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# Promoting International Respect for Worker Rights through Business Code of Conduct

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## Abstract

This Article explores the promotion of international respect for worker rights through codes of conduct for U.S. businesses operating abroad. The emphasis is on codes of conduct that have been expressly developed to apply to U.S. corporations or their suppliers. Therefore, codes developed by international organizations to deal with labor practices of multinational corporations, without regard to the country of origin of the corporation, are beyond the scope of this article. Part I of the Article describes several codes of conduct promoting fair labor standards that apply to U.S. businesses operating abroad. Part II outlines administrative and legislative efforts designed to encourage U.S. companies to adhere to such codes. Part III discusses the extent to which the codes have contributed to the promotion of international respect for worker rights; the emphasis is on the Sullivan and MacBride Principles because these two sets of principles have been in existence for relatively long periods of time, and therefore it is possible to make some inferences about their effectiveness in promoting worker rights abroad. The Article presents some tentative conclusions regarding the feasibility of using codes of conduct to promote international respect for worker rights.

# ARTICLES

# PROMOTING INTERNATIONAL RESPECT FOR WORKER RIGHTS THROUGH BUSINESS CODES OF CONDUCT

*Jorge F. Perez-Lopez**

CONTENTS



## *INTRODUCTION*

Promoting respect around the world for the rights of workers is a high priority of the United States. This objective is pur-

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sued in a partnership amongst the U.S. Government, organized labor, and the business community. For example, all three parties participate as equals in the activities of the International Labor Organization ("ILO"), an international body that seeks to improve working conditions, create employment, and promote human rights globally. Two of the chief functions of the ILO are to develop international labor standards and to supervise their observance.[1]

In promoting international respect for worker rights, the U.S. Government draws on a variety of resources:

- The Department of State maintains an officer responsible for keeping abreast of labor issues in every U.S. Embassy around the world; among the responsibilities of these officers is to promote free and democratic labor unions and to report on worker rights law and practice in each country.
- The Agency for International Development, through the American Federation of Labor and Council of Industrial Organizations ("AFL-CIO"), funds the training and education of foreign labor leaders, while the U.S. Information Agency invites foreign labor leaders and future leaders to the United States to meet with U.S. counterparts and view our labor institutions and practices first-hand.
- The Department of Labor provides technical assistance overseas, assists in planning travel by foreign labor leaders to the United States, and supplies technical support services to the AFL-CIO's international trade union institutes.[2]

The U.S. Government also promotes respect for the rights of workers around the world through the implementation of the worker rights provisions of U.S. trade and economic legislation.[3]

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1. INTERNATIONAL LABOR OFFICE, THE INTERNATIONAL LABOR ORGANIZATION: FACTS FOR AMERICANS at 5 (Wash., D.C., 1991).

2. *See Workers' Rights and Trade Adjustment Assistance Programs: Hearing on S. 490 and H.R. 3 Before the Senate Committee on Finance*, 100th Cong., 1st Sess. 54-55 (1987) (statement of Ambassador Michael B. Smith, Deputy U.S. Trade Rep.); *see also, International Worker's Rights: Hearing Before the Subcomm. on Human Rights and International Organizations of the House Comm. on Foreign Affairs*, 100th Cong., 1st Sess. 46-47 (1987) (statement of William J. Waller, Dept. of State).

3. *See, e.g.*, Caribbean Basin Economic Recovery Act, Pub. L. No. 98-67, tit. II, 97 Stat. 384 (1983) (codified at 19 U.S.C. §§ 2701 (Supp. III 1985)); Generalized System of Preferences Renewal Act of 1984, Pub. L. No. 98-573, tit. V, 98 Stat. 3018 (1984) (codified at 19 U.S.C. §§ 2461-2465 (Supp. III 1985)); Overseas Private Investment Corporation Amendments Act of 1985, Pub. L. No. 99-204, 99 Stat. 1669 (1985) (codified in scattered sections of 22 U.S.C. (Supp. III 1985) and 31 U.S.C. (Supp. III 1985); Continuing Appropriation, Fiscal Year 1988, Pub. L. No. 100-202, 101 Stat. 1329 (1987) (codi-

Moreover, the U.S. Government has proposed that the General Agreement on Tariffs and Trade ("GATT") establish a working party to review the relationship between labor standards and trade flows.[4]

U.S. organized labor, following the leadership of the AFL-CIO, promotes international respect for the rights of workers in at least three ways: by influencing U.S. foreign policies on international social, political, economic, and security issues;[5] by inde-

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fied as amended at 33 U.S.C. § 1330 (1988)) (authorizing funding for the Multilateral Investment Guarantee Agency); Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, 102 Stat. 1107 (1988) (codified as amended at 19 U.S.C. § 2901 (1988)); Andean Trade Preference Act, Pub. L. No. 102-182, tit. II, 105 Stat. 1233 (codified at 19 U.S.C. § 3201 (1991)); Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1993, Pub. L. No. 102-391, 106 Stat. 1633 (1992); Jobs Through Exports Act of 1992, Pub. L. No. 102-549, 106 Stat. 3651 (codified at 22 U.S.C. § 2151 (1992)) (authorizing funding for Overseas Private Investment Corporation); *see also*, Jorge F. Perez-Lopez, *Conditioning Trade on Foreign Labor Law: The U.S. Approach*, 9 COMP. LAB. L.J. 253 (1988) (commenting on U.S. trade and economic legislation incorporating worker rights conditionality); LAWYERS COMMITTEE FOR HUMAN RIGHTS, WORKER RIGHTS UNDER THE U.S. TRADE LAWS (1988) (same); Jorge F. Perez-Lopez, *Worker Rights in the U.S. Omnibus Trade and Competitiveness Act*, 41 LAB. L.J. 222 (1990) (same); James M. Zimmerman, *The Overseas Private Investment Corporation and Worker Rights: The Loss of Role Models for Employment Standards in the Foreign Workplace*, 14 HASTINGS INT'L & COMP. L. REV. 603 (1991) (same); Karen F. Travis, *Women in Global Production and Worker Rights Provisions in U.S. Trade Laws*, 17 YALE J. INT'L L. 173 (1992) (same); JAMES M. ZIMMERMAN, EXTRATERRITORIAL EMPLOYMENT STANDARDS OF THE UNITED STATES: THE REGULATION OF THE OVERSEAS WORK PLACE (1992) (same).

4. *See* Omnibus Trade and Competitiveness Act of 1988 § 1101(b), 102 Stat. at 1121-25. Section 1101(b) lays out specific negotiating objectives for the United States in 16 areas. *Id.* Section 1101(b)(14) states that, with respect to worker rights, the principal U.S. negotiating objectives are: (A) to promote respect for worker rights; (B) to secure a review of the relationship of worker rights to GATT articles, objectives, and related instruments with a view to ensuring that benefits of the trading system are available to all workers; and (C) to adopt, as a principle of GATT, that the denial of worker rights should not be a means for a country or its industries to gain competitive advantage in international trade. *Id.* at 1125.

In March 1986, prior to the passage of the Omnibus Trade and Competitiveness Act, the U.S. Government proposed that worker rights be included in the negotiating agenda for a new round of multilateral trade negotiations. *See* Perez-Lopez, *Worker Rights in the U.S. Omnibus Trade and Competitiveness Act*, *supra* note 3, at 228-29. The preponderance of other GATT contracting parties did not support the U.S. position. As a result, the Uruguay Round of Multilateral Trade negotiations, launched in September 1986, did not include negotiations on worker rights. *Id.* In May 1988, the United States requested that the GATT Council establish a working party to study the relationship of internationally recognized worker rights to trade. *Id.* Despite continuing requests from the United States, to date the GATT Council has not acceded to the formation of the working party. *Id.*

5. AFL-CIO, THE AFL-CIO'S FOREIGN POLICY 8 (AFL-CIO, Wash., D.C., No. 181, Aug. 1987).

pendently assisting in the building of free trade unions abroad, especially in the developing nations, as a major contribution to the defense and expansion of free and democratic societies;[6] and by developing relationships with other national and international labor organizations.[7]

Among the ways in which the U.S. business community promotes international respect for worker rights is through sets of principles or codes of conduct that govern practices of U.S.-owned companies operating in foreign countries. Since the late 1970s, several voluntary codes of conduct for U.S. corporations operating abroad have been proposed. Some of these codes of conduct deal exclusively or primarily with labor standards[8] while others are more general but nevertheless include fair labor standards as an important component.[9]

This Article explores the promotion of international respect for worker rights through codes of conduct for U.S. businesses operating abroad. The emphasis is on codes of conduct that have been expressly developed to apply to U.S. corporations or their suppliers. Therefore, codes developed by international organizations to deal with labor practices of multinational corporations, without regard to the country of origin of the corporation, are beyond the scope of this article.[10]

Part I of the Article describes several codes of conduct promoting fair labor standards that apply to U.S. businesses operating abroad. Part II outlines administrative and legislative efforts

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6. *Id.*

7. *Id.*

8. *See* REVEREND LEON H. SULLIVAN, SULLIVAN PRINCIPLES FOR U.S. CORPORATIONS OPERATING IN SOUTH AFRICA, *reprinted in* 24 I.L.M. 1496 (1985) (applying to U.S.-owned companies doing business in South Africa); SEAN MACBRIDE, THE MACBRIDE PRINCIPLES 2 (Irish National Caucus, Wash., D.C., 1984) (applying to U.S.-owned companies doing business in Northern Ireland).

9. *See* THE MILLER PRINCIPLES, *reprinted in* H.R. 1571, 102d Cong., 1st Sess. (1991) (applying to U.S. nationals involved in industrial cooperation projects in People's Republic of China or Tibet).

10. *See, e.g.* ORGANIZATION OF ECONOMIC COOPERATION AND DEVELOPMENT, GUIDELINES FOR MULTINATIONAL ENTERPRISES, *reprinted in* 15 I.L.M. 969 (1976); INTERNATIONAL LABOR ORGANIZATION: TRIPARTITE DECLARATION OF PRINCIPLES CONCERNING MULTINATIONAL ENTERPRISES AND SOCIAL POLICY, *reprinted in* 17 I.L.M. 422 (1978); UNITED NATIONS CONFERENCE ON RESTRICTIVE BUSINESS PRACTICES, MULTILATERALLY AGREED EQUITABLE PRINCIPLES FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES, U.N. Doc. TD/RBP/Conf/10 (May 2, 1980), *reprinted in* 19 I.L.M. 813 (1980); DRAFT UNITED NATIONS CODE OF CONDUCT ON TRANSNATIONAL CORPORATIONS, *reprinted in* 23 I.L.M. 626 (1984); ZIMMERMAN, *supra* note 3, at 93-94.

designed to encourage U.S. companies to adhere to such codes. Part III discusses the extent to which the codes have contributed to the promotion of international respect for worker rights; the emphasis is on the Sullivan and MacBride Principles because these two sets of principles have been in existence for relatively long periods of time, and therefore it is possible to make some inferences about their effectiveness in promoting worker rights abroad. The Article presents some tentative conclusions regarding the feasibility of using codes of conduct to promote international respect for worker rights.

## I. *CODES OF CONDUCT FOR U.S. CORPORATIONS*

Since the 1970s, several voluntary codes of conduct have been proposed that set forth appropriate standards of behavior for U.S. corporations operating in countries with questionable labor practices. Generally, these codes of conduct consist of sets of fair labor standards that U.S. corporations either commit to apply to their operations in foreign countries or, in some cases, require foreign subcontractors or suppliers to apply in their home countries. Some of the codes of conduct, such as the Sullivan Principles or the MacBride Principles, deal primarily with labor standards, while others, such as the Slepak Principles, the Miller Principles, the Maquiladora Standards of Conduct, and the Levi Strauss and Company's Business Partner Terms of Engagement, deal with a broader set of issues, with labor standards playing a prominent role within them.

