
Defending Labor Rights: On the Barricades and In the Boardroom

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“We’re having a big discussion within our internal business group... The big question is: When do you move from a promotional, friendly relationship with a company to an oppositional relationship ... There are Amnesty members who probably say the only way you can deal with business is on the barricades. Others say the best way is to go and speak with the board. There will also be a range of views between the two extremes.”

– Irene Kahn, Secretary-General, Amnesty International, 12 June 2002¹

Because multinational corporations (MNCs) wield such conspicuous power and wealth, critics and activists seek to hold them responsible for a myriad of social problems resulting from the increased international trade and investment that characterize globalization.² Many have called for greater social responsibility from MNCs on issues ranging from the environment to combating the scourge of AIDS.³ Among other things, global marketing firms are being asked to provide transparent assurance that their subcontractors and suppliers in Third World nations honor the rights of workers to a living wage, overtime pay, safe and healthy working conditions, and free association.⁴

For a number of reasons, the movement to hold multinational corporations responsible for labor and human rights has largely been channeled through nongovernmental organizations (NGOs). Many of the activities and transactions of MNCs are geographically dispersed and fast moving. As a result, they elude the governing will and capacity of both the developed countries in which MNCs are based and the Third World countries in which manufacturing

operations are located. In Third World countries, the competition to attract foreign capital and corruption both contribute to lax enforcement of local labor laws in a phenomenon that some have called a “race to the bottom.”

At the same time that national governments have failed to regulate the global labor practices of MNCs, international institutions have yet to acquire sufficient power and global support to do so.⁵ Legislators from time to time have considered imposing national and international legal obligations on MNCs operating in foreign countries.⁶ To date, however, these efforts have not yet proved to be fruitful. NGOs, along with labor unions, have stepped into the power vacuum to become the most conspicuous and vociferous critics of multinational corporations on labor and human rights.⁷ Not all observers, however, welcome the power wielded by NGOs. Some critics argue that efforts to impose common international labor standards restrict trade and investment, and thereby hold back the development of poor countries by suppressing employment opportunities.⁸

In the United States, public attention first focused on sweatshop issues in the mid 1990s when the National Labor Committee, led by Charles Kernaghan, spearheaded a highly effective media campaign exposing labor abuses at the licensees of a clothing label associated with television personality Kathy Lee Gifford.⁹ In Europe, consumer activism on global labor rights issues presaged the movement in the United States. In the early 1990s, the Clean Clothes Campaign began in the Netherlands. A decade later there were Clean Clothes Campaigns in ten Western European countries pressuring retailers to use their purchasing power to improve global labor conditions.¹⁰

Not surprisingly, the watchdog human and labor rights role staked out by NGOs has engendered significant tension with MNCs. This tension over worker rights reflects a broader trend of mutual distrust. A 1998 Notre Dame-PricewaterhouseCoopers study authored by Georges Enderle and Glen Peters found that 41 percent of NGOs concerned with international social issues regarded their relationship with MNCs as “antagonistic,” and another 47 percent said it was “ambivalent.” Moreover, the same survey found that 62 percent of NGOs believe that MNCs do not care about ethical standards. Looking to the future, however, optimism prevails. 61 percent foresee a time when relations between them will be “cooperative.” Although only 30 percent of NGOs surveyed had actually cooperated with MNCs, 80 percent thought it was possible to do so.¹¹

As the twenty-first century begins, many—though decidedly not all—NGOs are cooperating with MNCs to improve labor and human rights conditions in third world factories. As the comments of Amnesty International’s Irene Kahn poignantly illustrate, however, many human rights NGOs remain ambivalent, if not downright confused, about whether the better course is to confront or

cooperate with MNCs. Utilizing data gathered from interviews with managers from global marketing companies and NGO leaders concerned with global labor rights, this article examines the strategic choices behind collaborative efforts as well as the reasons why many NGOs remain deeply skeptical of the motivations of MNCs and choose instead to pursue confrontational tactics. The article also offers various suggestions for how the effectiveness of this cooperation may be enhanced.

Confrontation and Cooperation: Varying Objectives and Tactics of NGOs

The voluntary workplace code of conduct has become a *cynosure* in the struggle for labor and human rights in the global economy.¹² Responding to pressure from student groups, labor rights activists, and NGOs, many retailing and manufacturing companies have adopted voluntary codes to govern their own manufacturing operations and those of their subcontractors and suppliers in third world nations.¹³

NGOs have had varied responses to the voluntary efforts of MNCs to adopt and enforce codes of conduct. Some have encouraged these voluntary efforts and worked cooperatively with MNCs in the hopes of achieving sustainable and systemic—albeit incremental—improvements in the protection of global labor and human rights. For example, NGOs such as Social Accountability International (SAI), the Fair Labor Association (FLA), and the Ethical Trading Initiative (ETI) have developed standardized voluntary codes of conduct for adoption by participating companies. These NGOs have also engaged MNCs in a wide array of collaborative efforts to monitor compliance with voluntary codes and improve labor conditions in third world factories. By contrast, NGOs such as the United Students Against Sweatshops (USAS) and Global Exchange, working in tandem with unions such as the Union of Needletrades, Industrial and Textile Employees (UNITE), have maintained a skeptical attitude and, in large measure, a confrontational approach toward MNCs. These groups continue to keep the pressure on MNCs through muckraking investigations and publicity campaigns that expose egregious practices in selected manufacturing facilities throughout the world.

