CORPORATE SOCIAL RESPONSIBILITY (CSR):
MARKET-BASED REMEDIES FOR INTERNATIONAL
HUMAN RIGHTS VIOLATIONS?

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I. INTRODUCTION

The problem of poverty presents the opportunity of labour exploitation. Opportunities to profit out of the misery of others occur in a variety of trades,1 including flowers,2 textiles,3 oil,4 and diamonds.5


4. It is worth noting that “no Western oil company was willing to abandon its access to crude because of political risk in the West. . . . Second, these pressures did not deter new energy investments. . . . ” [While most MNCs stayed away from Nigeria, oil companies increased their investments.” Kenneth Rodman, “Think Globally, Punish Locally”: Nonstate Actors, Multinational Corporations, and Human Rights Sanctions, 12 ETHICS & INT’L AFFAIRS 19, 37 (1988).

Multinational companies can make a killing on their investments—literally.\(^6\) Often, as in the case of conflict diamonds,\(^7\) the source of the commodity resulting from exploitation cannot be traced.\(^8\)

Not only are labour exploitation patterns recurrent in several industries, human rights violations occur throughout the third world in places as diverse as Saipan,\(^9\) Ecuador,\(^10\) Papua New Guinea,\(^11\) Indonesia,\(^12\) Myanmar (formerly Burma),\(^13\) and Nigeria,\(^14\) and often implicate first-world multinational corporations.\(^15\)

The violations of human rights are just as wide-ranging. Indentured servitude,\(^16\) child labour,\(^17\) and slave labour\(^18\) are typical viola-
tions; however, even charges of murder or genocide are sometimes alleged.\textsuperscript{19} Quite simply the fact is that consumers want cheap goods, and third-world labour, particularly child and slave labour, is cheap. Companies exploit third-world labour because exploitation is profitable.\textsuperscript{20}

These facts, and the instability of local governments,\textsuperscript{21} often put corporations doing business in the third world into questionable positions. Usually these ethical problems are resolved quickly by looking to whether profit is hindered or aided.\textsuperscript{22} While we may expect a corporation to behave ethically when it costs nothing, we should realistically expect the corporation to maximise its profits when behaving ethically will reduce profits, even when that means exploiting sweatshop labour, for example.\textsuperscript{23} Partially, this is because the company will become less competitive with other businesses that do not renounce exploitative profits.\textsuperscript{24} The fact that competition, whether among corporations or states, can lead to sub-optimal outcomes explains why law rightly imposes limits on market transactions.\textsuperscript{25}

This Article explores market forces that may contribute to controlling corporate behaviour and the internal regulatory structure of the corporation. The Article particularly looks at nonbinding regulation of the corporation via codes of conduct and guidelines estab-

\begin{itemize}
\item \textsuperscript{18} Maria Ellinikos, \textit{American MNCs Continue to Profit from the Use of Forced and Slave Labor Begging the Question: Should America Take a Cue from Germany?}, 35 COLUM. J.L. \& SOC. PROBS. 1, 1 (2001).
\item \textsuperscript{19} See Beanal v. Freeport-McMoran, Inc., 197 F.3d 161 (5th Cir. 1999).
\item \textsuperscript{20} See Robert J. Liubicic, \textit{Corporate Codes of Conduct and Product Labelling Schemes: The Limits and Possibilities of Promoting International Labour Rights Through Private Initiatives}, 30 LAW \& POL'Y INT'L BUS. 111, 112-13 (1998) (outsourcing to take advantage of cheap unregulated third-world labour); see also Krug, supra note 2, at 658.
\item \textsuperscript{21} “[Shell’s] general manager explained the irrelevance of human rights to the economic opportunities in blunt terms: ‘For a commercial company trying to make investments, you need a stable environment. Dictatorships can give you that.’” Rodman, supra note 4, at 35.
\item \textsuperscript{23} Erin Elizabeth Macek, \textit{Scratching the Corporate Back: Why Corporations Have No Incentive to Define Human Rights}, 11 MINN. J. GLOBAL TRADE 101, 117 (2002).
\item \textsuperscript{24} JOEL MAKOWER, BEYOND THE BOTTOM LINE 30 (Simon & Schuster 1994).
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lished by the company itself, the industry, pressure groups, the state, or by international organisations, such as the International Labour Organisation (ILO) and the Organisation for Economic Co-operation and Development (OECD). The corporate social responsibility movement seeks to influence directly or indirectly or control corporate behaviour through a combination of (1) marketplace activism (influence over or via capital structure and sales of the corporation), (2) internal self-regulation (codes of conduct), and (3) shareholder activism. Accordingly, this Article examines indirect influence via market forces affecting capital and sales, and direct control or influence via the corporation’s internal organisation through codes of conduct and shareholder activism.

Individually the soft-law norms explored here are generally not very effective. However, in concert with other regimes, they can encourage improved human rights protection. Thus, although the state still plays a key role in the spectrum of international legal entities, it is increasingly supplanted by sub-state and supra-state normative regimes.


27. Thus, “[t]he World Diamond Congress, meeting in 2000 in Antwerp, proposed the creation of an international diamond council made up of producers, manufacturers, traders, governments, and international organizations to oversee a new system to verify the provenance of rough diamonds.” Dinah Shelton, Protecting Human Rights in a Globalized World, 25 B.C. INT’L. COMP. L. REV. 273, 314 (2002), available at http://www.bc.edu/bc_org/avp/law/lwsch/journals/bciclr/25_2/06_TXT.htm (last visited Oct. 26, 2003). This is an example of nonstate actors taking over the role of states—namely, proposing new international norms, the very core of the distinction between “object” and “subject” of international law. Id.


29. Macek, supra note 23, at 107-09.


33. Macek, supra note 23, at 110.

34. Id. at 119-24.