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# Human Rights and Corporate Responsibility, 8 Tulsa. J. Comp. & Int'l L. 1 (2000)

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## **HUMAN RIGHTS AND CORPORATE RESPONSIBILITY**

*Mark E. Wojcik<sup>†</sup>*

Legal issues relating to human rights and corporate responsibility are of interest not only to academics, but also to in-house counsel, other members of the practicing bar, human rights activists who advocate for improved international human rights standards, and government agencies that enforce international trade laws. While the subject of human rights and corporate responsibility may have once been one that could be safely ignored in the past, the street protests against the harmful effects of globalization and the continuing needs of the international business and trade community make it imperative to study seriously the issues of human rights and corporate responsibility.

Such was the mission of a showcase panel on Human Rights, Corporate Responsibility, and Economic Sanctions held at the Spring 2000 Meeting of the American Bar Association Section of International Law and Practice. Speakers included Illinois Congresswoman Jan Schakowsky, customs and international trade law attorney Donna L. Bade, international employment law expert Donald C. Dowling, Jr., human rights litigator Paul Hoffman of California (who was then a co-chair of the International Human Rights Committee), Alya Z. Kayal of the Calvert Group in Maryland (a current co-chair of the Subcommittee on Human Rights and Corporate Responsibility within the International Human Rights Committee), Professor William Mock of The John Marshall Law School in Chicago, Professor Marcella David of the University of Iowa College of Law, Leila Rassekh Milani (who appeared on behalf of the long-time chair of the International Human Rights Committee, Lea Browning of W.E. A.R.E. for Human Rights), and Jerome J. Shestack of Philadelphia (a former President of the American Bar Association and long-time human

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rights advocate). The panel was co-sponsored by an unprecedented number of committees within the ABA Section of International Law and Practice, including the Corporate Counsel Committee, the Customs Law Committee, the Export Controls and Economic Sanctions Committee, the International Employment Law Committee, the International Health Law Committee, the International Human Rights Committee, the International Trade Committee, the Task Force on Women's International Assistance Projects, and the Transnational Legal Practice Committee. To preserve some of the discussion from that panel, and to share information with scholars, attorneys, and activists, the *Tulsa Journal of Comparative & International Law*, by a special arrangement organized by Professor Larry Catá Backer, agreed to publish a selection of papers from that panel.

In her article on *Corporate Responsibility and U.S. Import Regulations Against Forced Labor*, Donna Bade presents a critical analysis of the customs laws and regulations relating to forced labor, followed by a framework of practical advice for importers who are seeking to comply with those regulations while also ensuring that their international business relations promote human rights generally. In the first part of her article, she notes that until recently U.S. law has failed to prohibit the importation of goods produced by child labor. She also notes that a recent amendment to the customs law prohibits only the importation of merchandise produced by "forced or indentured child labor." The failure of our laws to prohibit the importation of goods produced by other forms of child labor should be a focus of activity for human rights groups and children's rights advocates to specifically press before the U.S. Congress. In the second part of her article, she urges a three-part strategy for corporations to use to protect themselves not only from potential legal liability but also from threats of adverse publicity that corporations fear even more than legal sanctions. First, she urges corporations to study the voluntary codes of conduct that were drafted originally for human rights issues only in particular countries and that are now drafted more broadly. Second, she urges corporations to include specific human rights provisions in their contracts, such as prohibitions on the use of forced, indentured, convict, or child labor. Finally, she advises importers to require that manufacturers, suppliers, and subcontractors certify that products were not made with prohibited labor, but warns importers that naïve reliance on certifications will not protect them from legal liabilities or adverse publicity. To implement this final point, she urges corporations to draft contracts that expressly permit monitoring by unannounced inspections and audits throughout the duration of a contract, and enforcement by immediate suspension of shipments or even termination of the contract if the corporation or independent monitors find violations.

In his article on *Corporate Transparency and Human Rights*, Professor William Mock argues that significant contributions can be made to the cause of human rights in the corporate world by lowering information costs to those concerned with human rights and by increasing overall costs for those multinational corporations that ignore or abuse human rights. He urges human rights activists to focus on increasing the structural transparency of corporate conduct, whether it be from legal mandate, social pressure, or economic self-interest. He also invokes the underutilized concept of “separating equilibria” from contemporary game theory to argue that a means must be found to make human rights reporting low-cost to corporations that respect human rights and high-cost to those that do not. In this context, he decries the promulgation of corporate codes of conduct that fail to include provisions for public disclosure of results. He argues that those corporate codes that fail to provide for public reporting effectively allow multinational corporations to ignore with impunity the substantive provisions of international human rights law.

In an unusual challenge to many of the basic assumptions about human rights advocacy, Donald Dowling argues in his article on *The Multinational’s Manifesto on Sweatshops, Trade/Labor Linkage, and Codes of Conduct*, that the poorest countries of the world often exceed the United States in legislating fundamental legal standards for workers and in enforcing those standards. From this surprising—indeed shocking—revelation about many of the false assumptions made about employment laws in other nations, he argues that labor unions and anti-sweatshop activists need to learn more about worker protection laws in other countries before criticizing those countries for weak laws and weak enforcement. First, he begins his article with an analysis of employment traditions and laws in the world’s poorest countries, which finds that many of those laws are actually stronger than those in the United States in areas such as minimum worker protections, rest periods, child labor, forced prison labor, labor unions, and mandatory worker benefits. Second, he argues that any credible linkage of fair standards and international free trade must begin with respect for tough labor laws and enforcement of those laws in developing countries. Finally, he advises multinational corporations to design codes of conduct that factor in poor nations’ anti-sweatshop rules and other labor laws. His goal overall is to help multinational corporations create “viable codes of conduct that work in the real world and that respect the people we all want to protect.”

In the last article, Leila Rassekh Milani argues in *Women’s Rights and Corporate Responsibilities* that most treaties related to workers’ rights or international trade have generally failed to include provisions that would

prohibit discrimination against women in the workplace. She also argues that women have fared no better when nations implement those treaties on a domestic level. For these reasons she argues that the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) offers a valuable framework to promote the human rights of women, both in the text of the treaty itself and in how government parties must report their compliance to the United Nations Committee on the Elimination of Discrimination Against Women. She laments the continuing failure of the United States to ratify the CEDAW, and reminds us that this failure compromises the credibility of the United States to stand as a leader for human rights.

The four articles presented in this issue are obviously only part of the continuing dialog on human rights and corporate responsibility. Other voices need to be given opportunities to speak and be heard. For its part, the International Human Rights Committee of the ABA Section of International Law and Practice welcomes further study and scholarship on the legal issues raised here, as well as the active involvement of lawyers and law students in the programs, policies, and publications of the section, the committee, and its subcommittees.