While this article concerns global labor rights, a mixture of cooperation and confrontation between NGOs and MNCs can also be observed in regard to other human rights and social issues. Moreover, government can sometimes play a useful role in facilitating such cooperation. Perhaps the most successful example of such government facilitation can be found in the creation, in the last year of the Clinton administration, of the Voluntary Principles on Security and Human Rights, for which U.S. State Department and U.K. Foreign Office

Michael A. Santoro

brought together human rights NGOs and several large oil, mining, and energy companies.¹⁴

Embracing cooperation wholeheartedly: SAI, FLA, and ETI

Social Accountability International, a multi-stakeholder NGO with participation from industry and labor, started operations in 1997. It was founded by the Council on Economic Priorities to enhance the effectiveness of existing supply chain code of conduct programs.¹⁵ Its verification system is modeled after International Organization for Standardization (ISO) methodology. The SA8000 standard is designed to function either as a substitute for or as a complement to a company's own voluntary code.

SAI oversees a standardized, global system enabling MNCs to monitor the labor practices of their suppliers and subcontractors. It accredits and trains third-party monitoring firms to conduct social certification audits of facilities in nine categories—child labor, forced labor, health and safety, freedom of association, discrimination, disciplinary practices, working hours, management oversight, and compensation (including a living wage provision). In many countries, SAI also partners with international trade unions, local NGOs, and others to provide worker training, supplier training and auditor training. The SA8000 standard is derived, as are most voluntary codes, from existing human rights instruments, including the Universal Declaration of Human Rights, the United Nations Convention on the Rights of the Child, and various conventions of the International Labor Organization.

By the middle of 2002, eight auditing organizations had been accredited to conduct SA8000 certification audits. Certification had been earned by 133 facilities, employing over 69,000 workers, in 26 countries, including China, Italy, the United States, Vietnam, Brazil, Turkey, Malaysia, and Pakistan. Once certified, a facility is subject to semi-annual audits verifying continual compliance and successful implementation of corrective actions. In addition, SAI reports, over 2000 workplaces had been monitored to evaluate their “audit readiness.”

The SA8000 auditing process has had some notable glitches requiring use of its complaint and appeal system. For example, in 2000, the Christian Industrial Committee, a Hong Kong-based labor rights organization charged that the Yongsheng shoe factory in southern China was in violation of the SA8000 standard and was improperly certified by the Norwegian social auditing firm, Det Norske Veritas. After investigation of the complaint, the factory's certification was suspended.¹⁶ In 2001, certification was withdrawn from the Lizhan Chinese shoe factory where investigators from the U.S.-based National Labor Committee (NLC) found dormitory rooms packed with up to 28 people and 12 hour work-shifts. (The SA8000 standard limits work time to 48 hours of regular

shifts and 12 hours of overtime per week.) The NLC also found that workers were coached to lie to SA8000 inspectors.¹⁷ SAI's Executive Director Eileen Kaufman cites these de-certifications as evidence that the SA8000 system is working. "The fact that certification is public," says Kaufman, "provides structure for anyone with evidence of non-compliance to trigger an investigation leading to corrective actions or suspension or revocation of certification. Complaints have also led to changes to improve audit procedures."¹⁸

Companies committed to SA8000 have total annual revenues of over \$100 billion. They include Avon, Cutter & Buck, Toys 'R' Us, and Dole from the United States, Switzerland's Vogeleg and Amana, Italy's Coop Italia, Dutch WE Europe, and Germany's Otto Versand. Tom Deluca, vice president for product development and compliance at Toys 'R' Us, has stated that eventually all of its five thousand suppliers will be required to obtain certification under SA8000.¹⁹

Perhaps the most significant potential marketplace impact of SA8000 is its certification mark. Workplaces determined to be in compliance with SA8000 will be entitled to use the SA8000 certification mark. It is designed to signal to consumers that a company's factories respect labor and human rights. The certification mark will enable consumers to make morally informed choices about the goods they buy. It will be interesting to see whether, given the choice in the marketplace, consumers will exhibit a preference for goods manufactured by certified factories.

The marketplace preferences of consumers will constitute a critical factor in the long-run success of the global labor rights movement. Though proponents of codes of conduct argue, sometimes with anecdotal evidence, that the benefits of such programs in the form of increased efficiency and decreased worker turnover outweigh the costs of implementation, to date there has been no comprehensive and convincing study demonstrating such cost-effectiveness.

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It would seem inevitable that raising labor standards will increase production costs. Any increased production cost attributable to maintaining labor standards will ultimately be passed along to consumers. The willingness of consumers to absorb the costs of upholding labor rights is critical, therefore, to the effectiveness and sustainability of corporate codes of conduct.

