RESPECTING HUMAN RIGHTS: MULTINATIONAL CORPORATIONS STRIKE OUT

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The Burmese military government has forced entire villages to work on the railroad [for Unocal’s pipeline] without pay while under armed guard by Burmese troops.... People in the region have named the railroad the ‘New Death Railway.’ The government has burned villages in the pipeline path.¹

Rather than sitting there taking snipes at us, these activist groups should be embracing what [Unocal is] doing [in Burma].²

Human rights abuses are common in Burma.³ In September 1988, the Burmese military seized control of Burma and changed its name to Myanmar.⁴ To “ensure peace and tranquillity,” the military established a ruling body known as the State Law and Order Restoration Council

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4. The name Burma was changed to Myanmar after the State Law and Order Restoration Council (SLORC) seized control of the country, but it is commonly referred to by either name, see, e.g., BURMA: INTERNATIONAL RESPONSE, supra note 3. For simplicity, this Article will refer to it as Burma. Others offer vastly different reasons for referring to it as Burma: “I love my country even more since I came to America .... Please call it Burma, not Myanmar. That’s the name the military gave to try to fool the world.” K. Connie Kang, Burmese Pressing Their Cause in Southland, L.A. Times, Mar. 31, 1996, at 32 (quoting an expatriate Burmese activist in Southern California). Ironically, SLORC maintains a web site promoting Burmese culture to attract tourists. See The Golden Pages of Myanmar (visited Jan. 19, 1999) <http://www.myanmar.com>.
(SLORC),\(^5\) which promptly outlawed pro-democracy demonstrations. Additionally, SLORC’s agents reportedly shoot protesters on a routine basis.\(^6\) Of the protestors who are not shot, many are held under house arrest without trial,\(^7\) while others are arrested and tried before a military tribunal.\(^8\) Defendants rarely have legal counsel and are expected to admit their guilt or face a more severe sentence.\(^9\) Reports indicate that the military tribunal has never acquitted anyone.\(^10\) The United States Department of State recently examined human rights abuses in Burma, finding acts of torture, extrajudicial killings, mysterious disappearances, arbitrary arrests, rapes, destruction of homes and use of forced labor.\(^11\) Unfortunately, several groups have implicated American companies in these atrocities.

In 1993, Unocal,\(^12\) a California-based oil company, entered into a joint venture gas drilling project in Burma.\(^13\) Under that agreement, SLORC acted as the agent of Unocal, its French partner, Total S.A., and the SLORC-run Myanma Oil and Gas Enterprise.\(^14\) SLORC undertook to “clear forest, level ground, and provide labor, materials and security for the Yadana pipeline project,” and its operations were subsidized by Unocal and Total.\(^15\) SLORC reportedly began forcibly removing villagers from their homes by burning villages in the pipeline’s path.\(^16\) Rebel groups staged attacks and ambushes, seeking to disrupt the pipeline project.\(^17\) To help secure the pipeline area, SLORC ordered work to begin on what many villagers and human rights activists call the “Second Death Railway” or the

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5. See Burma: International Response, supra note 3, at 1.
6. See id. In 1990 SLORC allowed multiparty elections. SLORC’s opposition, the National League for Democracy, won 392 of the 485 contested parliamentary seats in the National Assembly, but, SLORC refused to relinquish control over the government. See id. at 2.
7. See id.
9. See id.
10. See id.
14. See id. Myanma Oil and Gas Enterprise is a state-owned, SLORC-controlled, company that sells and produces energy products. See id. at 883.
15. Id. at 885.
“Second Railway of Death,”18 which refers to a notorious rail line constructed by Allied prisoners to transport Japanese supplies between Burma and Thailand during World War II.19 Some 16,000 prisoners of war and over 100,000 Asian slave laborers died of disease, malnutrition, and torture while constructing the original railway.20

Human Rights Watch Asia testified before Congress that “there are numerous credible reports of thousands of people conscripted to build railway lines and roads in violation of Burma’s commitment to uphold international conventions against forced labor.”21 Workers escaping from the railway project spoke of ten and a half hour workdays, beatings, hunger, and disease.22 When confronted with such accusations, SLORC declared that “contributing labor” is “a noble Burmese tradition,” and many workers are convicted criminals who “volunteered to work in the open air.”23

While Unocal denies a connection between the 100-mile-long railway and the pipeline project, the State Department reports that SLORC routinely uses forced labor and “will use the new railway to transport soldiers and construction supplies to the pipeline area.”24 Unocal’s denials are further called into question by a group of Burmese nationals who are suing Unocal for its role in these atrocities.25 Unocal’s involvement in Burma has met with strong criticism not only from the general public but from its own shareholders as well.26

Concern over the role of multinational corporations (“multinationals”)27 in human rights violations has prompted several proposals. For example, many multinationals have adopted codes of


20. See id.


22. See id.


24. Id. at 11; see also Paul M. Sherer, Pact Is Signed for $1 Billion Pipeline, WALL ST. J., Sept. 12, 1994, at A11.


26. See infra, note 87 and accompanying text.

27. “In a strict sense [the term ‘multinational corporation’] is descriptive of a firm which has centers of operation in many countries in contrast to an ‘international’ firm which does business in many countries but is based in only one country, though the terms are often used interchangeably.” BLACK’S LAW DICTIONARY 1015-16 (6th ed. 1990).
conduct. A corporate code of conduct is generally a statement delineating a company's ethical policies. While the tendency to adopt corporate codes is increasing, their effectiveness remains subject to question. Other possible methods of compelling corporations to respect human rights include legislative or judicial action. Yet to date, no federal statute exists that directly and adequately addresses this problem. Because standards remain underdeveloped in this area of human rights law, victims of human rights abuse are forced to cope with unpredictable results.

This Article argues that multinationals should have a responsibility to respect human rights. Part I provides a basic review of the concept of human rights. Part II discusses multinationals' obligations regarding human rights. Then, Part III analyzes efforts to encourage respect for human rights through codes of conduct. Part IV examines efforts to force multinationals to respect human rights through existing legislation. Part V discusses Unocal's involvement in Burma and illustrates how codes and existing laws are insufficient to force multinationals to respect human rights. Finally, Part VI proposes that Congress adopt federal legislation imposing a duty on multinationals to respect human rights, and that states revoke the corporate charters of multinationals that routinely fail to do so. This Article concludes that multinationals, given their enormous economic and political power, should have a legal duty to respect human rights that should be enforced by federal legislation and, if necessary, corporate charter revocation.

I. HUMAN RIGHTS

While international human rights is a broad and difficult concept to define, several international agreements enumerate specific standards. In particular, the United Nations sets forth the most prominent example of current human rights standards, the Universal Declaration of Human Rights ("Universal Declaration"). The Universal Declaration provides standards for various human rights issues, including the rights of life, liberty, security of person, assembly and association, freedom of movement, and the

28. This Article uses the terms "corporate code of conduct," "corporate codes," and "codes" interchangeably.
31. See id. art. 3.
32. See id. art. 20.
33. See id. art. 13.
right to vote or take part in government. The Universal Declaration also promotes freedom from torture, cruel and inhuman punishment, arbitrary arrest, unjust labor practices, and slavery. These rights are universal and restrict both individuals and corporations from infringing on human rights. Other United Nations directives consider environmental protection a vital human right. The United Nations also has examined corporate involvement in human rights issues and asserted that "[t]ransnational corporations should/shall respect the social and cultural objectives, values and traditions of the countries in which they operate" and "shall respect human rights and fundamental freedoms in the countries in which they operate."

For the purposes of this Article, an important distinction exists between respecting and promoting human rights. Corporations already have a moral duty to promote human rights. This Article considers promoting human rights in the context of such activities as corporate philanthropy and humanitarianism. Today, promoting human rights is good business, and corporations are fortunate to be in a unique position to be able to do so. Multinationals in particular, as opposed to business enterprises in general, have an ability to exercise market power and influence in host countries through a kind of remote control. As many as 35,000 multinationals exist in the world; the largest of these control roughly one-fourth of the world's assets. International trade accounts for

34. See id. art. 21.
35. See id. art. 5.
36. See id. art. 9.
37. See id. arts. 23, 24.
38. See id. art. 4.
39. See id. art. 30.
42. Id. ¶ 14.
47. See id.
as much as one-fourth of the U.S. economy, and the Internet will cause that percentage to increase dramatically. As international trade continues to grow, the real power of multinationals continues to increase, while the real power of some national governments continues to decrease. With this degree of influence, multinationals have a tremendous opportunity to improve conditions around the world. The fact remains, however, that a moral duty cannot be forced upon a corporation.

By contrast, corporations should have a legal duty to respect human rights. In other words, they should not be permitted to profit from human rights abuse. Currently, no clear affirmative legal duty exists. While the Universal Declaration discourages persons from engaging in activities that violate the human rights of others, it lacks the necessary enforcement mechanisms to effectively impose such a duty. Moreover, the practicality of using the Universal Declaration by itself to force corporations to respect human rights is severely limited. If corporations are allowed to enjoy the benefits of existing as legally recognized "persons" with individual rights under the law, it is appropriate and reasonable to expect, and even demand, that they conduct themselves accordingly.

