors, companies and governments confront demands to respect human and labor rights claims. Until recently, the link between increasing global economic activity and human rights was tenuous. Investors and executives tended to see human rights as a matter for government officials and diplomats to implement, and resisted pressures to have their businesses used as tools for political reform. In a nutshell, as one critic of "corporate social responsibility" put it, "the company that seeks to pursue profit and do 'good works' at the same time is likely to do neither very well."¹

For their part, human rights activists tended to stress the most egregious violations of political and civil rights—arbitrary arrest and detention, torture, political killings, one-party dictatorships and the like—without confronting deficiencies in the protection of labor rights, working conditions or the role of international business in countries where such abuses have occurred. International labor rights were defined very narrowly and technically and were largely seen as the concern of the International Labor Organization (ILO). The ILO is a Geneva-based United Nations agency that issues but has no power to enforce "conventions" approved by government, management and labor delegates to its annual conferences.²

The globalization of the economy and the globalization of human rights concerns, both important phenomena in the second half of this century, developed separately from each other. Though the international community enacted elaborate charters, covenants and conventions that covered labor rights and labor conditions, these mainly remained statements of intent rather than guides to actual practice.³

1. See B.J. McCabe, *Are Corporations Socially Responsible? Is Corporate Social Responsibility Desirable?*, 4 BOND L. REV. 2, 18 (1992).

2. To date, the ILO has adopted 177 Conventions. Most deal with working conditions in specific industries or employment sectors. A half-dozen are considered to constitute a "human rights core" of ILO Conventions covering freedom of association, the right to organize and bargain collectively, forced labor, child labor, discrimination, and minimum acceptable conditions as to wages, hours and workplace health and safety. See *Human Rights—A Common Responsibility*, International Labor Organization (1988) (report of the Director General).

3. The principal international instruments addressing labor rights concerns are the United Nations Universal Declaration of Human Rights and the two international covenants that flow from the declaration: the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, and what the International Labor Organization (ILO) calls its core human rights conventions. Regional groupings like the Organization of American States and the European Union have analogous provisions

The anti-apartheid movement of the 1970s and 80s is a prominent exception to the general "delinking" of human rights and international business practices in the area of labor rights. The widespread rejection of a legal system based on racial discrimination prompted broad public pressure against U.S.-based multinational corporations active in South Africa. This pressure began with the "Sullivan Principles," a 1977 code of conduct for U.S. companies in South Africa that prohibited discriminatory practices against Black and Colored South Africans in employment, employee housing conditions and job advancement opportunities.⁴

In addition to its contents, the Sullivan Principles established an elaborate audit mechanism administered by an independent accounting and consulting firm to ensure compliance. However, the Sullivan Principles did not retain lasting importance because the author of the Principles later declared them to be ineffectual in overcoming apart-

in their basic charters. See, e.g., *Universal Declaration of Human Rights*, G.A. Res. 217A-(III), U.N. GAOR, 3d Sess., pt. 1 at 71, U.N. Doc. A/810 (1948); *International Covenant on Civil and Political Rights*, G.A. Res. 2200 (XXI), U.N. GAOR 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (1966); *International Covenant on Economic, Social and Cultural Rights*, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 49, U.N. Doc. A/6316 (1966); ILO, *Convention No. 87 Concerning Freedom of Association and Protection of the Right to Organise*, 1 INTERNATIONAL LABOR CONVENTIONS AND RECOMMENDATIONS 1919-1991 435 (1992) (convention entered into force July 4, 1950); ILO, *Convention No. 98 Concerning the Application of the Principles of the Right to Organise and Bargain Collectively*, 1 INTERNATIONAL LABOR CONVENTIONS AND RECOMMENDATIONS 1919-1991 524 (1992) (convention entered into force July 18, 1951); ILO, *Convention No. 105 Concerning the Abolition of Forced Labour*, 1 INTERNATIONAL LABOR CONVENTIONS AND RECOMMENDATIONS 1919-1991 618 (convention entered into force January 17, 1959); ILO *Convention No. 111 Concerning Discrimination in Respect of Employment and Occupation*, 1 INTERNATIONAL LABOR CONVENTIONS AND RECOMMENDATIONS 1919-1991 702 (convention entered into force June 15, 1960); ILO, *Convention No. 138 Concerning the Minimum Age for Admission to Employment* 1 INTERNATIONAL LABOR CONVENTIONS AND RECOMMENDATIONS 1919-1991 1030 (convention entered into force June 19, 1976) (1992); *American Convention on Human Rights*, OAS Official Records, OEA/Ser.A/16, T.S. No. 36 (Nov. 22, 1969); *Convention for the Protection of Human Rights and Fundamental Freedoms*, Europ. T.S. No.5 (Nov. 4, 1950); *European Social Charter*, 529 U.N.T.S. 89 (October 18, 1961).

4. Reverend Leon Sullivan was a prominent Philadelphia clergyman and a member of the board of directors of the General Motors Corporation. His Principles were a voluntary code of conduct to which U.S. companies would pledge compliance and report on their steps to effectuate the principles. Jacqueline Trescott, *Principles and Palates*, WASH. POST, Nov. 30, 1979, at C3. Companies that refused to "take the pledge" or failed to live up to the Principles requirements faced adverse publicity that might be detrimental to their own economic interest. For a recent discussion of the Sullivan Principles in the context of voluntary corporate codes of conduct, see Daniel Pink, *The Valdez Principles: Is What's Good for America Good for General Motors?*, 8 YALE L. & POL'Y REV. 180, 181-185 (1990).

heid,⁵ and because they were later superseded by congressional passage of comprehensive economic sanctions against South Africa.⁶

In the past ten years the general resistance to linking human and labor rights to international business practices has begun to break down. Since 1984, U.S. trade statutes have been amended to include labor rights conditionality in trade preference programs,⁷ a side accord covering labor rights was negotiated as part of the North American Free Trade Agreement,⁸ litigation has emerged in U.S. courts over international labor rights disputes,⁹ U.S. unions have moved aggressively to develop international solidarity programs with foreign workers and unions,¹⁰ an agreement was reached in the Uruguay Round of GATT negotiations to include worker rights issues in the agenda of the new World Trade Organization,¹¹ and more U.S.-based firms have developed codes of conduct on worker rights and working conditions for foreign subsidiaries and suppliers.¹²

5. See Karen Paul, *The Inadequacy of Sullivan Reporting*, 57 BUS. & SOC. R. 61 (1986); Leon Sullivan, *The Sullivan Principles and Change in South Africa*, in BUSINESS IN THE CONTEMPORARY WORLD 175 (Herbert L. Sawyer, ed., 1988).

