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## **Notes**

### **Scratching the Corporate Back: Why Corporations Have No Incentive to Define Human Rights**

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Due to the increased globalization of the world economy, corporations are more frequently expected to actively promote and protect human rights in the countries within which they do business. Spurring the call for such corporate morality is the acknowledgement that, as government aid has decreased, the private sector has become a primary source of finance for development in many countries. As a result, while countries look to corporations for investment, many analysts look to the same corporations to champion human rights standards. Some corporations have responded to rising consumer and nongovernmental organization pressure regarding human rights abuses by formulating codes of conduct. The vast majority of corporations, however, have not pursued such efforts. While business and social responsibility should go hand in hand, an international entity must take the initiative to define a corporation's specific human rights responsibilities. Until this is done, corporations will continue taking a piecemeal approach toward promoting and protecting human rights in the countries in which they do business.

This Note surveys the methods available to corporations for protecting human rights and recommends that the duty of establishing and defining human rights standards applicable to corporations should fall to the United Nations rather than the corporations themselves. Part I discusses the traditional methods of promoting and protecting human rights and their relation

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to corporations, social responsibility, and human rights. Part II details possible reasons a corporation would adopt a code of conduct and the shortcomings of such a code. Part III discusses the economic reasons why a corporation will most likely choose not to adopt a code of conduct voluntarily. The Note concludes by suggesting that the United Nations is the international organization best suited to undertake the task of defining corporate human rights responsibilities.

## I. THE PROTECTION OF HUMAN RIGHTS

### A. STATE ACTION

Traditionally, most proponents of human rights felt that the state was the actor primarily responsible for the protection of such rights.<sup>1</sup> There are numerous means for states to provide this level of protection. Individual state governments are expected to comply with "international obligations regarding treatment of individuals and groups living within the state's boundaries."<sup>2</sup> Indeed, many individual governments signed the United Nations International Bill of Human Rights, which includes the Universal Declaration of Human Rights, and have taken steps to safeguard many of the basic human rights detailed therein.<sup>3</sup> For instance, many national constitutions guarantee citizens freedom of expression and of the press, freedom of assembly, and the right to a fair trial, among other rights.<sup>4</sup> A

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1. See Barbara Frey, *The Legal and Ethical Responsibilities of Transnational Corporations in the Protection of International Human Rights*, 6 MINN. J. GLOBAL TRADE, 153, 153 (1997); see also Su-Ping Lu, *Corporate Codes of Conduct and the FTC: Advancing Human Rights through Deceptive Advertising Law*, 38 COLUM. J. TRANSNAT'L L. 603, 606 (2000) (stating that the discussion on human rights traditionally centered on defining the role of the state actor in the protection of those rights); Wesley Cragg, *Human Rights and Business Ethics: Fashioning a New Social Contract*, at <http://www.yorku.ca/dreed/cragg.htm> (last visited Nov. 10, 2000) (describing a state's government as the focus of the United Nations Declaration of Human Rights).

2. Frey, *supra* note 1, at 155.

3. Cragg, *supra* note 1. See also Kimberly Gregalis Granatino, *Corporate Responsibility Now: Profit at the Expense of Human Rights with Exemption from Liability?* 23 SUFFOLK TRANSNAT'L L. REV. 191, 199 (1999) (explaining that U.N. members are obligated to uphold the human rights standards detailed in the Universal Declaration of Human Rights).

4. See *id.* (describing a number of steps governments have taken to promote the protection of human rights such as passing anti-discrimination laws, aiding refugees, providing health and unemployment insurance, and old age security).

state may also use bilateral agreements to encourage other states to respect basic human rights.<sup>5</sup> The United States refuses to grant Most-Favored Nation ("MFN") status to countries with non-market economies that deny their citizens the right or opportunity to emigrate.<sup>6</sup> However, despite the outward appearance of commitment to human rights demonstrated by many nations, the problem of human rights abuse remains.<sup>7</sup> As a result, many human rights activists concluded that leaving the protection of human rights solely to individual governments is inadequate.<sup>8</sup>

## B. CORPORATIONS AND HUMAN RIGHTS

Human rights advocates now assert that corporations, particularly transnational corporations ("TNCs"), are the entities to fill the human rights protection void left by the public sector.<sup>9</sup> Because of globalization, many TNCs have greater power and influence within certain countries than the respective national governments.<sup>10</sup> This power and influence naturally stems from wealth. Twenty-five percent of the world's productive assets are controlled by the 300 largest TNCs.<sup>11</sup> Direct investment by TNCs in developing countries is greater than both the inflows from official aid and the net lending by international banks.<sup>12</sup> Furthermore, "the economies of most U.N. Member States are

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5. See Frey, *supra* note 1, at 159 (noting that some countries consider the human rights practices of other countries when making bilateral political and economic decisions).

6. 19 U.S.C. § 2432(a) (1994).

7. See Frey, *supra* note 1, at 155-170 (stating that most of the legislative and executive efforts in the United States to address transnational corporations and human rights issues have failed to be enacted into law); see also Granatino, *supra* note 3, at 223 (arguing that the U.S. government's reluctance to impose a mandatory code thereby making corporations liable for human rights abuses implies that profit outweighs the duty to abide by the international law of human rights).

8. Frey, *supra* note 1, at 155 (stating that "the monitoring of state action alone does not address the rights of all victims").

9. Lu, *supra* note 1, at 603 (noting the shift in attention to transnational corporations and their relationship to international human rights); see also ALAN REDER, IN PURSUIT OF PRINCIPLE AND PROFIT 175 (1994) (stating that governments have failed in the area of human rights and this puts the focus of protecting them on corporations).

10. See Lu *supra* note 1, at 604 (noting that the growth of many TNCs has taken away the power of many national governments).

11. *Id.*

12. Ann-Marie Erb-Leoncavallo, *The Road from Seattle*, UN CHRONICLE, Jan. 1, 2000 available at 2000 WL 25574281.

smaller than the annual revenues of the largest TNCs.”<sup>13</sup>

A corporation's wealth translates into power in a global economy. Corporations have the increasing luxury of being selective in deciding where to conduct business.<sup>14</sup> This option is the result of the fact that many developing nations compete for a TNC's investment decision.<sup>15</sup> In order to attract investment, many nations, particularly developing ones, will acquiesce to a corporation's needs. For example, many of these nations will establish a corporate-friendly legal environment.<sup>16</sup> As a result, because of their size and power, TNCs have the potential to influence a country's social and economic policies. A TNC could use its power to positively affect a country's international human rights practices by refusing to invest in or deal with countries violating human rights standards.<sup>17</sup>

#### C. BUSINESS ETHICS AND CORPORATE SOCIAL RESPONSIBILITY

Despite the professed potential for a TNC to influence a particular country's human rights practices, some commentators reject placing such a burden on corporations. Economists like Milton Friedman argue that a human rights victim should look to government to alleviate human rights violations.<sup>18</sup> If accused of being unsympathetic to a victim's plight, these economists simply assert that corporations are not in the business of international human rights, but in making a profit.<sup>19</sup> The goal of the

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13. *Id.*

14. *See* Cragg, *supra* note 1, at 6.

