INTERNATIONAL ORGANISATION OF EMPLOYERS
ORGANISATION INTERNATIONALE DES EMPLOYEURS
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A Response by the International Organisation of Employers to the Human Rights Watch Report — *"A Strange Case: Violations of Workers' Freedom of Association in the United States by European Multinational Corporations"*

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Foreword

In September 2010, Human Rights Watch, published a report entitled *A Strange Case — Violation of Workers' Freedom of Association in the United State by European Multinational Corporations* (hereinafter "Report"). The Report argues that the protections available in the United States for workers who desire to become unionized are insufficient and that the American laws are inconsistent with the protections available under international labour law. Relying on a series of select examples of European-based multinationals' alleged or actual violations of U.S. and international labour law, the Report contends that European companies operating in the United States work under a double-standard when compared to their operations at home and their public pronouncements in codes of conduct and corporate statements of policy.

This paper is a response by the International Organisation of Employers ("IOE") to some of the critical flaws contained in the Report and its analysis. This Response is designed to offer a broader and more complete perspective on this critical debate. The foregoing text will identify and explore misleading aspects of the Report. The analyses in this Response relied upon publicly available information, including the responses from the companies featured in the Report, and the IOE's own review and understanding of the relevant authorities.

To be clear, the IOE and the employer associations and companies it represents do not condone violations of national law and practice. Enterprises that fail to follow national law should be sanctioned in accordance with that law. That said, isolated transgressions such as those presented in the Report, particularly where they have merely been alleged and not proven, do not justify broad assertions regarding claimed deficiencies in U.S. law. Moreover, there exists no support for the notion that companies should adhere to higher standards than those set out under applicable national law and practice where that national law conforms to the basic principles of international law. Any arguments to the contrary, must be summarily rejected.

Ultimately, this critical and complex debate cannot be conducted solely from one perspective. Rather, it requires that there be balance. As such, this Response will serve to challenge certain conclusions and arguments contained in the Report, and to provide those interested in this debate a viewpoint that the Report does not offer.

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Introduction and Executive Summary of the Response

In September 2010, Human Rights Watch, published a report entitled *A Strange Case — Violation of Workers' Freedom of Association in the United State by European Multinational Corporations* (hereinafter "Report").[1]

The Report argues that protections available in the United States for workers who desire to become unionized are insufficient and that American laws are inconsistent with protections available under international labour law. Relying on a series of discrete examples of alleged or actual violations of U.S. law by European-based multinationals' and drawing upon earlier work by the organization,[2] the Report promotes the hypothesis that European multi-nationals, many of which have embraced principles of international labour law in codes of conduct and other internal policies, disregard those principles for their operations in the United States.

By promoting this hypothesis, the Report furthers a common misconception of what "international labour standards" and "international law" are, and how they apply. Rather than clarify that these standards exist to guide and to influence ***governments*** in the formulation of national law and practice, the Report perpetuates the notion that they apply directly to enterprises, and serve to fashion their behaviour. Yet international labour standards do not create obligations that directly apply to employers. They serve as guidance for the creation of laws, and it is those laws that define employer practices.

The Report not only condemns the conduct of a few companies, but also infers that U.S. laws fail to conform to international norms and standards. In doing so the Report goes far beyond the cases at issue. Yet, a careful analysis of the Report's assertions reveal that it misses the mark in a number of ways with respect to U.S. and international law, and the obligations of enterprises.

First, the Report incorrectly asserts that protections available to workers under U.S. labour law do not conform to international labour standards. While U.S. labour law provides a different legal framework from those in most European countries or elsewhere, the U.S. system still fits within the parameters established by international law. Within the context of international labour standards, no one system is better than another so long as each promotes the basic principles of freedom of association and the right to collective bargaining. They are merely different. They reflect different approaches to a common issue that reflect the national social dialogue, and the economic and cultural traditions associated with each country. Compliance with one system in one country does not amount to a double standard if a company complies with another when it operates in a different country. Indeed, U.S. labour law and its procedures, while different from its European counterparts, are consistent with international labour standards.

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1 The HRW Report is available at http://www.hrw.org/en/reports/2010/09/02/strange-case-0 (last visited May 3, 2011).

2 See, Compa, Unfair Advantage — Workers Freedom of Association in the United States Under International Human Rights Standards, Human Rights Watch (2000).

Second, the Report furthers the argument among trade unions that silence with respect to union organizing is what is to be expected of employers if they are to be considered in compliance with the principles of international law. Yet, the principles of freedom of association as defined at the international level promote the free exchange of information and ideas regardless of their source or affinity. Such freedom of expression and opinion is encouraged so long as its manifestation does not interfere with an employee's free choice. Just because an employer's origin is Europe, or it has publicly stated support for instruments that incorporate international principles of labour law, does not mean that the employer forfeits its national rights to freedom of expression and opinion. In fact, to deny employees access to relevant information about unionization would serve to violate the very principles of international law the Report seeks to promote.

Finally, the Report is premised upon the notion that American workers necessarily want or feel a need to be represented by a trade union. Trade union membership in the United States has declined steadily for the past 50 years. The reasons behind this decline vary. Many have nothing to do with employer hostility or alleged deficiencies in U.S. law. In fact polling data suggests that many American workers are satisfied with their employer or their working conditions, and simply do not wish to be represented by a labour union. The preservation of that choice is what the principles of freedom of association exist to further and protect. Just because the workers featured in the cases cited in the Report did not choose to be represented by a labour union does not mean the decision was the result of unlawful or inappropriate actions by an employer. A true understanding of this issue requires meaningful discussion of all of the reasons the workers rejected union representation. The risk of not engaging in such discussion creates the far greater risk of misrepresenting the true sentiments of employees.

A Summary of the Human Rights Watch Report

The Human Rights Watch Report provides a summary of U.S. and international labour law standards that cover the principles of freedom of association.[3] It details the relevant conventions, principles and mechanisms that constitute international labour standards and lists examples of interference with the principles of freedom of association as it has been defined at the international level.[4] It then summarizes the author's opinion with respect to freedom of association under U.S. law.[5]

Following a brief description of U.S. law, the Report outlines how the authors believe a number of aspects of the country's labour laws fall short of international standards.[6] Specifically, it cites areas where U.S. laws have been criticized by the ILO.[7] It also criticizes the secret-ballot election process under the NLRA, and the enforcement mechanisms available under U.S. law.[8]

The Report dedicates a majority of its text to detailing examples of how a handful of European-based multinationals[9] have made public statements of support for international labour standards, and how those very companies have allegedly violated international or U.S. labour laws in their activities in the United States. To support its arguments, the Report cites a mix of public records, employee interviews, newspaper and other accounts. The employers featured in the Report were given an opportunity to provide their position, and responses received were cited in the Report and posted on the Human Rights Watch website.