There is some evidence suggesting that consumers are willing to pay more to uphold labor rights, but this evidence is not conclusive. A survey conducted by Marymount University in Arlington, Virginia found that 86 percent

of Americans surveyed said that they would pay an extra dollar on a \$20 garment if they knew it was made in a “legitimate” shop, i.e. one that respected human rights. However, only marketplace experience will establish conclusively whether consumers actually will behave in accordance with the avowed preferences in the survey or whether, faced with the prospect of paying higher prices for certified goods, they will purchase with their budgets rather than their conscience in mind. For this reason, consumer reaction to the SA8000 mark will be an important telltale. If consumers accord no marketplace value to the SA8000 mark it will be a significant impediment to the global labor rights movement. In effect, this will mean that “good” companies that maintain labor standards will suffer a competitive disadvantage vis-à-vis “bad” companies that do not.²⁰

The FLA offers an alternative code of conduct and monitoring system.²¹ As does SAI, the FLA accredits third-party monitors to conduct audits. However, it does not have a certification mark. Prior to charter amendments adopted by the FLA Board of Directors in April 2002, to qualify for participation in the FLA, external, third-party monitors had to inspect 30 percent of a firm’s suppliers and subcontractors over the initial implementation period, which could be as long as three years, at the company’s election. Additionally, the company itself must follow certain internal procedures such as ensuring that a code of conduct was posted and communicated to all factories within a two-year period. Even if one could be assured of the reliability of all of the third-party audits, the FLA system thus crucially depended upon the effectiveness of internal checks, a feature that critics decried as inherently unreliable.

As a result of the April 2002 charter amendments, the FLA will employ external monitors to inspect a random statistical sampling of member companies’ manufacturing facilities. In most cases, according to the estimates of statisticians hired by the FLA, this will mean that less than five percent of any given company’s facilities will be inspected each year. All such inspections will be unannounced and conducted by monitors selected by the FLA. The inspection results will be posted on the FLA website.

Companies participating in the FLA include adidas-Salomon, Gear, Levi Strauss, Liz Claiborne, Nike, Patagonia, Reebok, Eddie Bauer, and Polo Ralph Lauren. Over 170 colleges and universities are also members of the FLA. These schools require all of their licensees manufacturing clothing and other goods bearing university logos to follow the FLA code of conduct.

Some European-based labor rights NGOs have also adopted a strategy of cooperation with MNCs. For example, the U.K.-based Ethical Trading Initiative is a tripartite alliance of companies, NGOs, and trade unions working collaboratively to “ensure that the working conditions of employees in companies that supply goods to consumers in the United Kingdom meet or exceed international standards.”²² ETI has a “base code” derived from ILO principles

which participating companies may either adopt verbatim or incorporate into their own codes. At the beginning of 2002, ETI had 26 corporate members, including Marks & Spencer, The Body Shop, and Tesco.

ETI has no certification or accreditation programs. Instead, it emphasizes learning, research and sharing information about implementing codes of conduct in global supply chains. A central mission of ETI is to produce reports, analyses of labor conditions, and surveys of “best practices” that can be shared among participating companies. For example, one ETI pilot project in India is investigating ways to effectively identify and remedy child labor problems.²³

NGOs emphasizing confrontation: UNITE, USAS, and Global Exchange

Despite the rapid proliferation of voluntary codes in recent years, some labor rights advocates remain deeply skeptical about the integrity of self-monitoring and assert that external monitoring systems such as those offered by SAI and the FLA are unreliable, serving only to cosmetically cover up deep and systemic problems. On a broad level, these critics worry that the emphasis on voluntary codes undermines the growth of trade unions and governmental interventions, both of which the critics

view as more reliable and effective than voluntary codes. In particular, the criticism has been over both the standards required for certification and the monitoring procedures employed to

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assure compliance. Controversy has arisen, for example, over whether codes should require workers to be paid a “living wage”²⁴ and whether participating companies should be required to engage in collective bargaining with independent trade unions. There also has been considerable debate over issues such as the frequency of factory inspections and the need for unannounced inspections.

As a result of such concerns, student groups, NGOs, and labor unions such as USAS, Global Exchange, and UNITE have chosen to address global labor issues by targeting prominent name brand companies for muckraking investigations. By subjecting a few well-known companies to public embarrassment and condemnation, these groups hope to generate a public outcry and thereby pressure image-conscious companies into adopting significant reforms in the way they conduct global manufacturing operations.

In the Christmas shopping season of 2001, for example, UNITE announced a publicity and demonstration campaign against 10 retailers. As Christmas approached, UNITE targeted fewer and fewer retailers, based in part

on the willingness of each company to negotiate with UNITE. The Union's goal was to exact concessions from retailers on a living wage, child labor, safe working conditions, and the right of workers to organize a union. UNITE President Bruce Raynor explained the union's intentions: "Retailers know if a seam is one-eighth inch off, but they say they don't know it's made with child labor. Bullshit. They know exactly what's going on, and we'll hold them accountable."²⁵

Following a somewhat different strategy, USAS has proposed a code of conduct program, termed the Workers Rights Consortium (WRC), whose substantive provisions are in certain respects more rigorous than those required by SAI and the FLA. The WRC is mostly intended to address the practices of companies that manufacture apparel and other licensed products for the collegiate market. It is funded through annual fees—one percent of licensing revenues—collected from member schools.²⁶