### A. *Labor Standards Codes of Conduct*

#### 1. Sullivan Principles

In March 1977, the Reverend Leon H. Sullivan, Pastor of the Zion Baptist Church in Philadelphia and a Member of the Board of Directors of General Motors Corporation, proposed a set of six principles to promote racial equality in the employment practices of U.S. companies doing business in South Africa.[11] Adoption of these principles would "promote programs

11. *See* Leon Sullivan, *Agents for Change: The Mobilization of Multinational Companies in South Africa*, 15 LAW & POL'Y INT'L BUS. 427-28 (1983) [hereinafter *Agents for Change*]; Leon H. Sullivan, *The Sullivan Principles and Change in South Africa*, AFRICA REPORT, May-June 1984, at 48; Leon H. Sullivan, *The Sullivan Principles and Change in South Africa*, *in* BUSINESS IN THE CONTEMPORARY WORLD 175 (Herbert L. Sawyer ed., 1988).

that could have a significant impact on improving the living conditions and quality of life for the non-white population [of South Africa], and to be a major contributing factor in the end of apartheid."[12] According to Sullivan, the approach incorporated in his "Statement of Principles" reflected an evolution of his own thinking regarding ways that outside pressure could be brought on the South African government to end apartheid.[13]

Earlier, in 1971, Sullivan had proposed to the Board of Directors of General Motors that the company withdraw completely from South Africa due to that nation's apartheid policies. Lack of support for this position within the Board, together with views of black South Africans, including labor leaders, that rather than divest, an attempt should be made to "marshal the resources of U.S. and other multinational companies into true forces of change"[14] led Sullivan to propose the code of conduct approach. When he announced the principles, Sullivan revealed that twelve major U.S. corporations doing business in South Africa had already signed the principles and agreed to abide by them.[15]

Sullivan's "Statement of Principles," as originally proposed, consisted of six elements:

1. Nonsegregation of the races in all eating, comfort, locker rooms, 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 blacks, coloreds, and Asians in substantial numbers for supervisory, administrative, clerical, and technical jobs.
5. Increasing the number of blacks, coloreds, and Asians in management and supervisory positions.
6. Improving the quality of employees' lives outside the work

12. Sullivan, SULLIVAN PRINCIPLES FOR U.S. CORPORATIONS OPERATING IN SOUTH AFRICA, *supra* note 8, at 1496.

13. *Id.*

14. Sullivan, *Agents for Change*, *supra* note 11, at 428.

15. Sullivan, *The Sullivan Principles and Change in South Africa*, *supra* note 11, at 179. The first 12 signatories of the principles were: American Cyanamid Company, IBM Corporation, Burroughs Corporation, International Harvester Company, Citicorp, Minnesota Mining & Manufacturing Company, Ford Motor Company, Mobil Oil Corporation, General Motors Corporation, Union Carbide Corporation, The Chase Manhattan Bank, and The Upjohn Company. *Id.*

> environment in such areas as housing, transportation, schooling, recreation, and health facilities.[16]

The "Statement of Principles" underwent elaboration over time, reflecting the evolutionary nature of the Principles and changes in the industrial setting, laws, and social conditions in South Africa. In 1984, Sullivan called on U.S. companies operating in South Africa to try to change the practices of other companies, to support the establishment of black businesses, and to oppose apartheid laws.[17] Sullivan also demanded that corporate signatories to the Principles disobey apartheid laws and support blacks seeking to use services, such as schools, beaches, and transportation, from which they were barred.[18] These efforts became known as "social justice" activities, and were formally incorporated as Sullivan Principle 7 in the November 1984 (or fourth) amplification of the Principles: "Working to eliminate laws and customs which impede social, economic, and political justice."[19]

The current "Statement of Principles" obligates signatories to take the following actions:

*Nonsegregation*: Eliminate all vestiges of racial discrimination; remove all race designation signs; and desegregate all eating, comfort, and work facilities.[20]

*Equal and Fair Employment Practices*: Implement equal and fair conditions of employment; provide non-discriminatory eligibility for benefit plans; establish comprehensive procedures for handling and resolving individual employee complaints; support the elimination of all racially discriminatory industrial laws that impede the implementation of equal and fair terms of employment, such as job reservations, job fragmentation, and apprenticeship restrictions for blacks and other nonwhites; support the elimination of discrimination against the rights of blacks to form or belong to government-registered and unregistered unions

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16. *Id.*

17. *See* Barnaby J. Feder, *Apartheid Deadline Troubles Sullivan*, N.Y. TIMES, June 1, 1987, at D3 (discussing Sullivan's possible plan to exhort U.S. companies to leave South Africa as protest of country's apartheid policies).

18. *Id.*

19. THE STATEMENT OF PRINCIPLES AND U.S. EMPLOYMENT PRACTICES IN SOUTH AFRICA, SOC. ISSUES SERVICE, PROXY ISSUES REP., 1990 Analysis C, Sub-Analysis #3, at 21 (Investor Responsibility Res. Center, Wash., D.C., Mar. 2, 1990) [hereinafter STATEMENT OF PRINCIPLES].

20. *Id.* at 19.

and acknowledge generally the rights of blacks to form their own unions or be represented by trade unions that already exist; secure black workers' freedom of association and assure protection against victimization while exercising this freedom; and involve black workers or their representatives in the development of programs that address their educational and other needs and those of their dependents and the local community.[21]

*Equal Pay for Equal or Comparable Work*: Design and implement a wage and salary administration plan that is applied equally to all employees, regardless of race, who are performing equal or comparable work; ensure an equitable system of job classifications, including a review of the distinction between hourly and salaried classifications; determine the extent to which upgrading of personnel and/or jobs into the upper echelons is needed, and implement programs to accomplish this objective in representative numbers, insuring the employment of blacks and other nonwhites at all levels of company operations; and assign equitable wage and salary ranges, the minimum of which is well above the appropriate local minimum economic living level.[22]

*Training Programs*: Determine employee training needs and capabilities, and identify employees with potential for further advancement; take advantage of existing outside training resources and activities, such as exchange programs, technical colleges, and similar institutions or programs; support the development of outside training facilities, individually or collectively, including technical centers, professional training exposure, correspondence and extension courses, as appropriate, for extensive training outreach; and initiate and expand inside training programs and facilities.[23]

*Affirmative Action*: Identify, actively recruit, train, and develop a sufficient and significant number of blacks and other nonwhites to assure that as quickly as possible there will be appropriate representation of blacks and other nonwhites in the management group of each company at all levels of operation; establish management development programs for blacks and other nonwhites, and improve existing programs and facilities

21. *Id.*
22. *Id.*
23. *Id.* at 20.

for developing management skills of blacks and other nonwhites; and identify and channel high management potential blacks and other nonwhite employees into management development programs.[24]

*Improve Living Conditions of Workers*: Address the needs of black and other nonwhite employees in the areas of housing, health care, transportation, and recreation; evaluate methods for utilizing in-house medical facilities or other medical programs to improve medical care for all nonwhites and their dependents; participate in the development of programs that address the educational needs of employees, their dependents, and the local community; support changes in influx control laws to provide for the right of black migrant workers to normal family life; and increase utilization and assist in the development of black and other nonwhite owned and operated business enterprises, including distributors, suppliers of goods and services, and manufacturers.[25]

*Social, Economic, and Political Justice*: Press for a single education system common to all races; use influence to support the unrestricted rights of black businesses to locate in the urban areas of the nation; influence other companies in South Africa to follow the standards of equal rights principles; support the freedom of mobility of black workers, including those from so-called "independent" homelands, to seek employment opportunities wherever they exist and provide for adequate housing for families of employees near workers' place of employment; use financial and legal resources to assist blacks, coloreds, and Asians in their efforts to achieve equal access to all health facilities, educational institutions, transportation, housing, beaches, parks, and all other accommodations normally reserved for whites; oppose adherence to all apartheid laws, practices, and customs; support the ending of all apartheid laws, practices, and customs; and support full and equal participation of blacks, coloreds, and Asians in the political process.[26]

### 2. MacBride Principles

The MacBride Principles, named after the late Sean Mac-

24. *Id.*
25. *Id.* at 20-21.
26. *Id.* at 21.

Bride,[27] were issued in November 1984. They are a corporate code of conduct aimed at U.S. companies doing business in Northern Ireland. The proponents of the MacBride Principles believed such a code of conduct was needed "because of the systematic practice and endemic nature of anti-Catholic discrimination"[28] by many of the forty-seven U.S.-owned companies operating in Northern Ireland, which were "perpetuating injustice and inequality."[29]

The MacBride Principles consist of nine fair employment and affirmative action principles modeled on those proposed by Sullivan for South Africa. The nine principles are:

1. Increasing the representation of individuals from underrepresented religious groups in the workforce including managerial, supervisory, administrative, clerical, and technical jobs.
2. Adequate security for the protection of minority employees both at the workplace and while travelling to and from work.
3. The banning of provocative religious and political emblems from the workplace.
4. All job openings should be advertised publicly and special recruitment efforts made to attract applicants from underrepresented religious groups.
5. Layoff, recall, and termination procedures should not in practice favor a particular religious group.
6. The abolition of job reservations, apprenticeship restrictions, and differential employment criteria which discriminate on the basis of religion.
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.

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27. *See* WHO'S WHO 1615 (133d ed. 1981-82); INT'L WHO'S WHO 994 (50th ed. 1986-87). Sean MacBride, Irish lawyer, revolutionary, journalist, political figure, government official, and United Nations Commissioner for Namibia, may be best known for his work in the promotion of human rights. *Id.* He was one of the co-founders of Amnesty International and was its Chairman from 1970-1973. *Id.* MacBride is the only person to have received the Nobel Peace Prize (1974), the Lenin International Prize for Peace (1977), and the American Medal of Justice (1978). *Id.* MacBride died in 1988 at the age of 83. William G. Blair, *Sean MacBride of Ireland is Dead at 83*, N.Y. TIMES, Jan. 16, 1988, at 10.

28. THE MACBRIDE PRINCIPLES, *supra* note 8, at 2.

29. *Id.*

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.[30]

Responding to objections from the British Government, some U.S. companies, and other critics that compliance in Northern Ireland with the Principles would violate the (British) Fair Employment Act,[31] MacBride issued the following amplification of the Principles in early 1986:

*Increasing Representation from Underrepresented Religious Groups*: A workforce that is severely imbalanced may indicate prima facie that full equality of opportunity is not being afforded to all segments of the community in Northern Ireland. Each signatory to the MacBride Principles must make every reasonable lawful effort to increase the representation of under-represented religious groups at all levels of its operations in Northern Ireland.[32]

*Security for the Protection of Minority Employees*: While total security cannot be guaranteed in Northern Ireland, each signatory to the MacBride Principles must make reasonable good faith efforts to protect workers against intimidation and physical abuse at the workplace. Signatories must also make reasonable good faith efforts to ensure that applicants are not deterred from seeking employment because of fear for their personal safety at the workplace or while travelling to and from work.[33]

*Banning of Emblems from the Workplace*: Each signatory to the MacBride Principles must make reasonable good faith efforts to prevent the display of provocative sectarian emblems at their plants in Northern Ireland.[34]

*Advertising of Positions and Recruitment of Minorities*: Signatories to the MacBride Principles must exert special efforts to attract employment applications from the sectarian community that is substantially underrepresented in the workforce. This

30. *Id.* at 1-2.

31. HELEN E. BOOTH & KENNETH A. BERTSCH, THE MACBRIDE PRINCIPLES AND U.S. COMPANIES IN NORTHERN IRELAND 57 (IRRC, Wash., D.C., 1989).

32. *Id.*

33. *Id.*

34. *Id.*

should not be construed to imply a diminution of opportunity for other applicants.[35]

*Nondiscrimination in Employment Practices*: Each signatory to the MacBride Principles must make reasonable good faith efforts to ensure that layoff, recall, and termination procedures do not penalize a particular religious group disproportionately. Layoff and termination practices that involve seniority solely can result in discrimination against a particular religious group if the bulk of employees with greatest seniority are disproportionately from another religious group.[36]

*Abolition of Discriminatory Employment Criteria*: Signatories to the MacBride Principles must make reasonable good faith efforts to abolish all differential employment criteria whose effect is discrimination on the basis of religion. For example, job reservations and apprenticeship regulations that favor relatives of current or former employees can, in practice, promote religious discrimination if the company's workforce has historically been disproportionately drawn from another religious group.[37]

*Training Programs to Train, Upgrade, and Improve the Skills of Minority Employees*: Such programs should be open to all members of the workforce equally.[38]

*Procedures to Recruit Minority Employees*: Such procedures should apply to all employees equally.[39]

*Reporting Requirements*: In addition to appointing 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, each signatory to the MacBride Principles is required to report annually to an independent monitoring agency on its progress in the implementation of the principles.[40]

### B. *Broad Codes of Conduct*

#### 1. Slepak Principles

The Slepak Principles, named for Soviet emigre and human rights activist Vladimir Slepak, a member of the original Moscow

35. *Id.*
36. *Id.* at 58.
37. *Id.*
38. *Id.*
39. *Id.*
40. *Id.*

Helsinki Monitoring Group,[41] constitute a code of conduct that was developed for American companies doing business in the former Soviet Union. With the dissolution of the Soviet Union, proponents of the Slepak Principles have apparently discontinued their campaign to gain acceptance of the Principles.

