

# International Labor Standards and Instruments of Recourse for Working Women

Lance Compa<sup>†</sup>

## I. INTRODUCTION

The special concerns of the growing number of women entering the global workforce are shaping the development of international labor law. Yet the specialized rules governing the rights of women often conflict with more generalized norms promoting equality in the workplace. This paper identifies a fundamental tension facing labor advocates and human rights groups supporting the rights of working women. International labor law must resolve the tension between standards that protect women and those that promote equality of opportunity.

International standards seek to protect female workers from dangerous or harmful working conditions by prohibiting women from working in certain industries or under certain conditions.<sup>1</sup> As a result, an inherent conflict arises between international standards that protect women and standards that promote equality between women and men. Childbearing issues have brought this conflict to the forefront of worker rights debates in both the industrialized and the developing world. The 1991 Supreme Court decision in *United Auto Workers v. Johnson Controls, Inc.*, which held that employers cannot prohibit women of childbearing age from performing certain types of work, demonstrates the centrality of these issues in the United States.<sup>2</sup> Similar debates are underway in other settings.<sup>3</sup>

The development of international labor standards specifically designed for women raises related issues. Can varying national labor laws and policies be harmonized through international fair labor standards, or should national policies be permitted to deviate from such standards for purposes of economic development or in light of cultural differences? Should Western notions of

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<sup>†</sup> Visiting Lecturer, Yale Law School; Legal Counsel to the Washington-Baltimore Newspaper Guild and United Electrical Workers Union; J.D., Yale Law School, 1973; B.A., Fordham University, 1969.

1. See, e.g., Convention Concerning the Employment of Women in Underground Work in Mines of All Kinds (Convention No. 45) (entered into force May 30, 1937) [hereinafter Convention No. 45], reprinted in INTERNATIONAL LABOUR ORGANISATION, INTERNATIONAL LABOUR CONVENTIONS AND RECOMMENDATIONS: 1919-1981, at 709 (1982) [hereinafter ILO CONVENTIONS AND RECOMMENDATIONS]; Recommendation Concerning the Protection of Women and Children Against Lead Poisoning (1919) (Recommendation No. 4) [hereinafter Recommendation No. 4], reprinted in ILO CONVENTIONS AND RECOMMENDATIONS, *supra*, at 365.

2. *United Auto Workers v. Johnson Controls, Inc.*, 111 S. Ct. 1196 (1991).

3. See *infra* note 43 and accompanying text.

feminism and trade union rights override a country's cultural traditions that historically have limited women's participation in the formal economy?<sup>4</sup>

International labor law and established fora for pressing worker rights claims supply the means to address these questions. The International Labour Organisation (ILO), a specialized United Nations body that establishes international labor standards,<sup>5</sup> is the principal international standard-setting agency. International labor law in the formal sense consists largely of the standards and conventions promulgated by the ILO,<sup>6</sup> which are advanced by the ILO's ability to investigate and publicize violations. Although the ILO is indispensable in defining and promoting labor rights, its power to enforce standards is limited to exhortation and censure. Additional enforcement has been largely limited to the application of domestic law by member states. As a result, there is presently no clearly defined single source of enforceable international labor law, though its outlines are beginning to take shape.

This paper examines the structure of the ILO and argues that labor advocates should emphasize worker rights and equality for women over competing demands for development rights and protective standards, both within the ILO and in other arenas. This paper then suggests ways in which labor advocates can seek to reconcile the tension between protection and equality for female workers within the ILO framework. The ILO should accelerate its tentative steps toward equal rights in both the standard-setting process and at the enforcement stage. Labor advocates must link equal-rights initiatives to ILO principles governing the right of association to achieve this goal. A protective standard should yield when it conflicts with the principle of equal rights as long as female workers fully enjoy the freedoms of association, organization, and bargaining. If women participate equally in their unions, they can seek the

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4. International labor advocates continually face this conflict between development and workers' rights. Many developing countries tout cheap labor and restrictions on union activity to attract investment by multinational corporations. Since economic development will benefit the entire populace in the long run, should development rights override, at least temporarily, individual worker and trade union rights that discourage investment and detract from international competitiveness? On the other hand, should economic development at the expense of worker rights be allowed to circumvent a key development goal: the well-being of workers in developing countries? See MAURICE FLORY, *DROIT INTERNATIONAL DU DÉVELOPPEMENT* 27-32 (1977) (on states' right to development in international law); STEVEN GILL & DAVID LAW, *THE GLOBAL POLITICAL ECONOMY: PERSPECTIVES, PROBLEMS AND POLICIES* 238-40 (1988) (discussing theories indicating developing countries will suppress workers' rights to maintain advantage derived from unlimited supply of cheap labor); ROBERT L. ROTHSTEIN, *THE WEAK IN THE WORLD OF THE STRONG: THE DEVELOPING COUNTRIES IN THE INTERNATIONAL SYSTEM* 244-45 (1977) (stating that companies will not invest abroad unless favorable economic conditions, such as low labor costs and government concessions, are present).

5. In general, indexed references to "labor," "workers," "trade unions," or "unions" are sparse in human rights literature. However, the ILO is often mentioned. See, e.g., *HUMAN RIGHTS IN THE WORLD COMMUNITY* 22-24, 189-90 (Richard P. Claude & Burns H. Weston eds., 1989). For specific treatment of the ILO, see C. Wilfred Jencks, *Human Rights, Social Justice and Peace: The Broader Significance of the ILO Experience*, in *INTERNATIONAL PROTECTION OF HUMAN RIGHTS* 223 (Asbjörn Eide and August Schou eds., 1968).

6. See ILO CONVENTIONS AND RECOMMENDATIONS, *supra* note 1.

specific protections they need in collective bargaining. If they are blocked at the bargaining table, they then can use the right of association to press for legislative protections tailored to their particular needs. This argument presupposes that workers' rights should triumph over national development policies when the two conflict. Women in both the developed and the developing world should have the opportunity to improve their working conditions regardless of macroeconomic conditions or cultural barriers.

Advocating equal rights within the ILO framework is an important avenue of recourse for female workers, but it is not the only one. This paper concludes by suggesting a variety of other arenas in which worker rights claims should be raised.

## II. THE ILO AND INTERNATIONAL HUMAN RIGHTS

### A. *The ILO Structure and Protected Rights*

The ILO is the principal international forum for presenting international labor rights claims. The ILO was created after World War I in the hope that the codification of international fair labor standards would reduce economic conflict among member states and deflect revolutionary currents in labor movements after the Bolshevik triumph in Russia. The goal of establishing international fair labor standards was reaffirmed with the passage of the Philadelphia Declaration of 1944 near the end of World War II.<sup>7</sup> When the ILO was brought under the aegis of the United Nations in 1948, the standards expressed in ILO conventions and recommendations were reinforced by the Universal Declaration of Human Rights, the Covenant on Economic, Social and Cultural Rights, and the Covenant on Civil and Political Rights, collectively known as the International Bill of Human Rights.<sup>8</sup> Presently, there are 172 ILO conventions and 179 recommendations, which together make up the International Labor Code.<sup>9</sup> The conventions range from statements of general

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7. The Philadelphia Declaration reasserted the ILO's ideals, broadened its mandate, and permitted the organization to "regroup" at the end of the war. Declaration Concerning the Aims and Purposes of the International Labour Organisation, Oct. 9, 1946, 62 Stat. 3485, 15 U.N.T.S. 35. It was subsequently incorporated into the ILO Constitution. See Stephen I. Schlossberg, *United States' Participation in the ILO: Redefining the Role*, 11 COMP. LAB. L.J. 48, 53-58 (1989) (discussing history of ILO).