As a conclusion, the Report offers recommendations to four separate audiences. For European-based multinational corporations operating in the United States, the Report asks them to create "rigorous" mechanisms whereby their U.S. operations could be audited for labour law compliance, to become party to framework agreements with appropriate global union federations, and to consider working with industry-based representative groups that mirror the "works council" model seen throughout Western Europe. For the U.S. Government, the Report asks that it ratify ILO Conventions 87 and 98 and pass a host of legislation that the authors contend would rectify the alleged shortcomings in U.S. labour law described in the Report. The Report seeks to have the European Commission and European Governments place greater scrutiny on the operations of European-based corporations in the United States and to pass legislation mandating that their corporations' operations abroad comply with international principles of freedom of association. Finally, it asks the Organization for Economic Cooperation and Development ("OECD") to refine and enhance its complaint procedure under the OECD Guidelines for Multinational Enterprises.[10]

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3 Report, at pp. 7-16.
4 Report, at pp. 8-9.
5 Report, at pp. 11-13.
6 Report. at pp. 11-16.
7 Report, at pp. 11-13.
8 Report, at pp. 13-16.
9 It is not clear from the Report's methodology how its authors selected the companies featured in the Report.
10 It should also be noted that in the 2011 revisions to the OECD Guidelines, the OECD did not follow the recommendations of the Human Rights Watch Report on this point.

Background — International Labour Law

The globalization of employers and the corresponding globalization of labour organizations, have placed an added importance on the true understanding of international law and international labour standards. Unfortunately, there is a misperception of what "international law" and "international labour standards" are, and because of that misperception, these concepts are frequently misused.

"International labour standards" and "international law" refer to a variety of conventions, principles and mechanisms developed by international organizations and in particular the International Labour Organization ("ILO"). These standards exist to guide and to influence ***governments*** in the formulation of national law and practice. This guidance serves to protect the basic rights of workers, but in a way that takes into consideration the unique cultures, traditions and social dialogue of each nation that applies them. International labour standards do not define a uniform path for every nation to follow. Rather, they account for the fact that an acceptable approach in one country, may contradict cultural traditions or economic norms in another. This framework emphasizes the fact that there is no singular way to do things.

Contrary to common misconception, international labour standards do not create obligations that directly apply to employers. They establish a framework for the development of laws, and those laws establish a framework for employer behaviour. To the extent national law and practice conform to international labour standards, an employer cannot be accused of disregarding them. Moreover, no one can justifiably condemn an employer for operating under a double standard where it complies with national laws that differ from one country to the next. Different countries require different approaches to the same issue. In the end, so long as a nation's laws fit within the parameters defined by international labour standards, compliance with those laws is all that is required.

The Principles of Freedom of Association Under International Law

The principles of freedom of association as they are defined at the international level appear in a variety of international instruments. Article 20 of the United Nations' Universal Declaration of Human Rights provides for the right to freedom of association, and the corresponding right not to associate.[11] Freedom of association and the right to collective bargaining are cornerstone principles of the ILO.[12] Two ILO Conventions govern the basic principles of freedom of association and the right to collective bargaining as they are defined at the international level: Conventions 87 and 98.

Convention 87, Freedom of Association and Protection of the Right to Organise, was adopted in 1948,[13] and focuses on the rights of workers to form and join labour organizations freely.[14] Article II of Convention 87 provides that "[w]orkers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorisation."[15]

Convention 98, Right to Organise and Collective Bargaining Convention, was adopted in 1949,[16] and relates to protections of workers who seek representation and the right to engage in collective bargaining.[17] Article IV of Convention 98 provides that "[m]easures appropriate to national conditions shall be taken, where necessary to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements."[18]

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11 U.N. UNIVERSAL DECLARATION OF HUMAN RIGHTS Art. XX (1948).

12 The ILO Constitution mentions the freedom of association in its preamble. In relevant part, it states: "And whereas conditions of labor exist involving such injustice hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required; as, for example, by … recognition of the principle of freedom of association …" U.N. ILO CONST. pmbl., available at http://www.ilo.org/ilolex/english/iloconst.htm (last visited May 3, 2011). ILO Conventions apply to member nations that have ratified them. Article 20 of the ILO Constitution governs the registration of Conventions by the ILO with the United Nations. The text reads, "[a]ny Convention so ratified shall be communicated by the Director-General of the International Labour Office to the Secretary-General of the United Nations for registration in accordance with the provisions of article 102 of the Charter of the United Nations but shall only be binding upon the Members which ratify it." ILO CONST. Art. XX. A Convention is an instrument of the ILO created by the ILO Conference and ratified by member states. U.N. ILO CONST. Art. XIX. The principle of freedom of association is also found in the 1998 Declaration on Fundamental Principles and Rights at Work which apply to ILO member states as "principles" to be realized even if they have not ratified the Conventions from which the principles are drawn.

13 U.N. ILO, Convention No. 87 (1948).

14 *Id.*

15 *Id.*, at Art. II.

16 U.N. ILO, Convention No. 98 (1949).

17 *Id.*

18 *Id.* at Art. IV.