15. Frey, *supra* note 1, at 160 (stating that foreign investment from corporations is now highly desired).

16. *See* Cragg, *supra* note 1, at 6 (providing examples of ways to create a favorable legal environment such as minimizing labor or environmental standards or creating opportunities for corporations to avoid the tax and banking restrictions in other countries). *See also* Frey, *supra* note 1 at 160 (stating many states compete for the benefits of corporate investment).

17. *See* Lu, *supra* note 1, at 604-06 (arguing that a corporation's location decisions can provide the impetus for change in countries desiring investment); Frey, *supra* note 1, at 160 (noting the influential power a corporation has by virtue of its investment decision).

18. Douglass Cassel, *Corporate Initiatives: A Second Human Rights Revolution?*, 19 FORDHAM INT'L L.J. 1963, 1977 (1996) (stating that the logical conclusion of Friedman's view that the only social responsibility of business is to increase profits within the rules of the game is that doing public good is the responsibility of government, not business).

19. *See* Patricia Werhane, *Introduction in* PROFIT AND RESPONSIBILITY 1 (Patricia Werhane & Kendall D'Andrade eds. 1985) (quoting Milton Friedman, "There is one and only one social responsibility of business—to use its resources and engage in activities designed to increase its profits so long as it stays within the

corporation is the maximization of profit for the benefit of its shareholders,<sup>20</sup> therefore, any action resulting in a deviation from this objective is improper because it decreases a shareholder's return on his or her investment.<sup>21</sup> This theory limits a corporation's social responsibility obligations to obey the law, abide by prevalent ethical customs, and promote good public relations. The primary focus of these activities, unlike promoting human rights, is to contribute to profit maximization.<sup>22</sup>

A related argument asserts that corporations can meet both profit and human rights goals through investment in countries that exploit their resources.<sup>23</sup> The justification for this position is that investment "sets in motion a chain of events that leads to a more open society."<sup>24</sup> Investment will stimulate the development of a middle class that in turn may provide a government with the funds necessary to increase the quality of life within a state.<sup>25</sup> Some commentators, however, feel the time it will take to reach this result is too long, and more frequently link ethical responsibilities, including the proactive protection of human rights, to corporations.<sup>26</sup>

"Business ethics" as a discipline began appearing in the United States around 1960.<sup>27</sup> Following a price fixing scandal in the electrical industry, the Commerce Department established the Business Ethics Advisory Council.<sup>28</sup> The number of university and college courses in business ethics soon multiplied as

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rules of the game," which is to say, engages in open and free competition, without deception or fraud); see also Ronald Cordeo, *The Place of Profit in Business*, in PROFIT AND RESPONSIBILITY 267, 267 (Patricia Werhane & Kendall D'Andrade eds., 1985) (quoting an automobile executive, "one thing you should understand . . . is that our business is making money, not automobiles").

20. JOEL MAKOWER, *BEYOND THE BOTTOM LINE* 30 (1994).

21. *Id.*

22. Cragg, *supra* note 1, at 3; see also REDER, *supra* note 9, at 175 (explaining Milton Friedman's view that corporations that abstain from getting involved in community issues such as human rights are behaving responsibly because diverting resources away from profit-maximization "short-changes" the corporation's boss, the stockholders).

23. Cassel, *supra* note 18, at 1980.

24. *Id.* at 1980. But see *id.* (stating that some governments would not use the resulting revenues for positive purposes).

25. *Id.*

26. See Frey, *supra* note 1, at 153 (the article's title, "The Legal and Ethical Responsibilities of Transnational Corporations in the Protection of International Human Rights" demonstrates this proposition).

27. Thomas F. McMahon, *Socio-Ethical Issues: Two Conceptual Frameworks*, in PROFIT AND RESPONSIBILITY 17, 17 (Patricia Werhane & Kendall D'Andrade eds., 1985).

28. *Id.*

well.<sup>29</sup> The main focus of these endeavors was the ethical practices of individual businessmen.<sup>30</sup> The 1964 Civil Rights Act and subsequent legislation also contributed by characterizing the corporation as an individual entity that was expected to behave in a socially responsible manner.<sup>31</sup> The 1972 Watergate scandal prompted individuals to not only investigate the corporation's responsibility, but also the executive or employee in charge of making ethical decisions.<sup>32</sup> The modern view of business and ethics examines both what a corporation ought to do and the person responsible for implementation.<sup>33</sup> Advocates for business ethics, however, disagree about the precise social role of corporations.<sup>34</sup>

Some advocates advance the notion that corporations need only be socially responsive, not responsible.<sup>35</sup> Under this theory, a corporation examines the environment within which it operates and reacts to those issues that measurably affect it.<sup>36</sup> Take for example a highly visible corporation that employs child laborers. If a large consumer group boycotts the corporation's products and the company ceases employing children, it acts in a socially responsive manner.<sup>37</sup>

Other proponents of social responsibility feel corporate obligations are founded upon "ethical, or even legal, foundations," rather than consumer responsiveness.<sup>38</sup> The premise of this theory is that there is a difference between rights of individuals and power, with the former imposing an obligation on the corporation.<sup>39</sup> For instance, a socially responsible corporation believes that it is an agent with responsibilities beyond the provision of goods and services.<sup>40</sup> Consequently, whether or not a

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29. *Id.* at 17-18.

30. *Id.* at 18.

31. *Id.* at 18 (implying that laws such as the Clean Air Act, Federal Water Pollution Act, and Toxic Substances Control Act led business courses to focus on the obligations of corporations to society).

32. *Id.* at 19-20 (stating that ethical questions took the form of "who told whom to do what?").

33. McMahon, *supra* note 27, at 26.

34. *See id.* at 20-21.

35. *Id.* at 24.

36. *Id.* at 21 (describing the need for corporations to forecast social change, and react to their predictions).

37. *See generally* MAKOWER, *supra* note 20, at 30 (defining social responsiveness as the idea that companies had to be responsive to social demands in order to survive).

38. McMahon, *supra* note 27, at 23.

39. *Id.*

40. *See id.*; *see also* MAKOWER, *supra* note 20, at 30 (highlighting the difference

particular consumer group attempts to pressure a corporation is insignificant, as the corporation will proactively promote individual rights such as those found in the Universal Declaration of Human Rights.<sup>41</sup>

Those individuals who stress the social responsibility of corporations justify this position by emphasizing that TNCs, as a result of the direct and indirect benefits of their investments, are often more powerful than the country within which they are doing business.<sup>42</sup> An overarching response to Milton Friedman's argument is that social responsibility accompanies power.<sup>43</sup> Profit is not disregarded; it is simply regarded as a single element of a corporation's broader purpose.<sup>44</sup>

As a result of the nature of business, many corporate decisions have the potential to affect human rights.<sup>45</sup> For example, corporations can directly violate human rights through practices such as maintaining sweatshop conditions or employing child laborers.<sup>46</sup> A chosen host country may violate the fundamental rights of workers without engendering any repercussions from the corporation or any other actor.<sup>47</sup> Therefore, the promotion of human rights would merely be another consideration factored into the decision-making model of the corporation.