8. Universal Declaration of Human Rights, G.A. Res. 217A(III), U.N. GAOR, 3d Sess., pt. 1, at 71, U.N. Doc. A/810 (1948) (prohibiting discrimination (art. 7), establishing freedom of association (art. 20), and freedom of choice of employment (art.23)); International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 (addressing specific labor-related issues such as equal rights for women (art. 3), right to work (art. 6), right to just and favorable conditions of work (art. 7), and right to join unions and strike in conformity with local law (art. 8)); International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 (establishing freedom of association but allowing it to be abrogated for reasons of national security, public safety, health, or order (art. 22)).

9. ILO CONVENTIONS AND RECOMMENDATIONS, supra note 1.

principles such as the rights of association and bargaining<sup>10</sup> to extremely detailed standards such as those governing hours of work in particular industrial sectors.<sup>11</sup>

ILO conventions are adopted at annual conferences by a two-thirds majority of individual delegates from all member states.<sup>12</sup> A complex process, designed to ensure that all delegates have the opportunity to modify drafts before they are adopted, precedes the adoption of each new convention. Member states are required to submit adopted conventions to competent national authorities for ratification. If a convention is ratified, the government must then sponsor implementing legislation. Whether or not a country ratifies an ILO convention, it must report back to the ILO on the steps taken to seek ratification, as well as on the degree to which the state's national laws and practices conform to the standards established by the convention. The ILO's Committee of Experts on the Application of Conventions and Recommendations scrutinizes country reports and issues findings and recommendations to all reporting governments.<sup>13</sup>

A number of ILO conventions codify fundamental principles of international human rights. These include Convention No. 87, which guarantees workers and employers the right to establish and join organizations of their own choosing and to conduct their affairs without interference from the state,<sup>14</sup> and Convention No. 98, which mandates the independence of worker and employer organizations and protects the right to organize and bargain collectively.<sup>15</sup>

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10. See, e.g., Convention Concerning Freedom of Association and Protection of the Right to Organize (Convention No. 87) (entered into force July 4, 1950) [hereinafter Convention No. 87], reprinted in ILO CONVENTIONS AND RECOMMENDATIONS, *supra* note 1, at 4; Convention Concerning the Right to Organize and Bargain Collectively (Convention No. 98) (entered into force July 18, 1951) [hereinafter Convention No. 98], reprinted in ILO CONVENTIONS AND RECOMMENDATIONS, *supra* note 1, at 7.

11. See, e.g., Recommendation Concerning Reduction of Hours of Work (1962) (Recommendation No. 116), reprinted in ILO CONVENTIONS AND RECOMMENDATIONS, *supra* note 1, at 282.

12. Currently, the ILO has 152 member states. South Korea, Latvia, Estonia, and Lithuania joined the ILO in 1991. South Africa is the only significant nonmember. The status of the newly independent republics of the former U.S.S.R. and other newly-formed nations is still undetermined. Interview with Stephen I. Schlossberg, Director, Washington Office of the International Labor Organization, in Washington, D.C. (Dec. 10, 1991). Each delegation is composed of four delegates, consisting of two government delegates, one delegate from an employer organization and one delegate from a trade union group. INTERNATIONAL LABOR OFFICE, FACT SHEET NO. 6, UNDERSTANDING THE ILO (1991).

13. INTERNATIONAL LABOR OFFICE, FACT SHEET NO. 1, INTERNATIONAL LABOR STANDARDS (1991).

14. Convention No. 87, *supra* note 10.

15. Convention No. 98, *supra* note 10. Convention No. 98 also guards against employer domination of labor organizations, a safeguard prompted by widespread use of company unions as an anti-union device in the United States in the 1920s and 1930s and in the corporatist structures of Fascist Italy and Nazi Germany. Convention No. 98 further calls for measures to encourage and promote voluntary negotiation between employers and unions. Significantly, however, it does not compel employers to engage in collective bargaining with unions chosen by their workers.

Adherence to these core ILO conventions is considered a function of membership in the Organization regardless of whether a state has ratified them.<sup>16</sup> This obligation flows from the ILO's Philadelphia Declaration, from the International Bill of Human Rights, and from ILO practice as it has evolved over the years. The ILO's own Constitution, however, does not itself oblige members to adhere to these conventions without ratification.<sup>17</sup>

Other key ILO conventions addressing fundamental worker rights include Conventions No. 105, No. 138, and No. 111. Convention No. 105 calls for the "complete abolition" of forced or compulsory labor, whether used as a means of political coercion, economic development, labor discipline, punishment for striking, or discrimination.<sup>18</sup> Convention No. 138 establishes limitations on child labor, but the limits stated are rather imprecise.<sup>19</sup> Convention No. 111 prohibits certain forms of discrimination in employment.<sup>20</sup> However, the wording of Convention No. 111 is ambiguous when compared with the outright ban on forced labor in Convention No. 105.<sup>21</sup>

In addition, more than 160 other conventions and as many recommendations seek to regulate working hours, basic benefits, health and safety standards, and other conditions of employment. These other conventions and recommendations are generally aimed at particular categories of workers—such as women, children, migrant workers, public employees, and part-time workers—or at specific branches of industry like mining, manufacturing, and maritime trades. To address the needs of female workers in particular, the ILO established a technical cooperation program in the 1950s to promote training and self-employment and to develop worker cooperatives. The ILO has also

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16. See INTERNATIONAL LABOUR OFFICE, HUMAN RIGHTS—A COMMON RESPONSIBILITY: REPORT OF THE DIRECTOR GENERAL at iii (1988) [hereinafter REPORT OF ILO DIRECTOR GENERAL]; Frances Wolf, *Human Rights and the International Labor Organization*, in HUMAN RIGHTS IN INTERNATIONAL LAW: LEGAL AND POLICY ISSUES 273 (Theodor Meron ed., 1984).

17. ILO CONST.

18. Convention Concerning the Abolition of Forced Labour (Convention No. 105) (entered into force Jan. 17, 1959), *reprinted in* ILO CONVENTIONS AND RECOMMENDATIONS, *supra* note 1, at 39.

19. Convention Concerning the Minimum Age for Admission to Employment (Convention No. 138) (entered into force June 19, 1976) (ages between 13 and 18 declared minimum age for employment in different sectors), *reprinted in* ILO CONVENTIONS AND RECOMMENDATIONS, *supra* note 1, at 730.

20. Convention Concerning Discrimination in Respect of Employment and Occupation (Convention No. 111) (entered into force June 15, 1960), *reprinted in* ILO CONVENTIONS AND RECOMMENDATIONS, *supra* note 1, at 47.

21. Under Convention No. 111, a member state "undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity . . . with a view to eliminating any discrimination with respect thereof." Convention No. 111 further specifies that "any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination." Convention No. 111, *supra* note 20, art. 1, para. 2. It concludes with a statement that "[s]pecial measures of protection" contained in other ILO conventions "shall not be deemed to be discrimination." *Id.* art. 5, para. 1. Many of the "special measures," supposedly enacted to protect women workers from the rigors of industrial life, have sustained the "weaker sex" stereotype and have excluded women from many forms of employment.

sponsored numerous regional conferences on working women's issues,<sup>22</sup> and has budgeted \$2.385 million to "equality for women in employment" programs for the 1992-1993 fiscal year.<sup>23</sup>

Besides its extensive reporting requirements, the ILO also provides for contentious proceedings in which one member may charge another with violating ILO standards. Unless a charge alleges the violation of a core human rights convention, both states must have ratified the convention in question in order for the ILO to hear the case. The ILO assigns a standing committee or a special committee to conduct an inquiry and report to the government concerned and to the ILO.<sup>24</sup>

Overall, the ILO performs an important role in elaborating international fair labor standards and managing an extensive oversight function and complaint procedure. However, the ILO still lacks an effective enforcement mechanism, even though its members are considered bound by its core human rights conventions and the ratification of an ILO convention is said to create an international obligation. ILO procedures and pronouncements can publicly embarrass, privately cajole, or otherwise pressure a country to change the labor practices that violate ILO standards, but ultimately the ILO has no remedial power to compel a member state to act.