In addition to the ILO Conventions, the international commitment to the principles of freedom of association appears in the ILO's 1998 Declaration on Fundamental Principles and Rights at Work ("1998 Declaration"). The 1998 Declaration was adopted as a means to guide every member nation of the ILO in its respect for labour rights solely by virtue of membership in the ILO, irrespective of whether a nation has ratified a particular convention.[19] The 1998 Declaration sets forth four core principles of international labour law, the first of which is "freedom of association and the effective recognition of the right to collective bargaining."[20]

As a means to examine a ***government's*** adherence to the principles of freedom of association and collective bargaining at the international level, the Governing Body of the ILO established a separate Committee on Freedom of Association ("CFA" or "Committee") "for the purpose of examining complaints about violations of freedom of association, whether or not the country concerned had ratified the relevant conventions."[21] The CFA's stated purpose is "not to blame or punish anyone, but rather to engage in a constructive tripartite dialogue to promote respect for trade union rights in law and practice."[22] Employers' or workers' organizations may bring a complaint against any member state where they believe the principles of freedom of association are not being respected.[23]

Over the years, the CFA has examined thousands of cases and developed a substantial body of recommendations upon which it relies to review the principles of freedom of association when examining new complaints.[24] CFA case examinations are not binding law. Rather, they are recommendations to states which are "intended as a tool to guide reflection relating to the policies and actions to be adopted so as to ensure the fundamental principles of freedom of association."[25] Even so, they serve as guidance on the principles of freedom of association and the right to collective bargaining as they are defined at the international level.

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19 U.N. ILO, Universal Declaration on Fundamental Principles and Rights at Work (1998), available at http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm (last visited May 3, 2011).

20 *Id*. The other three areas include the elimination of forced labor, the abolition of child labor and the elimination of discrimination in employment and occupation.

21 The ILO describes the Committee On Freedom of Association in this manner on its website. *See* http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-on-freedom-of-association/lang--en/index.htm (last visited May 3, 2011).

22 Freedom of Association — Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO, 2006 DIGEST, ¶ 4, available at The 2006 CFA Digest of Decisions can be found at http://www.ilo.org/global/standards/information-resources-and-publications/publications/WCMS_090632/lang--en/index.htm (last visited May 3, 2011) (hereinafter "2006 Digest").

23 *Id*. at Annex I, p. 235, ¶ 31.

24 *Id*. at Introduction, p. 3. See also, http://www.ilo.org/ilolex/english/cocaselistE.htm (last visited May 3, 2010).

25 *Id*. at Preliminary Remarks, p. 5.

The Principles of Freedom of Association in the United States

The principle of freedom of association is a cornerstone principle of law in the United States.[26] There are numerous pieces of legislation, treaties and agreements to which the United States is a party, that reference promotion of freedom of association and the right to collective bargaining.[27] Although it promotes the principle of freedom of association as a general matter, it is unlikely the country can ratify Conventions 87 or 98.[28] Apart from the technical reasons why Conventions 87 and 98 would require a substantial revision of U.S. federal and state laws, ratification would "pose a genuine constitutional dilemma in the United States" because the Tenth Amendment to the United States Constitution prohibits the federal government from mandating how a state organizes its affairs and ratification of these conventions "would clearly amount to an unconstitutional interference into the manner in which state and local governments organize their personnel policies to deliver services to the public."[29]

Notwithstanding the technical issues associated with ratification and consistent with the country's commitment to the principles, freedom of association and the right to engage in collective bargaining have long been at the core of labour laws in the United States. It is and has been the policy of the United States to encourage "the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."[30] The National Labor Relations Act ("NLRA") — the key U.S. law governing labour relations in the United States — was enacted in 1935 to promote this policy and to establish an orderly mechanism that allowed employees in the private sector to organize and bargain collectively, while at the same time avoid economic disruption and industrial unrest.[31]

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26 The freedom of speech and of assembly have been guaranteed in the United States through the Bill of Rights. U.S. CONST. Amend. I.

27 Examples include the following: Congressional Report on legislation governing U.S. participation in international financial institutions (H.R. Conf. Rep. 4426, 103 H. Rpt. 633, at § 1621(a) (2d Sess. 1994)); legislation governing the Generalized System of Preferences (19 U.S.C. §§ 2461 *et seq.*); legislation forming the Overseas Private Investment Corporation (22 U.S.C. §§ 2191 *et seq.*); legislation establishing the Caribbean Basin Initiative (19 U.S.C. §§ 2702 *et seq.*); Section 301 of the Trade Act of 1988 (*Id.* §§ 2411 *et seq.*); appropriations for economic development grants through the Agency for International Development (22 U.S.C. §§ 2151 *et seq.*); the laws governing U.S. participation in international lending institutions (*Id.* §§ 1621 *et seq.*). *See also* Compa, *Unfair Advantage*, at 48-50 (Human Rights Watch, 2000). These principles have also been embodied in bilateral free trade agreements with numerous countries, including the Israel Free Trade Agreement (24 ILM 653 (1985)), The North American Free Trade Agreement (32 ILM 289 (1994); 19 U.S.C. § 3471), and The Dominican Republic-Central America-United States Free Trade Agreement (43 ILM 514 (2004); 19 U.S.C. § 4001). These agreements can also all be found at http://www.ustr.gov/trade-agreements/free-trade-agreements (last visited May 3, 2011). Additionally, and although not yet ratified, the U.S. government has included a required commitment to abide by the ILO's Declaration on Fundamental Principles and Rights at Work in its proposed trade agreements with Columbia, Panama and South Korea. The final texts of these proposed agreements are all available at http://www.ustr.gov/trade-agreements/free-trade-agreements (last visited May 3, 2011).

28 *See* Edward E. Potter, *Freedom of Association, The Right To Organize And Collective Bargaining — The Impact On U.S. Laws And Practices Of Ratification Of ILO Conventions, NO. 87 And NO. 98* (Washington: Labor Policy Assn.) (1984).

29 *Id.* at 70.

30 29 U.S.C. § 151, *et seq.*

31 *See Id.* .

At the heart of the NLRA are the Section 7 rights which the Report characterizes as "a ringing affirmation of workers' freedom of association."[32] Section 7 of the NLRA provides that "[e]mployees shall have the right to self-organization, to form, join or assist labour organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities."[33] Often overlooked is the fact that Section 7 rights apply equally to those employees who do not wish to be represented by a labour union.[34]

32 Report, at p. 11.
33 29 U.S.C. § 157.
34 *Id.* § 158(a)(3), (b)(1)(A).

Scrutiny of U.S. Law Within the Context of International Law

While the United States has not ratified Conventions 87 or 98, the ILO still examines its labour laws and practice when complaints are filed.[35] It is these cases that form the foundation of the Report's criticism of U.S. labour law. CFA Complaints against the United States have been varied.[36] Notably, during the Administration of United States President George W. Bush, the CFA was used by American trade unions to challenge decisions under domestic labour law with which they did not agree.[37] Most CFA case examinations of U.S. law have resulted in conclusions and recommendations that the law or practice subject to the complaint is consistent with the principles of freedom of association,[38] and others have sought to address perceived deficiencies.[39] However, there has never been a wholesale criticism of the NLRA or NLRB by the CFA or the ILO.[40]

35 2006 Digest, at Annex I, p. 235, ¶ 31.