#### D. WAYS TO ADDRESS CORPORATIONS AND HUMAN RIGHTS

Because a corporation will only face legal liability if it disobeys the domestic laws of the countries within which it does business, outside corporate human rights regulation can be accomplished in three ways.<sup>48</sup>

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between social responsibility and social responsiveness).

41. McMahon, *supra* note 27, at 23. See also Frey, *supra* note 1, at 163-64 (explaining the views of many commentators that corporations should take on human rights responsibilities regardless of their impact on a corporation's operations).

42. See Frey, *supra* note 1, at 160.

43. MAKOWER, *supra* note 20, at 32-33 (presenting the view that social obligations automatically attach to powerful institutions such as corporations).

44. *Id.* at 31 (quoting Quaker Oats President Kenneth Mason that "making a profit is no more the purpose of a corporation than getting enough to eat is the purpose of life").

45. See Lu, *supra* note 1, at 604 (arguing that the power of TNCs places them in an "influential position in the area of human rights.").

46. *Id.* at 605.

47. *Id.* at 608; see also Frey, *supra* note 1, at 163 (stating the corollary that TNCs are protected from liability as long as they comply with the domestic laws of the countries in which they are doing business).

48. See Lu, *supra* note 1, at 607 (explaining that under current conditions, a corporation has no duty to protect human rights or to prevent the violation of human



### 1. Direct Regulation

The country where the corporation is headquartered can regulate the foreign activities of its corporations.<sup>49</sup> For instance, the United States could apply domestic laws such as the Fair Labor Standards Act to the activities of U.S. corporations overseas, pass legislation governing operations in specific hot-spot countries, use trade embargoes on either specific goods or countries, or ban investment into countries where serious human rights violations go unchecked.<sup>50</sup> As a method of forcing corporations to be socially responsible, direct regulation appears to be inadequate and subject to a great deal of criticism.<sup>51</sup> One of the most relevant criticisms is that "extraterritorial application of U.S. law is limited by its inapplicability to foreign producers and governments that violate human rights."<sup>52</sup>

### 2. International Regulation

A second alternative to consider is international regulation of corporate activities relating to human rights. For example, the International Labor Organization (ILO) focuses on the promotion of human rights mainly through developing and monitoring compliance with international labor standards.<sup>53</sup> Both the efforts of the ILO and a similar organization, the Organization for Economic Cooperation and Development (OECD), are criticized for the limited scope of their business guidelines.<sup>54</sup> Yet the premier international policing

rights by others).

49. *Id.*

50. *Id.*

51. Developing countries resist corporations being subject to laws other than their own because provisions are not made for the difference in custom and economic circumstances. Also, it is extremely difficult to pass legislation that purports to regulate corporate activities in foreign nations because of the power and influence of many affected corporations. *Id.*; see also Frey, *supra* note 1, at 158 (stating that the U.S. government may ban U.S. corporate investment in countries considered to be serious human rights violators).

52. Lu, *supra* note 1, at 610.

53. Jorge F. Perez-Lopez, *Promoting International Respect for Workers Rights Through Business Codes of Conduct*, 17 FORDHAM INT'L L. J. 1, 2 (1993); see also Cassel, *supra* note 18, at 1970 (stating that the ILO in conjunction with 159 member nations works to reach agreements between business and labor).

54. Cassel, *supra* note 18, at 1970 (maintaining that both the ILO and the OECD only reaffirm the longstanding rights of workers to organize unions, to bargain collectively, and to non-discriminatory employment); Granatino, *supra* note 3, at 204 (explaining that the ILO has no authority to enforce labor rights and human rights agreements, but derives power to affect corporations by access to the public through the media and corresponding notification to ILO officials).

Yet the premier international policing organization, the United Nations, has been unable to develop a code of conduct for multinational enterprises.<sup>55</sup> The difficulty in developing international human rights standards for corporations is underscored by the fact that none have been adopted.<sup>56</sup>

### 3. *Private action*

Private groups of human rights advocates can also aid in the development of standards; however, the results of their efforts are often limited in scope. For example, The Sullivan Principles<sup>57</sup> were directed at corporations engaged in business in South Africa. Initially proposed to deflect calls for divestment from the region, the principles demanded firms cease discriminatory employment, pay fair wages, provide workers benefits, etc.<sup>58</sup> At one point, 125 companies became signatories of the principles and agreed to abide by them.<sup>59</sup> Ultimately, the principles were credited with desegregating hundreds of enterprises, educating and training approximately 50,000 workers per year, and increasing investment in the infrastructure of Black and educational desegregation in South Africa.<sup>60</sup> Despite this commitment to corporate social responsibility toward human rights, the principles were unsuccessful in reaching the ultimate goal of

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55. *Id.* (stating that the United Nations attempted for a period of ten years to develop a code of conduct for multinational enterprises); cf. Frey, *supra* note 1, at 155 (discussing the role of the United Nations in protecting human rights and concluding that its lack of success in protecting human rights has been partially due to the organization's belief that individual governments are responsible for human rights).

56. Frey, *supra* note 1, at 159-60 (stressing that the reaction to international regulations regarding corporate responsibility for human rights would be less than positive because currently, many countries are wary of the international control model).

57. The following discussion details one such effort that was limited to corporations doing business in South Africa. Another regional effort was the MacBride Principles, which were targeted toward U.S. corporations doing business in Northern Ireland. The principles aim to combat discrimination in the workplace. *Id.* at 174-77; see also Robert J. Liubicic, *Corporate Codes of Conduct and Product Labeling Schemes: the Limits and Possibilities of Promoting International Labor Rights through Private Initiatives*, 30 LAW & POL'Y INT'L BUS. 111 (1998).

58. Cassel, *supra* note 18, at 1970-71.

59. Frey, *supra* note 1, at 175.

60. *Id.* See also Liubicic, *supra* note 57, at 111 (stating that because the results of the audits were made public, the principles established a new standard for investment decisions by institutional investors, many of which looked to Sullivan compliance records in making investment decisions).

ending apartheid in the country.<sup>61</sup> Therefore, while private action may produce some success, it cannot be relied upon to make substantial international headway.

