

BUSINESS AND HUMAN RIGHTS

**An Interdisciplinary
Discussion Held at
Harvard Law School in
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**Organized by the
HUMAN RIGHTS PROGRAM
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and the
LAWYERS COMMITTEE FOR
HUMAN RIGHTS**

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The Harvard Law School Human Rights Program, founded in 1984, fosters coursework; the participation of students in human rights activities through practical involvement as well as scholarly research and writing; and assistance to the world-wide human rights community. The Program forges cooperative links with a range of human rights workers, scholars and organizations from all parts of the world through its student summer internships, visiting fellows (scholars and activists), speakers, applied research and clinical work. HRP also plans and directs roundtables and conferences on human rights issues and publishes the resulting reports and analyses. These publications, together with a brochure describing HRP's activities, its newsletter and other related documents, are available at the HRP web site (indicated below) or upon request.

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The Lawyers Committee for Human Rights has worked since 1978 to protect and promote fundamental human rights. Its work is impartial, holding all governments accountable to the standards affirmed in the International Bill of Human Rights. Its programs focus on building the legal institutions and structures that will guarantee human rights in the long term. Strengthening independent human rights advocacy at the local level is a key feature of its work. The Committee also seeks to influence the United States government to promote the rule of law in both its foreign and domestic policy, and presses for greater integration of human rights into the work of the UN and the World Bank. The Committee works to protect refugees through the representation of asylum seekers and by challenging legal restrictions on the rights of refugees in the United States and around the world.

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Preface

This venture grew out of cooperative planning by the two sponsoring organizations: the Harvard Law School Human Rights Program and the Lawyers Committee for Human Rights. Our purpose was to bring together for an interactive and interdisciplinary discussion a small number of people who had given sustained thought from different perspectives to the issues involving business and human rights, particularly issues about business activities of multinational enterprises in developing countries. The 15 participants noted in the Annex included business executives, human rights activists and scholars, labor union leaders, a scholar of business enterprises, economists, executives of trade associations, a journalist and a government official.

The format and process for this meeting at Harvard Law School followed the pattern of prior meetings arranged by the Human Rights Program. Edited readings on the subject of the discussion were prepared in advance by the Program — particularly by the Projects Director, Peter Rosenblum — and distributed to all participants. No formal papers were presented. The participants engaged in a roundtable discussion about issues that were outlined in advance of the meeting.

Peter Rosenblum did most of the work in editing the transcript. Michael Posner and Henry Steiner participated in both the selection of the readings and the editing. The published text considerably shortens the original transcript and occasionally revises the order of remarks, in order to present a readable and cogent exchange of ideas. Each participant had the opportunity to review and correct a draft of this publication, to be certain that its text accurately reflects the views expressed during the discussions.

The Lawyers Committee for Human Rights took responsibility for raising the necessary funds for this venture, and received a grant from the John D. and Catherine T. MacArthur Foundation. The sponsors are most grateful to the MacArthur Foundation for its generous support. We are also grateful to Harvard Law students Philip Calabrese and Verity Winship for their preparation of transcripts of the discussion.

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Introduction

Henry J. Steiner

Over the past decade, human rights issues involving multinational business enterprises have taken a central place in corporate boardrooms, multilateral trade agencies, and human rights organizations. The economic data explain, in part, why this is so. Since the end of the cold war, foreign direct investment in developing countries has grown strikingly while official development aid has diminished. Businesses are now playing a role in economic development once reserved to states. That role has both stemmed from and strengthened the contemporary process of globalization with its stress on developing market economies, deregulating business activities, privatizing state enterprises, lowering national barriers, and expanding world trade and investment.

So pronounced a trend in theory, policy and practice raises urgent questions about whether states participating in this process will remain able to fulfill obligations to protect people against human rights violations and to provide necessary resources. It creates potential conflicts with rights that require state regulation and impose costs on business — for example, economic and social rights, or worker rights. On the other hand, advocates of globalization argue that activities of multinational enterprises in developing countries help to improve standards of living, build a middle class, bring about a more accountable and transparent government, and thus strengthen the rule of law. In this manner, the argument goes, the business activities of multinational enterprises in developing countries within a framework of deregulation and open markets will in the long run advance the entire human rights agenda, whatever their short-run effects on certain rights.

The interdisciplinary discussion that follows draws on such considerations. It examines human rights issues in the context of foreign business operations of multinational enterprises in developing countries. The major questions informing the discussion include:

What are the rights and standards that human rights advocates and others urge business enterprises to work to satisfy?

Why should profit-seeking enterprises aim at such a goal — out of obligation and fear of sanctions, out of other forms of self-interest, out of compassion?

What are the consequences — for matters like business investments, costs and competitive position of an enterprise, or economic development — that might flow from observance of enterprises of the identified rights and standards?

What techniques and pressures are available to international organizations, national governments and nongovernmental organizations to secure that observance?

Can business and consumers adequately address the problem of compliance with basic rights without governmental regulation?

Do practices that were outlawed in developed countries as violations of rights have a necessary or useful place in developing countries? Are some of these practices necessary, at least in the short run, to support economic development?

Such questions touch many fields of foreign business activities worldwide: the manufacture of goods, the construction industry, the operation of public utilities. Although the participants address a broad range of issues, the discussion gives particular attention to problems in the apparel industry stemming from the production of consumer items that are intended for sale mostly in the developed world. Hence worker rights become significant.

The vast economic and political stakes in the answers brought to these questions have drawn many interests and groups into the debate. Nongovernmental human rights organizations (NGOs), business firms, labor unions, consumer groups, churches, and the media have given these issues attention and notoriety, from lobbying in the Congress to advocacy campaigns directed to the general public. Certain issues have generated intense political argument, such as the thus far unsuccessful drive to include a social clause (that would condition international trade privileges on respect for basic worker rights) in the World Trade Organization, or the "fast track" authorization for the United States President. Certain events have put the public spotlight on worker issues, such as media reporting about sweatshops of multinational enterprises within Latin America and Asia, or about the exploitation of child labor.

After a half century of the human rights movement, the assertion that activities of nongovernmental business enterprises can raise international human rights concerns is hardly problematic. International law, institutions, and regimes ranging from human rights treaties to

the International Labor Organization have created an expanding framework of relevant norms. Some of those norms possess the cardinal quality of rights: relatively clear and absolute rules that must immediately be obeyed. The prohibition of forced labor offers a classic illustration. Some norms sound broader, more discretionary and flexible both as to their content and the time frame for reaching the stated goal — for example, treaty standards like “fair wages” or “reasonable limitation of working hours.”

These rules and standards respond to a range of concerns. A number of treaties require their parties to enact and enforce legislation on rights affecting relations between labor and management. Thus Article 11 of the Convention on the Elimination of all Forms of Discrimination against Women obligates states to end employment discrimination by ensuring that women benefit from rights on a basis of equality with men. The International Covenant on Civil and Political Rights provides in Article 22 that everyone has the right to freedom of association, including the right to join trade unions for the protection of interests. The companion International Covenant on Economic, Social and Cultural Rights reaches further to include individual rights to nondiscriminatory employment and safe working conditions, and the right to strike. Conventions of the International Labor Organization regulating aspects of employment and work conditions have a longer history.

Although the treaty texts on these matters sound fundamental and decisive, the means here as elsewhere of applying pressure on recalcitrant states failing to protect these rights remain weak and often ineffectual. In part, this is traceable to the fact that intergovernmental human rights institutions, and with some marked exceptions the NGOs as well, have given neither priority nor even concentrated attention to the problems of realizing worker rights.

In contrast to modest strategies for achieving compliance such as discussion and other efforts at persuasion, legislation in several developed countries authorizes sharper sanctions that, if applied, would produce more dramatic effects. For example, Section 301 of the United States Trade Act of 1974 permits trade sanctions against states that fail to observe worker rights. Section 307 of the Tariff Act of 1930 bars the import of goods produced by convicts or by forced labor. Legislative schemes like the Generalized System of Preferences condition other states' access to non-reciprocal trade benefits in the U. S. on their tak-

ing steps to observe "internationally recognized" worker rights, including rights to association and collective bargaining, prohibition of forced labor, minimum age of employment, and acceptable conditions of work with respect to matters like minimum wages and occupational safety. But United States policy about sanctions for violation of worker rights has been selective and often politically motivated.

The discussion below draws on this treaty and state regulation. It considers as well different approaches toward realizing worker rights: self-regulation by business, and reliance on market mechanisms involving consumer choice. Self-regulation with respect to workplace issues has taken the form of independent codes of conduct formulated by some multinational enterprises, and of agreements among firms within a given field such as the apparel industry. The proliferation of voluntary codes and agreements surely reflects the heightened and harsher public criticism of business firms. Compliance with these agreements may ultimately rest on the continued willingness of firms to do so. Or agreements may incorporate sanctions like periodic and public reports by independent monitors on conditions in foreign workplaces.

The market mechanisms vary. Consumer activism has led to boycotts of imports that were manufactured abroad under conditions violating basic rights. A different approach that requires the cooperation of producers or distributors relies on the "social labeling" of products that informs consumers whether, for example, child labor was used in their manufacture.

The variety of factors bearing on analysis of business practices and human rights underscores the necessarily interdisciplinary character of inquiry into these issues. Underlying trends toward globalization establish the contemporary framework for inquiry. Empirical investigation by social scientists can illuminate cause-and-effect relationships that may influence business decisions — for example, relationships between observance of worker rights and patterns of investment or employment or growth in developing countries. Economic conceptions like comparative advantage or the "free rider" problem — that is, third parties who benefit from restrictive agreements or burdens assumed by others — inform parts of the discussion. Cultural inquiries of sociologists and anthropologists can illuminate paths toward solution of problems like child labor. To such knowledge we must add the vital perspectives of human rights advocates and of the business firms

that navigate through turbulent currents of norms and policies in their efforts to secure a profitable return on foreign investments.

The discussion below among rights advocates, business executives, labor union leaders, economists, and a government official joins discourses that often remain closeted within their own worlds: the discourse of rights with its sense of absolutes and necessity, and its deep postulates of justice and equal human dignity; the discourse of utility and consequences, with its attention to cost-benefit calculations and cost efficiency, as well as its assumption of choice and contingency. This mix of participants, perspectives and ideas animates and illuminates the entire discussion.

Session One:

Globalization, Development and Human Rights: Clarifying the Terms of the Debate

Henry Steiner (chair)

This first session examines the broad theoretical framework for our discussion of business and human rights — or more specifically, of human rights that are germane to investment or other business activity by multinational enterprises in developing countries. For the most part, those rights pertain to labor.

Some questions that we will address include the impact of globalization, deregulated markets and free trade on human rights issues. Are we working to achieve a better understanding of the relationships between globalization, economic development, and human rights?

A vital question that will arise throughout the four sessions asks how much empirical data we now have on these matters. What do we know, for example, about links between free association of labor and economic growth? Are low wages or labor standards an inducement for direct foreign investment in all industries, or in some? If we had more information, would choices about what to do become easier? For example, would business be able to say at a minimum: "There's no reason not to implement this policy related to human rights, for the studies show that it has no bad consequences for us."?

Ron Blackwell will introduce the themes of this session.

Ron Blackwell

We know how difficult this subject is because of its polarized nature. In fact, that is a polite word for it. This is a heavily contested area with deep interests on all sides. These issues usually arise sandwiched among other issues and interests in the midst of a battle: the fast-track debate, the debate of Most Favored Nation (MFN) status for China, or, at a more micro level, a campaign against a particular company. This makes it difficult to initiate any constructive discussion. The other obstacle to discussion has been the complexity of the issues. It is hard to put definite meanings on terms like "business," "ethics," and "globalization" and to find common ground among the different interests. I believe there is much more common ground here than has so far been discovered — among the labor and business communities in particu-

lar, but also in the human rights community. We have to step back from the battle, weed through the complexities, and try to find our way towards that common ground.

One distinction is essential. When we in the labor movement refer to "worker rights," we are making an important distinction between such rights and "labor standards." Worker rights are human rights norms that govern the way in which labor is treated internationally, regardless of a country's level of development. They include individual rights like freedom of opinion, and freedom of expression, as well as collective rights like freedom of association, and freedom to organize. Poverty is no excuse for slavery. On the other hand, there are labor standards, for example, rules for minimum wage or maximum hours. Those matters do vary with a country's level of development. We would argue that worker rights are deontological and normatively more compelling than labor standards. There is no excuse for their abridgement, particularly by companies or countries seeking competitive advantage.

From the point of view of the labor movement, there is also an important relationship between the two. If workers have the essential individual and collective rights, they will be able to form unions and bargain collectively with employers. This provides a countervailing power to employers in determining how the benefits of increased productivity are shared. The value created gets shared more equitably. We believe this contributes to the development of the countries involved. We believe it adds to the market for products both here and there. In that way, recognition of worker rights serves the causes of developing countries, the companies involved, and certainly the workers and the unions here and there.

It is important to focus on respecting workers' rights and to avoid wasting time arguing about whether we are seeking to impose U. S. standards on the rest of the world. The question is how we insure that some of the most fundamental human rights are respected in an increasingly global economy.

[Workers' rights, labor standards and the question of universal values]

Jack Sheinkman

I would like to elaborate on what Ron Blackwell said. In the mass-tailored clothing industry, we had restrictions that prohibited companies from sending work out to non-union firms. In 1993, as international competition increased, we had to respond to the challenge of employers to ship work abroad. We followed the same model, allowing the employers to do it on condition that the foreign suppliers met ILO standards, primarily the right to organize.

After all, we had sweat shop conditions in the United States. Unionization brought about a rising standard of living and enhanced the economy in the long term. Henry Ford was attacked in the Wall Street Journal for adopting a \$5 a day wage for his factory workers — even without a union — because he felt they should be able to buy the products they were making.

The AFL-CIO was never opposed to foreign trade. What it wanted abroad was not American minimum wages or U. S. laws; it wanted the ILO standards. In that regard, it is important to remember that ILO conventions are not “labor conventions;” they are conventions that are adopted by labor, business, and government.

Dani Rodrik

I heard Ron Blackwell say something slightly different. There is a distinction that is often overlooked: are we concerned about working conditions and workers' rights abroad, or their effect on standards and conditions in our own economy? Let's be clear about that distinction, because the policy implications are very different.

Ron's argument about workers' rights depends on the existence of universal norms. But in fact there are few that are truly universal. Slavery would clearly be one; prison labor or forced labor, perhaps. As for collective bargaining, free association, and similar notions, there are very different practices. In some sense, if they were truly universal, the problems would not exist. It would be easy to embarrass governments into compliance. But, even in the case of the United States, where we have collective bargaining, the government hasn't ratified the ILO convention, so there must be something in this convention that doesn't comply with our understanding of the norm.

Ron Blackwell

I think the difference between what Jack Sheinkman and I were saying is more apparent than real. As a relatively high-paid worker, the American worker only has security if workers in the rest of the world are able to organize and defend their interests. That is how we seek and defend our members' interests. Neither Jack nor I are saying, "Protect our jobs and forget about workers in other countries."

Henry Steiner

The rights to association or assembly or speech that Ron Blackwell noted are fundamental to the basic human rights instruments. But the problem to which Dani Rodrik referred is immense. The rights are declared in treaties accepted by most states, but many states ignore their obligations. They affect matters relevant to this discussion, like labor organization. So we should be aware of this complexity when we talk of international human rights — on the one hand, their binding character stemming from customary law together with authoritative and broadly accepted treaties, and on the other, the great variety in state practice about protecting them.

The academic and political discussions about business and human rights inevitably involve both a "rights" discourse and a more instrumentalist or consequentialist approach to thinking about business practices and responsibilities. The classical distinction would view respect for or protection of rights as required in and of itself; rights are absolutes, givens not subject to trade-offs, stemming from basic postulates about human dignity. But economists tend to view these same issues in terms of consequences and to think instrumentally about means and ends. Policy or practice X is likely to produce consequence Y. The consequentialist idiom raises many empirical questions to which we may now have few convincing answers.

These distinctions blur in practice, in the arguments for or against protection of rights. In the real world, certain rights may be understood to compete with certain goals. Some people may prefer higher wages or job security or greater profits (if that's what they understand will result from, say, an authoritarian regime curbing human rights), to free association or speech or political formation. Investors or local labor may be willing to accept the "human-rights costs" of some degree of repression as part of an assumed trade-off leading to material gain. Others, perhaps part of a buying public, may assess the denial

of rights more critically and view a product as contaminated by that denial.

Michael Posner

On the issue of universal values versus American values, I start from a couple of premises: One is that there are now many international norms backed by government promises. Governments that have ratified the international human rights covenants are saying that they are committed to abiding by basic laws and principles in this area. It is no longer a question as to whether these are Western, American or universal. The fact is that they are part of an emerging set of standards that governments are committing themselves to. The real question is what kind of enforcement there will be. What means is there of providing a remedy, in view of the gap between what many governments say they are doing and what they are actually doing?

We are often talking about situations in which governments in the South, in what we used to call the Third World, are not living up to their end of the bargain. But there are also big international companies, many of them based in the United States and the West, that are in the middle of this discussion. The question is, what affirmative obligations or responsibilities go with being an economic actor in this setting? We should discuss how to enforce rights or standards — which are fairly clear on issues like non-discrimination, slave labor, or even child labor. There is an emerging consensus that these are rights and standards, but when local governments are weak or unwilling to enforce, what is the affirmative obligation of companies?

Debora Spar

As I understand Mike Posner, he is saying that governments have agreed to a broad set of principles, but aren't following through. In fact, they are violating them with some degree of frequency. Given that void, we are now going to ask corporations or other multinational actors to pick up the obligation. These are probably good actors to seize upon if you want somebody to pick up the slack, but it's an interesting transfer of responsibility. We are asking corporations to play a role that governments have been unable to fulfill. It's not surprising that it's become problematic to get them to do that. The corporations, of course, haven't signed on to these principles.

Raymond Vernon

One of the problems that I almost always encounter when confronting the normative aspects of multinational investment is the confusion or intermingling of the consequences of industrialization and the presence of multinational enterprises. There is a high correlation between the two, but they are different things. In light of the more unfortunate by-products of industrialization — for example, effects on the environment, or the destruction of indigenous cultures — it is easy to conflate the industrialization phenomenon with the multinational enterprise phenomenon.

The importance of the distinction turns out to be obvious when you look, for example, at the social implications of a state-owned enterprise engaged in some destructive chemical process. Compare the performance of that state-owned enterprise with a multinational enterprise doing the same thing. The consequences are generalizable. When Britain nationalized coal in the wake of World War II, I said to someone in the Board of Trade, “Well, I guess this makes life easy for you.” He looked at me in astonishment and said, “Whom are you kidding? Before, I could frighten the private entrepreneurs. Now I have to deal with another goddam civil servant.”

Many state-owned enterprises act with an utter indifference to the by-products of industrialization, not because they are less noble than multinational enterprise, but because multinational enterprise is often more concerned about the adverse consequences of stepping over the line. This generalization is a strong one which tends to constrain my thinking.

[Human rights and the bottom line]

Norman Dorsen

I would like to follow up on Debora Spar’s cogent observation that it seems curious to demand that business implement certain norms that governments have adopted but won’t implement. You need a theory for making such demands on business. One place to start is the agenda prepared by Henry Steiner. It sets forth six possible relationships between economic development and human rights. They are:

- (i) economies must develop within minimum regulatory constraints and, in order to attract investors, must assign capital to investment for economic growth rather than to welfare nets or higher labor standards;
- (ii) profit-making business institutions working in a competitive environment should not be responsible for advancing core labor standards/rights;
- (iii) rights will grow out of economic development rather than the reverse, as a developing middle class seeks guarantees and political voice;
- (iv) the rule of law will grow as business demands more security and stability, and it will spill over into the protection of human rights;
- (v) securing rights including core labor standards will spur development by improving education, health, and realization of human capacity; and
- (vi) rights, expressed in part through core labor standards, are inherently necessary, and not subject to trade-offs for purposes like economic growth.