6. Comprehensive Anti-Apartheid Act of 1986, 22 U.S.C. §§ 5001-5116 (1988).

7. See Jorge Perez-Lopez, *Conditioning Trade on Foreign Labor Law: The U.S. Approach*, 9 COMP. LAB. L.J. 253 (1988). For a criticism of the U.S. approach to international labor rights as reflected in these statutes, see Philip Alston, *Labor Rights Provisions in U.S. Trade Law: "Aggressive Unilateralism"?*, 15 HUM. RTS. Q. 1 (1993); T. Amato, *Labor Rights Conditionality: United States Trade Legislation and the International Trade Order*, 65 N.Y.U. L. REV. 79 (1990); Note, *In Pursuit of the Missing Link: International Worker Rights and International Trade?*, 27 COLUM. J. TRANSNAT'L L. 443 (1989). For a defense of such clauses, see JOHN CAVANAGH ET AL., *TRADE'S HIDDEN COSTS: WORKER RIGHTS IN A CHANGING WORLD ECONOMY* (1988); T. Collingsworth, *American Labor Policy and the International Economy: Clarifying Policies and Interests*, 21 B.C. L. REV. 1 (1989).

8. See North American Agreement on Labor Cooperation, Sept. 14, 1993, U.S.-Can.-Mex. 32 I.L.M. 1499. For a discussion on this subject, see Lance Compa, *The First NAFTA Labor Cases: A New International Labor Rights Regime Takes Shape*, 3 U.S.-MEX. L.J. 159 (1995).

9. See, e.g., *Osorio v. INS*, 18 F.3d 1017 (2d Cir. 1994); *Labor Union of Pico Korea v. Pico Products*, 968 F.2d 191 (2d Cir. 1992); *Dow Chemical Co. v. Castro-Alfaro*, 786 S.W.2d 674 (Tex. 1990); *Van Blaricom v. Burlington Northern*, 17 F.3d 1224 (9th Cir. 1994); *Longshoremen ILA (Coastal Stevedoring Co.)*, 313 N.L.R.B. 412 (1993).

10. See, e.g., U.E.-F.A.T. Strategic Organizing Alliance, *Statement on Joint Work* (Feb. 1992) (a program devised by the United Electrical, Radio and Machine Workers of America (UE), a U.S. union, and the *Frente Autentico de Trabajadores*, a Mexican labor federation, for coordinated union organizing campaigns in the *maquiladora* sector.) (on file with the author).

11. See Alan Riding, *U.S. Gains a Trade Forum for Labor-Equity Issues*, N.Y. TIMES, Apr. 8, 1994, at D6.

12. For a discussion, see Diane F. Orentlicher and Timothy A. Gelatt, *Public Law, Private Actors: The Impact of Human Rights on Business Investors in China*, 14 NW. J. INT'L L. & BUS. 66 (1993).

This paper examines the last of these new developments: codes of conduct on labor rights promulgated in the private sector for or by multinational corporations. The issue has taken on a new urgency in the wake of the Clinton administration's 1994 decision to maintain China's most-favored-nation (MFN) trade status despite its record of widespread human and labor rights violations.¹³ Responding to criticism at that time, the Administration promoted a voluntary code of conduct for U.S. companies doing business in China.¹⁴ It later expanded the proposal to embrace all overseas operations of U.S.-based multinational corporations.¹⁵

The Clinton administration's idea for a corporate code of conduct is not new. In response to growing pressure over labor issues, several U.S. companies involved in global business have begun creating corporate codes of conduct that, *inter alia*, address workers' rights. As a Reebok spokesman stated, "[c]onsumers today hold companies accountable for the way products are made, not just the quality of the product itself."¹⁶

Codes of conduct for labor rights are taking shape as part of a broader movement of corporate social responsibility. The premise of the corporate social responsibility movement is that "corporations, because they are the dominant institution of the planet, must squarely face and address the social and environmental problems that afflict humankind."¹⁷ The most visionary exponents of this movement call for a redesign of the current system of commerce to one where "doing good is second nature, in which natural, everyday acts of work and life cumulate into a better world as a matter of course, not a

13. See, e.g., Keith Bradsher, *Prison Labor Seen in Chinese Imports*, N.Y. TIMES, Sept. 24, 1991, at A9; Daniel Southerland, *China Said to Still Use Forced Labor: Report Contends Exports Violate Pact, Threaten Favored Trade Status*, WASH. POST, May 19, 1993, at F3.

14. See Edward A. Gargan, *Business Objects to a Code in China*, N.Y. TIMES, May 24, 1994, at D2; Steven Mufson, *For U.S. Firms, A Struggle Over Rights and Roles*, WASH. POST, Aug. 25, 1994, at B10.

15. See David E. Sanger, *Clinton to Urge A Rights Code For Businesses Dealing Abroad*, N.Y. TIMES, Mar. 27, 1995, at D1. The new proposal generated a new round of criticism at the alleged weakness of the Administration's "Model Business Principles." See, e.g., Clay Chandler, *"Code of Conduct" Draft Assailed: Rights Groups Criticize Administration's Rules for U.S. Firms Abroad*, WASH. POST, Mar. 28, 1995, at D4; A.M. Rosenthal, *The Limp Noodle*, N.Y. TIMES, Mar. 28, 1995, at A19; Steven Mufson, *The Beijing Duck: What U.S. Firms in China Don't Do for Human Rights*, WASH. POST, Apr. 9, 1995, at C1.

16. See *Human Rights Production Standards Set in Worldwide Reebok Initiative*, REEBOK MAKING A DIFFERENCE (June 1993) (company newsletter, on file with author).

17. Paul Hawken & William McDonough, *Seven Steps to Doing Good Business*, INC. Nov. 1993, at 79, 80.

matter of altruism."¹⁸

Beyond altruism and doing good as "a matter of course" lies a more immediate self-interested motive. One observer made the following observation:

. . . deteriorating social circumstances put at risk our ability to satisfy customers, provide a stable work environment, and meet our obligations to stockholders. . . . Business must actively continue to help ensure that the community has the economic policies to support business, the educational system to produce the workers of tomorrow, and the quality of life necessary to attract and retain employees.¹⁹

II. EXTERNAL CODES OF CONDUCT

Before examining codes of conduct generated within the multinational enterprise, a look at externally generated codes of conduct suggests why companies are developing their own internal norms. There are two main types of external codes: those created in multilateral government settings and those developed by either governments or non-governmental organizations (NGOs) that are offered to companies for acceptance either through outright adoption or through a pledge to comply with their terms.

A. *Multilateral Government-Initiated Codes*

1. The United Nations Code

The United Nations has formulated but never formally adopted a Code of Conduct for Transnational Corporations (UN Code).²⁰ It was promoted in the early and mid-1970s at a time when the "Group of 77," an organization of developing countries, was aggressively confronting the industrialized world.²¹ Evidence of malfeasance by multinational corporations (such as ITT's involvement in the 1973

18. *Id.* at 80.

19. George B. Harvey, *The Education of American Business*, 83 BUS. & SOC'Y REV. 62-63 (1992).

20. See *Development and International Economic Cooperation: Transnational Corporations*, U.N. Economic and Social Commission, 2d Sess., Agenda Item 7(d), at 1, U.N. Doc. E/1990/94 (1990).

21. See E.S.C. Res. 1908, U.N. ESCOR, 57th Sess., Supp. No. 1, at 13, U.N. Doc. E/1974/570 (1974); E.S.C. Res. 1913, U.N. ESCOR, 57th Sess., Supp. No. 1A, at 3, U.N. Doc. E/1975/570/Add. 1 (1975).

overthrow of Chilean President Salvador Allende)²² also provided the impetus for a UN-drafted corporate code of conduct.