The Slepak Principles are discussed here because they were an integral part of the movement in the United States in the 1980s toward business codes of conduct. Furthermore, the Slepak Principles have had some influence on subsequent codes, such as the Miller Principles, developed to address other perceived foreign deficiencies regarding human rights, political freedoms, and discrimination.

The Slepak Principles were developed by the Slepak Foundation, a Philadelphia-based non-profit organization created in 1987 with the purpose of "making human rights a priority issue that must be placed at the forefront of any exchange between the United States and the Soviet Union."[42] Pursuant to the Slepak Principles, American companies doing business in the former Soviet Union and the Baltic States:

1. Will not produce goods or provide services that replenish the Soviet military.

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41. *See Conference on Security and Cooperation in Europe: Final Act, reprinted in* 14 I.L.M. 1292, Aug. 1, 1975 [hereinafter *The Helsinki Accords*]. *The Helsinki Accords* was agreed to on August 1, 1975 by the governments of Austria, Belgium, Bulgaria, Canada, Cyprus, Czechoslovakia, Denmark, Finland, France, East Germany, West Germany, Greece, the Holy See, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Monaco, the Netherlands, Norway, Poland, Portugal, Romania, San Marino, Spain, Sweden, Switzerland, Turkey, the Soviet Union, the United Kingdom, the United States, and Yugoslavia. *Id. The Helsinki Accords* generally recognize the relationship between respect for human rights and fundamental freedoms and the attainment of security. *Id.* They commit signatories to "respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion." *See, e.g.*, U.S. DEPT. OF STATE, OFFICE OF THE HISTORIAN, THE CONFERENCE ON SECURITY AND COOPERATION IN EUROPE (Sept. 1990). Human rights activists established "monitoring" groups within each of the countries (e.g., the Moscow Helsinki Monitoring Group) to focus attention on the commitments and bring pressure on the national authorities to comply with them. *See id.* (noting continuing process of fulfilling vision of *The Helsinki Accords* through experts' meetings addressing issues including human rights and humanitarianism, scientific, environmental, and economic cooperation).

42. SLEPAK FOUNDATION, STATEMENT OF PURPOSE (on file with the *Fordham International Law Journal*). *See* Jessica Skelly, *A Code of Conduct for the American Partners*, ACROSS THE BOARD, Dec. 1988, at 37-38; Eva Pornice, *Rules of the Road to Red Square*, U.S. NEWS AND WORLD REP., Nov. 27, 1989, at 63.

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 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 cooperatives rather than institutions connected directly to the Soviet state.[43]

Principles 2, 3, 5, and 7 dealt most directly with the rights of workers.

*Forced Labor*: Over the years, there had been allegations of extensive use of forced labor in the former Soviet Union.[44] In 1982, allegations surfaced regarding the use of forced labor in the construction of a Soviet gas pipeline and in the production of certain items exported to the United States. In September 1983, the U.S. Commissioner of Customs recommended that, pursuant to the authority of Section 307 of the Tariff Act of 1930,[45] the United States bar the entry of three dozen products

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43. *See* SLEPAK FOUNDATION, 1 THE SLEPAK REPORT No. 1, at 1 (Mar. 1989) [hereinafter THE SLEPAK REPORT] (listing Slepak Principles) (on file with the *Fordham International Law Journal*).

44. *See, e.g.*, LUDMILLA ALEXEYEVA, AFL-CIO, CRUEL AND USUAL PUNISHMENT: FORCED LABOR IN TODAY'S U.S.S.R. (1987) (discussing recent allegations of extensive use of forced labor in former Soviet Union); *see also, Forced Labor in the Soviet Union: Hearing Before Subcommittee on Human Rights and International Organizations of the House Committee on Foreign Affairs and the Senate Committee on Security and Cooperation in Europe*, 98th Cong., 1st Sess. (1983). Several earlier works have been written on the issue of forced labor in the Soviet Union. *See, e.g.* ALBERT K. HERLING, THE SOVIET SLAVE EMPIRE (1941); DAVID J. DALLIN AND BORIS I. NICOLAEVSKY, FORCED LABOR IN SOVIET RUSSIA (1947); AFL-CIO, SLAVE LABOR IN RUSSIA (1949); S. SWIANIEWICZ, FORCED LABOUR AND ECONOMIC DEVELOPMENT (1965); JAMES BUNYAN, THE ORIGIN OF FORCED LABOR IN THE SOVIET STATE 1917-21 (1967).

45. Tariff Act of 1930 § 307, 19 U.S.C. § 1307 (1988) (prohibiting entry into United States of any articles that are mined, produced, or manufactured wholly or in part in any foreign country by convict, forced, or indentured labor). Since its enactment, Section 307 has not been amended and is still in force. *Id.* A prohibition on imports of goods produced by convict labor was first incorporated into U.S. law in the Tariff Act of 1890. Tariff Act of 1890, ch. 1244 § 3, 26 Stat. 567 (1890) (repealed at 28

from the Soviet Union allegedly produced using forced labor.

A review of available data and estimates on the economic significance of forced labor abroad revealed that, in 1982, virtually all of the 4 million Soviet prison population was engaged in "corrective labor," including the manufacture of goods that might enter international commerce such as chemicals, metal ores, glassware, miscellaneous metal articles, agricultural equipment, furniture and wood cabinets, electrical equipment, and some oil products.[46] Signatories of the Statement of Principles would be expected to suspend the use of any Soviet raw materials, products, or services if reasonable suspicions arose that they were produced by prison labor.

*Discrimination*: In societies where the state is the sole or principal employer, dismissal from employment is tantamount to punishment. Proponents of the Slepak Principles believed that American companies engaged in commerce with the former Soviet Union should not permit Soviet employees to be hired, dismissed, or reprimanded on the basis of political or religious views, sex, ethnic or national background, or involvement in activities protected under the Helsinki Accords or other statements of human rights signed by the Soviet Union.[47]

*Safety and Health*: Signatories to the Statement of Principles committed to ensure that their methods of production did not involve technologies or processes that negligently would pose a physical danger to workers, to neighboring populations, and to their property or bring destruction or imbalance to the surrounding environment.[48]

*Organizational Form*: Signatories to the Statement of Principles were urged to form joint ventures with Soviet cooperatives rather than with state enterprises.[49] This preference was based on the rationale that cooperatives in the Soviet Union were more likely to afford basic rights to their workers

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Stat. 569). Section 51 of the Tariff Act of 1890 extended to the national level a policy which had already been the practice in most states, that is, protection of free U.S. workers from foreign competition that relied on low-cost convict labor. *Id.*

46. U.S. INTERNATIONAL TRADE COMMISSION, INTERNATIONAL PRACTICES AND AGREEMENTS CONCERNING COMPULSORY LABOR AND U.S. IMPORTS OF GOODS MANUFACTURED BY CONVICT, FORCED, OR INDENTURED LABOR 1630 (1984).

47. THE SLEPAK REPORT, *supra* note 43.

48. *Id.*

49. *Id.*

than state enterprises.[50]

### 2. Miller Principles

The Miller Principles, developed by U.S. Representative John Miller (R-WA) and contained in a bill he introduced before the U.S. Congress in March 1991,[51] are aimed at encouraging political freedom and liberalization within the People's Republic of China ("PRC") and Tibet. According to Miller, the code was inspired by the Sullivan Principles.[52]

The Miller Principles set forth the following behavior for U.S. individuals or corporations participating in industrial cooperation projects in the PRC or Tibet:

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 if there is reason to believe that the material or product is produced or manufactured by 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. The United States national should not discriminate in terms or conditions of employment in the industrial cooperation project against persons with past records of arrests or internal exile for nonviolent protest or membership in unofficial organizations committed to nonviolence.
3. Ensure that methods of production used in the industrial cooperation project do not pose an unnecessary physical danger to workers and neighboring populations and property and that the industrial cooperation project does not

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50. *See, e.g.*, Don J. Pease, *New Thinking in East-West Trade*, THE CHRISTIAN SCI. MONITOR, Apr. 20, 1989, at 18. Accordingly, legislation introduced by Representative Pease in May 1989 would authorize the President to grant most-favored-nation status to imports from cooperatives in Communist countries, contingent on the cooperatives abiding by internationally recognized worker rights provisions. The East-West Trade and Human Rights Enhancement Act of 1989, H.R. 2307, 101st Cong., 1st Sess. (1989).

51. H.R. 1571, 102d Cong., 1st Sess. (1991).

52. *U.S. Business Officials in Beijing Score Sen. Kennedy's Ethics Bill*, INT'L TRADE REP., Sept. 11, 1991, at 1327.

unnecessarily risk harm to the surrounding environment, and consult with community leaders regarding environmental protection with respect to the industrial cooperation project.

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 in the industrial cooperation project.
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 of the United States national. The United States national should protest any infringement by the Chinese Government of these freedoms to the appropriate authorities of that government and to the International Labor Organization, which has an office in Beijing.
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 in the People's Republic of China and Tibet and to trials of prisoners arrested in connection with the pro-democracy events of April through June of 1989 and the pro-democracy demonstrations which have taken place in Tibet since 1987.
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. To this end, the United States national should raise with appropriate authorities of the Chinese Government concerns about restrictions on importation of foreign publications.[53]

Principles 1, 2, 3, and 6 are most directly related to labor issues.

*Forced Labor*: The PRC's "reform through labor" and "reeducation through labor" penal systems mean that imprisonment in that country usually entails compulsory labor. Nearly all per-

53. H.R. 1571, *supra* note 51, at 2-4.

sons sentenced to prison or forced labor camps in the PRC, including political prisoners, are required to work. Chinese prison labor is used for many types of production activities, including construction of roads, coal mining, agriculture, and manufacture of steel, clothing, shoes, and small machine tools.[54]

Allegations have been made for some time that some goods being produced by Chinese prison labor were being exported.[55] In the last quarter of 1991, the U.S. Customs Service ordered its agents throughout the country to detain a range of Chinese goods suspected of being manufactured by prison labor, pursuant to authority in Section 307 of the Tariff Act of 1930.[56] Affected by the decision were imports of small diesel engines, socks, machine presses, steel pipe, socket wrenches, and spanners.[57]

After almost a year of negotiations,[58] in August 1992 the U.S. and PRC governments signed a Memorandum of Understanding ("MOU") on Trade in Prison Labor Products, which allows for both sides to exchange information and evidence related to suspected exports of prison labor products from the PRC to the United States and enables U.S. officials to visit suspected facilities.[59] Despite the MOU, the prevalence of prison labor in the PRC remains a concern for U.S. proponents of worker rights. U.S. nationals abiding by the Miller Principles would be expected not to trade goods produced by prison labor

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54. U.S. DEPT. OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1992 553 (1993).

55. *See, e.g.*, STEVEN W. MOSHER, MADE IN THE CHINESE LAOGAI: CHINA'S USE OF PRISONERS TO PRODUCE GOODS FOR EXPORT (1990); Asia Watch, *Prison Labor in China*, NEWS FROM ASIA WATCH, Apr. 19, 1991; Dinah Lee et al., *China's Ugly Export Secret: Prison Labor*, BUS. WK., Apr. 22, 1991, at 42; *Use of Prison Labor for Exports Common in China, Former Prisoner Says*, INT'L TRADE REP., Nov. 6, 1991, at 1616.

56. James M. Zimmerman, *U.S. Law and Convict-Produced Imports*, 19 THE CHINA BUS. REV. 41 (Mar.-Apr. 1992).

57. John Burgess, *U.S. Blocks Exports by 4 Chinese Firms: Companies Alleged to Use Prison Laborers*, WASH. POST, Oct. 5, 1991, at B1; *Customs Official Says New Actions Against PRC Slave Labor Goods 'Probable,'* INSIDE U.S. TRADE, Oct. 11, 1991, at 11; *Helms Pressures Customs for Changes in Slave Labor Law*, INSIDE U.S. TRADE, Oct. 25, 1991, at 10; *Customs Pushes China for Slave Labor Reform*, INSIDE U.S. TRADE, Nov. 8, 1991, at 4; Zimmerman, *supra* note 56, at 43.