The first four are rationalizations for why businesses should not implement human rights norms, while only the last two argue in favor of respecting rights. However admirable may be the notion in the sixth idea, that rights are imperative and not subject to trade-offs, in my view very few businesses will be persuaded by such a categorical approach. That leaves the fifth idea that securing rights will spur development — an idea that it is in the self-interest of business to implement because it pays off at the bottom line.

Is this fifth assertion a well founded theory, one that companies could be persuaded to follow even if governments often don't? This is a central issue we must confront.

Jack Sheinkman

It appears from polls in the United States and Western Europe that most consumers don't want to buy goods made by children; therefore companies are adopting standards. This is also what I have found based on our experience. Many corporations have adopted standards purely for public relations reasons.

The questions that have arisen concern the monitoring device. The Council of Economic Priorities (CEP), a public interest research orga-

nization that focuses attention on the social and environmental practices of corporations, has set up a monitoring program whereby it will accredit monitors. Many companies are coming to us at the CEP and asking for help in setting up a monitoring program which would make a difference — and this is not only in the apparel industry.

Henry Steiner

From what Jack Sheinkman said, I should add to the agenda a seventh relationship between business and human rights. It would stress pure self-interest. Business that ignores and violates core rights or standards could suffer through public disgrace, loss of market share or perhaps governmental intervention.

Doug Cahn

I think we, collectively, ought to do a better job of defining the relationship between respect for human rights standards and the bottom line. We can look to the environmental movement for some guidance. That movement has clearly been successful in making the environment part of the thinking of corporate America and multinational corporations. There are chief environmental officers today in corporations around the world. One of the reasons this happened is that the environmental movement was able to articulate environmental concerns in business terms, to make them relevant to the bottom line.

I would like to suggest a few areas where there appears to be a correlation between good human rights policy and the bottom line. Generally speaking, good-quality products are made in good-quality workplace conditions; it is hard to make a top-quality shoe or garment in a factory that is dirty — which usually corresponds with unhealthy or unsafe conditions. In addition, where the workers put in 70, 80, or 90 hours a week, month after month, productivity goes down. Surely for these two important elements of most codes of conduct — health and safety conditions and maximum working hours — there is an argument that respect for human rights leads to more productivity and better quality products, each of which contributes to the bottom line.

Lael Brainard

I think we can construct a system where it is in a corporation's self-interest to respect rights, where we can expect our Western-based companies to transmit rights norms even if the local government fails to

enforce them. First, the people who own and operate these companies live among us. They are schooled in the same norms and have the same values. Though the countries in which they operate may have different levels of development, how can these companies practice different standards in the two environments? Secondly, there is the consumer. Do I really want to wear clothes whose production may have blinded or maimed children? Finally, returning to Ron Blackwell's earlier point, violations of human rights abroad threaten the system of equitable distribution that we have developed in our society. That recalls Ray Vernon's distinction between a multinational and a company which is simply participating in the evils of industrialization. Because multinationals connect our two systems, their practices matter in both environments.

Debora Spar

In light of what Lael Brainard said, I think there are essentially two bases for arguing that corporations should play a role in ameliorating human rights.

One is that there is some kind of natural progression — simply by virtue of doing what comes naturally, corporations will have a positive impact. Perhaps they export U. S. norms at some personal level, or lead to economic development or the rule of law — which is an important and under-examined factor. My sense is that some of my colleagues around the table would argue that this is neither sufficiently certain nor fast. I think that's a good response.

Can we do anything to push the corporations along? We need to be creative and strategic about the various consumer-based systems to induce compliance, or else we have to devise a system of codes, or eventually threats. That's my second base. I'm not sure how effective it would be. I take some comfort from the environmental movement. But their experience also shows that appeal to morality is not enough. You've got to find some way to affect the bottom line and force companies to internalize human rights concerns.

[Beyond the individual corporation — codes, laws, and multilateral agencies]

Ray Vernon

I would like to address the proliferation of official codes, endorsed by governments or multilateral bodies. When I encounter a code, I always ask myself how it was adopted. Sometimes people give in without really meaning to give their support. If a particular group advancing a code can raise a lot of hell, others may simply adopt it as long as no mandatory action is required by it. I don't believe for a moment that this piling up of codes constitutes the articulation of universal standards. In fact, many of the standards embodied in these codes represent positions on which there is a persistent division of opinion within democratic countries, as we would expect there to be.

In 1976, the U. S. government — or rather, a particularly passionate person in the Treasury Department — agreed with the other members of the OECD on a code for multinational enterprises. It's not a bad code; in fact I often draw on it. It was easy for other OECD governments to sign, because it had no binding effect on them. Some lawyers might think it was agreed on in order to create norms, but the governments knew better. They just took for granted that it wouldn't commit anybody. Now it is characterized as the OECD code adopted by twenty or so member states.

Bowman Cutter

Ray Vernon raises an important point. There is a significant difference between the "norm" that is embodied in the WTO enforcement provisions, signed and duly ratified by governments, and the code against bribery that is currently under negotiation within the OECD, which will be signed but not taken to governments for ratification. You would have a very difficult time moving to the higher tier of enforcement with the latter, whereas you could consider enforcing the former. That is why there has been such a substantial effort to enshrine many of these workers' rights issues in the WTO process. That is where they are going to be enforced.

Jack Sheinkman

When the issue of worker rights came up at the WTO, a number of Asian countries rejected any such effort. They took the position that

there are no international standards. In their view, it was an attempt by the Westerners to impose their culture. This was the position of Singapore, where the meeting was held, as well as Malaysia and others.

Henry Steiner

The difference may be more complex than simply that between a "voluntary" code and a treaty obligation. Treaties are legally binding, but many are roundly disobeyed. Governments may ratify them as a matter of convenience, knowing they are not likely to be seriously enforced. Self-interest on matters like reputation, on the other hand, may persuade participants in a code to keep faith. Much may turn on how serious the enforcement mechanisms are, and whether economic or other self-interest points toward compliance.

[The conflict between global economic reality and accepted normative structures: the relative weakness of corporations and developing countries to effect change]

Aaron Bernstein

I see a growing backlash against globalization around the world. In the United States, fast track was defeated. In Europe, the majority of polls show reluctance about going forward with integration, and in Asia the meltdown is causing tremendous backlash by citizens. This is not going to stop globalization but it will slow it down, and that will hurt U. S. multinationals, exporters, and others dependent on low labor costs or market access.

People are starting to respond to globalization the way they responded to the unregulated market in the United States, one hundred years ago. "If you don't do something to create rules for the game," they are saying, "then we don't want to play." I think that is something business can't afford. It is worth the trade-off for business to say, "Okay, let's sit down and hammer out some rules." We have to take into account the interests of other countries, particularly developing countries with different concerns about, for example, investment flows as opposed to labor standards. There are going to be some trade-offs and bargaining at both the governmental and corporate level.

Initiatives like the Apparel Industry Partnership* are interesting because they suggest that we are privatizing the development of global labor standards. If they succeed, they will obviate the need for government action. In fact, I don't think governments can do this very well. Finally, though the pressure is building for labor standards, I don't think this extends to human rights generally. There are moral questions in that large domain that go beyond self-interest.

Bowman Cutter

It is important to recognize the implications of changes now under way in models for global economic development. For example, shifts in the capital markets are leading to a situation in which the model for investment is no longer the large, international, American company investing to advance its own particular interests in a country. There will always be a lot of that. However, we now see more independent capital — capital not linked to particular companies, but, most often, to independent pools or funds — going directly into foreign markets. If you take, for example, Brazil or India, more than half of today's foreign direct investment is probably independent capital. That's not true in Indonesia because of the huge amount of natural resource investment, and I don't know about China. Large strategic investors — like General Motors or General Electric — no longer have the same clout they once had, nor is any single investor in a position to determine outcomes.

People are often stuck in outdated or unrealistic models. At times, when I was at the White House, it sounded to me as if people presumed a world that by and large agreed that the U. S. could tell them what it ought to do. In that presumed world, the U. S. knew what it wanted to do, and the U. S. and other powerful countries of concern had a highly honed ability to do it. Most or all investment was strategic investment. Moreover the companies concerned were presumed to know precisely what to do and how to do it once they were told clearly by their governments. Finally, people presumed a world in which most investment in a country was for purposes of ultimate export from that country. Even today it seems astounding that this model is close to the one that people are carrying around in their heads. The fact is that every single aspect of that model has changed substantially; sometimes there has been a complete reversal.

* See Glossary for capitalized terms and abbreviations.

Ron Blackwell

I want to make a comment on the question of theory that relates to Aaron Bernstein's remarks. Law is intended, in part, to provide the normative substructure in which an economy can take shape and firms can function and prosper. Our problem here is not whether there is a required normative underpinning to markets and business, but what that ought to be and how it ought to be enforced. Our problem is the systematic disjuncture between the realities of economic life in a globalized context, on the one hand, and the ethical, legal and regulatory structures of different societies, on the other.

We have to see this in an evolutionary context. The norms that underlie our government and helped to shape it, also helped shape humane business behavior with regard to workers, like minimum labor standards and collective bargaining. As the operations of business become international, the regulatory force of national law and local law becomes less effective. What is driving our discussion is the realization that the new reality violates elementary norms of human decency, if not universally recognized norms of human rights. Our charge should not be to place a burden on business that we are not prepared to lay on governments, but to find a way in which business and government, together with other concerned actors, can figure out which norms are appropriate, and what the most effective way is to implement them.

I wouldn't expect companies to become agencies for human rights in the world; that's not their mission. I also don't think you can simply expect small, trade-dependent, developing countries to enforce their laws. They are bidding with other countries, and advantageous labor costs will win the business. They have an incentive to subvert their own law. That, in turn, puts an incentive on us to lower the enforcement of our law so that we don't suffer any more job loss than is necessary. We've got to find a way to overcome this disjuncture between the economy, on the one hand, and the laws and regulations that support it on the other.

The way to do this is to determine what norms are appropriate to underpin international business and what the most effective mechanisms are — whether national law, international treaties, or codes, or whatever — to support those norms.

Michael Posner

Eighty or a hundred years ago, we had a debate in this society about issues like workplace health and safety, and child labor. My guess would be that a few, well-organized people persuaded the government to start enacting regulations. It's not all that different now on the international scene. There's an overwhelming, popular sentiment — among people if not always among governments — that some activities, like forced labor or employment of six and seven-year-olds working for 70 hour weeks and sleeping in locked dorms, are inappropriate conduct. The challenge now is to identify that handful of clearly important norms and to find some way to enforce them. It requires a combination of governmental, intergovernmental, and private action.

We regulate international conduct all the time — matters as diverse as airplane hijacking or chemical weapons. The business community is frequently asked to become a partner with government in making sure, for example, that Saddam Hussein doesn't get poison gas. At some point, we make the judgment that this is an important norm to us, an important objective, and some combination of government and private enterprise is necessary to achieve it. We are at the beginning of a conversation about what the relevant norms in this area are and how you combine government and private efforts to make sure that they are enforced.

Bowman Cutter

I largely agree with Ron Blackwell that developing countries should not be relied upon to take the initiative. Take four important countries bidding for foreign investment: China, Indonesia, India, Brazil. All are giants. Each is quite different. Indonesia, for example, is a kleptocracy, a fact that's becoming increasingly apparent. What has been increasingly clear to us is that regimes of law are crucial for business to function.

What is also clear, though, is the vast distinction between the intent and capacity of governments. Our domestic interests sometimes obscure the differences. There is a significant inability in China, for example, to get anything done. India, on the other hand, though decentralized, actually has laws, and they are actually obeyed. Foreigners can win court cases against Indian citizens. Brazil is somewhere else on that spectrum, Indonesia is somewhere else entirely. As we talk about developing economies and the way in which we would like

them to act, we have to keep in mind the incredibly different places they occupy on the spectrum of capacity.

Bruce Klatsky

I found Bo Cutter's comments about intent and capacity of government fascinating, but I think we also have to question the intent and capacity of business.

When it comes to workers' rights, as far as the apparel industry is concerned, the issues have less to do with standards than with enforcement. The major multinationals don't have the capacity to solve the problem. The number of multinationals that have volume in excess of \$1 billion can be counted on two hands. At the core of the issue are thousands of entrepreneurial ventures engaged in apparel and footwear. It's a question of regulation, standard setting and enforcement in their factories. That is critical. I don't believe that all labor unions are crooked, steal money and abuse their membership, and I don't believe that corporations, certainly of the size of ours or Reebok, are horrible. They have good intent, but there are others on the fringes that either create these problems or do not have the means for enforcement.

[Footloose production and corporate responsibility]

Henry Steiner

One of the puzzling issues is how to persuade business to accept certain human rights responsibilities that may not be expressed in hard law, when our government has so wavering a policy on enforcement of basic human rights principles. I heard Bruce Klatsky say that he recognizes a responsibility of companies to be aware of the conditions in countries where they do business. What is the source of that responsibility?

Bruce Klatsky

If businesses are going to benefit from a lower wage society, then, in my view, they have an obligation to participate in the evolution of that society in a constructive way. They have a duty to see that decent wages are paid, that there are decent working conditions, that the workers have the right to free association, and that the workers' kids have the ability to go to school when they're at work. I'm not always sure

that the classic labor-business, adversarial struggle is the way to achieve this. There is some question in my mind as to whether efforts by union leaders in the United States to organize unions and raise wages in developing countries are actually motivated by their desire to protect their membership and jobs in the United States.

Li Lu

Most of the emerging markets operate in the mode of the free market. But it is not at all clear that they will turn into effectively functioning markets, whether because government doesn't have the capacity to develop the necessary rules or doesn't want to develop them. It is really in the interest of local business to abuse whatever rights people have, even to destroy the economy, in order to make a profit. A legal regime is essential.

What is the role of the multinationals in these countries? There are different types of multinationals. You have a company that simply uses the country for outsourcing because of its cheap supply of labor and which does not have a shared interest in the local economy. I don't see any self-interest to observe human rights standards, other than the fact that corporations run into a fairness issue, like competing with American jobs. Then you have the U. S. labor force trying to enforce the labor standards as an element of fair play.

There are also manufacturers who view the local market as their goal — a company like Coca-Cola, McDonald's, or Motorola. Obviously it should be in their best interest to see that the local economy emerges and grows for the benefit of their product. They have the self-interest. But what tends to happen is that they vote with their feet. They say, "It's not my job; I couldn't do that alone. If something happens, I'll leave and go elsewhere."

There is also a third level which includes investors. Some of the investors also vote with their feet and think the human rights business is not a part of their obligation. Some of them take a more doctrinaire position and say they'll make money in the worst way but give it away the right way. Some have done very well with this.

So all in all, I don't see how the self-interest of the corporation will work to benefit human rights without further incentives to business. The first thing we must do is to convince governments in the developing world that without appropriate rules for business many "emerging" economies will never emerge.

Robert Kapp

As Bo Cutter said, we need to keep in mind a country's capacity to enforce the law as we discuss countries that don't live up to their own standards. In spite of the proclamation of an emergent and universal consensus on norms and standards, countries differ. Secondly, we have to distinguish among industries as well. The focal point of our discussion has become labor rights and standards. But remember, although some foreign investment is based on labor costs, a lot is not. Because we've gotten off on the labor footing, we've become focused on a particular kind of business, particularly the production of things which are consumed in vast quantities mostly in the developed, high-income economies of the world. In other kinds of manufacturing, companies go abroad to get closer to the market. I think we all know that labor alone is not the defining issue in why multinationals go abroad, and that needs to be mentioned quickly.

Finally, we have to remember that people take jobs because they need them. In some parts of the world, prostitution is seen as a way up and out of the poor village. Somewhere, we have to grapple with the fact that people who don't have enough to eat — the hundred fifty million Chinese who are deserting Sichuan and Hunan for Canton and other places where they can find work — have different perspectives on what is a step up.

Debora Spar

Robert Kapp's comment is relevant to my own disagreement with Li Lu. I understood Li Lu to make a strong statement that it will never be in the interest of the multinationals to improve human rights, that, in fact, "doing what comes naturally" will work against human rights. It depends on the nature of the company. This may be true where we are concerned with low-wage industry production.

But that is not the case as frequently as we may believe. I work with a number of companies looking at China. They are not going abroad to pay low wages; they're going for market. They are going to sell that magic number. I'm not imagining that they will all turn into Henry Fords and try to raise wage levels. Nevertheless, it is a very different dynamic.

Moreover, for the non-apparel companies — the GEs and General Motors of this world — it is not so easy to pick up and move. For these companies, the so-called "race to the bottom" is a much slower race;

its not even a race at all. In the end, they too are going for market. So it is important to distinguish among kinds of companies.

Bruce Klatsky

Let me disagree with both Li Lu and Debora Spar. Maybe there is a problem with low-wage industries, but it is simplistic to say that they have no economic motivation to avoid violating human rights. From a pragmatic standpoint, as an employer of low-wage people all over the world, let me give you two reasons.

The first is that this world is a very small place and getting smaller all the time. There are very few places to go. Second, you need to foster good relations with people to create efficiencies, to create more effective methods of production. The workforce you develop in one place is a valuable thing. After we show up in a developing country - where all we need is brick, mortar, and a sewing machine — GE shows up with more high-tech and the means to pay a higher wage. Right away, they knock at the doors of our facilities, as they once did in New England or in the southeastern United States, to steal our employees. So it's very important for us, and any enlightened person trying to operate facilities, to create a good working environment in an effort to motivate and retain employees. It doesn't make sense in those conditions to suppress wages as if they are the be all and end all.

Li Lu

When GE moves in, why don't you move out to another country where you can have lower wages with the same skill — or even move to a different part of the country? There are 26 different provinces in China. If you have a problem in one place there are 300 million people you can turn to someplace else.

Bruce Klatsky

To move from one province of China to another or to move from China to Guatemala is a very significant issue for us. We can't just pick up and leave. You underestimate the costs attached to that decision. They are very real and significant. I also don't want to diminish the importance, even for an industry like ours, of selling products in the country. We make a lot more money in Guatemala in selling Bass shoes today than we do making Van Heusen shirts. That's a function of the evolving societies and shouldn't be minimized.

[Rule of law and its relevance to improving human rights]

Norman Dorsen

We have discussed the need to look at different countries, cultures, industries and models of development, but I don't think we have thought in terms of different types of human rights. Until now, we have been speaking a great deal about labor-related rights. But there are a host of other issues that arise. In many countries, one of the biggest problems is that groups are not allowed to organize to protest autocratic governments. There are problems like torture, discrimination against various castes or women. All are problems unrelated to labor or any direct activity of businesses.

What obligations, if any, does business have in those countries? It seems far removed from reality to expect multinationals to step out front and raise such questions with governments. Most of the issues are far removed from the company's immediate situation. Unlike labor issues, the companies have no immediate control over the violations. The only answer I can suggest is that it is in the best interest of business to work in a society where there is the rule of law, where there are reliable and predictable norms, where corporations can sue, take their money out and operate in a manner that suits the best interests of the company.

Li Lu

For the market economy to prosper, there must be the rule of law. And that actually comprises a lot of the human rights issues we are dealing with. That should be the focus of U. S. and multinational business — to push governments, including China, to build the legal infrastructure for markets to flourish, in other words, to build the rule of law.