The situation in Burma exemplifies one of the most pervasive problems of multinationals benefiting from human rights abuse. In 1996, the United States Senate considered imposing a ban on all investments in Burma. Several American companies, led by the oil company Unocal, lobbied against such a measure because they feared a ban on American investments would not improve conditions in Burma. Rather, a ban would merely create an opportunity for foreign rivals to take advantage of the absence of American companies. Despite extensive lobbying, President Clinton issued an executive order banning business operations in

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48. See id.
51. See Universal Declaration, supra note 30, art. 30.
53. See Laurie Lande, Senate Votes Limited Sanctions Against Burma After Lobbying, WALL ST. J., July 26, 1996, at A9A.
54. See id.
55. See id.
Burma in 1997.\textsuperscript{56} Since the ban restricts only new investments and not existing ones, however, it does not affect Unocal's pipeline project.\textsuperscript{57}

Human rights abuses do not exist solely in Burma, and Unocal is not the only corporation ever accused of profiting from such atrocities.\textsuperscript{58} Pharmaceutical company, Bayer A.G., admits to having used slave labor drafted from World War II concentration camps, while other companies, including BMW, Volkswagen, and Siemens, have been accused of similar acts.\textsuperscript{59} While many companies, including Levi Strauss & Company, have ceased all operations in Burma, critics complain that Unocal continues to profit from SLORC abuse.\textsuperscript{60} Unocal disavows all involvement and responsibility for such abuses.\textsuperscript{61} In a statement to its shareholders, Unocal stated that "if there were any possibility that our project was connected

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\item \textsuperscript{56} See Exec. Order No. 13,047, 2 C.F.R. 202 (1997).
\item \textsuperscript{57} See id.
\item \textsuperscript{60} See Gray, supra note 18, at A12.
\item \textsuperscript{61} In 1994, at the company's urging, Unocal's stockholders rejected a proxy resolution calling on the company to compile a comprehensive report on conditions in Burma despite "credible reports" of forced labor. \textit{See Karl Schoenberger, The Human Rights Pipeline Charges of Slave Labor in Myanmar Lead to Ballot at Unocal, L.A. TIMES, Apr. 11, 1994, at D.}
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with human-rights abuses, this would be absolutely unacceptable to us."  
When asked about the human rights record of Burma, however, Unocal spokesman David Garcia stated: "[t]hat is the job of international diplomacy, of the United Nations and so on. International companies cannot afford to assume that mantle, and we will not."  

II. THE CORPORATION'S EVOLVING DUTY TO RESPECT HUMAN RIGHTS

The business of America is business.  
—President Calvin Coolidge

We demand that business give people a square deal.  
—President Theodore Roosevelt

The sentiments of Calvin Coolidge's famous quotation above were echoed in 1970 by Milton Friedman, a Nobel Prize-winning economist at the University of Chicago. Friedman calls social/corporate responsibility a "fundamentally subversive doctrine" in a free society. Friedman believes that protecting human rights is the responsibility of governments, not of industry. The responsibility of a corporation is to "make as much money as possible," and anything less is "pure and unadulterated socialism." "There is one and only one social responsibility of business... to increase its profits... without deception or fraud." Despite his stance against multinational corporations' social responsibility, Friedman qualifies his views by calling for businesses to seek profits while conforming "to the basic rules of the society.

While profit and social responsibility are sometimes viewed as opposite ends of the spectrum, society is slowly demanding greater

64. Calvin Coolidge, Speech to the American Society of Newspaper Editors (Jan. 17, 1925).
67. See Friedman, Social Responsibility of Business, supra note 66.
68. Id.
69. Id.
70. Id.
Responsibility on the part of corporations. Some corporations are taking notice of the financial gains that may come from environmental and social responsibility. They are finding it more profitable and less problematic to avoid environmentally or socially irresponsible conduct. Thus, these two seemingly separate concepts are moving closer together.

Generally, corporations are legally bound only to their corporate charters, their shareholders, and existing statutes. The American Law Institute’s Principles of Corporate Governance state that a corporation:

1. Is obliged, to the same extent as a natural person, to act within the boundaries set by law;

2. May take into account ethical considerations that are reasonably regarded as appropriate to the responsible conduct of business; and

3. May devote a reasonable amount of resources to public welfare, humanitarian, educational and philanthropic purposes.

However, both commentators and corporations are beginning to realize that “there are particular moral and ethical duties that multinationals must recognize.”

Historically, corporations attempted to distance themselves from human rights issues. Calls for human rights came from relatively small, not-for-profit organizations with relatively little clout. Today, however, calls for corporate social responsibility come not only from third parties but from within a corporation. Moreover, investors, financial institutions, and mutual funds are demanding more socially conscious business practices. The economic repercussions of severing business ties with countries like Burma are often negligible. In fact, a termination of these ties may even be more advantageous than continuing operations. “A world community that

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72. The monetary advantages of conducting business may be offset by negative publicity and lost sales over such operations, as well as by the rising costs of defending lawsuits.
73. Principles of Corporate Governance: Analysis and Recommendations § 2.01(b) (Tentative Draft No. 11, 1991) (emphasis added).
74. Frey, supra note 29, at 164.
respects democracy and human rights will provide a more hospitable climate for American trade and commerce. Repression fosters instability in the long run and puts investment at greater risk of expropriation or loss. As multinationals continue conducting business on a global scale, it becomes increasingly critical that they do so in a responsible manner.

In today's marketplace, many consumers shop for products that are produced in a "socially responsible" manner. Problems with environmental misconduct, sweatshop labor, and other human rights abuses have been exposed and corporations have felt the strain from negative consumer backlash. For example, many shoppers boycotted particular brands of tuna trapped in the same nets as those used to kill dolphins, putting a significant squeeze on sales. Similarly, when Shell Oil announced its plans to dump the Brent Spar oil platform into the sea, a consumer boycott caused sales to drop as much as fifty percent. While Exxon's size helped it survive a consumer boycott, the Valdez oil spill left some independent dealers suffering. Public outcry over human rights abuses (such as the use of forced, child, or prison labor) is making social responsibility a growing concern for companies and their bottom lines.

Negative publicity regarding human rights violations may have a detrimental effect on relations with employees and impede relations with governments in foreign states where companies conduct business. Media

the reward." Management consultant Bob O'Meara notes: "[t]here's no value—or possibly even negative value—in being No. 1 in Burma... I doubt whether Pepsi will be hurt by leaving." Id.


78. Corporate responsibility is particularly important where business is conducted internationally because most human rights abuses occur overseas. Such companies are faced with more challenging and complex cultural issues than are companies limiting their operations to a domestic level.

79. See Orentlicher & Gelatt, supra note 44, at 97.

80. See id.


84. See Orentlicher & Gelatt, supra note 44, at 97; see also Frey, supra note 29, at 157-58 (discussing the impact of consumer pressure on exportation of products).

85. See Lance Compa & Tashia Hinchliffe-Darricarrere, Enforcing International Labor Rights Through Corporate Codes of Conduct, 33 COLUM. J. TRANSNAT'L L. 663, 674
coverage of environmentally dangerous activities or inhumane labor conditions often acts as a catalyst for changes in corporate policy. These changes are most commonly a response to angry protesters and negative reactions from consumers and governmental entities. Companies that rely heavily on image and goodwill for marketing success are especially at risk to such attacks. For example, soft-drink company PepsiCo’s substantial ties to Burma prompted college students to mount a national boycott against Pepsi and its subsidiaries. “We don’t want to do business with anyone who does business with Burma,” declared one student. The boycott benefited competitor Coca-Cola, which has received praise for avoiding business dealings in Burma. As a result of this intensifying (1995).

86. See Human Rights: Ethical Shopping, ECONOMIST, June 3, 1995, at 58 (discussing a 1993 NBC newscast that depicted young children making clothing for Wal-Mart in a Bangladesh factory; the program prompted Wal-Mart to alter its policies).


88. “I don’t want your toy,” wrote a ten-year-old boy to retailer Wal-Mart. The boy returned a Power Ranger toy that was made in a Thailand factory, likely by a child laborer earning just a few dollars in exchange for working a 14-hour day. See Haider Rizui Toying with Workers, MULTINAT’L MONITOR, Apr. 1996 (visited Jan 19, 1999) <http://www.essential.org/monitor/hyper/mm0496.03.html>.

89. For example, San Francisco, Oakland, and Alameda Counties in California have each proposed legislative measures to discourage companies from doing business in Burma. See Jonathan Marshall, Bay Area May Join Boycott of Burma, S.F. CHRON., Apr. 19, 1996, at B1, available in 1996 WL 3218006. Such measures include a ban on city contracts with companies that have employees or investments in Burma and an ordinance that requires city funds to be withdrawn from all financial institutions having ties to Burma. See id.

90. See Compa & Hinchliffe-Darricarrere, supra, note 85, at 674-75. One analyst pointed out that the media “will expose inconsistency and irresponsibility in corporate behavior, and vigilant consumers will respond.” Id. (citing Martha Nichols, Third-World Families at Work: Child Labor or Child Care?, HARV. BUS. REV. 22 (Jan.-Feb. 1993)).


92. Id. At one protest, a student held up a sign that parodied Pepsi’s slogan. It read, “The Choice of a New Genocide.” Id.

93. See id.
criticism, Pepsi ceased all of its Burmese operations in May of 1997. Other companies pulling out of Burma include Federated Department Stores (which owns Macy’s), Liz Claiborne, Eddie Bauer, Levi Strauss, Reebok, and Amoco. The actions of these companies represent a growing trend toward multinationals recognizing their social obligations.

III. RESPECTING HUMAN RIGHTS THROUGH CODES OF CONDUCT

Government and world organizations seeking to address human rights abuse are calling for multinationals to adopt codes of corporate conduct, of which two basic types exist. First, “external” codes are those drafted by entities such as international labor organizations and environmental and human rights groups in the hope that they will be adopted by corporations. Second, corporations may draft and adopt their own “internal” codes.

A. External Codes

1. International Organization Initiatives


regulating multinationals' activities against standardizing the host government's behavior toward multinationals.  

According to the Draft U.N. Code's preamble, one of its principal purposes was to minimize the harmful effects of multinationals' activities. It made explicit reference to human rights, requiring that "[t]ransnational corporations should/shall respect human rights and fundamental freedoms in the countries in which they operate. In their social and industrial relations, transnational corporations should/shall not discriminate on the basis of race, color, sex, language, social, national and ethnic origin or political or other opinion." Unfortunately, because the Draft U.N. Code was never formally adopted by the U.N. General Assembly, it exists today as little more than a model for other codes.

Also in 1977, the International Labor Organization (ILO) adopted the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy. The ILO intended the Tripartite Declaration to "encourage the positive contribution which multinational enterprises can make to economic and social progress ...." The Tripartite Declaration provides guidance to governments, companies, and worker organizations in such areas as equal opportunity and treatment, working conditions, safety and health, and freedom of association. Effectiveness is limited, however, because the primary method of enforcing the Tripartite Declaration is through "discrete persuasion by OECD or ILO officials" and "public embarrassment through the media."