The UN Code refers to human rights and fair treatment of workers in a very general manner, requiring, for example, that "[t]ransnational corporations shall respect human rights and fundamental freedoms in the countries in which they operate. In their social and industrial relations, transnational corporations shall not discriminate on the basis of race, colour, sex, language, social, national and ethnic origin or political or other opinion."²³

Since the time this code was drafted, however, third world confrontation has largely given way to integration into a liberalized global economy. For most of the developing world, multinational companies are now prized investors, not malfeasors.²⁴ The UN Code stands as a worthy statement of principle, but until it is adopted it will remain just that and nothing more.

2. The OECD Code

The Organization for Economic Cooperation and Development (OECD) established its Guidelines for Multinational Enterprises in 1976,²⁵ also in response to concerns about corporate interference in national political affairs. The code recognizes the right of labor to organize and bargain collectively and requires employers to provide facilities and information to union representatives so that they may engage in meaningful bargaining. The OECD code also mandates that companies furnish financial and strategic information to unions so that the latter may "obtain a true and fair view" of a company's operations. It further bans discrimination in employment, requires corporations to give advance notice of layoffs and to cooperate with unions to mitigate the effects of layoffs, and calls on management not to threaten plant closures or layoffs to influence contract negotiations or

22. See *Multinational Corporations and United States Foreign Policy: Hearings before the Subcomm. on Multinational Corporations of the Senate Comm. on Foreign Relations*, 94th Cong., 1st Sess., 381-86 (1975).

23. U.N. Economic and Social Commission, *supra* note 20.

24. See, e.g., John F. Burns, *India Now Winning U.S. Investment: A Boom in Deals as Socialism Wanes*, N.Y. TIMES, Feb. 6, 1995, at D1; James Brooke, *Brazil Paves Way for More Foreign Investment*, N.Y. TIMES, Feb. 17, 1995, at A8.

25. See OECD, *Declaration on International Investment and Multinational Enterprises* (originally written in 1976, revised in 1979), in DUNCAN C. CAMPBELL & RICHARD L. ROWAN, *MULTINATIONAL ENTERPRISES AND THE OECD INDUSTRIAL RELATIONS GUIDELINES* 243 (1983).

to interfere with the right to organize.²⁶

Although the OECD avoids making specific findings of misconduct by individual companies under its code, it provides a complaint procedure that can result in "clarifications" of the guidelines as they apply to particular labor-management disputes. There is no coercive enforcement mechanism to ensure compliance with the guidelines, but workers and trade unions have occasionally achieved successful resolution of disputes through recourse to the OECD.²⁷

3. The ILO Code

The ILO has elaborated a Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy.²⁸ The ILO code has a broader range than that of the OECD, extending to such issues as job creation, investment in the local economy, subcontracting and the like. It also provides for a more detailed complaint procedure before a Standing Committee on Multinational Enterprises empowered to investigate and make specific findings of code violations by individual companies. However, like the OECD code, the ILO Declaration has no sanctions to back up its rules. Enforcement is more a matter of discreet persuasion by OECD or ILO officials, or public embarrassment through the media.²⁹

B. Privately-Drawn "Sign-Up" Codes of Conduct

1. The MacBride Code

The Sullivan Principles discussed earlier remain the most prominent example of a corporate code of conduct drafted by a private party with whose terms individual companies pledged to comply. This approach was also used in the "MacBride Principles,"³⁰ a code of conduct issued in 1984 by the noted Irish statesman Sean MacBride which was designed to influence the activities of U.S. companies doing business in Northern Ireland. This code requires non-discrimi-

26. *Id.* at 251-253.

27. *Id.* See also JOHN ROBINSON, *MULTINATIONALS AND POLITICAL CONTROL* (1983).

28. See ILO, *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* (1977), in CAMPBELL & ROWAN, *supra* note 25, at 254.

29. For a discussion of cases arising under the ILO Declaration, see B. Glade & E. Potter, *Targeting the Labor Practices of Multinational Companies*, FOCUS ON ISSUES (U.S. Council for International Business, 1989).

30. See Jorge Perez-Lopez, *Promoting International Respect for Worker Rights through Business Codes of Conduct*, 17 FORDHAM INT'L L.J. 1, 9-12 (1993).

nation and affirmative action programs in order to overcome the deep antipathy between the Protestant majority and the Roman Catholic minority in that British-ruled territory.³¹

2. The Slepak and Miller Codes

The "Slepak Principles"³² and "Miller Principles"³³ sought to create codes of conduct for multinational companies doing business in the Soviet Union and in China. The Slepak code, named in honor of a well-known Soviet dissident, was issued in 1988 by a private foundation. The Miller principles were contained in a 1991 bill introduced by a U.S. congressman, Rep. John Miller of Washington state. Both principally dealt with forced labor issues and military-related industrial projects. However, in the wake of the Soviet Union's dissolution and continuing U.S. corporate interest in investment opportunities in China, neither has attracted much support.³⁴

3. The Maquiladora Code

Concerns about pollution, unsafe working conditions and poverty-level wages in the *maquiladora* factory zone along the border with Mexico have led to the issuance of a code of conduct for U.S. companies with operations in this area. Promoted by the AFL-CIO and a coalition of religious and environmental groups, the "Maquiladora Standards of Conduct" code appeals to U.S. corporations to promote a healthy environment, a safe workplace and an adequate standard of living for workers.³⁵

The Maquiladora code addresses hazardous waste disposal, chemical leaks, and transportation of toxic materials. It requires disclosure to workers and communities on the use and risks of chemicals and other hazardous materials, calls for workplace health and safety committees, protects the right to organize and bargain, bans discrimination (including sexual harassment), and requires a higher minimum wage and limits on working hours. Finally, this code would abolish barracks-style living quarters for workers, and establish a trust fund to improve housing, health care, and sanitary services.³⁶ However,

31. *Id.*

32. *Id.* at 12-16.

33. *Id.* at 16-19.

34. *Id.* at 12-19, 32-35.

35. See INTERFAITH CENTER FOR CORPORATE RESPONSIBILITY, MAQUILADORA STANDARDS OF CONDUCT (1991).

36. *Id.* at 16.

as of mid-1994, only one corporation, Asarco, reportedly had committed itself to abide by the Maquiladora Standards of Conduct.³⁷

4. The "Rugmark" Campaign

An innovative effort to use the protection of labor rights as a marketing device for manufacturers and distributors has arisen with the formulation of the "Rugmark" campaign. In September 1994, a new U.S.-based Child Labor Coalition launched its "U.S. Consumer Education Campaign for the 'RUGMARK.'" ³⁸ Already underway in Germany, the campaign was devised by Indian carpet industry representatives, the South Asian Coalition on Child Servitude, and the Indo-German Promotion Council. They created the Rugmark Foundation, which receives funding to develop and implement a monitoring program to ensure that companies entitled to use the Rugmark label do not use child labor and comply with the applicable labor protection laws of India, Pakistan and Nepal. Companies must register their looms with the Foundation and agree to permit surprise visits by Foundation inspectors to obtain their Rugmark certification.³⁹

In Germany, carpet wholesalers and retailers are asked to agree to buy only Rugmark-certified products. They are then permitted to use the Rugmark label themselves and to publicize the fact that consumers can purchase carpets that were manufactured without the use of child labor.⁴⁰ In December of 1994, Rugmark Campaign representatives wrote to the ten largest carpet retailers in the United States asking for a similar commitment. They stressed that alignment with the Campaign "could bring significant press attention to its positive marketing strategy and its social conscience."⁴¹ It is too soon to

37. See *Activists Reached a Variety of Agreements in Withdrawing All 10 Maquiladora Resolutions*, NEWS FOR INVESTORS (Investor Responsibility Research Center) May 1992, at 15.

