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## Enforcement of Human Rights on Multi-National Corporations: Global Climate, Strategies and Trends for Compliance

### Keywords

Corporations, Human Rights Law, Comparative Law

# ENFORCEMENT OF HUMAN RIGHTS ON MULTI-NATIONAL CORPORATIONS: GLOBAL CLIMATE, STRATEGIES AND TRENDS FOR COMPLIANCE

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## I. INTRODUCTION

Engaging in a human rights discussion concerning multi-national corporation (MNC) enforcement is multi-dimensional. Economic, political, social and profit issues, among others, dangle precariously from the web of an increasingly global community that debates the issue of human rights enforcement. Examination of the cacophony of compliance mechanisms must be viewed in the shadow of these rapidly changing issues.

## II. OVERVIEW OF THE CLIMATE OF THE HUMAN RIGHTS DEBATE

### A. *International Political Climate*

When human rights issues and economics combine the debate therein becomes highly political.<sup>1</sup> The increase of U.S. corporate expansion extraterritorially gives rise to a heated debate worldwide on the role corporations' play in the international human rights arena. The political dichotomy between interests of developing countries and those with market economies makes it very difficult to determine the very foundation of the human rights debate.<sup>2</sup> Within the UN General Assembly, competing views arise between developing countries who value "respect for cultural and religious diversity around the world, respect for sovereignty and an end to the politicization of human rights issues," and those of developed countries who argue for fundamental standards of human rights and stress the hierarchy of individual liberty over eco-

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1. GUIDE TO INTERNATIONAL HUMAN RIGHTS PRACTICE 13 (Hurst Hannum ed., 1999) [hereinafter GUIDE].

2. *Human Rights Issues Dominate the Agenda*, General Assembly 52, 35 U.N. CHRON. 56 (Mar. 22, 1998)

conomic and social rights.<sup>3</sup>

## B. *Climate Change With Emergence of Developing Nations*

### 1. Enticement of Low Wage Markets

While the tide of political sentiment continues to question the very essence of human rights, developing countries swim with powerful strokes into the international economic market.<sup>4</sup> Developing countries entice MNC's with low wages and an increasingly more skilled and productive workforce.<sup>5</sup> Certain sectors of the U.S. labor market suffer from the competition developing countries provide.<sup>6</sup> The steel and textiles industries are examples of "labor-intensive" segments that have been weakened by the increased globalization of the labor market.<sup>7</sup>

Many MNC's who take advantage of such high profit, low wage labor markets do not abide by the international labor standards of the International Labor Organization (ILO).<sup>8</sup> The ILO was created in 1919 in an attempt to remove injustice in global labor markets.<sup>9</sup> The framers felt the injustices were enough to "imperil" world safety.<sup>10</sup> Many argue the North American Free Trade Agreement (NAFTA) has only added to the failure of the ILO's effectiveness.<sup>11</sup>

Instances of slavery, child labor, and unpaid prison labor are among the most visible injustices in developing countries.<sup>12</sup> Children in India and Pakistan are commonly found working to help support their low-income families.<sup>13</sup> Without work making items such as rugs, children may be relegated to work in even worse situations.<sup>14</sup>

Local opposition in India to Enron, a U.S. corporation, has led to farmer grievances of unfair seizure of land and diversion of water for corporate needs.<sup>15</sup> Fishermen also protest in fear that power generation

3. See GUIDE, *supra* note 1, at 14.

4. THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: FIFTY YEARS AND BEYOND 289 (Yael Danieli et al. eds., 1999) [hereinafter FIFTY YEARS AND BEYOND].

5. BRIAN McDONALD, THE WORLD TRADING SYSTEM: THE URUGUAY ROUND AND BEYOND 12 (1998).

6. *Id.* at 13.

7. *Id.*

8. See FIFTY YEARS AND BEYOND, *supra* note 4, at 289.

9. See GUIDE, *supra* note 1, at 85.

10. ILO CONST. preamble (1961).

11. See FIFTY YEARS AND BEYOND, *supra* note 4, at 289.

12. See McDONALD, *supra* note 5, at 281.

13. *Id.*

14. *Id.* at 282.

15. U.S. Corporation Complicit in Abuses in India: Report Charges U.S. and Indian Governments Also Overlook Human Rights Violations (visited Jan 25, 1999) <<http://www.hrw.org>>.

from the US plant will increase seawater temperature and kill fish vital to their survival.<sup>16</sup>

Such abuses seem repugnant to many in developed countries, most of whom, like the U.S., do not recall similar abuses in the early U.S. industrial age.<sup>17</sup> It is unfair to place the entire burden of human rights management on developing countries.<sup>18</sup> Most of the developing countries cannot provide the kind of human rights protection afforded by developed nations.<sup>19</sup> Developing countries are caught between the need for economic stability, development and fulfillment of international laws and treaties signed by the government.<sup>20</sup> When governments enter into business, it is difficult to say that they should also be the "watch dog" of their own human rights practice.<sup>21</sup>

## 2. Call to the Global Market vs. Human Rights

The emergence of developing countries into the global market evokes issues of formulation of appropriate human rights standards, determination of governance over such standards, and conflicts between the competing interests of economic development and human rights.<sup>22</sup> In the developed countries where MNC's are incorporated, officials are ensnared between the call to foreign investment, global capitalization, and the promotion of the human rights they espouse.<sup>23</sup>

To further blur the line between business and human rights, the UN adopted a resolution in March, 1999, proclaiming that the "right to development" is a human right.<sup>24</sup> The resolution called the gap between developed and undeveloped countries unacceptably wide.<sup>25</sup>

Despite the lack of an organized framework of human rights standards among nations, the UN endorses and encourages developing countries to enter the international market.<sup>26</sup> "Industrial nations must relax trade barriers and open their markets to the developing

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16. *Id.*

17. See MCDONALD, *supra* note 5, at 281.

18. *Id.* at 280.

19. *Id.*

20. See *U.S. Corporation Complicit in Abuses in India*, *supra* note 15.

21. THOMAS L. FRIEDMAN, *Foreign Affairs The New Human Rights*, N.Y. TIMES, July 30, 1999.

22. See GUIDE, *supra* note 1, at 14.

23. *Corporations and Humans Rights*, HUMAN RIGHTS WATCH (visited Mar. 28, 2000) <http://www.hrw.org/hrw/about/initiatives/corp.html>.

24. *Human Rights & Unilateral Coercive Measures*, U.N GAOR 3d Comm., 53<sup>rd</sup> Sess. At 1, G.A. Doc. A/RES/53/141.