Among other things, the WRC's model code requires the licensees of its collegiate members to manufacture only in factories that pay a living wage and bargain collectively with independent trade unions. In effect, this means that when licensees operate in China, where all trade unions are by law under the control of the All China Confederation of Trade Unions, they will technically be in violation of the WRC code. As of mid-2002, more than 100 schools had joined the WRC. However, according to Marybeth Schmutz, a member of the Board of Directors of the Association of Collegiate Licensing Administrators, "very few were requiring their licensees to comply with the 'living wage' and collective bargaining provisions of the WRC code."²⁷

The WRC makes no pretense of creating a system of monitoring and compliance analogous to those offered by SAI and the FLA. In essence, the WRC "code of conduct" is really a platform for conducting a limited number of targeted investigations that, according to Scott Nova, WRC's Executive Director, "are designed to take an in-depth look at key factories and determine whether the brands' internal monitoring is getting the job done."²⁸ Rather than attempting to set up a systematic third-party monitoring system covering thousands of factories, Nova says that the WRC uses the prospect of negative publicity to "create a permanent incentive for multinationals to upgrade conditions in their factories." As the WRC website proclaims, "instead of attempting to create a comprehensive monitoring regime in order to certify companies, the WRC will use limited but carefully targeted investigatory resources to hold companies accountable ... Coupled with broad-based public disclosure, spot investigations force each licensee to recognize that any plant located around the world can bring negative exposure at any time."²⁹

Other NGOs also continue to follow primarily confrontational strategies in their approach to global labor rights. While these NGOs eschew cooperation

with MNCs, they often take advantage of the information sharing made possible by the Internet and global professional networks to work in tandem. Global Exchange, for example, is a San Francisco-based NGO active in a broad array of “environmental, political, and social justice” global issues. Working in partnership with like-minded NGOs around the world, Global Exchange’s anti-sweatshop Clean Clothes Campaign seeks to highlight abusive practices by targeted brand-name companies. In March 2002, Global Exchange collaborated with Oxfam Community Aid Abroad to issue a report criticizing abusive labor practices by Nike and adidas in selected factories in Indonesia.³⁰

Good Cop, Bad Cop: Cooperation and Confrontation as Complements

In certain respects the cooperative approaches of NGOs such as SAI and the FLA work at cross-purposes with the confrontational tactics of USAS, UNITE, and Global Exchange. Nowhere is the heat of this opposition felt more keenly than among the beleaguered college administrators caught in the middle of the battle between the two groups. Conscious of their own image and ethical responsibilities, college administrators are anxious to take some action to help assure that products manufactured by their licensees (tee-shirts, mugs, baseball caps, etc.) are in conformity with minimal global labor standards. For college administrators, participation by their licensees in programs such as the FLA and SAI is comforting, as it represents a palpable, albeit flawed, step toward the ideal goal of assuring that they all licensed goods be manufactured with respect for labor and human rights. The best intentions of administrators have not, however, been rewarded. USAS has been highly effective in training and organizing student representatives to lambaste administrators who adopt the imperfect and incremental solutions that FLA and SAI represent. Many college administrators—some simply to avoid unpleasant encounters with radicalized students and others because they recognize the merits of complementary strategies—have decided to join both the FLA and the WRC initiative introduced by USAS.

Although they sometimes work at cross-purposes, the carrot and stick tactics variously employed by NGOs can also work in a complementary fashion. Confrontational tactics have been very successful in shining a spotlight onto the issue of labor abuse and in scaring the heck out of multinational corporations. Moreover, USAS, UNITE, and other like-minded groups have been very influential in pushing the envelope on what is considered possible. For example, when USAS first suggested that companies manufacturing under collegiate licenses disclose the locations of all of their subcontractors in Third World countries, they were met with incredulous denial. “Impossible,” they were told. “That is a valuable trade secret,” many companies asserted. But after years of

pressing on the issue by USAS, nearly all of the companies participating in FLA-monitored collegiate licensing programs have agreed to make such disclosure widely available.

Buoyed by such successes, student groups continue to exert pressure on the FLA to put more teeth into the third-party monitoring process. The WRC's Scott Nova emphasizes how investigative tactics complement the monitoring process: "The WRC's targeted, in-depth investigations provide a level of information about key factories that is not available from other groups, and, by finding problems other monitors may miss, create an incentive for companies to improve their more systematic compliance efforts. Thus, schools can look to the FLA for broader scope and the WRC for its essential watchdog function."

Although they have been successful in focusing attention and pushing the frontiers of the agenda, the "bad cop" groups such as WRC and UNITE have not sought to develop comprehensive, independent supply chain monitoring systems. That has been the strong suit of "good cops" such as SAI that have

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cooperated with MNCs to fashion workplace codes of conduct and to pursue the formidable task of setting up reliable, sustainable, and comprehensive global systems for monitoring compliance with those codes throughout the

supply chain. Despite the publicity accorded to the embarrassing missteps in the implementation of internal and third party monitoring programs, they nevertheless constitute an indispensable element of any serious solution to the global sweatshop problem. NGOs such as the SAI have invested significant time and resources in order to position themselves as trustworthy "honest brokers" that will work cooperatively with companies to improve the way such systems work.