Henry Steiner

From a human rights perspective, it's not sufficient to invoke the ideal of the rule of law, as if that concept alone would bring about a human rights paradise. History has seen many societies that meet in major respects the basic, broad criteria of the rule of law: rules of general applicability, reasonably objective and predictable application of those rules by independent courts whose judgments are followed. At least

they met such criteria in the business sector that was of particular importance to foreign states and firms. But gross violations of human rights characterized other parts of some of these societies. The apartheid regime coexisted with a functioning democracy and a functioning market structure and court system for whites. Even the Soviet Union could be rigorous and correct in its international trade relationships while acting oppressively in other sectors. My caveat is that we should be wary of glorifying the rule of law as a final goal unless we understand it to include certain basic human rights notions — equal protection, for example.

Bowman Cutter

I agree with Li Lu's comments about the rule of law and I don't think it is fair to raise apartheid. Let's put that to the side and look at the societies that we are dealing with today. The focus on rule of law is profoundly in the interest of business as I understand it. That may not be our chief goal, but it has the merit of providing a direction in which everyone has an interest in going. It is also the direction of the entrepreneurs whom I deal with every day — significant owners of businesses in developing countries who are nationals of those countries. Of course, they have the same ambivalences that we have discussed. Although they are willing to support and cooperate with the process, it is very hard for them to be prime movers.

Pursuing the rule of law also has the merit of being "doable." One can focus on issues of process, create common cause with the NGOs in these countries and even with the governments themselves. I think this is an area of large consensus.

At the same time, I'm worried about how much can be incorporated into the concept of rule of law. I'm quite happy to adopt the notion of human dignity that Henry Steiner put forward into my concept of the rule of law as well as many of the general human rights principles which Michael Posner has mentioned. On the other hand, the concept can easily splinter into more divisive issues or issues that have more to do with our own domestic agendas than with the rule of law itself.

At the end of the day, you can end up in a number of ridiculous circumstances as we did during the China debate, because we couldn't agree on a particular set of human rights topics. The sum total of human rights that figured in the conversations between the President of

the United States and the Chairman in China — of which I was part — consisted of asking that two or three named people in a country of 1.3 billion people be freed. That struck me as far removed from the end that we wanted.

Henry Steiner

Let me try to clarify what I meant about the rule of law. In the bare essentials of that concept that I sketched before — independent courts, general rules, reasonable predictability — it can be part of a repressive state. The concept doesn't tell us what the rules must say, what the norms are. They may serve well certain dominant groups, and impose great suffering on others. The general rules of reasonable predictability may deny basic rights, such as speech or association rights or political participation.

In fact, human rights treaties require some basic ingredients of the classical rule of law notions — and of course require a lot more. I don't deny the vital function of the rule of law in any development toward a higher level of observance of human rights. This may be part of a long process of moving toward values like freedom of association or religion or gender equality and so on. But it is not the entire game and should not be taken for it. It is an opening out of which one hopes to see further substantive human rights development.

Lael Brainard

We have seized on the notion that businesses advance human rights by pursuing their own interests in promoting the establishment of legal and judicial processes. It is a very convenient and hopeful coincidence of interests. On the other hand, I agree with Henry Steiner that you can't divorce procedural aspects of the rule of law from the content of the rules. That brings us back to the values that inform the rule of law.

I also think Li Lu is right in linking the development process to the rule of law, but I would offer some caveats. It is in such conditions that a stable business climate is created and people bring their values and concerns to the fore. The history of different colonial empires more or less shows this. It is also true, however, that many economies have prospered with a very different conception of how business operates. So, to some extent, we are exporting our own values by insisting that the rule of law is critical to the economic environment. There are a lot

of economies that function in ways that are less litigious than ours. They are arguably correct when they insist that different way of doing business can also be effective.

Michael Posner

I would like Bo Cutter to develop his suggestion that he and perhaps others in business might be ready to take on the rule of law in a broader sense — not just to ensure greater predictability or other direct business interests, but in order to promote the broader functioning of judicial systems. I wonder to what extent the business community is thinking in terms of affirmative measures it can take to advance that agenda?

Bowman Cutter

The business community is a big place. To the degree to which I understand the question, my answer is, yes. I would personally be willing to push those issues quite far, in terms of their import and the extent of their application.

[Embedded differences, cultural relativism and ethnocentrism]

Raymond Vernon

I've been trying to put a structure on what I've heard. We have come to the conclusion that there are certain "goods" that it would be terribly desirable for the rest of the world to accept. As we describe these goods, I find myself agreeing. Then the question is defining the strategy to use the multinational enterprise as a critical channel to spread these goods and make them valid and larger.

What troubles me about this is its ethnocentricity, in two different senses. First, there is the question of what is good and what isn't in various places. Second, there is the process for effecting change. The conceptions of stakeholders in corporations vary considerably around the world. The state is a stakeholder in the advanced industrialized countries and, more subtly, there is the wounded but persistent concept of the social market in which the worker is a stakeholder.

In the EU, this result that we are seeking will be achieved by a totally different process than the one that we have been discussing.

One day the Greeks are going to wake up to discover that there was a law duly passed with weighted voting in the EU, duly contested in the Court of Justice, and duly imposed on Greece, forcing her to do some of the very things that a lot of us around the table would like to see done.

But the way we are talking, it is as if we think the rest of the world is an extension of the United States. Can we break out of our U. S. shell? Do we dare? If so, how far? And what do we try ultimately in terms of strategy?

Ron Blackwell

We are discussing commonly accepted norms, not just values. And it is not important whether they are, in fact, universal; they were negotiated among different parties, including labor, business and governments, internationally. But even if we start with our own national norms, that doesn't disqualify us from applying them to others. If the Queen of England comes to the United States, she is welcome, but we will insist that she drive on the right side of the road. Otherwise she interferes with our traffic. We are now engaged in commerce with different cultures having different values and norms. Unless we find a way to address the differences, we undermine our own norms or our own commerce.

Michael Posner

I disagree strongly with the notion that this process is U. S.-led or centered. I take great exception to the way in which, for example, the U. S. government imposes itself in the world with respect to human rights and other matters. I also have trouble with the way some U. S.-based human rights advocates implicitly convey the idea that we are the "city on the hill" and everybody else should learn from us. The movement is international. What we're talking about are evolving international standards concerning issues like the integrity of the person. A vast majority of the people in the world agree that there ought to be protection against torture. It doesn't mean that every government subscribes to that, but it's something rooted in every culture and tradition. It is something that we aspire to as a matter of law and international action.

Henry Steiner

Ray Vernon invokes many of the themes of the debate between universalism and relativism in human rights. I'm far from certain that this is at stake here. These themes are of central importance if we are talking about, say, equality of women, apostasy or equal treatment for different religions. We will find real conflicts that cut deeply into culture and tradition. Is that the issue here? Is there something deep in the culture of third world countries in different parts of the world that leads them to resist, say, rights of association or rights to certain standards in the workplace?

I don't think that is what we are hearing. The discourse is very different. When Lee Kuan Yew, a very vigorous exponent of a different vision of Southeast Asian values, justifies arbitrary detention or bans on advocacy, it is on instrumental grounds. "We are threatened by ethnic conflict," he might say, "and have to take precautions against it. We need stability and order to develop." Apologists for such positions seem to me to be seeking a temporal exemption from human rights norms that are widely understood to be universal, like personal security or a free press, rather than a cultural exemption that might typically involve religious, family, sexual or gender norms. It is as if they're saying, "A hundred years ago you didn't believe in or follow many of those absolute rights that you're talking about today. You were busy, perhaps, exploiting labor to accumulate capital. Give us a chance to go through your experience. In the meantime, we've got different fish to fry from you." In other words, it is not so much a matter of cultural relativism as pragmatism and historicism.

Raymond Vernon

That may be one of the responses, but not a widely held one. I believe the differences between developed and some developing countries are more embedded. The perception of businessmen in Indonesia about the proper role of government and their proper relationship to it is of a different order than that in Europe or the United States. Indeed, U. S. perceptions about the proper relationship are different than in Europe. In Europe, for most big corporations, the mother was the government and the father was the bank that the government created.

Dani Rodrik

I would like to reinforce what Ray Vernon has said. We are not facing simply instrumental arguments. There are a number of values which are in some sense truly universal. But once you turn to implementation, there are different institutional structures, different cultures, and different historical traditions that impinge. Consider collective bargaining or even child labor. We could all agree that these are desirable norms, but that hasn't led to agreement on implementation. The United States has not even agreed to the relevant ILO conventions. Presumably, that is not driven by a principled opposition to either collective bargaining or prohibition of child labor, but by the specific requirements of the convention which are inconsistent with the way the U. S. runs its own business. Perhaps it is a matter of asserting and defending states' rights or other aspects of national institutions and of sovereignty in international life.

This is a specific illustration of what Ray Vernon was saying. The conclusion that I draw from this discussion is that implementation must be undertaken at a national level by each nation within the scope of its institutions. Each nation should have the right to protect its own norms and institutions but not the right to enforce them on other countries.

When the Queen of England comes to the United States, in Ron Blackwell's example, she should drive on the right side of the road. When she goes home, however, we don't ask her to keep driving on the same side. Moreover, to the extent that norms, institutions and practices in some countries erode domestic norms and institutions in other countries, those countries have the right to protect themselves from the consequences.

These are the difficult issues that we have to confront. For example, now that the Southeast and East Asians are begging for money, should we insist on rights-based conditionality? It's attractive, but what impact would this have at an operational level? It could be a disaster. Without addressing the operational content of these rights, I think we are avoiding the tough questions.

Henry Steiner

I would like to ask Dani Rodrik how far he would advance that idea. Consider, for example, a workplace in a given country that produces entirely for consumption. It prohibits any kind of worker association and discriminates on the grounds of race, ethnicity or gender. Is that like the Queen returning to her own country?

Dani Rodrik

Let's take the case of soccer balls produced in Pakistan. As I understand it, there is effectively no production of soccer balls in the United States. So when child workers in Pakistan produce soccer balls and export them to the United States, there is no issue for U. S. labor, in one sense, because they aren't competing with U. S. labor. Here is a clear case where the only issue that concerns us is the potential well being of the workers in Pakistan. I think the issue will rank very low in the priorities of trade policy or demands on U. S. enterprises to address the problem.

The situation is different where the imports actually compete with domestic production, such that violations of labor rights are the direct route through which employment practices in the United States are being undermined. There, I think you need an institutionalized, democratic procedure in the United States that tries to determine how much we care and how far we are willing to trade off the norm of economic gains through international trade against the corrosive impact on the employment norms and labor standards which are a product of a long history and evolution in this country. That's where the hard issues are, when you have to confront them. The resolution is likely to be unilateral U. S. action.

Henry Steiner

In other words, when a producing country does compete directly with U. S. production, it is as if the queen comes to the United States.

Ron Blackwell

I think we're close to an understanding here. At least, we all agree that when the queen goes back to England, she can drive on whatever side of the road she wants to. The difference is when foreign production affects our economy. It is not just what we think about human rights in different countries but what that means as an economy becomes global. What motivates many labor people is precisely the negative effects here. We are simply trying to take steps to protect ourselves from that, but steps that we believe advance interests more generally.

Bruce Klatsky

The analogy to the queen doesn't work for me. In the case of soccer balls, for example, the industry in Pakistan exists to a large degree because of the marketplace here. Whether the queen drives on the left or right side of the road when she goes back doesn't depend on us here. Moreover, the conditions that exist in Pakistan — conditions that perhaps caused that industry to flourish — might indeed prevent me from starting a soccer ball factory in the United States. Or, perhaps, they put me out of business twenty years ago. As we reflect on more pragmatic approaches, I wouldn't want that image of the queen sitting too firmly in people's heads.

Dani Rodrik

There's some point in history at which products like soccer balls were produced here. So in that sense you're absolutely right. But from this point on, it is irrelevant. I was trying to draw a distinction between cases where the primary issue is how much we care about what's going on there as opposed to cases where it seems our primary concern is what is happening in the home economy.

Session Two: Defining the Obligations of Business and the Means of Achieving Them

Michael Posner (chair)

This second session will begin with a discussion of the standards or rights that business should respect, the means of enforcing them, and the obstacles to their protection. The problem of empirical information arises throughout — what do we know about the relationship between rights and economic performance? What is the likely impact of particular kinds of intervention? And how can we fill the lacunae in what is very limited empirical data? The problem is particularly important as we consider the possibility and the limits of private, primarily market-based mechanisms, including codes of conduct and labeling campaigns, to strengthen rights.

The focus on empirical studies brings us back to the issue raised by Henry Steiner, regarding the contrast between rights-based and consequentialist approaches. At what point do we put aside the data and insist on something because it is right? Different kinds of violations require different solutions. In order to facilitate the discussion, we will discuss several case studies that involve varying violations — violations of basic rights by the states, abuses that are tolerated though not explicitly ordered by the state, and subtler issues of worker exploitation where the culprit may not always be clear.

Debora Spar and Bruce Klatsky will make some introductory remarks.

Debora Spar

Let me start with some quick responses to questions on the agenda. Does the responsibility of business vary depending on whether it is involved directly or through outsourcing? Yes. Does it vary depending on whether the harm is inside or outside the workplace? Yes. Is there corporate responsibility where the company is perfectly well behaved but the government is engaged in systematic violations of human rights? Maybe.

I will go on record as being pragmatic about these issues. I would rather have standards that work towards particular outcomes than abstract rights. Although we could probably come up with some con-

sensus about those standards, it wouldn't have much value. It doesn't even mean much when governments sign off on the standards. There is still the question of how or whether they will be enforced.

Let me suggest several possibilities for the source of standards and enforcement mechanisms at the national and international level. At each level, there are customs, laws and private standards that constitute "rules." We all know how complex custom is. Law refers to rules duly promulgated by an official body that provide a specific sanction. Of course, law is strongest at the national level. Finally, private standards are emerging from sources other than government.

It is private standards that we see in the soccer ball industry or the Rugmark project. They are becoming the bases for rules and for new approaches to enforcement. How do private firms take on the enforcement function that used to be the province of the state? You can imagine forms of private enforcement that are different from contract law. Cartels have always done this. There are also consumer mechanisms. But we should insist on distinguishing these mechanisms from enforcement through law. They are different, though not necessarily better or worse.

Bruce Klatsky

Today, there is widespread acknowledgment of corporate responsibility to respect basic rights in developing countries. You could probably get agreement on the content of fundamental rights and basic standards in 99% of U. S. corporate boardrooms. There would be shades of gray, but you would be hard pressed to find a CEO who refuses to acknowledge a significant degree of responsibility. In my view, the type of investment — direct or indirect — is irrelevant.

The battle with communism is over and capitalism has triumphed, like it or not. Though it may sound trite, we, as capitalists, have the unique opportunity to provide decent livelihoods and opportunities for all people, and we have an obligation to ensure that the system doesn't fail. At the end of the day developing economies — both in terms of economics and freedoms — benefit business. In addition to a concern for people, that is what motivates me and many CEO's with whom I speak. But the hurdles that exist are very real. One is the differences in culture, not only with the host country, but also among many of the companies doing business there. We've all read about the Koreans and the Taiwanese in the Americas.

Developing countries have very different priorities. They say to us, "We want to feed our people. We want to provide health care." Even when they pursue this sincerely, their way may not be consistent with protecting other basic rights. People may be better off in China, for example, than they were twenty years ago, but that doesn't justify prison labor and abusive work conditions. That is the reality that we have to deal with.

It is also true that organizations in the developed countries have mixed agendas. I don't question the important role played by unions in the development of this society and of capitalism in the United States. But it would be naïve and wrong to avoid noting whom these unions work for. They represent and are supported by workers in the United States. From one perspective, that is terrific. I am struggling to maintain jobs and open factories in the United States every day. But the desire to keep certain U. S. industries economically viable is at times in conflict with fostering the development of industries in developing countries. Of course, there are people who are just out and out protectionists. And there are union leaders principally concerned with the preservation of their own jobs.

There is also the issue of NGOs. I am proud of my active participation on the board of Human Rights Watch, but I do not believe that it, or other NGOs engaged in issues of worker rights and corporate responsibility, are equipped to assess business conduct, and to evaluate in quantifiable terms how companies operate with respect to human rights. They can only identify the extremes of the spectrum. They have to develop some comparative method if they want to play a credible role in evaluating business conduct.

Finally, there is a sense that it is easy to indict business. We business people are not necessarily the role models in America. When I was graduating college, and now as my son graduates, it was and is easier to admire a labor leader like Jack Sheinkman than a business executive like Bruce Klatsky. That is a hurdle that we as business leaders have to overcome.

*[Democracy, human rights and economic growth;
correlations, causations and empirical lacunae]*

Norman Dorsen

Unfortunately we do not have any business people here who are very critical of international human rights. We do not have people here from the commanding heights of industry — GM and Ford and Unocal and Bechtell and GE — the ones who do not serve on the board of Human Rights Watch or the Lawyers Committee. What would they say about the issues we are raising? We need somebody here who can put himself or herself in the shoes of the CEO of one of these companies.

On another point, I would like to see us move to the question of how much we know, empirically, and in what respects more empirical knowledge would assist us. It is not surprising that we have avoided this subject, since there is embarrassingly little data. It is much easier to remain at the theoretical level, where we may indulge in unexpressed and usually unchallenged assumptions about what the facts are. For example, how do we know whether actions will lead to greater or fewer violations of human rights or whether low wages and labor standards are an inducement for direct foreign investment?

Dani Rodrik

I am pleased that Norman Dorsen raised this issue. There are four things that I think we know from the empirical evidence, none of which is particularly controversial.

The first is that economic growth tends to bring greater democracy. Higher income levels appear to lead to higher levels of observance of human rights.

But what about the effect of democracy on the economy? Higher levels of democracy and human rights do not appear to have any predictable effect on long-run economic growth, positive or negative. That is not to say that they do not influence economic performance. There is some evidence that greater democracy is associated with lower variance in economic performance and a better ability to handle shocks. There is also some evidence that democracy is associated with a somewhat better distribution of income between labor and capital.

The third thing we know concerns the huge variation in wages from one country to the next. People often assume the variation is

linked to differences in labor market standards, human rights, freedom of association, and the like. But between 80 and 90% of the variation is actually explained by labor productivity as determined by the skill level of the work force, the physical capital endowment of the country, and the natural and public infrastructure of that country. Issues like human rights, freedom of association, labor market standards, or presence of unions do matter, but they explain only a small part of the variance.

Finally, the evidence suggests that wages and labor costs as a whole play only a small part in attracting foreign investment. I always use the example of Germany, which has the highest unit labor cost (*i. e.*, productivity-adjusted labor cost) in the world. And you wonder why 90% of Germans still invest in Germany?

Lael Brainard

The lore paints the problem of wage competition in much more draconian terms than the reality faced by firms across a broad variety of industries. Some industries are extremely sensitive in terms of where they locate or where they source production, but they are a minority. Much of the wage competition that you see in those industries is not between parent multinationals or between the parent and affiliates in developing countries. It is between affiliates in different countries. So the main source of wage competition in very labor sensitive industries is actually between developing countries.

The more footloose the production — in other words, the easier it is to ramp up production in one area and reduce it in another — the more you're going to see intense competition between developing countries. And the apparel industry has always been a prime example where the footloose nature of production is pretty high relative to cars, for instance, or even semi-conductors.

Debora Spar

I agree with Norman Dorsen that there is a need for more data. I have seen some recent data suggesting that levels of mobility are much smaller than we would have believed. Firms tend to invest in countries where they already are invested. The reasons have to do with managerial ease rather than labor rates, even in instances where labor rates are important.