## II. CORPORATE CODES OF CONDUCT

Increasingly over the past thirty years, corporations have individually addressed human rights issues by adopting "global human rights codes of conduct and policies for their operations and contractors."<sup>62</sup> While fewer than ten percent of U.S. based multinational corporations have such codes, the number is increasing.<sup>63</sup> There are many reasons given for these corporate initiatives, but the main motive discussed at great length in scholarly literature on the subject is consumer pressure.<sup>64</sup>

Consumer pressure provides an incentive for a corporation to voluntarily adopt a code of conduct because "there is a demand curve for labor standards that reflects the additional amount consumers will pay for products made under decent conditions."<sup>65</sup> Essentially, some consumers will boycott goods

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61. See Cassel, *supra* note 18, at 1971. Proponents of the MacBride Principles have also faced difficulties in reaching their goals. In large part, the corporate community has not accepted them due to the lack of public pressure. In addition, many people in Northern Ireland were concerned the principles would deter investment into the country that in turn would hurt the economy and actually increase sectarian tensions. See Frey, *supra* note 1, at 176.

62. Cassel, *supra* note 18, at 1972; see also Frey, *supra* note 1, at 177-80 (providing examples of companies such as K-Mart and Timberland that have formulated minimum standards regarding conditions of employment for their workers and those of their business partners, civil and political rights, and investment criteria); see also Lu, *supra* note 1, at 611 (finding that over 100 companies have voluntarily adopted codes of conduct dealing with issues such as child labor, foreign investment criteria, forced labor, and protection of civil and political rights).

63. Cassel, *supra* note 18, at 1972 (claiming that there is an increase in the use of human rights codes of conduct).

64. See Lu, *supra* note 1, at 613 (explaining codes of conduct are an asset in public relations with consumers as they value purchasing goods from human rights friendly corporations.); see also Frey, *supra* note 1, at 159 (stating that socially conscious consumers can exert pressure that has an impact on corporate profits); Paschal Zachary, *Multinational Can Aid Some Foreign Workers*, WALL ST. J., Apr. 24, 1995, at A1 (stating that "perhaps the main reason companies are adopting voluntary labor codes is that their public image, which is important to their business, is at stake."); but see FT McCarthy, *Doing Well by Doing Good: Anti-Globalisation Protesters See Companies as Unethical as Well as Exploitative. Firms Demur, of course, But Face an Awkward Question: Does Virtue Pay?*, THE ECONOMIST, Apr. 22, 2000 (providing at least one example where media attention did no lasting damage to a corporation's share price or sales after a brief decrease in market share).

65. Liubicic, *supra* note 57 (providing an illustration of consumer purchasing behavior in a human rights context).

produced by a corporation whose practices violate basic human rights standards.<sup>66</sup> Even if the real offender is the host country and not the corporation, consumers may react negatively toward the corporation.<sup>67</sup>

However, consumers will only purchase human rights friendly "Product A" at a higher price if informed of the human rights violations of the company making "Product B."<sup>68</sup> Additionally, for most individual purchases, consumers are not informed of the conditions under which the product was made.<sup>69</sup> Even if consumers possess relevant information, there is a limit to the amount one can take into account, especially considering the lack of coherence among different codes of conduct.<sup>70</sup>

Another criticism of corporate codes of conduct is that those corporations who are not dependent on brand image and goodwill to sell their product lack the incentives to adopt and adhere to a code of conduct.<sup>71</sup> Additionally, most corporations use internal auditors to assess compliance with the code.<sup>72</sup> Furthermore, the majority of voluntary initiatives do not provide for public disclosure of violations should they occur.<sup>73</sup> Finally, non-

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66. Cassel, *supra* note 18, at 1968 (describing the reaction of consumers to information that a Gap contractor in El Salvador forced employed sweatshop conditions at its factories); *see also* McCarthy *supra* note 64 (asserting that in the CNN world, customers are apt to learn of corporate behavior making business vulnerable to hostile campaigns).

67. Frey, *supra* note 1, at 159 ("An additional and very important factor is the push by consumers. . . for corporate management awareness of human rights abuses in the countries in which they do business. Raising the visibility of human rights issues with consumers may be an effective tool for changing the behavior and policies of TNCs"); *see also* Granatino, *supra* note 3, at 214 (stating that media attention examining a host country's non-compliance with human rights standards raises consumer awareness).

68. Liubicic, *supra* note 57; *see also* Lu, *supra* note 1, at 624 (discussing a survey which reported that fifty-eight percent of consumers said that they would boycott a brand if they knew that the company was employing children to make their product and eighty-four percent of consumers would pay extra if the product was manufactured in a worker-friendly environment).

69. *Id.* (reasoning that codes of conduct will give consumers the information necessary to make an informed human rights purchase).

70. Liubicic, *supra* note 57 (quoting Richard Rothstein, "Without greater coherence, corporate codes are unlikely to significantly influence Third World labor standards").

71. *See id.* (explaining that corporations which sell raw materials and components or end use goods that do not derive value from brand or corporate image have nothing to fear from the effects of media and consumer pressure).

72. *Id.* (providing three reasons this method of monitoring is questionable: (1) conflict of interest problem, (2) auditors may not have adequate skills or training, (3) workers may not aid with the audit).

73. *Id.*

compliance does not translate into any significant corporate legal liability.<sup>74</sup>

Despite the criticisms, the most obvious incentive for a corporation to adopt a code of conduct is if it resulted in an increase to the bottom line.<sup>75</sup> Many commentators stress that social responsibility and profitability can coexist.<sup>76</sup> However, at least one company has found difficulty combining profit and human rights.<sup>77</sup> Levi Strauss & Co. eventually succumbed to economic pressures by taking advantage of cheap labor overseas where "working conditions bordered on the sub-human."<sup>78</sup> Thus, implementation of a code of conduct does not signal a decrease in concern for profit.<sup>79</sup> In fact, a survey for *Management Accounting* indicated that many respondents felt more pressure to increase earnings when the company had a written code of conduct.<sup>80</sup>

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74. Lu, *supra* note 1, at 614. Two U.S. Federal Courts imposed liability on two corporations despite each having an established code of conduct. However, the authors noted that the court in one case allowed the jury to take into account whether the company "acted diligently in the promulgation, dissemination, and enforcement of an antitrust compliance program in an active good faith effort to ensure that the employees would abide by the law." An effective code of conduct is tailored to the core principles of the corporate culture, communicated to affected employees, and most importantly enforced by among other things, penalizing the manager responsible for the specific violation. Harvey L. Pitt & Karl A. Groskaufmanis, *Why a Corporate Code May Not Protect You*, ACROSS THE BOARD, May 1990 at 24-5; McCarthy, *supra* note 64 (discussing U.S. federal sentencing rules which allow judges to reduce fines in cases involving companies that had rules in place to promote ethical behavior, and to increase them from those that did not).

75. REDER, *supra* note 9, at 1 (noting profit is the main priority of business).

76. *Id.* (discussing the success of many socially responsible mutual funds, in particular the fact that most of the them have outperformed the average funds in their investment category over the long term and drawing the conclusion that one reason many companies are doing well is due to their socially responsible policies); see also McCarthy, *supra* note 64 (stating that one reason Shell rewrote its business principles was because it was worried about the long-term impact of socially irresponsible behavior); Granatino, *supra* note 3, at 198 (explaining that the economic potential in China convinced many corporations to both continue their business in the country and adopt codes of conduct aimed at improving human rights conditions).