25. *Id.*

26. UNCTAD: *Urges Market Access For Poor Countries*, UNCTAD PRESS RELEASE, UN WIRE, (Sept. 21, 1999).

world . . ."<sup>27</sup> The UN goes further and calls on the international community to move at a faster pace to incorporate developing countries into the global market.<sup>28</sup> Finally, the UN calls on developed countries to "encourage trade," and "sustain market access" to developing countries.<sup>29</sup>

### C. *Climate Change With The Emergence Of Technological Advances*

#### 1. Race to the Bottom

Technological advancements are having both positive and negative effects on the global climate surrounding human rights violations by MNC's. The development of new technology creates a phenomenon called a "race to the bottom."<sup>30</sup> This phenomenon suggests that in the MNC's rush to keep in step with competitors' new technological advances by seeking low wage and low welfare environments, they often do so at the expense of human rights.<sup>31</sup> New electronics and information technology fuel the race by forcing corporations to constantly upgrade their facilities.<sup>32</sup>

#### 2. Improved Access to Global Community

Technology has also fueled advancements in human rights activism.<sup>33</sup> Non-governmental organizations (NGO's) and other activists have seized upon the internet to "mobilize widespread awareness campaigns."<sup>34</sup> Use of the internet afforded an opportunity for previously silent NGOs to stop the Organization of Economic Cooperation and Development (OECD) negotiations for the Multilateral Agreement on Investment, called corporations into account for human rights violations, and garnered support for incorporation of communities on the fringe.<sup>35</sup> Some argue that while access to such a large segment of the general populous is a human rights advantage, others contend that such publicity widens the already hostile gap between corporations and human rights advocates.<sup>36</sup>

The enhanced communication network not only gives a louder voice

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27. *Id.*

28. *Id.*

29. *Id.*

30. See MCDONALD, *supra* note 5, at 13.

31. *Id.*

32. *Id.*

33. See FIFTY YEARS AND BEYOND, *supra* note 4, at 260.

34. *Id.*

35. *Globalization With A Human Face*, HUMAN DEVELOPMENT REPORT 1, 1999, at 5.

36. See FIFTY YEARS AND BEYOND *supra* note 4, at 260.

to human rights advocates, it also creates improvements in health and education.<sup>37</sup> The wall of size, location, wealth and knowledge is crumbling with the falling cost of Internet access.<sup>38</sup> Small businesses and poor countries are now able to enter the global economic market more easily.<sup>39</sup>

#### *D. Evolution Of The International Social Climate*

##### 1. Battle Over Responsibility

The social climate among the international community is convoluted. There is a constant push and shove among the players for economic control and social responsibility. Some countries try to divert criticism concerning human rights abuses by charging individuals with a responsibility to respect governmental authority.<sup>40</sup> Westerners however, decry that individuals have the right to protest perceived unjust acts committed by their government without fear of retribution.<sup>41</sup>

Some argue that when governments fail, the burden shifts to corporations to uphold human rights standards.<sup>42</sup> Current human rights trends suggest that not only should corporations monitor human rights abuses, but they should also teach their employees "moral competence" and "moral values."<sup>43</sup> Some human rights educators narrow the responsibility for human rights violations down to the smallest scale, calling for individual responsibility.<sup>44</sup> Educators are on the verge of merging their ideals to create a new set of values to be applied to the entire human race.<sup>45</sup>

##### 2. Continuing Abuses

Yet as the push and shove continues, human rights abuses by MNC's and the governments that protect them, continue. In Sao Paulo, Brazil, 500,000 children live without homes and work on the streets.<sup>46</sup> Women in Bangladesh may work a total of eighty-seven hours per week

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37. See *Globalization With A Human Face*, *supra* note 35, at 5.

38. *Id.*

39. *Id.*

40. See FIFTY YEARS AND BEYOND, *supra* note 4, at 407.

41. *Id.*

42. See *Corporations and Humans Rights*, *supra* note 28.

43. See FIFTY YEARS AND BEYOND, *supra* note 4, at 262.

44. *Id.*

45. *Id.*

46. *Id.* at 289.

in the garment industry, but receive wages for only fifty-six hours.<sup>47</sup> NGOs report numerous abuses around the globe, including those in Nigeria where Human Rights Watch (HRW) reports that Nigerian police force uses extremely brutal measures to quiet protests against oil companies.<sup>48</sup> Attacks on young people by security guards protecting a Chevron drilling rig have also been cited.<sup>49</sup> HRW charged that U.S. owned Enron Power Company with complicity in Indian government abuses against protesters of the plant.<sup>50</sup> The ILO reports that nearly 180 million child workers are located in Asia, and recently has severed ties with Burma as a result of continuing child labor abuses.<sup>51</sup>

### 3. Search for a Global Human Rights Scheme

One difficulty surrounding the social structure of the human rights debate is the same as for the political debate: the determination of the foundation of the human rights discussion. Many westerners seem to focus on issues of individual liberty, whereas internationally, for the sake of survival, workers focus on labor issues.<sup>52</sup>

The social struggle currently is in the search for a global scheme in industry that works for the profit of the corporation and for the dignity of people.<sup>53</sup> One tactic is to call upon a globalization plan with "ethics, equity, inclusion, human security, sustainability and development."<sup>54</sup> Determining exactly how to accomplish this is the paramount task.

#### *E. International Economic Climate Change*

##### 1. State of Confusion: Disparate Distribution of Wealth

The economic climate of today's global market is in a constant state of flux. While the market continues to become more accessible to MNC's and developing countries, the distribution of wealth remains uneven.<sup>55</sup> In addition, the search for market accessibility and profits by

47. See *Globalization With A Human Face*, *supra* note 35, at 7.

48. *Oil Companies Complicit in Nigerian Abuses*, HUMAN RIGHTS WATCH WORLD REPORT, (visited Oct. 6, 1999) <<http://www.hrw.org/press/1999/feb/nig0223.htm>>.

49. *Id.*

50. See *U.S. Corporation Complicit in Abuses in India*, *supra* note 15.

51. *World Children Top Conference Agenda*, BBC NEWS ONLINE, (visited Sept. 8, 1999) <[http://news.bbc.co.uk/1/hi/english/world/newsid\\_441000/441339.stm](http://news.bbc.co.uk/1/hi/english/world/newsid_441000/441339.stm)>.

52. See FRIEDMAN, *supra* note 21.

53. See *Globalization With A Human Face*, *supra* note 35, at 7.

54. *Id.*

55. Eric Beaucheshe, *Wealth Gap a Recipe for Financial Crisis: UN*, SOUTHAM NEWS, (visited Sept. 20, 1999) <<http://www.nationalpost.com/news>>.