Recently, I have been looking at data that tracks the correlations between foreign investment and progress in human rights. To the best of my knowledge, only one or two studies have tried to do that so far. What happens as investment goes into the underdeveloped countries? The data is very noisy. It is hard to pull anything out of it. Essentially, the correlation runs in the direction that you want to see it run: in places where you have higher levels of U. S. foreign investment, you have better conditions of human rights. Whether there is any causal relationship is much more difficult to determine.

Ron Blackwell

If more mainstream economists were here, they would assure us that there was indeed no problem. We should simply let markets function as they will. Though they will produce horrific conditions in the short term — as they did in our history — we can be assured that markets will eventually yield the best of all possible worlds. That is a very comforting thought, but I don't think there is much agreement on it around the table. I, for one, think there are very serious problems with this view.

Li Lu

Maybe I am misreading the data, but it seems to me that any country that is fairly rich observes high levels of human rights and a certain degree of democracy. Those countries that are poor and developing do not observe rights and do not have democracy. That would lead me to believe that basic rights and due process are, to some degree, a cause of economic development.

In recent years there has been a huge debate about the so-called "Asian model." Some people point to Southeast Asia where dictatorship and high economic growth have coexisted. But I think it is simply wrong. Most of those countries that have experienced high growth have a degree of predictability, at least in regard to certain fundamental rights. There is a minimum of free participation necessary to a free market system.

So the question is what constitutes the minimum rights, norms and standards that facilitate the growth of a market economy. If we find those norms, it should be easy to convince developing countries and corporations to support them.

Ron Blackwell

Let's return to the question of appropriate norms and means of implementation. I want to stress again the distinction between rights and standards. Rights are what they are regardless of the level of development of the country. Either people are slaves or they are not. They have a right to express their feelings or they do not. These need to be enforced. But minimum wages are a labor standard that varies with the level of development of the country and competitiveness of the industry. Our charge is not to enforce them, but rather to harmonize them at higher rather than lower levels.

But there's a relationship between the two. The implementation tool is collective bargaining. If workers have basic rights to form unions, then you have a mechanism for countervailing power to bargain with individual employers and share more equitably the value created in those enterprises. The corporation wants to conduct its business in one way. Collective bargaining is a means of setting standards. Industry standards are a third way to do it. Local law is another way, as are international treaties.

Bruce Klatsky

I think that Ron Blackwell and I are closer together than it seemed. There are problems, but are unions able to address them, given their constituency and their commitment to protecting domestic jobs? I'm not sure whether collective bargaining, as we know it today in the United States, is appropriate in a developing country. Some years ago, for example, a local union failed to pay the local hospital for medical services on behalf of its dues paying membership. The hospital in turn refused to treat a kid who died of meningitis. Our purpose should be to find a means of addressing such problems. But we differ about who the people are with the skills to do that. I question whether unions in the United States or NGOs have the skills. And we must question whether unions in developing countries are motivated correctly and not for financial gain.

Michael Posner

How important is collective bargaining and freedom of association? Dani Rodrik said that, empirically, wages depend 90% on factors other than issues like freedom of association. If the right to association is so

“inexpensive” and potentially powerful, doesn’t it belong to what Li Lu was calling a category of minimum rights?

Dani Rodrik

I agree with what Li Lu said. It is most important to distinguish between “rule of law,” and democracy. What Li Lu said about East and Southeast Asia is correct. What was critical there was predictability, which I interpret to mean greater realization of the rule of law. These governments were not expropriating private contracts. They had a relatively predictable set of incentives and regimes. It is very important to realize that, interpreted in this way, the rule of law is a vital requirement of economic growth. On this point we have strong empirical evidence. But we have to distinguish between that notion of the rule of law and notions of civil liberties and political rights. The evidence here is quite mixed: greater civil liberties and political rights seem to be associated with lower variance of economic performance, but not higher levels of economic growth over the long term. Authoritarian regimes have produced extremes: there were high growth economies in East and Southeast Asia, but there was dismal failure in sub-Saharan Africa. Democratic regimes tend to have restraints and checks that preclude extremes of economic performance. That, at least, is one way of interpreting the data.

On the issue of collective bargaining and freedom of association, I do not want to overstate what we know from the empirical evidence. Essentially, labor productivity appears quite independent of labor market institutions or the overall legal regime. Take, for example, the difference between Mexico and the United States: the ratio of wages between Mexico and the United States is 1 to 7. But how much of that is due to the average skill level of the Mexican workforce, the average level of physical capital, and the average level of infrastructure, all of which make workers in Mexico less productive than their counterparts in the United States? On the other hand, how much is due to the fact that the regime of civil liberties and political rights and labor standards are much inferior there? My best guess is that Mexican wages would rise about 20% if you raised the Mexican civil liberties and political rights to the United States level. That is not small potatoes for Mexican workers, but in relation to the United States it does not change matters a great deal. It is unlikely to affect the larger pattern of trade and the question of where investors go.

Raymond Vernon

Until now, nobody has spoken about the free rider problem. There are people and firms who listen respectfully to our objectives and say, "Just mind your own business; I'm going to do whatever I want." We might ignore them if we thought of history as the ongoing diffusion of a relatively high set of values, reaching out to include more and more producers. But we are in a curious stage in this globalization process. When the Russians, for example, begin to create multinational enterprises or get involved in off-shore production, they will do it with a level of concern for human rights that is a function of their history. At this particular junction, alas, that level will be significantly lower than our own. The same is true of a lot of the developing countries which are developing a stake in multinational trade. As a result, anyone in the United States or Europe who wants to do something to further human rights has to face the question of free riders coming from other parts of the world.

How important are the advantages of being a free rider? *Ex post*, the advantages of being a free rider turn out to be a lot less important than we suppose, but *ex ante*, this is not necessarily the case. Given the uncertainties, people facing the question are likely to consider it an overwhelming factor in their competitive life — probably wrongly, but it almost certainly affects the way they will react.

Ron Blackwell

This explains the limits of private mechanisms. The enlightened companies need support from public authorities at some level in order to protect themselves from the free riders.

Lael Brainard

We really lack data at the micro-level regarding the costs of improved standards and basic rights. A 20% increase in costs of labor should not affect the choice of doing business in the U. S. or Mexico, but it is still a huge difference that may turn out to be quite costly.

What about the savings gained through exploitation? It is worth distinguishing the kinds of exploitative practices that have no commercial value from those that do, though we may find them disturbing. On the one hand, there is forced or child labor, which at least in the case of forced labor, conveys no commercial value that I am aware

of. On the other hand, dumping environmental pollutants clearly gives such an advantage. It costs nothing and gives you an advantage over your competitors who might try to be more environmentally responsible. Companies may find it much more difficult to try to change obnoxious behavior where it disadvantages them vis-à-vis other companies.

Bruce Klatsky

There is no profit in exploiting kids or chaining them to machines. There is an economic benefit attributable to a lower wage environment. It is a very important distinction. There is no excuse for chaining a kid to a sewing machine. We have to insist on that and recognize that in developing countries these so called low-wage industries can and do constructively participate in the evolution of those societies without exploiting the rights of workers.

Aaron Bernstein

Clearly productivity growth makes wage growth possible. But there are tremendous variations in how that occurs. The value added through labor is attributed differently, essentially, according to who has got the upper hand in the labor market. There was a study last year by Richard Rothstein (a researcher affiliated with the Economic Policy Institute in Washington, D. C.) who looked at wages and productivity in Chile and Mexico, compared to the United States in 1939. He chose 1939, because GNP per worker, which is a rough proxy for productivity levels, was about \$5,000 dollars a year — about the same as Mexico and Chile in 1990, once you adjust for inflation and exchange rates. Yet, converted to 1990 dollars, the minimum wage in the U. S. in 1939 was \$2.10 an hour. With necessary adjustments, the rate in Mexico was \$.80. There are a number of explanations, but the most straightforward is that Mexico squelches its labor movement. There is no mechanism there for productivity sharing, or for productivity bargaining. So the increases in productivity are there, but they aren't shared.

Raymond Vernon

The other explanation may be weaknesses in his data.

Lael Brainard

I agree that collective bargaining, like democracy in the broader sense, is a way of redressing various kinds of exploitation. But even that begs the question of enforcement. Many countries have fine laws regarding collective bargaining that go unenforced. When we import goods from them, we have no way of verifying whether or not the law has been respected.

[Distinguishing types of violations: three case studies]

Ron Blackwell

We can distinguish three distinct ways in which the rights of workers are violated. In the first case, workers are oppressed. In Mexico, they are systematically oppressed in order to gain a competitive advantage. They are denied fundamental individual and collective rights. In the second case, there is abuse that does not amount to oppression. Workers are sexually harassed. They are prevented from going to the bathroom. In many countries, employers interfere with the reproductive freedom of women employees. In some cases, factory doors are locked. It is grotesque. I do not even understand what the rationale is. But such abuse is distinct from oppression. The third category is exploitation. How do we share the value that is created? Workers are exploited if the system does not allow them to sustain themselves and their families.

Michael Posner

I would like us to discuss three case studies that correspond roughly to the categories that Ron Blackwell has identified, though in a different order. We will start with the problem of child labor in the soccer ball industry. This is an abusive practice that is tolerated if not ordered by the state. In the category that he referred to as "oppression," I would like to consider a case where freedom of association is blocked by the government. The case study concerns the Phillips Van Heusen experience in Guatemala. Finally, on the thornier subject of exploitation, we will devote a few minutes to the experience of the Council on Economic Priorities in defining the concept of a living wage.

Rather than framing this exclusively or even principally in terms of the responsibilities of business, we should discuss the problem broadly. What are the appropriate roles of government — U. S. and foreign — unions, and NGOs? Where does business fit? What are we going to ask the companies to do? How effective are they going to be? Is the result desirable?

Doug Cahn of Reebok, Bruce Klatsky of Phillips Van Heusen, and Jack Sheinkman of Amalgamated Bank will introduce the case studies.

[Child labor in the soccer ball industry and in textile factories]

Doug Cahn

Eighty percent of the world's quality soccer balls are made in Sialkot, Pakistan, an industrial city of 300,000 people in northern Punjab Province. The industry grew over the decades. The ball panels, laminated and cut in factories, were outsourced — that is to say, they were taken to villages around Sialkot in a 250 square kilometer area. There, they were stitched in homes and small stitching centers. Surveys recently indicated that as many as 20% of the stitchers were children, particularly in the ages of 9 to 12.

These were not considered to be the most exploitative of conditions, even in that particular area. For example, the children were not paid less than adult laborers. Nevertheless, the reliance on child labor was clear. The situation came to the light of buyers about three years ago. The question was what to do about it.

Reebok didn't feel that it could effect change by itself. We were a small player, a neophyte in the business, and we simply did not have the leverage to drive the industry. It is important to note that at that time most manufacturers in Pakistan denied that child labor existed. Others recognized that children were being employed, but did not see need to change the system.

We had to jump several hurdles to get all the buyers on board. There was a conversation on a steamy July afternoon at a trade show in Chicago. A Reebok colleague and I proposed to the Soccer Industry Council of America — a U.S.-based trade association — that it adopt a resolution calling for the Council to study the issue and make recommendations. As innocuous as the proposal might have seemed, the Council hotly debated taking on this new role and opening up what,

for them, might be a Pandora's box. The vote was 7 to 3 in favor and that was a hard-fought step. There was a considerable delay in developing a focused agenda to develop a solution. One other hurdle is worth mentioning. It became clear that a U. S.-based solution wasn't going to work. We needed to internationalize it. First, we in the U. S. are all international brands. Second, there are significant brands outside the United States. Eventually, we reached out through the international parent association, the World Federation of Sporting Goods Industries in Switzerland, and made this a global initiative.

After two years of negotiations, buyers in the West cajoled, convinced, and eventually compelled manufacturers in Pakistan to come into a unique partnership. The partnership consisted of the Sialkot Chamber of Commerce (the manufacturers), the over 150 member companies of the World Federation of Sporting Goods Industries (the buyers), UNICEF and Save the Children, and, not insignificantly, the International Labor Organization (ILO).

Each of those entities has an important role to play, and has made important commitments to eliminate child labor over an 18-month period. The role of manufacturers is to agree to monitoring conducted by the ILO, and to certify stitchers so that there is a system in place to determine that children are not present. The role of NGOs — in this case, Save the Children — is to come up with plans that can address the transition problems facing children and their families. There are problems related to the income that was previously derived from the children's work, problems related to the impact on the family unit and particularly women who, in the traditional Islamic society, find it difficult to travel to centralized stitching facilities and leave the family and village. The NGOs are looking at solutions to these issues, including micro-credit programs. UNICEF is also playing an important role. Educational centers are being established.

As hard as this has been to do, it has been easy compared to other kinds of workplace problems because it is a single issue, in a single city and a single country. There is also the notable absence of the government of Pakistan. It wasn't deemed to be a constructive partner in this, and perhaps would have made it much more difficult to achieve an agreement.

Reebok has an even more aggressive program than the industry collaborative, though we felt that in order to move the industry and to have leverage we needed to participate in the collaboration as well. We did not want to use child labor for 18 months while waiting to have

certified stitchers with monitors. We had the means by which we could establish a four-walls factory and control our own production with monitors and inspectors to ensure that people were of an appropriate age. Then we decided to assign \$1 million in profits to educational programs. We centralized production. We instituted aggressive monitoring, and we partnered with a local NGO to provide educational opportunities.

Dani Rodrik

What evidence is there that the outcome of this process would actually be better for the children involved? If the idea is to make resources available or to provide better educational opportunities, perhaps other means would have been more effective. The best response would not necessarily come in the context of one particular industry and one kind of consumer activism.

Robert Kapp

There is a whole set of assumptions and social facts underlying our discussion of child labor. Why are kids making soccer balls in the first place? I did *not* hear Doug Cahn say, for example, that in order to produce soccer balls, fingers have to be less than 3 centimeters long and workers have to be less than 40 inches high. In other words, there are no requirements of this type, and hence children do not have an inherent advantage in the stitching of soccer balls. Child labor may result, instead, from a local social pathology affecting the quality of the adult labor pool.

If we are truly interested in eliminating the problem, we have to think in terms of a structured follow-on process with measurement of results. Many in the human rights community say, "That is not our job. Our job is to focus the light of public attention and scrutiny on an evil." I think this is inadequate. We have to accept the notion of incremental change over time, perhaps even mildly incremental, but nevertheless demonstrable.

Doug Cahn

As far as our project is concerned, Save the Children will track the impact in the workplace. It has the strongest interest in doing that institutionally. On the basis of the tracking, it will put in place remedial programs to alleviate any hardship that would come from the transition.

In general, there is a great deal of pressure on businesses to avoid child labor, but without regard to the impact on these children. What we need are good partners in the NGO community to help us move out of the practice in a way that is not detrimental to the kids.

Michael Posner

Can we generalize from the choices that Reebok has made?

Doug Cahn

It is hard for us to generalize, because this is a small part of our business. We saw an opportunity to drive the rest of the industry. As a result, we were more willing to take the profits and roll them back into redress for children. It would be different if it were part of our core business in thirty different countries. In a way, I am admitting that this one is easy for us, as hard as it has been. If this were footwear, we would have to approach it differently.

Raymond Vernon

What's the motive of the local association of soccer ball merchants in furthering the project?

Doug Cahn

I think they see a growing movement of buyers insisting on production free of child labor. Some among their ranks have recognized the need to move in this direction. It is not just external pressure, although such pressure certainly has been a strong factor in getting the manufacturers in Pakistan to sign onto this.

Elliot Schrage*

Once Pakistani manufacturers examined the practices of their stitching sub-contractors, I think many were not happy with what they learned. But that unhappiness did not inevitably lead them to correct the situation. The experience in Pakistan dramatically illustrates the distinction that Ray Vernon made earlier between *ex ante* and *ex post* thinking. *Ex ante*, the Pakistani manufacturing community demon-

* Elliot Schrage, an observer at this discussion, teaches at Columbia Business School and represented the global soccer industry in creating the Sialkot project.

strated tremendous resistance to correcting the abuses in the production process. They denied the problem existed, claiming that "little fingers" did not have the strength to stitch quality soccer balls. They attacked the messengers, even in the face of mounting evidence. They claimed the allegations were motivated and supported by their foreign competitors.

Ex post, the manufacturers discovered that their partnership with Save the Children, ILO and UNICEF had become a competitive advantage in the marketplace — demonstrating their responsiveness to the needs of their international customers. Indeed, some manufacturers, those for Nike and Reebok in particular, realized they truly could do well by doing good — by developing closer business relationships with their key customers. Perhaps the best illustration of the positive impact of the Pakistani program is that ball manufacturers in India, a much smaller source of global ball production, decided to establish a similar program after observing international reaction to the Pakistan initiative.

There is no doubt that agreement is transforming business and even cultural practices in Pakistan. For example, it requires production to shift from a home-based, cottage industry to a factory-type setting, with positive financial consequences — higher wages — and some potentially negative social ones — particularly for women and families, which the project is working to address. But the ramifications may be even further reaching. Whether consciously or not, this cottage industry structure prevented workers from joining together to negotiate with manufacturers about wages and working conditions. That explains, in part, the poverty that has led to child labor. The Pakistan project offers an excellent empirical test to see if efforts to eliminate child labor can — over time — change the dynamic between labor and capital in an industry.

With regard to Dani Rodrik's point, it is important to recognize the broader repercussions of the Sialkot program in Pakistan. Perhaps these resources could have been allocated more productively elsewhere for greater short term benefit. But successfully removing children from the workplace in Sialkot will place additional pressure on the government of Pakistan to provide the children with meaningful educational opportunities. That is already happening, both as a result of the international attention that has been directed to the region, but also as a consequence of the creation of an increasingly powerful domestic constituency that recognizes the need to provide children with alterna-

tives. And if such pressure begins for children in Sialkot, there is every reason to expect that it will continue to include other industries and other regions.

Michael Posner

I would like to look beyond Sialkot and the soccer balls to determine how much we can generalize from this experience. What lessons can we learn that we might apply more broadly?

Bruce Klatsky

Phillips-Van Heusen had an experience in a small village in Guatemala where we produce shirts. The village is populated by Mayan Indians, many of whom have been systematically killed by various Guatemalan regimes. Similar to the case that Doug Cahn described, the young kids work in homes sewing shirts. It was something that we found offensive. But the people in the village would not change, no matter what we did.

From the perspective of corporate obligations, we had a real problem because, on the one hand, we were significant to the economy of the village. On the other hand, there was no way that we were going to impose our standards on them. We were faced with the dilemma of whether to stay or leave. Honestly, I am not sure that child labor there was bad. If we left, we knew we were hurting the village. If we stayed, we were violating our own standards. Our response was to provide financing and work with the local schools to improve the physical infrastructure, train teachers and improve the nutrition of the students. It was a salve to our conscience. We have not done that in China because we do not have the resources to do that in China. Therefore, we have no choice but to unilaterally say, "No child labor, regardless of 'your culture.'"

Ron Blackwell

I would like to draw some general conclusions. We care about children whatever happens to them. Their right to develop as individuals is abridged by keeping them occupied in factories. But I want to focus on the abuse part. Children can't defend themselves. They do not know the dangers of operating complicated machinery. They can't recognize a noxious substance. They are very vulnerable to abuse.

This is one of those circumstances that requires not just sanctions, but remedial action. As the examples here have illustrated, you can't just throw the kids out of the factory. We have the same problem with Mexican kids living in New York city. There's an essential remedial aspect to whatever response we put together for the case of child labor. As commendable as it is, you can't expect companies by themselves to bear that responsibility.