77. Peter McKenna, *Human Rights and the Jean Business Don't Seem to Make for a Good Fit*, NATIONAL POST, Sept. 2, 2000 (reviewing Levi Strauss & Co.'s progressive human rights policies which were discarded in the late 1990s when sales and profit margins considerably decreased and stating that "people are more likely to reach for a lower-priced product than one stamped with 'Guarantee: Manufactured Without Child Labour'").

78. *Id.*

79. See Anne J. Rich et al., *Are Corporate Codes of Conduct Effective?*, MANAGEMENT ACCOUNTING, Sept. 1990 at 35.

80. *Id.*

Globalization has brought corporations a great opportunity to expand production of their products and increase profits.<sup>81</sup> It has also brought "companies into contact with other countries that do business by different rules."<sup>82</sup> In making tactical decisions, a corporation has to consider its competition.<sup>83</sup> Corporations may worry that implementing codes of conduct will force them to operate less efficiently than their competitors.<sup>84</sup> It may also be difficult for a corporation to justify enforcing their standards in countries where ethical standards differ from those of its home country.<sup>85</sup>

### III. REGULATION OF CORPORATE HUMAN RIGHTS BEHAVIOR

#### A. WHY NOT TO ADOPT A VOLUNTARY CODE OF CONDUCT

The basic problem faced by a company that decides to adopt a code of conduct is that its competition may not play by the same rules.<sup>86</sup> If codes of conduct could be empirically linked to the bottom line, the question of whether to adopt one would essentially be moot. Many commentators state that codes of conduct increase profit, but the foundation for such statements is often nonexistent.<sup>87</sup> Indeed, it is very difficult to isolate and investigate any individual component of the profit equation.<sup>88</sup> Most commentators support this theory by offering examples of profitable corporations that make socially responsible decisions, such as adopting codes of conduct.<sup>89</sup> These examples are prob-

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81. See McCarthy, *supra* note 64.

82. *Id.*; see also *Another Audit in Your Future?*, JOURNAL OF BUSINESS STRATEGY, May 1, 1996, available at 1996 WL 10928525 (stating that in dealing with suppliers and distributors being too aggressive is counterproductive).

83. McCarthy, *supra* note 64 at 65 (asserting that competitive pressures force firms to treat their employees differently than they otherwise would).

84. Lu, *supra* note 1, at 617 (stating that for every corporation which makes a socially responsible decision based on a code of conduct, there is another corporation willing to do what it takes in order to take advantage of a business opportunity).

85. See McCarthy, *supra* note 64, at 66 (explaining the proposition that American business people are more "ethically sensitive" than those of many other countries).

86. See *supra* note 83 and accompanying text.

87. MAKOWER, *supra* note 20, at 67 (acknowledging the present lack of any empirical evidence that socially responsible programs are successful in business terms).

88. MANUEL G. VELASQUEZ, BUSINESS ETHICS: CONCEPTS AND CASES, 39 (1998) (stating that many factors affect profitability).

89. See *id.* (listing the following examples of profitable companies with long-

lematic because the definition of socially responsible is malleable and profit can be measured in a number of different ways.<sup>90</sup>

Even so, some commentators point to those corporations that enacted codes responding to consumer pressure as evidence of the effect a corporation's irresponsible social behavior has on profit.<sup>91</sup> The argument appears very simple. The consumer is the nexus between a corporate code of conduct and profit. If there were no causal link between consumer pressure, and adopting a code of conduct dictating socially responsible standards for companies to abide by and profit, the company would ignore negative consumer reaction and continue with present actions. This argument may have merit when in the short-run,<sup>92</sup> in the long run, however, it is subject to criticism.<sup>93</sup>

Consumers must be aware of a corporation's behavior before they can respond, and most consumers do not have such information.<sup>94</sup> Indeed, even with information on human rights violations, consumers do not respond to every offense.<sup>95</sup> If a consumer backlash does occur, it will likely be short-lived. The media is often the instrument from which consumers derive their information, and as with most news events, the spotlight will eventually fade.<sup>96</sup> Consumer reaction in the short-term may have detrimental consequences, but over time the actions that provoked the response will likely be forgotten. Ultimately, developing a code of conduct is expensive and is likely to decrease profits to shareholders.<sup>97</sup>

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standing ethical cultures: "[c]ompanies that have combined a good history of profit with exemplary ethical standards include: Xerox, Home Depot, Odwalla, Hewlett-Packard, Digital Equipment, Silicon Graphics, Levi Strauss, Monsanto, Polaroid, Patagonia, Johnson & Johnson, and Starbucks Coffee").

90. VELASQUEZ, *supra* note 88, at 39; see also MAKOWER, *supra* note 20, at 66 ("[t]here are many "bottom lines"—pre-tax profits, return on assets, stock price, return on equity, sales growth, earnings-to-assets ratio, and many more").

91. See *supra* notes 61-63 and accompanying text.

92. Granatino, *supra* note 3, at 214-15 (citing the voluntary adoption of codes of conduct by companies doing business in China as evidence that consumer pressure can impact corporate profits).

93. *Id.*

94. See *supra* note 60 and accompanying text.

95. Lu, *supra* note 1; see also *Apparel: Labor Activists Urge Holiday Shoppers to Raise Issue of Sweatshops with Retailers*, BNA OCCUPATIONAL SAFETY AND HEALTH DAILY, Dec. 2, 1997 (reporting that TNCs continue to use child labor and sweatshop practices).

96. Granatino, *supra* note 3, at 214-15 (explaining that the media raised consumer knowledge of corporate conduct in China, which forced U.S. corporations to deal with issues of corporate responsibility).

97. Mark B. Baker, *Private Codes of Corporate Conduct: Should the Fox Guard the Henhouse*, 24 U. MIAMI INTER-AM. L. REV. 399 (1993) (discussing the costs in-

Socially irresponsible behavior of a corporation should not be condoned, but in the current global climate there is no long-term incentive for a corporation to adopt a code of conduct. A code would arguably provide consumers with the necessary information to make a purchase based on the human rights stance of a corporation. It would also, however, constrain the corporation from taking advantage of the opportunities its competitors are able to pursue.<sup>98</sup> Levi Strauss faced this problem and ultimately implemented some of the practices its code of conduct outlawed.<sup>99</sup> The economics prisoners' dilemma<sup>100</sup> explains a corporation's decision not to implement a code or to entirely abandon the code adopted in order to pursue higher profits. The basic conclusion of the prisoners' dilemma is that a "rational, self-interested person should be unethical in business when there is something to be gained through unethical behavior."<sup>101</sup> If all the corporations in a given industry adopted and adhered to a code of conduct, they would all realize higher profits than if codes were selectively implemented.<sup>102</sup> However, if the circumstances allow for one corporation to maintain a competitive advantage by not adopting a code of conduct, the more rational decision for a corporation focusing on the bottom line is to refrain from doing so.<sup>103</sup> If one corporation pursues this route, it is only rational for other corporations to follow suit.<sup>104</sup>

Current conditions provide an environment conducive to

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volved in implementing a code).

