

**CHILD LABOR: AN ANALYSIS OF THE ECONOMIC IMPLICATIONS &  
INTERNATIONAL MEASURES TO ELIMINATE THE PROBLEM OF CHILD  
LABOR**

**By**

**Kevin Randal Smith**

**THESIS**

Submitted to  
KDI School of Public Policy and Management  
in partial fulfillment of the requirements  
for the degree of

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Thesis for Masters of Business Administration  
Supervisor: Professor Oh, Byung-Ho

**DEDICATION:** I would like to dedicate this thesis to my brother Adam Smith, who studied next to me at KDI and who encouraged me during those times I felt overwhelmed by demands on my time.

**ACKNOWLEDGEMENT:** I wish to acknowledge the guidance and support of my thesis supervisor Professor Oh, Byung-Ho. I could not ask for more in a mentor.

**ABSTRACT:** Child labor is a serious problem throughout the world, especially in developing countries. Millions of working children are subjected to extreme exploitation in terms of toiling for long hours for minimal pay under harsh conditions. This paper first puts the issue of child labor into its historical context, tracing its course from the first recognition of the practice as a social and moral problem in the 19<sup>th</sup> century to the present-day international effort to curb child labor, headed by the International Labor organization. The underlying economic causes of child labor are examined as are its pernicious effects on children and society from both a societal and economic standpoint. Economic arguments in support of child labor are also addressed and, finally, international efforts to curb the practice of child labor through the creation of an international legal apparatus to tackle the problem and also through efforts to remedy the underlying economic conditions that lead to child labor.

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**LIST OF ACCRONYMS & ABBREVIATIONS:**

- AFC-CIO – American Federation of Labor and Congress of Industrial Organizations
- CBERA – Caribbean Basin Economic Recovery Act
- CLDA – Child Labor Deterrence Act
- FIFA – Federation of International Football Association
- GATT – General Agreement on Tariffs and Trade
- GSP – Generalized System of Preferences
- ILO – International Labor Organization
- IMF – International Monetary Fund
- IPEC – International Programme for the Elimination of Child Labour
- NAFTA – North American Free Trade Agreement
- NLC – National Labor Committee
- OPIC – Overseas Private Investment Corporation Act
- UNICEF – United Nations International Children’s Emergency Fund
- WTO - World Trade Organization

## **I. Introduction**

Child labor is a serious problem throughout the world, especially in developing countries. Millions of working children are subjected to extreme exploitation in terms of toiling for long hours for minimal pay under harsh conditions. While the child labor issue is a complex one, without any easy solutions, this paper seeks to address the nature of the problem and what efforts are done about it.

Part II looks at the historical developments of child labor at the national and international levels. Part III provides an overview of the current child labor situation and the reasons why child labor remains pervasive in the world today. Part IV examines the measures presently in use to curb child labor. Finally, Part V highlights proposals for reducing the use of child labor.

## **II. History**

Child labor was, at the international and national levels, one of the first fields in respect to human rights which regulations were adopted. Premised on the notion of protection of the weakest, these regulations aimed at eliminating the very serious abuses to which child labor had given rise at the beginning of the industrial era. This concern for the protection of children against poor work conditions that shocked public opinion had been at the origin of the whole concept of labor law, international as well as national. The fact that children of five or six years of age were employed in spinning mills had been one of the main reasons which promoted the first campaigns in favor of

international action in the field of labor law. Over the years, there has been considerable effort to protect children at both national and international levels.

#### A. Domestic Efforts

At the national level, the first labor laws concerning children were those adopted in England in the 19<sup>th</sup> century and the French law of 1841, which fixed at 8 years the minimum age of admission to industrial work (rising to 12 in 1874 and 13 in 1892).<sup>1</sup> Private industries also attempted to reform child labor standards. For example, as early as 1850, in Belgium, textile manufacturers and mine managers decided among themselves to prohibit the use of child labor in their own plants.<sup>2</sup> However, without laws to force their competitors to observe the same prohibitions, the reformers could not afford to maintain their new standards. These reformers did not want their good will rendered worthless by a minority of self-interested manufacturers who ignored the new minimum age, and hired children for the savings in wage costs.<sup>3</sup>

At the same time, in the United States, reformers were fighting their own campaign against child labor. After the Civil War, industry created manufacturing jobs for many poor farmers in the American South, and sometimes for their children. Businessmen in the South competed with the North in much the same way as developing countries compete with developed nations in the 20<sup>th</sup> century: by exploiting cheap labor. Lewis Parker, a South Carolina cotton mill owner, when testifying before the U.S. House of Representatives Committee on Labor in 1914, said that “[W]e cannot possibly gravitate from a condition of agriculturalism to a condition of industrialism without the

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<sup>1</sup> CLARK NARDINELLI, CHILD LABOR AND THE INDUSTRIAL REVOLUTION 127 (1990).

<sup>2</sup> *Id.* at 128.

<sup>3</sup> *Id.*



employment of minors.”<sup>4</sup> Northern businesses complained that the South had an unfair advantage, and that Southern manufacturers should copy the North’s progressive child labor prohibitions. But the South refused. Cotton mill owners thought of themselves as benevolent for employing children as young as eight years old who contributed their meager wages to their otherwise destitute families.<sup>5</sup>

Financial self-interest might have motivated employers to resist child labor reform indefinitely had the reform campaign not been strengthened by public outrage. The press began to expose the conditions of children in the workplace.<sup>6</sup> Citizen action committees, such as the National Child Labor Committee, began lobbying the government for reforms in child labor. The early federal bans won by these reformers were declared unconstitutional. In *Hammer v. Dagenhart*, the Supreme Court struck down as unconstitutional the Child Labor Law of 1916 which attempted to regulate child labor by prohibiting the transportation in interstate commerce of products made by children.<sup>7</sup>

After the *Hammer* decision, the reformers changed tactics. They pushed for a constitutional amendment that would have given Congress the power to set a minimum age for employment.<sup>8</sup> The Congress adopted an amendment in 1924.<sup>9</sup> However, the amendment was successfully opposed in twenty-two states.<sup>10</sup> It was not until 1938, with adoption of the Fair Labor Standards Act, that the United States banned the use of child

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<sup>4</sup> WALTER I. TRATTNER, *CRUSADE FOR THE CHILDREN: A HISTORY OF THE NATIONAL CHILD LABOR COMMITTEE AND CHILD LABOR REFORM IN AMERICA* 125 (1970).

<sup>5</sup> *Id.* at 39.

<sup>6</sup> VERNA PESEUER CURTIS, *PHOTOGRAPHY AND REFORM: LEWIS HINE AND THE NATIONAL CHILD LABOR REFORM IN AMERICA* 3 (1984).

<sup>7</sup> *Hammer v. Dagenhart*, 247 U.S. 251, 255 (1918).

<sup>8</sup> Trattner, *supra* note 4 at 164.

<sup>9</sup> *Id.* at 167. The House approved the amendment by a vote of 297 to 69. The Senate approved the amendment by a vote of 61 to 23.

<sup>10</sup> *Id.* at 184.

labor altogether.<sup>11</sup> While the ban still suffers from serious enforcement problems, the widespread use of child labor in the United States has been effectively eradicated.

## B. Early International Efforts

While reformers in various nations called for minimum age standards and other worker protections within their own countries, citizens of many nations began calling for standards on the international level. Popular pressure for workplace safety and other worker rights grew following World War I. Workers were organizing into trade unions and demanding greater rights.