The radically divergent tactics of confrontation and cooperation thus prove, on closer inspection, to be highly complementary. Neither tactic would be as effective without the other. It is interesting to note that while some individual NGOs are exclusively cooperative and others are exclusively confrontational, some are attempting the yin-yang task of pursuing the two tactics simultaneously. The WRC, for example, is putting increasing emphasis on working with companies to develop solutions to the problems it uncovers. The WRC's watershed experience was its investigation of Mexmode—a factory in Mexico that supplied college sweatshirts to Nike and Reebok. Marcela Munoz, a seamstress, and other workers were fired for boycotting the cafeteria because they were angered to find worms in their salad. The WRC, after initially

emphasizing public pressure as a tactic, made a conscious effort to work with Nike, Reebok, and the factory operators to improve conditions in the factory.³¹ Encouraged by such successes, the WRC's Scott Nova says, "there is no point in exposing violations at a factory if you are not committed to doing the work necessary to eliminate those abuses. In some cases that requires public censure. In others the best approach is cooperative engagement. This is the tactic we are employing at the PT Dada factory, a major stuffed animal and cap factory in Indonesia."

From a public policy perspective there is room in the global labor rights movement for all sorts of NGOs that do their job effectively and with integrity—those that are fully cooperative with MNCs, those that are wholly confrontational, and those that try to be a little bit of both. The important thing is that the movement as a whole continues both to cooperate with MNCs when progress can be made that way and to challenge MNCs when that is required. As successful as the WRC has been in particular instances such as Mexmode, however, such efforts cannot by themselves create global, systemic, and sustainable change. There are literally hundreds of thousands of factories scattered throughout the globe where brand name companies manufacture their goods for export to Europe, the United States, and other economically advanced countries. Though cooperative programs such as those promulgated by the SAI are flawed, they do, through sustained engagement with MNCs, offer the promise of addressing global labor rights issues at the required scale. They also offer extensive resources for organizational and policy changes within MNCs. Alas, such systemic and global changes proceed imperfectly and at a glacial pace. There will, therefore, continue to be an equally important watchdog role for NGOs such as the WRC for the foreseeable future.

The debt owed to the more confrontational NGOs is not lost on the cooperative NGOs. The FLA's Executive Director, Auret Van Heerde, credits the more confrontational NGOs with the "ability to uncover problems." In explaining why the FLA chooses to go the cooperative route, however, Van Heerde explains that "once you've uncovered a problem, the question becomes how to fix it. To do that you need access to manufacturing facilities and to the brand name companies that have the leverage to achieve change in those facilities." Van Heerde goes on to say that "whereas other NGOs might see their role as investigatory, our role is to be programmatic and consistent—to get contractors and brands to sign on to a multi-year compliance program."³² SAI's Executive Director Eileen Kaufman agrees: "There are many different roles to play in the struggle for labor rights. We don't try to play every role. Our mission is to achieve change by means of implementing multi-stakeholder consensus." The WRC's Scott Nova envisions its role as changing perceptions about what is possible to achieve by honing in on particular cases: "Our job is to pinpoint

abuses and get the problems fixed, while encouraging companies to take the positive lessons they learn from remediation efforts at one factory and begin to apply them across the board.”

The Fruits of Cooperation for MNCs

Many global marketing companies have eagerly seized the olive branch extended by some elements of the NGO community. They have joined collaborative programs such as the FLA, SAI, and ETI to bolster their own codes of conduct and monitoring efforts. MNCs perceive a number of benefits from cooperating with NGOs. The most important are gauging public expectations of their behavior, gaining credibility for their efforts, securing access to resources, and achieving greater leverage with their contractors.

At a minimum, it behooves MNCs to keep in close communication with NGOs because NGOs offer the most effective way for MNCs to understand what the public expects from them. As Doug Cahn, Vice President for Human Rights Programs at Reebok, notes, “a company cannot afford to be blind to what NGOs expect and the standards to which we will be held because those expectations, when the NGOs have representation from the labor rights communities, often approximate the expectations of the community.”³³ Moreover, cooperation with NGOs can offer a kind of safe harbor from the often uncertain and unpredictable spotlight of public opinion. As SAI’s Eileen Kaufman puts it, “companies working with us will have the benefit of a clear and well-developed system. We have a definite standard and a well-defined program of certification.”

NGOs are also a potential source of credibility for MNCs seeking to promote a global brand. Many NGOs, particularly those where labor rights advocates have a voice, have established credibility with stakeholders that are crucial for MNCs, e.g. the press, students, workers, and consumers. By working cooperatively with such NGOs, MNCs are better able to establish their own bona fides in addressing worker rights. Doug Cahn of Reebok notes “as a global brand, we need to demonstrate transparency in our labor rights efforts. We need to demonstrate to a broad audience that we are doing our job. When companies and NGOs collaborate on a project that truly benefits workers, the credibility of a company’s labor compliance program is almost always enhanced.”