36 They range from complaints about the decision of President Ronald Reagan to terminate the federal air traffic controllers represented by the Professional Air Traffic Controllers' Organization ("PATCO") for engaging in an illegal strike (U.N. ILOCFA, 211th Rep., Case No. 1074, United States (1981)), to actions of the United States in the Panama Canal Zone. U.N. ILOCFA, 6th Rep., Case No. 42, United States (1953).

37 *See*, U.N ILOCFA, 350th Rep., Case No. 2547, United States (2007) (NLRB decision on graduate teaching and research assistants); U.N ILOCFA, 349th Rep., Case No. 2524, United States (2006)(NLRB decision on the definition of supervisor); U.N. ILOCFA, 332d Rep., Case No. 2227, United States (2002) (United States Supreme Court decision regarding remedies available to undocumented workers under the National Labor Relations Act).

38 95 U.N. ILOCFA, 211th Rep., Case No. 1074, United States (1981) (concluding that the U.S. government acted appropriately in terminating striking air traffic controllers and using controllers from the military); U.N. ILOCFA, 349th Rep., Case No. 2524, United States (2006) (concluding that the exclusion of certain classifications of employees under the NLRA can be done provided that exclusion is limited to workers who genuinely represent the interests of employers).

39 U.N. ILOCFA, 350th Rep., Case No. 2547, United States (2007) (concluding that the NLRB decision excluding graduate teaching and research assistants did not comport with the principles of freedom of association); U.N. ILOCFA, 344th Rep., Case No. 2460, United States (2005)(concluding that the law in the State of North Carolina that prohibits the state or any subdivision thereof from entering into any collective bargaining agreement was contrary to the principles of freedom of association, and should be repealed).

40 At one point in 2007, the AFL-CIO filed a complaint which was docketed as ILO CFA Case No. 2608, in which it sought to enlist the assistance of the CFA in a resounding and wholesale criticism of the NLRA as administered by an NLRB appointed by President George W. Bush. Perhaps in recognition of the reality that the labour laws of the United States in fact complied with the principles of international labor law, the AFL-CIO withdrew the complaint in early 2009. U.N. ILOCFA, 353d Rep., Case No. 2608, United States (2009).

Contrary to the Report's Assertions, U.S. National Law Conforms to the Principles of Freedom of Association as They Are Defined Internationally

The Report incorrectly asserts that certain key protections available to workers under U.S. labour law do not conform to the principles of freedom of association as defined at the international level. The Report then uses this broad assumption to argue that European multinational corporations, which generally have collaborative working relationships with labour unions and other workers' groups in their home countries, and which frequently promote international labour standards throughout all of their operations, act under a double standard with respect to their U.S. operations. Contrary to these arguments, however, key aspects of U.S. labour laws conform fully to international law and the principles of freedom of association as they are defined at the international level. As such, compliance by any enterprise with U.S. labour laws, whether that enterprise is based in Europe or not, amounts to compliance with principles of international law. In short, there is no double standard as the Report contends.

The Report goes on to identify conduct considered to amount to "interference" with freedom of association at the international level, and argues that effective laws at the national level are essential to prohibiting such conduct.[41] To illustrate its point, the Report contains a listing of conduct the CFA has found to violate the principles of freedom of association. Cited examples of interference include paying employee bribes, employee dismissal, discipline, promotion or blacklisting.[42] The Report then goes on to assert that employers and anti-union consultants have engaged in such conduct, but fails to tie such conduct to any of the featured employers. While there should be no dispute that such conduct must be prohibited by national law and practice if the law is to effectively promote the international principles of freedom of association, the Report fails to acknowledge that U.S. law does just that.

41 Report,at p. 8-9.
42 *Id*. at p. 9.

Under U.S. labour law it is unlawful for an employer to "***interfere*** with, restrain or coerce employees" in the exercise of their rights to organize and bargain collectively.[43] For each example of interference identified in the Report as being a violation of international law,[44] one can find ample authority that it is also a violation under U.S. law.[45]

Beyond these specific examples, the Report discusses at great length its conclusion that U.S. labour law insufficiently limits employer speech to protect employees' trade union rights, and emphasizes the so-called "captive audience meeting" it describes as "filled with predictions of dire consequences if workers organize."[46] The Report contends that there is but one limitation on such meetings — that employers cannot conduct them within 24 hours of a representation election.[47] In reality, there are many. For example, statements by an employer that would be considered the "dire consequences" referred to in the Report have long been considered unlawful under U.S. law.[48]

The Report also fails to address the degree of personalized and other access available to unions in the United States that is not available to employers, choosing instead to focus on the fact that labour unions do not have the same degree of "access" to employees in the workplace.[49] For example, unlike unions, employers are not allowed to visit employee's homes to discuss a union organizing drive.[50] It is also unlawful for an employer to attempt to bar union officials from property or to call the authorities to have them removed where others are permitted similar access.[51] There are limits on

43 29 U.S.C. § 158(a)(1).

44 Report, at p. 8-9.

45 The body of law governing interference under the NLRA is extensive, and very fact-dependent. The following is a mere sampling of cases holding that the very same infractions cited in the Report would be NLRA violations: *Stride Rite Corp.*, 228 NLRB 224 (1977) (holding that employees could infer that the Employer's repeated reference to the Union causing other plants to close and the high unemployment situation locally, placed their employment in jeopardy if they supported the union); *NLRB v. Crown Can Co.*, 138 F.2d 263, 267 (8th Cir. 1943) ("[i]nterference is no less interference because it is accomplished through allurements rather than coercion."); *McKenzie Eng'g Co. v. NLRB*, 182 F.3d 622, 628 (8th Cir. 1999) (offer of $2 per hour above union scale to refrain from joining union); *V&S ProGalv, Inc. v. NLRB*, 168 F.3d 270, 277–78 (6th Cir. 1999) (employer's proposal of a plan to match union dues in a savings fund). Additionally, it is unlawful under U.S. labor law to "grant[ ] bonuses to some or all non-union member staff and excluding union members from such bonuses[.]" *Peyton Packing Co.*, 129 NLRB 1275 (1961) (withholding bonus as punishment for selecting union in election violated § 8(a)(1)). With respect to other forms of discrimination, the NLRB has found similar violations. *Gravure Packaging, Inc.*, 321 NLRB 1296 (1996) (dismissals); *Pillsbury Chem. & Oil Co.*, 317 NLRB 261 (1995) (demotions); *NLRB v. AMFM of Summers County*, 1996 U.S.App. LEXIS 14894, at *6 (4th Circuit 1996) (artificial promotion); *Truck and Trailer Service*, 239 NLRB 967 (1978) (blacklisting).