In 1919, as part of the peace treaties that ended World War I, the International Labor Organization (ILO) was created, providing for universal application of worker standards and tripartite participation by workers, government, and employers in the legislative process.<sup>12</sup> The primary motivation for the creation of the ILO was economic. Because of its inevitable effect on production costs, any industry or country adopting social reform would find itself at a disadvantage in relation to its competitors.<sup>13</sup> The Preamble to the ILO Constitution states that “the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries.”<sup>14</sup> The second motivation was humanitarian. The condition of workers, more and more numerous and exploited with no consideration for their health, their family lives and the advancement was less and less acceptable.<sup>14</sup> The third motivation was political. Without an improvement in their condition, the workers,

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<sup>11</sup> Id. at 204. The Fair Labor Standards Act was upheld by the Supreme Court in *United States v. Darby*, 312 U.S. 100 (1940), overruling *Hammer v. Dagenhart* 247 U.S. 251 (1918). The Act defined child labor as the employment of children under sixteen, or the employment of children under sixteen in occupations designated as hazardous by the Children’s Bureau. Trattner, *supra* note 4 at 204.

<sup>12</sup> HÉCTOR BARTOLOMEI DE LA CRUZ, *THE INTERNATIONAL LABOR ORGANIZATION: THE INTERNATIONAL STANDARDS SYSTEM AND BASIC HUMAN RIGHTS* 4 (1996).

<sup>13</sup> Id. at 24.

<sup>14</sup> ILO, *Constitution of the International Labour Organization and Standing Orders of the International Labour Conference*, the Preamble (1989).

whose numbers were ever increasing as a result of industrialization, would create social unrest, and possibly revolt.<sup>15</sup>

The ILO is the most important international organization dealing with the issue of worker rights, including those of children. Its activities include setting international standards through the promulgation of Conventions<sup>16</sup> and Recommendations,<sup>17</sup> monitoring the implementation of those standards; and providing technical assistance, information and aid to its member States.<sup>18</sup> The ILO, through its standard-setting activities, has created a comprehensive international labor code, an unprecedented achievement for an international organization.

The real strength of the ILO is its unique tripartite structure.<sup>19</sup> In all of the ILO's activities, the most comprehensive employers' organization, the most representative workers' organization, and the government of each state participate equally.<sup>20</sup> Worker and employer involvement provide alternate sources of information to government statistics, force governments to be honest on the information they provide, make the ILO more accountable, and counterbalance the political motives that governments bring to any international body.<sup>21</sup>

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<sup>15</sup> De la Cruz, *supra* note 12 at 25.

<sup>16</sup> Conventions are comparable to multilateral international treaties. Once they are ratified by member states, they create binding obligations. Once ratified member states are expected to pass necessary laws to implement the convention. The government of each ratifying state is expected to report regularly on the implementation on the convention. States are not permitted to ratify a Convention with reservations. They must either accept or reject it as written. N. Valticos & G. von Potobsky, *International Labour Law* 50 (1995).

<sup>17</sup> The recommendation serves as a guideline for the states. Member states are expected to submit the texts of the recommendation to their legislative bodies for adoption, and report to the governing body of the ILO regarding progress with respect to implementation of the recommendation. There are, however, no substantive obligation required. *Id.* at 52.

<sup>18</sup> De la Cruz, *supra* note 12 at 12-14.

<sup>19</sup> *Id.* at 10.

<sup>20</sup> *Id.* at 11.

<sup>21</sup> *Id.* at 13.

While the ILO is the most important body addressing the issues of child labor, it is not the only international body to have done so. The United Nations has touched on the issue in certain instruments. The International Covenant on Economic, Social and Cultural Rights provides that “children and young people should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which paid employment of child labor should be punishable by law.”<sup>22</sup> The Covenant has been ratified by 135 States.<sup>23</sup>

The United Nations also adopted in 1959 the Declaration of the Rights of the Child, the terms of which are very similar to the 1919 Constitutional provisions of the ILO.<sup>24</sup> This Declaration affirms in particular that a child shall not be admitted to employment before an appropriate minimum age and that it “shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development.”<sup>25</sup> In 1979, the International Year of the Child, the United Nations Commission on Human Rights appointed a group to draft the Convention on the Rights of the Child. The aim of the Convention was to establish more comprehensive protection for children by holding society legally accountable for such protection.<sup>26</sup> The Convention was adopted in 1989,

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<sup>22</sup> International Covenant on Economic, Social and Cultural Rights, G.A. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966) 933 U.N.T.S. 3, entered into force Jan. 3 1976.

<sup>23</sup> Jean-Bernard Marie, *International Instruments Relating to Human Rights: Classification and status of ratifications as on 1 January 2006* 90, Vol. 18 No. 1-4 (2006). There are no reservations regarding the child employment provisions.

<sup>24</sup> Declaration on the Rights of the Child, G.A. res. 1386 (XIV), U.N. GOAR Supp. (No. 16) at 19, U.N. Doc. A/4354.

<sup>25</sup> *Id.*

<sup>26</sup> Gursharan Varandani, *Child Labour and Women Workers* 66 (1994).

and incorporated most of the rights of children into one comprehensive international law. These guaranteed rights include “civil-political, economic-social-cultural, and humanitarian rights.”<sup>27</sup> The Convention creates a binding obligation on each ratifying country to apply its provisions through legislation and then to report regularly on its application. The Convention has been ratified by 189 nations.<sup>28</sup> Only the United States and Somalia have not ratified the Convention.<sup>29</sup>

### **III. Child Labor in the World Today**

#### **A. Child Labor in Statistics**

Statistics on child labor are in general fragmentary and often unreliable. Many governments, especially in developing countries, lack an adequate system for obtaining accurate data on child labor. Furthermore, they are reluctant to document child labor abuses which are often illegal under their domestic legislation, violate international labor standards, and are perceived by many as a serious failure in their public policy.<sup>30</sup> It is difficult to know the exact number of children working throughout the world, but recent studies by the ILO Bureau of Statistics confirms that the problem is severe. Earlier estimates based on very limited statistical information from about 100 countries estimated that there were 73 million economically active children between the ages of 5 and 14.<sup>31</sup> However, in 1993-94, the ILO carried out experimental studies in Ghana, India, Indonesia and Senegal suggests that this figure is an underestimate. The ILO now

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<sup>27</sup> Convention on the Rights of the Child, G.A., res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354 (1959).

<sup>28</sup> See the UN web site at <http://www.un.org> for a list of states that have ratified this Convention. There were no reservations regarding Article 32 which deals with the employment of children.

<sup>29</sup> Id. at <http://www.unicef.org/crc>.