58. Daniel Southerland, *U.S., China Draft Pact on Prison-Made Exports*, WASH. POST, June 20, 1992, at A10.

59. *U.S., China Sign Understanding Prohibiting Prison Labor Exports*, INT'L TRADE REP., Aug. 12, 1992, at 1382; U.S. DEPARTMENT OF STATE, *supra* note 54, at 553.

and to make a commitment not to use prison labor in industrial cooperation projects.

*Employment Discrimination*: The Miller Principles seek to prevent employment discrimination in industrial cooperation projects. Not only do the Principles forbid discrimination based on sex, ethnicity, or national background, but they also ban it on the basis of political activities, participation in nonviolent demonstrations, or association with suspected or known dissidents.[60] That the Principles seek to prevent discrimination based on political views and behavior reflects the harsh actions taken by Chinese authorities against political dissidents, including trade union members, in the aftermath of the 1989 Tiananmen Square demonstrations.[61]

*Occupational Safety and Health*: According to a recent U.S. Department of State report, the PRC passed its first law on mining safety in 1992, and the country still does not have comprehensive safety and health laws covering other areas of the economy.[62] Thus, the PRC's overall record regarding occupational safety and health appears to be poor. U.S. nationals abiding by the Miller Principles would agree that industrial cooperation projects in which they are involved would use established production methods that do not unnecessarily endanger workers.

*Freedom of Association*: The PRC's 1982 Constitution provides for "freedom of association."[63] This Constitutional guarantee, however, is "heavily diluted by references to the interests of the State and the leadership of the Chinese Communist Party."[64] U.S. nationals abiding by the Miller Principles would commit to promoting freedom of association by the workers of its industrial cooperation projects and to protest infringements of that right to the appropriate Chinese authorities and to the ILO.[65]

### 3. Maquiladora Standards of Conduct

The Coalition for Justice in the Maquiladoras, an alliance of U.S. and Mexican church, environmental, labor, and human

60. H.R. 1571, *supra* note 51, at 2.
61. *Chinese Workers Receive Harsh Sentences*, NEWS FROM ASIA WATCH, Mar. 13, 1991.
62. U.S. DEPARTMENT OF STATE, *supra* note 54, at 554.
63. *Id.* at 551.
64. *Id.*
65. H.R. 1571, *supra* note 51, at 3.

rights activists, formally issued its Maquiladora[66] Standards of Conduct in the Spring of 1991.[67] A document prepared by the Coalition presenting the Standard of Conduct indicates that the principles are drawn from existing Mexican and U.S. federal laws and labor standards established by the ILO, and are directed at U.S. multinational corporations that operate production facilities (either subsidiaries, affiliates, contractors, or through supplier arrangements) in Mexico along the U.S.-Mexico border.[68] Their objective is "to promote socially responsible practices that ensure a safe environment on both sides of the border, safe work conditions within maquiladora plants and an adequate standard of living for maquiladora employees."[69]

The Maquiladora Standards of Conduct deal specifically with: (i) responsible practices for handling hazardous wastes and protecting the environment; (ii) health and safety practices; (iii) fair employment practices and standard of living of workers; and (iv) community impact.[70] Overall, the Maquiladora Standards of Conduct contain twenty-nine specific principles that U.S. corporations participating in maquiladora operations should follow.[71] Those most closely associated with labor issues correspond to the areas of health and safety practices and fair employment practices and standard of living of workers. In both of these general areas, concerns about the situation in the maquiladoras,

66. *See* GREGORY K. SCHOEPFLE & JORGE F. PEREZ-LOPEZ, U.S. DEPT. OF LABOR, BUREAU OF INT'L AFFAIRS, U.S. EMPLOYMENT IMPACT OF TSUS 806.30 AND 807.00 PROVISIONS AND MEXICAN MAQUILADORAS: A SURVEY OF ISSUES AND ESTIMATES (Economic Discussion Paper No. 29, Aug. 1988). Maquiladoras are factories located in Mexico along the U.S.-Mexico border that specialize in assembling U.S.-made parts and components into finished products that are then sold in the United States. *Id.* The term comes from the Spanish verb "maquilar," which means taking payment for grinding corn. The term "maquila" is commonly used in Spanish to describe the payment farmers pay to millers to have their corn milled. *See* Thomas M. Shoesmith, *Basic Business Structuring and the Maquiladora Option*, MEXICO TRADE AND LAW REP., Oct. 1, 1991. The number of maquiladora plants, and the number of workers they employ, has risen sharply in recent years. AMERICAN EMBASSY MEXICO CITY, U.S. DEPT. OF LABOR, FOREIGN LABOR TRENDS—MEXICO 1991-1992 (1992). By 1991, there were close to 2,000 such plants employing nearly 500,000 workers. *Id.*

67. *Activists Reached a Variety of Agreements in Withdrawing All 10 Maquiladora Resolutions*, IRRC NEWS FOR INVESTORS, May 1992, at 15 *available in* LEXIS, Nexis Library, OMNI File [hereinafter *Activists Reached a Variety of Agreements*].

68. COALITION FOR JUSTICE IN THE MAQUILADORAS, INTRODUCTION TO MAQUILADORA STANDARDS OF CONDUCT, § 1 (1991).

69. *Id.*

70. *Id.*

71. *Id.*

and more broadly in Mexico, have been raised recently in the United States.[72]

In the area of health and safety practices, the specific principles contained in the Maquiladora Standards of Conduct are:

1. Disclose to employees, their designated representatives and the public the chemical identity of all chemicals used, as well as amount of chemical materials and wastes stored on premises. Ensure that all chemical containers will have appropriate warning labels in Spanish as well as English.
2. In accordance with Mexican law, provide employees with written explanation of risks associated with the use of toxic materials, including information currently required for Material Safety Data Sheets under U.S. law. This information will be conveyed with illustrations in simply-understood Spanish.
3. Use chemicals that are the safest and least toxic for employees, especially from the standpoint of their reproductive and other functional capacity.
4. Design work operations and tasks to limit repetitive strain injuries and other ergonomic problems.
5. As required by Mexican law, each plant will establish worker/management health and safety commissions, allowing workers to elect their representatives to these commissions. These commissions will be trained in health and safety and charged with making monthly plant inspections and recommendations for improving plant safety.
6. Provide all employees with health and safety training using a qualified instructor approved by the Joint Health and Safety Commission. Training will include identification of and protection against health and safety hazards, including those which negatively affect human reproductive health and function. Training and drills will be conducted on evacuation procedures for facility emergencies including fire and chemical leaks.

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72. *See, e.g.*, LESLIE KOCHAN, THE MAQUILADORAS AND TOXICS (1989); AFL-CIO, EXPLOITING BOTH SIDES: U.S.-MEXICO FREE TRADE (Feb. 1991); *see also, Response of the Administration to Issues Raised in Connection with the Negotiation of a North American Free Trade Agreement* (May 1, 1991) (on file with the *Fordham International Law Journal*); U.S. DEPARTMENT OF LABOR, BUREAU OF INTERNATIONAL LABOR AFFAIRS, WORKER RIGHTS IN EXPORT PROCESSING ZONES—MEXICO (Aug. 1990); AMERICAN EMBASSY MEXICO CITY, *supra* note 66; U.S. DEPARTMENT OF STATE, *supra* note 54, at 449-51.

7. Provide an adequate ventilation system including local exhaust for all point sources of air contamination, as well as provide employees with appropriate protective equipment and clothing to minimize risk of toxic exposure and as a back up (not a replacement) for ventilation. The corporations will keep sources of clean water for washing and showering and fire fighting equipment in areas where hazardous materials are used.
8. Arrange health and safety inspections by qualified outside consultants (approved by the Joint Safety and Health Commission) at least once every six months and provide public disclosure of inspection reports.
9. Provide fair damage compensation to any worker who suffers an occupational injury or illness.
10. In accordance with Mexican law and the OSHA (U.S. Occupational Safety and Health Administration) Medical Records Rule, provide all employees and their designated representatives access to medical records, including medical and employment questionnaires and histories, results of medical examinations and lab tests, medical opinions and diagnoses, and descriptions of treatments. U.S. corporations will be responsible for providing maquiladora employees and their representatives access to both in-house and contractual medical records.[73]

In the area of fair employment practices and standard of living, the following principles are set forth:

1. U.S. corporations will not engage in employment discrimination based on sex, age, race, religious creed or political beliefs. Equal pay will be provided for equal work, regardless of sex, age, race, religious creed or political beliefs.
2. In general, workers will be provided with a fair and just wage, reasonable hours of work and decent working conditions.
3. U.S. corporations will not interfere with workers' rights to organize and to reach collective bargaining agreements, including grievance procedures. Workers who seek to organize will not be harassed in present or future work endeavors.
4. U.S. corporations will not employ or utilize child labor and will exercise good faith in ensuring that employees are of legal working age.

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73. MAQUILADORA STANDARDS OF CONDUCT, *supra* note 68, § 2.

5. U.S. corporations will distribute profit sharing to employees as required by Mexican law. For accounting purposes and calculating fair distribution of profit sharing, U.S. corporations will consider maquiladoras as profit centers, provide full financial disclosure in an annual report for maquiladora facilities (or entire Mexican subsidiary) and make public formula and calculations used for determining profit sharing distribution.
6. U.S. corporations will print and distribute a written handbook on company employment policies to all employees as required by Mexican law. This handbook will include a description of basic employee rights under Mexican labor laws and information on government mandated benefits such as severance pay and medical treatment. When a union contract exists, it will be posted in the plant.
7. In the workplace, U.S. corporations will take positive steps to prevent sexual harassment. Policies will be developed to ensure strict disciplinary measures against sexual harassment. To support these policies, programs will be established to educate employees about what constitutes sexual harassment. Finally, a supportive environment will be created, giving workers the confidence needed to report incidents of sexual harassment.[74]

Proponents of the Maquiladora Standards of Conduct have been seeking adoption of their principles primarily through shareholder initiatives. In 1992, shareholders proposed that ten major U.S. companies adhere to the Standards of Conduct or report on their maquiladora operations; although all ten proposals were ultimately withdrawn, one company, Asarco,[75] agreed to sign on to the Standards.[76]

### 4. Subcontractor/Supplier Codes of Conduct

While most business codes of conduct were developed to address affiliates, subsidiaries, and joint ventures located abroad in which U.S. corporations held an equity or controlling position, U.S. corporations that source globally have recently begun

74. *Id.* § 3.

75. *Activists Reached a Variety of Agreements, supra* note 67, at 15.

76. *See id.*, at 15 (stating that U.S. companies that faced shareholder proposals to accept Maquiladora Standards of Conduct in 1992 were Allied-Signal, Asarco, AT&T, Chrysler, Du Pont, General Motors, ITT, and Johnson & Johnson; Waste Management and Zenith faced proposals to report on their maquiladora operations).

to require their foreign subcontractors/suppliers to comply with codes of conduct.

For example, in March 1992, Levi Strauss & Co. ("Levi Strauss") issued a set of global sourcing guidelines covering environmental matters, ethical standards, health and safety standards, legal requirements, and employment practices.[77] The issuance of the guidelines came on the heels of an announcement by Levi Strauss in February 1992 that it had canceled agreements with a contractor in Saipan that had been found to be in violation of U.S. labor laws.[78] The contractor in question had been charged by the U.S. Department of Labor with operating manufacturing facilities in Saipan in which Chinese immigrant workers, mostly young women, were kept under apparent slave labor conditions; the workers "were housed in 'fenced and guarded barracks and they work[ed] at factories inside compounds again fenced and guarded by security personnel.'"[79] Once they arrived in Saipan, the immigrant workers were required to surrender their passports to their employers and to work seven days a week, eleven hours per day Monday through Saturday and eight and one-half hours on Sunday.[80]

Levi Strauss' Business Partner Terms of Engagement apply to contractors and suppliers who provide labor and/or materials (including fabric, sundries, chemicals, and stones) used in the manufacture or finishing of apparel goods sourced globally by the corporation. The specific Terms of Engagement, as set out in a brochure produced by the company, are:

1. *Environmental Requirements*: We will only do business with partners who share our commitment to the environment.
2. *Ethical Standards*: We will seek to identify and utilize business partners who aspire as individuals and in the conduct of their business to a set of ethical standards not incompatible with our own.
3. *Health and Safety*: We will only utilize business partners

77. Frank Swoboda, *Levi Strauss to Drop Suppliers Violating Its Worker Rights Rules*, WASH. POST, Mar. 13, 1992, at D1-D2; *see also*, Statement by Peter A. Jacobi, President of Global Sourcing for Levi Strauss and Company, commenting on Martha Nichols, *Third-World Families at Work: Child Labor or Child Care?*, *in* HARV. BUS. REV. 14, 16 (Jan.-Feb. 1993).