MNC's leaves human rights issues in the wake.<sup>56</sup>

Per capita income continues to drop in more than fifty-five countries; and in 80 countries the average per capita income is lower than it was ten years ago.<sup>57</sup> According to the UN's Human Development Report for 1999, globalization of the world economy has done little to effect the poor where "the richest fifth of humanity [is] enjoying more than 85 percent of total gross domestic product and the poorest fifth only one percent."<sup>58</sup> In Chile, for example, ten percent of the richest control forty-five percent of national wealth, which has risen eleven percentage points since globalization began.<sup>59</sup> The income gap continues to widen. The gap doubled in thirty years from 30 to 1 in 1960 to 60 to 1 in 1990.<sup>60</sup> The gap currently stands at 74 to 1.<sup>61</sup>

The disparity not only occurs in developing nations. Among industrialized nations, the U.S. has one of the three worst poverty levels sharing its poor ranking with Ireland and the U.K.<sup>62</sup> In the U.S., twenty-five percent of children live in poverty.<sup>63</sup>

## 2. Negative Impacts by Multi-National Corporations

MNCs have had certain negative effects on the global market. When MNCs rush to low wage markets, where trade unions, child labor and slavery exist, the market suffers from elevated competition.<sup>64</sup> The "mega corporation" poses the opposite risk. The current trend toward huge corporate mergers results in the centralization of power that threatens to degrade global competition.<sup>65</sup>

## 3. Emergence of New Players

New political players are contributing to an ever-changing global economic climate. The World Trade Organization (WTO) governs with increasing power over member states, MNC's emerge with more economic power in the global market than many national governments and the scope of NGOs expands with the increase use of global internet technology.<sup>66</sup> The full of effect of these new players has yet to be fully

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56. See *Globalization With A Human Face*, *supra* note 35, at 2.

57. *Id.*

58. *Human Development Report: Globalization Leaving Poor Behind*, UN WIRE (July 12, 1999).

59. *Id.*

60. *Id.*

61. *Human Development Report: Globalization Leaving Poor Behind*, *supra* note 58.

62. *Id.*

63. See FIFTY YEARS AND BEYOND, *supra* note 4, at 288.

64. See MCDONALD, *supra* note 5, at 279.

65. See *Globalization With A Human Face*, *supra* note 35, at 3.

66. *Id.* at 1.

realized.

The international community focuses on the fast pace of corporate economic growth, and strives to keep up by creating economic policies and standards, but fails to exert effort toward protecting human rights.<sup>67</sup> The need for economic controls is essential, however, because when the market is out of control, profit motives may outweigh corporate efforts to protect human rights.<sup>68</sup> Stabilization of the global economy depends on the development of human rights governance mechanisms, as well as effective economic controls on MNC's.<sup>69</sup>

### III. HUMAN RIGHTS COMPLIANCE STRATEGIES

#### A. *Compliance Via Self-Governance*

##### 1. Protecting Corporate Image

Absent any clear governmental regulation and given the confusion that surrounds the human rights debate, NGO's have become even more important in effecting human rights change. By focusing on exposing human rights abuses by MNC's, NGOs drive corporate entities to regulate themselves.

While many MNC's do not actively participate in human rights abuses, they nevertheless, may stand idle while governments protect corporate interests at the expense of human safety and dignity.<sup>70</sup> Some corporations deflect responsibility for these abuses by charging the governments where they trade and invest, with the duty to care for their citizens.<sup>71</sup>

Corporations are only able to deflect such criticism to a certain extent; once investigated by NGO's corporate image may be affected if corporations fail to address abuses surrounding their companies.<sup>72</sup> Currently, corporate image is the key to human rights compliance by MNC's. Corporations that market items such as footwear and clothing rely heavily on corporate image and have been the first industry players to react to human rights abuse accusations.<sup>73</sup>

NGO's can also be effective in exposing abuses, and effecting

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67. *Id.* at 2.

68. *Id.*

69. *Id.* at 8.

70. Arvind Ganesan, *Business and Human Rights—The Bottom Line*, HUMAN RIGHTS WATCH, (visited Oct. 6, 1999) <<http://www.hrw.org/hrw/advocacy/corporations/index602.htm>>.

71. *Id.*

72. *Id.*

73. *Id.*

change in corporations that do not depend heavily on the price of good corporate image.<sup>74</sup> Shell oil established a human rights policy after activists arranged protest over abuses by the oil company in the Niger Delta.<sup>75</sup> While the era of good corporate image via a positive human rights record grows, some corporations still contend that they are not responsible for specific human rights abuses because they improve human rights overall simply by investing and conducting business in developing countries.<sup>76</sup> Still amidst such arguments, many corporations understand the advantage of marketing a good human rights record.<sup>77</sup>

MNC's understand that NGO pressure is only going to increase as global technology is used to reach a larger audience.<sup>78</sup> Many corporations are even beginning to push a collective human rights policy, arguing that if all corporations are held to a single voluntary standard of human rights responsibility, no MNC will be unfairly penalized.<sup>79</sup> A collective policy may preserve global competition and help focus the international community on the needs of human rights.<sup>80</sup> While profit will always be the primary consideration, especially when a corporation is in the business of self-governance, a collective policy will help remove one hurdle to disadvantaged competition.

## 2. Voluntary Codes of Conduct

Another positive aspect of the self-governance trend is that at least in the garment and shoe industries, a small pocket of leadership has developed.<sup>81</sup> These corporate leaders meet periodically with NGOs to discuss current human rights policies and methods of implementation.<sup>82</sup>

Nike has been one of the most criticized MNC's, but one that has also attempted to change its corporate image.<sup>83</sup> Nike chairperson Philip Knight presented Nike's philosophy at a meeting with President Clinton and the Fair Labor Coalition:

For the past twenty-five years, Nike has provided good jobs, improved labor practices and raised standards of living wherever we operate, including here in the U.S. What we've come to realize is that we need to do a better job of publicly describing actions we've taken to promote

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74. See GUIDE, *supra* note 1, at 13.

75. See Ganesan, *supra* note 70.

76. *Id.*

77. *Id.*

78. See FIFTY YEARS AND BEYOND, *supra* note 4, at 1.

79. See *id.*

80. See *Globalization With A Human Face*, *supra* note 35, at 7.

81. See *Corporations and Humans Rights*, *supra* note 28.

82. *Id.*

83. *Id.*

fair labor practices in newly emerging market societies, including the development of a code of conduct, internal monitoring and external audits.<sup>84</sup>

Dissenters criticize these types of corporate image statements and other highly publicized development strategies, arguing that they do little to effect the state of human rights.<sup>85</sup> Such programs appeal politically and socially, changing the public perception of MNC's, however they may do little substantively.<sup>86</sup>

Many human rights educators have issued a call to corporations to do more than invent a glossy human rights package, but rather to begin to teach their employees what it means to be a responsible global citizen.<sup>87</sup> MNC's need to teach their employees what it means to live in this new global society.<sup>88</sup>

Some skeptics argue that self-governance is not an effective solution.<sup>89</sup> These activists argue that human rights are issues applicable to individuals, governments, corporations and intergovernmental organizations, and that it will take a collective effort to have a sustained impact on human rights.<sup>90</sup> They further contend that human rights goals are far too important to be left to MNC's to voluntarily decide to abide by "self-generated" independent standards.<sup>91</sup>

## *B. Compliance Via Governmental Human Rights Regulation*

### *1. U.S. Efforts*

Very little external governmental regulation of MNC's exists with respect to human rights abuses. While the U.S. government has spearheaded discussions on corporate responsibility, it has been reluctant to follow through with the ideas expressed.<sup>92</sup> In 1995, the U.S. introduced "Model Business Principles" for companies involved in foreign operation; these rules however, were never implemented.<sup>93</sup>

Other U.S. efforts at government regulation have also failed. In July of 1996, the government hosted a "Fashion Industry Forum," urg-

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84. *Id.*

85. *See* FIFTY YEARS AND BEYOND, *supra* note 4, at 261.