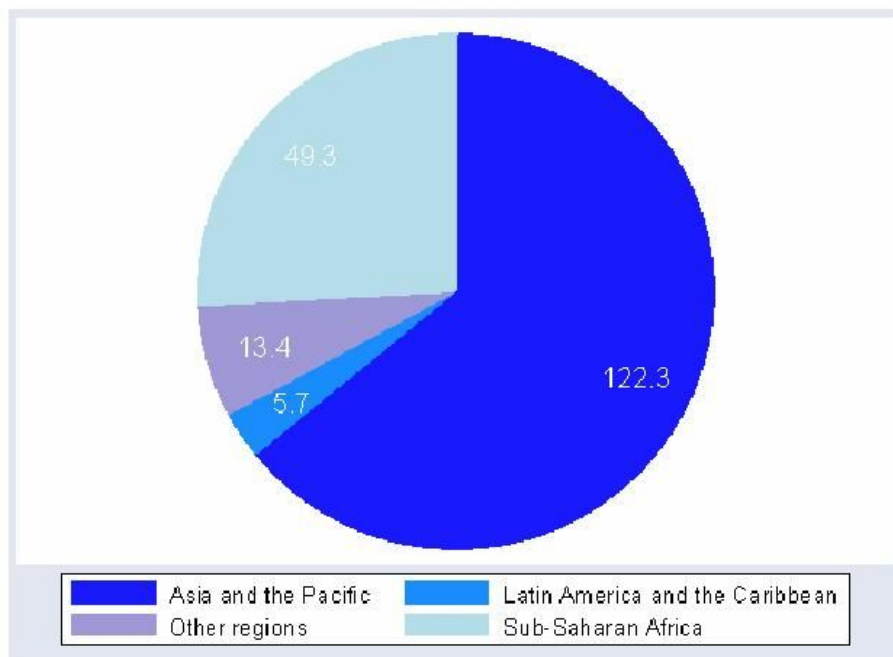
<sup>30</sup> ILO, Child Labour: Targeting the Intolerable, [www.ilo.org/publish/english/90ipc.chlabour.htm](http://www.ilo.org/publish/english/90ipc.chlabour.htm).

<sup>31</sup> ILO Committee on Employment and Social Policy, Governing Body Document on Child Labour, 264<sup>th</sup> Session, November 1995, G.B. 264/ESP/1, see [www.ilo.org/publish/english/90ipc/chlabour/gb.htm](http://www.ilo.org/publish/english/90ipc/chlabour/gb.htm).

estimates that, in the developing countries alone, there are at least 120 million children between the ages of 5 and 14 who work full time, and more than twice as many if those who combine work with school or other non-economic activities are included.<sup>32</sup>

Of the estimated 250 million children working, 61 percent are found in Asia, 32 percent in Africa, and 7 percent in Latin America.<sup>33</sup> Although Asia has the largest number of working children, Africa has the highest incidence with roughly 40 percent of children between the ages of 5 and 14 working.<sup>34</sup>

**Economically active children in the world (5-14 years old), by region (million)**



Source: Frank Hagemann, et al. *Global child labour trends 2000 to 2004*, International Labour Office

<sup>32</sup> Id.

<sup>33</sup> Id.

<sup>34</sup> ILO, supra note 30.

## B. The Effects on the Children

Millions of children work under conditions that impair their full physical and psychological development. The long hours that children are required to work is a pressing problem. In Siaklot, an eastern Pakistani region, children under the age of 14 often work eight to ten hours each day, six days a week.<sup>35</sup> In some countries, up to 80 percent of working children work seven days a week.<sup>36</sup> The most serious disadvantage to children of long working hours is the inability to attend school. The lack of educational opportunity is a serious disadvantage since opportunities for future employment increasingly depend on literacy and other skills. For the estimated 120 million children working full-time, the opportunity to acquire basic reading and writing skills is not available because they spend all their time away from school; for these children, school is not an option. Also, the education of those children that split their time between work and school also suffers because many of the children are too fatigued from work to learn properly.<sup>37</sup>

For many children, the risks of working stem from the physical hazards specific to their jobs.

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<sup>35</sup> Matthew C. Bazzano, Child Labor: What the United States and Its Corporations Can Do to Eliminate Its Use, 18 *HAMLIN J. PUB. L. & POL'Y* 200, 203 (Fall 2005).

<sup>36</sup> ILO 2006 Press Release, Oslo Conference to Seek Global Strategy for Combating Child Labour, [www.ilo.org/public/english/235press/pr/2006.25.htm](http://www.ilo.org/public/english/235press/pr/2006.25.htm).

<sup>37</sup> ILO, *supra* note 30. Studies have shown that 20 hours worked per week can negatively affect educational opportunities for working children. *Id.*

### Distribution of injuries/illnesses by industry and sex

Industry (major division)	Both sexes <sup>*</sup>	Boys <sup>*</sup>	Girls <sup>*</sup>
	%	%	%
1. Agriculture, hunting, forestry and fishing	70.2	75.8	57.2
2. Mining and quarrying	0.5	0.5	0.4
3. Manufacturing	4.7	4.3	5.6
4. Electricity, gas and water	0.1	0.0	0.1
5. Construction	2.9	4.1	0.3
6. Wholesale and retail trade, restaurants and hotels	13.4	8.3	25.7
7. Transport, storage and communication	2.6	3.8	**
8. Financing, insurance, real estate and business services	0.0	0.0	**
9. Community social and personal services	4.9	2.5	10.2
10. Unspecified industries	0.6	0.7	0.6

*Source: ILO Bureau of Statistics (Geneva, 1997)*

For example, child labor is used in mines in many countries in Africa, Asia and Latin America. The children work long hours, without adequate protective equipment, clothing and training, and are exposed to high humidity levels, extreme temperatures, and exposure to harmful gases and fumes.<sup>38</sup> In Asia, child labor is common in the ceramics and glass factory work. Children carry loads of molten glass taken from furnaces which reach temperatures of 1600 degrees Celsius. They work long hours in rooms with poor lighting and little or no ventilation. The main dangers in this industry are: exposure to high temperatures leading to heat stress, cataracts, and burns; injuries from flying glass particles; impaired hearing from loud noise; eye strain from poor lighting; and exposure to dust, lead and toxic fumes such as carbon monoxide and sulfur dioxide.<sup>39</sup> In the match and fireworks industry, children as young as 3 years of age are alleged to be working in unventilated rooms where they are constantly exposed to toxic substances such as

<sup>38</sup> ILO, *supra* note 31 at 9.

<sup>39</sup> *Id.*



asbestos and potassium chlorate.<sup>40</sup> Moreover, match manufacturing usually takes place in small village factories where the risk of fire and explosion is constantly present. In the carpet industry, child workers are afflicted with spinal disorders from crouching for long hours.

Because children differ biologically from adults in anatomical, physiological and psychological characteristics, they are at greater risk of suffering mental and physical problems than their adult co-workers suffer. There is evidence that children suffer more readily from exposure to toxic substances.<sup>41</sup> Also, they are much more vulnerable to psychological and physical abuse than are adults, and suffer more devastating psychological damage from living and working in an environment in which they are denigrated and oppressed.

### C. The Causes of Child Labor

Poverty is the most important reason offered as a cause of child labor. This argument contends that the desperate economic conditions in some developing countries force children to work to help support their families.<sup>42</sup> Also, some writers argue that child labor is necessary for a developing country to compete in the global marketplace. They argue that industrialized countries such as the United States and the United Kingdom have, at some time in the past, utilized child labor.<sup>43</sup> Because developing countries cannot keep up with more developed countries in areas such as technology, the use of child labor is the only way those countries can remain competitive.<sup>44</sup>

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<sup>40</sup> Id.

<sup>41</sup> Id.

<sup>42</sup> ILO, *supra* note 30.

<sup>43</sup> Id.

<sup>44</sup> Bazzano, *supra* note 35 at 201.