78. Swoboda, *Levi Strauss to Drop Suppliers*, *supra* note 77, at D1.

79. Frank Swoboda, *Apparel Firms on U.S. Pacific Island Accused of 'Slave Labor' Conditions*, WASH. POST, Feb. 12, 1992, at A4.

80. *Id.*

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.

4. *Legal Requirements*: We expect our business partners to be law abiding as individuals and to comply with legal requirements relevant to the conduct of their business.
5. *Employment Practices*: 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:
   a. *Wages and Benefits*: We will only do business with partners who provide wages and benefits that comply with any applicable law or match the prevailing local manufacturing or finishing industry practices. We will also favor business partners who share our commitment to contribute to the betterment of community conditions.
   b. *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. While we favor partners who utilize less than sixty-hour work weeks, we will not use contractors who, on a regularly scheduled basis, require in excess of a sixty-hour week. Employees should be allowed one day off in seven days.
   c. *Child Labor*: Use of child labor is not permissible. "Child" is defined as less than 14 years of age or younger than the compulsory age to be in school. We will not utilize partners who use child labor in any of their facilities. We support the development of legitimate workplace apprenticeship programs for the educational benefit of younger people.
   d. *Prison Labor/Forced Labor*: We will not knowingly utilize prison or forced labor in contracting or subcontracting relationships in the manufacture of our products. We will not knowingly utilize or purchase materials from a business partner utilizing prison or forced labor.
   e. *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.

f. *Disciplinary Practices*: We will not utilize business partners who use corporal punishment or other forms of mental or physical coercion.[81]

Other U.S. corporations that have taken steps to police the labor practices of its subcontractors/suppliers include retailer Sears, Roebuck and Company ("Sears"), apparel manufacturer Phillips-Van Heusen, and chemical manufacturer Dow Chemical. Sears announced in March 1992 that it had negotiated an agreement with the Amalgamated Clothing and Textile Workers Union ("ACTWA") whereby Sears stopped purchasing goods from subcontractors/suppliers in the PRC that used forced labor. Furthermore, Sears agreed to carry out surprise inspections of its suppliers' manufacturing sites in the PRC to ensure compliance.[82] Phillips-Van Heusen has reportedly threatened to terminate orders from apparel suppliers that violate its broad ethical, environmental, and human rights code.[83] Dow Chemical "asks suppliers to conform not just to local environmental and safety laws, but to often tougher U.S. standards."[84]

## II. *CODIFICATION OF THE CODES OF CONDUCT*

The Sullivan, MacBride, and Slepak Principles were originally promulgated as strictly voluntary codes of conduct, applicable to U.S.-owned corporations operating in South Africa, Northern Ireland, and the former Soviet Union, respectively. The U.S. Congress has considered legislation that would require or encourage adherence by U.S.-owned companies to these principles. Similarly, the author of the Miller Principles introduced legislation in the 101st Congress that would codify that code of conduct.

To date, legislative action to codify labor codes of conduct has succeeded only with regard to the Sullivan Principles. Legislation to encourage U.S. companies to comply with the Sullivan Principles was introduced in the U.S. Congress in 1985 and enacted as part of the Comprehensive Anti-Apartheid Act of

81. LEVI STRAUSS & CO., BUSINESS PARTNER TERMS OF ENGAGEMENT AND GUIDELINES FOR COUNTRY SELECTION (Mar. 1992).

82. Frank Swoboda, *Sears Agrees to Police Its Suppliers*, WASH. POST, Mar. 31, 1992, at C1-C5.

83. John McCormick & Marc Levinson, *The Supply Police*, NEWSWEEK, Feb. 15, 1993, at 48.

84. *Id.*

1986;[85] earlier, in September 1985, President Reagan had taken a similar action through an Executive Order.[86] A legislative proposal to codify the MacBride Principles was first introduced in Congress in early 1987 and in every session of Congress since then, but has not yet been voted upon. Legislation to codify the Slepak and Miller Principles was introduced in the 100th and 101st Congresses, respectively, but the bills failed to advance.

### A. *Sullivan Principles*

Section 207 of the Comprehensive Anti-Apartheid Act of 1986 provides that "national[s] of the United States that employ . . . more than twenty-five persons in South Africa shall take the necessary steps to insure that . . . the Code of Conduct [regarding employment practices] is implemented."[87] The Code of Conduct, Section 208 of the Comprehensive Anti-Apartheid Act, based on the Sullivan Principles, consists of the following elements:

1. desegregating the races in each employment facility;
2. providing equal employment opportunity for all employees without regard to race or ethnic origin;
3. assuring that the pay system is applied to all employees without regard to race or ethnic origin;
4. establishing a minimum wage and salary structure based on the appropriate local minimum economic level which takes into account the needs of employees and their families;
5. increasing by appropriate means the number of persons in managerial, supervisory, administrative, clerical, and technical jobs who are disadvantaged by the apartheid system for the purpose of significantly increasing their representation in such jobs;
6. taking reasonable steps to improve the quality of employees' lives outside the work environment with respect to housing, transportation, schooling, recreation, and health; and

85. Comprehensive Anti-Apartheid Act of 1986, Pub. L. No. 99-440, 100 Stat. 1086 (1986) (codified at 22 U.S.C. § 5001 (1988 & Supp. III 1991)).

86. Prohibiting Trade and Certain Other Transactions Involving South Africa, Exec. Order No. 12,532, 3 C.F.R. 387 (1985), *reprinted in* 50 U.S.C. § 170, at 661-663 (1988).

87. Comprehensive Anti-Apartheid Act of 1986, Pub. L. No. 99-440, § 207, 100 Stat. at 1097 (1986) (codified at 22 U.S.C. § 5001 (1988 & Supp. III 1991)).

7. implementing fair labor practices by recognizing the right of all employees, regardless of racial or other distinctions, to self-organization and to form, join, or assist labor organizations, freely and without penalty or reprisal, and recognizing the right to refrain from any such activity.[88]

No department or agency of the United States may intercede with any foreign government or foreign national regarding the export marketing activities of any U.S. company covered by the Act (i.e., employing more than twenty-five persons in South Africa) unless that company is implementing the Code.[89] These same eligibility criteria, principles, and remedies had already been proclaimed by an Executive Order signed by President Reagan in September 1985 that encouraged strongly all U.S. companies doing business in South Africa to follow the example of those that had voluntarily agreed to a set of fair labor standards benefitting those South Africans disadvantaged by apartheid.[90]

In addition to regulating employment practices of U.S. enterprises in South Africa, the legislation explicitly addressed labor practices of the U.S. Government with regard to South African employees. Section 205(a) states that "it is the sense of the Congress that" in hiring South Africans, paying them for employment services, and employing them through contracts, that labor practices of the U.S. Government "should represent the best of labor practices in the United States and should serve as a model for the labor practices of nationals of the United States in South Africa."[91]

Finally, the Comprehensive Anti-Apartheid Act also expressed the sense of Congress that U.S. companies operating in South Africa should "extend the[ir] scope of influence on activities beyond the workplace."[92] Among the specific measures U.S. companies were encouraged to take were:

1. supporting the unrestricted rights of black businesses to locate in urban areas;
2. influencing other companies in South Africa to follow the standards of equal rights principles;

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88. *Id.* § 208(a).
89. *Id.* § 207(b).
90. Exec. Order No. 12,532, *supra* note 86.
91. Comprehensive Anti-Apartheid Act of 1986, Pub. L. No. 99-440, § 205(a), 100 Stat. at 1096 (1986)
92. *Id.* § 208(b).

3. supporting the freedom of mobility of black workers to seek employment opportunities wherever they exist, and make provisions for adequate housing for families of employees within the proximity of workers' places of employment; and
4. supporting the recision of all apartheid laws.[93]

The South African Family Advancement Act of 1988, H.R. 5160, was introduced by Representative Nancy L. Johnson (R-CT) in August 1988.[94] This bill would amend Section 208 of the Comprehensive Anti-Apartheid Act of 1986 to add another principle to those already embodied in the statute. Namely, any U.S. corporation employing more than twenty-five persons in South Africa would be required to establish a fund to assist black and nonwhite South Africans.[95] The fund would be financed by an amount equal to twenty-five percent of the payroll of the U.S. corporation's holdings in South Africa, and administered by a board of directors containing representatives of the U.S.-owned holdings, labor, and the local black community.[96] The fund would provide the following forms of assistance:

1. college or vocational training scholarships for employees and members of their immediate families;
2. grants to primary and secondary schools to improve teaching and resources;
3. grants to health clinics;
4. subsidized housing loans and counseling to assist employees in purchasing homes;
5. assistance to businesses; and
6. development of recreational facilities.[97]

H.R. 5160 was referred to the Foreign Affairs Committee but was not the subject of legislative action in the 100th Congress (1987-88).[98]

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93. *Id.* § 208(b).

94. The South African Family Advancement Act of 1988, H.R. 5160, 100th Cong., 2d Sess. (1988).

95. *Id.* § 3, at 3.

96. *Id.* at 4.

97. *Id.* at 3.

98. *See Id.* (indicating H.R. 5160 was referred to House Committee on Foreign Affairs).

### B. *MacBride Principles*

The Northern Ireland Fair Employment Practices Act, S. 229, was introduced by Senator Alfonse D'Amato (R-NY) in January 1987.[99] A companion bill, H.R. 722, was introduced by Representative Hamilton Fish, Jr. (R-NY) and twenty-six cosponsors.[100] The proposals were referred to the Finance Committee and the Committees on Foreign Affairs and Ways and Means, respectively.[101] Neither bill was the subject of hearings or legislative action during the 100th Congress (1987-1988).[102]

Senator D'Amato's bill would ban U.S. imports from Northern Ireland unless documentation is introduced at the time of entry demonstrating that the enterprise that manufactured or assembled the articles being imported was in compliance at the time of manufacturing with the MacBride Principles.[103] Each U.S. person who either "(i) has a branch or office in Northern Ireland, or (ii) controls a corporation, partnership, or other enterprise in Northern Ireland in which more than twenty people are employed," would have to be in compliance with the MacBride Principles and the Fair Employment Act of Northern Ireland.[104]

U.S. entities operating in Northern Ireland who meet the requirements of the Act would be required to submit an annual report to the Secretary of Commerce showing compliance with the MacBride Principles.[105] The requirements could be waived with respect to individual U.S. entities by the President on national security grounds, subject to disapproval by the Congress via a joint resolution.[106]

Senator D'Amato and Congressman Fish reintroduced the Northern Ireland Fair Employment Practices Act in 1989,[107]

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99. The Northern Ireland Fair Employment Practices Act, S. 229, 100th Cong., 1st Sess. (1987).

100. The Northern Ireland Fair Employment Practices Act, H.R. 722, 100th Cong., 1st Sess. (1987).

101. S. 229, *supra* note 99, at 1; H.R. 722, *supra* note 100, at 1.

102. *See* S. 1287, 101st Cong., 1st Sess. (1989) (indicating that S. 229 was reintroduced in 101st Congress); H.R. 725, 101st Cong., 1st Sess. (1989) (indicating that H.R. 722 was reintroduced in 101st Congress).

103. S. 229, *supra* note 99.

104. *Id.* § 4, at 3-4.

105. *Id.* at 4.

106. *Id.* § 6, at 6-7.