98. See *supra* note 83 and accompanying text.

99. See *supra* note 88 and accompanying text; see also Lance Compa & Tashia Hinchliffe-Darricarrre, *Enforcing International Labor Rights through Corporate Codes of Conduct*, 33 COLUM. J. TRANSNAT'L L. 663, 686 (1995) (describing Levi Strauss' use of child labor, unsafe condition, and unpaid wages at a supplier plant).

100.

	Corporation B adopts the same code as A	Corporation B does not adopt a code
Corporation A adopts the same code as B	A's profit is \$3 M B's profit is \$3 M	A's profit is \$2 M B's profit is \$4 M
Corporation A does not adopt a code	A's profit is \$4 M B's profit is \$2 M	A's profit is \$1.5 M B's profit is \$1.5 M

VELASQUEZ, *supra* note 88, at 41 (providing a description of the prisoners' dilemma).

101. *Id.*

102. See *id.*

103. *Id.*; see also Baker, *supra* note 97 (admitting that corporations who develop and enforce an internal code of conduct face a potential decrease in profits due to competitive forces).

104. VELASQUEZ, *supra* note 88, at 41.



placing codes of conduct issues far behind profit issues. Corporations not dependent on brand image or goodwill to sell products are immune from even the short-term consumer pressures that corporations not similarly situated may take into account.<sup>105</sup> Therefore, there is an entire group of corporations that have incentives to follow the lead of the competition even if it means being socially irresponsible.<sup>106</sup> The result is the same even for those corporations dependent on brand-image.

There will always be "companies and individuals that take advantage of the goodwill of others to make a quick profit."<sup>107</sup> Because codes are voluntarily adopted, the corporation has complete control over its content.<sup>108</sup> Furthermore, most corporations internally monitor compliance with their codes.<sup>109</sup> This self-regulation "does not assure compliance or resolution because the codes lack the necessary accountability to a third party."<sup>110</sup> Most importantly, simply disregarding provisions within the code of conduct will not render a corporation liable under current legal regimes.<sup>111</sup> The flexibility a corporation has in choosing code provisions combined with the lack of repercussions resulting from ignoring them will result in a continual downgrading of human rights.<sup>112</sup>

Viewing the problem from an individual employee's perspective reinforces the conclusion drawn from the prisoners' dilemma analysis.<sup>113</sup> Ultimately, without profits, corporations will cease to exist. Employees are hired to aid the corporation in reaching the profit maximization goal. Therefore, each employee has a personal incentive to make decisions that aid in the maximization of profit and a code of conduct does not change a corporation's expectations of its employees.<sup>114</sup> Financial pres-

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105. See *supra* note 70 and accompanying text.

106. See *id.*

107. Andrew Bartlett & David Preston, *Can Ethical Behavior Really Exist in Business?*, J. BUS. ETHICS, Jan. 1, 2000 at 199.

108. Granatino, *supra* note 3, at 221 (noting that the current regulation through corporate codes of conduct is voluntary and corporations develop their own codes).

109. See *supra* note 71 and accompanying text.

110. Granatino, *supra* note 3, at 221.

111. See *supra* note 64 and accompanying text; see also Frey, *supra* note 1, at 163 (stating that a corporation is not going to be held to have violated international law as long as it is complying with the domestic laws of the country within which it is doing business).

112. Lu, *supra* note 1, at 617 (describing a situation such as this as a race to the bottom).

113. See *supra* note 100 and accompanying text.

114. See *supra* notes 69-70 and accompanying text.

asures do hinder employee compliance with codes of conduct.<sup>115</sup> Employees may feel forced to make decisions that contribute to the bottom line at the expense of social responsibility when demanded by the corporation.<sup>116</sup> This scenario is more likely made when the employee has little empirical data indicating a socially responsible decision will actually lead to long-term profit gains.<sup>117</sup> In fact, "pressure for short-term results was one of the main threats to business ethics perceived by managers."<sup>118</sup> Consequently, if the competition is gaining advantages from the pursuit of socially irresponsible practices, an individual employee may implement a similar plan despite condemnation of the action in the corporation's code of conduct.<sup>119</sup> In addition, research indicates that codes of conduct do not help individuals resolve ethical dilemmas.<sup>120</sup> For example, most managers would say that using child laborers is unethical without consulting a code of conduct. Therefore, a code of conduct serves little use as a decision-making tool.

Even studies investigating the link between social responsibility tactics like codes of conduct and profit have produced less than conclusive results. Some studies did find a positive link between socially responsible behavior and profit; however, others found no such link.<sup>121</sup> No study has found that socially responsible behavior decreases profit.<sup>122</sup> Despite this, companies such as Levi Strauss might wish to argue with this result.<sup>123</sup> Levi Strauss is well known as a socially responsible company, but, "the integrity of [its] ethical tradition was severely tested by financial deterioration at the end of the 1990's."<sup>124</sup>

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115. Harvey L. Pitt & Karl A. Groskaufmanis, *Minimizing Corporate Civil and Criminal Liability: A Second Look at Corporate Codes of Conduct*, 78 GEO. L.J. 1559, 1632-33 (1990).

116. *Id.* at 1632 n. 430; see also Bartlett, *supra* note 107 (stating that employees often perceive the ultimate choice as being between profitable success or failure rather than between good and bad business practices).

117. MAKOWER, *supra* note 20, at 94 (suggesting that signs of short-term competitive disadvantages force managers to choose profit over social responsibility).

118. Bartlett & Preston, *supra* note 107.

119. MAKOWER, *supra* note 20, at 94 (reasoning that a major disincentive for a manager to act socially responsible is because the corporation may face a competitive disadvantage in the short-term).

120. Rich et al., *supra* note 79, at 35 (stating that a corporation should focus attention on creating an overall ethical atmosphere).

121. *Id.* at 40; see also McCarthy, *supra* note 64 (stating that proving a causal link between responsible corporate ethics and profitability is "well-nigh" impossible).