38. See *CLC Launches RUGMARK Consumer Campaign*, IV CHILD LABOR MONITOR 1-2 (Sept. 1994) (National Consumers League publication).

39. See the following publications of the Rugmark Foundation: *What you need to do to become Licensee of RUGMARK*, *RUGMARK Application*, *RUGMARK License Agreement*, *RUGMARK Criteria*, *Inspection Modalities* (on file with author; available from Child Labor Coalition, U.S. National Consumers League).

40. Interview with Pharis Harvey, Executive Director, International Labor Rights Education and Research Fund and Co-Chair, RUGMARK CAMPAIGN, (Jan. 13, 1995).

41. See Letter from Pharis J. Harvey and Linda Golodner, Co-Chairs, RUGMARK CAMPAIGN, to chief executive officers of the ten largest home furnishing retailers selling oriental rugs (Dec. 13, 1994) (on file with author, available from Child Labor Coalition). The selection of companies and the strategy for implementing the Rugmark Campaign in the United States is contained in a study titled *Rugmark and the U.S. Rug Industry: A Strategy for Effective Interaction*, prepared by POLITICAL AND ECONOMIC LINK CONSULTANCY (1994).

know whether this campaign will have an effect in the massive and diverse U.S. market, but it reflects a creative attempt to turn respect for international labor rights, at least on the child labor question, into an advantage in global trade.

III. INTERNAL CORPORATE CODES OF CONDUCT

Broad codes of conduct sponsored by groups seeking the acceptance and compliance of multinational corporations have not had much success in attracting company adherents. Of the examples just noted, only the Sullivan Principles attracted broad support from U.S. companies, and these companies were motivated more by potential adverse reactions from consumers in their domestic market than from a desire to "do good". Even then, they came under fire from critics who contended that signatories to the Sullivan Principles were using them "as camouflage—as a justification for operating in (and profiting from) a fundamentally corrupt and odious system."⁴²

Understandably, international business managers resist a "one size fits all" approach that includes a review of compliance by parties not associated with the corporation. But increasingly companies are being pressured to better protect human and labor rights in their international operations. First, companies face potentially damaging enforcement of unilateral U.S. labor rights legislation, a new North American labor rights regime under the NAFTA side agreement on labor, the emergence of worker rights in the new GATT/WTO system, innovative litigation by foreign employees claiming worker rights violations and other developments that can affect relations with employees and governments in countries where they do business.⁴³

The occasional media exposé on the use of child or prison labor, or on the creation of environmental hazards, also affects attitudes in multinational companies' target markets. Companies that are the most vulnerable to such exposés are those whose sales depend heavily on

The study concludes that

Without an effective campaign to industry, the consumer education campaign is almost certain to generate enthusiasm for which there is no outlet and expectations which cannot be met. Rugmark's potential will be realized only if interaction with industry is pursued through a strategy which is based on the moral foundation of the issue, maximizes the opportunities for cooperation with the industry, and is synchronized effectively with the consumer education campaign.

Id. at 26.

42. See Pink, *supra* note 4, at 189.

43. See *supra* notes 7-11.

brand image and company goodwill, such as Levi Strauss. As one analyst points out, "[i]n a global marketplace with almost instant communications, there are no hiding places for companies. International media will expose inconsistency and irresponsibility in corporate behavior, and vigilant consumers will respond."⁴⁴

Multinational companies are also feeling pressures in board rooms, shareholder meetings and from sources of capital.⁴⁵ Resolutions on protections for human and labor rights are commonly proposed to boards of directors and offered at annual meetings.⁴⁶ Such resolutions traditionally have been proposed by religious orders or non-profit groups that hold tiny shares of company stock to gain access to shareholder meetings. Now, however, larger institutional investors and a new breed of "socially conscious" mutual funds with real financial clout also are raising questions and making demands about human and labor rights protections.⁴⁷

Many companies have chosen a pro-active route and have begun to fashion their own, self-initiated and self-supervised, codes of conduct for human and labor rights for their international subsidiaries and suppliers. The U.S.-based firms that are in the forefront of this movement are Levi Strauss & Co., Reebok Corp. and Starbucks Coffee Co.

A. *Levi Strauss & Co. Terms of Engagement and Guidelines*

In 1985, the descendants of the founder of Levi Strauss & Co. took the company private in a \$1.6 billion leveraged buyout. In doing so, they hoped to revive the company's history of value-based decision making. As a privately-held company with no shareholders to convince, Levi Strauss can go farther and faster with corporate social responsibility initiatives than its competitors. Levi Strauss's international code of conduct is just part of a broad-based program for a socially conscious approach to business.

The Levi Strauss Mission Statement declares that "[w]e will

44. See Martha Nichols, *Third-World Families at Work: Child Labor or Child Care?*, HARV. BUS. REV. 22 (Jan.-Feb. 1993).

45. For a discussion, see Timothy H. Smith, *Pressure from Above*, 81 BUS. & SOC'Y REV. 36 (1992).

46. *Id.* at 37.

47. See, e.g., Francis Flaherty, *Nice Profits, Hard Ethics For Political Correctness*, N.Y. TIMES, Nov. 27, 1993, at 33; Carole Gould, *A Social Responsibility Shake-Up*, N.Y. TIMES, June 12, 1994, §3, at 14; Albert B. Crenshaw, *Where Responsibility Meets Accountability*, WASH. POST, Nov. 28, 1994, (Washington Business), at 5.

conduct our business ethically and demonstrate leadership in satisfying our responsibilities to our communities and to society. Our work environment will be safe and productive and characterized by fair treatment, teamwork, open communications, personal accountability and opportunities for growth and development."⁴⁸

The adoption of sourcing standards for overseas suppliers is held out as an extension of Levi Strauss company values. "As we expand our production to more diverse cultures and countries, it makes sense to select partners whose practices are compatible with our aspirational and ethical values,"⁴⁹ stated a company official. At the same time, such policies also serve to protect the company's valuable brand image. The official went on to say, "[o]therwise we may end up with contractors who don't abide by responsible business policies, and our association with them could damage the image of our brands and our company."⁵⁰ A Levi Strauss vice president responsible for offshore sourcing points out, "[w]e'll pay more to deal with reputable people who take care of their employees and maintain our brand image."⁵¹ "Sourcing decisions which emphasize cost to the exclusion of all other factors will not best serve our long-term business interests," concludes an internal company analysis.⁵²

In September of 1991, Levi Strauss senior officials appointed a management task force, called the Sourcing Guidelines Working Group (SGWG), to develop its Global Sourcing Guidelines. The 14-member group was drawn from eight divisions within the company to reflect its broad internal interests. The Group was charged with taking into account the concerns of all the company's "stakeholders," including its employees, customers and the communities in which the company operates.