### *B. Tensions in ILO Standards on Women's Labor Rights*

The strengths and weaknesses of ILO standard-setting mechanisms, and some of the underlying contradictions that blunt their effectiveness, are particularly apparent in ILO conventions concerning the rights of working women. The prohibition on discrimination in Convention No. 111 does not ban discrimination based on "inherent" job requirements. The Convention concludes with a statement that "special measures of protection or assistance" provided for in other ILO conventions and recommendations "shall not be deemed to be discrimination."<sup>25</sup> Other conventions and recommendations have established various rules governing women in the workplace, including extensive restric-

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22. INTERNATIONAL LABOR OFFICE, FACT SHEET NO. 11, WOMEN WORKER RIGHTS (1991).

23. *Programme and Budget Proposals for 1992-93*, at 140-47, ILO Doc. GB.249/PFA/7/1 (Feb.-Mar. 1991).

24. For example, the ILO will assign the case to the Committee on Freedom of Association if the charge is a violation of Conventions No. 87 or No. 98.

25. Convention No. 111, *supra* note 20, at 47-48.

tions on night shift work,<sup>26</sup> limitations on the amount of weight that can be lifted by female workers—which must be at levels "substantially less" than weight limits for male employees<sup>27</sup>—and an almost absolute prohibition on underground work by women.<sup>28</sup> In addition, conventions impose mandatory rest periods for female workers (including a requirement that they must be provided with seats during such rest breaks<sup>29</sup>), a limitation on the number of hours that women performing tasks involving heavy physical labor or mental strain may work,<sup>30</sup> and a limitation on work involving contact with lead, radiation, and benzene.<sup>31</sup> In some cases, exceptions have been made for women who hold managerial positions or who work in the nursing profession.

Several ILO conventions relating to pregnancy and maternal protection create a complex mix of protections, benefits, and restrictions on women. For example, Convention No. 103 mandates twelve weeks' leave in connection with pregnancy and childbirth, prohibits employers from terminating women who take maternity leave, requires employers to permit mothers to interrupt their work to breast-feed a child, without loss of pay,<sup>32</sup> and prohibits various forms of physical exertion during pregnancy.<sup>33</sup>

The tension between the standards that protect female workers and those that treat them as equal to their male counterparts is evident in these ILO conventions. The conventions indicate that the ILO has historically opted for protection, and moved only with great care to reconsider and scale back protective provisions to expand employment opportunities for women. In 1990,

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26. Convention Concerning Night Work of Women Employed in Industry (Convention No. 89) (revised 1948, entered into force Feb. 27, 1951), *reprinted in ILO CONVENTIONS AND RECOMMENDATIONS, supra* note 1, at 706; Convention Concerning Employment of Women During the Night (Convention No. 41) (revised 1934, entered into force Nov. 22, 1936), *reprinted in ILO CONVENTIONS AND RECOMMENDATIONS, supra* note 1, at 704; Convention Concerning Employment of Women During the Night (Convention No. 4) (entered into force June 13, 1921), *reprinted in ILO CONVENTIONS AND RECOMMENDATIONS, supra* note 1, at 701.

27. Convention Concerning the Maximum Permissible Weight to be Carried by One Worker (Convention No. 127) (entered into force Mar. 10, 1970), *reprinted in ILO CONVENTIONS AND RECOMMENDATIONS, supra* note 1, at 402.

28. Convention No. 45, *supra* note 1, at 709.

29. Recommendation Concerning Welfare Facilities for Workers (1956) (Recommendation No. 102), *reprinted in ILO CONVENTIONS AND RECOMMENDATIONS, supra* note 1, at 496.

30. Recommendation Concerning Reduction of Hours of Work (1962) (Recommendation No. 116), *reprinted in ILO CONVENTIONS AND RECOMMENDATIONS, supra* note 1, at 282.

31. Convention Concerning Protection Against Hazards of Poisoning Arising From Benzene (Convention No. 136) (entered into force July 27, 1973), *reprinted in ILO CONVENTIONS AND RECOMMENDATIONS, supra* note 1, at 377; Convention Concerning the Use of White Lead in Painting (Convention No. 13) (entered into force Aug. 31, 1923) [hereinafter Convention No. 13], *reprinted in ILO CONVENTIONS AND RECOMMENDATIONS, supra* note 1, at 367; Recommendation No. 4, *supra* note 1.

32. Convention Concerning Maternity Protection (Convention No. 103), art. 5 (entered into force June 4, 1952) [hereinafter Convention No. 103], *reprinted in ILO CONVENTIONS AND RECOMMENDATIONS, supra* note 1, at 695.

33. Convention No. 103, *supra* note 32; Recommendation Concerning Maternity Protection (1952) (Recommendation No. 95), *reprinted in ILO CONVENTIONS AND RECOMMENDATIONS, supra* note 1, at 697.

the ILO adopted a revised Convention on Night Work requiring equal treatment of male and female night workers.<sup>34</sup> However, as if to confirm the caution with which the ILO approaches women's issues, the Convention preserves limits on night shift work done during pregnancy. Similarly, although the ILO revised the convention banning women from working with lead, it still applies to women of childbearing age.<sup>35</sup>

The resulting tension between protection and equality within the ILO creates problems for advocates of international fair labor standards. For example, U.S. trade laws contain labor-rights clauses that eliminate trade privileges for countries that violate specified international labor rights.<sup>36</sup> These clauses point to ILO standards to define "internationally recognized worker rights," the violation of which would trigger sanctions.<sup>37</sup> Similarly, union bodies such as the International Confederation of Free Trade Unions and sector-based trade secretariats such as the International Metalworkers Federation continually press for uniform conditions and standards across national boundaries and in various branches of industry. These organizations assert that enterprises should not gain a competitive advantage by undercutting the fair labor standards defined by the ILO.<sup>38</sup>

Labor advocates face a dilemma when the ILO standards they support in one context conflict with positions taken in another context, as evidenced by the holding in *United Auto Workers v. Johnson Controls, Inc.*<sup>39</sup> In *Johnson Controls*, the employer's decision to prohibit women of childbearing age from working with lead-based products was entirely consistent with ILO standards set forth in Recommendation No. 4,<sup>40</sup> and permitting such work would clearly have violated ILO standards. However, the U.S. Supreme Court ruled in favor of the trade union that sought to overturn the ban. The Court determined that the ban violated Title VII prohibitions against gender discrimination. The employer's policy of excluding employees "capable of bearing children" was unlawfully discriminatory because it did not apply to male employees, despite ample evidence that exposure to lead could damage the male reproductive system as well. Most labor rights supporters in the United States applaud the

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34. Convention Concerning Night Work (Convention No. 171) (entered into force June 6, 1990) (unpublished pamphlet available at the ILO, Washington, D.C.).