There are other considerations that weaken the argument that poverty is the cause of child labor. In fact, child labor may contribute to greater levels of poverty. First, studies have shown that a child's financial contribution on many families is insignificant. A study by the United Nations International Children's Emergency Fund (UNICEF) found that, at least in Latin America, the percentage of a family's income earned by children seldom exceeds 10 to 20 percent.<sup>45</sup>

Second, child labor reduces the job opportunities for adults, which leads to lower wage rates.<sup>46</sup> With fewer adults in the workforce, employers lower wages, and poverty continues. Studies have shown that employers pay children one-half to one-third the amount paid to adults doing the same work.<sup>47</sup>

Third, because working children neglect their education, they grow up without the essential skills to improve their economic status. If one assumes that education leads to a more industrialized society, then employing children contributes to poverty because it prevents them from acquiring the skills which could increase their earning potential. This vicious cycle continues to trap working children.

Finally, the fact that rates of child labor vary dramatically between countries of similar levels of economic development illuminates the point that poverty is not, by itself the cause of child labor. In China, for example, there has been little child labor in recent decades. Even though extremely poor until recent years, China made a political decision to put its children in school rather than in jobs. Similarly, Kerala State, in India, the country most famous for abuse of child labor, has virtually abolished child labor.<sup>48</sup>

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<sup>45</sup> ILO, *supra* note 31.

<sup>46</sup> Department of Labor Study, *By the Sweat & Toil of Children*, [www.dol.gov](http://www.dol.gov)

<sup>47</sup> ILO, *supra* note 31.

<sup>48</sup> David True, *Kerala State: A Social Justice Monitor*, July/August 1995.

Further studies have shown that countries may be equally poor, and still have relatively high or low levels of child labor.<sup>49</sup> The lesson which comes from the China and Kerala examples is that (arguably) child labor can only exist where it is treated as politically and culturally acceptable.

One the demand side, another cause of child labor is the financial self-interest of employers. Basically, employers can take advantage of children to a greater extent than they can adults. It has been found that working children are unorganized, less demanding, more obedient, and less likely to complain about poor working conditions.<sup>50</sup> Thus, the more children employed the greater the profits for the employer. A disturbing story from India's carpet industry illuminates the extent employers will go to exploit children for financial gain. It has been reported that when children suffered cuts from working on the looms, supervisors would grind sulfur from matches into the cut and then set the sulfur on fire to stop the bleeding in an effort to return the children to work sooner.<sup>51</sup>

Also, employers have justified their use of child labor by claiming that children are uniquely suited for jobs. This is best exemplified in the carpet and gem industries on India. The argument is that "nimble fingers" can produce a greater number of knots in the weaving of carpets and polish tiny gems.

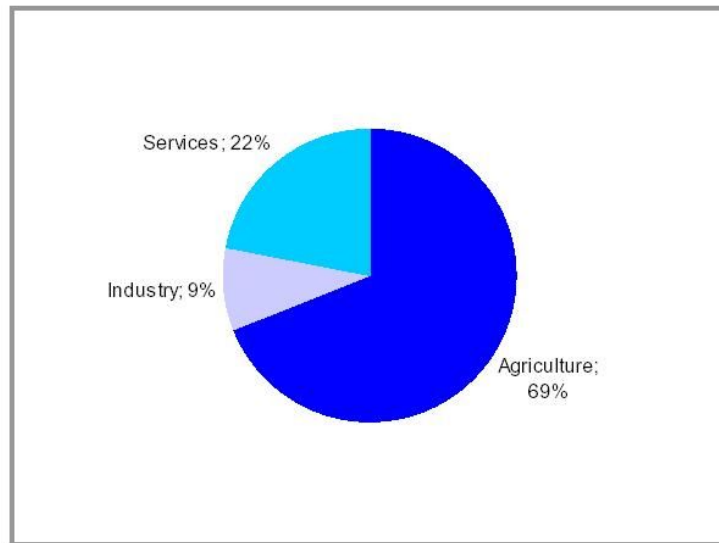
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<sup>49</sup> ILO, *supra* note 30.

<sup>50</sup> *Id.*

<sup>51</sup> ILO, *supra* note 29.

### Working children ages 5-14 by sector (%)



Source: Frank Hagemann, et al. *Global child labour trends 2000 to 2004*, International Labour Office

But, the ILO reports that its research in hazardous industries in India, including carpet-making, glass factories, lock making and gem polishing, has shown this argument to be entirely false. Even in the hand-knotting of carpets, which calls for considerable dexterity, an empirical study of over 2,000 weavers found that children were no more likely than adults to make the finest knots.<sup>52</sup>

Child labor is also perpetuated by societal attitudes that say children should work to support themselves or their families. This moralistic argument is coupled by the practical argument that by learning a skill at a young age, a child will learn a trade which will support him or her throughout life. Regardless of whether these contentions are valid, they remain prevalent among certain societies.

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<sup>52</sup> Id. The argument that children are somehow more dexterous than adults seems quite ridiculous, yet the “nimble finger” argument is still used by those employing children in the carpet industry.

**Distribution of economically active children 5-14 years of age in developing countries, by regions and sex (1995)**

Region	Both sexes	Boys	Girls
World (estimates in millions)	250	140	110
Regions (in per cent)	(%)	(%)	(%)
Africa	32	56	44
Asia (excluding Japan)	61	54	46
Latin America & Caribbean	7	67	33
Oceania (excluding Australia & New Zealand)	0.2	57	43
Sex ratio (World)	100	56	44

*Source: ILO Bureau of Statistics (Geneva, 1997)*

In Asia, the general perception is that “children should work to develop a sense of responsibility and develop a career, rather than become street urchins or beggars.”<sup>53</sup> In Pakistan, parents push their children to work at an early age to avoid the dangers of vagrancy.<sup>54</sup> Parents think their children will be better off and do not realize they are almost certainly being exploited.

The World Bank and the International Monetary Fund (IMF) have been accused of contributing to the use of child labor.<sup>55</sup> They provide low-interest loans to developing countries, but as a condition for receiving loans, the IMF and World Bank instruct developing countries to promote exports and cut government spending. Often, governments pressed by the IMF and World Bank reduce spending for education. In recent years, however, the World Bank in particular has recognized the value of education and health care, and has urged governments to maintain programs in these

<sup>53</sup> Department of Labor, *supra* note 46.

<sup>54</sup> *Id.*

<sup>55</sup> Veronica Brand, *Third World’s Poorest Crushed by First World Debt*, *Houston Chronicle*, November 21, 2006.

areas as “investments in human capital.”<sup>56</sup> A World Bank economist has recently stated that the Bank’s structural adjustment programs may have increased the incidence of child labor in a few countries, but he argues that these countries would have been worse off if they have not followed Bank advice.<sup>57</sup> However, the World Bank has also encouraged governments to charge students for attending school, or for books and supplies – a so-called “cost recovery” approach. In Zimbabwe, the structural adjustment program forced the reintroduction of school fees and charges for basic health services.<sup>58</sup> These measures are linked by independent monitoring groups to decreases in school attendance.<sup>59</sup> Even small fees prevent poor families from sending some or all of their children to school and those unable to afford school frequently are forced to work.

#### **IV. Measures Currently In Use to Curb Child Labor**

##### **A. Customary International Law**

International human rights law, through both custom and treaties, contain certain explicit and implicit prohibitions against certain forms of child labor. International law, however, may be viewed as ineffective because it has a weak enforcement mechanism.<sup>60</sup> While from this perspective, reliance solely on international law as a means to eradicate child labor may seem futile, custom and treaty are integral elements to a solution to child labor.

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<sup>56</sup> Id.

<sup>57</sup> Id.

<sup>58</sup> Id.

<sup>59</sup> Id.