The credibility benefits of working with NGOs become pronounced when the integrity of a MNC is challenged. For example, when Global Exchange issued a report criticizing Nike’s labor practices in Indonesia, Nike immediately issued a rebuttal which referenced Nike’s cooperative efforts with other NGOs: “Nike is well aware of the issues raised in the report (based on interviews with 35 workers) because we engaged in a transparent assessment of our Indonesia

operations with an independent entity, the Global Alliance for Workers and Communities, that involved interviews with 4,000 workers.” Nike also cited its work with the FLA: “If there are further specific issues of concern they can be freely raised through the Fair Labor Association (FLA) grievance process to ensure their swift and fair resolution ... In Indonesia and around the world, Nike participates in independent monitoring through the FLA.”³⁴

NGOs also offer a plethora of informational and training resources that can help MNCs to implement their human rights programs more effectively. Apart from having model codes of conduct, some NGOs such as SAI and the FLA have independent monitoring systems that can help MNCs measure the effectiveness of their internal effort. Moreover, NGOs are the repository of significant expertise and networks of influence into which MNCs can tap. For example, when Reebok was having trouble with some of its suppliers in a Southeast Asian country, an NGO helped the company to identify local NGOs that provided training in local labor laws to its factory operators. Seeking a credible independent monitor for its factories, Liz Claiborne worked with the International Labor Rights Fund and Business for Social Responsibility as project facilitators to identify a suitable NGO. This process helped lead to the formation of the Commission for the Verification of Corporate Codes of Conduct (COVERCO). Liz Claiborne began working with COVERCO in Guatemala on a pilot project with two goals—(1) to get an in depth look at conditions in one factory and to help the company to formulate solutions to those problems, and (2) to experiment with how it might make its labor compliance program more publicly transparent. Tom Deluca of Toys ‘R’ Us even enrolled in one of SAI’s training programs for independent monitors. “I wanted to see for myself how good the training was and what the auditors needed to learn to be certified. Knowing about the training process helps me when I talk with factory operators about what it will take them to come into compliance with the SA8000 standard.”

The FLA’s Van Heerdeken notes that companies may not be cognizant of all of the value-added programs the FLA makes available, e.g. a third-party complaint system in which the FLA will independently investigate allegations of abuse, and a crisis management program for factories with particularly egregious violations that need to be addressed speedily. Eileen Kaufman of SAI also touts the consultative capacities of her NGO in terms that speak to the bottom line concerns of business managers: “We help companies to achieve continuous improvement, to meet and exceed minimum standards,” Kaufman says, “and working with SA8000 can help firms to achieve efficiency gains.” She cites as an example the way that a Thai factory addressed the problem of excessive overtime: “What began as an inquiry into how to lower work hours to comply with SA8000,” says Kaufman, “ended up as a reengineering effort which also evidently replaced a traditional assembly production process with a quality


circle manufacturing operation that increased productivity and maintained compensation levels at the plant.” Similarly, in India, Kaufman reports, “a government case study of a textile factory reported synergies among SA8000, ISO 9000, and ISO14000 certification efforts that resulted in reduced effluent, input savings and a halving of overtime.”

A final benefit of cooperating with NGOs is that it enables MNCs to leverage influence over their contractors and suppliers through collaborations with other companies. In most cases, when an MNC contracts with a supplier, the MNC represents only a fraction of that supplier’s business. This makes it difficult to impress upon that supplier the urgency of operating a factory in a manner that respects the labor and human rights of workers. By working in collaborative initiatives with NGOs and labor rights advocates, however, MNCs can coordinate their own efforts in particular factories with those of other companies and thereby increase their leverage over their suppliers. As Reebok’s Doug Cahn puts it, “we may be only 20 percent of a particular supplier’s business and thus have little influence, but when we can combine with two other companies that each have 20 percent, we can leverage our influence over that factory operator.” The FLA’s Aurret Van Heerdeen concurs, adding “there are benefits to an association which go beyond the sum of the parts.”

Although the benefits of working cooperatively with NGOs are manifest, executives of MNCs must be thoughtful about how they approach such relationships. One key to working effectively with NGOs is the need to carefully choose NGO collaborators. As Doug Cahn of Reebok, puts it, “we can’t participate in every NGO labor rights system. There are enough different models that it would be burdensome to adopt each system. Each has their benefits and costs.” For Tom Deluca of Toy ‘R’ Us, SAI’s multi-industry approach is an important attraction: “We are more than a toy company. We sell apparel and baby products too. Working with a cross industry standard like SA8000 means that we don’t have to work with three separate programs.”

Once the decision is made to cooperate with NGOs the collaboration cannot be half-hearted and may involve more openness and transparency than a company is used to showing to the public. Liz Claiborne’s Vice President for Human Rights Compliance, Daryl Brown, emphasizes the importance of embracing openness, whatever it might lead to. Referring to public documents issued by COVERCO about a plant in Guatemala, Ms. Brown said “the reports were candid and at times reported on issues that were disturbing to all. But this is what transparency and credibility are all about.”³⁵ The FLA’s Van Heerdeen observes “many companies, because of their corporate culture, find it hard to embrace transparency with open arms, but it’s ultimately in the company’s interest to do so.”

Conclusion

There will always be some degree of tension between NGOs and MNCs. This is inevitable in ongoing relations between organizations with different aims—profit for stockholders versus advocacy of labor and human rights.³⁶ As the FLA's Van Heerdeken observes, "after all, our responsibility is ultimately to the public." Because MNCs and NGOs have different ultimate objectives, they will never be perfect partners. There will always be some areas of disagreement between them. The fact that there will always be tension in the relationship, however, does not mean that the relationship must always be antagonistic. As we have seen, both NGOs and MNCs have much to gain from cooperating with one another. These benefits constitute a compelling incentive for NGOs and MNCs to take steps to enhance the effectiveness of this cooperation. For both sides, there is understandable ambivalence about such cooperation. Ultimately, however, the most important reason for seeking effective cooperation is that it can lead to real improvements in the lives of low-wage workers in developing countries. 