35. Convention No. 13, *supra* note 31.

36. *See, e.g.*, Caribbean Basin Economic Recovery Act, 19 U.S.C.A. § 2702(c)(8) (West Supp. 1991); Generalized System of Preferences Renewal Act of 1984, 19 U.S.C. § 2462(a)(4)(A)-(E) (1988); Overseas Private Investment Corporation Amendments Act of 1985, 22 U.S.C. § 2191a (1988); Omnibus Trade and Competitiveness Act of 1988, 19 U.S.C. § 2411(d) (1988).

37. LAWYERS COMM. FOR HUMAN RIGHTS, WORKER RIGHTS UNDER THE U.S. TRADE LAWS, 1988 PROJECT SERIES NO. 2, at 1-8 (1989).

38. *See* JOHN CAVANAGH ET AL., INTERNATIONAL LABOR RIGHTS EDUC. AND RESEARCH FUND, TRADE'S HIDDEN COSTS 42 (1989).

39. *United Auto Workers v. Johnson Controls, Inc.*, 111 S. Ct. 1196 (1991).

40. Recommendation No. 4, *supra* note 1.



*Johnson Controls* decision as a victory for equality in the workplace, even though it deviates from ILO standards. At the same time, labor advocates often point to ILO standards and practices in other countries to support their arguments while lobbying for passage of the Family and Medical Leave Act, or similar legislation.<sup>41</sup>

A similar controversy arose in France under a French law prohibiting night work by women, with exceptions for managerial and technical employees. The ban was entirely consistent with ILO standards. French authorities prosecuted a company that established, with the agreement of its workers, a twenty-four hour, three-shift schedule that allowed women to work at night. The case was removed to the European Court of Justice (ECJ). The ECJ declared that the ban on night work violated a European Council directive on equal treatment for men and women regarding access to employment, training and professional promotion<sup>42</sup> due to its discriminatory impact on nonmanagerial and nontechnical women employees. Nevertheless, the ECJ asserted that certain prohibitions on night work could be allowed in order to protect women, but found that the facts of the case did not warrant such "protections."<sup>43</sup>

Supporters of uniform international standards who make an exception for the *Johnson Controls* and ECJ night-work decisions might have a difficult time criticizing other actions that deviate from ILO norms. For example, labor advocates frequently argue that ILO standards are loosely enforced in labor-intensive export industries such as the garment and electronics industries. In Asia, Latin America, and perhaps soon in Eastern Europe, millions of young female workers are pressed by poverty into service on the global assembly line.<sup>44</sup> Their work supposedly requires qualities such as visual acuity, manual dexterity, deference to authority, and antipathy to union organizing. Employers hire young women for these jobs because they are presumed to possess these characteristics. In many cases, the nature and the pace of their work disables these women within a few years, dimming their eyesight and diminishing their motor skills as a result of repetitive strain to their arms, wrists, and hands. Economic planners often dismiss these charges by arguing that international labor standards work against the creation of labor-intensive factory jobs in developing countries and condemn these nations to a future without economic

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41. See HOUSE EDUCATION AND LABOR COMM., REPORT ON FAMILY AND MEDICAL LEAVE ACT OF 1991, H.R. REP. NO. 102-135, 102d Cong., 1st Sess., pt. 1 (1991); see also Anne Lofaso, *Pregnancy and Parental Care Policies in the United States and the European Community: What Do They Tell Us About Underlying Societal Values?*, 12 COMP. LAB. L.J. 458, 482-88, 493-97 (1991).

42. Council Directive 76/207, 1976 O.J. (L 39/40).

43. See *European Community Cannot Ban Night Work For Women*, Court Rules, 9 EMPLOYEE REL. WKLY. (BNA) 856 (Aug. 5, 1991).

44. See Jean Larson Pyle & Leslie M. Dawson, *The Impact of Multinational Technological Transfer on Female Workforces in Asia*, 25 COLUM. J. WORLD BUS. 40, 42-43 (1990).

development by eliminating the comparative advantage of cheap labor.<sup>45</sup> Without general economic development, the conditions of female workers will never improve, and women will be consigned to a life of dawn-to-dark field labor in a repressive familial setting. For many young women, the prospect of independent factory work and some measure of disposable wage income, however meager, is preferable to life on a farm or plantation.<sup>46</sup>

Development planners also argue that it is unfair to force developing countries to adhere to labor standards set by industrialized states.<sup>47</sup> Indeed, insisting on improved labor conditions may conflict with a developing nation's right to development.<sup>48</sup> According to this theory, developing countries have a right to attract investment capital and new technology, and to develop their manufacturing capacity so that they can compete in the global marketplace. If the main competitive advantage that a country brings to the marketplace takes the form of abundant, low-cost female labor, the country should be able to use this resource to attract investment and create jobs.

Malaysia is a case in point. In recent years, U.S. labor and human rights advocates have sought to apply economic sanctions against Malaysia in accordance with labor rights clauses in preferential trade programs, because the Malaysian government restricts union organizing and collective bargaining in the burgeoning electronics sector. Malaysian officials counter that such tactics interfere with the Malaysian people's right to development. They argue that their country should not be forced to depend upon its exports of raw materials and agricultural products. Malaysia wants to develop its manufacturing capacity and to compete in the global marketplace. If U.S. trade preferences are removed because of alleged labor rights violations, the electronics firms will relocate. Given this fact, Malaysia claims a sovereign right to control the

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45. For example, delegates from Columbia, Nigeria, Korea, and Hong Kong to the General Agreement on Tariffs and Trade (GATT) responded to U.S. proposals to create a GATT working group on labor issues in 1986 by arguing that such proposals are an "attempt to cancel out any comparative advantage which developing countries might enjoy" and that "lower labor costs in some developing countries were due to the economic situation, not necessarily to 'enslavement' of labor." Concurring, the ambassador of Singapore "asked rhetorically whether a country were failing if it could not provide full employment but had high labor standards; or whether a country failed if it had full employment but not such high-minded labor standards as in developed countries." Telegram from U.S. Mission, Geneva to Secretary of State regarding worker rights discussion at GATT Prep. Comm. (July 1986) (on file at International Labor Rights Education and Research Fund, Washington, D.C.).

46. See Diane L. Wolf, *Linking Women's Labor With the Global Economy: Factory Workers and Their Families in Rural Java*, in *WOMEN WORKERS AND GLOBAL RESTRUCTURING* 25, 42-43 (Kathryn Ward ed., 1990).

47. A recent statement by Malaysian Prime Minister Mahathir Mohammed captures the tension between labor rights as defined by western democracies, and development rights: "Our concept of being developed does not simply focus on per capita income, but on the quality of life and morality as well." He continued, "The hedonistic materialism of present Western models [of development] is not for us. We hope the rest of the world will give us this freedom of choice and not harass us into conformity in the name of freedom." Karl Schoenberger, *The Model Here Isn't America*, *L.A. TIMES*, Jan. 30, 1992, at 1.

48. See *supra* note 4.

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nature and extent of unionization within its borders while it creates a manufacturing base.<sup>49</sup>

This is a powerful theoretical argument, but it fails to consider the impact this kind of development may have on individual workers. For example, a young woman in a multinational corporation's electronics plant in Malaysia, or in the assembly factories along the U.S.-Mexico border, works ten to fourteen hours a day on microscopic assembly work, often using hazardous chemicals. She is subject to immediate discharge if she voices any protest against working conditions or seeks either to form or to join a union. If development is to be more than a hollow achievement benefiting only foreign investors and local elites, then worker rights must progress simultaneously with economic development. Furthermore, if women are to be truly empowered in the workplace, international labor standards must promote gender equality even when doing so would conflict with existing protective standards. From a position of equality, the Malaysian electronics worker can bargain more effectively for the protective standards that she feels are appropriate.