<sup>60</sup> HENKIN, PUGH, SCHACHTER AND SMIT, INTERNATIONAL LAW CASEBOOK AND MATERIALS 31 (1995)

“Custom is defined as the ‘pure law’ implicit in the interaction of states whose joint practices become a legal obligation over time.”<sup>61</sup> Establishing a rule of customary international law requires two elements: state practice that reflects the rule and state belief that following the rule is legally required (*opinio juris*).<sup>62</sup> However, simply showing that a state follows a rule does not prove that the state believes it is subject to a legal obligation.<sup>63</sup> Developed states may have an implicit agreement amounting to a prohibition of child labor. But, states that continue to utilize child labor may not recognize such a custom, or they may realize they acting improperly yet are unable to stop.

No court has ever considered whether a prohibition of child labor is a customary international norm and it is unlikely that such a norm exists.<sup>64</sup> While there is certainly practice to support the norm in the developed world, there remains a staggering amount of practice inconsistent with that norm in the developing world. It is worth noting that attempts by the U.S. to insert child labor prohibitions into the General Agreement on Tariffs and Trade (GATT) and the North American Free Trade Agreement (NAFTA) were blocked by less developed countries.<sup>65</sup> It is thus difficult to see how these countries would ever consider themselves bound by a rule of customary international law against child labor.

While there is almost certainly not an international custom that prohibits child labor. However, there may be a general principle that child labor is a violation of international law. Since most child labor abuses occur in countries with domestic laws

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<sup>61</sup> Id. at 35.

<sup>62</sup> Id.

<sup>63</sup> Id. at 36.

<sup>64</sup> Claudia R. Brewster, *Restoring Childhood: Saving the World’s Children from Toiling in Textile Sweatshops*, 16 *J.L. & Com.* 191 (Spring 2006).

<sup>65</sup> Lance Compa & Stephen F. Diamond, *Human Rights, Labor Rights, and International Trade* 64, (2005).

regulating ages for work, one could argue that there exists a general principle outlawing child labor.<sup>66</sup> Yet, an international custom or a general principle that is not enforceable is of little help in the elimination of child labor in the international community.

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<sup>66</sup> The argument would be that since almost all countries have domestic regulations on child labor, there exists a general principle within the international community that child labor is wrong.



## B. The International Labour Organization

### 1. Minimum Age Convention No. 138

From its very inception, the ILO has advocated the regulation and eradication of child labor. The primary element of the ILO's work for the abolition of child labor has been its standard-setting work.<sup>67</sup> Since 1919, the ILO has enacted a series of conventions and recommendations addressing the issue of child labor. The Minimum Age (Industry) Convention 1919 (No. 5), was the first international instrument dealing with the minimum age of employment.<sup>68</sup> This Convention, which has been ratified by 72 countries, prohibits children under the age of 14 years from working in any public or private industrial employment. Between 1920 and 1965, the ILO adopted nine additional Conventions dealing with the minimum age of employment in various areas of employment.<sup>69</sup>

In 1973, the ILO adopted the comprehensive Minimum Age Convention of 1973 (No. 138).<sup>70</sup> This Convention consolidates and revises all ten of the previous minimum

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<sup>67</sup> Varandani, *supra* at 26 at 22.

<sup>68</sup> See Minimum Age (Industry) Convention 1919 (No. 5). This Convention and all other ILO Conventions can be located through the ILO database at <http://ilolox.ilo>.

<sup>69</sup> See Minimum Age (Sea) Convention 1920 (No. 7), which has been ratified by 52 States and sets the age for admission to maritime work at 14 years of age. Convention No. 7 was revised by Minimum Age (Sea) Convention (Revised) 1936 (No. 58) which has been ratified by 51 States and raised the minimum age for maritime work to 15 years; Minimum Age (Non-Industrial Employment) Convention 1932 (No. 33) which has been ratified by 25 States and sets the standard of 14 years for non-industrial employment. Convention No. 33 was revised by Minimum Age (Non-Industrial Employment) Convention (Revised) 1932 (No. 60) which has been ratified by 11 States and raises the minimum age to 15 years. Minimum Age (Agriculture) Convention 1921 (No. 10), which has been ratified 54 States and provides that children below the age of 14 may not work in agriculture employment except where it will not impede their school attendance. The ILO has provided that for certain hazardous occupations the age of employment is higher than the general standard. See, Minimum Age (Trimmers and Stokers) Convention 1921 (No. 15) which has been ratified by 67 States and provides that for trimmers and stokers aboard sea-going vessels the minimum age is 18; Minimum Age (Fisherman) Convention 1959 (No. 112) which has been ratified by 56 States and provides that the minimum age for work on fishing vessels is 18 years; Minimum Age (Underground Work) Convention 1965 (No. 123) which has been ratified by 42 States and provides that the minimum age for work in mining is 16 years.

<sup>70</sup> Minimum Age Convention of 1973 (No. 138)

age conventions.<sup>71</sup> Convention No.138 is intended to be the definitive standard-setting instrument in the area of child labor. This ideal is reflected in the Preamble to Convention No. 138 which reads that “the time has come to establish a general instrument on the subject, which would gradually replace the existing ones applicable to limited economic sectors, with a view to achieving the total abolition of child labor.”<sup>72</sup> This Convention has been ratified by sixty States as of the present date.<sup>73</sup>

### Minimum ages according to ILO Convention No. 138

General minimum age	Light work	Hazardous work
<i>In general:</i>		
Not less than age of completion of compulsory schooling, and in any case not less than 15 years	13 years	18 years (16 years under certain strict conditions)
<i>Where the economy and educational facilities are insufficiently developed:</i>		
Not less than 14 years for an initial period	12 years	18 years (16 years under certain strict conditions)

Source: Frank Hagemann, et al. *Global child labour trends 2000 to 2004*, International Labour Office

<sup>71</sup> Id. art. 10. Article 10(2) provides that the “coming into force of this Convention shall not close the Minimum Age (Sea) Convention (Revised), 1936, the Minimum Age (Industry) Convention (Revised), 1937, the Minimum Age (Non-Industrial Employment) Convention (Revised), 1937, the Minimum Age (Fisherman) Convention, 1959, or the Minimum Age (Underground Work) Convention, 1965, to further ratification.” Article 10(3) provides that the “Minimum Age (Industry) Convention 1919, the Minimum Age (Sea) Convention, 1920, the Minimum Age (Agriculture) Convention, 1921, and the Minimum Age (Trimmers and Stokers) Convention, 1921, shall be closed to further ratification when all parties thereto have consented to such closing by ratification of this Convention or by a declaration communicated to the Director-General of the International Labour Office.” Article 10(5) provides that “acceptance of the obligations of this Convention – (a) shall involve the denunciation of the Minimum Age (industry) Convention, 1919, in accordance with Article 12 thereof, (b) in respect of agriculture shall involve the denunciation of the Minimum Age (agriculture) Convention, 1921, in accordance with Article 9 thereof, (c) in respect of maritime employment shall involve the denunciation of the Minimum Age (Sea) Convention, 1920, in accordance with Article 10 thereof, and the Minimum Age (Trimmers and Stokers) Convention, 1921, in accordance with Article 12 thereof, if and when this Convention shall have come into force.” Id. art. 10(5).

<sup>72</sup> Supra note 72, Preamble.

<sup>73</sup> A list of the ratifying States can be found at <http://ilolex.ilo/ch:1567/public/50normes/ilolex.pqconv.pl>.