86. *Id.*

87. *Id.*

88. *Id.*

89. *See* Globalization With A Human Face, *supra* note 35, at 12.

90. *Id.*

91. *Id.*

92. *See* Corporations and Humans Rights, *supra* note 28.

93. *Id.*

ing U.S. corporations to mark "no sweat" on garments to distinguish themselves as corporations that do not use sweatshops.<sup>94</sup> Once again, there was no follow-through and the project faded.<sup>95</sup>

One possible reason that the U.S. government is sluggish in its regulation of MNC's is that officials are occupied tackling human rights violations occurring domestically. The U.S. General Accounting Office cited numerous violations in "wage, child labor, health, and security in the workplace."<sup>96</sup> Most of these types of sweatshop violations occur in businesses that supply products to high profile corporations.<sup>97</sup> Such manufacturers as GAP, Esprit and Liz Claiborne head the list of approximately 1,000 companies accepting goods from more than 22,000 sweatshops located in the U.S.<sup>98</sup>

## 2. Utilization of an International Criminal Court

Many discussions have revolved around the creation and utilization of an International Criminal Court (ICC) to hold human rights abusers accountable. Currently, such a system is only used in an ad hoc tribunal form for crimes against humanity.<sup>99</sup> Many suggest that this court could be used to prosecute corporations that violate human rights standards. Activists argue that even under the current court structure, corporations should be held accountable for crimes against humanity-including incidents such as the poisoning of civilians as in the Bhopal incident, which is strikingly close to genocide.<sup>100</sup>

## 3. Utilization of Existing Treaties

One suggested method of regulation would be to include MNC's as parties to existing treaties, arguing that they should be bound as "citizens" of the signatory parties.<sup>101</sup> While this may seem far-reaching such inclusion would be similar to how the ILO binds trade unions and other industry associations as "social partners" with their nation of origin.<sup>102</sup> These "partners" assist in drafting standards, but are also required to comply with those standards upon ratification.<sup>103</sup>

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94. *Id.*

95. *Id.*

96. *See* FIFTY YEARS AND BEYOND, *supra* note 4, at 289.

97. *Id.*

98. *Id.*

99. *See id.*, at 407.

100. *Id.*

101. *Id.* at 408.

102. *Id.* at 407.

103. *Id.*

#### 4. State and Local Governance

Some state and local legislation has occurred to monitor human rights violations.<sup>104</sup> Following the U.S.'s introduction of the "Model Business Principles," the U.S. Department of Labor issued a report of MNC's human rights record regarding child labor.<sup>105</sup> In response to the report, cities and states around the country began issuing purchasing ordinances. Both Massachusetts and the city of Berkeley, California have passed laws prohibiting public entities from purchasing goods from Burma.<sup>106</sup>

#### 5. Utilization of Loan Guarantees

The U.S. does have some ability to directly control MNC's. Prior to granting loan guarantees to corporations for foreign investment, the U.S. completes a mandatory political and human rights assessment.<sup>107</sup> In theory, the assessment should hinder human rights violators from profiting in the global market. However, the process seems underutilized and ineffective when corporations such as U.S. owned Enron secures \$300 million worth of loan guarantees amidst reports of abuses in India.<sup>108</sup>

Because of U.S. government loan guarantees, lobbying efforts on behalf of corporate interests in foreign countries and using public funds for corporate development projects, activists argue the U.S. must accept some liability for corporate human rights violations.<sup>109</sup> It is also argued that international lending institutions such as the WTO or IMF should provide some human rights regulation.<sup>110</sup>

#### 6. Collective Effort Among All Global Members

Global governance must start with all international players dedicated to establishing a common set of standards and core values. The issue must be managed externally, as it is arguably too important to leave any member of the global community to self-govern alone.<sup>111</sup> The UN Charter and the Universal Declaration of Human Rights establishes some commonly accepted human rights, which may be a good foundation to begin developing a collective external set of global human

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104. See *Corporations and Humans Rights*, *supra* note 28.

105. *Id.*

106. *Id.*

107. See *U.S. Corporation Complicit in Abuses in India*, *supra* note 15.

108. *Id.*

109. See *id.*

110. *Id.*

111. See *Globalization With A Human Face*, *supra* note 35, at 8.

rights standards.<sup>112</sup>

There has been very little proposed legislation from within the U.S. or from international organs.<sup>113</sup> What little debate that has been generated from key international economic organizations, has been highly criticized for its narrow focus and lack of inclusion of non-market communities and developing countries.<sup>114</sup> Institutions such as the IMF and WTO, as well as the World Bank and the OECD, are largely comprised of wealthy nations with large powerful voices; little room is left for the adequate representation of weaker countries or other international associations.<sup>115</sup> Critics argue that regulation that may result from these groups would have little sustainable global impact.<sup>116</sup>

### 7. Corporate Response to Regulation

Corporations bristle at the suggestion of U.S. government regulation, in fear that any unilateral regulation will severely affect competition in the global market.<sup>117</sup> When the U.S. government proposed refusing loan guarantees to MNC's involved in the Three Gorges Dam in China, U.S. based Caterpillar launched a high profile campaign in protest.<sup>118</sup> Minus a few feeble attempts at regulation, most corporate response results from consumer concern. Consumer pressure sparked two grocery store chains in Great Britain to create labor codes for the third world workers who supplied their store brand products.<sup>119</sup> Image troubles have forced some major name corporate players, like Michael Jordan, Nike, and Kathie Lee Gifford into accepting social responsibility for labor standards held by the overseas plants that manufacture their products.<sup>120</sup>

Still other corporations have a mixed response or no response to human rights accusations.<sup>121</sup> Corporations such as Pepsi-Cola pulled out of Burma as a result of human rights abuse exposure, while an oil company, UNOCAL, remained amid the protests.<sup>122</sup> The Zenith Corporation offered no apology for acknowledged sex discrimination of female

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112. See *U.S. Corporation Complicit in Abuses in India*, *supra* note 15.

