

GLOBALIZATION AND LABOR STANDARDS (GALS) NEWSLETTER

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ALIEN TORTS CLAIMS ACT

Clapman, Andrew and Jerbi, Scott, "Categories of Corporate Complicity in Human Rights Abuses",
24 Hastings International and Comparative Law Review 339-349 (2001)

Abstract

This article explores corporate complicity in human rights abuses by asking, what responsibility does a multinational company have for monitoring the policies of a host government? The authors explore whether the corporation must refrain from participating, or must it also take affirmative measures to prevent crimes such as forced labor. Reasoning from various judgments by international and domestic tribunals, the authors conclude that while international law clearly prohibits multinational corporations from intentionally participating in an international crime, it is uncertain whether corporations may also be held liable for silent complicity in human rights abuses.

Subjects [Alien Torts Claims Act](#)

CASE STUDIES

Goolsby, John H. (student author), "Is the Garment Industry Trying to Pull the Wool Over Your Eyes? The Need for Open Communication to Promote Labor Rights in China", *19 Law & Inequality Journal of Theory and Practice* 193-227 (2001)

Abstract

This Note addresses the interplay between labor conditions in China, principles of national sovereignty, free-market labor theory, and global human rights. Section II offers a description of five possible approaches for addressing labor violations in China – relying on China's own municipal laws; advancing labor rights through Permanent Normal Trade Relations (PNTR) [formerly Most Favored Nation status]; applying business codes of conduct; implementing intergovernmental organizations' mechanisms for promoting compliance with treaties; and promoting greater awareness among Chinese workers of their own legal rights through communications media such as the Internet. Section III assesses the effectiveness of the various strategies by first looking at their limitations, and then discussing how those limitations might be overcome. The author argues that the unifying theme behind all the strategies for improving workers' rights in China must be a drive for more open communication; specifically, Chinese laborers must have greater access to information about their rights under international standards and the laws of their own country, they must be able to voice grievances effectively, and outsiders must have access to information concerning working conditions in Chinese factories. The Article concludes that a reduction in constraints on communication is necessary to advance each of these goals, and that the Internet holds unique promise for doing so. Thus for China to be open for business without trammeling workers' rights, it must also become open to the free flow of ideas.

Subjects [Case Studies](#), [Labor Rights in General \(Misc.\)](#)

CHILD LABOR

Bullard, Madeleine Grey, "Child Labor Prohibitions are Universal, Binding, and Obligatory Law: The State of Customary International Law Concerning the Unempowered Child Laborer", 24 *Houston Journal of International Law* 139-185 (2001)

Abstract

This article examines child labor as a global phenomenon and argues that international law should be utilized to end its worst manifestations. Part I addresses the extent, causes, and effects of child labor around the globe. Part II discusses the various international treaties and organizations that have been developed to protect children's rights. And Part III argues that the worst forms of child labor are now prohibited under customary international law due to universal condemnation and growing intolerance to the practice. As a result, the author concludes, customary international law could effectively be used to construct a legal strategy to combat child labor globally.

Subjects [Child Labor](#)

CODES OF CONDUCT

Baker, Mark B., "Tightening the Toothless Vise: Codes of Conduct and the American Multinational Enterprise", 20 *Wisconsin International Law Journal* 89-142 (2001)

Abstract

This article addresses the widespread impact multinational corporations have on the world, and summarizes the various ways governments, NGO's, and industry have attempted to minimize corporations' abusive power. Part I illustrates the global power of corporations, how that power has been augmented in recent years, and why groups worldwide have been fighting to bridle that power. Part II surveys the various attempts to regulate corporations that have been implemented and/or proposed by local, national, and international groups. The author finds that although there is surprising commonality among the various "pressure point" proposals, all current forms of regulation remain essentially toothless. Finally, Part III concludes that traditional methods of corporate control remain ineffective, and as a result, new methods of regulation must be proposed and adopted.

Subjects [Codes of Conduct](#)

FORCED LABOR

Ellinikos, Maria (student author), "American MNCs Continue to Profit from the use of Forced and Slave Labor, Begging the Question: Should America take a Cue from Germany?", 35 *Cornell International Law Journal* 1-33 (2001)

Abstract

This note discusses the dismal record of judicial enforcement of international labor rights violations committed by American multinational corporations (MNCs). Part I discusses the current status of American litigation of international labor rights violations under the Alien Tort Claims Act (ATCA) in light of the recent line of cases involving the Unocal Corporation and the pending Saipan labor suits involving U.S.-based retailers. Part II considers the German initiative to compensate victims of Nazi labor rights violations through the Foundation established by the German government, German industry, and several foreign nations. Part III concludes that ATCA is not the best means to combat international labor rights violations committed by American MNCs. The author concludes instead that the U.S. government and American MNCs should develop an initiative similar to the German model. Under such an initiative, American MNCs would accept moral and legal responsibility for their actions and take proactive steps to eliminate the use of forced and slave labor globally.