The SGWG reviewed the UN's Universal Declaration of Human Rights and other international human rights instruments⁵³ in formulating its recommended country and supplier guidelines. In February 1992, the SGWG presented its guidelines to the Executive Management Committee for approval. The guidelines were approved in

48. Levi Strauss & Co., "Mission Statement," *LS&Co. Human Resource Policies*, June 1, 1992 (on file with author).

49. See Levi Strauss & Co., *Sourcing Guidelines Working Group Report to Executive Management Committee*, at 14 (1993) (on file with author) [hereinafter *Sourcing Guidelines Report*].

50. *Id.*

51. *Id.*

52. *Id.*

53. See *supra* note 3.

March 1992 with a certain eagerness, because their adoption followed soon after an embarrassing media exposé of abusive labor conditions in factories in Saipan, a U.S. protectorate, that supplied Levi Strauss, Sears and other U.S. retailers.⁵⁴

1. Levi Strauss' Labor Rights Code

Titled "Business Partner Terms of Engagement and Guidelines for Country Selection," the Levi Strauss code of conduct is a two-part instrument which distinguishes it from other corporate codes of conduct. The first part, the "terms of engagement," covers environmental requirements, ethical, health and safety standards, legal requirements and employment practice guidelines to the extent that they are "issues that are substantially controllable by our individual business partners." In contrast, the second part's "guidelines for country selection" entails "issues which we believe are beyond the ability of the individual business partner to control." It addresses issues of brand image, health and safety, human rights, legal requirements and political or social stability, to the extent that each of them turns on the policies of the government in countries where Levi Strauss maintains operations or contracts with suppliers, rather than the employment policies of the supplier.⁵⁵

The "employment practices" section of the terms of engagement is the only one of the terms or guidelines itself broken down in greater detail, addressing six specific types of employment conditions to be regulated: wages and benefits, working hours, child labor, prison labor/forced labor, discrimination and disciplinary practices (namely, "corporal punishment or other forms of mental or physical coercion"). From a labor rights perspective, however, the Levi Strauss code of conduct has a significant omission. It does not include the right to form and join trade unions and the right to bargain collectively, norms otherwise contained in every international human rights instrument that addresses labor concerns.

Levi Strauss has gone beyond a simply hortatory use of its code of conduct on human and labor rights. The company has created an elaborate internal monitoring and enforcement system that begins with a detailed questionnaire on employment practices in foreign supplier plants. It also provides for audits that can include surprise site visits,

54. For an account of the exposé, see *A Stitch in Time*, *ECONOMIST*, June 6, 1992, at 27.

55. Levi Strauss & Co., *Business Partner Terms of Engagement and Guidelines for Country Selection* (1992)(on file with author).

intense review by company personnel charged with enforcing the code of conduct, and the termination of violators' contracts.

The company applies its enforcement procedures in a flexible fashion, taking a three-tiered approach to suppliers that violate its standards. The first level of implementation applies to those contractors whose practices are unworkable where the "business partners" appear indifferent and unwilling to improve the situation. These relationships are terminated. The second level looks at operations where there is some concern over conditions but there appears to be the possibility for improvement. Levi Strauss sets out a plan and a time-frame for resolving the problems. If goals are met, Levi Strauss will maintain a relationship with that contractor. If not, the relationship is ended. The third level applies to those contractors who appear to fulfill the requirements of the terms of engagement but could do more. A severance of relations is not threatened, but Levi Strauss continues to work with the supplier in an effort to make it a model partner.

One of the first applications of the Levi Strauss code of conduct followed a burst of publicity in 1992 about working conditions in supplier factories in Saipan. There were reports about a factory owner who forced virtual slave conditions on his employees. Many of the workers were immigrants housed in padlocked barracks with their passports confiscated during their contract period. They were working as much as 11 hours a day, seven days a week, for as little as \$1.65 an hour with no overtime pay (the minimum wage in Saipan is \$2.15 an hour).⁵⁶ The stories were especially embarrassing since Saipan is a U.S. protectorate governed by American labor law as part of the Commonwealth of the Northern Mariana Islands. All goods produced there may be labeled "Made in the USA" and shipped without quota limits or duties.⁵⁷

Levi Strauss code of conduct auditors inspected the Saipan factories using their 10-page terms of engagement questionnaire. The company quickly canceled its contract with those suppliers. In addition, contracts with suppliers in the Philippines, Honduras and Uruguay were terminated when the auditors found that they failed to "conduct their business consistent with a set of ethical values not inconsistent with those of Levi Strauss & Co."⁵⁸ In all, Levi Strauss terminated contracts with thirty suppliers worldwide, and forced re-

56. See *supra* note 54, at 27.

57. *Id.*

58. *Sourcing Guidelines Report*, *supra* note 49, at 14.

forms in employment practices in over one hundred others.⁵⁹

In Bangladesh, Levi Strauss undertook an innovative program to address child labor conditions in two supplier plants where the company discovered that children under fourteen years of age were working. After a dialogue with local officials, an agreement was reached wherein the children returned to school but continued drawing pay from the contractor. Levi Strauss paid for their school tuition, books and uniforms, and the children will be offered jobs when they turn fourteen.⁶⁰

Applying its guidelines for country selection, Levi Strauss code of conduct auditors cross-checked its suppliers with a list of facilities in China reported to utilize prison labor. They also conducted surprise inspections of Chinese supplier plants, and visited each supplier to inquire about their use of prison labor.⁶¹ Similar measures were undertaken in Burma, where a repressive military regime crushed a human rights movement.⁶² As a result, the company announced that it would entirely withdraw from both countries.⁶³

Adoption of codes of conduct such as Levi Strauss & Company's terms of engagement provide a framework for acceptable business partner behavior. One Levi Strauss official points out that the code benefits its business partners as well. "Contractors value listing us as a client for sourcing. If they can meet our requirements, it means they can work for anybody in the industry."⁶⁴

B. *Reebok's Human Rights Initiatives and Production Standards*

Reebok Corp. has developed an innovative international human rights advocacy program that includes sponsoring rock concerts to raise funds for human rights organizations, giving Reebok Foundation grants to human rights organizations and annual Human Rights Awards to individual human rights activists, and issuing a code of

59. See John McCormick & Marc Levinson, *The Supply Police*, NEWSWEEK, February 15, 1993, at 48-49.

60. See *id.* See also Nichols, *supra* note 44, at 16.

61. Amy Borrus and Joyce Barnathan, *Staunching the Flow of China's Gulag Exports*, BUS. WK., April 13, 1992, 50, 51-52.

62. See G. Pascal Zachary, *U.S. Companies Back Out of Burma, Citing Human-Rights Concerns*, GRAFT, WALL ST. J., April 13, 1995, at A10.

63. See *Bailing Out Of Burma*, N.Y. TIMES, Apr. 2, 1995, §6 (Magazine), at 18; McCormick & Levinson, *supra* note 58, at 50.