122. *Id.*

123. See McKenna, *supra* note 77.

124. KARL SCHOENBERGER, *LEVI'S CHILDREN* 169 (2000).

Due to the lack of any concrete data on a link between social responsibility and long-term profit, it is not surprising that few corporations have adopted codes of conduct.<sup>125</sup> They are expensive to implement, incentives from consumer pressure wane over time, competitive advantage decreases, and individual employee concerns can result in noncompliance. The corporation that adopts a code of conduct will generally find itself at a competitive disadvantage.<sup>126</sup>

Furthermore, a corporation with a code of conduct may find itself at a legal disadvantage. Contrary to the views of many corporate executives, establishing a code of conduct may not diminish or eliminate corporate liability from wrongs committed by its employees.<sup>127</sup> Therefore, while the code is a social responsibility signal to those consumers paying attention, it is unlikely legal benefits will accrue as well.<sup>128</sup> Courts in the United States generally adhere to common law principles that do not relieve employers from liability based on an employee's acts even if the employer has given instructions that proscribe the acts.<sup>129</sup> Furthermore, the code may give the party bringing the suit an additional weapon. A plaintiff or prosecutor could logically argue that the company should be held liable because the act falls below a standard set by the company itself.<sup>130</sup> Regardless of legal liability, the corporation that disregards its own standards also signals its basic untrustworthiness and in the end, appears more unethical than a corporation without a code of conduct.<sup>131</sup> Therefore, few tangible benefits are associated with codes and "few companies rationally will welcome the additional costs and burdens of the special compliance programs that ineluctably accompany this adoption."<sup>132</sup>

#### B. WHY AN INTERNATIONAL REGULATING INSTITUTION IS NEEDED

The fact that the costs of implementing voluntary codes of

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125. See *supra* note 54 and accompanying text.

126. MAKOWER, *supra* note 20, at 30 (quoting Milton Friedman who argued that "companies that did adopt responsible attitudes would be faced with more binding constraints than companies that did not, rendering them less competitive.")

127. Pitt & Groskaufmanis, *supra* note 115, at 1560. This assumes a company could be held liable for its human rights abuses.

128. *Id.*

129. *Id.*

130. Pitt & Groskaufmanis, *supra* note 74, at 23.

131. Baker, *supra* note 97, at 421.

132. Pitt & Groskaufmanis, *supra* note 115, at 1560.

conduct appear to outweigh the benefits does not imply that corporations should not be held accountable for human rights violations, but that they have very few incentives to attack the problem individually. Standards must be set and enforced by an outside entity.<sup>133</sup> Even some socially responsible corporations such as Patagonia believe that ultimately laws and regulations are necessary.<sup>134</sup>

Economic analysis can aid in the determination of what entity is best situated to address an international legal problem such as promoting and protecting human rights.<sup>135</sup> Institutions to consider include the market itself, domestic legislatures, adjudicatory bodies, or international rule-making bodies.<sup>136</sup> The commodity in the international legal context that is "traded" is power in the form of governmental regulatory authority.<sup>137</sup> The incentive behind participation in the international regulating market is that there are gains to be made from exchange.<sup>138</sup> For example, one state's environmental laws may cause an adverse effect in another state because the first state's law permits pollution to flow to other states.<sup>139</sup> The affected state will attempt to change the first state's regulation.<sup>140</sup> One way to accomplish this goal would be through institutionalization.<sup>141</sup> By allowing a

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133. Jeremy Lehrer, *Trading Profits for Change*, 25 HUM. RTS. 21, 23 (1998) ("[E]veryone seems to agree that government-enforced regulations are the best means of preventing industry abuses.") See also Erb-Leoncavallo, *supra* note 12 at 29-30 (providing opinions from two top UN advisors to the Secretary-General that international institutions can protect human rights in this era of globalization better than the current national rules and regulations). See generally Cassel, *supra* note 18, at 1978-80 (stating that where a corporation's self-interest is not manifest, outside assistance such as standards promulgated by an international entity may provide the necessary incentive).

134. *Id.* See e.g., REDER, *supra* note 9, at 12 (placing Patagonia in the category of successful socially responsible businesses). See also Granatino, *supra* note 3, at 221 (arguing that mandatory, uniform, and aggressively regulated human rights codes of conduct would ensure corporate compliance with international law). C.f., Liubicic, *supra* note 56 (asserting that individual voluntary codes of conduct are ineffective and that the workplace conditions need to be treated as public goods and removed from the free market).

135. Jeffrey L. Dunoff & Joel P. Trachtman, *Economic Analysis of International Law*, 24 YALE J. INT'L L. 1, 4 (1999).

136. *Id.*

137. *Id.* at 13-14 (declaring that international law focuses on the definition, exchange, and pooling of governmental regulatory authority).

138. *Id.* (explaining that if no gain resulted from a trade, there would be no trade).

139. *Id.*

140. *Id.* at 13-14.

141. Dunoff & Trachtman, *supra* note 135, at 14-15 (defining institutionalization as a process which involves the transfer of power over time through a treaty or an

treaty or an international organization to regulate an aspect of its affairs, a state relinquishes power over this particular aspect but gains uniformity.

Another gain often realized from trading regulating power in the international market is the realization of economies of scale.<sup>142</sup> The globalization of the world economy arguably provides the opportunity for economies of scale to be realized from the international regulation of human rights issues that relate to corporations.<sup>143</sup> The competitive risk an individual corporation takes when adopting conduct codes allows greater efficiencies to be attained from coordinated rule making, surveillance, and enforcement activities.<sup>144</sup> If a single organization or treaty governed corporate human rights conduct, the consequences of non-compliance would be predictable, and the regulatory disharmony that currently exists would be minimized.<sup>145</sup>

Asset specificity, uncertainty, and complexity present in the areas of business and human rights are also elements that indicate an international rule-making body should be the entity in charge of defining the human rights responsibilities of corporations.<sup>146</sup> As asset specificity, uncertainty, and complexity increase, the need to transfer regulatory authority to an international institution also increases.<sup>147</sup> A transaction is asset specific when one actor "advances consideration at a particular point in time and must rely on one or more other [actors] to carry out their end of the bargain at a later point in time, or else experience a significant loss in its expected value."<sup>148</sup> Examining an industry in which a number of corporations adhere to an industry-wide code of conduct serves as an example.<sup>149</sup>

One corporation may take action to implement the standards embodied in the code, believing other corporations will do the same. Such steps may involve extensive organization and modification of current business practices, which would be difficult to reverse in the short-term. If a rival corporation wishes to

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international organization).

142. *Id.* at 16.

143. *Id.*

144. *Id.*

145. *Id.* (stating that regulatory disharmony results in inefficiencies).

146. Dunoff & Trachtman, *supra* note 135, at 36 (declaring that international organizations can be the best approach to dealing with the allocation of some types of rights).

147. *Id.* at 41.

148. *Id.* at 40.