Lael Brainard

As an economist, I agree with Dani Rodrik's concern about whether just ending all child labor is the best way to address the lack of educational or economic opportunities for these kids. But there is a salience to the child labor issue that attracts funds in a political process that otherwise would not be available. The U. S. government has tremendous difficulty mobilizing support for foreign aid right now, but there are certain issues for which there is a lot of public empathy. And we can attract funds. It may not be the first, best way of addressing the problem, but it is better than doing nothing, which may be the alternative.

I think we can generalize from this lesson. Some rights have a lot of public salience that can lead to consumer pressure. I don't think that people have the same sort of visceral reaction, for example, to collective bargaining.

The other important factor to consider is the nature of the companies involved. Reebok and Phillips-Van Heusen may be special, but it is not coincidental that they are both companies with direct consumer contact and huge brand names. Bad publicity is extremely costly to them. Some of the other companies most involved in these efforts have similar characteristics. It is much more difficult to deal with industries down the production food chain that are invisible to consumers.

In the apparel industry partnership and elsewhere, we have been finding pressure points — for example, holding retailers responsible for subcontractors five levels down the chain. But those are difficult pressures to maintain. It is easiest where companies are visible and consumers care about them.

I also agree that there is an important role for government and government resources, even in the particular case that we are discussing. UNICEF and ILO are both prominent players in the Sialkot agreement. I don't think it is possible for business to take on the whole burden.

Dani Rodrik

I want to draw a distinction between the examples which Doug Cahn and Bruce Klatsky recounted. In my view, the only ethically consistent and supportable position in dealing with this issue is the one that Bruce articulated. I will say it strongly so that the issue is out on the table. In both cases, the two companies were faced with a situation in which they had no clear idea of what the consequences would be for the children. They hope for the best, but actually have serious reasons to believe that the consequences might be negative. They are coming in as outsiders who do not believe the parents in the area are doing what is best for the children. They are imposing a set of outside values. But in one case, resources were made contingent on local changes, and in the other, they were not. The way that Bruce put it was to acknowledge his uncertainties and invest some of the gains from a partly illegitimate process — i.e., child labor — to expand opportunities, educational or otherwise, for these children. All this was done in a way that did not impinge directly on the values or behavior of the parents. In the Reebok case, in contrast, the additional resources were made contingent on children not working. From what I heard, I do not see much benefit in going down the Reebok path, and I do see a lot of risks.

Doug Cahn

If this was a situation where a company was displacing children without a program to mitigate the negative impact for them and their families, then I would share Dani Rodrik's concern. But this was not the case. Social research agencies in Pakistan and Save the Children conducted studies which provided the information to create a transition that was consistent with local cultural norms and socioeconomic circumstances. Programs were designed to mitigate the stark potentials that he describes.

I also want to underscore the limited economic impact of our efforts, even as large multinational enterprises. As Lael Brainard pointed out, manufacturers that do not produce branded goods are not susceptible to the kind of leverage that we are talking about. These are often low-end producers and producers for local markets. Their volume is huge, probably much larger than that represented by Bruce Klatsky and myself or even by the companies that make up the China Business Council today.

[Freedom of association]

Michael Posner

Our next topic is freedom of association. At one extreme, there are countries like China or Vietnam that have official laws prohibiting freedom of association. Government controls every entity. In the middle, there are countries like Indonesia, which have laws, but little room to move within a non-governmental context. Finally, there are places like Guatemala or Mexico where there is technically room to move, but a lot of difficulty in practice. We will take the last case as a starting point. Bruce Klatsky will discuss the experience of Phillips-Van Heusen (PVH) in Guatemala.

His case study raises the question of how far a company can and should go where a local government is essentially inhospitable to unions and freedom of association. Here you have a government that at least in theory has the laws but, in practice, does not provide an enabling atmosphere for this activity to proceed easily. The company is forced to struggle with internal issues at the same time that it fights the host government.

Bruce Klatsky

Guatemala is a country with a terrible history of labor abuse, a country where soldiers dragged union organizers out in the middle of the night, shot them and left them in the street. If PVH had been sophisticated enough to learn the history in advance, it would not be in Guatemala. Unfortunately, we weren't that sophisticated. We sent a couple of well meaning engineers and factory managers down to Guatemala. They saw a nice building, put an ad in a local paper, put up some posters and discovered there was a huge demand for jobs. They did some dexterity testing and determined that the people could sew shirts. Then they said, "This is a great place to produce shirts."

If I paint us as good guys, it is because we were. We opened a model shirt facility. It was well-engineered and well lighted and well appointed. We applied the same standards there that we do in the States, and more. We provided school supplies for kids and medical attention at the facility. The employees were paid twice the average industry wage in Guatemala, approximately a dollar an hour. This was a wonderful place to work if you wanted to sew shirts to provide for your family. We turned away countless people.

Some activists and union organizers decided that this was the place to introduce unionization in Guatemala. Perhaps it was because we were a U. S. company, perhaps because of our reputation. With us, they would not have to worry about people getting killed or beaten up. They wanted to make a statement.

There is actually an excellent labor code in Guatemala. Sadly, however, it is not enforced. The law provides simply that a union is in formation once a petition is signed by 20 people in a facility of any size. At that point, hiring and firing must be regulated by the courts and a whole set of controls put in place. The union advised us that there were sufficient signatures. But no one at the Department of Labor, Ministry of Justice or anywhere else up to the office of the President — which I personally visited — would acknowledge that there was a petition. We faced a dilemma. If we took the initiative to acknowledge the union without the government, we were concerned that union organizers in the United States would accuse us of treating workers better in Guatemala than in the States.

Nevertheless, without hearing from the government, we eventually decided to recognize that a union was in formation. Our local people had told us that there probably were twenty people out of our 800 workers who signed the petition. That was phase one.

Guatemala only requires one quarter of workers to sign cards in order to establish the union (unlike the U. S. where you need a majority). Given the horrendous history in Guatemala, it is probably a good law. But it put tremendous pressure on the employees, i.e., a minority of the workers exerting influence normally requiring a majority. There were terrible antagonisms. The factory stopped working completely.

The union insisted they had submitted the petition to the government. The government denied it. We chose to put the burden on the government to make the final determination. We hired lawyers, including the lawyer who drafted the labor code in Guatemala. We thought we had influence in the government, at least to convince them to say either yes or no. We incurred the ire of the local manufacturing association who wondered what we were doing acknowledging a union. The pressures were extraordinary.

The waters became muddied when someone organized a campaign in the United States, attacking us and throwing bloody shirts on the floor of our retail stores. It was a distraction. It did not affect our business, but it was a personal embarrassment. At that time, a year and a half ago, my wife and I were the co-chairpersons of the annual Human

Rights Watch fund-raising dinner. The campaigner decided to target the dinner. At first Human Rights Watch ignored it. As a matter of policy, they had avoided getting involved in labor disputes because of the difficult nature of determining the rights and the wrongs. But apparently a couple of targeted board members felt the pressure to react.

Human Rights Watch decided to send one of its most experienced investigators to Guatemala to try to ferret out the truth. This gentleman made a 48-hour trip to Guatemala City during which he interviewed the government, workers, and management. He came back with the conclusion that we had done nothing wrong. That was an informal report distributed to the directors of Human Rights Watch. It complimented the facility and characterized the problem as a classic union struggle.

Nevertheless, this had no effect on the campaign. On the eve of the dinner, Human Rights Watch did not want anything to happen that would detract from the event, at which they honor human rights monitors from around the world. Ken Roth, the executive director, spoke with the organizer of the campaign and agreed to send a full mission to Guatemala if he agreed to call off the pressure on the dinner. I agreed to open the books to Human Rights Watch and give them full access.

Two months later, Human Rights Watch sent two investigators to Guatemala. They issued a report that was somewhat different than the original report. They determined that the government of Guatemala had been dragging its feet. They found that there was in fact a petition signed by 25% of the workers and thus a union with which we were obliged to bargain. The report said we should be criticized for hiding behind the skirts of a corrupt government, if we failed to acknowledge this. At that point, I hung my hat on Human Rights Watch's expertise in assessing the conduct of governments around the world. I made the decision to negotiate with the union.

In the interest of full disclosure, I should add that Human Rights Watch criticized the management of this facility for intimidating union workers and provoking them to leave the facility, specifically by paying inflated severance payments to union workers. There is some latitude allowed companies in terms of what kind of severance is paid and we were accused of inflating.

That speaks to my earlier comment that Human Rights Watch, and NGOs generally, are not the best groups to act in this field when it comes to hard, quantifiable information. They drew conclusions that

were inappropriate and, in my judgment, wrong. There was no data available to support their view that we used compensation as a vehicle to discourage unionization and plenty of data to the contrary that they did not utilize. NGOs do not necessarily have the skills to assess business in a quantifiable way that will cause management to react with alacrity in the way that I was comfortable doing because of my personal knowledge and comfort with Human Rights Watch as an organization.

Norman Dorsen

Obviously, this was a serendipitous and unusual situation. First, Human Rights Watch was more vulnerable because you were on the board. Second, you had more access to it and could get it to do certain things.

Bruce Klatsky

Yes, Human Rights Watch got us to take the action because I was on the board. But it is also important to recall that HRW only undertook the investigation because I was on the board. It was not otherwise within their mandate, at least at that time.

Ron Blackwell

Your story raises the question of why Guatemala would be resistant to having a union. It is in part due to the peculiarities of Guatemala, but it is also true of other countries in the region. On paper, they are very good. But they are telling corporations they “know how to deal with unions.” I think the competition among countries to attract business is why it is so difficult to defend freedom of association in the region.

There is another element that concerns the U. S. government. The U. S. has not simply stood by with regard to the apparel industry in the Caribbean. USAID has played a role in promoting U. S. investment in the region.

Finally, I would also draw attention to the differences between a small trade-dependent country like Guatemala, and a country like China where that kind of incentive simply will not work. You have enormous power in Guatemala. You can pick up the phone and protect a worker. But in China, if you aren't there, Airbus is. Therefore the dynamic is very different.

Raymond Vernon

Concentrating on individual cases reveals their extraordinarily idiosyncratic nature. The right of association itself takes on an very idiosyncratic role depending on the conditions and the country that we are discussing. In France, for example, freedom of association was not so much a tool to negotiate with the employer, but one to be pooled with a national political movement. In Chiapas — if the current struggle succeeds — freedom of association will be a right with enormous political implications that are unique to that area. We need to determine what we are asking these various countries to do and, more importantly, what the consequences of achieving freedom of association would be. It may turn out that the consequences are really quite different from our own expectations.

Henry Steiner

The right to association is basic to contemporary thought about political organization and democracy since it is a core component of what we talk of as civil society. It's basic because one of its purposes is to diffuse power and authority, to move power away from one center and allow or encourage all sorts of groups to form. Here we have an essential vehicle toward broadly based political and social participation, for getting voices heard. No one has doubted that economic interest groups, prominent among which stand labor unions, are part of what we think of as civil society. This idea recurs in the USAID literature, in the State Department human rights reports, and in the literature about developing countries. The political repression described in human rights reports often includes the repression of labor associations.

The bald denial of a right to associate, as well as the manipulative regulation of associations so as to confer directive power over an association on the governmental regulator, are simply hard core violations of human rights. The issue of regulation can itself grow very complex, as it does in the United States. Just what degree or kind of regulation — for example, this country's earlier stress on excluding Communist influence from labor leadership — offends human rights ideas is too complex a matter to talk about here. There is an enormous range of regulatory law affecting many "rights" like that to association, or the right to found a family, that human rights law stays clear of. I readily understand the reluctance of human rights NGOs to enter systemati-

cally the confused area of deciding whether this or that aspect of a foreign regulatory scheme on labor or other matters complies with the human right to associate. NGOs handle the notorious interferences, the bald violations.

Association also is relevant to another topic that has been discussed. I do not understand anyone here to suggest that the task of opening a society to permit labor organization is exclusively the business of business. The term "privatization of regulation" appeared earlier in the discussion. But in many human rights topics, government defers not at all or only very guardedly to voluntary business arrangements. State legislation in the end must determine what is required, or prohibited. For example, the issues of gender or racial employment discrimination would not be satisfactorily resolved exclusively through understandings between labor groups and companies — issues like deciding whether discrimination is economically efficient and therefore to be accepted, or simply wrong. Legal norms created by government, or growing out of governmental acceptance of private arrangements, play a major role. The same applies to associations. It's unclear to me how much about the international human right of association could be decided without state norms and protection — that is, decided only bilaterally between a firm and its employees, or be handled by a voluntary code among companies.

Nevertheless, firms offer special opportunities. Lael Brainard made the point that advocates must seize the rare and special opportunities to advance positions even before there's a systematic vision of what ought to be done to change deep habits, political traditions. Time and again, systemic programs in the United States grew out of almost happenstance events that evoked a strong and targeted response in the form, say, of new regulation about a particular problem, or industry. Later, people started to generalize: "If here, why not there, and if there, why not in all similar circumstances?" Human rights issues often become imbedded in concrete situations and political processes that dramatize a particular issue for the public and stimulate a legislature to act. Only later do people start to think of the implications for a broader picture — as opposed to developing the broader picture at the start and then replicating it across the board.

And so here. Business is involved, and there are avenues that it can open — here and there, by happenstance perhaps. We're considering the relevance of this business activity to human rights without losing sight of the fact that, with respect to a right as broad and basic as

association, much in the way of norms and protection has to be done ultimately at the governmental and intergovernmental level.

Norman Dorsen

I would like to expand on what Henry Steiner has said about the relationship between government and private organizations. If you start from the premise of no government regulation, people could presumably organize groups of any kind without government action. In certain societies, people do organize under such a regime of law.

There are two other possibilities. One is where government itself acts to restrict the right to organize. In the United States, this occurred during the anti-Communist period and at other times. There was, for example, the loyalty oath required by the Taft-Hartley Act. In such cases, government is the problem. It is not neutral.

In a third model, government starts out as neutral. But private organizations interfere to block other private organizations. Employer groups, for example, prevent unions from organizing; anti-women groups prevent women's groups from organizing; others interfere with civil liberties or environmental groups. In those situations, government inaction will lead to a battle to determine the more powerful private entity. If freedom of association is to be protected, government must often intervene. If it remains neutral, it would permit private organizations to interfere with the rights of others, like the vigilantes who prevented civil rights groups from organizing or southern whites who prevented the NAACP from organizing in the South. Whether it is the executive branch, the legislative branch or, in some situations, the courts, the government has had to act to protect the freedom of association.

Henry Steiner

I view Norman Dorsen's suggestions as within the mainstream understandings of what the human rights instruments require. Like the market or any other social or economic institution, associations require a governmental structure that permits, perhaps facilitates, and surely protects them — perhaps protection against, say, violent union busters or strike breakers. Government is under a human rights duty to protect lawful associations against such threats. Repression by management of labor groups through arbitrary firings or assassinations, as in Guatemala, would require that a government complying with interna-

tional human rights treaties intervene and provide protection, just as these treaties require government to protect political parties assaulted by opponents.

Li Lu

I would like to ask whether it is in the interest of a business to promote broad freedom of association, as in China?

Debora Spar

It is unrealistic to think that the business community has a vested interest in freedom of association, anywhere, let alone China. Motorola, GM, GE, Intel — they do not want unions. It is hard to imagine that firms are going to bring pressure for unionization in China. I have spoken a lot about what business can be pushed to do. But if the White House doesn't get behind these issues, business won't.

Bruce Klatsky

I agree. I don't think the right of association even emerges on the list of business priorities. To respect the right of freedom of association is one thing; to promote it, another.

Michael Posner

In response to Debora Spar, I don't expect companies to take the lead in promoting freedom of association in China. In my view, government isn't fulfilling its responsibility and the perceived hostility of the business community is making it more difficult for government to do so. The reality is that companies want predictability, rule of law. Those things aren't going to happen in a vacuum. They will only happen if there is a more open society. Right now, for example, lawyers are in China trying to figure out how to form an independent bar association. That is an element of freedom of association that bears on the rule of law. You have got to have non-governmental interest groups that are raising issues about the arbitrariness of government action on a range of fronts. Sometimes it is called human rights; sometimes it is called business accountability. You can't pick and choose. You can't go into China and say, we want intellectual property rights without paying attention to the context in which they are being protected.

Robert Kapp

The reason the lawyers are thinking about that now is because in 1978 the Chinese leadership decided that autarky and political and intellectual isolation from the world were driving China to destruction. They opened the door to globalization. This is the reason there are lawyers in China and a growing concern for the way law is developing. It is a very positive development. Over the last 20 years, the magnitude of the change has been enormous.

Michael Posner

Of course it is a positive sign. But the U. S. should be doing more to push that process. It shouldn't just wait for it to happen.

Henry Steiner

It's very difficult to draw a boundary line between the general right to associate and, for example, political party formation. Political parties and a pluralist, competitive political system are natural outgrowths of the right to association. The United States, while of course generally criticizing many authoritarian, non-democratic states, has rarely tried to use its economic power to reach so deeply into such a society as to demand total freedom of association. This country raised many issues with the Soviet Union, and now raises many issues with the P. R. C., but it has not "demanded" abandonment of a one-party system and conversion to pluralist liberal democracy as a condition to continuing existing economic relationships like MFN. It tends to use economic pressures for much more limited change that is more likely to be granted.

So the problem of where one finds the opening wedge toward greater freedom to associate, to form groups critical of business and government, remains thorny. We are, I think, agreed that even a country's release of several political prisoners, an excellent thing in itself, may not do much for the rest of society. What should the U. S. argue towards? Is there a widespread belief that the deep and pervasive structural changes that would stem from, say, radically different attitudes toward freedoms of press and association must be worked toward by forces that are internal to the society? There is a line, however shifting and difficult to trace, between asking for something that can be granted and asking for total structural transformation.

Li Lu

Robert Kapp was right to observe that China has changed over the past 20 years. But I am still impatient. The reason for change is not because the government did anything. It simply stopped doing something particularly awful. In Mike Posner's example, the lawyers are individual, private lawyers trying to organize themselves. That is not the development of China, it is a development of the Chinese people. Where does U. S. business stand on this? Why would the students like us risk our lives to push for those changes? If we were happy with the pace of change, we wouldn't have killed ourselves to demonstrate on Tiananmen Square. To make a judgement of whether the progress is too slow or too fast is ultimately made by the Chinese people living in that regime. The message is that they are impatient. They want change. They want to be exactly like people in Taiwan and Hong Kong. Economically, politically, and morally, it is right to be impatient.

[Defining a living wage]

Michael Posner

Next, Jack Sheinkman will give us our third and final case study. He will speak about the concept of the living wage as defined by the CEP. As Ron Blackwell mentioned, in this area we see probably the least consensus, though there is an evolving standard. There is broad language in the covenants and equally broad and imprecise language in the International Labor Organization instruments. We are dealing with a standard that is less clear, where conditions in countries are varied. There is nonetheless a strong popular sentiment that wages are too low in places, that workers are being exploited, and that it is not enough for a company to rely on the local minimum wage. The question is how we begin to move from those general conclusions to specific formulas. The CEP has put forward the living wage as one of the elements it will monitor.

Jack Sheinkman

In many countries, the minimum wage is not really a meaningful wage. We are going to use the following standards. The first level is to apply the minimum wage. Then, we want to determine whether that pro-

vides sufficient food to feed a family or an individual. Does it provide sufficient housing? We are going to determine this by sending monitors to conduct surveys to find out how the workers are faring. We will monitor their pay, talk to workers, and check with local organizations, church groups and the like. It is going to be difficult to conduct an independent survey for each country, but it has been agreed to as part of the standards that we are calling SA8000.