In 1998, the ILO recognized the Tripartite Declaration's shortcomings and introduced a new initiative called the ILO Declaration on Fundamental Principles and Rights at Work. This declaration aims to ensure that

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99. See Frey, supra note 29, at 166 (citing Sidney Dell, The United Nations & International Business 24-26 (1990)).
100. See Draft U.N. Code, supra note 41, preamble. The Draft U.N. Code also demanded that "[t]ransnational corporations shall refrain, in their transactions, from the offering, promising or giving of any payment, gift or other advantage to or for the benefit of a public official as consideration for performing or refraining from the performance of his duties in connection with those transactions." Id. ¶ 20.
101. Id. ¶¶ 13-14.
104. Id. ¶ 2.
105. See id.
106. Compa & Hinchliffe-Darricarrere, supra note 85, at 671.
107. International Labor Organization, Declaration on Fundamental Principles and
national efforts to foster economic progress go hand in hand with social progress by calling for:

a. freedom of association and the effective recognition of the right to collective bargaining;

b. the elimination of all forms of forced or compulsory labour [sic];

c. the effective abolition of child labour; and

d. the elimination of discrimination in respect of employment and occupation.\(^{103}\)

To promote the new Declaration, the ILO implemented a four-part follow-up of which only the second and third parts outline substantive prescriptions. The second part calls for an annual review of countries not ratifying one or more of the conventions addressing the four areas of rights mentioned above.\(^{109}\) The third part establishes an annual global review of one of the four categories of fundamental principles and rights.\(^{110}\) Because the Declaration on Fundamental Principles is fairly new, its effectiveness cannot yet be evaluated.

2. Private Initiatives

Perhaps the most notable private initiative for promoting corporate responsibility through a code of conduct came from Reverend Leon H. Sullivan, who served on the General Motors board of directors.\(^{111}\) After making repeated efforts to convince the board to withdraw its operations from South Africa, he formulated a new plan of action: If General Motors and other companies would not leave South Africa, they should at least attempt to improve conditions there by helping to end apartheid.\(^{112}\) In 1977, he drafted a document aimed at meeting this challenge.\(^{113}\) Sullivan’s


\(^{108}\) Id. ¶ 2.

\(^{109}\) See id. Annex.

\(^{110}\) See id. Annex.


\(^{112}\) See id.

original "Statement of Principles" for U.S. companies doing business in South Africa consisted of six elements:

1. Non-segregation of the races in all eating, comfort and work facilities.

2. Equal and fair employment practices for all employees.

3. Equal pay for all employees doing equal or comparable work for the same period of time.

4. Initiation and development of training programs that will prepare in substantial numbers Blacks, and other non-whites for supervisory, administrative, clerical and technical jobs.

5. Increasing the number of Blacks and other non-whites in management and supervisory positions.

6. Improving the quality of employees' lives outside the work environment in such areas as housing, transportation, schooling, recreation and health facilities.\(^\text{114}\)

Over time the principles evolved and were expanded or amplified.\(^\text{115}\) The principles also included the following system of evaluation:

The Signatory Companies of the Statement of Principles will proceed immediately to:

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Sullivan Principles and the further need for mandatory compliance by all or most multinationals).


115. See id. One such amplification called for the following:

**Increased Dimensions of Activities Outside the Workplace**

1. Use influence and support the unrestricted rights of Black businesses to locate in the Urban areas of the nation.

2. Influence other companies in South Africa to follow the standards of equal rights principles.

3. Support the freedom of mobility of Black workers to seek employment opportunities wherever they exist, and make possible provisions for adequate housing for families of employees within the proximity of workers employment.

4. Support the ending of all apartheid laws.

With all the foregoing in mind, it is the objective of the companies to involve and assist in the education and training of large and telling numbers of Blacks and other non-whites as quickly as possible. The ultimate impact of this effort is intended to be of massive proportion, reaching and helping millions.

*Id.* at 1498-99.
1. Report progress on an annual basis to Reverend Sullivan through the independent administrative unit he has established.

2. Have all areas specified by Reverend Sullivan audited by a certified public accounting firm.

3. Inform all employees of the company’s annual periodic report rating and invite their input on ways to improve the rating.

There will be a continuing review and assessment of these guidelines in light of changing social circumstances in South Africa as well as the results of Progress Report evaluations, and periodic on-site monitoring in South Africa.\textsuperscript{116}

Auditors reviewed detailed questionnaires prepared by companies and assigned companies one of four grades.\textsuperscript{117} The auditors published the results, thereby subjecting companies performing poorly to public scrutiny.

In 1977, only twelve companies, including General Motors, adopted the principles.\textsuperscript{118} By 1982, however, nearly 150 companies became signatories.\textsuperscript{119} The Sullivan Principles did not put an end to apartheid as Reverend Sullivan had hoped, but they did make a significant impact.\textsuperscript{120} They made corporations “aware of the injustices in the South African employment system, by providing a focus for company programs, and by teaching the companies to have a sense of strength in numbers as they confronted social issues in South Africa.”\textsuperscript{121} Finally, the Sullivan Principles provided investors with information they could use in evaluating companies they considered investing in as well and providing information on which companies were concerned with international human rights.\textsuperscript{122}

Inspired by this success, other external codes began to emerge.

In the mid-1980s an American group of advocates introduced the MacBride Principles, named for the late Sean MacBride, a founder of Amnesty International.\textsuperscript{123} The MacBride Principles set forth

\textsuperscript{116} See Frey, supra note 29, at 175.
\textsuperscript{117} Arthur D. Little Inc., a Massachusetts consulting firm, graded the companies on a curve, failing as many as one third annually. “Little gave companies one of three grades: (I) Making good progress; (II) Making progress; and (III-A) Needs to be more active/received low point rating; and (III-B) Needs to be more active/did not meet basic requirements.” Pink, supra note 111, at 183.
\textsuperscript{118} See id.
\textsuperscript{119} See Kevin McManus, Being There, FORBES, Nov. 8, 1982, at 218.
\textsuperscript{120} See Geltman & Skroback, supra note 75, at 472.
\textsuperscript{121} Id.
\textsuperscript{122} Id.
\textsuperscript{123} The MacBride Principles called for:

1. Increasing the representation of individuals from underrepresented religious
nondiscrimination standards to combat the political and social strife in Northern Ireland. While the Sullivan Principles sought to alleviate racial discrimination, the MacBride Principles attempted to ease sectarian tensions, calling for a ban on all "provocative, sectarian, or political emblems from the workplace," as well as enforcing security measures to protect workers from sectarian practices. The MacBride Principles not only called for the personal safety of employees while at work, but also while traveling between work and home. Unfortunately, the MacBride Principles did not duplicate the success of the Sullivan Principles, due in part to a conflicting provision of British law.

Other groups have proposed external codes with varying levels of

2. Adequate security for the protection of minority employees both at the workplace and while traveling to and from work.

3. The banning of provocative religious or political emblems from the workplace.

4. All job openings should be publicly advertised and special recruitment efforts should be made to attract applicants from underrepresented religious groups.

5. Layoff, recall and termination procedures should not in practice favor particular religious groupings.

6. The abolition of job reservations, apprenticeship restrictions, and differential employment criteria, which discriminate on the basis of religion or ethnic origin.

7. The development of training programs that will prepare substantial numbers of current minority employees for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of minority employees.

8. The establishment of procedures to assess, identify and actively recruit minority employees with potential for further advancement.

9. The appointment of a senior management staff member to oversee the company's affirmative action efforts and the setting up of timetables to carry out affirmative action principles.


124. See Frey, supra note 29, at 175.

125. Id. at 176, (citing THE MACBRIE PRINCIPLES, supra note 123, n.128).


success. In 1991, the Coalition for Justice in the Maquiladoras, an alliance of religious, labor, environmental, and human rights activists from the United States and Mexico, introduced the Maquiladora Standard of Conduct.\textsuperscript{128} Containing twenty-nine principles, the Maquiladora Standard sought "to promote socially responsible practices that ensure a safe environment on both sides of the border, safe work conditions... and an adequate standard of living..."\textsuperscript{129} Similarly, a coalition of investors and environmental organizations known as the Coalition for Environmentally Responsible Economies proposed the Valdez Principles.\textsuperscript{130} The coalition intended the Valdez Principles to "create a voluntary mechanism of corporate self-governance that will maintain business practices consistent with the goals of sustaining our fragile environment for future generations, within a culture that respects all life and honors its independence."\textsuperscript{131} Finally, the Slepak Foundation, a Philadelphia-based non-profit organization, introduced the Slepak Principles.\textsuperscript{132}


\textsuperscript{129} \textit{Id.} at 20 (quoting \textit{Coalition for Justice in the Maquiladoras, Introduction to Maquiladora Standards of Conduct} § 1 (1991)).

\textsuperscript{130} The Valdez Principles call for:

1. Protection of the Biosphere
2. Sustainable Use of Natural Resources
3. Reduction and Disposal of Waste
4. Wise Use of Energy
5. Risk Reduction
6. Marketing of Safe Products and Services
7. Damage Compensation
8. Disclosure
9. Environmental Directors and Managers
10. Assessment and Annual Audit

\textsuperscript{131} \textit{Id.} at 186 (citing The Social Investment Forum, C.E.R.E.S. Project, Valdez Principles Statement of Intent (Sept. 7, 1989)).

\textsuperscript{132} Under the Slepak Principles, American companies:

1. Will not produce goods or provide services that replenish the Soviet military.
2. Will not use goods or products manufactured by forced labor in the Soviet Union.
3. Will safeguard Soviet employees prone to dismissal based upon politics, religion, or ethnic background.
4. Will decline to participate in a commercial transaction if the place of work is
attempted to give guidance to "American companies doing business in the former Soviet Union." The Slepak Principles’ primary purpose was to "make human rights a priority issue that must be placed at the forefront of any exchange between the United States and the Soviet Union."

However, when the Soviet Union dissolved, support for the Slepak Principles also eroded, "revealing the ephemeral nature of corporate codes."

3. Government Initiatives

In 1991, Congressman John Miller introduced legislation similar to the Slepak Principles. Inspired by the Sullivan Principles, the Miller Principles sought to encourage liberalization and political freedom in Tibet and the People’s Republic of China. The Miller Principles, however,

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a Soviet-confiscated religious edifice.