In sum, ILO standards that seek to protect women create two related problems. First, these standards necessarily conflict with national laws that eschew specialized protection for women in favor of equality between women and men in the workplace. Second, this conflict in turn allows countries violating international labor standards in ways that do not serve the goal of equality between women and men to claim that all international labor standards may be violated at will if the violations serve national purposes. To resolve these problems, labor advocates must attempt to modify international labor standards to favor the norm of equality over the norm of protection by lobbying the ILO and other international and national organizations.

### III. A STRATEGY FOR THE ENFORCEMENT OF WORKING WOMEN'S RIGHTS

Advocates of women's labor rights should pursue a three-pronged approach, by seeking: 1) to strengthen the language of ILO Convention No. 111 to achieve women's equality in the workplace; 2) to strengthen the tie between

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49. See International Labor Rights Education and Research Fund, *Petition to the United States Trade Representative*, Case No. 005.011.017-CP-90 (1990) (on file with author). This petition and the accompanying response of the government of Malaysia contain a detailed description of Malaysian labor policy. The petition also contains a statement by General Instrument's Optoelectronics Division, dated November 4, 1986, which declares that: "if there is a union of any kind, it is quite likely that GI Corporate will sell this optoelectronic business away; and it may mean closing down the off-shore plant in Malaysia" (emphasis in original). See also Arne Wangel, *The ILO and Protection of Trade Union Rights: The Electronics Industry in Malaysia*, in *TRADE UNIONS AND THE NEW INDUSTRIALIZATION OF THE THIRD WORLD* 287 (Roger Southall ed., 1988); Jeyamalar Kankiah, *National Union's Out, Electronics Workers Can Form Only In-House Unions: Kim Sai*, *KUALA LUMPUR STAR*, Oct. 20, 1988 (on file with author); *Our In-House Policy Stays, Says Lee*, *NEW STRAITS TIMES*, Feb. 28, 1989 (on file with author); *Workers Want Own National Trade Union*, *NEW STRAITS TIMES*, Feb. 27, 1989 (on file with author).

norms on nondiscrimination and the ILO's core human rights conventions; and 3) to move beyond the ILO to other national and international fora to vindicate the rights of female workers. Part III analyzes each prong of the strategy.

### A. *Inside the ILO*

#### 1. *Convention No. 111*

Labor advocates must lobby the ILO to accelerate its movement toward equal rights for women.<sup>50</sup> In the past, ILO Convention No. 111 was used primarily to attack racial discrimination, as the case of South Africa illustrates. The ILO continued to monitor South Africa even after it withdrew from the ILO in 1968, arguing that South Africa had continuing obligations under the ILO conventions it had previously ratified.<sup>51</sup> The ILO reasoned that the maintenance of international peace and security both required such monitoring and justified the subsequent sharp condemnation. Annual reports, frequent conferences, and financial and technical aid to anti-apartheid organizations reflect the ILO's continuing commitment to eliminating racial discrimination.

In light of the ILO's continued efforts to eliminate racial discrimination, women's labor rights advocates should press for an equivalent commitment by the ILO to combat gender discrimination. Advocates first should demand a stricter formulation of the core antidiscrimination convention. The reformulated convention should ban gender discrimination outright. Amending an ILO convention is a complex undertaking, but regardless of whether women's rights groups are successful, forcing such a debate will heighten sensitivity to women's rights issues and pressure governments to enforce women's rights in the workplace. A stronger antidiscrimination provision will help to create a system in which equality in the workplace can triumph over discriminatory protective measures. In addition, whenever an internationally established protection conflicts with an equal rights claim, the ILO should favor equality over protection.

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50. Labor delegates to the ILO are sent by each country's principal confederation of unions. However, the ILO is still unfamiliar to many workers in affiliated unions. The confederation must hear from its affiliated unions that women's issues are a priority before it will lobby for such issues within the ILO. In order to bring women's issues to the attention of union leadership, women should employ the panoply of grass-roots tactics traditionally used to advance labor causes—educational programs, petitions, resolutions, conferences, workshops, and rallies. In fact, these tactics have already been used by female unionists with some success. The Coalition of Labor Union Women, the principal women's group in the U.S. labor movement, featured the topic of international labor and working women at its October 1991 biannual convention. The AFL-CIO made the same topic a centerpiece of its Summer School for Union Women in August 1991. The International Confederation of Free Trade Unions convened a Women's Congress in April 1991 to bring together women unionists from around the world. Telephone Interview with Joy Anne Grune, North America Regional Secretary, International Union of Food and Allied Workers' Associations (Feb. 6, 1992).

51. REPORT OF ILO DIRECTOR GENERAL, *supra* note 16, at 21.

2. *Conventions No. 87 and No. 98*

Women need strong, democratic unions to advance their interests in the day-to-day struggle for justice in the workplace. Current ILO exhortations to end discrimination must take concrete form in the workplace. Advocates must try to link equal rights initiatives and ILO principles governing the right to form and join trade unions and to bargain collectively with employers. As long as female workers enjoy these freedoms, their trade unions can seek needed protections by bargaining with employers or through legislative action.

In the United States, women's rights advocates can add their voices to those of trade unionists demanding that the United States ratify ILO Conventions No. 87, No. 98, and No. 111. The United States has historically had an ambivalent relationship with the ILO. The United States refused to join the ILO in its first fifteen years, and then quit the Organisation in 1977, charging that the ILO indulged the interests of communist members and had taken a pro-Palestinian turn when it reported labor abuses in Israeli-occupied territories.<sup>52</sup> Although it rejoined the ILO in 1980, the United States has ratified only eleven ILO conventions, mainly those on working conditions in the maritime sector. In May 1991, the U.S. Senate voted to authorize ratification of Convention No. 105 on forced labor,<sup>53</sup> perhaps signaling a greater willingness by the United States to accept an expanded role for the ILO. However, the Council for International Business (CIB), the U.S. employer representative at the ILO, has insisted that the Senate authorized ratification only in light of the universality of strictures against forced labor. The CIB and the U.S. government have resisted ratification of other key ILO conventions, such as Conventions No. 87 and No. 98, despite considerable union support for ratification.<sup>54</sup>

B. *Beyond the ILO*

The ILO is an essential forum for asserting equal rights for female workers. However, the same organizational features that make the ILO effective in the international community—near-universal membership, its tripartite governmental character, and its constitutional structures that reconcile diverse interests, sizes, and levels of economic development—preclude rapid changes

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52. See Schlossberg, *supra* note 7, at 66-70; see also ECONOMIC POLICY COUNCIL, THE UNITED NATIONS ASS'N OF THE USA, THE ILO AND THE GLOBAL ECONOMY: NEW OPTIONS FOR THE UNITED STATES IN THE 1990S (June 1991).

53. 137 CONG. REC. S5728, 5731 (daily ed. May 14, 1991).

54. See generally EDWARD E. POTTER, FREEDOM OF ASSOCIATION, THE RIGHT TO ORGANIZE AND COLLECTIVE BARGAINING: THE IMPACT ON U.S. LAW AND PRACTICES OF RATIFICATION OF ILO CONVENTIONS No. 87 & No. 98 (1984) (arguing that impact of ratification of these conventions on U.S. domestic labor law would be great and that this ceding of control over domestic labor law to ILO would violate constitutional principles).

in ILO approaches to women's rights. Given the rigidity of ILO procedures, labor advocates must also assert the rights of working women in other arenas. Apart from improving women's rights directly, these efforts can force the international community to reevaluate its traditional reliance on protective standards.