It includes all manufacturers as well as their contractors. For example, when we monitor we will monitor an entire company. It is not going to be just monitoring one facility.

I would like to point out one other thing. Our code applies to the domestic economy as well as to the international economy. It is not just an international code.

Norman Dorsen

This sounds like a large lobbying operation ultimately intended to get governments to do things that the United States has adopted in our fair labor standards laws. Is that the case? Another method relates to our previous discussion of freedom of association. If there was total freedom of association in these countries, presumably organizations would exist to lobby internally, in the same way that labor unions, or incipient labor unions, lobbied for the Wagner Act of 1935. In other words, freedom of association would permit groups to organize to lobby their own countries. Then you wouldn't need an external monitor.

Debora Spar

This is potentially a powerful means of enforcement. Although it falls outside normal usage of the word, it is an enforcement mechanism. It begins to get to what has been bothering Ray Vernon, the free rider problem. Maybe I am being over-optimistic about this. What a code like this starts to do is to offer a seal of approval that at some point companies will, hopefully, be forced to accede to. It becomes the standard of behavior. Similarly, the ISO 9000 and 14000 codes* have, as I understand, been powerful tools for forcing companies to do a whole range of things. Now they have begun to internalize them as part of their standard operating procedures. Everyone wants to brag that their facility is ISO certified. The certification has a great deal to do with environmental provisions, so the end result is that plants exceed the

* Standards developed by the International Organization for Standardization. ISO 9000 concerns primarily "quality management" while ISO 14000 concerns environmental standards.

higher levels of environmental cleanliness because they are ISO certified. Such codes can be an important mechanism, not just for getting enforcement at the national level, but at some point in the future, extending it globally. The next step may be to get it enshrined in law, but I don't see that happening anytime soon.

Michael Posner

I know from the Apparel Industry Partnership that there is less willingness on the part of companies to buy into the living wage. In the context of the partnership, companies like PVH and Reebok have expressed great misgivings about adhering to a standard that can't be defined. Everybody would say wages are an issue, but defining a living wage in every part of the world and having an individual company comply with that according to some kind of monitoring scheme is extraordinarily difficult. It is probably the most difficult issue we have dealt with; as a result, it has been deferred.

Raymond Vernon

With regard to the living wage concept, it sounds good intuitively because the pie must be divided up and maybe slices ought to be of somewhat different dimensions than presently exist. At the same time, I keep thinking of the living wage as moving goals that just keep growing as your capacity to produce grows. Even if you get equity in the division of the pie, it can never be satisfied. It must have haunted you a little bit from time to time: how do you deal with the issue as you go from country to country?

Ron Blackwell

This issue is bound up in principles of equity that involve historical and cultural factors as well. But the solution can't be conceptual. You need a procedural solution. A company code can't do that by itself. From a trade union point of view, you need some system like collective bargaining that allows sharing within the constraints that recognize the rights of both sides, that allows business to prosper and does not compromise the development needs of an underdeveloped country. But at the same time it should allow for some element of justice in the actual division of product. I think the fact that there is a discussion in the world about living wage is good, because it is raising the question of how we should distribute the value that is created in enterprise.

I recall discussions with a very advanced apparel company about its code. It was discussing with us the language on the wages and we were suggesting a living wage. Their response was, quite unselfconsciously, "Well, if we pay a living wage in Thailand, will we have to pay a living wage in the United States?" Look how we define poverty in the United States. It is pathetic. It is starvation. It is an emergency food diet multiplied by three, based on 1933 numbers, or something like that. It is a completely arbitrary definition, which is nevertheless useful in comparing one time to another.

[Efforts to synthesize and explain]

Norman Dorsen

We have taken three disparate cases and in a relatively short period of time tried to figure out what the elements are. It will be difficult in these last moments to find any unifying themes, but let us try.

Dani Rodrik

For two out of three of those cases — child labor and the living wage — there are very cogent, reasonably valid arguments that the approach we have discussed will do more harm than good for those we are seeking to help. In the case of child labor we have to be much more confident that we are doing good for the children that are involved before we try essentially to do some social engineering for other countries. In the case of the living wage, I think one has to face up to the notion that any increased wages are likely to reduce employment. That is at least a risk that has to be taken into account.

Henry Steiner

These three categories raise very different issues, although all three can be cast in terms of rights. They come directly out of the major treaties of the ILO and out of the International Covenant on Civil and Political Rights (ICCPR). Indeed the labor issues are addressed in another covenant we haven't discussed very much, the International Covenant on Economic, Social and Cultural Rights (ICESCR) that has been signed by over 140 countries. On wage issues, for example, the ICESCR provides that everyone is entitled to an "adequate" standard

of living. Part of that adequate standard involves the right to a wage enabling the wage earner to support self and family in a manner consistent with minimum human dignity.

The rights involved in the case studies are however very different in their implications and in means of implementation. Eliminating exploitative child labor, for example, could be called an end result right. It is what ought to be, an element of human dignity that cannot be compromised. But its eradication may run into vast obstacles other than additional cost, such as customary beliefs and practices. So change in a child labor regime will require work on these cultural issues. Nonetheless, it does not seem to me to require fundamental structural change in the society itself — in its basic economy or political system.

In contrast, freedom of association is not only an end in itself within the idiom of rights, but it is also instrumental, the very key to making possible political and other participation in the society. It opens up things that we can't begin to predict. That opening will ultimately reach basic political life, new formations and contests, new ideas.

Matters like wages seem to be in a very different situation from child labor or association. Even the OECD and other studies treat this question in a more circumspect, complex way, less as a right or entitlement, more as a variable standard, a necessary direction of change. States seem loath to deny the legitimacy of lower wage competition from the developing world, faced as they are by the argument that many countries started on their paths toward substantial development with wage levels that now appear disgracefully low. It seems much harder to fasten on wages than on child labor or association.

Session Three: Promoting Compliance: Voluntary and Coercive Methods at the National and International Levels

Norman Dorsen (chair)

The agenda for this third session stresses inducements to, or motivations for, business to support improved standards for labor and related human rights, as well as modes of implementation and enforcement. Consider, for example, the assumed or putative self-interest of business: its reputation, the fear of alienating consumers, concern about possible boycotts. Consider also the possibility that business may at times see itself, or want to see itself, as a leader in advancing human rights issues. With respect to formal or institutional approaches to implementation and enforcement, consider the possibilities of monitoring business activities abroad, of making broad standards more precise and operational, of working out accords or codes.

We know that all the rights in the world don't mean much unless there are some influential or coercive approaches to translating them into action on the ground — often action by business. Most of the types of implementation or enforcement that I've noted are relatively exotic in an entirely domestic setting. These are not the approaches that would first come to mind if a domestic human rights organization planned ways to advance domestic civil liberties. We would be talking of a different cluster of ideas.

The last issue mentioned — ways of defining the broad standards in this field — is not formally a matter of implementation or enforcement. But it surely relates to them, for you have to know just what you are trying to enforce. The question is less one of strategy than of theory and analysis: just what do we mean by the human rights that are here relevant.

I have asked Dani Rodrik, Lael Brainard and Doug Cahn to start off.

Dani Rodrik

The discussion brings me to three kinds of distinctions that I think are useful to make as we think about these issues. First is the distinction

that Henry Steiner stresses between a consequentialist approach to these issues and a more absolutist standard. A second kind of distinction that I would draw is between a market based approach and, for lack of a better term, a coercive approach. Third, assuming a coercive approach, at what level is it most effective to apply coercion — at the level of enterprises, national governments or international institutions?

First, with regard to the consequentialist vs. absolutist distinction, my economist instincts dominate. Without denying the importance of some absolute standards and criteria, which many nations have adopted into law, it is very difficult for me to divorce issues from an analysis of their consequences for the groups and individuals whom we are trying to help.

Thus far, there has been too little discussion about the likely consequences of upholding a particular standard. That was particularly clear in our discussion of child labor, freedom of association and a living wage. There is a danger when enterprises act on the pressures of customers in order to look good, without sufficient attention to the consequences.

The ultimate reason for our concern for labor rights abroad could be to protect norms and standards domestically rather than to improve standards abroad. This is a perfectly legitimate and understandable goal. But we have to be careful that this is what we are trying to do. Ultimately, there might be a trade off between trying to retain employment standards and wages in the domestic economy and doing the same in the exporting countries.

Second, I turn to the distinction between market based and coercive approaches. The economist Richard Freeman has written persuasively about market based means of implementing some of the norms and values that we have been discussing. Appropriately targeted labeling programs, for example, allow enterprises and consumers to choose whether they want to pay the price for things that they purportedly value. If we really believe that it is good practice for businesses to uphold human rights and worker rights standards, then the market will solve that problem. If it is indeed good business to treat your workers well, to pay decent wages, to make sure that they are working under decent working conditions, then so acting would be more profitable and would drive enterprises that don't live by these rules out of business.

Otherwise, coercion is required. There are often reasons to be coercive. Markets do not work, for example, when there are free rider

issues — something we keep returning to. Collective bargaining may not add tremendous costs to an industry, but a single enterprise is not likely to institute it when others do not. Market based solutions also do not work when there are deeply held norms at home that transcend simple consumptionist issues, norms that reach to what we want our society to look like, what kind of social arrangements we can all live with. Slavery is a case in point. We do not want to live in a society where consumers are free to buy goods made by slaves. In economic terms, this is a consumption externality. It is not appropriate to trust the markets to take care of it.

Finally, coercion is needed when informational needs are too complex for consumers to assimilate. Labeling and codes won't solve such problems. For example, the ILO has more than 170 conventions. I can't imagine how you could fit each of them on a label. In addition, there are issues of cheating and so forth.

We should encourage labeling, encourage making information available and allowing market based approaches. Only if those failed would I be comfortable going on to coercive measures.

Once you agree to coercion, at what level do you apply it — at the level of enterprises, national governments or international organizations? I think that most of the action is going to be at the level we have discussed the least — the national governments. There are severe difficulties with implementation at the level of enterprises and severe free rider problems if you do not enforce norms generally. At the international level, there is the problem of achieving consensus, which in my view will prevent the necessary agreements. By default, that leaves us with enforcement at the national level.

Lael Brainard

The framework that Dani Rodrik set out is very helpful. I will try to give some examples. Market based and coercive responses clearly interact with each other. There is often a threat of coercive action behind market efforts at solutions. I would like to talk about some of the experiences of the Clinton administration on the issue of labor standards.

The Apparel Industry Partnership is a good case study because of the interaction between market based and coercive frameworks. The Partnership came about, in part, opportunistically. We had domestic problems in enforcing our labor laws. Even in a rich industrial country where there is widespread belief in our wage and hour laws, we only

spend government resources on 800 enforcement agents to monitor nearly 6 million work sites. Even in a context where private rights of action are very strong, and where the will to enforce is there, we don't put the necessary money into enforcement. That is just the domestic problem in the apparel industry. The problem at the international level is much bigger.

A variety of people in government had been looking for new mechanisms to strengthen enforcement domestically and raise standards internationally. Then came Kathy Lee Gifford. When they discovered that her name label clothes were being produced under sweat shop conditions, she was suddenly everywhere lamenting what had occurred. A variety of factors made it possible to take advantage of this moment. There was the continuing threat of coercive action. For example, legislation comes up year after year to ban imports produced under objectionable conditions. That is a real goad to companies that would prefer to regulate themselves, and for good reasons since the impact of the bans could be serious.

Moreover, there is polling data to suggest that consumers really do care about the issues, that they don't have the information that they need to make the selection they want and, according to the data, would be willing to pay more. The President recognized the importance of the issue. So, we decided to try for a voluntary approach, bringing together different elements in the industry, NGOs, labor organizations and consumers, in a way that would take advantage of consumer pressures. We asked them to work out a code of conduct and monitoring initiative. That initiative has been very hard to get moving. We spent a great deal of time convincing companies to come on board. We twisted a lot of arms at very high levels; it was tough to pull people to the table, and it has faltered at every step along the way. There have been intense fights over the labeling issue; there have been fights over which standards to include and the use of external monitors. There is a huge industry out there. Frankly, we have some of the better people at the table, but there are many who just aren't playing yet. This illustrates how difficult it is.

The issue of sweatshop labor is much more important internationally than it is in the United States. But we don't have the mechanisms to enforce standards and shine light on the issues internationally. There are no wage and hour inspectors internationally. So we have been looking at other mechanisms. We have been trying to get some of the central American governments like Guatemala to sign on to a voluntary

code of conduct plus monitoring. Interestingly, the industry associations in some of these countries have adopted codes of conduct, but are absolutely unwilling to consider any kind of monitoring.

We find this approach promising because it brings business to the table in a positive way. On the other hand, it is limited, because it requires a lot of information and depends on consumers to maintain pressure. That isn't going to work for many industries.

There are a host of other mechanisms that you can use, in escalating degrees of coerciveness. They are all controversial. I just throw them out for discussion.

We have laws that allow us to revoke trade preferences — that is, tariff reductions above and beyond what we have negotiated in the WTO. We do exercise those in the case of worker rights. Relevant to Bruce Klatsky's experience, there is an active debate as to whether we should revoke Guatemala's trade preferences under the General System of Preferences (GSP) in order to put additional pressure on the government to respect the rights of workers to organize and form unions. Beyond revoking trade preferences, we are very wary of imposing any kind of ban on imports or increase in barriers, in part because we have industries here that might be subject to retaliation, like industries involved in genetic engineering or use of hormones for agricultural products — practices that we do not think are problematic.

In the case of NAFTA, we were successful in creating a mechanism for the protection of worker rights. There is a side agreement with real sanctions for an entire range of violations, though not all. Most people don't realize it. It is, in fact, the most extensive, internationally enforceable mechanism. It has, however, remained controversial, despite the fact that its application to this point has been extremely benign. Although the side agreement has had some good consequences in terms of allowing unions to form, to date it has not led to sanctions.

Finally, it is important to note that those who argue for labor protection in trade agreements should also be supporting some of the more "carrot" type approaches, like foreign aid to provide alternatives, for example, to child labor.

Doug Cahn

Three issues come to mind, when I think of inducements to business to respect rights: the range of rationales that allow us as businesses to view rights as beneficial to the bottom line, corporate cultures that could

be created to support the implementation of rights, and the role that consumers play in creating demand for products made by such companies.

There is more work that must be done to understand each of these approaches. On the bottom line, I think there is a correlation between work place conditions and products, at least generally speaking. We should look at other kinds of bottom line incentives to respect rights. In the area of corporate culture, I think there are tremendous opportunities for teaching and education, not just for brands and buyers, but also for manufacturers who simply don't understand the necessity, opportunity, and potential value of managing their businesses in a different way. Finally, with respect to the consumers, the survey research data is as yet somewhat undefined. There are claims that consumers increasingly care, and that caring influences purchasing. I think that is true for better educated consumers. This is changing a lot and I'm not sure exactly where it will go as public pressure campaigns increasingly target consumers.

I would also like to say a word about the fourth estate. The media has covered and will continue to cover these issues. Allegations of "sweatshops" make for good copy. The media will do what is in their interest to do and we, as businesses, must learn to manage that, while we continue to implement standards and rights through the supply chain. But it is important to bear in mind that solutions borne of crises are almost never good solutions; they don't provide for the opportunity to incorporate the consequential impact that Dani Rodrik has stressed. They are constrained by press cycles, rather than by thinking, for example, about the impact on families of pulling children out of factories. I would ask our friends from the fourth estate to bear that in mind as well.

[Coercive tools vs. market measures; using trade agreements to promote human rights]

Ron Blackwell

I question the distinction between the market and coercive measures. The market is emphatically coercive — you either take the price or you are out of business. An executive like Bruce Klatsky might want to do all kinds of things, but he operates under real world market constraints.

Further, we want norms so that coercion does not become sheer arbitrariness. We want the competing interests in our society to be governed by rules. But establishing rules and thus predictability requires special measures. Many of the policies adopted by companies, including codes of conduct, are implemented under the duress of adverse publicity. The U. S. government may be committed but it is not sending a powerful message that this is a priority that must prevail.

If we are going to exercise influence, we have to determine where we have the most power. Given its development and economic strategy, China needs its trade surplus to finance its desire to modernize. We have enormous influence over this, but we are not prepared to use it.

On the second point about enforcement, there is only one party in this globalization process that has an unqualified interest in worker rights, and that is the workers in these factories. And there is only one party in this apparatus that knows and cares about violations — namely, the same workers. They don't know their rights; they don't have the means to communicate violations, much less the means to redress them. Unless and until those workers have freedom of association to be able to express their interests and rights, there will not be an adequate means for enforcement.

Norman Dorsen

I sense a certain word play there. When you say the market is coercive, it is true in the sense that you are out of business if you don't make money. But that is not the kind of coerciveness that we are talking about. We are talking about government action of a self-conscious kind. I will let the economists defend or oppose me.

Aaron Bernstein

I have been intrigued by trade agreements and the WTO as a new and potentially powerful venue for enforcement. If you look at the NAFTA side agreements, workers and their associations have, for the first time, the right to complain about specific instances where standards for rights were not being followed. But it is still laughed off because it is not part of the central agreement. There is no enforcement, no vehicle for making things happen. If you put some of these standards and rights into the agreement — which was lacking in the administration's proposed fast track authorization — it might give workers, NGOs and other interest groups around the world a mechanism for forcing decision.

Lael Brainard

There is a misunderstanding about the side agreements. The fact that they are side agreements doesn't mean there are no sanctions. Sanctions are potentially associated both with the labor and environmental side agreements of NAFTA. With respect to the labor agreement, the Mexican government would not agree to sanctions for all the rights. But the reason sanctions have not been invoked until now is that we have had several very successful cases coming through the Commission of the North American Agreement on Labor Cooperation (NAALC).^{*} They have not been widely publicized, but they involved cases where unions were not allowed to organize. Without exhausting the process, independent unions were eventually allowed to organize. These are not perfect mechanisms, but they are a first step that goes further than just about any other mechanism at the current time. We shouldn't write them off.

[Protectionism vs. protecting workers; NAFTA, WTO and Fast Track]

Bruce Klatsky

In my judgment, trade legislation would be the most effective vehicle for addressing the problems that we have identified. But the adversarial dynamic between labor and business has left a vacuum. The agreements have become a stalking horse for protectionists and other people who don't want to open up trade. I think this is horrific to the development of human rights in the global economy. We have to work aggressively to find innovative ways to incorporate legitimate human rights issues into trade agreements. Until now, the effort has been too peripheral to the government negotiators, and too politicized by union leaders, some of whom simply use it as a guise to protect their jobs and membership in the United States.

Ron Blackwell

I think there is a solution to this problem between labor and business. In the fight over NAFTA and fast track, there were some people on our side who simply wanted to stop trade. There were others, myself included, who viewed the fight as a strategy for getting worker rights to

^{*} See Glossary; also referred to as the NAFTA Labor Side Agreement.

the center of trade agreements. I hope that business doesn't turn around after the failure of fast track and try to jam it down our throats. That would be a mistake. We now have an opportunity to sit down and negotiate a version which takes all our concerns into account.

As far as NAALC is concerned, I wouldn't say it is worthless. I sit on its advisory board and have seen many of the submissions. But it is not what we are looking for. We need a process with an effective enforcement mechanism to work into our international trade and investment regime, one that will allow workers to act collectively in a non-violent way when they decide it is necessary. If business would join us and approach the administration, we would persuade half of those Democrats who voted against fast track. There is a standing offer.