5. Will ensure that methods of production do not pose an irresponsible physical danger to Soviet workers, neighboring populations, and property.

6. Will refrain from making untied loans to the Soviet government—loans which may be used to subsidize Soviet non-peaceful activities.

7. Will attempt to engage in joint ventures with private co-operatives rather than institutions connected directly to the Soviet state.


134. Statement of Purpose, supra note 132.
135. Sacharoff, supra note 126, at 936.
137. See Perez-Lopez, supra note 128, at 16. The Miller Principles called for participants in business dealings with the People’s Republic of China or Tibet to:

1. Suspend the use of all goods, wares, articles, and merchandise that are mined, produced, or manufactured, in whole or in part, by convict labor or forced labor ... and refuse to use forced labor in the industrial cooperation projects.

2. Seek to ensure that political or religious views, sex, ethnic, or national background, involvement in political activities or nonviolent demonstrations, or association with suspected or known dissidents will not prohibit hiring, lead to harassment, demotion, or dismissal, or in any way affect the status or terms of employment in the industrial cooperation project ....

3. Ensure that methods of production ... do not pose an unnecessary physical danger to workers and neighboring populations and property and ... to the surrounding environment ....

4. Strive to use business enterprises that are not controlled by the People’s Republic of China or its authorized agents and departments as potential partners ....
were never enacted into law. Senator Edward Kennedy and Representative Jolene Unsoeld considered sponsoring a new, similar bill, but decided against it when President Clinton promised to propose his own code of conduct.

In 1994, amid intensifying criticism, President Clinton separated human rights issues from American trade policy toward China. As an alternative to an official U.S. Government policy on human rights, Clinton promised to devise a human rights code for corporations. One year later, President Clinton unveiled his own set of voluntary ethical standards for multinationals, known as the "Model Business Principles." The principles encourage businesses to adopt voluntary codes that, at a minimum, address:

1. Provision of a safe and healthy workplace;

2. Fair employment practices, including avoidance of child and forced labor and avoidance of discrimination based on race, gender, national origin, or religious beliefs; and respect for the right of association and the right to organize and bargain collectively;

3. Responsible environmental protection and environmental practices;

5. Prohibit any military presence on the premises of the industrial cooperation project.

6. Undertake to promote freedom of association and assembly among the employees.

7. Use every possible channel of communication with the Chinese Government to urge that government to disclose publicly a complete list of all those individuals arrested since March 1989, to end incommunicado detention and torture, and to provide international observers access to all places of detention and to trials of prisoners arrested in connection with pro-democracy events.

8. Discourage or undertake to prevent compulsory indoctrination programs from taking place on the premises of the operations of the industrial cooperation project.

9. Promote freedom of expression, including the freedom to seek, receive, and impact information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any media.


138. See Frey, supra note 29, at 171.
139. See id.; see also Orentlicher & Gelatt, supra note 44, at 82-95 (discussing and analyzing the Kennedy-Unsoeld Proposal).
141. See id.
142. Id.
4. Compliance with U.S. and local laws promoting good business practices, including laws prohibiting illicit payments and ensuring fair competition;

5. Maintenance, through leadership at all levels, of a corporate culture that respects free expression consistent with legitimate business concerns, and does not condone political coercion in the workplace; that encourages good corporate citizenship and makes a positive contribution to the communities in which the company operates; and where ethical conduct is recognized, valued and exemplified by all employees.\textsuperscript{143}

Both human rights and business leaders have sharply criticized the Model Business Principles.\textsuperscript{144} Critics complain the proposal is too vague to have an impact on human rights atrocities in China or that it is merely duplicative of the existing laws.\textsuperscript{145} “We’re quite disappointed. This falls far short of what is needed,” says a representative from Human Rights Watch Asia, echoing the sentiments of spokespeople for Amnesty International and other human rights groups.\textsuperscript{146} Carol Richards, a spokeswoman for the activist group, Burma Forum, complains “[t]his kind of code would be useless in Burma.”\textsuperscript{147} Perhaps the main problems associated with the Model Business Principles are the identical flaws in most other existing corporate codes—lack of mandatory conformity or enforceability.\textsuperscript{148} As one commentator notes, “[i]t is a toothless, clawless, and, arguably, a comatose tiger.”\textsuperscript{149}

The Model Business Principles are intended to be used as a model for other companies to draft their own codes.\textsuperscript{150} Several large corporations have expressed support for Clinton’s plan, including General Electric, Kodak, Boeing, Digital Electric, Loral, Rockwell, and Honeywell.\textsuperscript{151} While

\begin{itemize}
  \item \textsuperscript{144} See Frey, supra note 29, at 172-73.
  \item \textsuperscript{145} See Cassel, supra note 43, at 1975; see also Frey, supra note 29, at 173.
  \item \textsuperscript{147} Iritani, supra note 146, at D1.
  \item \textsuperscript{148} See Frey, supra note 29, at 173.
  \item \textsuperscript{149} Earle, supra note 146, at 229.
  \item \textsuperscript{151} See Cassel, supra note 43, at 1975.
\end{itemize}
the Model Business Principles could certainly be more forceful, they at least represent a positive step toward encouraging multinationals to recognize their social responsibilities.\(^{153}\)

B. Internal Corporate Codes

Some corporations are responding to calls for corporate responsibility by voluntarily imposing such codes upon themselves. These internal codes serve several functions, some substantive and some symbolic. For example, mission statements set forth by coffee seller, Starbucks, address both general corporate matters\(^{154}\) and environmental concerns.\(^{155}\) Internal corporate codes and similar policy statements purport to serve as a "general moral statement" and may have force, although in other instances they are criticized as little more than a public relations strategy.\(^{156}\)

Some multinationals’ codes expressly address human rights issues.\(^{157}\) For example, athletic apparel company Reebok’s code includes a promise to withdraw operations from countries violating human rights and actively encourages human rights protection.\(^{158}\) Many multinationals are adopting minimum standards regarding employment conditions for their workers. Other multinationals are refusing to accept business partners unless those companies adhere to the same principles.\(^{159}\) For example, in 1993, retailer Wal-Mart responded to an embarrassing television expose of children making shirts in a Bangladesh factory\(^{160}\) by adopting a policy requiring vendors to:

- comply with applicable U.S. import laws (including forced labor products prohibition) ... meet conditions of employment that include appropriate compensation for employees, maintain reasonable hours, refrain from engaging in forced or prison labor practices, refrain from using child labor, [and] demonstrate a commitment to basic human rights (allowing for cultural

\(^{152}\) See id.


\(^{156}\) See Frey, supra note 29, at 179.

\(^{157}\) See id.

\(^{158}\) See id. at 177-78.

\(^{159}\) See Human Rights: Ethical Shopping, supra note 86, at 58.
Similarly, Levi Strauss’ code flatly restricts the company from doing business in countries where pervasive human rights abuses exist.\textsuperscript{161}

\begin{itemize}
  \item[160.] Frey, \textit{supra} note 29, at 177-78, (citing \textit{Memorandum from Wal-Mart Stores, Inc. Regarding Standards for Vendor Partners (undated))}.
  \item[161.] Levi Strauss’ “Terms of Engagement” require:
    \begin{enumerate}
      \item Ethical Standards: We will seek to identify and utilize business partners who aspire as individuals and in the conduct of all their businesses to a set of ethical standards not incompatible with our own.
      \item Legal Requirements: We expect our business partners to be law abiding as individuals and to comply with legal requirements relevant to the conduct of all their businesses.
      \item Environmental Requirements: We will only do business with partners who share our commitment to the environment and who conduct their business in a way that is consistent with Levi Strauss & Co.’s Environmental Philosophy and Guiding Principles.
      \item Community Involvement: We will favor business partners who share our commitment to contribute to improving community conditions.
      \item Employment Standards: We will only do business with partners whose workers are in all cases present voluntarily, not put at risk of physical harm, fairly compensated, allowed the right of free association and not exploited in any way. In addition, the following specific guidelines will be followed:
        \begin{itemize}
          \item Wages and Benefits: We will only do business with partners who provide wages and benefits that comply with any applicable law and match the prevailing local manufacturing or finishing industry practices.
          \item Working Hours: While permitting flexibility in scheduling, we will identify prevailing local work hours and seek business partners who do not exceed them except for appropriately compensated overtime \ldots. [W]e will not use contractors who, on a regular basis, require in excess of a sixty-hour week. Employees should be allowed at least one day off in seven.
          \item Child Labor: Use of child labor is not permissible. Workers can be no less than 14 years of age and not younger than the compulsory age to be in school. We will not utilize partners who use child labor in any of their facilities.
          \item Prison Labor/Forced Labor: We will not utilize prison or forced labor in contracting relationships in the manufacture and finishing of our products. We will not utilize or purchase materials from a business partner utilizing prison or forced labor.
          \item Health & Safety: We will only utilize business partners who provide workers with a safe and healthy work environment. Business partners who provide residential facilities for their workers must provide safe and healthy facilities.
          \item Discrimination: While we recognize and respect cultural differences, we believe that workers should be employed on the basis of their ability to do the job, rather than on the basis of personal characteristics or beliefs. We will favor business partners who share this value.
        \end{itemize}
    \end{enumerate}
\end{itemize}
Internal codes demonstrate a company’s societal views. They are devices for companies trying to increase public approval for multinational action. However, the company is likely not seeking approval exclusively from the general public. Often, implementing a code of conduct may demonstrate to a host country that the corporation is interested in protecting that country’s citizens and environment. Internal codes also serve as a tool for policy reviews and a “measuring stick” against which corporations may compare themselves. Codes implemented by upper management may also keep employees abreast of the company’s objectives.

A few corporations have enforced their codes very seriously by installing strict internal controls to deter illegal or unethical activity. For example, Levi Strauss created an elaborate system of enforcing its code through regular monitoring. Also, toy manufacturer Mattel banned the use of child labor in its factories and implemented an independent monitoring system. Some multinationals are appointing “ethics officers”

Terms of Engagement (visited Oct. 18, 1999)
<http://www.levistrauss.com/about/code.html>.