Notes

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1. Alison Maitland, "Human Rights and Accountability," *Financial Times*, 12 June 2002.

2. See generally Debora L. Spar, "The Spotlight and the Bottom Line," *Foreign Affairs* (March/April 1998). The debate over global corporate accountability echoes a deeper ambivalence about the effects of globalization. Compare Jagdish Bhagwati, "Coping with Antiglobalization: A Trilogy of Discontents," *Foreign Affairs* (January/February 2002) with Samuel M. Hartman, *Social Movement Perspectives: Examining the Reasons Behind the '99 WTO Protests* (Senior Thesis, Haverford College 2001).

3. One watershed of the accountability being demanded by the world community is United Nations General Secretary Kofi Annan's call for MNCs to pledge adherence to a "Global Compact" on social concerns. See <http://www.unglobalcompact.org/gc/unweb.nsf/content/thenine.htm> (Accessed 24 July 2002).

4. See generally Robert J.S. Ross and Anita Chan, "From North-South to South-South: The True Face of Global Competition," *Foreign Affairs* (September/October 2002) and David S. Weissbrodt, *Human Rights Principles and Responsibilities for Transnational Corporations and Other Business Enterprises*, U.N. Doc. E/CN.4/Sub.2/2002/XX/Add.1, E/CN.4/Sub.2/2002/WG.2/WP.1/Add.1 (2002), available at <http://www1.umn.edu/humanrts/introduction05-01-02finalhtml> (Accessed 24 July 2002). For an analysis of child labor issues, see Kaushik Basu, "International Labor Standards and Child Labor," *Challenge* 42 (September/October 1999): 80-92. The ethical and public policy issues concerning MNCs and human rights are addressed in Michael A. Santoro, *Profits and Principles: Global Capitalism and Human Rights in China* (Cornell 2000). For an ethical analysis of corporate

responsibility for worker rights violations, see Laura P. Hartman, Bill Shaw, and Rodney Stevenson, "Exploring the Ethics and Economics of Global Labor Standards," and Denis G. Arnold and Norman E. Bowie, "Sweatshops and Respect for Persons," both forthcoming in *Business Ethics Quarterly*.

5. For an analysis of the reasons behind the limited power of existing international institutions such as the Human Rights Commission and the International Labor Organization, see Chapter 9 of Santoro, *Profits and Principles*, *op. cit.*

6. In a White Paper published in July 2002, the European Commission rejected a regulatory approach to corporate social responsibility issues, including global labor rights, in favor of continued emphasis on voluntary efforts. *Corporate Social Responsibility: A Business Contribution to Sustainable Development*, 2 July 2002, available at http://europa.eu.int/comm/employment_social/soc-dial/csr/csr2002_en.pdf (Accessed 26 July 2002). For an analysis of the legality of such proposals under U.S. law, see Diane Orentlicher and T. Gelatt, "Public Law, Private Actors: The Impact of Human Rights on Business Investment in China," *Northwestern Journal of International Law and Business* 66 (1993): 14. For an argument that international human rights instruments and treaties might create legal obligations for private companies, see International Council on Human Rights, *Beyond Voluntarism: Human Rights and the Developing International Legal Obligations of Companies* (2002) available at <http://www.ichrp.org> (Accessed 29 July 2002); See generally European Union Committee on Development and Cooperation, *Report on EU standards for European Enterprises operating in developing countries: toward a European Code of Conduct* (17 December 1998), available at <http://www.cleanclothes.org/codes/howit.htm> (Accessed 29 July 2002).

7. The "instant classic" analysis of the rise of non-state actors in the global system is Jessica T. Mathews, "Power Shift," *Foreign Affairs*, (January/February 1997): 50-66; see generally *NGOs and the Universal Declaration of Human Rights: A Curious Grapevine* (Palgrave 1998); Claude Welch (ed.), *International Non-governmental Human Rights Organizations: Making a Difference?* (Pennsylvania 2000); see also Debora Spar and James Dail, "Of Measurement and Mission: Accounting for Performance in Non-Governmental Organizations," *Chicago Journal of International Law*, (Spring 2002).

8. See, e.g. David Henderson, "Misguided Virtue: False Notions of Corporate Social Responsibility" *Hobart Paper* no. 142 (5 November 2001), available at <http://www.iea.org.uk/record.php?type=publication&ID=143> (Accessed 29 July 2002).

9. Information about the National Labor Committee and the Kathy Lee Gifford campaign can be found at <http://www.nlcnet.org> (Accessed 29 July 2002).

10. Information about the Clean Clothes Campaign can be found at <http://www.cleanclothes.org> (Accessed 29 July 2002).

11. Georges Enderle and Glen Peters, *A Strange Affair? The Emerging Relationship Between NGOs and Transnational Companies* (1998), available at <http://www.pwcglobal.com> (Accessed 29 July 2002).