Bruce Klatsky

Yes, we have allowed these issues to block free trade and open markets. At the end of the day, the market will provide for the evolution of these societies; that is something we all want. I want to emphasize the need for someone who can provide a driving force in the government to address these issues and insure that they do not detract from negotiations to open markets.

Dani Rodrik

What you two are saying is perfectly compatible, but it seems that you have different objectives. Bruce Klatsky is worried about the development and status of workers in the exporting countries while Ron Blackwell is worried about those of workers in the United States.

Jack Sheinkman

The perception that many people have about labor is inaccurate. I was a member of the AFL-CIO committee on trade during the negotiations on NAFTA and WTO. Our concern was not only about protecting American standards, but giving foreign workers the opportunity to join a union and raise their standards. In the United States, after World War II, a large percentage of workers organized and there was a rapid rise in the standard of living. As for NAFTA, when Salinas met with the advisory committee on trade, he was the one — we were told by the U. S. Trade Representative — who opposed worker rights in the

agreement. Apparently, he was worried about losing jobs to the rest of Latin America and the Caribbean.

With WTO and NAFTA, we have been losing ground. As Aaron Bernstein pointed out, the side agreements don't work. Not only is there nothing on labor rights in the WTO, it actually took away one of our useful bilateral measures. Under Section 301 of the Trade Act of 1974, you had a right to file a complaint with the Department of State with regard to a country that was violating labor rights. And the United States could take effective action. The Dominican Republic was forced to change the conditions in their free trade zone. We even had the support of the government. Now, Section 301 no longer applies under the WTO.

Until now, there has been only opposition and not partnership from the business community. The two main opponents to labor rights in NAFTA, the Business Round Table and the Chamber of Commerce, told the President and Congress that if NAFTA and WTO were to be enacted with labor rights, they would oppose it. They made it very clear.

Michael Posner

The U. S. appears to be vacillating on the question of linking basic worker rights to trade. On the one hand, they send representatives to the Singapore meeting of the WTO and talk about a social charter. On the other hand, they want no social clause or discussion of labor rights in the fast track authorization. Last summer, after the WTO passed the buck to the ILO with respect to these issues, the head of the ILO tried to fashion a response. But it is still not clear where the U. S. leadership is on that position. There is a need for leadership and consistency in the international context. There is a need for a high level strategy that is pushed by the business community, and led by the administration to find a way to integrate these issues into these various international bodies. I think there is an opportunity.

Lael Brainard

The President believes strongly that core worker rights have to be protected at the international level. There is a lot of similarity between intellectual property and labor standards, but it is also worth remembering that it took a long time to convince developing countries that intellectual property protection was in their self-interest. We took baby

steps along the way. We want to see labor standards advanced in international institutions but we are unable to achieve our full objectives in the WTO because we have been a fairly lonely voice. Over time, we need to go back and argue for the inclusion of these subjects in the WTO and build support more broadly.

Then there is the question with fast track. Would we like to have labor standards in the core of our fast track authority? Yes, but we can accomplish the same goals with side agreements. The reality is that the United States has an incredibly open economy already. So by rejecting fast track because it is not perfect we do the greatest harm to ourselves. If we come back and get a perfect fast track, it will have been a great experience. But if we get nothing, we, who are the engine behind world trade liberalization, will be sidelined to our detriment.

Michael Posner

When disputes over intellectual property arose, there was a tremendous interest among the companies that produce compact discs, movies and so forth, to deal with the issue. Through partnership between business and the government, the United States developed a policy for advancing an international standard to address the problem of intellectual property in China, among other places. Why don't we have a business-government partnership dealing with questions of basic labor rights or basic human rights and, more importantly, how we can develop one?

Debra Spar

I can suggest a simple answer to Michael Posner's provocative question. There is political action on intellectual property because it is in the interest of American corporations, and it is not necessarily in their interest to get labor standards. Government has not acted in the area of labor rights because there is not enough political pressure yet. There are two ways to respond. One is that you continue to work from the so-called labor side to provoke the government to act. I do not think that is going to work. The other is to work from the private side and to pull corporations into the process because they have the power to make government work.

[Collaboration among business, labor and human rights NGOs: the Apparel Industry Partnership]

Bruce Klatsky

Part of the problem we have in sitting down with labor and the human rights movement is that there are those among them who don't feel that business should be an equal partner. That is a difficulty with the Apparel Partnership, though it is symptomatic of other initiatives. I wish that those in the labor movement and the human rights movement would acknowledge that we are equal partners and need a level playing field. One doesn't need to be more powerful than the other to create positive results.

Doug Cahn

I agree with Bruce. In order for the Apparel Industry Partnership to succeed, labor and human rights groups must acknowledge the constraints on business and be comfortable working within these constraints. Business is not all powerful. To the extent that antagonisms persist, they limit the initiative to only the few who are willing to participate.

Michael Posner

The Apparel Industry Partnership is potentially a significant initiative. But, again, the administration has to play a bigger role. There are eight companies at the table, six of them relatively large. There are no retailers — Walmart, KMart, Sears are not there. I don't have a sense that there is a strategy — public or private — to ratchet up the pressure on these companies. Apparently, the White House Christmas tree is adorned with ornaments from different apparel makers, none of whom are part of the initiative. That is a tiny example, but it is indicative of the problem. Nike is one of eight companies at the table, as part of the Apparel Industry Partnership. At the same time, they are getting skewered in the press. Relative to Kmart and Walmart, Nike is doing a lot. And yet, I don't see a national governmental strategy asking: "How are we going to help those companies that are taking a risk?" And, on the other hand, "What is it going to cost the companies that don't come to the table?"

Norman Dorsen

Is it utopian to imagine business engaged in promoting human rights together with labor and rights groups? Can reasons of principle or diverse elements of self-interest induce businesses to do the sort of things that we think are desirable? What would those not represented at this roundtable from the Fortune 500 be saying? Perhaps it is better that they are not here. There is an advantage of talking things through with a group that is not so polarized. But perhaps at the next meeting, or the one after that, we should be talking with them.

Ron Blackwell

It is not just the big companies, it is the international institutions. Unless we can change the international structure of governance in the global economy, whatever we do with the Apparel Partnership or codes of conduct is limited.

I noticed that during NAFTA, there was perfect class solidarity in the business sector. I was very admiring. In this round of fast track, there was a difference. Some of the businesses said, "What is the big deal? Why not include core labor rights?" I take that as a very promising sign.

[Effecting changes: the rule of law and rights of association]

Li Lu

I wear two hats. I am a human rights activist, but also a business man. I would like to express a business view of China. There are basically three kinds of business investment in China: outsourcing, big strategic multinational investment, and entrepreneurial project investment. With very few exceptions, most everybody I know is losing money. This market might fail. All the problems that we have recently been seeing in Southeast Asia are magnified in China. Because it is a closed society, there is no way that market forces can reveal the problem. Take the example of the banking system, where there is \$200 billion in back debt and only \$5 billion in equity. Now, because of the problems in Southeast Asia, foreign money is going to slow substantially. The banking system is completely tied up with the state sector, two thirds of which is losing money.

The other half of the economy is dominated by the non-state sector which is dynamic and high growth, but doesn't have any credit. All the credit is tied up by the state sector businesses. They are therefore dependent on the foreign flow of money. Given this and the fear-inspired panic in Southeast Asia, the Chinese economy might be in for a very difficult period.

It is not only important, it is urgent for the business community to do something about it, to set up some predictable structure that can incorporate the rights of workers and freedom of association, and encourage the existence of civil society at multiple levels. Unless you do that, I don't see serious investors staying in China.

Jack Sheinkman

We should be looking to the pressure that can be exerted by other countries and by the multilateral institutions like the IMF and the World Bank. When Portugal and Spain wanted to become part of the European Union following the demise of their dictatorships, the European Union placed certain conditions on them. This included not only rights like freedom of association but the labor standards that we have already discussed. In the U. S., we have done the same thing, to a certain extent. Through USAID, we will not provide aid to any country that does not protect worker rights. Shortly after the Clinton administration took power, Congress passed a bill prohibiting the Inter-American Bank from making loans to a country if it doesn't respect labor rights. We've also instructed our representative at the IMF to pursue the same policy, though we haven't yet succeeded in having it adopt the policy of the Inter-American Bank. With countries like Indonesia and Malaysia looking for aid from the IMF, there is no reason why it can't tell them they have to implement the rights and standards that we have been talking about.

Debora Spar

Let me comment on Li Lu's point. I did some work a few years ago on the Russian oil market. This is one of the classic high risk, high reward situations that business people tend to love. At that time a lot of people whom I spoke with adopted the cowboy mentality, saying, essentially, that they liked the fact that there were no rules. But it turns out to be pretty hard as an outside investor to affect the rules of a large, chaotic, and evolving system. One could argue that rules are being written in

Russia, but probably not by the sectors of the society that we would like to see involved. The foreign investors are getting out of there. No one is making money in the Russian oil sector except the service firms who were smart. The government is not writing the rules. So who is? The mafia?

This is what makes me nervous when we say that corporations or outside governments can play a role in creating law for another state. I don't think that Russians are listening to many outside forces, with the possible exception of the multilateral organizations. One of the few voices that is being listened to in Russia, Indonesia, or Vietnam is from the Bretton Woods Institutions: the IMF, the World Bank and the IFC. These organizations have huge amounts of leverage. The IMF religiously tells everybody what they should do and they are listened to. Although I am not a big supporter of the IMF, they are another pressure point to bring into the discussion. Internally, human rights has become a major issue, at least for the World Bank. The question of the extent to which it should incorporate human rights and environmental concerns is splitting the bank. That is another piece of the puzzle.

Michael Posner

In the last five years, the World Bank has gone through quite dramatic change. After keeping its blinders on about human rights, it has begun to take a broader view. We have to recognize that shift. There is now a pilot project on how to advance the rule of law in Latin America. There are various World Bank initiatives underway or on the drawing board that would look at developing the legal system in different countries, like Russia. A lot of loans for big industrial infrastructure projects were going down a dark hole. Based on bad experience, the World Bank finally, reluctantly came to the conclusion that the rule of law is something it should be addressing.

Though the Bank is now very keen on participation, it remains very closed. One of the things that ought to be on our agenda is how to open up the Bank's own process. When the Russian law reform proposal came from the World Bank, we translated it and sent it to about 20-30 Russian NGOs — the people most likely to deal with law issues. None of them had ever seen it, and the World Bank went crazy when it learned that we had given its project proposal to, of all people, Russian legal experts.

As regards intergovernmental organizations, Russia and a number of the central European states are now a part of the Council of

Europe. The Council is the single most effective inter-governmental body addressing a rights agenda in the world. It represents a model that we should be trying to replicate. The Western European states have, for a long time, dealt with issues of rights, including labor rights, communally. This is the model we should draw on.

Li Lu

The blow-up in Southeast Asia offers an opportunity to put these issues on the table. The IMF assistance package to Indonesia has broad implications. There are anti-corruption provisions which break the link between the Suharto family and the banks, and undermine the linked family dominance. Combining that with the anti-bribery treaty, we may see a new direction. Secondly, there are extensive disclosure requirements. That also has ramifications for the rule of law.

Robert Kapp

I have three simple questions, one of which is meant to be provocative.

How is the rule of law introduced into another country? Second, how are worker rights introduced into another country? Third, what could the rest of the world do in response to our failure to live up to our own legal and ethical commitments at home? How, for example, can the international community rectify the perversion of American democracy caused by the corruption of the political campaign process which, by the way, the executive branch and one of the world's greatest deliberative bodies have failed to do?

Michael Posner

On the rule of law point, we cannot introduce it into another society. We don't have to. Every society is grappling with these issues in its own way. What we can do is to reinforce that process on three levels: First, strengthen the capacity of local people who are trying to raise these issues in a principled way in their own society. Give them information, resources, protection and space. That is probably the most important thing.

Second, we should be reinforcing the utility of international norms and standards that are incorporated into the various UN and regional agreements. One of the reasons that the United States government is not a very effective advocate on human rights is because the U. S. government doesn't exactly live by the rules. We have been slow to ratify

treaties, and we often do with multiple reservations. People elsewhere believe that we think that there is one set of rules for us and another for the rest of the world. We blame Jessie Helms for that because of his role on the Senate Foreign Relations Committee. But, in fact, the Clinton administration doesn't make it a priority either. That is a problem that goes to the foreign perception that we are dictating and not receiving.

Third, we need to exercise government pressure in appropriate places — both with carrots and sticks. Aid programs should be carefully directed to advance legal institutions. Legal aid, for example, is a subject for the Chinese right now. But we need to use the stick as well. There has got to be a clear expression of concern and appropriate action when a law based system doesn't develop in areas that we think are key.

Henry Steiner

Bob Kapp's third question captures much of what has been underlying the discussion. We now have a number of voluntary codes within given industries, and we can expect more. The fights will be over monitoring, independent auditors, publicity as a sanction, and so on. All this strikes me as analogous to the willingness of states to ratify human rights treaties but to fight vigorously over the institutions or processes that aim at enforcement, compliance. That's where the bite may really be, where the rules really do threaten ideas of sovereignty because they are backed by institutions or processes.

Perhaps the "hegemons," like the United States and China, will never truly give in to international enforcement. The United States, for example, has been willing to sign up on a fair number of human rights treaties, but it remains extremely cautious about accepting powers of enforcing institutions and the processes to which this country will subject itself equally with others. China seems to be of the same mind. Agreeing to norms may be OK, but institutions or processes for their enforcement really put a much tougher challenge to notions of sovereignty.

Norman Dorsen

I wouldn't characterize the problem for the U. S. as one of enforcement. It has to do with public opinion or national ethos. We have a particular way of viewing our institutions vis-a-vis international institutions that is a function of U. S. history, our physical separation and

lack of dependence on other countries, among other things. That will only change — if it does at all — out of national self-interest, as it has in Europe.

Michael Posner

Bob Kapp suggests that confronting China on human rights is akin to foreign interests coming here to reorient our political system. I would make a sharp distinction between the two. It was Ronald Reagan who turned the debate from human rights to promoting democracy, when he spoke about democracy before the British parliament in 1982 and then created the National Endowment for Democracy. We do a lot of intervening into political processes abroad that is questionable. I have real questions about our setting up elections in Bosnia, for example. On the other hand, in connection with China, we are talking about international human rights standards applicable to everyone — no torture, no forced labor camps, no prohibition on freedom of association. You could reach these issues without intruding on national sovereignty or attempting to change a country's political system. This is an important distinction.

Henry Steiner

I disagree. All human rights are intrinsically and deeply political. All affect the organization and control of power, though to different degrees. If you give up the right to torture, you lose a useful tool of repression. If you grant equal protection, the entire power structure may change, as in South Africa. Rights of association lead naturally to political parties. And so on. But within these understandings, states and NGOs are always drawing lines about what states do to apply pressure, all influenced by what they think they can achieve. We don't say to China: have periodic genuine elections or we'll cut off trade. A broad demand for free association throughout China would go a long way toward making political elections possible some day. A "demand" for such freedom backed by economic threats would surely intrude on China's notions of its sovereignty. These are partly matters of practical politics, of what is realizable, and partly a matter of establishing priorities among rights.

Robert Kapp

My question was obviously inflammatory. The rest of the world doesn't have a prayer of making a difference to the way we resolve our problems, even something as fundamental as the faltering of our basic institutions. If the PRC, the Finns, the Turks and the Kenyans threw money into a newly established, tax-deductible 501(C)(3) nonprofit organization called "The American Society for the Elimination of the Corruption of our Democratic Principles," that society would face quick government scrutiny and might fall on its face as an agency of foreign intervention.

[Bilateral relations and human rights; the case of China]

Robert Kapp

I would like to make a comment that relates to bilateral government relationships. In the case of a relationship with a large, powerful and highly bureaucratized, centrally dominated state with a quasi-market economy — which shall remain nameless — the government-to-government relationship is crucial to implementing any coercive measures to protect human rights or worker rights. If the two governments are at odds with one another, you can kill any possibility that national level, coercive efforts will change behavior on rights. Therefore, I think we have to add the question of how to develop a more fruitful and cooperative relationship between countries in order to address a range of national objectives, including the improvement of human rights. Without an effective relationship between the United States and, in this case, China, it isn't possible to anticipate serious progress on the front that we have been discussing.

Michael Posner

Without question, the stronger the U. S.-China bilateral relationship, the easier it is to exercise influence. On the other hand, there are already many opportunities to raise substantive rights issues that are not used. To say we should enhance the relationship first, and then get to the content on human rights, means we will never get to human rights.

In other areas like intellectual property, nuclear arms proliferation, or many of the other issues on the agenda, whatever the stage of the

relationship, there is somebody in the government thinking full time about how to advance our objectives. When Westinghouse wants to sell a reactor, there is somebody in the U. S. Trade Representative's office whose job is to figure out how to resolve the impasse. It is a federal government priority and it gets done. There is no comparable "czar" in the human rights sphere.

In reference to what Lael Brainard said about government priorities, we have been pushing for the U. S. government to raise freedom of association with the Chinese authorities. In a broad sense, it is U. S. government policy to promote freedom of association around the world, except in China. It is not the only exception, but it is an important one. On this issue, there is simply no one within the government pushing the human rights agenda in a disciplined and aggressive way within the government. If the government is not doing it, it is hard for individual companies to play a constructive role. Occasionally we get a Bruce Klatsky who says, I'm going to go do something on my own. But the Chinese government needs to feel sustained pressure on this issue.

Lael Brainard

We have a small number of high priorities with China and human rights is always on this short list. There may be disagreements about the approach, how public and confrontational to be, but we always maintain pressure on these issues. We have also been working with the business community to develop codes of conduct, which I am sure you are familiar with.

Michael Posner

But the administration doesn't have a senior person with the means to move the White House or even the Commerce Department on these issues. It can't be the Assistant Secretary for Human Rights. He has been marginalized on the question of China. His office has raised freedom of association for several years and it has been rejected. There are a few items on the human rights agenda which administration officials tick off each time — a handful of dissident cases, and access for the Red Cross, for example. It has become a ritual for both sides; you could write up the script. To me, a fundamental flaw in our human rights policy toward China is that it is not being raised consistently by senior U. S. officials across the government.

Lael Brainard

On the China front, I don't think there is a disagreement about what we are trying to achieve. The disagreement is about the tools we use. Do we cut off trade with China? Is this something where we are willing to take the costs? We could cut off all of our trade with China and end up marginalized in China's development. I'm not sure that this is what would happen, but I do think we need to be careful. We may not get the results we are looking for. I want to suggest that these are actually very complicated decisions.

Session Four: Looking to the Future

Henry Steiner (chair)

The purpose of this fourth session is to revisit some of the themes that we had discussed, with a view towards future action. Assuming a general commitment to realizing the core rights that we have discussed, what strategies might be envisioned for the coming three to five years?

For example, I think it will be problematic with respect to countries like China for the U. S. to take on the right of association in general — for the reasons that I have previously raised — but it might well be productive to make progress by targeting different expressions of the right. I would view the business penetration in many countries where the right is denied as an opportunity to advance it in the context of the workplace.

Another entry point for the right to associate might be religious freedom. This is a controversial area, in the way that it has been addressed so far in the United States. But it is an example that has tremendous popular appeal in the U. S. and elsewhere. Preventing association in houses of worship, collective meetings and advocacy might produce a reaction that would lead to an alliance here among powerful faith groups, NGOs and others. Thus, one strategy would be to promote domestic coalitions that take a goal such as association for religious purposes, and combine different points of leverage, different interest groups in this and other major countries. Such groups could put pressure on their governments to act, and generally give publicity to these issues.