162. See Baker, supra note 155, at 415.
164. See Baker, supra note 155, at 414-15.
165. See generally KLINE, supra note 163, at 6.
167. Levi’s code further states that:

- All new and existing factories involved in the cutting, sewing, or finishing of products for Levi Strauss & Co. must comply with our Terms of Engagement. These facilities are continuously evaluated to ensure compliance. We work on-site with our contractors to develop strong alliances dedicated to responsible business practices and continuous improvement.
- If Levi Strauss & Co. determines that a business partner is in violation of our Terms of Engagement, the company may withdraw production from that factory or require that a contractor implement a corrective action plan within a specified time period. If a contractor fails to meet the corrective action plan commitment, Levi Strauss & Co. will terminate the business relationship.

<http://www.levistrauss.com/about/code.html>.

168. See Steve James, Mattel Bans Child Labor at Sites Making Its Toys, ORANGE COUNTY REG., Nov. 21, 1997, at C03, available in 1997 WL 14885766. Mattel’s code requires that its manufacturing facilities:

1. Set working hours, wages, and overtime pay rates that meet the requirements of governing laws. Wages must match the minimum legal wage or local industry standards, whichever is greater.

2. Hire no one under the age of 16 or the local legal age limit, whichever is higher.
to serve as their consciences. Athletic apparel company Nike demands that its business partners, in addition to adhering to Nike's own code, adhere to an additional set of guiding principles. Nike also sought to

3. Never use forced or prison labor of any kind, nor work with any manufacturer or supplier who does.

4. Not tolerate discrimination of any kind.

5. Abide by all the laws and regulations of the country in which they operate and recognize all employees' rights to choose (or not) to affiliate with legally sanctioned organizations or associations without unlawful interference.

6. Provide a safe working environment for employees.

7. Favor business partners who are committed to ethical standards that are compatible with Mattel's.

8. Only work with those manufacturers and suppliers who comply with all applicable laws and regulations and share Mattel's commitment to the environment.

9. Insist that business partners maintain a strict adherence to all local and international customs laws.

10. Meet or exceed all requirements in the company's "Global Manufacturing Principles."


169. See id.

170. Nike's code of conduct for its business partners states:

While these principles establish the spirit of our partnerships, we also bind these partners to specific standards of conduct. These standards are set forth below.

1. Forced Labor: The manufacturer does not use forced labor in any form—prison, indentured, bonded or otherwise.

2. Child Labor: The manufacturer does not employ any person below the age of 18 to produce footwear . . . [or] any person below the age of 16 to produce apparel, accessories or equipment.

3. Compensation: The manufacturer [pays] . . . at least the minimum wage, or the prevailing industry wage, whichever is higher . . . .

4. Benefits: The manufacturer provides each employee all legally mandated benefits.

5. Hours of Work/Overtime: The manufacturer complies with legally mandated work hours; uses overtime only when each employee is fully compensated according to local law; informs each employee at the time of hiring if mandatory overtime is a condition of employment; and, on a regularly scheduled basis, provides one day off in seven, and requires no more than 60 hours of work per week, or complies with local limits if they are lower.
remedy its involvement in past human rights abuses by hiring former United Nations Ambassador Andrew Young and his company, GoodWorks International, to investigate Nike’s international plants and ensure that its code of conduct was being followed.\footnote{See Maria Saporta, *Young Insisted Nike Give Him Full Access to Plants*, ATLANTA J. & ATLANTA CONST., June 24, 1997, at E03, available in 1997 WL 3978042. The Nike Code of Conduct states in part:}

\begin{quote}
Simply put, you should consider this letter as blanket authority from me to go anywhere, see anything and talk with anybody in the Nike family about this issue. Your goal is to seek the truth. Our obligation to you is to help you in every way possible to find the truth.\footnote{Id.}
\end{quote}

6. Management of Environment, Safety and Health (MESH): The manufacturer has written health and safety guidelines, including those applying to employee residential facilities, where applicable; has a factory safety committee; complies with Nike’s environmental, safety and health standards; limits organic vapor concentrations . . . .

7. Documentation and Inspection: The manufacturer maintains on file all documentation needed to demonstrate compliance with this Code of Conduct [and] agrees to make these documents available for Nike or its designated auditor to inspect upon request . . . .


\footnote{See Saporta, * supra* note 171, at E03. Young found that the factories were satisfactorily adhering to Nike’s code of conduct, but that room for improvement existed. Upon Young’s finding, Nike insisted that conditions be improved. \textit{See id.}}
C. Limitations of Codes

The truth is, corporations are no more capable of acting ethically than they are of acting lovingly.174

The chief criticism of corporate codes is that they are mere public relations gimmicks.175 Some commentators argue Nike’s hiring of Andrew Young was just that.176 Nike critics condemned Young’s work, calling it “superficial,” because it failed to address key issues such as wages.177 Nike also faced criticism after a 1997 internal audit, conducted by accounting firm Ernst & Young, found that many plants were not complying with Nike’s code.178 Whereas Nike encouraged Andrew Young to publicize his findings, the Ernst & Young audit was not made public by Nike but was instead leaked to the New York Times.179 Critics further called Nike’s credibility into question when a lawsuit arose alleging Nike’s advertising misrepresented employment conditions in its overseas factories.180 In addition to being used as public relations gimmicks, codes might also be used as a tool for corporate managers to protect themselves and their companies by claiming that the existence of a corporate code demonstrates their company’s good faith or lack of complicity.

Other commentators complain that corporate codes lack enforceability; even when multinationals adopt a code, they are free to depart from or circumvent their self-imposed code with little trouble.181 Few codes contain internal enforcement provisions, and even fewer provide

175. See id.
176. Some contend Nike appointed Young for mere publicity reasons, and that he was little more than a spokesman for Nike. See Dana Canedy, Nike’s Image-Polishing Effort May Face Some Tough Obstacles, DENY. POST, Mar. 31, 1997, at C02.
178. See Lobe, supra note 177.
179. See id.
180. See id.
an internal remedy for code violations. Although a few companies, such as
toy manufacturer Mattel, have taken steps to ensure enforceability through
independent monitoring, most multinationals have not taken this step.\footnote{\textit{See Paul Knox, Corporations Not Likely to Have Codes of Conduct, Few Firms Allow Independent Monitoring, Study by Canadian Rights Centre Reveals}, \textit{Globe \& Mail}, May 14, 1997, at A17. Of the 98 Canadian companies surveyed, only 21 had codes of conduct. Of those 21, only six addressed business dealings with oppressive governments and only six allowed for independent monitoring. \textit{See id.}} Without enforceability, compliance with corporate codes cannot be verified or assured.\footnote{\textit{See Nomi Morris \& Suzanne Goldenberg, Kids At Work}, \textit{Maclean's}, Dec. 11, 1995, at 28 (illustrating the problem with voluntary compliance).}

Another problem with corporate codes is that they lack uniformity and consistency. For example, Oil Company A might adopt a code prohibiting business activities in a country such as Burma, while Oil Company B simply promises to meet the highest ethical standards in all of its business activities. This situation allows Oil Company B to profit despite Burmese atrocities, while placing Oil Company A at a competitive disadvantage, and accomplishing little with respect to furthering human rights.

Adhering to a code may also be confusing to company employees because a single factory might have more than one code.\footnote{For example, a clothing factory might have one code for tailors, another for packers, and another for managers. \textit{See A Modest Start on Sweatshops}, \textit{N.Y. Times}, Apr. 16, 1997, at A22 (discussing positive and negative aspects of the industry-wide code).} The apparel industry has sought to overcome this inconsistency problem by enacting an industry-wide code.\footnote{\textit{See Seymour J. Rubin, Transnational Corporations and International Codes of Conduct}, 10 \textit{Am. U. Int'l L. \& Pol'y} 1275, 1286 (1995).} While an industry-wide effort is a positive step, human rights abuse is such a serious problem that an industry-wide solution is simply insufficient.

Since codes are strictly voluntary, multinationals may simply choose not to adopt or adhere to such a code. Moreover, many codes act only as guiding principles rather than as a definitive statement of policy. The result is a blurred line between acts that employees cannot and should not commit.\footnote{\textit{See id.}} Also, codes often do not generally afford injured parties a remedy. Finally, the costs of developing an internal code may cause corporations to either adopt those that are not comprehensive, or fail to adopt one at all.

While corporate codes are not without value, they are sometimes insufficient to prevent multinationals from profiting from human rights abuse. In response to the inadequacies of corporate codes, some human rights abuse victims have sought refuge through the court system.
IV. USING EXISTING LAW TO FORCE CORPORATIONS TO RESPECT HUMAN RIGHTS

Corporations currently do not have a clear legal duty to respect human rights. Neither existing external nor internal codes are adequate to impose such a duty. Human rights abuse victims have turned to the courts to impose such a duty, but have met with little success.

A. Labor Laws

In the area of labor law, plaintiffs have failed in their attempts to have American law applied extraterritorially. Courts follow a presumption that U.S. laws do not apply extraterritorially absent an express intent by Congress to have them do so. Accordingly, courts have steadfastly refused jurisdiction of claims under the National Labor Relations Act, the Labor Management Relations Act, and Title VII of the Civil Rights Act of 1964. Even the Fair Labor Standards Act, which sets labor standards that directly protect workers' human rights, has been of little help to workers seeking to apply the statute extraterritorially.

B. Alien Tort Claims Act

The Alien Tort Claims Act (ATCA) expressly provides courts with

187. See, e.g., EEOC v. Arabian Am. Oil Co., 499 U.S. 244, 248 (1991) (refusing to apply Title VII of the Civil Rights Act of 1964 extraterritorially, holding that legislation of Congress, absent a contrary intent, is meant to apply only within the territorial jurisdiction of the United States); Foley Bros., Inc. v. Filardo, 336 U.S. 281, 285 (1949). See also PAUL B. STEPHAN, III ET AL., INTERNATIONAL BUSINESS AND ECONOMICS: LAW & POLICY 243 (2d ed. 1996) (discussing a "general, and rather strong, presumption that regulatory legislation not on its face limited to domestic transactions will be so limited").


jurisdiction over alien tort claims arising from a "violation of the law of nations or a treaty of the United States." The law of nations is a vague concept and may include "norm[s] of international law so fundamental that [they are] binding on all members of the world community," including "such basic rights as the right not to be murdered, tortured, or otherwise subjected to cruel, inhuman or degrading punishment; the right not to be a slave; and the right not to be arbitrarily detained."