46 Report, at p. 11.

47 *Id.* at p. 11, n. 22.

48 *See, e.g., Taylor Wharton Division*, 336 NLRB 157 (2001); *Metalite Corp.*, 308 NLRB 266 (1992).

49 Even under international law, union access to the workplace is limited by "due respect for the rights of property and management." U.N. ILOCFA, 284th Rep., Case No. 1523, at ¶ 195, United States (2006). There, the CFA refused to condemn the way U.S. law has balanced the right of a trade union to access an employer's facility with the property and management right of the employer.

50 As just one example, an employer visit to a home to discuss a union organizing drive is prohibited and grounds to set aside an election where such visits from union members are generally not precluded. *See e.g., Peoria Plastic Co.*, 117 NLRB 545, 547-48 (1957) ("we have . . . consistently condemned the technique of calling all or a majority of the employees in the unit into the employer's office individually or calling upon them at their homes to urge them to reject a union as their bargaining representative as conduct calculated to interfere with the free choice of a bargaining representative regardless of whether or not the employer's actual remarks were coercive in character."); *F.N. Calderwood, Inc.*, 124 NLRB 1211, 44 LRRM 1628 (1959).

51 *See, e.g., Sandusky Mall*, 329 NLRB 618 (1999).

the manner in which employers can have individual meetings with employees about a union organizing drive, regardless of what is actually said, as a means of avoiding unlawful interference with employees' rights to organize.[52] American trade unions are also pioneers in the field of disseminating messages through social media using websites, Facebook pages and other forums. The tools available to access prospective members are significant, and demonstrate that the degree of employee access to labour unions in the U.S. is far more consistent with international law than the Report suggests.

52 *See, e.g., Economic Mach. Co.*, 111 NLRB 947, 949 (1955) ("the technique of calling the employees into the Employer's office individually to urge them to reject the Union is, in itself, conduct calculated to interfere with their free choice in the election. This is so, regardless of the noncoercive tenor of an employer's actual remarks.")

U.S. National Law Conforms to the Principles of Freedom of Association with Respect to Freedom of Expression and Opinion

In the context of a unionization effort, U.S. law also provides a comprehensive definition of what statements by an employer constitute "interference," whether such statements occur during a meeting with employees or in another setting. In the U.S., an extensive and nuanced body of authority regulates employer speech, and prohibits such interference. The NLRB and U.S. courts have consistently qualified an employer's right[53] to express its opinion during a unionization effort to ensure that employees' rights are not prejudiced.[54] The restrictions on employer expression exist to ensure that employees may choose freely whether to be represented by a union.

U.S. labour law's restrictions on employer speech and conduct that interferes with employee freedom of association rights mirror the prohibitions prescribed by international law. The trade union movement exists in large part because of the right to freedom of expression and opinion. At the international level, the boundaries of this right had been defined by complaint examinations involving trade unions and alleged suppression of expression and opinion in support of them.[55] In May 2010 the CFA endorsed an employer's right to free expression and opinion.[56] CFA Case No. 2683 involved the United States, and the decision confirmed that employers have a right under international law to freedom of expression and opinion in the context of a union organizing effort.[57]

In Case No. 2683, the complaint introduced evidence of employer communications to employees designed to further the employer's position that the employees should reject the union as their bargaining representative. It characterized the employer's conduct as an "aggressive and sustained anti-union campaign to suppress voter turnout in the union election and interfere with their workers' right to organize."[58] Among other things, the complaint claimed that the employer "saturated" the workplace with "an overwhelming anti-union message… designed to inundate employees with anti-union

53 Under U.S. law, an employer's right to express its opinions during an organizing drive are embodied in Section 8(c) of the NLRA.

54 *Gissel Packing Co.*, 395 U.S. 575, 617 (1969). "Any assessment of the precise scope of employer expression, of course, must be made in the context of its labor relations setting. Thus, an employer's rights cannot outweigh the equal rights of the employees to associate freely . . . And any balancing of those rights must take into account the economic dependence of the employees on their employers, and the necessary tendency of the former, because of that relationship, to pick up intended implications of the latter that might be more readily dismissed by a more disinterested ear. Stating these obvious principles is but another way of recognizing that what is basically at stake is the establishment of a non-permanent, limited relationship between the employer, his economically dependent employee and his union agent, not the election of legislators or the enactment of legislation whereby that relationship is ultimately defined and where the independent voter may be freer to listen more objectively and employers as a class freer to talk."

55 2006 Digest, at ¶¶ 154-159.

56 U.N. ILOCFA 357th Rep., Case No. 2683, ¶¶ 584-85, United States (2010). It is, however, not the only CFA pronouncement endorsing the notion of employers' freedom of speech under international labor law. *See e.g.*, U.N. ILOCFA 356th Rep. Case No. 2654, ¶ 381, Canada (2009); U.N. ILOCFA, 350th Rep., Case No. 2254, ¶¶ 1592(g), 1655, Venezuela (2003); U.N. ILOCFA, 331st Rep., Case No. 2220, ¶ 576, Kenya (2002); U.N. ILOCFA, 216th Rep., Case No. 1084, ¶ 36, Nicaragua (1981).

57 U.N. ILOCFA, 357th Rep., Case No. 2683, United States (2010).

58 *Id.* at ¶¶ 451, 457, 464.

messages and misleading information."[59] The U.S. labour union involved had argued this position before the national authorities, which concluded the employer's conduct did not amount to unlawful interference.