149. *Id.* at 41 (stating that there are many circumstances in international relations contexts where asset specificity exists).

disregard the code of conduct, it will be difficult for the first corporation to respond, especially if the nature of the code allows for easy defection.<sup>150</sup> Therefore, the socially responsible company is left adhering to a disadvantageous code. A corporation can achieve a competitive advantage by disregarding the code of conduct after others in the industry change their relative positions, leaving the other corporations at a competitive disadvantage. As a result, there is a need for binding regulation from an institutional organization.<sup>151</sup>

Regulation of corporate human rights conduct is highly uncertain in the sense that it is not only difficult to identify, but also to define.<sup>152</sup> The task of defining human rights standards is complex as corporations deal with one another extensively in the marketplace, competing for government contracts, suppliers, and retailers. In addition, governments often have divergent views on the relationship between business and social responsibility.<sup>153</sup> Any standards should take into account a country's particular development stage. The economic growth of developing countries will be drastically affected if they are held accountable to the same standards as developed countries.<sup>154</sup> Altogether, because of the asset specificity, uncertainty, and complexities involved in defining corporate human rights standards, an international organization should be charged with promulgating the standards to be applied in particular circumstances.<sup>155</sup>

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150. Dunoff & Trachtman, *supra* note 135, at 40 (using the modification of individual state regulatory systems in the European Union as an example of a situation of high asset specificity).

151. *Id.* at 41 (explaining that potential opportunism is the negative consequence of an asset specific transaction, which in turn makes a binding mechanism necessary).

152. Different corporations have different principles embodied in their codes. *See supra* note 63 and accompanying text.

153. MAKOWER, *supra* note 20, at 33 (providing Japan as an example of a country that leaves the protection of social welfare to the government).

154. Lehrer, *supra* note 133, at 22 (stating that the developing countries insist they cannot be held to the same standards as developed countries without a corresponding infusion of capital and technology); *see also* Gerd Behrens, *When Human Rights and Profits Collide*, TIME, Aug. 19, 1996 (stating that the growth of developing nations is contingent upon their ability to pollute at a higher level and lower wages).

155. *Id.*; *c.f.* Frey, *supra* note 1, at 155 (declaring compliance with international obligations is critical to the success of promoting human rights).

### C. THE INTERNATIONAL ORGANIZATION

As the principal international organization dedicated to resolving international disputes,<sup>156</sup> the United Nations is the entity best equipped to define human rights standards for corporations.<sup>157</sup> The most important multilateral treaty that legally binds almost every country is the UN Charter.<sup>158</sup> The Charter defines the general human rights obligations of UN members.<sup>159</sup> The UN has also sponsored a number of international human rights agreements such as the Universal Declaration of Human Rights (UDHR) that further specify international human rights obligations.<sup>160</sup> Because the UDHR and other UN agreements bind governments who have ratified the instrument and not corporations, the link between the expounded principles and corporations is unclear.<sup>161</sup> The connection between business and human rights, however, is established.<sup>162</sup>

The UN has recognized that despite the initiative of many corporations in formulating their own codes of conduct, a great deal of work remains in defining businesses' human rights obligations.<sup>163</sup> To aid in this effort, in 1999, the UN instituted the Global Compact.<sup>164</sup> The goal of the Global Compact is to "advance implementation of universally agreed values that are relevant to business, to promote global corporate citizenship and to stimulate best practices."<sup>165</sup> A distinguishing feature of the

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156. BARRY E. CARTER & PHILLIP R. TRIMBLE, *INTERNATIONAL LAW* 455 (1991).

157. Frey, *supra* note 1, at 158 (stating that the UN faces pressure to regulate the behavior of non-state actors such as corporations); *see also* Erb-Leoncavallo, *supra* note 12 (reporting that the International Chamber of Commerce believes that relevant UN agencies and programs should be responsible for promoting human rights and labor standards); Joshua Karliner & Kenny Bruno, *The United Nations Sits in Suspicious Company*, *INTERNATIONAL HERALD TRIBUNE*, Aug. 10, 2000 (declaring that the UN "is the only potential countervailing force to a brand of globalization that puts profits before people and the environment").

158. *Id.* at 869.

159. *Id.*

160. *Id.*

161. Frey, *supra* note 1, at 163 (noting that these types of covenants do not directly regulate corporations).

162. *See supra* notes 11-14 and accompanying text (how powerful corporations are and how they have more power than governments).

163. United Nations High Commissioner for Human Rights, Business and Human Rights: An Update, *available at* [www.unhchr.ch/businesupdate.htm](http://www.unhchr.ch/businesupdate.htm) (July 26, 2000).

164. Global Compact Web Site Links, UN, Business, Civil Society with Simultaneous Launch in New York, *Davos*, M2 Presswire, Jan. 31, 2000, *available at* 2000 WL 4798400.

165. *Id.*

Compact is that it is the result of the collaboration of the UN, business, labor and civil society.<sup>166</sup> The Compact details nine human rights, labor, and environmental principles for corporations to promote and apply.<sup>167</sup> The Universal Declaration of Human Rights, the International Labor Organization's Fundamental Principles on Rights at Work, and the Rio Principles on the Environment provide the substance for the nine principles.<sup>168</sup> The Compact is not a code of conduct, but it does ask corporations to do three things: (1) issue a clear statement of support and engage in public advocacy for the Global Compact and its principles; (2) post once a year on the Global Compact website a concrete example of progress made or lessons learned in implementing the principles; and (3) engage in partnership with UN organizations by undertaking activities that further the implementation of the principles, or by entering strategic partnerships in support of broad UN goals such as poverty eradication.<sup>169</sup>

The Global Compact is an excellent start to defining the human rights obligations of corporations. Because the Compact takes into account the perspectives of corporations along with non-governmental organizations and other stakeholders, it is more likely that corporations would adhere to its principles. Yet, the Compact's principles are not legally binding.<sup>170</sup> There is no system in place to publicly report or sanction deviant corporations.<sup>171</sup> Even UN Secretary General Kofi Annan has repeatedly stated "voluntary initiatives of this kind are no substitute for effective government action or international agreements."<sup>172</sup> Annan's statement implies that even he realizes that uniform, comprehensive, legally effective standards will be the most effective in not only defining a corporation's human rights responsibilities but also ensuring adherence to such standards. Due to its established presence in international affairs and the relationship it has built with business, the UN is in an excellent po-

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166. See The Global Compact, Executive Summary and Conclusion, available at [www.un.org/partners/business/gcevent/press/summary.htm](http://www.un.org/partners/business/gcevent/press/summary.htm) (last visited November 10, 2000).

167. See *id.*

168. *Id.*

169. *Id.*

170. Karliner & Bruno, *supra* note 157.

171. *Id.* (further stating that the corporation can violate the Global Compact yet continue to benefit).

172. John Ruggie, *UN's Global Compact*, INTERNATIONAL HERALD TRIBUNE, Aug. 16, 2000.



sition to capitalize upon the success of the Global Compact and go one step further to set legally binding standards for corporations. Such standards would ensure a level playing field for corporations doing business in the global economy and further the promotion and protection of human rights.

### III. CONCLUSION

Corporations should have a responsibility to protect and promote human rights. However, the definition of these responsibilities through adoption of voluntary codes of conduct should not be left to the corporations themselves, because the incentive to make a profit and remain competitive will potentially persuade a corporation to disregard the principles within such a code. An international organization such as the United Nations must promulgate the human rights standards by which companies shall abide, and the standards must have legal effect. Only through such efforts will human rights truly be safeguarded from corporate exploitation.