Courts are divided as to whether an ATCA claim may be based upon purely private action or whether state action is required. In Tel-Oren v. Tel-Oren, the court must determine whether the law of nations includes the rights as described. The law of nations may be ascertained by consulting the works of jurists, writing professedly on public law; or by the general usage and practice of nations; or by judicial decisions recognizing and enforcing that law. United States v. Smith, 18 U.S. (5 Wheat.) 153, 160-61 (1820).

First, the Foreign Sovereign Immunities Act (FSIA) provides foreign states with immunity except under narrow exceptions. See Foreign Sovereign Immunities Act (FSIA), 28 U.S.C. § 1605 (1994 & Supp. II 1997); see also Argentine Republic v. Amerada Hess Shipping Corp., 488 U.S. 428, 443 (1989) (finding that the legislative intent behind the FSIA was not to contradict the international law of sovereign immunity). One way that ATCA plaintiffs may overcome this immunity is by showing that the allegations constitute a commercial activity under FSIA. This is possible where:

1. The action is based upon a commercial activity carried on in the United States by the foreign state;
2. or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere;
3. or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States.


Second, an ATCA action against a foreign state may be further stalled by the Act of State doctrine. This judicially created doctrine restricts federal courts from second-guessing the validity of a foreign sovereign's actions inside its boundaries, regardless of whether the alleged acts violate international law. See Banco Nacional de Cuba v. Sabbatino 376 U.S. 398, 424 (1964). The act of state doctrine operates to preserve separation of powers by prohibiting the judiciary, in general, from interfering with the executive's role in foreign and diplomatic relations. Id. at 423-25.
Libyan Arab Republic, the D.C. Circuit rejected plaintiffs' claim due to the lack of subject matter jurisdiction and running of the statute of limitations. Courts have looked to § 1983 jurisprudence for guidance in determining whether state action exists in an ATCA claim. Courts have articulated four separate approaches to finding state action for purposes of § 1983: 1) Public function; 2) State compulsion; 3) Nexus; and 4) Joint action. Other courts have allowed plaintiffs' claims to proceed in the absence of state action. In Kadic v. Karadzic, the Second Circuit held that, due to the existence of international treaties and law condemning and outlawing genocide and war crimes, such acts by private actors could be brought under the ATCA without state action. In a recent development, Burmese torture victims have sued Unocal under the ATCA for its role in human rights violations. While the ATCA has been successfully used to sue dictators such as Ferdinand Marcos for human rights violations, the ATCA has never yet successfully been used against an American company in this type of situation.

In 1997, a federal judge allowed the lawsuit Doe v. Unocal to

197. 726 F.2d 774 (D.C. Cir. 1984).
198. See id.
202. State action may be found under the nexus approach where the government is sufficiently involved in the actor's conduct that it benefits from the conduct or encourages the conduct. See, e.g., id. at 14-18.
204. 70 F.3d 232, 241-43 (2d Cir. 1995).
205. See id. at 241-43 (stating that "instances of inflicting death, torture, and degrading treatment" may be actionable under the ATCA when committed in the pursuit of genocide or war crimes).
207. See In re Estate of Ferdinand Marcos, Human Rights Litig., 25 F.3d 1467 (9th Cir. 1994).
209. 963 F. Supp. at 880.
proceed against Unocal for its role in Burmese atrocities. The lawsuit was brought by citizens of Burma as a class action against Unocal, two of its top executives, its partner Total S.A., SLORC, and SLORC-run Myanma Oil and Gas Enterprise. The plaintiffs sought injunctive, declaratory, and compensatory relief for human rights violations arising from the Yadana pipeline project. According to the plaintiffs, SLORC soldiers secured the pipeline area through "violence and intimidation... forcing farmers to relocate... confiscating property and forcing inhabitants to clear forest, level the pipeline route, build headquarters for pipeline employees, prepare military outposts and carry supplies and equipment." Reports were made of rape and gang-rape by SLORC soldiers.

Alleging atrocities such as "assault, rape and other torture, forced labor, and the loss of their homes and property," the plaintiffs brought their claim, in part, under the ATCA. The district court held that allegations that Unocal "paid and continue[s] to pay SLORC to provide labor and security for the pipeline... accepting the benefit of and approving the use of forced labor" were sufficient to establish a cause of action under the ATCA. The court based ATCA jurisdiction over Unocal by finding that the Burmese atrocities violated a "jus cogens norm" of the law of nations. The court premised its state action finding on a § 1983 analysis, relying on the joint action theory. Doe v. Unocal may eventually be recognized as a legal milestone, because it could mark the first time an American corporation is held liable under the ATCA for benefiting from human rights abuses.

210. See id.
211. See id. at 883. The district court dismissed SLORC and Myanma Oil and Gas Enterprise for lack of subject matter jurisdiction under the doctrine of sovereign immunity. See id. at 884. The court rejected plaintiff's claim that these actions fell under the commercial activity exception to the Foreign Sovereign Immunity Act. See id.
212. See id.
213. Id. at 885.
214. See id.
215. Id.
216. See id. at 884; see also 28 U.S.C. § 1350 (1994).
218. See id. at 890. A "jus cogens norm," also known as a "peremptory norm," is ""a norm accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character."" Id. at 890 n.7 (quoting the Vienna Convention on the Law of Treaties).
219. See id. at 890-91.
C. **Torture Victims Protection Act**

In 1992, Congress attempted to expand the ATCA by passing the Torture Victims Protection Act (TVPA). The TVPA creates a statutory cause of action for crimes such as torture or extrajudicial killing committed under the authority or color of law of any foreign nation. The TVPA is broader than the ATCA insofar as it affords Americans as well as aliens the right to bring a cause of action for human rights violations. However, plaintiffs relying upon the TVPA in actions against corporations have met with little success. In *Beanal v. Freeport-McMoRan, Inc.*, an Indonesian citizen brought suit, in part, under the TVPA against American corporations owning mining operations in Indonesia. Plaintiffs alleged environmental torts, cultural genocide, torture, and other human rights abuses. However, the court rejected Beanal’s claim, holding in part that

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220. The Torture Victim Protection Act provides in relevant part:

Sec. 2. Establishment of Civil Action

(a) Liability.—An individual who, under actual or apparent authority, or color of law, of any foreign nation—

1. subjects an individual to torture shall, in a civil action, be liable for damages to that individual; or

2. subjects an individual to extrajudicial killing shall, in a civil action, be liable for damages to the individual’s legal representative, or to any person who may be a claimant in an action for wrongful death.

(b) Exhaustion of Remedies.—A court shall decline to hear a claim under this section if the claimant has not exhausted adequate and available remedies in the place in which the conduct giving rise to the claim occurred.


221. See id.

222. See id. For further discussion of the scope of the Torture Victim Protection Act, see H.R. Rep. No. 102-367, pt. 1, at 4 (1991), reprinted in 1992 U.S.C.C.A.N. 84 ("The TVPA . . . enhance[s] the remedy already available under § 1350 in an important respect: While the Alien Tort Claims Act provides a remedy to aliens only, the TVPA . . . extend[s] a civil remedy also to U.S. citizens who may have been tortured abroad. Official torture and summary executions merit special attention in a statute expressly addressed to those practices.").


224. See id.

225. See id. The complaint alleged that defendants committed human rights abuses through its security staff “in conjunction with third parties.” The following illustrates the human rights abuses committed:

1. Repeated acts of torture have occurred at Freeport security stations and Freeport containers, which conduct includes kicking with military boots, beating with fists, sticks, rifle butts, stones; starvation, standing with heavy weights on the subject’s heads, shackling of thumbs, wrists and legs.
a corporation is not "an individual" under the TVPA, and therefore not amenable to suit under the TVPA.\footnote{226}

V. UNOCAL: AN ILLUSTRATION OF HOW CORPORATE CODES ALONE ARE INSUFFICIENT TO RESPECT HUMAN RIGHTS

While other companies are pulling their operations out of Burma, Unocal has continued its involvement in the pipeline project. Unocal asserts that its involvement in Burma will improve conditions in the country, in accordance with its mission "to improve the lives of people wherever we work."\footnote{227} Unocal argues that through its involvement in the pipeline project, the company is taking a leadership role in ensuring that no human rights violations occur on the project with which Unocal is involved.\footnote{228} Unocal also states that its "record on human rights is as good or better than any other company."\footnote{229} In reality, however, allegations of Unocal's involvement in human rights abuse are lengthy and well documented.\footnote{230}

Despite the atrocities from which Unocal is accused of profiting,\footnote{231} Unocal asserts that it protects human rights by adhering to its code of

\footnote{2. Security surveillance of Plaintiff and others resulting in fear and mental stress.}

\footnote{3. Torture victims were forced to stand in Freeport containers in water calf-high which reeked of human feces.}

\footnote{4. Indigenous people have been detained with their eyes taped shut, thumbs tied, subject to repeated beatings by Freeport security personnel and third parties acting in conjunction with said personnel.}

\textit{Id.} at 369 (citations omitted).

\footnote{226. \textit{See id.} at 381-82. The court reasoned that "To give the term 'individual' its plain meaning under the TVPA means that the Act does not apply to corporate entities." \textit{Id.} at 382.}


\footnote{230. \textit{See Doe v. Unocal}, 963 F. Supp. 880, 883; \textit{see also infra note 235}. Unocal's former President and current Vice Chairman impliedly conceded the existence of a connection between forced labor and the pipeline project, but attempted to lay blame for such atrocities on the victims. "If you threaten the pipeline there's going to be more military . . . If forced labor goes hand and glove with the military, yes there will be forced labor. For every threat to the pipeline, there will be a reaction." R. Strider, \textit{Blood in the Pipeline}, MULTINATIONAL MONITOR, Jan. 1, 1995, at 22.}

Unocal’s “Code of Conduct for Doing Business Internationally” requires the company to “meet the highest ethical standards in all of our business activities.” Unocal’s code also provides that the company “[b]e a good corporate citizen and a good friend of the people of our host country.” Nevertheless, in September 1998 petitioners asked that California’s Attorney General revoke Unocal’s corporate


233. See id. Unocal’s complete code calls for the company to:

1. Meet the highest ethical standards in all of our business activities.
   - Conduct business in a way that engenders pride in our employees and respect from the world community.