64. See Richard Rapaport, *Import Jeans, Export Values: What Happens if a Company's Global Reach Exceeds its Ethical Grasp?*, FAST COMPANY, Nov. 1993.

conduct for international labor rights called the "Reebok Human Rights Production Standards."⁶⁵

Amnesty International (AI) approached Reebok in 1988 about sponsorship of the "Human Rights Now!" tour by rock music groups, designed to raise consciousness about human rights. The tour also aimed to secure millions of signatures on petitions calling for governments to observe the Universal Declaration of Human Rights and protect human rights activists. Reebok executives worked with their then-chief advertising agency, Chiat Day, to underwrite the "Human Rights Now!" tour on a budget of \$12 million, including advertising produced by Chiat Day.⁶⁶

The company tied the Reebok name to the tour for marketing purposes, but did so in an understated fashion (in fact, several trade retailers actually requested less subtlety to help sell more shoes). As one executive explained, "[t]he fact that Reebok is making this possible is important to get across. We are a business entity, and for that I don't apologize. But we also care about issues like human rights. So, this is not an occasion to blast the name Reebok all over the place."⁶⁷

T-shirts, sweatshirts and jackets with the AI tour symbol and the note "Made possible by Reebok" were sold to concertgoers. Proceeds from the sale of these items went to Amnesty International. Reebok continues to support Amnesty International's efforts with its own AI chapter at the company headquarters and allows employees to use company time to write letters on behalf of political prisoners. Some Reebok retailers also continue to carry membership applications for Amnesty International in their stores.

The Reebok Foundation provides video cameras, computers, and fax machines, as well as training for human rights advocates, in developing countries under the "Witness" program.⁶⁸ This support is designed to amplify documentation of human rights conditions and to give evidence of violations to the global media, in hopes of providing activists with a powerful weapon against abuses.

Since 1988, Reebok has given annual human rights awards of \$25,000 each to selected young activists. As the company explains,

65. See Banning Eyre, *Big Business and Human Rights: A constructive engagement or a complicated marriage?*, RHYTHM MUSIC MAG., Vol IV., No. 2, at 29-33 (1995).

66. See Bruce Horowitz, *Reebok Walks Marketing Tightrope with Human Rights Concert Tour*, L.A. TIMES, July 26, 1988, pt. 4, at 6.

67. *Id.*

68. See Eyre, *supra* note 65, at 31.

"[t]he Reebok Human Rights Award seeks to honor individuals from the United States and around the world who have made significant contributions to the cause of human rights, often against great odds. The purpose of the Award is to shine a positive, international light on the awardees and to support their work in human rights. . . . Award candidates must be 30 years old or younger and working on an issue that directly relates to the United Nations Universal Declaration of Human Rights."⁶⁹

1. Reebok's Labor Rights Code

A Reebok executive observes that "[c]onsumers today hold companies accountable for the way products are made, not just the quality of the product itself."⁷⁰ The formulation of the Reebok Human Rights Production Standards begins with a statement of the company's commitment to human rights: "Reebok's devotion to human rights worldwide is a hallmark of our corporate culture. As a corporation in an ever-more global economy we will not be indifferent to the standards of our business partners around the world."⁷¹

The Reebok code addresses seven defined areas of labor rights: non-discrimination, working hours/overtime, forced or compulsory labor, fair wages, child labor, freedom of association, and safe and healthy work environment. In contrast to the Levi Strauss code, which omits any reference to trade union organizing or bargaining rights, Reebok's worker rights code declares forthrightly that it "will seek business partners that share its commitment to the right of employees to establish and join organizations of their own choosing . . . Reebok recognizes and respects the right of all employees to organize and bargain collectively."⁷²

Another contrast to the Levi Strauss approach is Reebok's application of its labor rights code only to business partners, rather than to governments in the countries where it does business. Levi Strauss has "terms of engagement" for suppliers and "guidelines" for country selection, and the application of those guidelines caused it to withdraw from China and Burma. In contrast, Reebok has chosen, in the

69. Reebok Human Rights Award application form, 1993. At the most recent Reebok Human Rights Award program, youthful activists from Nepal, Brazil, Liberia, Haiti and Pakistan were honored. See Eyre, *supra* note 65.

70. See Human Rights Production Standards Set in Worldwide Reebok Initiative, *Reebok: Making a Difference*, company newsletter, June 1993.

71. Reebok Human Rights Production Standards (1993) (on file with author, available from Reebok corporate offices).

72. *Id.*

case of China, to ensure that it is not sourcing from contractors employing prison labor, but not to withdraw altogether.⁷³

Reebok has entered into joint ventures with factories in China rather than have its products manufactured by a government owned or third party operated facility under contract. This way, it can both manage the workplace environment and assure the quality of the shoes produced, factors which company executives believe are positively correlated. "We believe that the incorporation of internationally recognized human rights standards into our business practices improves worker morale and results in a higher quality working environment, which in turn helps us produce a higher quality product."⁷⁴

Reebok is faced with the ever-present dilemma of using economic sanctions to enforce social objectives: canceling contracts can harm the very workers the policy is supposed to protect by depriving them of needed work. Reebok has adopted an "engagement" rather than a "sanctions" mode of applying its labor rights standards. It does not have the same record of canceled contracts or country pullouts that Levis Strauss has demonstrated.⁷⁵ Instead, Reebok aims to "screen out at the outset the factories with poor conditions" rather than "leaving factories and displacing workers."⁷⁶

Reebok believes that by maintaining the relationship with a supplier, and the influence that accompanies it, over the long term labor rights and conditions will be improved: "[w]e monitor our standards assiduously [at the Chinese plants], and we pray that our decision is the right one—that there can be constructive engagement."⁷⁷

Reebok maintains a three-tiered program of monitoring and enforcement of its labor rights code. First, inside its supplier plants, Reebok personnel are responsible for assessing labor rights and labor conditions and pressing for improvements where needed. Second, audit teams from Reebok's international headquarters visit plant sites to evaluate conditions and recommend improvements where needed. Finally, Reebok has engaged an independent accounting firm to un-

73. See Eyre, *supra* note 65, at 32-33.

74. See Human Rights Production Standards Set in Worldwide Reebok Initiative, in Reebok: Making a Difference (company newsletter, June 1993) (on file with author, available from Reebok corporate offices).

75. However, Reebok officials report they did force a Chinese supplier factory to move employees from a dormitory that was out of compliance with its code of conduct, upon a threat of cancelling the supplier's contract. See Eyre, *supra* note 65, at 32-33.

76. See Paul Fireman & Doug Cahn, *Reebok's human rights record has earned international acclaim*, BOSTON GLOBE, July 19, 1994, at 14 (letter to the editor).