107. S. 1287, *supra* note 102; H.R. 725, *supra* note 102.

1991,[108] and 1993.[109] As with the earlier proposals, their draft bills were referred to the appropriate committees of Congress but were not the subject of any legislative action during the 101st (1989-90) and 102nd (1991-92) Congresses or to date in the 103rd (1993-94) Congress.[110]

A different approach to codify the MacBride Principles was set out in a bill introduced by Senator Frank Lautenberg (D-NJ) in 1989.[111] Unlike the D'Amato-Fish proposals, that attempted to encourage adherence to the MacBride Principles by U.S. corporations operating in Northern Ireland via an import ban, the Lautenberg proposal would accomplish the same objective by restricting the flow of funds to U.S. corporations that were not adhering to the MacBride Principles.[112]

Senator Lautenberg's would require the Secretary of the Treasury to conduct a study "to determine the extent to which the assets of any Federal pension or annuity fund are invested in . . . U.S. corporation[s] or their subsidiar[ies]" doing business in Northern Ireland and monitor the compliance of such corporations with the MacBride Principles.[113] Annually, the Secretary of the Treasury would submit a report to the Congress indicating the results of the study and of the monitoring.[114] For those corporations found not to be in compliance, the Executive Director of the Federal Retirement Thrift Investment Board would be directed, "when necessary, appropriate, and consistent with prudent standards for fiduciary practice, [to] initiate and support shareholder petitions or initiatives requiring adherence" to the MacBride Principles.[115] The Lautenberg bill was referred to the Senate Governmental Affairs Committee, but did not receive further legislative action during the 101st Congress.[116]

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108. S. 449, 102d Cong., 1st Sess. (1991); H.R. 856, 102d Cong., 1st Sess. (1991).

109. S. 603, 103d Cong., 1st Sess. (1993); H.R. 672, 103d Cong., 1st Sess. (1993).

110. S. 1287, Bill Tracking, *available in* LEXIS, Legis Library, BLT101 File; H.R. 725, Bill Tracking, *available in* LEXIS, Legis Library, BLT101 File; S.449, Bill Tracking, *available in* LEXIS, Legis Library, BLT102 File; H.R. 856, Bill Tracking, *available in* LEXIS, Legis Library, BLT102 File; S. 603, Bill Tracking, *available in* LEXIS, Legis Library, BLTRCK File; H.R. 672, Bill Tracking, *available in* LEXIS, Legis Library, BLTRCK File.

111. S. 758, 101st Cong., 1st Sess. (1989).

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. S. 758, Bill Tracking, *available in* LEXIS, Legis Library, BLT101 File.

A third approach to codify the MacBride Principles was incorporated in H.R. 87, introduced by Representative Eliot L. Engel (D-NY) in January 1991.[117] An identical bill was re-introduced in February 1993.[118] Representative Engel's bill would prohibit entities employing twenty or more workers in Northern Ireland and Ireland from receiving financial support from the American contribution to the International Fund for Ireland[119] unless they complied with the MacBride Principles.[120] The bills were referred to the House Foreign Affairs Committee but were not subject to any further legislative activity during the 102nd Congress or to date in the 103rd Congress.[121]

### C. *Slepak Principles*

In May 1989, legislation was introduced in the U.S. Congress to implement the Slepak Principles. The Slepak Principles Act, S. 1018, was introduced by Senator John Heinz (R-PA).[122] Representative John Miller (R-WA) introduced an identical House bill.[123]

The Slepak Principles Act expresses the sentiments of Congress that U.S. corporations involved in industrial cooperation projects, especially joint ventures, in the Soviet Union and the Baltic States should comply with a series of principles structured closely after the Slepak Principles, particularly those related to the rights of workers.[124] Thus, U.S. corporations operating in the Soviet Union and the Baltic States should undertake:

1. to ensure that they do not use goods, facilities, or services when there is reason to believe that these goods, facilities,

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117. H.R. 87, 102d Cong., 1st Sess. (1991).

118. H.R. 712, 103d Cong., 1st Sess. (1993).

119. *See* The Anglo-Irish Agreement Support Act of 1986, Pub. L. No. 99-415, 100 Stat. 997 (1986) (governing U.S. contributions to International Fund for Ireland). The International Fund for Ireland is the international fund for economic development projects in Northern Ireland and Ireland. *See* Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Ireland, Nov. 15, 1985, U.K.-Ir., art. 10, *reprinted in* 24 I.L.M. 1582, 1588 (1985). The overall objectives of the fund are to promote economic and social advancement and to encourage contact, dialogue, and reconciliation between nationalists and unionists throughout Ireland and Northern Ireland. *Id.*

120. H.R. 87, *supra* note 117.

121. H.R. 87, Bill Tracking, *available in* LEXIS, Legis Library, BLT102 File.

122. S. 1018, 101st Cong., 1st Sess. (1989).

123. H.R. 2366, 101st Cong., 1st Sess. (1989).

124. S. 1018, *supra* note 122.

or services were produced, wholly or in part, with the utilization of forced labor;

2. to ensure, with respect to the Soviet workers employed in the industrial cooperation project, that a worker's political or religious views, sex, ethnic, or social background, or engagement in activities promoting human rights or other activities protected under the Helsinki Final Act and the Madrid and Vienna Concluding Documents, will not affect, or be allowed to affect, the status or terms of his or her employment;
3. to decline participation in an industrial cooperation project involving the use of a structure currently or previously serving as a religious institution or a place of worship;
4. to ensure that methods of production used in the industrial cooperation project meet international standards for occupational safety and do not pose a threat or danger to workers or surrounding communities;
5. to refrain from using methods of production that pose unnecessary environmental risks to the surrounding environment, including nearby populations and their property, and to seek to consult with concerned populations regarding protection of the local environment; and
6. to seek out private cooperatives as potential partners or participants in commercial activities, when that is commercially feasible and allowed by relevant Soviet law.[125]

S. 1018 would have required the U.S. Secretary of State to submit to the Congress an annual report "describing the extent to which [U.S.] industrial cooperation projects, including joint ventures, located in the Soviet Union and the Baltic States" adhered to the six principles outlined in the legislation.[126] The report would also have been made available to the secretariat and the members of the Organization for Economic Cooperation and Development ("OECD").[127] The Secretary of State was

125. *Id.* § 3, at 4-5.

126. *Id.* § 4, at 5-6.

127. *Id.* Convention on the Organization for Economic Cooperation and Development, Dec. 14, 1960, 12 U.S.T. 1728, T.I.A.S. No. 4891, 888 U.N.T.S. 179 [hereinafter OECD]. Signatories of the Convention and founding members of the organization are Austria, Belgium, Canada, Denmark, France, the Federal Republic of Germany, Greece, Iceland, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. 12 U.S.T. at 1730, 888 U.N.T.S. at 181. Subsequently, Japan, Finland, Australia, and New Zealand also acceded to the Convention. *See* KIYOSHI KOJIMA & TERUTOMO OZAWA, DEVELOPMENT CENTER OF THE ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT,

directed to encourage OECD members to promote among their companies the adoption of similar principles for projects located in the Soviet Union and the Baltic States.[128] Finally, the legislation would have directed the U.S. Secretary of Commerce and other Administration officials to inform U.S. companies doing business in the former Soviet Union or interested in doing business there about the provisions of the Slepak Principles Act, and to disseminate the annual reports to the Congress among these companies.[129]

Congressional hearings on the legislation to codify the Slepak Principles were scheduled in the fall of 1989.[130] In September, the Foreign Relations Committee held hearings on S. 1018.[131] A hearing on H.R. 2366 was scheduled for December 1989, but not held.[132] With the dissolution of the Soviet Union, legislation to codify the Slepak Principles has not been reintroduced.

### D. *Miller Principles*

Representative Miller introduced H.R. 1571, a bill "to encourage liberalization inside the People's Republic of China and Tibet" in March 1991.[133] As noted above, the Act would have created a set of nine principles governing the conduct of industrial cooperation projects of U.S. nationals in those two regions.[134] It would also have encouraged other nations with membership in the OECD to promote similar principles among its nationals in industrial cooperation projects with the PRC and Tibet.[135]

The bill would have required U.S. nationals conducting an industrial cooperation project (defined as a for-profit activity

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JAPAN'S GENERAL TRADING COMPANIES: MERCHANTS OF ECONOMIC DEVELOPMENT, at Copyright page (1984). Yugoslavia takes part in some OECD activities. *Id.*

128. S. 1018, § 4(b) *supra* note 122 at 5.

129. *Id.* § 4(c), at 5-6.

130. Pornice, *supra* note 42, at 63.

131. *International Trade, Administration Opposes Rights Bill for U.S. Firms Operating in U.S.S.R.*, Daily Rep. For Exec. (BNA), at A-6 (Sept. 15, 1989).

132. *See* Pornice, *supra* note 42, at 63 (indicating that hearings before House Foreign Affairs Committee were planned); *see also*, H.R. 2366, Bill Tracking, *available in* LEXIS, Legis Library, BLT101 File (indicating no hearings were held on H.R 2366).

133. H.R. 1571, *supra* note 51 at 1.

134. *Id.* § 1(b), at 1-4.

135. *Id.* § 1(c), at 4.

employing more than twenty-five individuals or having assets greater than U.S.$25,000) in the PRC or Tibet to register with the U.S. Secretary of State six months after the bill's enactment.[136] The U.S. national would have also been required to indicate whether he or she agrees to implement the nine principles stated in the legislation.[137] Subsequently, U.S. nationals would have been required to submit annual reports to the U.S. Secretary of State regarding adherence to the principles;[138] the latter would have been required to issue an annual report on adherence to the principles, and to submit it to the Congress and to the Secretariat of the OECD.[139]

Departments and agencies of the United States may only intercede with a foreign government or foreign national regarding export marketing activity in the PRC or Tibet on behalf of a U.S. national subject to the legislation if that national adheres to the principles.[140] Such intercedence includes any contact by an officer or employee of the United States with officials of any foreign government or foreign national involving or contemplating any effort to assist in selling a good, service, or technology in the PRC and Tibet.[141] U.S. nationals who have not agreed to implement the principles, are found not to be taking good faith measures to implement them, or have not complied with the reporting requirements, would be deemed not to be adhering to the principles.

## III. *CODES OF CONDUCT AND THE PROMOTION OF WORKER RIGHTS*

More than fifteen years and eight years, respectively, have elapsed since the Sullivan and MacBride Principles were issued. How have U.S. corporations operating in South Africa and Northern Ireland behaved with regard to the Principles? More importantly, what does past experience with the Sullivan and MacBride Principles suggest about the extent to which exemplary behavior by U.S. corporations operating abroad, for example through compliance with a code of conduct, can bring about

136. *Id.* § 2(a), at 5.
137. *Id.*
138. *Id.* § 3(a), at 5.
139. *Id.* § 3(c), at 6.
140. *Id.* § 4(a), at 6.
141. *Id.* § 4(b), at 6-7.

significant positive changes in worker rights in the host countries?

### A. *Adherence to the Codes of Conduct*

#### 1. Sullivan Principles

Voluntary application of the Sullivan Principles[142] is monitored by an independent corporation, Arthur D. Little, Inc., for the Industry Support Unit, an organization of companies subscribing to the Statement of Principles for South Africa.[143] Signatories to the principles are required to submit an annual report on their South African operations to Arthur D. Little; a reporting form is filed for each operation in which: (1) a signatory owns more than fifty percent of the equity, or exercises control; and (2) there are twenty-five or more employees.[144]

Individual signatory performance is evaluated following a two-step process: signatories are required to meet a number of "basic requirements" pertaining to Principles 1-3 (nonsegregation, equal and fair employment practices, equal pay for equal or comparable work);[145] and are also evaluated in each of four action areas related to Principles 4-7 (education, training and advancement, community development, and social justice).[146] In the most recent report, adherence to Principles 1-3 was measured through eleven individual basic elements; reporting units that met all eleven basic requirements were additionally evaluated on each of the four basic action areas corresponding to

142. *See* James Buchan, *Sullivan Calls For Boycott of South Africa*, FIN. TIMES, June 4, 1987, at 6. In June 1987 Reverend Sullivan withdrew his support for the fair labor principles that he developed and that carry his name. Id. Despite this action by Reverend Sullivan, companies that had signed the Sullivan Principles continued to adhere to them. ARTHUR D. LITTLE, INC., SIXTEENTH REPORT ON THE SIGNATORY COMPANIES TO THE STATEMENT OF PRINCIPLES FOR SOUTH AFRICA (Nov. 20, 1992) (monitoring companies still adhering to Sullivan Principles) [hereinafter SIXTEENTH REPORT ON THE SIGNATORY COMPANIES TO THE STATEMENT OF PRINCIPLES FOR SOUTH AFRICA]. To reflect this action, what were referred to as the "Sullivan Principles" are technically now known as the "Statement of Principles for South Africa" or the "Statement of Principles." *Id.* In what follows I have continued to refer to them as the "Sullivan Principles" to prevent unnecessary confusion.