The CFA refused to condemn the voting procedure under national labour law, or the employer's campaign statements.[60] In its conclusions, the CFA noted that "the national process did not find interference with freedom of association."[61] Had the CFA disagreed with that conclusion, it would have so stated.[62]

Case No. 2683 demonstrates that freedom of expression and opinion are fundamental rights under international law irrespective of their origin or content. The complaint was an endorsement of the approach under U.S. law to determine whether employer speech amounts to interference. "While having stressed the importance which it attaches to freedom of expression as a fundamental corollary to freedom of association and the exercise of trade union rights on numerous occasions, the Committee also considers that they must not become competing rights, one aimed at eliminating the other."[63]

The Committee went on to write that "providing all relevant ballot information, including how to vote against a union, would be acceptable as part of the process of a certification election," but an employer's active participation in a way that interferes with an employee's exercise of free choice would be a violation of the principles of freedom of association.[64]

Even more, the CFA in Case No. 2683 explained that the boundaries between permissible employer speech and impermissible employer interference under international law are to be defined by national legislation.[65] In support of this proposition, the CFA cited a case arising out of Canada,[66] in which it found Canadian provincial legislation to be compatible with the principles of freedom of association as defined at the international level ***because*** the national legislation provided that speech which interfered with the rights of workers to form a labour union violated the law.[67] There, the Committee considered amendments to labour laws in Canada that permitted employers to communicate with their employees "not only facts but

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59 *Id.* at ¶ 464.

60 The Report's authors' analysis of this decision does not comport with the obvious decision by the CFA to defer to the national labor inspectorate with respect to whether the employer's conduct during the union campaigns amounted to interference condemned by international law. Report, at p. 71 n.236. Had the CFA considered that the conduct of the employer in the case to constitute interference, it would have so stated. It did not.

61 U.N. ILOCFA, 357th Rep., Case No. 2683, ¶ 584, United States (2010).

62 *Id.* at ¶ 585 ("In this regard, the Committee wishes to recall that it has had the opportunity to review the question of employers' freedom of expression in a recent case where, observing that the protection afforded by unfair labour practices in the country included protection against freedom of speech that would interfere with the formation of any labour organization or with the selection of a trade union as a representative for the purpose of bargaining collectively, found that the principles of freedom of association did not appear to be violated."). U.N. ILOCFA, 356th Rep., Case No. 2654, ¶ 381, Canada (2008).

63 U.N. ILOCFA, 357th Rep., Case No. 2683, ¶ 584, United States (2010).

64 *Id.*

65 *Id.* at ¶ 585 .

66 U.N. ILOCFA, 356th Rep., Case No. 2654, Canada (2008).

67 *Id.*

opinions" in connection with the employees' decision to affiliate with a labour union.[68] Prior to that time, the authorities had interpreted the legislation as prohibiting all forms of employer communication.[69] The CFA expressly rejected the challenge to the legislative endorsement of Canadian employers' rights to express their opinions about unionization.[70] Not surprisingly, the legislative protections against employer interference under Canadian law largely mirror those available in the United States.[71]

Following adoption of Case No. 2683 by the ILO's Governing Body in May of 2010, the ILO issued a statement that emphasized the CFA's conclusion that freedom of expression and opinion, even when exercised by an employer, is a fundamental aspect to freedom of association. In a letter on behalf of the Director General of the International Labour Organization to the Secretary General of the International Organization of Employers, the ILO emphasized the importance that freedom of expression and opinion has in the context of freedom of association. In that letter, the ILO wrote that "freedom of expression is a basic civil liberty whose protection along with other basic civil liberties, is essential to the meaningful exercise of freedom of association. Care should be taken within the national context, along the lines of the basic principles mentioned above, to ensure that the former freedom does not interfere in practice with the free choice of workers in relation to their right to organize."[72]

Case No. 2683 is therefore an endorsement of the notion that, under international law, freedom of expression and opinion is not only available to unions and workers, but also to employers. It highlights the fact that the very balancing that international law expects of legislative schemes to protect and promote freedom of association at the national level exists under U.S. law, and that this balancing is sufficient to protect the rights of U.S. workers whether they are employees of a U.S. or European employer.[73]

The Human Rights Watch Report also ignores the significant point that employers have a right under international law to express their opinion even if that opinion is one that opposes unionization. Instead, it focuses on isolated and anecdotal examples of company opposition to unionization, some that were deemed a violation of U.S. law, and some that were not. By doing this, it makes the broader argument that companies are allowed too much latitude under U.S. law to oppose unions and that European companies should refrain from taking advantage of this latitude.[74] Although the Report acknowledges "that employer silence is not required under international standards," it employs a definition of "interference" that is so broad that it amounts to a prohibition of employer expression critical of unions. Indeed, nowhere in the Report is there any

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68 *Id.*

69 *Id.* Notwithstanding the support accorded such a practice by the trade unions in the case involving Canada, such a limitation on employer speech violates international labor standards since it stifles the free exchange of information and opinion so critical to the principles of freedom of association.

70 *Id.*

71 *Compare* U.N. ILOCFA, 356th Rep., Case No. 2654, ¶ 381, Canada (2008), *with* 29 U.S.C. § 157.

72 *See,* Letter from Karen Curtis, Deputy Director of the International Labour Standards Department, on behalf of Juan Somavia, to Antonio Peñalosa, Secretary General of the IOE (July 12, 2010). Copy maintained on file at the offices of the International Organisation of Employers.

73 *See, e.g., Gissel Packing Co.*, 395 U.S. at 617.

74 *See, e.g.*, Report, at pp. 11-13.

indication of the type of employer expression or opinion its authors would consider appropriate under U.S. or international law.

Ultimately, the principles of freedom of association as they exist at the international level are compromised when used to deny workers the benefit of all relevant information regarding unionization, irrespective of its source or affinity. The CFA has written that "[t]he full exercise of trade union rights calls for the free flow of information, opinions and ideas, and to this end workers, employers and their organizations should enjoy freedom of opinion and expression at their meetings, in their publications and in the course of other trade union activities."[75] To deny workers such information, even as the result of voluntary restraint by an employer merely because of its content, contradicts this core principle. Implicit in an enterprise's embrace of international labour law principles lies an obligation ***not*** to stand by idly and remain silent while its workers are considering whether or not to affiliate particularly where national law and practice allows for such expression. They should receive the benefit of relevant information from all perspectives, and not solely that of the union.

75 2006 Digest at ¶ 154.