Convention No. 138 provides States that ratify it are expected to pursue a “national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.”<sup>74</sup> Ratifying States are required to “specify a minimum age for admission to employment or work within its territory, and on means of transport registered in its territory.”<sup>75</sup> The minimum age must not be less than the age of completion of compulsory schooling, and in any case, cannot be less than fifteen years<sup>76</sup> -- or fourteen years for States “whose economy and educational facilities are insufficiently developed.”<sup>77</sup> Also, eighteen years is the minimum age for any type of employment which is “likely to jeopardize the health, safety or morals of young persons.”<sup>78</sup>

Articles 4, 5 and 6 allow for ratifying States to limit the scope of application of the Convention. Under Article 4, a ratifying State may exclude certain specific categories of employment from the application of this Convention provided they meet certain procedural requirements.<sup>79</sup> Furthermore, Article 5(1) allows States “whose economy and administrative facilities are insufficiently developed to limit the

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<sup>74</sup> Id. art. 1.

<sup>75</sup> Id. art 2(1).

<sup>76</sup> Id. art. 2(3).

<sup>77</sup> Id. art. 2(4).

<sup>78</sup> Id. art. 3(1). The types of work which art. 3(1) applies is to be determined by national laws after consulting employer and worker organizations if they exist. National laws can authorize employment from the age of 16 years on condition that the health, safety and morals of the young persons are fully protected and that the young persons have received adequate instruction or training in the specific area of work. See art. 3(2)-(3).

<sup>79</sup> Id. art. 4(1). Ratifying States must submit in its application of the Convention any categories which may have been excluded, give the reasons for such exclusion, and state in subsequent reports its law in respect to those categories. Art. 4(2)-(3).

Convention's application."<sup>80</sup> This provision seems to allow developing States a broader range of excludable categories. Both Articles 4 and 5 seem to provide some flexibility for the ratifying State to limit the application of the Convention. However, none of the ratifying States have sought any exclusion based on Articles 4 or 5.<sup>81</sup> Article 6 provides that the Convention "does not apply to work done by children and young persons in schools for general vocational or technical education or in other training instructions or to work done by persons at least 14 years of age in undertakings, where such work is carried out in accordance with conditions prescribed by the competent authority."<sup>82</sup>

Under Article 7(1) national laws may permit the employment of persons 13 to 15 years of age on light work which is "(a) not likely to be harmful to their health or development; and (b) not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received."<sup>83</sup> It is up to the competent authority to determine which types of employment may be permitted, set the number of hours in which the young person may be employed and the conditions in

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<sup>80</sup> Id. art. (5)(1). Under Article 5(3) no exceptions will be allowed in the following areas: mining and quarrying; manufacturing; construction; electricity, gas and water; sanitary services; transport, storage and communications; and agricultural undertakings mainly producing for commercial purposes, but excluding family and small-scale producing for local consumption. A State seeking to exclude based on Article 5(1) must have first consulted with the employer and worker organization, listed the exclusions in a declaration appended to the instrument of ratification, and be subject to periodic reports explaining any progress which has been made towards wider application of the Convention. Article 5(2)-(4).

<sup>81</sup> Breen Creighton, *Combating Child Labour: The Role of International Labour Standards*, 18 *Comp. Lab. L.J.* 362, 375 (Spring 2006). Creighton suggest that some States may have interpreted Articles 4 and 5 as restrictive rather than flexible thereby inhibiting these States from ratifying the Convention. Id. The International Labour Office appears to have recognized this possibility as evidenced from its suggestion to the ILO Governing Body that a memo be prepared describing Convention No. 138 so that States can better appreciate the flexibility of Article 4 and 5. Id. (citing ILO, *Child Labour: What Is To Be Done?* (2005), para. 9).

<sup>82</sup> Minimum Age Convention 1973 (No. 138), art. 6.

<sup>83</sup> Id. art. 7(1)(a)-(b). A ratifying State may permit the employment of persons who are at least 15 years of age but have not completed their compulsory education on work which meets the requirements in Article 1(a)-(b). Id. art. 7(2).

which such work may be undertaken.<sup>84</sup> Ratifying States that have set fourteen as the minimum age under the provisions of Article 2(4) may substitute the ages 12 and 14 for the ages 13 and 15 in Article 7(1) and the age of 14 for the age 15 in Article 7(2).<sup>85</sup> This Article seems to provide that employment under the age of 12 is not permitted under any circumstances and requires States to enact legislation relating to the amount and conditions under which light work may be undertaken by children.

The Committee of Experts on the Application of Convention and Recommendation of Minimum Age No. 138 in their 1981 General Survey reported that “few nations have decided that light work should not be allowed for younger children. Therefore, most countries allow some work by children below the minimum age for admission to employment and have made little effort to regulate the amount or the conditions of such work.”<sup>86</sup> The provisions of Article 7 may be the primary reason that so few developed countries have ratified Convention No. 138.<sup>87</sup> Under Article 7, a twelve-year-old could not deliver newspapers, shovel snow, or wash cars after school or during vacations. In order to comply with Article 7 ratifying nations would have to legislate an area of work which is temporary in nature. It is highly questionable whether a developed country such as the United States, which already has comprehensive labor laws, would regulate this area where the potential for abuse is slight.

Article 9(1) provides that “all necessary measures, including the provision of appropriate penalties, shall be taken by the competent authority to ensure the effective

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<sup>84</sup> Id. art. 7(3).

<sup>85</sup> Id. art. 7(4).

<sup>86</sup> Creighton, *supra* note 81 at 378 (citing the General Survey by the Committee of Experts on the Application of Convention and Recommendations: Minimum Age, ILO, 67 Sess., Rep III, pt. 4B, at para. 35 (1981)).

<sup>87</sup> For example the United States, the United Kingdom, Australia and Canada have not ratified Convention No. 138.

enforcement of the provisions of this Convention.”<sup>88</sup> Furthermore, Article 9(2) further provides that “national laws or regulations or the competent authority shall define the persons responsible for compliance with the provisions giving effect to the Convention.”<sup>89</sup> Moreover, Article 9(3) provides that “national laws or regulations or the competent authority shall prescribe the registers or other documents which shall be kept and made available by the employer, such registers or documents shall contain the names and ages or dates of birth, duly certified wherever possible, of persons whom he employs or who work for him and who are less than 18 years of age.”<sup>90</sup>

Convention No. 138 was supplemented by the Minimum Age Recommendation, 1973. Recommendation No. 146 gives more detailed guidance regarding the minimum age (which States should seek to raise to 16 years) and in particular to conditions of work such as remuneration, hours of work, rest, social security and occupational safety and health.<sup>91</sup>

## 2. The Supervisory System of the ILO

The ILO has the most-highly-developed system of any international governmental organization for the adoption and supervision of international standards.<sup>92</sup> The ILO enforcement procedures fall into three main categories: submission and examination of annual reports, supervision based on the submission of complaints and representations, and technical cooperation programs to help member states comply with their ILO obligations.

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<sup>88</sup> Minimum Age Convention 1973 (No. 138), art. 9(1).

<sup>89</sup> Id. art. 9(2). The Committee of Experts has interpreted “persons responsible” as those persons whom legal obligations are imposed. Typically, this will be employers and in some circumstances will be parents. Creighton, note 83 at 382 (citing the General Survey by the Committee of Experts on the Application of Convention and Recommendations: Minimum Age, ILO, 67 Sess., Rep III, pt. 4B, at para. 35 (1981)).

<sup>90</sup> Minimum Age Convention 1973 (No. 138), art. 10(3).