Subjects [Alien Torts Claims Act](#), [Forced Labor](#)

Inglis, Shelley Case, "Expanding International and National Protections Against Trafficking for Forced Labor Using a Human Rights Framework", 77 *Buffalo Human Rights Law Review* 55 (2001)

Abstract

This article discusses how the current process of redefinition and debate concerning trafficking is broadening the scope of traditional conceptions of trafficking and bringing into focus this phenomenon. Section I assesses the contours of current international legal norms concerning trafficking and forced labor. Section II examines the limitations of existing protections and presents contemporary suggestions from international actors for redefining trafficking. Section III reviews the current proposed solutions initiated by governmental, intergovernmental and non-governmental entities to address this considerable human rights problem. Turning to a discussion of the policy implications emerging from these proposed solutions, Section IV analyzes the most controversial aspects of the trafficking issue and highlights ways to reconceptualize international protections. Finally, Section V concludes with a set of recommendations to effectively combat trafficking within a human rights framework.

Subjects [Forced Labor](#), [Women's Rights](#)

INTERNATIONAL LABOUR ORGANIZATION

Moorman, Yasmin (student author), "Integration of ILO Core Rights Labor Standards into the WTO", 39 *Columbia Journal of Transnational Law* 555-583 (2001)

Abstract

Following the establishment of the International Labor Organization's Declaration on Fundamental Principles and Rights at Work, World Trade Organization scholars and constituents are considering its enforcement through the WTO's Dispute Settlement construct. Robert Howse has proposed that the WTO use Article XX(a) as the legal basis for enforcement of those core labor rights. This Note explores how integrating human rights conceptions of discrimination into the commercial context of the WTO challenges the normal functioning of the WTO and Article XX standards of review and threatens to frustrate the very purposes behind not only WTO-ILO integration, but also the Declaration itself. In Part II the author examines the Howse proposal, which attempts to reach labor rights standards through an organic extension of Article XX beyond its current range of application. The credibility of the proposal relies on an anticipated interpretation of 'public morality' contained in Subsection (a) of the article. While Howse's interpretation appears sound, the author questions whether an interpretive approach to WTO-ILO integration is preferable to legislation. Part III undertakes a review of discrimination jurisprudence in the United States and the European Union to contrast the approach to legal reasoning applied in the commercial and human rights contexts respectively. Part IV continues with a description of the legal definitions and tests associated with discrimination in Article XX case law, on the one hand, and discrimination disputes in international adjudicatory bodies, on the other. Part V argues that Article XX review standards, discrimination jurisprudence tensions, and the customary practice in the WTO and ILO together will both frustrate the purpose of WTO-ILO integration and fail to advance to the nondiscrimination principle embodied in the Declaration. In investigating the limitations of the Howse proposal, the author hopes to engender a pursuit of innovative alternatives. In Part VI, the author identifies some directions for future alternatives that, she claims are capable of overcoming the limitations of Howse's proposal.

Subjects [International Labour Organization \(ILO\)](#), [World Trade Organization \(WTO\)](#)

NAFTA/GATT

Bal, Salman, "International Free Trade Agreements and Human Rights: Reinterpreting Article XX of the GATT", 10 *Minnesota Journal of Global Trade* 62 (2001)

Abstract

This article argues that labor rights are integrally related to international trade, and as a result the two policies should be linked. Part I examines the historical and contemporary connections between international

agreement provisions and human rights. Part II looks at the scope of the General Agreement on Tariffs and Trade (GATT), as incorporated in the World Trade Organization Agreement (WTO)--specifically Article XX. Part III discusses the procedures of Article XX, using the Article's introductory phrase and paragraphs (a), (b), and (d) of Article XX, which constitute the most controversial sections concerning the linkage of human rights and GATT provisions. The section further discusses the application of the paragraphs and the possible inclusion of fundamental labor rights within the Article's scope. Finally, this article argues that through careful application of these paragraphs, the GATT can be used to protect human rights and expand labor protection. **Subjects** [NAFTA/GATT](#), [World Trade Organization \(WTO\)](#)

WOMEN'S RIGHTS

Wiseman, Lesley J., "A Place for 'Maternity' in the Global Workplace: International Case Studies and Recommendations for International Labor Policy", *28 Ohio Northern University Law Review* 195-229 (2001)

Abstract

This article argues for fashioning minimum international "maternity law" standards for women in order to curtail the race to the bottom among developing countries competing for investment. Specifically, the author examines the "maternity laws" of four countries – China, Mexico, Sweden, and the United States – with the goal of determining what type of basic universal standards the international labor community should espouse. The article also explores current international documents governing maternity in the workplace, and juxtaposes them to the laws and experience of the four named nations. It also considers the potential cultural impact of the various standards. Finally, the author offers proposals for improved international guidelines and a discussion of how to fund such an initiative.

Subjects [Women's Rights](#), [Case Studies](#)

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