A variety of alternatives are available to labor advocates, and each bears evaluation and use by proponents of women's rights in the workplace. The most important alternatives are: unilateral government action, bilateral and multilateral trade agreements, other governmental and private agreements, voluntary codes of conduct, litigation, and union solidarity.

### 1. *Unilateral Government Action*

With the passage of laws linking labor rights with U.S. trade programs, national legislation has taken on new importance as a source of international labor law. The most recent U.S. trade laws to link trade benefits and worker rights are the Generalized System of Preferences (GSP), the Overseas Private Investment Corporation (OPIC), the Omnibus Trade and Competitiveness Act of 1988, and the Caribbean Basin Initiative.<sup>55</sup> Significantly, the worker rights provisions in these laws do not currently contain the antidiscrimination provisions that would most help female workers.<sup>56</sup> However, these laws can still be used to influence conditions that affect female workers abroad.<sup>57</sup> Continued workers' rights violations have prompted the United States to remove or suspend preferential status for Paraguay, Romania, Nicaragua, Chile, the Central African Republic, Suriname, and Sudan under the Generalized System of Preferences.<sup>58</sup> The United States is currently reviewing labor rights in El Salvador, Bangladesh, and Syria. OPIC administrators removed Ethiopia in 1987 and China in 1990 from the corporation's insurance coverage on account of continued labor rights violations. In an important 1991 decision, South

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55. See legislation cited *supra* note 36.

56. See Karen F. Travis, *Women in Global Production and Worker Rights Provisions in U.S. Trade Laws*, 17 YALE J. INT'L L. 173, 173 (1992).

57. International labor rights claims can be made under other U.S. laws as well. For example, the Tariff Act of 1930 ordered the U.S. Treasury Secretary to bar entry into the United States of any goods produced abroad by convict labor or forced labor. Tariff Act of 1930, 19 U.S.C. § 1307 (1988). The United Mine Workers of America sought enforcement of this statute in 1985 to ban importation of coal mined in South Africa. The petition, related correspondence, and FOIA requests from the United Mine-workers of America to the U.S. Customs Service (on file with author) were filed in 1985. The Mine Workers' complaint was eventually made moot by passage of the Comprehensive Anti-Apartheid Act of 1986. Anti-Apartheid Act of 1986, Pub. L. No. 99-440, 100 Stat. 1086 (1986) (codified at 22 U.S.C. §§ 2346(d), 5001-5116 (1988)).

58. Paraguay, Chile, and the Central African Republic were reinstated in 1991. 137 CONG. REC. S1788-89 (daily ed. Feb. 7, 1991).

## International Labor Standards and Instruments of Recourse

Korea was declared ineligible for OPIC coverage due to its continuing repression of trade unionists.<sup>59</sup>

One variant of unilateral action on labor rights is an ad hoc application of economic sanctions against an offending country. For example, in 1991, the Bush administration came under sharp pressure from Congress, unions, and human rights organizations to withdraw China's most-favored-nation (MFN) trading status as a protest of Chinese violations of human rights. Alleged abuses by China included the suppression of independent unions, the use of prison labor in making products for export to the United States, and the Tiananmen Square incident and its aftermath.<sup>60</sup> Seeking to forestall the loss of MFN status, the Chinese government claimed to halt exports of prison-produced goods. However, the Chinese government never made any concessions concerning the right of association or the right to independent union organizing. Although so far unsuccessful in this case, similar ad hoc economic sanctions could be used to advance the cause of women's labor rights.

### 2. Trade Agreements

Many bilateral and multilateral trade pacts regulate labor rights and labor standards, especially among neighboring countries. These agreements also provide a means to advance women's international labor rights. For example, French-Italian accords of the early twentieth century covered such matters as pay and pension fund transfers from one country to another, and compelled Italy to establish a labor ministry to enforce labor standards equivalent to those of France.<sup>61</sup> On the island of Hispaniola, a series of bilateral accords to protect Haitian sugar cane cutters working in the Dominican Republic has given rise to human rights complaints before U.N. Human Rights Commissions, the United States Trade Representative, and other agencies.<sup>62</sup> The European Community also has a highly developed system of labor standards. In association with its progress toward increased economic integration in 1992, the Community has prepared a detailed Social Charter of worker and trade

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59. Administrative decisions and their supporting rationales are available from the Office of the United States Trade Representative (USTR) or OPIC. A number of U.S. unions are currently preparing complaints under Section 301 of the Labor-Management Relations (Taft-Hartley) Act, 29 U.S.C. §§ 141-197 (1988), alleging labor rights abuses in countries that export to the United States, such as Korea. For a description of labor rights abuses in Korea, see GEORGE E. OGLE, *SOUTH KOREA: DISSENT WITHIN THE ECONOMIC MIRACLE* 54-64 (1990). Similarly, human rights organizations are preparing claims in connection with labor practices in the export processing zone factories of the Dominican Republic, Guatemala, and other countries that benefit from the Caribbean Basin Initiative. Interview with Pharis Harvey, Executive Director of the International Labor Rights Education and Research Fund, in Washington, D.C. (Oct. 22, 1991).

60. See Keith Bradsher, *Prison Labor Seen in Chinese Imports*, N.Y. TIMES, Sept. 24, 1991, at A9.

61. See NICOLAS VALTICOS, *DROIT INTERNATIONAL DU TRAVAIL* 167 (2d ed. 1983).

62. See LAWYERS COMM. FOR HUMAN RIGHTS, *A CHILDHOOD ABDUCTED: CHILDREN CUTTING SUGAR CANE IN THE DOMINICAN REPUBLIC* 22-28 (1991) (detailing protest efforts).

union rights with an elaborate administrative and judicial system to which complainants can turn.<sup>63</sup>

Pressure from trade unionists and environmentalists has forced the Bush Administration to address labor and environmental matters in the context of the North American Free Trade Agreement (NAFTA) negotiations with Mexico.<sup>64</sup> Conditions in the *maquiladora* factories, whose workforce is largely female, have prompted U.S. labor advocates to insist that an enforceable scheme of worker rights protections be made part of the NAFTA negotiations.<sup>65</sup>

The General Agreement on Tariffs and Trade, the principal multinational forum for regulating international commerce, provides a third alternative.<sup>66</sup> Thus far, GATT negotiators have rejected all proposals to address worker rights and minimum labor standards. In previous GATT rounds, Scandinavian delegates and U.S. representatives have proposed a working group on labor standards. United States representatives have echoed this suggestion in the current Uruguay round. However, many developing countries have called these proposals disguised protectionism aimed at slowing imports from developing countries rather than at helping workers. Despite offers from the ILO to provide technical assistance,<sup>67</sup> GATT negotiators have not yet addressed the issue of labor rights, and most government officials insist that the goal of regional, bilateral, and multilateral trade talks should be limited to removing tariff and nontariff barriers to trade. They further argue that inclusion of labor rights criteria in trade regimes will erect new trade barriers.<sup>68</sup> Nonetheless,

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63. See Draft: Community Charter of Fundamental Social Rights, COM(89)471 final; see also William Drazdiak, *Europeans Agree on Unity Pacts: Stalemate Avoided by Granting Britain Key Concessions*, WASH. POST, Dec. 11, 1991, at A1 (reporting 11 European Community nations agreed to common social and labor policies). For a critical view of these developments by U.S. business representatives, see The Social Dimension: The Developments in the EC Relating to Labor and Employment Matters, Memorandum from Akin, Gump, Strauss, Hauer & Feld to U.S. companies operating in Europe (1990) (on file with author).