<sup>91</sup> Minimum Age Recommendation, 1973, (No. 146). Recommendation No. 146 can be found in its entirety at <http://ilolex.ch:1567/public/50normes/ilolex.pqrecc>.

<sup>92</sup> De la Cruz, supra note 12 at 124.

The ILO system of supervision requires each member state to submit annual reports.<sup>93</sup> After the Reports are submitted, the Committee of Experts on the Application of Conventions and Recommendations (the Committee) examines them.<sup>94</sup> The Committee's examination is based on the review of the required government reports submitted by member states, the laws and regulations adopted by the member state, and observations by employers' and workers' organizations.<sup>95</sup> The Committee is to be objective and impartial in pointing out the extent to which it appears that the situation in each State is in conformity with the terms of the Conventions.<sup>96</sup> The Committee submits its annual report to the Conference Committee on the Application of Conventions and Recommendations.<sup>97</sup> The Conference Committee, which holds its sessions in public, focuses on member states that have the greatest difficulties in meeting their ILO obligations.<sup>98</sup> It invites the governments concerned to furnish explanations and answer questions concerning the report.<sup>99</sup> The Conference Committee then summarizes its

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<sup>93</sup> ILO, Constitution of the International Labour Organization and Standing Orders of the International Labour Conference, art. 22 (1989). Article 22 of the ILO Constitution requires member states "to make an annual report to the International Labor Office on the measures which it has taken to give effect to the provisions of Conventions to which it is a party." *Id.*

<sup>94</sup> Valticos & Potobsky, *supra* note 16 at 284. From a legal aspect, the Committee of Experts is the main supervisory body of the ILO. The Committee is composed of 20 members who represent various regions of the world and serve in their personal capacities rather than as government representatives. They are appointed for three-year renewable terms by the Governing Body on the recommendation of the ILO Director-General. Appointments are based on technical qualifications. See, *id.* at 284-285.

<sup>95</sup> *Id.* at 285.

<sup>96</sup> *Id.* at 283. The Committee meets in closed sessions and its deliberations are in private. The findings of the Committee take the form of either observations or requests. Observations, published in a lengthy annual report, are used to draw attention to cases involving more serious or long-standing failures to comply with Convention obligations. Requests are not published but are sent directly to the member state concerned and to employers' and workers' groups. *Id.* at 286.

<sup>97</sup> *Id.*

<sup>98</sup> The Conference Committee is set up at the annual sessions of the International Labour Conference and is composed of representatives of governments and of employers' and workers' organization. *Id.* at 286.

<sup>99</sup> *Id.* at 287.

conclusions in a report which is then sent to member states with instructions to address particular issues in their next report to the ILO.<sup>100</sup>

Another procedure to supplement the regular reporting system is the direct contacts procedure. This procedure is used at the request or with the cooperation of the government concerned when a state has persistently failed to comply with the ILO's findings regarding their obligations under the Convention.<sup>101</sup>

The ILO Constitution provides for two kinds of complaints that may set in motion contentious proceedings concerning the application of a ratified Convention: complaints and representations. The complaint procedure is provided for under Article 26-34 of the Constitution.<sup>102</sup> A complaint may be filed by a state that is a party to a Convention "if it is not satisfied that the other member is securing the effective observance of that Convention."<sup>103</sup> The ILO Governing Body may also initiate a complaint on its own or after receiving a complaint from a delegate to the International Labour Conference.<sup>104</sup>

When a complaint has been filed, the Governing Body may appoint a Commission of Inquiry to make a thorough examination of the matter.<sup>105</sup> When the Commission of Inquiry has fully examined the issue, it prepares a report embodying its findings on all questions of fact relevant to determining the issue, and containing recommendations as to the steps which should be taken to meet the complaint.<sup>106</sup> After receiving the report, the implicated government is required to state within three months

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<sup>100</sup> Id. The Conference Committee has emphasized that it is not acting as a tribunal and that mentioning of a member state having difficulties with its Convention obligation is not to be construed as a sanction. Id.

<sup>101</sup> Id. at 288. A "direct contact" involves ILO officials visiting the country to assess the situation more thoroughly and to aid in the provision of technical assistance

<sup>102</sup> ILO Constitution, supra note 93 art. 26-34.

<sup>103</sup> Id. art. 26 para. 1.

<sup>104</sup> Id. art. 26 para. 4.

<sup>105</sup> Id. art. 26 para. 3.

<sup>106</sup> Id. art. 28. The Commission of Inquiry is composed of three independent persons, one of whom is appointed chairman by the Governing Body. De la Cruz, at 96.



whether or not it “accepts the recommendations; and if not, whether it proposes to refer the complaint to the International Court of Justice.”<sup>107</sup> The decision of the International Court of Justice is final.<sup>108</sup> No country has ever appealed the findings of the Commission of Inquiry to the International Court of Justice.<sup>109</sup>

If a country does not comply with the recommendations or conclusions of the Court within a defined period of time, the Governing Body may propose to the Conference the measures it considers necessary to secure compliance.<sup>110</sup> The government may inform the Governing Body that it has taken the measures necessary to apply the recommendations of the Commission of Inquiry or the Court’s decision, and may request that another Commission of Inquiry be convened to verify these assertions.<sup>111</sup> If this report is favorable, the Governing Body will discontinue any additional compliance measures that it might have instituted.<sup>112</sup> Finally, the Commission of Inquiry includes in its recommendations a request that the implicated state note in its annual reports to the ILO the steps that it has taken to give effect to the recommendation.<sup>113</sup>

The second type of contentious procedure for by the ILO Constitution is that of representation.<sup>114</sup> A representation may be made by any employer or worker organization on the ground that a State has “failed to secure in any respect the effective

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<sup>107</sup> Id. art. 29. No court has ever appealed the Commission’s findings to the International Court of Justice. De la Cruz, *supra* note 12 at 95.

<sup>108</sup> Id. art. 31. The International Court of Justice may confirm, modify or annul the conclusions or recommendations.

<sup>109</sup> De la Cruz, *supra* note 12 at 95.

<sup>110</sup> ILO Constitution, *supra* note 93 at art. 33. Other measures to secure compliance have never been used. De la Cruz, *supra* note 12 at 95.

<sup>111</sup> Id. art. 34.

<sup>112</sup> Id.

<sup>113</sup> De la Cruz, *supra* note 12 at 97.

<sup>114</sup> ILO, Constitution *supra* note 93 at art. 24-25.

observations of a Convention to which it is a party.”<sup>115</sup> The Governing Body decides, on receiving a representation, whether to establish a Tripartite Committee composed of one government, one employer, and one worker representative from its members.<sup>116</sup> The Committee gathers information on the matter and deliberates in closed meetings.<sup>117</sup> After receiving the Committee’s report, the Governing Body deliberates in private on the representation.<sup>118</sup> A representative from the implicated government may participate in the deliberations with the right to speak, but not to vote.<sup>119</sup> The Governing Body can either accept the government’s explanation and terminate the proceeding, or “if no statement is received within a reasonable time from the government in question or if the statement when received is not deemed to be satisfactory by the Governing Body, the later shall have the right to publish the representation and the statement, if any, made in reply to it.”<sup>120</sup> The publication of the case is the most serious decision the Governing Body can take to conclude the procedure.<sup>121</sup>

Besides the supervisory system, the ILO provides member states with technical assistance to enable them to achieve greater compliance with its ILO obligations.<sup>122</sup> Specific activities may include technical assistance in drafting legislation, organizing regional seminars on standards, and providing technical and vocational education.<sup>123</sup>

Technical assistance has never been withdrawn to punish states that refuse to implement

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<sup>115</sup> Id. at art. 24. The organization does not have to be from the accused country.