Another focus of attention for labor rights might be the international NGO community. The work of international NGOs is here at its very beginning, with the efforts by the Lawyers Committee and examples like Human Rights Watch in Guatemala. There is a slow increase in the number of NGOs concerned with economic and social rights. There should be efforts to get international NGOs committed to this area of work and to give it their characteristic publicity.

NGOs could also address the UN Commission on Human Rights, which, with all its weaknesses, is the premier UN body to address human rights issues. It has rarely dealt with business and human rights, though its mandate clearly extends to these issues.

I would be curious to know what we can propose for the IMF or the World Bank. How do we deal with structural adjustment programs that have frequently undermined the kind of progress that we are discussing? Some such programs have not looked benevolently upon labor associations. Should there be intensive lobbying of international financial institutions to reverse some of their positions, and to stress more pluralism and diffusion of power in developing countries, including through labor associations?

Debora Spar

I would propose a process rather than particular solutions. We want a race to the top. We need to address the free rider problem in order to prevent large groups of countries or companies from acting in a way that pulls the standards down and leads to a race to the bottom. We need a strategy of collective action. The activist NGO groups must at some point get together and speak with as unified a voice as possible.

We need to pull and squeeze the private firms into the process as well. I think the power lies increasingly in the private sector as well as in the international contacts. Multinationals, by definition, are international entities. National governments, by definition, are not.

The next step up is to embed norms and standards in national legislation. Ultimately, this is where enforcement lies, not with the private firms. There, again, because of the free rider problem, the United States cannot do it on its own. As long as there are powerful outliers like China, the problem does not get solved.

When I get most idealistic, I believe the solution will be a multilateral process, eventually through the WTO or whatever is around ten years from now. I don't think it can start at that level. The ILO is not a particularly powerful institution. I think you have got to get the private sector and then national governments together and then bring it to the international level. That is the process that has occurred in other areas like security regulation. You get private law spilling over to national law. Then, when the U. S. twists arms and cajoles allies, you get international agreement. That is a fairly powerful process.

Norman Dorsen

Earlier, it was noted how brand companies are those that are most susceptible to pressure. I think we need to use that leverage. It is impossible to focus on all companies at once and there is a danger of being

over-broad. The campaign has to be focused on selected companies. This was done during the civil rights movement. Targeted embarrassment can be very effective. I don't see why we — the Lawyers Committee, for example — couldn't write a letter to the President and politely remind him of his support for the Apparel Industry Partnership and then note that the companies that participated are not the ones he has honored. Then, I would send the letter around to the other companies.

Ron Blackwell

I am not very sympathetic to a strategy that doesn't focus on where the power lies in our society. All the NGO activity in the world is simply marginal unless it focuses on the places of power. I would start in the private sector, though not stop there. We have to "pave the high road" at the same time that we develop means to block the low road. The leaders who are prepared to run their businesses with respect for basic rights ought to see us as an opportunity and not a threat. But companies committed to low-road strategies ought to feel the heat of our public campaigns.

The success and direction of this ultimately depends on public authority, because the free rider problem has to be foreclosed. If we succeed in moving private business with the help of other social groups, it allows the government to play a more powerful role.

Dani Rodrik

I would like to talk about how to pitch these issues to national governments. I agree with Debora Spar that it is going to be national governments who are left with the enforcement. Governments are more and more feeling the pressure to compete. It seems to me that human rights as good economic policy in a globalized world is exactly the right pitch to make. There are real reasons and good empirical evidence to underscore that human rights is good economic policy. This argument opens the way for powerful institutions like the IMF and the World Bank to bring these concerns to developing countries. To some extent this is happening through issues like the rule of law, governance and corruption. These kinds of issues have already been brought on board in the Bretton Woods institutions. Thinking about labor and human rights there has been changing. A few years ago the World Bank Development Report was on labor markets and institutions. It included what

many people took to be an outrageous statement, namely that unions are good for economic performance. It shows recognition that labor market institutions — worker rights — could be good for economic performance.

There is a correlation between civil liberties and where multinationals tend to go. It goes back to the point that Li Lu was making. There needs to be a correlation with the rule of law, to some extent. Multinationals want to be in places where there is a certain amount of predictability, a certain amount of basic standards. There is evidence that countries with these kinds of rights actually tend to be better at providing institutions of conflict management in the society. These institutions are tremendously important in a globalized economy because the economy is constantly throwing up shocks to the national economies. These shocks and the distributional costs have got to be managed. If you don't have good institutions of conflict management, you are disadvantaged in a global economy because you cannot undertake the kinds of adjustments. There are reasons to believe that many of these rights that we are talking about are actually instrumental in that process. I am looking at this in an instrumental way, but our idea is to get national governments to behave in this way.

I think there is a very strong case being made for selling human rights as good economic policy. Having said that, I think you also have to be very careful about what not to include. Of the three specific issues that we discussed, there is good reason to include freedom of association. I am prepared to make the case on the basis of economic arguments, quite aside from its intrinsic worth. I am not willing to do the same for the notion of a living wage or for a child labor policy. I am less certain about the child labor than the living wage. I am certainly not prepared to say that a uniform policy is necessarily good. These would be the caveats.

Henry Steiner

I agree with Dani Rodrik, that rights advocates only hurt themselves by staying within a purely rights rhetoric that purports to be aloof to consequences. "Let justice be done though the heavens may fall." It is interesting that a lot of economists — as I read Dani Rodrik, Amartya Sen, UNDP economists, and others — make arguments that all rights advocates could easily accept, even if those statements are not in the idiom of rights. Economists talk of tapping into the resource of women's

work as a benefit for development, and of the importance of educating girls. In many settings, that may be a far more potent argument than stressing everyone's right to education. My hope would be that at times economists might lean over and talk of some things as absolutes. Then we would have a shared discourse across the board.

Robert Kapp

First, remember that you can't have linkage in only one direction; it goes both ways. If you demand that human rights be integral to trade, then the trade community has the right to make demands on you. Businesses that are willing to sit down and talk with you might even have some views about how the human rights community or labor community might want to change its behavior or its arguments. It is assumed that business is all powerful. It is not.

Second, as has been hinted at already, you catch more flies with honey. Keep your eyes open for ways in which business can look good. CEOs hate looking bad. Though they may not give in to threats of embarrassment, there is a lot to be said for emphasizing the positive things that companies have done.

Third, you can't work on international human rights or trade or law or international anything without having a functional fluency with the country you are talking about — how it lives, acts, speaks and behaves. You can't sit around at Harvard and talk about rights of association in Kenya or China.

Doug Cahn

In order to think about how to be effective over the next three to five years, we have to look back to where we were three to five years ago. The answer, as to relationship between business and human rights, is that we were almost nowhere. There were a couple of codes of conduct; companies had begun to think about the question. When we set about in 1992 to develop a code of conduct, I flew to San Francisco to talk to Levi Strauss, because they were one of only a very few. Now there is vast activity. I believe the most valuable thing we can do is to bring human rights to business. Over the coming years, we should inform business, help business learn and think about these issues. We need training programs. We need to know how to create informed work places.

Lael Brainard

I have no grand vision, but I want to raise a point that has been largely overlooked. Earlier, Ron Blackwell spoke of paving the high road while blocking the low road, but not in terms of resources that we are willing to commit to that process. The extent to which the U. S. is retreating from its commitment of resources, both internationally and domestically, is troubling.

One of the reasons that trade is so contentious is that we are trying to use it as the sole instrument for all of our international aims. We use it in a small measure for positive things — special trade preferences that we give some developing countries — but for the most part it is simply a negative means. We take away. The reason that we spend so much time on trade is that we have very little money devoted to international institutions. At the same time that we are trying to use the IMF and the World Bank to do more to advance our values, we are deeply in arrears to all of these institutions to a point that is embarrassing, and fundamentally undercuts our ability to pursue our interests. Those in the advocacy community frequently don't make the link. We have people decrying the conditions in maquiladoras along the border. True, people are living in hovels without environmental protections. So human rights advocates may recommend that we cut off trade. Maybe we should be transferring some resources. Maybe there are some things that we could do on the positive side.

Domestically, this is also the case. We have a very strong constituency that is in favor of trade. But every economist will tell you that trade has serious distributional consequences. Yet, the same constituency that will benefit most from trade is not calling for a tax raise or for spending more on education so that people can better compete in the global market. Where is the willingness to be taxed to pay for trade adjustment assistance?

Ron Blackwell

I agree that we need a commitment of resources — aid in addition to trade. But the reason that you are not getting the political support for either is that people don't think the global economy is working for them. You may have created 400,000 jobs last month, but the vast majority of workers in America are falling behind. If there are net benefits from trade, then we ought to compensate the losers. We can afford to do that, but we don't. And we don't show concern in the rules of trade

and investment that concern the same people. The point is one that Aaron Bernstein raised the other day: either this global economy will work for everybody or it is not going to go forward, at least insofar as there is a democratic process involved. There are too many people left behind.

I think the business community must get more engaged on these issues.

Dani Rodrik

As Lael Brainard says, trade creates losers as well as winners. That is exactly why we have to compensate them. Is the labor movement ready to exchange a true compensation program — a real trade-adjustment assistance package that is designed to work — and go easy on the basic worker rights? The real issue is that workers at home are being hurt by trade.

Ron Blackwell

Since the 1960s, every administration has promised worker assistance.

Dani Rodrik

You are absolutely right. And the labor movement has a lot of reason to be suspicious of any promise that future assistance is going to work. But are you willing to accept the principle — I would like to understand where the interest is really coming from. If the interest is really to protect domestic workers, then a lot more energy has to go into thinking about trade adjustment assistance, about which the administration came in much too late. But I didn't see the labor movement involved.

Ron Blackwell

There are losers, as well as winners. The point is to take some of the net social gain that we believe in and direct it towards helping people who are losing. These are people who are least able to help themselves and least deserving of being losers. In any case, it is a net economic loss for the country.

Michael Posner

We are facing a different world in terms of trade and aid. A couple of months ago, the *New York Times* reported that development aid in 1990 — including U. S. foreign aid, Japanese ODA, UNDP, etc. — totaled something on the order of \$60 billion from industrial states to southern states. It is now down to about \$55 billion. At the same time, private investment from the North to the South rose from \$35 billion in 1990 to \$250 billion in 1997. It transforms the paradigm that the human rights community has operated on. What do we do about human rights in El Salvador? Well, in 1983 U. S. bilateral military and economic assistance programs were used by the Salvadorian government to violate rights. In effect, U. S. aid was giving guns to people who were shooting nuns and priests. A decade later the U. S. has effectively ended its foreign aid program, except for a handful of countries. It was built on the premise of supporting our allies in the struggle against the Soviet Union and her allies.

How do we recreate a consensus around foreign policy, one that includes human rights and worker rights? Is there a way to build popular support to develop human rights programs, not just to punish states, or indeed the workers and families who live in them? What can be done to advance the enterprise, using government as a vehicle to provide the carrot that Lael Brainard is talking about?

As far as the multilateral agencies are concerned, Henry Steiner referred to the UN Human Rights Commission. Within the UN there may be better places to start the discussion. We ought to be taking a more comprehensive view of the UN. We probably ought to start with the UN Development Program. We ought to ask what the UN human rights strategy is for the United Nations as a whole. How do we strengthen it, support it financially and build a public consensus in this society where it is very weak? And how do we make human rights part of a global strategy for development and bring in institutions that don't view themselves as human rights institutions?

Related to that is the term human rights. It is often a turn-off. It has a lot of baggage. That doesn't mean that you abandon the principles, but it may not be the right way to get into the discussion. It is not necessary to start the discussion by telling states how to respect human rights.

In this meeting, we have not been talking about some of the worst case scenarios. We should not forget Shell in Nigeria, Unocal in Burma,

Freeport-McMoran in Irian Jaya. These are some of the worst situations — and the Freeport example deserves more attention than it gets. We shouldn't expect business to take leadership roles in campaigns for human rights. On the other hand, where — and I would cite Freeport as the most egregious example — a company is in direct collusion with a government and an army causing serious rights violations, the company has to be held accountable for its actions. Pressure must be brought to stop what is going on.

Finally, our energies should be focused on change from within. Societies change because people in those societies want them to change. But to be a part of that process, there has to be an openness to allow the free flow of ideas and allow a process to go forward which, in some countries in the world, is impossible. This is also a part of our challenge, as we look five to ten years forward. Give everybody a chance within their society to be engaged in the debate and my sense is that in every society there will be a move towards what we are calling an improvement in human rights.

Our experience has been that most members of the business community are less than enthusiastic about coming to the table with us. We welcome the chance to have discussions like this one. We are open to the notion that it would be a reciprocal discussion. We are open to talking about anything that the business community wants to bring to the table.

Henry Steiner

Those were good thoughts to close our meeting. My thanks to all participants for this engaged discussion.

Annex I:

Glossary of Abbreviations and References

- AIP** Apparel Industry Partnership — a coalition of business, labor, consumer and human rights groups established in 1996 by President Clinton and Secretary of Labor Robert Reich to develop industry-wide labor standards and monitoring procedures for the apparel industry. (See text of agreement at www.lchr.org/sweatshop/aipfull.htm)
- CEP** Council of Economic Priorities — a public service research organization dedicated to analysis of the social and environmental records of corporations. The CEP has developed standards referred to as **SA8000** to serve as a common framework for monitoring social accountability. (See www.cepnyc.org/)
- GSP** Generalized System of Preferences — a program for import advantages (19 U. S. C. A. § 2461 et seq. 1998) that restricts preferences, *inter alia*, where countries fail to respect “internationally recognized” worker rights, including rights to association and collective bargaining.
- ICCPR** International Covenant on Civil and Political Rights — the major treaty covering civil and political rights. Part of the “International Bill of Human Rights” (together with the UDHR and ICESCR, below). (See www.unhchr.ch/html/menu3/b/a_ccpr.htm)
- ICESCR** International Covenant on Economic, Social and Cultural Rights — the major treaty covering economic and social rights. Part of the “International Bill of Human Rights” (together with the UDHR, below, and the ICCPR, above). (See www.unhchr.ch/html/menu3/b/a_ceschr.htm)
- ILO** International Labor Organization — multilateral organization concerned with labor issues, based in Geneva, Switzerland. (See www.ilo.org)

ISO	Standards developed by the International Organization for Standardization. ISO 9000 concerns primarily “quality management” while ISO 14000 concerns environmental standards. (See www.iso.ch/)
MFN	Most Favored Nation — highest status of treatment in trade and investment treaties.
NAALC	North American Agreement on Labor Cooperation (January 1, 1994) — often referred to as the Labor Side Agreement to NAFTA, below. (See www.naalc.org/index.htm)
NAFTA	North American Free Trade Agreement — agreement among Canada, Mexico and the United States. Entered into force January 1, 1994. (See www.solon.org:80/Treaties/NAFTA/index.html)
UDHR	Universal Declaration of Human Rights — premier human rights instrument of the United Nations, adopted by UN General Assembly in 1948. (See www.unhchr.ch/html/menu3/b/a_udhr.htm)
UNDP	United Nations Development Programme — the major UN agency through which development assistance is channelled. (See www.undp.org/)
USAID	United States Agency for International Development — the U. S. government agency through which much economic development and humanitarian assistance is channelled. (See www.info.usaid.gov/)
WTO	World Trade Organization — created in 1995 as a successor to the GATT, with the intention to monitor and enhance agreements to liberalize trade, ensure its free flow and establish means of dispute settlement. (See www.wto.org/)

Annex II:

The Participants

Aaron Bernstein is the Workplace Editor at *Business Week Magazine*, where he writes on issues such as globalization, sweatshops, and codes of conduct.

Ronald Blackwell is Director of Corporate Affairs at the AFL-CIO, a new department charged with supporting unions in their strategic relations with employers. Blackwell is author of "Globalization and the American Labor Movement," in Fraser and Cohen (eds), *Audacious Democracy: Labor, Intellectuals and the Social Reconstruction of America* (1997).

Lael Brainard is Deputy Assistant to the President for International Economic Policy and Deputy Director of the National Economic Council. Formerly, she was Associate Professor of Applied Economics at the MIT Sloan School of Management. She has also worked at the consulting firm, McKinsey and Co., and at the Ford Foundation and Harvard Institute for International Development in Africa.

Doug Cahn is Vice President, Human Rights Programs at Reebok International Ltd., where he is responsible for systems to ensure that conditions in factories making Reebok products comply with Reebok's workplace code of conduct. Cahn formerly served as a congressional aide for three members of the U. S. House of Representatives on issues relating to foreign policy and human rights.

W. Bowman Cutter joined Warburg, Pincus in March 1996 as a Managing Partner. He was formerly Deputy Assistant to the President for Economic Policy (National Economic Council). Prior positions with Coopers & Lybrand include Managing Partner of the firm's Strategic Services. During the Carter Administration, Cutter was Executive Associate Director of Budget at OMB.

Norman Dorsen is Stokes Professor of Law at New York University School of Law, and chairman of the Lawyers Committee for Human Rights. He served from 1976-1991 as president of the American Civil Liberties Union. Dorsen is the co-editor of *Political and Civil Rights in the U. S.*, and president of the U. S. Association of Constitutional Law. He has participated in human rights missions to countries including Argentina, Egypt, Northern Ireland, and the Philippines.

Robert A. Kapp has been President of the US-China Business Council since 1994. He taught at Rice University and the University of Washington between 1970 and 1980. Kapp headed the Washington State China Relations Council and the Washington Council on International Trade, 1980-87 and 1987-94, respectively.

Bruce J. Klatsky is Chairman and Chief Executive Officer of Phillips-Van Heusen Corporation. He is a member of the Board of Directors of Human Rights Watch and Business for Social Responsibility, and a member of the Board of Directors and the Executive Committee of the American Apparel Manufacturers Association. Klatsky serves on President Clinton's White House Apparel Task Force. He also advised the Bush and Reagan administrations on trade.

Li Lu was one of the principal student leaders in the Tiananmen Square protest of 1989. Since he fled China, he has been an active human rights advocate. Currently, he is President of Himalaya Management, a global value hedge fund.

Michael Posner has been Executive Director of the Lawyers Committee for Human Rights since its inception in 1978. He is a member of the White House Task Force examining the sweatshop practices in the apparel industry worldwide. He has authored numerous articles and reports, led human rights fact-finding missions to more than 25 countries and has taught at Yale and Columbia University Law Schools.

Dani Rodrik is Professor of International Political Economy at Harvard University. His research focuses on international economics, political economy, and economic development. He is the author of *Has Globalization Gone Too Far?* (1997).

Jack Sheinkman is Vice Chairman of Amalgamated Bank of New York and of the Council on Competitiveness. He is also President Emeritus of Americans for Democratic Action. Sheinkman was previously President of the Amalgamated Clothing and Textile Workers Union and Vice President of the AFL/CIO. He has been a member of Presidents Reagan, Bush, and Clinton's Advisory Committee on Trade.

Debora Spar is Associate Professor at Harvard Business School, where her work focuses on the political environment of international trade and investment. She is the author of *The Cooperative Edge*, and co-author of *Beyond Globalism* and *Iron Triangles and Revolving Doors*.

Henry Steiner is Jeremiah Smith, Jr. Professor of Law and the founding Director of the Law School Human Rights Program at Harvard University. He is also chair of the University Committee on Human Rights Studies. Steiner has written on a wide range of human rights topics. He is co-author of *International Human Rights in Context: Law, Politics, Morals* (1996).

Raymond Vernon is Professor Emeritus of International Affairs at the Kennedy School of Government at Harvard University. He is the author of numerous articles and books on international economic relations, dealing especially with business-government relations and with multinational enterprise. Prior to entering academic life, he held positions in the Department of State and in the Securities and Exchange Commission.