113. See *Globalization With A Human Face*, *supra* note 35.

114. *Id.*

115. *Id.*

116. See *id.*

116. *Id.*

117. See *Corporations and Humans Rights*, *supra* note 28.

118. *Id.*

119. See *id.*

120. *Id.*

121. *Id.*

122. *Id.*

workers in Mexico.<sup>123</sup> Even after the hanging death of the human rights advocate Ken Saro-Wiwa, Royal Dutch/Shell increased financial investment in Nigeria.<sup>124</sup> Such mixed reaction serves only to strengthen the call for external regulation of MNC's.

### C. *Compliance Via Non-Governmental Organization Pressure*

#### 1. *Effective Public Campaigns*

MNC's have received more change producing pressure from NGO's than from any other source.<sup>125</sup> When NGO's are effective at mobilizing the public to boycott human rights abusing companies, MNC's begin to react.<sup>126</sup> NGO's can also push consumers to purchase products from companies that are socially responsible. The "Dolphin Safe" labels on tuna cans have been extremely effective and may become the NGO strategy of the future.<sup>127</sup>

NGO's have been extremely effective at exposing MNC's human rights failures, prompting some corporations (such as Heineken) to withdraw from countries (such as Burma) that tout very poor human rights records.<sup>128</sup> As NGO's become increasingly more effective, they demand solid results from MNC's after reporting abuses, calling for "transparency" of corporate policies and independent monitoring of human rights standards.<sup>129</sup>

Human Rights Watch (HRW) is one example of a cutting edge NGO that seeks to "expose human rights violations and hold abusers accountable."<sup>130</sup> HRW maintains a sleek website and issues multiple press releases concerning human rights abuses by governments and "those who hold power."<sup>131</sup> Groups such as HRW are growing increasingly more sophisticated, employing a full-time staff, board of directors, enlisting the support of major donors and even offering fellowships and internship programs.<sup>132</sup>

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123. *Id.*

124. *Id.*

125. See FIFTY YEARS AND BEYOND, *supra* note 4, at 409.

126. *Id.*

127. *Id.*

128. See *Corporations and Humans Rights*, *supra* note 28.

129. See *Oil Companies Complicit in Nigerian Abuses*, *supra* note 48.

130. HUMAN RIGHTS WATCH WEBSITE, (visited Oct. 6, 1999) <<http://www.hrw.org/about/about.html>>.

131. See generally *id.*

132. *Id.*



## 2. Endorsment of NGO's by UN

As the credibility of NGO's increase, they gather more support from major inter-governmental organizations (IGOs) including the UN.<sup>133</sup> In 1996, a UN resolution permitted NGO's to apply for "consultative status" with ECOSOC. In March of 1999, the UN adopted the "Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms."<sup>134</sup> Among the articles to the declaration, the UN included a right to "form, join and participate in non-governmental or inter-governmental organizations, associations or groups. . ."<sup>135</sup> Many now argue that NGO's and other corporate associations together may serve as an effective means of independently monitoring "human safe" or "not produced by child labor" labeling campaigns.<sup>136</sup>

Campaigns by NGOs have even had some international effect, compelling governments to entertain the possibility of new human rights legislation.<sup>137</sup> When Canadian Prime Minister Jean Chretien refused to meet with a child labor activist while on a trip to India in 1996, negative press coverage pushed Chretien to publicly announce the possibility of sanctions against makers of goods using child labor imported into Canada.<sup>138</sup>

Human rights issues now demand time from more than twenty-seven for the UN's fifty-three meetings per year, and much of the current discussions could be the direct result of increased public concern over human rights abuses.<sup>139</sup> Increased public concern could very well be traced back to the increase of human rights information provided to the public by NGO's.<sup>140</sup> While the UN cannot in effect create legislation, increased demands on member nations to "set specific target dates for eliminating child labor and ensuring full enforcement of laws and legislation. . ." as well as other recommendations towards human rights may indirectly change the nature of human rights enforcement.<sup>141</sup>

It is clear that the wave of peer pressure that NGO's exert to increase human rights responsibility will not decrease until government entities establish effective regulatory controls and even then, the need

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133. *In Fiftieth Anniversary Year, Assembly Reviews Progress on Human Rights Declaration; General Assembly*, 36 UN CHRON. 54, 53 (Mar. 22, 1999) [hereinafter *Fiftieth Anniversary Year*].

134. *Id.*

135. *Id.*

136. See FIFTY YEARS AND BEYOND, *supra* note 4, at 409.

137. See *Corporations and Humans Rights*, *supra* note 28.

138. *Id.*

139. See *Fiftieth Anniversary Year*, *supra* note 133.

140. See GUIDE, *supra* note 1, at 29.

141. See *Fiftieth Anniversary Year* *supra* note 133.

for the NGO's independent monitoring may still be required to police implementation and enforcement.

#### D. Compliance Via Intergovernmental Organization Regulation

##### 1. United Nations Efforts

The UN is the most recognized IGO, and yet, it too has surprisingly little regulatory control of MNC's and human rights violations.<sup>142</sup> The UN Centre on Transnational Corporations has issued recommendations to MNC's to "abstain from involvement in and subversion of domestic politics in host nations; practice nondiscrimination; and respect host government priorities on employment, the environment and socioeconomic policy."<sup>143</sup> These recommendations are weak, as there is no binding effect or enforcement capability if violated.<sup>144</sup>

Rather than focusing on a regulatory approach to MNC compliance with human rights, the UN is beginning a cooperative program to encourage MNC's to voluntarily join together to increase human rights protection in the new global market.<sup>145</sup> Close to twenty MNC's have joined the dialog and submitted the \$50,000 entry fee to become part of the United Nations Development Program (UNDP).<sup>146</sup> The foundation of the program is to close the gap between developing and developed countries in the global market.<sup>147</sup> Promoters hope to see increased employment in undeveloped countries, thus bringing new wealth into these countries and improving human rights.<sup>148</sup> Any company engaging in UNDP will, according to UN officials, have to meet a minimum human rights standard in return for the use of a newly developed logo and an improved human rights reputation.<sup>149</sup>

UNDP has been highly criticized by corporate and human rights watch dog groups.<sup>150</sup> While the program's guidelines state "the corporation's past or current operations [must not be] ethically, socially or politically controversial," dissent has arisen over the inclusion of several corporations with shady human rights records.<sup>151</sup> MNC's such as Dow

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142. WILLIAM H. MEYER, HUMAN RIGHTS AND INTERNATIONAL POLITICAL ECONOMY IN THIRD WORLD NATIONS: MULTINATIONAL CORPORATIONS, FOREIGN AID, AND REPRESSION, 84 (1998).