143. *Id.*

144. *Id.* at 28.

145. *See supra* note 16 and accompanying text (noting original six elements of Sullivan Principles).

146. *See supra* notes 16-19 and accompanying text (discussing original six elements of Sullivan Principles and evolution of seventh requirement of "social justice").

Principles 4-7. The rating methodology in the most recent report is reproduced at Exhibit A-1.[147]

Reporting signatories are assigned one of three ratings:

I Making Good Progress,
II Making Progress, or
III Needs to Become More Active.[148]

A signatory who fails one or more of the eleven basic requirements pertaining to Principles 1-3 automatically receives a failing rating (IIIB).[149] A category IIIA rating means that a company has met the basic requirements but has failed to make sufficient progress with regard to Principles 4-7 to receive a category I or II rating.[150]

The number of U.S. companies operating in South Africa, and the number of signatories to the Statement of Principles, have declined sharply over the years as U.S. corporations have followed a policy of disinvestment in that country. The Sixteenth Report of the signatory companies, covering the period July 1, 1991 to June 30, 1992, was based on the performance of fifty signatory companies controlling fifty-two subsidiaries and employing 16,387 workers in South Africa.[151] By comparison, the Tenth Report, covering the period July 1, 1986 to June 30, 1987, was based on signatories controlling 178 subsidiaries and employing 62,400 workers.[152] In the time period covered by the Sixteenth Report, seventy-three percent of the reporting units achieved a category I rating (making good progress), nineteen percent category II (making progress), and eight percent category IIIA (needs to become more active); no signatory received a

147. SIXTEENTH REPORT ON THE SIGNATORY COMPANIES TO THE STATEMENT OF PRINCIPLES FOR SOUTH AFRICA, *supra* note 142, at 36-37.

148. *Id.* at 28.

149. *Id.*

150. *Id.*

151. *Id.*

152. ARTHUR D. LITTLE, INC., FOURTEENTH REPORT ON THE SIGNATORY COMPANIES TO THE STATEMENT OF PRINCIPLES FOR SOUTH AFRICA at 5 (Nov. 9, 1989). In early 1986, 192 U.S. companies, a majority of U.S. firms operating in South Africa at the time, subscribed to the Sullivan Principles. *See* Michael H. Armacost, *Promoting Positive Change in Southern Africa*, 86 DEPT. ST. BULL. at 53 (Apr. 1986) (discussing U.S. concerns in South Africa); Karen Paul, *The Inadequacy of Sullivan Reporting*, 57 BUS. & SOC'Y REV. 61 (Spring 1986) (noting that there were 275 U.S. companies operating in South Africa in 1985); D. Reid Weldon, Jr., *The Evolution of Sullivan Principle Compliance*, 57 BUS. & SOC'Y REV. 56 (Spring 1986) (reporting that 200 out of 275 U.S. companies operating in South Africa, presumably in late 1985-early 1986, subscribed to the Sullivan Principles).

failing (category IIIB) rating.[153]

Independently of the monitoring and reporting by Arthur D. Little, Inc. for the Industry Support Unit, the U.S. Department of State monitors adherence with the Fair Labor Principles set forth in Executive Order 12532 and in the Comprehensive Anti-Apartheid Act of 1986.[154] As noted above, all nationals of the United States who employ more than twenty-five persons in South Africa must take the necessary steps to ensure that the fair labor principles incorporated in the statute (the Sullivan Principles) are implemented.[155] U.S. companies subject to the statutory requirements must provide an annual report to the U.S. Department of State describing their implementation of the fair labor principles.[156] However, U.S. companies who are signatories to the Statement of Principles for South Africa and bona fide participants in its implementation and reporting system are exempt from submitting this annual report.[157] The rationale for this exemption is that "[t]he requirements of the voluntary code exceed those of the E.O. 12532 in certain respects, and the voluntary nature of the code has set an example for all firms in South Africa."[158] That is, U.S. companies that report to the U.S. Department of State are those that meet the statutory requirements regarding size and either (i) have chosen not to subscribe to the voluntary code and its implementation and reporting system, or (ii) participate in the voluntary system and have achieved a Category IIIB standing.[159]

The U.S. Department of State's Office of Southern African

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153. SIXTEENTH REPORT ON THE SIGNATORY COMPANIES TO THE STATEMENT OF PRINCIPLES FOR SOUTH AFRICA, *supra* note 142, at 29.

154. *See* 22 C.F.R. § 63.1 (1992).

155. *See supra* notes 85-88 and accompanying text (discussing U.S. statutory implementation of Sullivan Principles).

156. *See* 22 C.F.R. § 63.1 (1992). The report must be filed with the U.S. Department of State by February 15 of each calendar year. *Id.*

157. *See* 22 C.F.R. § 63.1(d)(1) (1992). Bona fide participation in the voluntary reporting and implementing system means: (1) subscribing to the Statement of Principles for South Africa; (2) filing the annual report required by the Signatory Companies monitoring mechanism; and (3) receiving a Category I, II, or IIIA standing. *Id.* U.S. companies that qualify as bona fide participants are required to file an annual letter with the U.S. Department of State certifying their status. *Id.*

158. 22 C.F.R. § 60.1(b) (1992).

159. *See* 22 C.F.R. § 63.1(c). The requirement that companies receiving a Category IIIB rating file a questionnaire with the U.S. Department of State was imposed in 1989. South Africa and Fair Labor Standards, 54 Fed. Reg. 31,815-16 (Aug. 2, 1989).

Affairs, within the Bureau of African Affairs, is required to review each report pursuant to compliance with the fair labor principles and to determine whether the reporting company is adhering to such principles.[160] The Office of Southern African Affairs is also required to produce an annual report regarding implementation of the fair labor principles and to make it available to other U.S. Government agencies and the appropriate committees of the U.S. Congress.[161]

The most recent U.S. Department of State report is for calendar year 1991.[162] The report covered twenty-six firms (the same number as in 1990), compared to twenty-seven in 1989, twenty-nine in 1988, thirty-one in 1987, and twenty-nine in 1986.[163] The assessment follows a rating system very similar to that in the Arthur D. Little reports. The Department awards reporting firms one of two ratings: "making satisfactory progress" in implementing the fair labor standards, or "needs to become more active."[164] Within the second rating, firms are further divided into those that meet a set of basic requirements and those that do not.[165] In the report for the calendar year 1991, the U.S. Department of State judged that ten firms (thirty-eight percent) were making satisfactory progress in implementing the fair labor standards and one firm (four percent) was judged to have failed to meet the basic requirements of the program.[166] The remaining fifteen firms (fifty-eight percent) were judged to have met the basic requirements but not to have been sufficiently active in the areas of employee training and advancement and in efforts to improve the quality of life outside the workplace, and there-

160. 22 C.F.R. § 63.3(a)(2) (1992).

161. 22 C.F.R. § 64.2 (1992).

162. U.S. DEPT. OF STATE, BUREAU OF AFRICAN AFFAIRS, OFFICE OF SOUTHERN AFRICAN AFFAIRS, SIXTH ANNUAL REPORT-SOUTH AFRICA AND FAIR LABOR STANDARDS-FOR CALENDAR YEAR 1991 (Jan. 1993) [hereinafter U.S. DEPT. OF STATE, SIXTH ANNUAL REPORT]. The description of the survey methodology is based on this issue of the report. *Id.* It should be noted that in March 1990, the regulations implementing the Comprehensive Anti-Apartheid Act were amended to remove their applicability to Namibia, since that country became independent on March 21, 1990. Prior to that time, Namibia was a non-self governing territory under the United Nations Charter under the administration of South Africa. Thus prior to the change, the regulations pursuant to the Comprehensive Anti-Apartheid Act were applicable to U.S. companies employing 25 or more workers in Namibia. *See* 55 Fed. Reg. 9722-23 (Mar. 15, 1990).

163. U.S. DEPT. OF STATE, SIXTH ANNUAL REPORT, *supra* note 162, at 3.

164. *Id.* at 11.

165. *Id.*

166. *Id.* at 15.

fore were place on probation.[167]

It should be noted that there are substantive differences between the reports prepared by Arthur D. Little (for the Industry Support Unit and the signatories to the Statement of Principles) and the U.S. Department of State:

- Signature and adherence to the (Sullivan) Statement of Principles is strictly voluntary; compliance with the Fair Labor Principles (the subject of the U.S. Department of State report) is compulsory for U.S. firms employing more than 25 employees in South Africa.
- There is no penalty for failure to adhere to the Sullivan Principles other than moral censure; failure to meet the compulsory Fair Labor Principles carries a tangible penalty (denial of export marketing support from the U.S. Government).[168]
- The Sullivan Principles have been amplified over time; the Fair Labor Principles are based on the original six Sullivan Principles (prior to the 1984 amplification) and therefore do not include the seventh (social justice) principle.

### 2. MacBride Principles

To date, proponents of the MacBride Principles have had limited success in securing signature of the principles by U.S. corporations operating in Northern Ireland. Although no U.S.-owned corporations have finally adopted the MacBride Principles, sixteen companies have agreed to implement them "to the extent they lawfully can do so."[169] These corporate decisions resulted from negotiations with the City of New York Comptroller,

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167. *Id.* at 15.

168. *See* 22 C.F.R. § 65.1 (1992). According to the regulations, no department or agency of the United States may intercede with any foreign government or foreign national regarding export marketing in any country of any U.S. national or entity whose operations in South Africa do not adhere to the fair labor principles; "'intercede with any foreign government regarding export marketing activity' means any contact by U.S. Government personnel with officials of any foreign government or foreign national which involves or contemplates any effort to assist in selling a good, service, or technology in a foreign market." *Id.*

169. *See U.S. Corporate Activities in Northern Ireland*, SOCIAL ISSUES SERVICE, PROXY ISSUES REPORT, 1992 BACKGROUND REPORT A at A22 (Investor Responsibility Res. Center, Wash., D.C., Dec. 23, 1991). These U.S. companies are: Alexander & Alexander, AM International, American Home Products, Data General, Digital Equipment, Federal Express, Fruit of the Loom, Honeywell, Nacco Industries, NYNEX, Oneida, Pitney Bowes, Procter & Gamble, Sonoco Products, Teleflex, and Texaco. *Id.* at A23. A Northern Ireland affiliate of Sara Lee, employing seven workers in Northern Ireland,

who is required by four New York City pension funds "to promote implementation of the MacBride Principles of fair employment by Northern Ireland subsidiaries of companies in which these funds have holdings."[170] Proponents of the MacBride Principles are continuing to encourage U.S. corporations to sign the principles using two approaches: shareholder resolutions and legislation at the state and local levels.[171]

Since 1985, MacBride Principles resolutions have come up at annual meetings of U.S. corporations operating in Northern Ireland. Different versions of "Northern Ireland Resolutions" have been prepared and presented at shareholder meetings, ranging from a call for U.S. companies to review and report on their operations in Northern Ireland to the actual signing of the MacBride Principles. The degree of shareholder support for these resolutions has increased gradually over time, but is still too low to compel management to sign the principles. Pension funds and church groups have been very influential in the shareholder campaign in favor of the MacBride Principles.

The boards of trustees of these two New York City pension funds (the New York City Employees' Retirement System and the New York City Teachers' Retirement System) adopted resolutions in 1985 directing the New York City Comptroller to survey U.S. companies operating in Northern Ireland with regard to the composition of their work forces, the history of their treatment of minority employees, their adherence to existing fair employment guidelines, and their willingness to adopt the MacBride Principles.[172] They also instructed the Comptroller to encourage companies in the retirement system's portfolios to adopt and implement the MacBride Principles and "where necessary and appropriate, to initiate or support shareholder initiatives requiring such corporate action."[173] Identical resolutions were adopted by the Police Pension Fund in 1988 and the Fire Department Pension Fund in 1989.[174]

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formally adopted the MacBride Principles in 1991. *Id.* However, Sara Lee subsequently sold the subsidiary. *Id.*

170. CITY OF NEW YORK, OFFICE OF THE COMPTROLLER, THE EFFECT OF THE MACBRIDE PRINCIPLES ON EMPLOYMENT DISCRIMINATION AGAINST CATHOLICS IN NORTHERN IRELAND 1 (Nov. 1990).