77. See Eyre, *supra* note 65, at 33.

dertake payroll audits, interview workers and conduct "focus groups" on wages and working conditions.⁷⁸

C. *A New Initiative: Starbucks Coffee and Guatemalan Farmworkers*

A dramatic new corporate initiative on labor rights was taken on February 15, 1995 with an announcement by the Starbucks Coffee Co. that it would formulate a code of conduct for workers at the company's supplier plantations in Guatemala.⁷⁹ This makes Starbucks the first major U.S. corporation to develop its own code of conduct in the agricultural commodities sector.⁸⁰

The Starbucks move came in response to a "campaign for justice for coffee workers" sponsored by U.S. labor rights advocacy groups on behalf of Guatemalan coffee workers. Working with the Chicago-based U.S.-Guatemala Labor Education Project, a coalition of Washington state religious, labor, and environmental organizations first requested meetings with Starbucks officials "to discuss the possibility of Starbucks breaking new ground in the areas of corporate responsibility: the establishment of a code of conduct for your business partners abroad who produce the coffee you sell."⁸¹ Citing the Levi Strauss and Reebok codes and Starbucks' own reputation for having a "socially responsible corporate image," the coalition urged the company to adopt a sourcing code requiring business partners to "pay a living wage, respect freedom of association, provide sanitary housing, provide safe and healthy workplaces, and not practice discrimination."⁸²

In its first response to this activist coalition, the president of

78. See Fireman & Cahn, *supra* note 76.

79. See U.S.-Guatemala Labor Education Project, *Big Move for Workers' Rights by Starbucks*, February 17, 1995 (press release); Sylvia Wieland Nogaki, *Coffee's Code of Conduct: Starbucks to adopt standards for wages, work conditions for Guatemala workers*, SEATTLE TIMES, February 16, 1995, at C1.

80. A number of industry-wide private sector commodity agreements contain labor rights provisions. In particular, the principal accords among tin, sugar, cocoa and rubber producers require fair labor standards. Critics charge, however, that such standards have been used more by advanced producers to limit entry into the business than to advance worker rights. See Ulrich Kullmann, "Fair Labour Standards" in *International Commodity Agreements*, 14 J. WORLD TRADE L. 527 (1980). For a view defending such standards (and discussing their inefficacy), see P. Alston, *Commodity Agreements — As Though People Don't Matter*, 15 J. WORLD TRADE L. 455 (1981).

81. See letter from John C. Boonstra et. al, Washington Association of Churches, to Howard Schulz, President, Starbucks Coffee Co., July 21, 1994 (on file with author).

82. *Id.*

Starbucks declined to meet with its representatives and refused to consider a code of conduct.⁸³ He pointed to Starbucks' generous support for CARE as Starbucks' chosen expression of social responsibility, stating "[w]hile we understand the purpose of your codes, I'm afraid that I cannot in good faith bring our company and our shareholders in on this project."⁸⁴ With regard to the Levi Strauss, Reebok and other examples of internal company codes of conduct for labor rights, Starbucks' president said "I'm sure that each of these companies has their own special circumstances surrounding their involvement in the third world countries in which they do business" and noted that "when we first sought out the organizations with which we planned to partner, we looked carefully and studied their programs a great deal."⁸⁵ He concluded that "[w]e have invested a great deal of time nurturing our relationships with the coffee growers we do business with, and we truly feel it would not be prudent to impose someone else's sanctions on them now."⁸⁶

Following this refusal, the labor rights coalition initiated a public communication campaign, including informational picketing at Starbucks stores, to pressure the company into adopting the proposed code.⁸⁷ The U.S.-Guatemala Labor Education Project proceeded to draft a code of conduct that it offered for Starbucks' adoption as part of its campaign.⁸⁸ By the end of 1994 the campaign was in high gear, with informational leafleting at Starbucks stores in major cities around the country.⁸⁹ At this point the campaign took care *not* to call for a boycott, instead urging consumers to write to the company asking them to adopt a code of conduct for workers' rights on supplier plantations in Guatemala.⁹⁰

83. See letter from Howard Schulz, President, Starbucks Coffee Co., to Rev. John C. Boonstra, Washington Association of Churches, August 29, 1994 (on file with author).

84. *Id.* at 1.

85. *Id.* at 2.

86. *Id.*

87. See *Were the Beans for Your Coffee Picked by Workers Earning \$2 a Day?* and other materials from U.S.-Guatemala Labor Education Project, *A Campaign for Justice for Coffee Workers* (on file with author).

88. See U.S.-Guatemala Labor Education Project, *Draft Code for U.S. Coffee Companies Doing Business in Guatemala—Model: Starbucks* (on file with author). The draft code contains clauses addressing issues of wages, working hours, forced labor, child labor, freedom of association, discrimination, housing, safe and healthy work environment, and monitoring.

89. See Mike Zielinski, *Trouble Brewing at Starbucks Coffee*, THE PROGRESSIVE, March 1995, at 12.

90. See Jim Woolf, *Nationwide Coffee Firm is Target of Activists*, SALT LAKE TRIB., Jan. 9, 1995, at D2.

Contrary to what might be expected of a company under such pressure, Starbucks did not assume a defensive posture and condemn its critics. Behind the scenes, Starbucks officials and leaders of the U.S.-Guatemala Labor Education Project and the Washington state coalition sustained a confidence-building dialogue through meetings, conference calls and correspondence. The Project became convinced that Starbucks' social responsibility concern was genuine, and Starbucks was reassured that the Project was not a "company-buster" but sincerely interested in improving labor rights and working conditions in Guatemala.⁹¹

On February 10, 1995, just before its annual shareholders' meeting, the president of Starbucks wrote to the U.S.-Guatemala Labor Education Project to confirm that "we will move forward and adopt a Starbucks code of conduct."⁹² Referring to the "campaign for justice," he remarked "you can understand our frustration at being forced to continue to defend our name in response to public relations issues, when we could be using our limited resources to begin making progress towards our goal."⁹³

Rather than simply adopt the code drafted earlier by the Project, Starbucks stated its intention to fashion its own code which would be "something that works and something that we can live with."⁹⁴ The company said that it would engage in a broad consultation in preparing a new code: "Since this is a new concept in the agricultural context, we need to take time to research the options and seek help from all the constituencies, both internal and external, to reach an understanding of all the issues."⁹⁵ In conclusion, Starbucks declared "[w]e accept the challenge to take the lead in adopting a Starbucks code of conduct. We don't know what kind of companies you've dealt with in the past, but you can be assured that when we say we're going to do something, we always come through," and finally, generously, "[t]hank you for your patience and persistence."⁹⁶

91. Interview with Stephen Coats, Executive Director, U.S.-Guatemala Labor Education Project, February 24, 1995.

92. See letter from Howard Behar, President, International and Dave Olsen, Sr. Vice President, Starbucks Coffee, to Stephen R. Coats, Executive Director, U.S.-Guatemala Labor Education Project, February 10, 1995 (on file with author).

93. *Id.*

94. *Id.*

95. *Id.* Starbucks president Howard Schultz told the company's shareholders he expected it would take "at least six months" to understand the issues and develop a code. See Sylvia Wieland Nogaki, *supra* note 79.

96. See *supra* note 92.

IV. CONCLUSION: THE PROBLEM OF CORPORATE VULNERABILITY

A dilemma faced by any company that charts a proactive course in enacting human and labor rights protections is that it can never fully satisfy its ideals. Most multinational corporations have not issued human and labor rights codes of conduct, preferring to tersely maintain that they obey the laws of the countries where they do business. Companies like Levi Strauss, Reebok and Starbucks that claim to set a higher standard often suffer the perverse result of becoming the targets of criticism.