143. *Id.*

144. *Id.*

145. Naomi Klein, *The UN Is Losing Sight of Its Goals*, THE TORONTO STARR, (Mar. 26, 1999) <<http://www.corpwatch.org/trac/undp/star2.html>>.

146. UNDP: *Agency Assailed For Soliciting Money From Companies*, UN WIRE, Mar. 12, 1999.

147. See *Fiftieth Anniversary Year*, *supra* note 133.

148. See UNDP: *Agency Assailed For Soliciting Money From Companies*, *supra* note 146.

149. Nicole Winfield, *UN Agency Defends Business Ties*, ASSOCIATED PRESS, Mar. 18, 1999.

150. Joan Oleck, *Will the UN Sell a Seal of Approval*, BUS. WK., Mar. 19, 1999.

151. UNDP: *Agency Assailed For Soliciting Money From Companies*, *supra* note 146.

Chemical, makers of Agent Orange, and Royal Dutch/Shell, potentially to be investigated by the UN human rights envoy, top the list of controversial partners.<sup>152</sup> Activists argue that MNC's are simply buying the UN logo and a clean human rights record with no showing of an improved human rights record.<sup>153</sup> Still amidst the heated protest the Transactional Resource and Action Center says the partnership that the UNDP provides will show corporations that they can participate in a market that provides access to all global players, protects human rights and makes a profit.<sup>154</sup> Supporters hold that when corporations have tarnished human rights records, it is better to partnership with them to improve their record rather than ostracize them from any meaningful dialog and opportunity to make a sustainable impact on improving human rights.<sup>155</sup>

## 2. *World Trade Organization Efforts*

The trend among the international community is to call on other IGO's as well to take a stand concerning MNC's impact on human rights. The WTO is responsible for managing MNC's regarding economic and trade policies.<sup>156</sup> It has power over national governments, MNC's, and a huge network of NGOs.<sup>157</sup> The amount of power held by such an organization has many calling the WTO to increase responsibility and monitoring of human rights violations incurred by its member nations.<sup>158</sup> The WTO could be effective in establishing human rights standards. Unlike most other IGO's and national governments, tools such as peer pressure and trade sanctions exist for enforcement of human rights standards.<sup>159</sup>

In a draft ministerial declaration written for proposal at the November 1999 Ministerial in Seattle, the WTO pledged to promote, among other issues, raising the living standard and sustainable development.<sup>160</sup> The declaration called for more transparency within the WTO and to help global trade be more effective in relieving poverty

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152. *Id.*

153. Farhan Haq, *Report Faults UNDP Partnership with Corporations*, INTER-PRESS SERVICE, Mar. 2, 1999.

154. *Agency Assailed For Soliciting Money From Companies*, CORP. WATCH (visited 10/6/99) <<http://www.corpwatch.org/trac/undp/unfoundation.html>>.

155. James Ridgeway, *Mondo Washington: UN-Environmental U.S. Designee Gets Funds From Eco Plunderers*, VILLAGE VOICE, Mar. 24-30, 1999.

156. *See Globalization With A Human Face*, *supra* note 35 at 9, 12.

157. *Id.*

158. *See Human Development Report: Globalization Leaving Poor Behind*, *supra* note 58.

159. *See* MCDONALD, *supra* note 5, at 281.

160. Text: Draft Ministerial Declaration, Draft preparation for World Trade Organization Ministerial, Seattle Washington 1 (Oct. 7, 1999).

around the globe.<sup>161</sup> The WTO has also suggested conducting research on the link between the ILO's core labor standards and the WTO.<sup>162</sup> Many developed countries want the WTO to study the effect that the Uruguay Round of GATT had on core labor standards via the relaxation of trade barriers.<sup>163</sup> Some developing countries resist such discussions as enforceable core labor standards that would decrease the competitive advantage they enjoy by offering low labor market costs and imposition of standards that their developing status would not be able to support.<sup>164</sup>

During the 1996 Singapore ministerial, the WTO issued a compromise to continue to promote the core labor standards, but stated that it would not use the standards to detract from the competitive advantage enjoyed by developing countries. Exactly how such a compromise can be reached is uncertain.<sup>165</sup> Finally, the WTO did admit that it is the appropriate authoritative body to monitor core labor standards.<sup>166</sup> The WTO has not opposed simply researching trade liberalization's negative effect on human rights, but maintains that the true focus should be on "how to foster economic growth to promote core labor standards in countries at early stages of economic and social growth."<sup>167</sup>

The WTO also proposes to hold yearly symposiums to discuss the link between trade and labor standards. Discussions would involve NGO's with special interest in trade and human rights.<sup>168</sup> Such efforts by the WTO were not realized soon enough to satisfy NGO's and representatives of developing nations who succeeded in shutting down the Seattle Ministerial in November of 1999.<sup>169</sup> NGO's protested vehemently for more WTO responsibility and transparency in areas of human and environmental rights and developing countries argued against under-representation in WTO activities.<sup>170</sup>

### 3. World Bank, IMF and Other IGO Efforts

The World Bank has also been mentioned in the human rights arena and has been called upon to join with the UN to determine how investment inequities between developed and developing countries can

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161. *Id.* at 3.

162. *Briefing Paper on: International Core Labour Standards and the WTO*, QUAKER U.N OFFICE, Geneva, 1999 [hereinafter *Briefing Paper*].

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.* at 2.

167. *Id.*

168. *Id.*

169. Evelyn Iritani, *Poor Nations Defy, Derail WTO 'Club'*, L.A. TIMES, Dec. 5, 1999 at A.

170. *See id.*

be effectively managed for proper access.<sup>171</sup> It is suggested that this joint task force would report to ECOSOC and the World Bank Development Committee.<sup>172</sup>

The International Monetary Fund (IMF) has recently emphasized the imposition of "structural and institutional reforms as opposed to focusing on balance-of-payments adjustments."<sup>173</sup> The IMF has proposed forgiving the debts of many developing countries in an attempt to stimulate their economy and access to the global market.<sup>174</sup> This is the result of the evolving focus of IMF. Upon its inception in 1945, the fund was designed simply to monitor exchange rates; gradually its function began to encompass the encouragement of trade and currently it has acquired the role of actually issuing credit.<sup>175</sup>

Many argue that forgiving debt will not have the desired effect of encouraging trade and indirectly resulting in market access, a better economy and improved human rights.<sup>176</sup> The debts of approximately forty-two countries could be forgiven, but some say these countries could use the boost in their "credit rating" to purchase arms to further control their citizenry.<sup>177</sup> Further arguments hold that debt relief will be a patronizing insult to the dignity of developing countries.<sup>178</sup> With the backlash on the IMF's current debt relief plan it is uncertain as to whether the IMF will research any more proactive measures to address global market or human rights issues.<sup>179</sup>

The OECD has proposed raising the standards of conduct for MNC's.<sup>180</sup> The OECD hopes that by requiring greater transparency and increasing corporate responsibility to shareholders they can attract more foreign access to the global market.<sup>181</sup> The OECD would like these standards to be come a part of the WTO and IMF application process.<sup>182</sup>

The Overseas Development Council (ODC) is working on establishing better conflict resolution mechanisms that are needed in a volatile

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171. See *Globalization With A Human Face*, *supra* note 35, at 12.