2. Treat everyone fairly and with respect.
   - Offer equal employment opportunity for all host country nationals regardless of race, ethnic group or sex.
   - Make sure that a very high percentage of the work force is made up of nationals.
   - Train and develop national employees so they have full access to opportunities for professional advancement and positions at higher levels in the organization.

3. Maintain a safe and healthful work place.
   - As employees, value and protect each other’s health and safety as highly as we do our own.

4. Use local goods and services as much as practical, whenever they’re competitive and fit our needs.

5. Improve the quality of life in the communities where we do business.
   - Contribute—and not just economically—to local communities so that our presence enhances people’s lives in long-lasting, meaningful ways.

6. Protect the environment.
   - Take our environmental responsibilities seriously and abide by all environmental laws of our host country, as we do in the United States.

7. Communicate openly and honestly.
   - Maintain our policy of encouraging meaningful dialogue with concerned shareholders, employees, the media and members of the public.

8. Be a good corporate citizen and a good friend of the people of our host country.


234. Id.
According to the petition’s allegations, “Unocal’s record... involve[s] hundreds of incidents and many thousands of victims—18,000 alone in one incident in the San Francisco Bay Area—not to mention the vast numbers of women, villagers and ethnic minorities suffering severe human rights harms” in various parts of the world.236 Dozens of parties, in fact, support the petition to revoke on these grounds.237

Unocal’s code also requires that Unocal “[p]rotect the environment.”238 A few years ago, however, Unocal pled no-contest to three criminal misdemeanor counts after leaking a diesel-like thinning agent at its Guadalupe oil field in San Luis Obispo County.239 The company agreed to pay a $1.5 million fine and clean the 200,000 barrels of toxin that were dumped over the past forty years.240 In 1997, a federal judge found that Unocal could be liable for as much as $50 million in damages after it ignored environmental laws and dumped toxic chemicals into San Francisco Bay.241

While Unocal strives to “improve the quality of life in the communities where it do[es] business,”242 it currently defends itself against allegations of profiting from slavery, torture, and rape.243 With respect to charter.235 For the Petition to Revoke the Corporate Charter of the Union Oil Company of California, see Unocal Corporate Charter Revocation Action Center (visited Feb. 3, 1999) <http://www.heed.net/revoke.html> [hereinafter Petition].

236. Id.

237. Petitioners include: Action Resource Center; Alliance for Democracy of U.S.A.; Alliance for Democracy of Austin, Texas; Alliance for Democracy of San Fernando Valley, California; Gloria Allred (individual); Amazon Watch; Asian/Pacific Gays and Friends; Burma Forum Los Angeles; Democracy Unlimited of Humboldt County, California; Earth Island Institute; Michael Feinstein, City Council Member, Santa Monica, California (individual); Feminist Majority Foundation; Free Burma Coalition; Free Burma—No Petro-dollars for SLORC; Global Exchange; Randall Hayes (individual); National Lawyers Guild of U.S.A.; National Lawyers Guild of Los Angeles, San Diego, Santa Clara Valley and San Francisco; National Organization for Women (NOW); National Organization for Women (NOW) of California; Program on Corporations, Law; and Democracy; Project Maje; Project Underground; Rainforest Action Network; Harvey Rosenfield (individual); Surfers’ Environmental Alliance; and Transnational Resource and Action Center. See id.

238. See Unocal Code of Corporate Responsibility, supra note 233.

239. See Schoenberger, supra note 229, at 3. More recently, the California Coastal Commission approved a plan to dig up a Pacific beach to remove roughly 20 million gallons of oil that seeped from oil wells over a 44-year period. Approximately 2300 acres of the 3000-acre site were contaminated. See Tribune News Services, State to Bulldoze Oil-Tainted Beach, CHICAGO TRIBUNE, Nov. 4, 1999, at 4 [hereinafter State to Bulldoze].

240. See State to Bulldoze, supra note 239, at 4.


the pipeline project alone, a recent Department of Labor report cites evidence that is "consistent with and lends substantial credibility"\textsuperscript{244} to allegations of the use of slave labor on the Yadana pipeline project.\textsuperscript{245}

Unocal's activities in Burma and elsewhere indicate that multinationals' actions are not always consistent with the actions mandated by their codes. The allegations set forth in government reports and lawsuits such as Doe v. Unocal suggest that corporate codes and existing laws are simply insufficient to effectively impose a duty upon multinationals to respect human rights.

VI. IMPOSING AND ENFORCING A LEGAL DUTY TO RESPECT HUMAN RIGHTS

Corporations like Unocal claim legal rights as 'persons' under the law, yet if they actually were real persons they'd be 'out.' Baseball players and convicted individuals in California get only 3 strikes. Unocal, the California oil giant, has many strikes... and it's still playing.\textsuperscript{246}

Despite the proliferation of corporate codes, some multinationals continue to profit from human rights abuse. While positive corporate involvement is important, significant measures should be taken at federal and state levels to effectively combat this problem.\textsuperscript{247}

While this Article attempts to illustrate the limitations of codes of conduct, it does not take the position that codes are completely useless. In spite of their limitations, codes do serve laudable functions and have several valuable characteristics. Further, private initiatives are often more favorable than governmental intervention. Therefore, multinationals should adopt codes of conduct given that codes have successfully elevated or maintained ethical standards in many professions and industries.

The track records of some multinationals, however, indicate that codes alone are insufficient. Private initiatives must have proper guidance, and where such guidance is lacking, or where private initiatives fall short, governmental intervention becomes necessary. Codes must be based upon a solid foundation of minimum standards that are uniform and enforceable.

Yet, whereas many such codes are based upon legislated minimum

\footnotesize{personal jurisdiction, but not the claim against Unocal).}
\footnotesize{245. See Iritani, supra note 2, at C1.}
\footnotesize{247. See Orentlicher & Gelatt, supra note 44, at 69.}
standards, corporate codes have no such clear legal basis to establish minimum standards. Legislatively mandating minimum standards would be a fairly limited type of involvement and would allow multinationals or industries to adopt their own codes that can improve upon, or “wrap around,” the legislated minimum standard.

A. A Call to Congress: The Foreign Human Rights Abuse Act

Doe v. Unocal represents a substantial victory for human rights abuse victims by recognizing a “knew or should have known” theory against a corporation that “looked the other way” and benefited from atrocious acts. However, some commentators argue that the Unocal doctrine is too vague and offers little guidance to multinationals wishing to avoid such a lawsuit. In particular, questions remain as to how direct the benefit may be, the degree of knowledge required, and the types of human rights abuses included. Moreover, the final outcome of the case is yet to be determined, leaving the future in doubt for human rights abuse plaintiffs. To answer these questions and avoid similar ambiguities, the Unocal doctrine should be formalized by the legislature.

Congress has the authority to pass legislation making it unlawful to benefit from human rights abuse. In passing the Foreign Corrupt Practices Act (FCPA), Congress set forth ethical standards for American companies and in doing so relieved the courts of having to “define prohibited behavior on a case-by-case basis without any statutory guidelines.” Congress could similarly set forth human rights standards by enacting a “Foreign Human Rights Abuse Act” (Act). To be

250. Wallance, supra note 208, at 1210.
251. See id.
252. See id.
253. See id.
255. Wallance, supra note 208, at 1210.
256. Id. “The Unocal decision is important in its own right because it draws a line against American companies benefiting from slavery. But it will prove far more important if it ultimately inspires a Foreign Human Rights Abuse Act.” Id. Congress has moved to protect human rights in some other areas. See, e.g., The United States International Financial Institutions Act, 22 U.S.C. § 262d(f) (1994) (instructing U.S. Executive Directors
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comprehensive, the Act should make it unlawful for any company or its agent to induce, authorize, participate, assist, utilize, engage in, or accept the benefits of human rights abuse. The Act should also adequately define human rights abuse, including acts of torture, rape, child or forced labor, sweat-shop practices, genocide, and ecocide.

Moreover, like the FCPA, the Act could require that the Attorney General set forth guidelines describing specific types of conduct which would enhance the business community while conforming with the Act, and set forth general precautionary procedures that may be used to conform conduct to the Department of Justice’s present enforcement policy regarding the Act. Noncompliance with the Act could include both significant civil and criminal penalties. Finally, the Act could provide a cause of action for foreign nationals aggrieved with the conduct of multinationals.

Federal legislation is necessary to adequately overcome the limitations of voluntary codes, but legislation alone is not enough. The government should aggressively punish those corporations that disregard their obligations.

B. A Call to States: Corporate Charter Revocation

In addition to federal enforcement of the Act, states should reconsider multinationals’ privilege to do business under the corporate form. There is a growing movement to revoke the corporate charters of corporations refusing to satisfy their obligations. Although revoking a corporation’s

The United States Government, in connection with its voice and vote in the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Inter-American Development Bank, the African Development Fund, the Asian Development Bank, the African Development Bank, the European Bank for Reconstruction and Development, and the International Monetary Fund, shall advance the cause of human rights, including by seeking to channel assistance toward countries other than those whose governments engage in a pattern of gross violations of internationally recognized human rights, such as torture or cruel, inhumane, or degrading treatment or punishment, prolonged detention without charges, or other flagrant denial to life, liberty, and the security of person.


257. For further discussion of this movement, see Thomas Linzey, Awakening a Sleeping Giant: Creating a Quasi-Private Cause of Action for Revoking Corporate Charters in Response to Environmental Violations, 13 PAC ENVTL. L. REV. 219 (1995) [hereinafter
ability to do business and liquidating its assets may seem radical, such measures actually are well-founded in American and English law. Both England and the American colonies granted corporate charters with the understanding that the special benefits attached to incorporation were conferred for purposes of serving the public. Corporate status was regarded as a grant of privilege from the state, conditioned upon performing a valuable public service. As Justice Byron R. White recognized in First National Bank of Boston v. Bellotti, "[c]orporations ... are created by the [s]tate as a means of furthering the public welfare.") Thus, a corporate charter can be viewed as a social as well as legal contract, which makes each corporation a trustee of the public good. Accordingly, when a company fails to satisfy its obligations, its privilege to conduct business should be reconsidered.