64. The House of Representatives authorized the President to conduct NAFTA negotiations by a 229-190 vote on May 6, 1991, after the Bush Administration issued a press statement entitled "Response to Issues Raised in Connection With the Negotiation of a North American Free Trade Agreement" on May 1, 1991. The "Response" promised extensive parallel discussions with Mexico and consultations with Congress on labor and environmental issues. Letter and Related Papers from President George Bush to Congress (May 1, 1991) (on file with author).

65. See Michael Satchell, *Poisoning the Border*, U.S. NEWS & WORLD REP., May 6, 1991, at 33-42; for a general description of conditions in the *Maquiladora* factories, see Susanna Peters, *Labor Law for the Maquiladoras: Choosing Between Workers' Rights and Foreign Investment*, 11 COMP. LAB. L. J. 226 (1990).

66. For a comprehensive introduction to GATT, see JOHN H. JACKSON, *THE WORLD TRADING SYSTEM: LAW AND POLICY OF INTERNATIONAL ECONOMIC RELATIONS* (1989).

67. See REPORT OF ILO DIRECTOR GENERAL, *supra* note 16, at 56-62.

68. For extensive debate on this point, see Ian C. Ballon, *The Implications of Making the Denial of Internationally Recognized Worker Rights Actionable Under Section 301 of the Trade Act of 1974*, 28 VA. J. INT'L L. 73 (1987); Terry Collingsworth, *American Labor Policy and the International Economy: Clarifying Policies and Interests*, 31 B.C. L. REV. 31 (1989); Theresa A. Amato, Note, *Labor Rights Conditionality: United States Trade Legislation and the International Trade Order*, 65 N.Y.U. L. REV.



## International Labor Standards and Instruments of Recourse

GATT negotiations provide another forum in which advocates of working women's rights can call for gender-neutral labor standards that promote equality in the international system.

### 3. *Governmental and Private Agreements*

Governmental and quasi-governmental agencies and private employers sometimes declare and enforce non-legislated labor protections. For example, several international agreements negotiated among labor ministries, state-owned or privately-owned airlines, and air transport unions set standards on wages, hours, and working conditions for industry employees. In another arrangement, the U.S. Department of Labor, private growers' councils in Florida, and a parastatal commission created by several Caribbean islands negotiated wages, benefits, hours, and working conditions for unorganized migrant sugar workers. Their accord even contains a grievance procedure permitting workers to complain to commission representatives at the Florida work sites.<sup>69</sup> Women's labor rights advocates should strive to create similar fora for addressing women's labor concerns where appropriate.

### 4. *Voluntary Codes of Conduct*

Codes of conduct promulgated by nongovernmental organizations or agreed upon by multilateral economic coordinating bodies also contribute to international labor law and can be used to further the cause of women in the workplace. For example, the AFL-CIO and a coalition of religious and environmental groups have proposed a code of conduct for U.S. companies operating in the Mexican *maquiladora* sector. The AFL-CIO is currently planning a public campaign to pressure U.S. companies to adopt and comply with the code. The *Maquiladora* Standards of Conduct seek to promote a safe environment and an adequate standard of living for workers, most of whom are women. The Standards address such issues as hazardous waste disposal, chemical leaks, and transportation of toxic materials. They call for full disclosure to workers and communities of the risks associated with the use of chemical materials, and suggest mandatory workplace safety and health committees with training for worker members. The Standards also protect the rights to organize and to be free from racial and gender discrimination, and they call for fair wages, hours, and working conditions. Notably, the *Maquiladora* Standards do not seek to

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79 (1990).

69. Financial irregularities involving salary deductions for health insurance and pension benefits and alleged denials of rights of association for workers who challenge the scheme have marred this system. The House Education and Labor Committee has announced that it will investigate the issue. See Al Kamen, *Probe Sought of Sugar Cane Cutters' Pay*, WASH. POST, July 29, 1991, at A9.

protect women from hazardous chemicals by prohibiting women from working with such chemicals. Instead, they call for disclosure, the right to organize, and the use of committees that would allow female workers to create appropriate protective standards themselves.<sup>70</sup>

Similarly, in 1976, the Organisation for Economic Co-operation and Development (OECD), under pressure from national labor movements in developed countries, devised a set of Guidelines for Multinational Enterprises to operate in member states. The Guidelines discuss and protect the organization, recognition, and collective bargaining rights of unions.<sup>71</sup>

The usefulness of these codes was demonstrated recently when the United Steel Workers of America bypassed the U.S. National Labor Relations Board and complained directly to the OECD that its Guidelines had been violated. When White Consolidated Industries resisted a 1988 union organizing campaign in Tennessee, the union filed a complaint against White's Swedish parent, Electrolux Corporation, with the OECD's Committee on International Investment and Multinational Enterprises. The Steel Workers' charge forced the Committee and the governments in both countries first to confront and then to review the issue. Although no remedy was forthcoming, the action brought Electrolux under intense pressure from both Swedish trade unions and Social Democrat party leaders to reform the practices of its U.S. affiliate. In a later organizing effort by the Paperworkers Union at another Electrolux plant in the United States, the company did not conduct a similar anti-union campaign, and the union prevailed in an election supervised by the National Labor Relations Board.<sup>72</sup>

All of these arenas are available to female trade unionists who seek to challenge discriminatory practices by multinational corporations. Given the predominance of female workers in the *maquiladora* sector, women's rights advocates might well make promotion of the *Maquiladora* Standards of Conduct a priority. The strong provisions of the *Maquiladora* Standards that

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70. See INTERFAITH CTR. ON CORPORATE RESPONSIBILITY, *MAQUILADORA STANDARDS OF CONDUCT* (1991). The proposed code also would abolish barracks-style living quarters for workers and set up a trust fund to improve housing, health care, and sanitary services.

71. ORGANISATION FOR ECONOMIC CO-OPERATION AND DEV., *THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES* 15 (1986). The ILO has also adopted a code of conduct for multinational corporations. The 1977 Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy created a new forum for the consideration of labor rights complaints.

72. See AFL-CIO INDUS. UNION DEP'T, *MAKING THE INTERNATIONAL CONNECTION WORK* 23-25 (1990); see also Brian J. Glade & Edward E. Potter, *Targeting the Labor Practices of Multinational Companies*, FOCUS ON ISSUES (United States Council for International Business), July 1989, at 4. A similar event occurred in 1988, when the United Mine Workers of America petitioned the OECD and the ILO in conjunction with a labor dispute at Enoxy Coal, Inc., a West Virginia mine owned by ENI, the Italian state coal enterprise. The union's action prompted investigations by the governments involved and by the ILO's Freedom of Association Committee. The latter concluded that "a number of actions by Enoxy . . . cannot be said to be conducive to good industrial relations." Glade & Potter, *supra*, at 5.

prohibit discrimination and protect union rights will be especially helpful in promoting women's equality in the workplace.