As a Procedural Matter, the NLRA and NLRB Effectively Protect Workers' Freedom of Association Rights

In addition to the substantive criticism of U.S. labour laws, the Report also criticizes the procedural mechanisms of the U.S. authorities to provide remedies expeditious and effective enough to protect workers' freedom of association rights. The Report argues that the time needed to ultimately resolve labour disputes prejudices the rights of unions to organize workers effectively and, more generally, to maintain adequately employees' freedom of association rights.[76] While some cases before the U.S. authorities take long periods of time to adjudicate, in general, available information belies the Report's claims that such delays are the general rule. Within this context, the criticisms levelled by the Report at the featured companies for exercising their rights of appeal are unfounded.

Contrary to the Report's contention, the ILO has recognized the U.S. system as an effective mechanism to enforce workers' rights. "[T]he Committee notes that the NLRA does establish an elaborate system for the hearing and adjudication of unfair labour practices complaints before the NLRB, with possibilities of appeal by both sides, up to the Supreme Court in certain situations. As a specialised quasi-judicial national body, the NLRB issues binding decisions after hearing witnesses, considering evidence and arguments — frequently very complex due to the nature of unfair labour practices cases — weighing the respective interests of the parties and interpreting the domestic labour legislation and jurisprudence as applied to a given set of facts. Based on the evidence submitted, it appears that the majority of cases are processed expeditiously by the NLRB."[77]

The CFA's declaration serves as an endorsement at the international level of the very mechanisms the Report critiques. Moreover, with this statement the CFA acknowledges the reality that labour disputes are complex and fact-sensitive, and require time to thoughtfully and correctly adjudicate. Such procedures ensure that the rights of all parties have been respected properly and their interests protected. Both U.S. and international law provide protection for workers who wish to join a labour union, and those who do not. To subordinate the protections and rights available to workers in favour of expedited proceedings that would benefit the rights of trade unions, does not further the principle set out in ILO Convention 87 that workers shall have the right to be represented by a labour union "of ***their*** own choosing."

Irrespective of what might be an ideal amount of time that a proceeding should take in order to conform to the principles of international law, available statistical evidence shows that, with limited exceptions, the NLRB routinely adjudicates labour matters quickly. To that end, the NLRB enacted a strategic plan in 2007 to aid it in handling cases expeditiously and has incorporated performance measures to track its success.[78]

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76 *See, e.g.*, Report, at pp. 15-16.

77 U.N. ILOCFA, 284th Rep., Case No. 1523, ¶ 193, United States (2006).

78 *See. e.g.*, NLRB 2010 Annual Report, at p. 18, available at http://www.nlrb.gov/performance-and-accountability (last visited May 3, 2011).

Available statistical information shows the government's efforts have been successful. In fiscal year 2010, 95.1 percent of all initial elections were conducted within 56 days of filing of the petition. Initial elections in union representation cases were conducted in a median of 38 days from the filing of the petition.[79] In the same year, the NLRB resolved 86.3 percent of all cases involving questions concerning representation within 100 days from the filing of the representation case petition, an improvement from the 84.4 percent in fiscal year 2009 and 83.5 percent in fiscal year 2008.[80] The NLRB also resolved 73.3 percent all charges of unfair labour practice cases by withdrawal, by dismissal, or by closing upon compliance with a settlement or NLRB order or court judgment within 120 days of the filing of the charge, an improvement from the 71 percent in fiscal year 2009 and 68 percent in fiscal year 2008.[81] Finally, the NLRB closed 84.6 percent of meritorious (prosecutable) unfair labour practices within 365 days of the filing of the unfair labour practice charge, an improvement from the 79.7 percent in fiscal year 2009 and 76 percent in fiscal year 2008.[82]

These figures do not portray an agency systematically burdened by delay or ineffectiveness. To the contrary, they show a labour inspectorate that in the first instance generally resolves labour disputes quickly, and in the second instance, protects the basic rights of interested parties. Ultimately, the data demonstrates that the CFA's endorsement of the U.S. system is well founded, and that enterprises, no matter where they are from, should not be reluctant to exercise rights available to them under U.S. law.

Notwithstanding the available information, the Report seems to disregard the basic rights afforded to all parties under the available administrative and judicial procedures of U.S. law, and implies that the featured companies somehow were acting inappropriately when they pursued appeals where they were accused of wrongdoing. Although the Report presents examples of various proceedings before the NLRB and federal courts that were pursued by the featured employers, there is no meaningful discussion of the broader context of these disputes, including the basis for the employer's objections and how they arose. Moreover, there is no meaningful discussion about the extent to which the employees working at the facilities of the featured employers also opposed unionization. In short, the Report intimates that the objections that formed the basis for these disputes were frivolous or intended to interfere with the wishes of a majority of the employees at issue to be unionized. Such an approach marginalizes the highly complex and fact-sensitive nature of labour disputes — a reality recognized by the ILO. Moreover, it disregards the basic notion that the protection of rights requires time to ensure that ***all*** parties' rights are respected and, most importantly, that the majority of workers' wishes — whatever those wishes may be — are reflected accurately.

79 *Id.* at p. 32.
80 *Id.* at p. 19.
81 *Id.*
82 *Id.*

Despite its tone and implications to the contrary, the Report does not cite to a single instance in which any of the featured employers pursued an appeal, or took a position before the government authorities that was later deemed by the authorities to be frivolous or an abuse of the process. The reality is that nothing contained in the Report supports the notion that any of the featured employers acted improperly by exercising their rights under U.S. labour law that they did. Moreover, nothing contained in the principles of international law or the employer policies cited in the Report supports the notion that employers should refrain from pursuing their legitimate rights under U.S. law in favour of expedited unionization of members of its U.S. workforce.

The Decline of Labour Unions in the United States

The Report also appears to promote the presumption that workers in the United States inherently desire to be represented by a trade union. In support of that presumption, the Report cites a small number of anecdotes in support of unionization at the cited facilities of the featured employers. These accounts promote the notion that the sentiments of these few individuals are shared by a majority of employees at the various companies, and the American worker in general. Moreover, implicit in this presumption is the contention that where the labour union was unable to organize workers successfully at the featured facilities, it was the direct result of conduct of the employers. These assumptions belie available data, which presents a far more complicated picture of worker interest in labour union representation in the United States.