172. *Id.*

173. Martin Feldstien, *Refocussing The IMF*, FOREIGN AFF., Apr. - May 1998.

174. Susan Warner, *Relief From Debt May Be in Sight for World's Poorest Countries*, PHILA. INQUIRER, June 18, 1999, at A03.

175. See Feldstien, *supra* note 173.

176. *Debt Relief: G-8 Plan Will Not Solve Crisis, Critics Say*, U.N WIRE, June 18, 1999.

177. *Id.*

178. Rosemary Righter, *A Debt Bonfire is No Panacea: Pennies From Heaven?*, TIMES (London), June 18, 1999, at Opinion Section.

179. See Feldstien, *supra* note 173.

180. *CORPORATIONS: OECD Urging 'Code of Conduct' For Developing Nations*, U.N WIRE, May 5, 1999.

181. *Id.*

182. See *Debt Relief: G-8 Plan Will Not Solve Crisis, Critics Say*, *supra* note 176.

economic market.<sup>183</sup> Because free market economies are volatile and developing countries are inexperienced, the need for conflict management is imperative to prevent social upheaval and violations of human rights.<sup>184</sup> A book written by Harvard Professor Dani Rodrik on global development and developing countries, compared South Korea and Indonesia. According to Rodrik, Indonesia provided no method for people to express their views and riots broke out. In Korea, the government negotiated with uncooperative union leaders to provide solutions prior to social upheaval.<sup>185</sup>

Each of these IGO's illuminates a piece of the puzzle, trying to encourage MNC investment in foreign markets, opening the market to developing countries, but attempting to maintain core human rights and labor standards. None of the roles these IGO's define for themselves or programs they promote seem to adequately address solutions to MNC's violations of human rights or provide effective enforcement tools to compel corporations to comply.

#### *E. Compliance Via International Trade And Treaty Law*

##### 1. Efforts in the Arena of Trade and Customary International Law

International trade law is one method of indirect regulation that may have some substantial effect in deterring human rights violations.<sup>186</sup> Concepts of fair trade restrict corporations from profiting from human rights violations; under such law, equal treatment must be given to every nation's product.<sup>187</sup> Producers who violate human rights to lower merchandise prices and increase profits may be found guilty of dumping, and the U.S. may impose punitive anti-dumping tariff measures to reduce any competitive advantage the offending MNC may have gained by human rights violations.<sup>188</sup> While anti-dumping measures may not directly regulate human rights violators, they decrease the advantage that such violations give the MNC's that engage in such practices.<sup>189</sup>

International law whether customary or treaty law, has had little effect on human rights violators. State human rights violations, alleged

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183. Nancy Alexander, *Notes From Overseas Development Council (ODC) Forum: Making Globalization Work*, INTERNATIONAL TRADE CENTER, March 18, 1999.

184. *Id.*

185. See Alexander, *supra* note 183.

186. See *Corporations and Humans Rights*, *supra* note 28, at 6.

187. See FIFTY YEARS AND BEYOND, *supra* note 4, at 408.

188. *Id.*

189. *Id.*

in protection of corporate interests in India, were violations of both customary international law and multilateral treaties.<sup>190</sup> International law almost exclusively considers nations as those primarily responsible for the management of human rights.<sup>191</sup> National governments then hold all individuals within their borders responsible for managing human rights according to treaties and customary international law.<sup>192</sup> Little governance is exerted however, toward corporate actors incorporated within the borders of a nation that has signed on to a human rights treaty, but who are conducting business outside of that nation's borders.<sup>193</sup> There is no international law either by treaty or custom that is binding authority on all international actors including individual corporate entities.<sup>194</sup>

The main concern is that the countries where MNC's operate, many times have very low human rights standards to comply with; these standards may be significantly less than those of the MNC's country of incorporation.<sup>195</sup> And even if the country where the MNC conducts business is a signatory to human rights treaties, they may not enforce those obligations adequately on the individual actors within their state.<sup>196</sup> For example, while many countries have signed the Convention Against Torture, it is not widely recognized as a crime in their national penal codes, thus is rarely enforced.<sup>197</sup>

## 2. Efforts in the Arena of Treaty and Customary International Law

In theory, the simplest method of forcing MNC's to comply with human rights treaties and customary international law, is to incorporate them into the existing human rights treaties as individuals of the state parties; thus holding corporate entities responsible for the management of human rights violations, regardless of any foreign business location.<sup>198</sup> While this sounds appealing, the only existing treaty to hold individuals responsible is the UN Convention on the Prevention and Punishment of the Crime of Genocide.<sup>199</sup> It has been argued that there would be increased support for the ICC if corporate actors could be

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190. See *U.S. Corporation Complicit in Abuses in India: Report Charges U.S. and Indian Governments Also Overlook Human Rights Violations*, *supra* note 15.

191. See MEYER, *supra* note 142, at 83.

192. See *Globalization With A Human Face*, *supra* note 35 at 9.

193. *Id.*

194. See GUIDE, *supra* note 1, at 6.

195. See FIFTY YEARS AND BEYOND, *supra* note 4.

196. See GUIDE, *supra* note 1, at 3.

197. See FIFTY YEARS AND BEYOND, *supra* note 4, at 260.

198. JOHN M. ROGERS, INTERNATIONAL LAW AND UNITED STATES LAW (1999).

199. See GUIDE, *supra* note 1, at 11.

brought before the court on "crimes against humanity" as expressed in the Genocide Convention.<sup>200</sup> Even if the ICC is not the most effective means of holding corporate actors responsible, others argue that under the Genocide Convention, national courts should have extended "trans-boundary" jurisdiction to hold Convention violators responsible.<sup>201</sup>

Out of the Treaty of Versailles came the International Labour Organization (ILO), and a set of five core labor standards, "the right to organize, bargain collectively, freedom of association, freedom from forced labor, child labor, and discrimination."<sup>202</sup> While these labor standards have been in force for many years, they are sometimes disregarded in order for foreign nations to attract MNC's by offering the lowest wage and production costs.<sup>203</sup> In addition, many of the ILO's conventions have not received widespread ratification. The U.S. has not ratified the Forced Labor Convention, Freedom of Association Convention, or the Right to Organize and Collective Bargaining Convention; other developed countries have refused ratification as well.<sup>204</sup>

Treaties promoting social and political rights, such as the International Covenant on Civil and Political Rights, have received sparse mention in the human rights debate.<sup>205</sup> Few NGO's lobby for the regulation of MNC's concerning these rights because they continue to struggle to enforce basic human rights.<sup>206</sup> It is possible to make an argument that anti-dumping laws could apply to social and political rights as they do to core human rights violations to tie them to trade law, but there is little evidence that such an argument would stand.<sup>207</sup>

NAFTA has been heralded as a plight against enforcement of human rights violations against corporations. Relaxing North American trade barriers has made it convenient for U.S. corporations to slip the bounds of human rights regulation for the lower wage markets in Mexico.