171. *See* BOOTH & BERTSCH, *supra* note 31, at 60-73.

172. *Id.* at 66.

173. *Id.*

174. CITY OF NEW YORK, *supra* note 170, at 4.

Following the New York City example, during 1985-1988, as many as ten states and twenty-four local governments passed legislation requiring that public pension funds and investments focus attention (e.g., review the workplace practices of portfolio companies) on the MacBride Principles. Furthermore, in a few cases legislation has been tougher, requiring complete divestment. The momentum of the campaign slowed after 1988, with only two states adopting binding MacBride laws in 1989, and none doing so in 1990, although the legislatures of two states did adopt fair employment resolutions in the latter year.[175] As of October 1992, thirteen states and the District of Columbia had passed MacBride Principles legislation, and three others had endorsed the Principles. Similarly, more than three dozen cities and counties had passed MacBride Principles legislation or were on record supporting the Principles.[176]

### B. *Codes of Conduct and Worker Rights*

Typically, U.S.-owned corporations represent only a small fraction of national employment and output in the host countries in which they operate and, therefore, their actions do not materially affect a significant number of workers. Direct employment by U.S.-owned corporations is probably more extensive relative to total employment in Northern Ireland than in South Africa, but even there the U.S. presence is limited:

- U.S. companies are reportedly the largest foreign investors in Northern Ireland and constitute a significant part of the industrial base; the roughly 10,000 employees of U.S. companies represent about 10 percent of manufacturing jobs.[177]
- It has been estimated that in the early 1980s, approximately 400 U.S.-controlled corporations operated in South Africa, employing about 107,000 workers or less than 1 percent of the labor force.[178]

To be sure, exemplary behavior by U.S. companies can have some positive impact on the well-being of foreign workers. The

175. *U.S. Corporate Activity in Northern Ireland*, *supra* note 169, at A26-A27.

176. IRISH NATIONAL CAUCUS, SUPPORT FOR THE MACBRIDE PRINCIPLES [AS OF OCTOBER 1992] (1992).

177. BOOTH & BERTSCH, *supra* note 31, at 1.

178. *The Sullivan Principles After Six Years: Compliance and Noncompliance*, 44 BUS. & SOC'Y REV. 29 (1983); Sullivan, *Agents for Change*, *supra* note 11, at 429.

150 or so U.S.-controlled corporations that adhered to the Sullivan Principles through 1983, which accounted for about ninety percent of all black workers employed by U.S. firms in South Africa, brought about tangible improvements for black South African workers:

- more than 130 companies, or about 95 percent of all signatories, reported the end of discrimination in all factories and on all company property;
- over 100 companies were providing scholarships to blacks and nonwhites for advanced training;
- the number of black and nonwhite managers and supervisors in U.S. companies rose from a handful in the 1970s to over 3,000, representing 30 percent of all management and supervisory positions in signatory companies;
- U.S. companies "adopted" more than 150 schools, providing better facilities, equipment, and instruction to thousands of students, and assisted hundreds of black enterprises through loans, purchases, training, and guidance;
- blacks and nonwhites were placed in positions within U.S.-controlled corporations in which they supervised white employees;[179] and
- these companies spent more than U.S.$158 million in the areas of health, education, community development, training, housing, and black entrepreneurship.[180]

Probably more significant is the demonstration effect that such behavior can bring about, and its potential for strengthening domestic political forces that favor worker rights improvements. Thus, according to Reverend Sullivan,

> The Statement of Principles and the programs developed in accordance with them provide a conduit through which companies with subsidiaries in South Africa may exercise moral leadership by using their resources, as one means among many, to work toward the peaceful elimination of apartheid and to improve the quality of life for South Africa's black and white population. I reason that if all multinational companies, led by U.S. companies, end discrimination in their plants and businesses, they will impart a remarkable, progressive influence on the country.[181]

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179. Sullivan, *Agents for Change*, *supra* note 11, at 432-33.

180. Sal G. Marzullo, *Corporations: Catalysts for Change*, 57 BUS. & SOC'Y REV. 51 (1986).

181. Marzullo, *supra* note 180, at 51.

Ample evidence exists to support Sullivan's reasoning. First, the Sullivan Principles spawned a series of similar codes of conduct by other nations[182] covering investment in South Africa by their nationals and even by South African corporations (the Urban Foundation Code, the Cape Code). In 1980, ten large South African companies employing more than 900,000 workers, led by the Barlow Rand Company, established a consortium to implement the intent of the Sullivan Principles.[183]

Second, in the view of one analyst,

> the Sullivan Principles adopted in 1976, were a major influence in the South African government's creation of the Wiehahn and Riekert Commissions. The Wiehahn Commission's recommendation that black workers be included in the definition of "employee" in the then Industrial Conciliation Act was the catalyst for the spectacular growth of a black trade union movement and consequential changes in South African industrial relations.[184]

Thus, in 1989, the two confederations of black trade unions, the Congress of South African Trade Unions ("COSATU") and the National Council of Trade Unions ("NACTU"), claimed paid membership of 900,000 and 150,000, respectively.[185] More recent data put COSATU's membership at 1.2 million workers,[186] and the share of union members who are black at over fifty percent, or over 1.5 million workers.[187]

Similarly, there is evidence that the MacBride Principles have had some favorable effect on curbing religious discrimina-

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182. *See* D. Reid Weedon, Jr., *The Evolution of Sullivan Principle Compliance*, 57 BUS. & SOC'Y REV. 56 (1986) (noting codes similar to Sullivan Principles, including those of South African organizations and British Code, European Economic Community standard); Duncan C. Campbell, *U.S. Firms and Black Labor in South Africa: Creating a Structure for Change*, 7 J. LAB. RES. 3 (1986) (discussing influence of trade unions in enforcing worker's rights codes and protection in South Africa).

183. Sullivan, *Agents for Change*, *supra* note 11, at 430-34; *see* John H. Chettle, *The Law and Policy of Divestment of South African Stock*, 15 L. & POL'Y INT'L BUS. 466 (1983); Brian J. F. Clark, *United States Labor Practices in South Africa: Will a Mandatory Fair Employment Code Succeed Where the Sullivan Principles Have Failed?*, 7 FORD. INT'L L. J. 362 (1984); A. M. Roshalt, *Can Business Lead the Way to Reform?*, 57 BUS. & SOC'Y REV. 38 (1986).

184. Duncan C. Campbell, *supra* note 182, at 3. *See* Jerome T. Barrett & Anne Finbarr Mullins, *South African Trade Unions: A Historical Account, 1970-90*, 113 MONTHLY LAB. REV. 25 (Oct. 1990).

185. AMERICAN EMBASSY JOHANNESBURG, U.S. DEPT. OF LABOR, FOREIGN LABOR TRENDS—SOUTH AFRICA 1989 at 1 (1989).

186. *Id.* at 3.

187. U.S. DEPT. OF STATE, *supra* note 54, at 252.

tion in employment and promoting equitable job opportunities in Northern Ireland. According to observers, the international attention focused on Northern Ireland by the MacBride Principles campaign was instrumental in the passage by the British Parliament in 1989 of the Fair Employment (Northern Ireland) Act,[188] "since the government hoped that the new law would counter the MacBride campaign in the United States."[189] The U.S. Department of State's *Country Reports on Human Rights Practices for 1992* describes the Northern Ireland Fair Employment Act of 1989 and its operation as follows:

> [It] is intended to end employment discrimination and is aimed at outlawing even unintentional or "indirect" discrimination. All public sector employers and private firms with 25 or more workers must register with the Fair Employment Commission, monitor the religious composition of their work force, supply annual monitoring reports to the Commission, and review their overall employment practices at least once every 3 years. These obligations were extended to small firms (employing between 11 and 25 workers) beginning in 1992. While the Fair Employment Act has been criticized for not establishing sufficiently rigorous targets and timetables, in general it has been praised by leaders of the Catholic community. Employers who fail to comply face criminal penalties and loss of government contracts. A Fair Employment Tribunal has been established to adjudicate individual cases of alleged discrimination. In 1992, for example, tribunals found five local councils, including that of Belfast, guilty of discrimination against Catholic job applicants, and directed payment of compensation. Although most companies are in compliance with the legislation, fines for violations have been imposed on some firms.[190]

According to statistics compiled by Fair Employment Commission in Belfast, between three and four times as many individuals in Northern Ireland are resorting to the anti-discrimination complaints machinery of the new Fair Employment Act as compared to the previous law, suggesting that there is greater confidence in the new legislation.[191]

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188. BOOTH & BERTSCH, *supra* note 31, at 33.

189. *Id.*

190. U.S. DEPT. OF STATE, *supra* note 54, at 964.

191. Ed Moloney, *MacBride Brings Better Anti-Discrimination Law in Northern Ireland*, IRISH VOICE, Oct. 13, 1992, at 10.

It should be clear, however, that the codes of conduct are not a panacea. Thus, a strong case can be made that the Sullivan Principles, either during the time period when they were strictly voluntary or after codification, had only a marginal impact on improving worker rights in South Africa. In June 1987, Reverend Sullivan withdrew his support from the code of conduct approach and called on U.S. companies doing business in South Africa to take the more drastic step of withdrawing from that country.[192] Reverend Sullivan also requested that the U.S. Government impose a total embargo against South Africa until statutory apartheid was ended and blacks were given a clear commitment for equal political rights.[193] While Reverend Sullivan expressed satisfaction with the contribution the principles named after him had made in improving the conditions of blacks in South Africa and stressed the "notable record" of U.S. business against South African segregation, in his view more drastic actions, such as divestiture and a trade embargo, were justified because "the main pillars of apartheid still remain, and blacks are still denied basic human rights in their own country and are denied the right to vote."[194]

As the U.S. Department of State's *Country Reports on Human Rights Practices for 1992* notes, the Government of South Africa has repealed the broad legal pillars of apartheid, but the majority of South Africans remain disenfranchised.[195] Thus, according to this same source,

> South Africans who are not white continue to face de facto discrimination, restrictions on due process rights, and deprivation caused by generations of social, economic, and other legally enforced inequalities. Positive developments in the area of worker rights continued in 1992, but little, if any, effort was made to address legal and societal discrimination against women.[196]

Opponents of the MacBride Principles argue that the nega-

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192. *See Leon Sullivan's Statement for United States Company Withdrawals from South Africa, and a United States Embargo*, June 3, 1987, at 1 (on file with the *Fordham International Law Journal*).

193. *Id.*

194. *Id.* at 3; *see* Barnaby J. Feder, *Sullivan Asks for End of Business Links with South Africa*, N.Y. TIMES, June 4, 1987, at A1, D6.

195. U.S. DEPT. OF STATE, *supra* note 54, at 241.

196. *Id.*

tive publicity and compliance "hassle" associated with the Principles would encourage companies to leave Northern Ireland and discourage others from locating there, thereby worsening an already serious unemployment situation.[197]

## *CONCLUSION*

The United States is committed to enhancing respect for worker rights around the world. This objective is pursued by the U.S. Government and by the U.S. private sector using a variety of approaches, from information exchanges and technical assistance to moral suasion and trade sanctions. Given the complexity and political sensitivity associated with worker rights issues, no single approach is likely to work in each case. In most circumstances, it makes sense to use a combination of approaches to promote international respect for worker rights; one of these approaches is the business code of conduct.

The experience to date with business codes of conduct to promote fair labor standards is that they can bring tangible benefits to workers directly employed by the U.S. firms. However, though not insignificant, the number of workers directly employed by U.S. firms abroad is relatively small. More significant, and longer lasting, is the leadership or demonstration effect that positive behavior by U.S. companies, via exemplary practices in the context of a code of conduct, can have on other companies and on the legislative process of host countries to improve worker rights.

As one commentator points out, it is a sound business decision for a U.S. corporation to adhere to, or establish, a code of conduct that promotes worker rights abroad. Codes of conduct promoting workers rights on an international level could stave off potential negative publicity and ensure that U.S. corporations do not participate in, or encourage, worker rights violations in foreign countries.[198]

197. *U.S. Corporate Activity in Northern Ireland*, *supra* note 169, at A27.

198. James M. Zimmerman, *Exporting Worker Rights: Multinational Corporations Should Police Foreign Labor Practices*, L.A. DAILY J., Sept. 4, 1992, at 6.