### 5. *Litigation Strategies*

Foreign workers and their advocates in the United States have launched innovative litigation in U.S. courts to vindicate labor rights claims. This approach is based not on human rights standards, but on traditional principles of administrative, contract, and tort law. For example, plaintiffs in *International Labor Rights Education & Research Fund v. Bush*<sup>73</sup> argued that GSP administrators in the office of the United States Trade Representative had dismissed claims of labor rights abuses in beneficiary countries for political and foreign policy reasons. The plaintiffs argued that such an action was contrary to the congressional mandate to withdraw GSP benefits from labor rights violators. The government argued that the plaintiffs lacked standing, and that the Administration's reviews under the GSP program were conducted within the bounds of the discretion granted to it by Congress. The district court dismissed the complaint as non-justiciable on the grounds that the President has discretion as part of his foreign affairs power to determine whether to pursue claims under this statute.<sup>74</sup>

In *Labor Union of Pico Korea v. Pico Products, Inc.*,<sup>75</sup> Pico Korea, Ltd., a subsidiary of the New York company Pico Products, Inc., laid off three hundred employees at its Korean factory in February 1989, most of whom were women. The company owed these workers back wages for work performed. Employees filed suit in federal court, claiming that the shutdown violated both Korean law and their collective bargaining agreement by failing to give them advance notice of the shutdown and severance pay. The plaintiffs based their claim on three theories: first, a violation of the labor contract, with jurisdiction conferred on the district court by Section 301 of the Labor-Management Relations Act;<sup>76</sup> second, tortious interference with the labor contract by company officials in New York; and third, violation of the Worker Adjustment and Retraining Notification Act.<sup>77</sup> The district court found that a valid contract existed between the plaintiff union and the Korean subsidiary, that the U.S. directors were aware of the contract but caused it to be breached, and that the plaintiffs suffered damages as a result of the breach. However, the court held that New York law insulates a parent corporation whose actions

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73. *International Labor Rights Educ. & Research Fund v. Bush*, 752 F. Supp. 495 (D.D.C. 1990), *aff'd*, No. 90-5390, 1992 U.S. App. LEXIS 1060 (D.C. Cir. Jan. 31, 1992) (per curiam).

74. *Id.* at 499.

75. *Labor Union of Pico Korea v. Pico Products, Inc.*, No. 90-CV-774 (N.D.N.Y. filed July 12, 1990).

76. Labor-Management Relations (Taft-Hartley) Act § 301(c), 29 U.S.C. § 185(c) (1988).

77. Worker Adjustment & Retraining Notification Act, 29 U.S.C. §§ 2101-2109 (1988).

cause its subsidiaries to breach contracts when the parent's actions are motivated by a justifiable business purpose rather than by malice or some other unjustifiable purpose.<sup>78</sup> The court also ruled that the plant notice closing requirement in the collective bargaining agreement between Pico Korea, Ltd., and a local union could not be applied extraterritorially. While the defendant won in this case, *International Labor Rights Education & Research Fund and Pico Products* illustrate the potential for the enforcement of foreign women's labor rights in U.S. courts.

A growing number of foreign-worker plaintiffs are also bringing toxic tort claims against chemical manufacturers or companies that use hazardous materials in their manufacturing processes. The majority of these suits were filed in Texas, because the Texas Supreme Court held in the 1990 decision of *Dow Chemical Co. v. Alfaro* that such suits may be tried on the merits.<sup>79</sup> The Court rejected defendants' argument that the doctrine of *forum non conveniens* requires such suits to be brought in the country where the harm allegedly occurred. As a result of the *Alfaro* decision, workers may find it easier in the future to assert their rights in Texas.

## 6. Union Solidarity Action

United States unions often take ad hoc action in defense of individual workers in other countries. For example, the United Auto Workers (UAW) initiated a campaign to defend Moses Mayekiso, a South African auto union leader who faced the death penalty on charges of treason.<sup>80</sup> Prominent U.S. jurists organized by the UAW monitored the 1989-1990 trial. Their reports placed tremendous international pressure on the South African government to ensure that the proceedings were fair, and in doing so contributed directly to Mr. Mayekiso's eventual acquittal.

In another example, union employees at the Coca-Cola bottling plant in Guatemala City conducted a year-long stay-in strike from 1984 to 1985, protesting the management's plan to cease operations. The plan was announced after several union leaders were killed as a result of death squad terrorism from 1979 to 1982.<sup>81</sup> A massive international support campaign that included

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78. *Pico Products*, No. 90-CV-774, at 9, citing *Felsen v. Sol Cafe Mfg. Corp.*, 249 N.E.2d 459, 461 (N.Y. 1969). Plaintiffs in *Pico Products* have filed notice of appeal to the U.S. Court of Appeals for the Second Circuit.

79. *Dow Chemical Co. v. Alfaro*, 786 S.W.2d 674 (Tex. 1990); see also *Rodriguez v. Mallory Capacitor Co.*, No. 91-09-5152-E (D. Tex. Sept. 23, 1991); Edward Cody, *Disfigured Children, Distressed Parents*, WASH. POST, Oct. 15, 1991, at A18.

80. See Don Stillman, *International Labor Solidarity: The Campaign for Justice for Moses Mayekiso* 48-52 (Oct. 1, 1989) (unpublished manuscript, on file with the Center for Labor-Management Policy Studies of the City University of New York).

81. See *LATIN AM. BUREAU (RESEARCH AND ACTION) LTD., SOFT DRINK, HARD LABOR* 10-13 (1987).

boycotts and work stoppages in Coca-Cola's European plants was coordinated by the International Union of Food and Allied Workers' Associations. The campaign helped prevent the violent eviction of the Guatemalan strikers. The dispute ended with an agreement to reopen the plant and rehire the workers.<sup>82</sup>

In 1988, intervention by another group of U.S. unionists helped end another long strike at the Lunafil textile factory in Guatemala. The labor delegation presented a plan to officials of the Guatemalan embassy in Washington, D.C., stating that they intended to boycott the country's sugar imports to the United States if the strike was not settled. The company's owner also owned of the largest sugar plantation in Guatemala. Faced with this demand, the employer moved quickly to settle the strike on terms acceptable to the workers.<sup>83</sup> The outcome of this case demonstrates that union solidarity, like the other strategies mentioned herein, can be an effective tool in the struggle for increased labor rights in the world economy.

#### IV. CONCLUSION

Advocates of working women's rights must address the main tensions in the debate over international labor standards for women, between protection and promotion of equality. When an internationally established protection runs counter to equal rights claims, international labor law should favor equality over protection. If female workers need special protections, they can seek the appropriate measures themselves either by bargaining directly with employers or through legal, legislative, and political action. For these mechanisms to be effective, women must have the right and opportunity to organize and hold leadership positions in the labor movement.

This paper has suggested that advocates for working women must arm themselves with knowledge and shared experience about the ILO and other arenas. An appreciation of non-ILO tools will help international labor advocates respond to attacks on female workers and change prevailing attitudes concerning protective standards and development rights within the ILO. This is not to deprecate the work or the importance of the ILO, which remains a critical arena for raising worker rights claims. Shortcomings in technical ILO standards should not prevent labor advocates from appreciating that its vital, core human rights conventions and its antidiscrimination convention can be powerful tools to promote women's labor rights on the basis of equality.

Female workers on the global assembly line, on plantations, in domestic labor, and in service-sector jobs must all be able to defend their rights as equals and advance their position through self-organization. Through a program

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82. *Id.* at 31.

83. See Peter Hogness, *One More Hole in the Wall: The Lunafil Strike in Guatemala*, 8 LAB. RES. REV. 1 (1989).

of their own creation and an organization of their own choosing, working women can best exercise grass-roots power in an otherwise impersonal global economy. The role of the ILO in promoting freedom of association and the right to organize and bargain is critical to that effort, as is the creative use of every other forum available to promote the rights of working women.