In September 1998, dozens of groups petitioned the Attorney General of California to revoke Unocal's corporate charter. The petition alleged ten counts of Unocal atrocities:

1. Ecocide: Environmental Devastation.
2. Unfair and Unethical Treatment of Workers.
3. Complicity in Crimes Against Humanity: Aiding Oppression of Women.

Sleeping Giant] (explaining that the states retain ultimate control over corporations because of their ability to revoke charters) ; see also Thomas Linzey, Killing Goliath: Defending Our Sovereignty and Environmental Sustainability Through Corporate Charter Revocation in Pennsylvania and Delaware, 6 DICK J. ENVTL. L. & POL'Y. 31 (1997) [hereinafter Killing Goliath].

7. Complicity in Crimes Against Humanity: Killings, Torture and Rape.

8. Complicity in Gradual Cultural Genocide of Tribal and Indigenous Peoples.


10. Deception of the Courts, Shareholders and the Public.263

The petition has received strong support from members of the California legislature, city council members from several major cities, and the environmental group Greenpeace.264 If Unocal’s charter is revoked, it will not mark the first time a corporation lost its privilege to conduct business as a result of ignoring public duties.

For example, in Standard Oil of New Jersey v. United States,265 the Supreme Court upheld the revocation of an oil trust’s charter.266 At that time, American corporations had acquired more capital than any other country. Justice Harlan juxtaposed the danger of unchecked corporate activity to slavery:

All who recall the condition of the country in 1890 will remember that there was everywhere, among the people generally, a deep feeling of unrest. The nation had been rid of human slavery—fortunately, as all now feel—but the conviction was universal that the country was in real danger from another kind of slavery sought to be fastened on the American people, namely, the slavery that would result from aggregations of capital in the hands of a few individuals and corporations controlling, for their own profit and advantage exclusively, the entire business of the country, including the production and sale of the necessaries of life.267

The Court reasoned that the preservation of freedom depends upon the existence of a democracy free from economic and political domination by the elite.268 Some commentators have praised the Court’s reasoning, deeming “unchecked corporate power . . . inherently undemocratic.”269

263. How Many Strikes, supra note 246 (recounting the ten allegations of abuse by Unocal).


265. 221 U.S. 1 (1911).

266. See id.

267. Id. at 83 (Harlan, J., concurring in part and dissenting in part).

268. See How Many Strikes, supra note 246, at 17 (discussing Supreme Court reasoning for revoking corporate charter in Standard Oil of New Jersey v. United States).

269. Id.
All fifty states and the District of Columbia have statutes providing for revocation of corporate charters.\textsuperscript{270} Although states once regularly exercised their power to revoke corporate status,\textsuperscript{271} they may now be reluctant to do so because of increasing reliance on the corporate structure to provide economic income and growth.\textsuperscript{272} Further, the trickle of charitable gifts and community reinvestment combined with enormous corporate marketing campaigns has created the perception that charter revocation is unreasonable.\textsuperscript{273}

Multinationals are in a position to have an enormous impact on human rights and have the option to choose whether to make such an impact positive or negative. Yet, the act of granting corporate charters has become a mere administrative process.\textsuperscript{274} Over the last few decades, both

\textsuperscript{270} See Sleeping Giant, supra note 257, at 223 & n.15 (citing ALA. CODE \S 6 - 6 -590 (1994); ARIZ. REV. STAT. ANN. \S 10 -1430 (effective 1/1/96) (1994); ARK. CODE ANN. \S 4 - 75 - 205 (Michie 1993); CAL. CIV. PROC. CODE \S 803 (Deering 1994); CAL. BUS. & PROF. CODE \S 18410 (Deering 1993); CAL. CORP. CODE \S 1801 (Deering 1994); COLO. REV. STAT. \S 7-114 -301 (1994); CONN. GEN. STAT. \S 35 - 36a (1993); DEL. CODE ANN. tit. 8, \S 284 (1993); D.C. CODE ANN. \S 29 - 419 (1995); FLA. STAT. ANN. \S 607.1430 (West 1994); GA. CODE ANN. \S\S 7 - 1 - 92, 14 - 4 -160 (Michie 1994); HAW. REV. STAT. \S 842-5 (1993); IDAHO CODE \S 490.1430 (1994); ILL. REV. STAT. ch. 805, \S 20/1 (1994); IND. CODE ANN. \S 23 -1-47-1 (Burns 1994); IOWA CODE ANN. \S 490.1430 (West 1995); KAN. STAT. ANN. \S 17 - 6812 (1993); KY. REV. STAT. ANN. \S 271B.14 -300 (Baldwin 1993); LA. REV. STAT. ANN. \S 12:163 (West 1993); ME. REV. STAT. ANN. tit. 13 -A, \S 1111 (West 1994); MD. CORPS. & ASS'NS CODE ANN. \S 3 -513 (1993); MASS. ANN. LAWS ch. 155, \S 11 (Law. Co-op. 1994); MICHI. COMP. LAWS \S 600.4521 (1994); MINN. STAT. ANN. \S 556.07 (West 1993); MISS. CODE ANN. \S\S 11-39 -I, 11-39 - 3 (1993); MO. REV. STAT. \S 355.255 (1993); MONT. CODE ANN. \S 35 - 6 -102 (1994); NEB. REV. STAT. \S 25 -21,121 (1994); NEV. REV. STAT. ANN. \S 589A.180 (Michie 1993); N.H. REV. STAT. ANN. \S 293 - A:14.30 (1994); N.J. REV. STAT. \S 14A:12 - 6 (1993); N.M. STAT. ANN. \S 53 - 16 -13 (Michie 1994); N.Y. BUS. CORP. LAWS \S 1101 (McKinney 1994); N.C. GEN. STAT. \S 55 -14 -30 (1994); N.D. CENT. CODE \S 10 -19.1-118 (1994); OHIO REV. CODE ANN. \S 2733.02 (Baldwin 1994); OKLA. STAT. tit. 15 \S 567 (1994); OKLA. STAT. tit. 12, \S 1532 (1994); OR. REV. STAT. \S 30.580 (1993); PA. STAT. ANN. tit. 71, \S 824 (1994); R.I. GEN. LAWS \S 7-1-1- 87 (1993); S.C. CODE ANN. \S 33 - 14 - 300 (Law. Co-op. 1993); S.D. CODIFIED LAWS ANN. \S 21-28 -12 (1994); TENN. CODE ANN. \S 48 -24 -301 (1994); TENN. CODE ANN. \S 29 -35 -101 (1994); TEX. CORPS. & ASS'NS CODE ANN. \S 3A-Art.7.01 (West 1994); UTAH CODE ANN. \S 16 - 10a-1430 (1994); VT. STAT. ANN. tit. 11A, \S 14.30 (1994); WA. CODE ANN. \S 8.01- 636 (Michie 1994); WASH. REV. CODE ANN. \S 7.56.010 (West 1995); W. VA. CODE \S 53 -2-1 (1994); WIS. STAT. ANN. \S 180.1430 (West 1994); WYO. STAT. \S 17-16 -1430 (1994)); see also ALASKA STAT. \S 10.06.635 (Lexis 1998).


\textsuperscript{272} See Sleeping Giant, supra note 257, at 224.

\textsuperscript{273} See id. at 278.

\textsuperscript{274} See id. at 222.
multinationals and states have largely ignored the fact that corporate form is a privilege and not a right. They forget that "[c]orporations ... are created by the [s]tate as a means of furthering the public welfare"\(^{275}\) and that "[t]he [s]tate need not permit its own creation to consume it."\(^{276}\) The time has come for states to aggressively enforce multinationals' behavior by revoking their corporate charters. Of course, states should not exercise this power recklessly or whimsically. However, like physicians, lawyers, accountants, and other professionals, when multinationals such as Unocal continuously ignore their legal duties, their privilege to do business should be questioned.

VII. CONCLUSION

In response to media attention and public outcry over abuses of human rights, many organizations and companies have drafted or adopted codes of conduct; however, such codes are voluntary and have minimal enforcement mechanisms. To date, existing laws have also not effectively imposed or enforced a duty upon multinationals to respect human rights. For example, the Clinton administration banned American companies from conducting new business in Burma,\(^ {277}\) but did not require the cessation of existing business operations. Also, the ban does not address similar atrocities that could occur in other countries. Such approaches are not only limited, but are also reactive rather than proactive because they allow human rights abuses to continue until Congress or the President takes notice.

Large multinationals may have more economic power than that of small countries. One-half of the world's largest economies belong not to nations but to corporations.\(^ {278}\) Moreover, seventy percent of global trade is controlled by only 500 corporations.\(^ {279}\) Their strength can make them quasi-governmental in nature and as powerful as some nation-states.\(^ {280}\) It would be difficult to imagine a single type of entity that has had a greater impact on American society and economics than the modern corporation.\(^ {281}\) At the same time, however, multinationals are sometimes considered the largest violators of environmental and labor statutes.\(^ {282}\)

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276. Id. at 809.
279. See id.
280. See Petition, supra note 235, at 15.
281. See Killing Goliath, supra note 257, at 32.
282. See id. (citing ERNEST CALLENBACH ET AL., ECO MANAGEMENT: THE ELMWOOD GUIDE TO ECOLOGICAL AUDITING AND SUSTAINABLE BUSINESS (1993)).
The ability of multinationals to profit from human rights abuses can be significantly limited by federal initiative and by states revisiting corporate privileges. Multinationals must be expected to respect human rights, and government should intervene to demand that they do so. Every year, states permanently revoke the privilege of hundreds of accountants, doctors, lawyers and others to do business.\textsuperscript{283} There is no reason to treat corporations differently.

\textsuperscript{283} See Petition, supra note 235, at 4.