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200. See FIFTY YEARS AND BEYOND, *supra* note 4, at 408.

201. See GUIDE, *supra* note 1, at 11.

202. See Briefing Paper, *supra* note 162.

203. See FIFTY YEARS AND BEYOND, *supra* note 4, at 289.

204. See MCDONALD, *supra* note 5 at 281.

205. See *Oil Companies Complicit in Nigerian Abuses*, *supra* note 48.

206. *Id.* at 2.

207. See FIFTY YEARS AND BEYOND, *supra* note 4, at 409.



#### IV. GLOBAL RESPONSE AND ENFORCEMENT TRENDS

##### A. *Foreign Response Generally to Human Rights Issues*

###### 1. Easier Said Than Done

Foreign governments struggle with human rights issues. They are clearly caught between the need to enter the global market to improve their economy and an attempt to retain the human rights standards they espouse.<sup>208</sup> Countries such as Germany while initially discussing banning rugs made by child labor in Asia instead opted to mix their support of the rug manufacturers with the support of education programs for children in Asia.<sup>209</sup> Governments tend to flip-flop on their position, holding tight to human rights obligations at one point, yet releasing the hold for obvious political and economic reasons at the next point.<sup>210</sup>

###### 2. Cultural Relativism

Cultural relativism plays an important role in the eyes of developing countries. Human rights in general should be weighed so as not to offend the "cultural, economic and social backgrounds of the concerned country."<sup>211</sup> Some resistance toward globalization comes from the view that the cultural identity and traditions of indigenous people will be threatened amid the rush toward western consumerism.<sup>212</sup> MNC's who conduct business in developing countries, seem to understand little about the developing country's distinct traditions, and then wonder why local fishermen complain that increased water temperatures will kill their fish harvests.<sup>213</sup> The opposite argument is made that indigenous people are underrepresented in the global market and that heed should be taken to their human, property and cultural rights when MNC's move into their country.<sup>214</sup>

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208. See *Corporations and Humans Rights*, *supra* note 28, at 2.

209. *Id.*

210. *Id.*

211. *Fiftieth Anniversary Year*, *supra* note 133, at 2.

212. See *FIFTY YEARS AND BEYOND*, *supra* note 4, at 261.

213. See *U.S. Corporation Complicit in Abuses in India: Report Charges U.S. and Indian Governments Also Overlook Human Rights Violations*, *supra* note 15, at 1.

214. *INDIGENOUS PEOPLES: UN Slow To Act On Rights Statement*, UN WIRE, Aug. 13, 1999.

## B. *The Future of Human Rights*

### 1. Focus Shift

The future of human rights protections seems to include a shift in the focus of human rights responsibility from state actors to the increasingly more powerful corporate actors.<sup>215</sup> As the power of the state over the corporate sector erodes, corporate entities will have to either incorporate into the existing system or create new binding standards on human rights performance.<sup>216</sup> Corporations should be held to a minimum standard of human rights education of employees to emphasize global ownership of the human rights ethic.<sup>217</sup>

### 2. Increase of NGO and IGO Pressure

NGOs will intensify the current level of public assault on corporate violators to encourage more corporate transparency concerning human rights compliance and create more effective corporate development programs.<sup>218</sup> Public encouragement will continue to work toward a global market policy that regards people to be as important as profits.<sup>219</sup>

Trade law may be utilized more effectively to control exports and imports of goods manufactured by human rights violators and anti-dumping laws could be broadened to include areas of social human rights abuses.<sup>220</sup> Implementation of a multilateral code of conduct for MNC's could be established and enforced against MNC's to balance the loss of any competitive edge and remove the voluntary nature of current norms.<sup>221</sup> Increased pressure on economic IGO's may prod organizations such as the WTO and the IMF to use the enormous power they hold to manage and enforce common core labor standards and basic human rights.<sup>222</sup> Multi-lateral agreements and treaties could incorporate MNC's and individuals so that all actors in the international community may be held accountable for abuses.<sup>223</sup> Use of IGO organs, such as the ICC, could be used to pierce the corporate veil and hold individuals responsible for violations in the name of their corporations also holds

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215. See FIFTY YEARS AND BEYOND, *supra* note 4, at 407.

216. *Id.* at 407.

217. *Id.* at 261.

218. *Id.* at 409.

219. See *Globalization With A Human Face*, *supra* note 35, at 2.

220. See *id.* at 10.

221. *Id.* at 11.

222. See *Human Development Report: Globalization Leaving Poor Behind*, *supra* note 55, at 2.

223. See *Globalization With A Human Face*, *supra* note 35, at 9.

potential.<sup>224</sup>

The foregoing trends illustrate that progress must be made in an industry that lacks any binding regulation, toward a balanced system of human rights norms, that may be effectively enforced unilaterally toward all corporate actors in the global market.

## V. CONCLUSION

Corporate compliance will not be accomplished by use of voluntary standards of conduct; some independent body must police any standards or regulations. Education alone will not bring into effect the desired change, as placed on a scale, profit will always outweigh the social mores that human rights espouse. Incorporation into current human rights treaties alone will not be an effective enforcement tool as human rights treaties are commonly disregarded even by the governments of the signatory countries. Enforcement may come from a mixture of corporate involvement in the creation of standards, education and treaty incorporation, however corporate actors will only respond when, for profit reasons, they are left with no other choice.

Utilization of trade law and external regulation by the WTO seems the most effective means for the creation of true sustainable human rights enforcement. The WTO wields power that no independent state holds. Membership in the WTO is coveted and regulations would garner instant enforcement value. The issues surrounding developing countries may improve as the WTO opens the ministerial doors to the voices of those emerging in the global market. Trade law penalties for abusers will neutralize any economic benefit realized from human rights infringement. No single compliance mechanism will be completely effective, however where profit is the primary end for which corporations aspire, any substantive effort to enforce human rights must focus on affecting profit.

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224. See *Oil Companies Complicit in Nigerian Abuses*, *supra* note 48.