Shortly after Levi Strauss received an award from the Council on Economic Priorities for its "unprecedented commitment to non-exploitative work practices in developing countries," reports surfaced alleging use of child labor, unsafe conditions and unpaid wages at a Levi Strauss supplier plant in Juarez, Mexico.⁹⁷ Similarly, Reebok has been sharply criticized for its reliance on supplier facilities in Indonesia, where wage levels, though higher than the minimum, are lower than estimates of what is needed for the basic necessities of life, and where the military-dominated government suppresses independent trade union organization.⁹⁸

Levi Strauss, Reebok and Starbucks are not alone in moving toward codes of conduct on human and labor rights in their international operations. Sears, JCPenney, Wal-Mart, Home Depot, Philips Van-Heusen, Timberland and others have all adopted similar measures for their overseas subsidiaries and suppliers.⁹⁹ Many companies have adopted codes of conduct on global environmental practices.¹⁰⁰ The code of conduct phenomenon is also prevalent domestically, where many U.S. companies have formulated codes for Ameri-

97. See Laurie Udesky, *Sweatshops Behind the Labels: The 'Social Responsibility' Gap*, THE NATION, May 16, 1994, at 665-67.

98. See "Labor Rights Group Asserts Reebok Human Rights Award Marred by Company's Exploitative Production Practices," press release from International Labor Rights Education and Research Fund, December 10, 1991 (on file with author). On wage levels, see Jeffrey Ballinger, *The New Free Trade Hell*, HARPER'S MAG., Aug. 1992, at 46-47 (discussing salaries at a Nike contractor). On trade union suppression, see Thomas L. Friedman, *Bentsen Prods Indonesia on Rights of Workers*, N.Y. TIMES, Jan. 18, 1994, at D6.

99. See McCormick & Levinson, *supra* note 58, at 48-49. Generally, these companies' codes of conduct are available from corporate offices upon request.

100. See Stan Hinden, *Joan Bavaria's Crusade for the Environment: Social Activist is Driving Force Behind the Valdez Principles, a Corporate Code of Conduct*, WASH. POST, Dec. 23, 1990, at H1.

can labor, environmental and other social concerns.¹⁰¹

As we have seen, several factors are promoting the emergence of corporate codes of conduct that protect human and labor rights in multinational enterprises. There is a genuine humanitarian impulse at work in many cases, whether it starts with individual corporate leaders shaped by personal experiences, or as a consensus arrived at by a more collective company leadership. Often the altruistic motive coincides with "bottom line" considerations related to brand name, company image and other intangibles that are part of a company's assets. For some advocates of corporate social responsibility, the motivation is more action-oriented than a product of reflection:

[T]he most important contribution of the members of the socially responsible business movement . . . is that they are leading by trying to do something, to risk, to take a chance, to make a change—any change. They're not waiting for "the solution" but acting creatively without guarantee of success.¹⁰²

From outside the enterprise, a more traditional pressure common in the modern regulatory state has an effect. Governments seeking to mandate behavior by companies are devising laws and regulations for labor rights in international trade, as in the Generalized System of Preferences and other U.S. trade statutes.¹⁰³ International regulation is also beginning to appear, as in NAFTA, the European Union and perhaps next in the new World Trade Organization.¹⁰⁴

A traditional response by corporations to such "mandates," as they are known in U.S. regulatory discourse, is an assertion of self-regulation that will allow for individual differences and needs while still achieving the overall social goal. From an historical perspective since the early 20th century, this pre-emptive thrust toward corporate self-governance on social matters has been more of an orderly retreat than an offensive movement. But in the new, market-driven global economy where the regulatory state is coming under greater criticism, self-regulation by means of codes of conduct on human and labor rights may enjoy a greater chance to prove its effectiveness.

101. For a broad survey of company initiatives, see JOEL MAKOWER, *BEYOND THE BOTTOM LINE* (1994); see also Leslie Crutchfield and Luba Vangelova, *Can Companies Care?*, *WHO CARES*, Summer 1994, at 28-32.

102. See Hawken & McDonough, *supra* note 17, at 92.

103. See *supra* note 7.

104. On NAFTA, see *supra* note 8; on the WTO, see *supra* note 11; on the European Union, see Treaty on European Union and Final Act, Feb. 7, 1992, Protocol on Social Policy, 31 I.L.M. 247, 357 [hereinafter *Maastricht Treaty*].

Drafting the content of such codes is relatively easy. Good models exist in United Nations human rights instruments, in International Labor Organization conventions, in codes drafted by multilateral governmental or economic coordinating bodies, and in the formulations adopted by the companies studied here. Effective implementation is the real test of such codes. Companies sincerely interested in making them work will have to create credible enforcement regimes to back them up, characterized by such elements as:

- * assigning responsibility for attaining compliance to a named, on-site individual manager;
- * ongoing auditing and reporting on labor rights and labor conditions in company operations, either by independent examiners or, if by company officials, with results subject to independent verification;
- * surprise visits to production facilities by independent auditors and by senior management officials;
- * creating avenues of recourse for workers to invoke the code of conduct, with guarantees of non-reprisal;
- * no-nonsense enforcement of the code, including cancellation of contracts, termination of responsible managers, withdrawal from offending countries and similar sanctions;
- * a willingness to accept trade union representation and collective bargaining where workers desire them, even if the firm's preference is to remain non-union;
- * adding an independent human rights and labor (or environmental, in the case of an environmental code) advocate to the corporation's board of directors, or otherwise opening the board to independent advocacy.
- * regular public reporting on labor rights progress, and continuing dialogue with labor and human rights advocacy groups.

To become a permanent and positive feature of the global economy, private codes of conduct devised by firms to generate respect for worker rights in their international operations must be more than eccentricities. It remains to be seen if such codes are the exception or are part of a general trend. Initiatives like those reviewed here could remain the practice of a handful of companies who do not want their brand names associated in the minds of consumers with child labor or other labor rights abuses.

Meanwhile, the rest of the international corporate community, whose sales are principally made to other companies or governments, rather than consumers, might refuse to develop their own codes of conduct and resist codes offered for their adoption by governments or by NGOs. The result of such indifference on a broad scale will be escalating pressure from advocacy groups for mandatory international fair labor standards linked explicitly to trade agreements and backed by trade sanctions.

On the other hand, perhaps forward-looking corporate leaders and strategists will recognize the value of integrating human and labor rights concerns into their global employment policies. They might move in this direction not just to avoid offending consumers, but for a beneficial effect such codes will have on employee involvement, training and productivity.

In the same way that a "first generation" of civil and political rights emerged in the human rights field, to be followed by "second" and "third" generation rights that expanded the scope of human rights,¹⁰⁵ the corporate codes of conduct that have taken shape recently can be said to be the first generation. They are limited to those companies with a direct interest in demonstrating a positive human rights record. A "second generation" might lie in making such codes the rule rather than the exception in the international corporate community, and finding creative methods for making them effective, not just hortatory. Perhaps after that, a third generation of corporate social responsibility will find respect for human rights a "matter of course," rather than just a matter of "altruism," as envisioned by visionary proponents of corporate social responsibility.¹⁰⁶

105. For a discussion of the "generations" analysis of international human rights, see Burns H. Weston, *Human Rights*, in *HUMAN RIGHTS IN THE WORLD COMMUNITY: ISSUES AND ACTION* (Richard Pierre Claude and Burns H. Weston, eds., 2nd ed. 1992) 14-31.

106. See Hawken & McDonough, *supra* note 17, at 80.