12. See Oliver Williams (ed.), *Global Codes of Conduct: An Idea Whose Time Has Come* (Notre Dame 2000).

13. For an account of the challenges of implementing a global code of conduct, see Stephen J. Frenkel and Duncan Scott, "Compliance, Cooperation, and Codes of Labor Practice: Inside adidas," forthcoming *California Management Review*; see generally Gary Gereffi, Ronnie Garcia-Johnson, and Erika Sasser, "The NGO-Industrial Complex," *Foreign Policy*, (July/August 2001).

14. The Voluntary Principles on Security and Human Rights can be found at http://www.state.gov/www/global/human_rights/001220_fsdtl_principles.html (Accessed 29 July 2002). See Bennett Freeman, "Drilling for Common Ground," *Foreign Policy* (July/August 2001) and Bennett Freeman *et al.*, "A New Approach to Corporate Responsibility: The Voluntary Principles on Security and Human Rights," *Hastings International and Comparative Law Review*, Vol. 24, No. 3 (Spring 2001).

15. Information about Social Accountability International can be found on its website <http://www.sa-intl.org> (Accessed 29 July 2002).

16. Jennifer Ehrlich, "Sweatshop Swindlers," *South China Morning Post*, 18 December 2000.

Defending Labor Rights: On the Barricades and In the Boardroom

17. Bruce Gilley, "Sweating it Out," *Far Eastern Economic Review*, 10 May 2001.
18. Author Interview with Eileen Kaufman, 12 March 2002.
19. Author Interview with Tom Deluca, 19 March 2002.
20. *The Consumer and Sweatsshops* (November 1999), available at <http://www.marymount.edu/news/garmentstudy/findings.html> (Accessed 29 July 2002). See *Profits and Principles*, *op. cit.*: 162-66.
21. Information about the Fair Labor Association can be found on their website <http://www.fairlabor.org> (Accessed 29 July 2002).
22. Information about the Ethical Trade Initiative can be found on their website <http://www.ethicaltrade.org> (Accessed 29 July 2002).
23. See <http://www.ethicaltrade.org/pub/activities/pilots/cildlab0102/index.shtml> (Accessed 26 August 2002).
24. For a discussion of the "living wage" debate, see the Lafollette Institute of the University of Wisconsin *Report on the Living Wage Symposium*, available at http://www.lafollette.iwsc.edu/livingwage/Final_Report/report.htm (Accessed 29 July 2002).
25. David Moberg, "Never Let Them See You Sweat," *InTheseTimes.com* (15 October 2001), available at <http://www.inthesetimes.com/web2523/moberg2523a.html> (Accessed 29 July 2002).
26. Information about the WRC can be found at <http://www.nlcnet.org/elsalvador/wrcandes.html> (Accessed 29 July 2002).
27. Author Interview with Marybeth Schmutz, 15 January 2002.
28. Author Interview with Scott Nova, 3 July 2002.
29. <http://www.nlcnet.org/elsalvador/wrcandes.html> (Accessed 29 July 2002).
30. Global Exchange, "We Are Not Machines," available at <http://www.globalexchange.org/economy/corporations/nike/machines/> (Accessed 29 July 2002). See Reuters, "Report Says Nike, Adidas Factories Still Sweatshops," 7 March 2002.
31. Ginger Thompson, "Mexican Labor Protest Gets Result," *New York Times*, 8 October 2001: A3.
32. Author Interview with Aurret Van Heerdeem, 13 March 2002.
33. Author Interview with Doug Cahn, 26 February 2002.
34. "Nike Statement Regarding Indonesia Report," Company Press Release, 7 March 2002. Copy available from the author. The press release also noted that, "in 2001, the FLA accredited eleven monitoring organizations to conduct independent external monitoring of participating companies' factories. Accredited monitoring organizations have already conducted external audits in Thailand, China, the Philippines, Indonesia, Malaysia, India, Bangladesh, Guatemala, Mexico, and in the United States." However, the press release did not specify whether any of these organizations conducted external audits of Nike factories in any of these countries.
35. Author Interview with Daryl Brown, 19 March 2002.
36. It should be noted that although, as a matter of corporation law, directors officers owe a fiduciary duty to stockholders to run the corporation for their benefit, there remains considerable disagreement among ethical thinkers as to which stakeholders are owed moral duties by directors and officers. The pioneering work on stakeholder theory is R. Edward Freeman, *Strategic Management: A Stakeholder Approach* (Boston: Pitman, 1984). In the legal literature, there is a longstanding debate over whether the corporation should be managed exclusively for the benefit of shareholders. Compare A.A. Berle, Jr., *Corporate Powers as Powers in Trust*, 44 Harv. L. Rev. 1049 (1931); A. A. Berle, Jr., *For Whom Corporate Managers Are Trustees: A Note*, 45 Harv. L. Rev. 1365 (1932) with E. Merrick Dodd, Jr., *For Whom Are Corporate Managers Trustees?*, 45 Harv. L. Rev. 1145 (1932). See also Thomas W. Dunfee, *Corporate Governance in a Market With Morality*, 62 Law & Contemp. Probs. 129 (Summer 1999). The classic economic case for managing a corporation solely in the interests of shareholders is Milton Friedman, "The Social Responsibility of Business is to Increase its Profits," *New York Times Magazine*, 13 September 1970: 32.