Union membership in the U.S. has declined significantly over the last 50 years. This decline cannot be attributed solely to employer hostility or alleged deficiencies in the law.[83] In fact, it has been persuasively argued that the web of employment-related legislation protecting individual employee rights, much of which was enacted at the behest of organized labour, has been a leading cause of its decline.[84] One former government official, Former NLRB Chairman Peter Schaumber, attributes this to "a complex set of social, economic, political, historical, and competitive factors" [and that the Board's decisions] "are a small drop in a very large sea."[85] It therefore does not necessarily follow that employees as a rule desire to be represented by a union to protect their rights in the U.S.[86]

Polling data confirms that trade unions are not nearly as popular in the United States as the Report would lead one to believe from the few examples it cites. One poll conducted in 2009 revealed that a mere nine percent of un-represented workers in the U.S. wished to join a union, while 81 percent did not.[87] Another poll conducted in

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83 *See eg.*, Richard Bales, *Article: The Discord Between Collective Bargaining and Individual Employment Rights: Theoretical Origins and a Proposed Reconciliation*, 77 B.U.L. Rev. 687, 696-97 (October, 1997) ("Explanations [for labor's decline] that focus on . . . the recent resurgence of employer belligerence to unionization fail to account for the fact that union density began its steady decline forty years ago, and continued apace through President Carter's pro-labor tenure. Likewise, commentators who argue that the reasons for unions decline are the weak enforcement mechanisms or the inherent contradictions contained with the NLRA cannot explain why, for its first twenty years, the collective bargaining model was so successful.").

84 *See generally Id.* at 694-702 (explaining the various schools of thought on dwindling union membership in the United States, including the rise of individual employee employment rights legislation); Katherine Van Wezel Stone, *The Legacy of Industrial Pluralism: The Tension Between Individual Employment Rights and the New Deal Collective Bargaining System*, 59 U. Chi. L. Rev. 575, 593 (1992) ("the emerging regime of individual employee rights represents not a complement to or an embellishment of the regime of collective rights but rather its replacement.").

85 Statement of NLRB Chairman Peter Schaumber to the American Bar Association's Section of Labor and Employment Law on September 12, 2008. See, Susan J. McGolrick, "Schaumber, Liebman Discuss Dynamics of Two-Member Board; 'Bush Board' Legacy," 181 BNA Daily Labor Report at p. C-1 (September 18, 2008).

86 *See Id., see also generally, e.g.*, Sharon Rubin Margalioth, *The Significance of Worker Attitudes: Individualism as a Cause for Labor's Decline*, 16 Hofstra Lab. & Emp. L. J. 133 (1988).

87 *Responding to Union Rhetoric: The Reality of the American Workplace, Union Studies on Employer Coercion Lack Credibility and Integrity*, U.S. Chamber of Commerce, White Paper, at p. 16 (2009) (citing a March 2009 Rasmussen poll)

2005[88] showed that 32 percent of those surveyed rated unions positively, while in the same poll, corporations received a 42 percent approval rating. Even in polls conducted in America ten years earlier, majorities of both union and non-union households rated the job done by labour unions negatively.[89]

The reasons behind workers dissatisfaction with labour unions vary. For example, in the 2005 Harris Poll, 67 percent of all respondents and 65 percent of union households believed that "unions are too involved in political activities,"[90] and 60 percent of those polled, agreed that "unions today are more concerned with fighting change than with trying to bring about change."[91] Finally, 55 percent of those polled thought that "unions stifle individual initiative."[92] Another theory, is that in the United States, job satisfaction among those in the American workforce is consistently high.[93] Perhaps the tone of overall job satisfaction obviates the perceived need among workers for the assistance of a labour union.

To be sure, there are members of the American workforce that desire to be represented by a labour union. However, based on various polling data, a large segment of that population apparently does not. In light of such evidence, it is overly simplistic to attribute a labour union's inability to organize employees at the featured companies to the conduct of the employer. Indeed, it is perhaps more likely that an employer's desire not to have a labour union represent its work force was in fact consistent with the sentiments of the workers themselves.

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88 Negative Attitudes to Labor Unions Show Little Change in Past Decade, According to New Harris Poll, August 31, 2005, http://www.harrisinteractive.com/harris_poll/index.asp?PID=598 (last visited January 29, 2008).

89 *Harris Poll Suggests Continuing Erosion of Labor Union Support and Influence Made Worse by Fight Against NAFTA*, January 31, 1994 (Cornell University, ILR), available at http://digitalcommons.ilr.cornell.edu/key_workplace/443 (last visited May 3, 2011).

90 *Negative Attitudes to Labor Unions Show Little Change in Past Decade, According to New Harris Poll*, August 31, 2005, http://www.harrisinteractive.com/harris_poll/index.asp?PID=598 (last visited January 29, 2008).

91 *Id.*

92 *Id.*

93 "Five separate polls (Gallup 2008, National Open Research Center (NORC) 2006, CBS/NYT 2005, Harris 2002 and Center for Survey Research 2001) all revealed overall job satisfaction number ranging from 87% to 90%." *Responding to Union Rhetoric: The Reality of the American Workplace, Union Studies on Employer Coercion Lack Credibility and Integrity*, U.S. Chamber of Commerce, White Paper, at a p. 16-17 (2009) (citing Karlyin Bowman, *The State of the American Worker* at 3, American Enterprise Institute (2008)).

Conclusion

The Human Rights Watch Report argues that U.S. labour law offers an incentive for foreign companies to operate in the United States under a double standard with respect to their approach to trade unions and the principles of freedom of association as defined at the international level.[94] As explained herein, that is simply not the case. U.S. labour law substantially tracks international law such that companies operating within the United States will generally not provoke international concerns by merely complying with U.S. labour law. Where companies fail to abide by U.S. and international standards, as with several of the examples outlined in the Report, they are subjected to the applicable enforcement procedures and remedies available under U.S. or International law.

The significance of international labour law will continue to grow as workforces continue to grow globally. This reality highlights the importance of a complete, thoughtful and balanced debate over the meaning of international labour law principles and, relevant to this response, the proper place of U.S. labour law within that context. It is hoped that this Response will serve as an alternative perspective on the topic — that of the employers — and that others with a vested interest in the outcome of this debate will similarly contribute to it.

94 *See, e.g.*, Report, at p. 4.

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