<sup>116</sup> De la Cruz, *supra* note 12 at 90. No national of the State against which the representation has been filed, nor any person who is an official of the complainant organization, may be a member of this committee. Id.

<sup>117</sup> Id.

<sup>118</sup> Id. at 91.

<sup>119</sup> Id. at 91.

<sup>120</sup> ILO Constitution, *supra* note 93 at art. 25.

<sup>121</sup> De la Cruz, *supra* note 12 at 91. The Governing Body has only taken this step once, deciding to publish a case in the Official Bulletin of the ILO. Normally, the Governing Body decides that the government should continue to inform the ILO on the measures it has taken to rectify the situation, within its regular supervisory methods. Id.

<sup>122</sup> De la Cruz, *supra* note 12 at 86.

<sup>123</sup> Id. at 87.

labor standards.<sup>124</sup> Rather technical assistance is seen as way of encouraging states to comply with ILO standards.

The ILO relies on moral persuasion, publicity, shame, and diplomacy to ensure compliance by member states.<sup>125</sup> No material form of sanctions has ever been implemented to induce compliance from a member state.<sup>126</sup> In fact, none of the ILO's supervisory procedures include sanctions against a country found in violation of an ILO standard. If the ILO did implement sanctions against violating states, this may have the effect of discouraging member states from ratifying ILO Conventions and perhaps motivate member states to denounce Conventions to which they are already parties.<sup>127</sup>

Over the years, the ILO has stepped-up its use of its contentious procedures. Since 1919, there has only been twenty-six complaints and forty-six representations submitted to the ILO. However, twenty-eight of these were between 1983 and 1994.<sup>128</sup> While the overall low number of complaints and representations might be due to the effectiveness of the regular supervisory proceeding, the more likely explanation is the unwillingness of states to criticize each other for human rights violations.<sup>129</sup> Because nations often view complaints as hostile acts, they may fear retaliation. The overuse of contentious methods may create distrust among member states and threaten the entire ILO system.<sup>130</sup>

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<sup>124</sup> *Id.* at 85.

<sup>125</sup> J.M. Servis, *Flexibility and Rigidity in International Labour Standards*, 125 *Int'l Lab. Rev.* 193, 202-203 (1986).

<sup>126</sup> *Id.* at 203.

<sup>127</sup> A ratifying state may denounce a out-right Convention of which it is party. There have only been 72 outright denunciations as against more than 6,000 ratifications. Valticos & Potobsky *supra* note 16 at 274.

<sup>128</sup> *Id.* at 293-294.

<sup>129</sup> Virginia A. Leary, *Lessons from the Experience of the International Labour Organization, in the United Nations and Human Rights: A Critical Appraisal* 580, 601 (Phillip Alston ed., 1992).

<sup>130</sup> *Id.* at 600.

### 3. Enforcement of the Minimum Age Convention No. 138

The Committee of Experts on the Application of Conventions and

Recommendations has published a number of individual observations and requests regarding non-compliance by particular member states with the Minimum Age Conventions of 1973 (No. 138). The Committee has also addressed the two representations filed against member states regarding non-compliance with Convention No. 138.

The Committee has published five observations concerning non-compliance by Dominica with Convention No. 138. In 1993, the Committee noted “with regret”<sup>131</sup> that for the third straight year Dominica had not sent its required annual report on the status of its implementation of Convention No. 138.<sup>132</sup> The Committee requested once again that a report would be sent during its next session.<sup>133</sup> In 2003, 2004, 2005 and 2006, the Committee noted that the national laws have not been amended to give effect to the minimum age for admission to employment, which was specified to be 15 years when the Convention was ratified by Dominica.<sup>134</sup> Each year, the Committee repeated that it was “hopeful” that reports would be sent by the government of Dominica to the Committee.<sup>135</sup>

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<sup>131</sup> “The Committee is extremely polite in its comments and has developed a stylized and under stood diplomatic language to couch its remarks. For, example phrases such as ‘with concern’ or ‘with regret’ are understood to denote harsh criticism and signify that the government’s failure to adhere to its Convention obligation are serious. Leary, *supra* note 128 at 598.

<sup>132</sup> CEACR: Individual Observation concerning Convention No. 138, Minimum Age, 1973 Dominica (ratification: 1983) Published: 1993.

<sup>133</sup> *Id.*

<sup>134</sup> CEACR: Individual Observation concerning Convention No. 138, Minimum Age, 1973 Dominica (ratification: 1993) Published: 2004, February; CEACR: Individual Observation concerning Convention No. 138, Minimum Age, 1973 Dominica (ratification: 1993) Published: 1995, February; CEACR: Individual Observation concerning Convention No. 138, Minimum Age, 1973 Dominica (ratification: 1983) Published: 2005. CEACR: Individual Observation concerning Convention No. 138, Minimum Age, 1973 Dominica (ratification: 1993) Published: 2006.

<sup>135</sup> *Id.*

In 2006, the Committee was active in publishing observations concerning the non-compliance with Convention No. 138 by member states.<sup>136</sup> For example, the Committee asked that Rwandan government to indicate the measures taken or contemplated to clarify the scope of the exceptions provided for in Article 7 of the Convention.<sup>137</sup> A similar observation was published regarding Romania and Costa Rica.<sup>138</sup>

The Committee observed that France in application of Convention No. 138, intended to revise its Maritime Labour Code, which established a minimum age of 15 years, in order to raise the minimum age for work on board ships to 16 years.<sup>139</sup> The Committee requested the Government to indicate the measures which have been taken to bring its legislation in to conformity with the obligations deriving from the Convention on this point.<sup>140</sup>

In a case dealing with the Russian Federation, the Committee noted “with concern” the indication in the Government’s report that the minimum age for employment had been lowered to 15 from the previous 16, by virtue of Federation legislation. The Committee observed that the lowering of the existing minimum age is

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<sup>136</sup> The Committee has published 12 observations on ratifying states in 2006. See ILO web page at <http://ilolex.ilo>.

<sup>137</sup> CEACR: Individual Observation concerning Convention No. 138, Minimum Age, 1973 Rwanda (ratification: 1981) Published: 2006. Article 7 provides that exceptions to the minimum age for admission to employment in the case of light work done by children over 13 years of age on condition that the work is not likely to be harmful to their health or development and not such as the prejudice their school attendance. Convention No. 138, supra note 72, art. 7. With the current situation in Rwanda it is hard to believe this is realistic.

<sup>138</sup> CEACR: Individual Observation concerning Convention No. 138, Minimum Age, 1973 Romania (ratification: 1975) Published: 2006; CEACR: Individual Observation concerning Convention No. 138, Minimum Age, 1973 Costa Rica (ratification: 1976) Published: 1993.

<sup>139</sup> CEACR: Individual Observation concerning Convention No. 138, Minimum Age, 1973 France (ratification: 1990) Published: 2006.

<sup>140</sup> Id.

contrary to the principles of the Convention, which is to raise progressively the minimum age, provided in Articles 1 and 2(2).<sup>141</sup>

In an observation regarding Togo, the Committee requested the Government to indicate as provided by Article 2(3) of the Convention the measures which had been taken or are envisaged for the benefit of street children and children who are employed as domestic servants.<sup>142</sup>

Also, the Committee recalled in an observation on Uruguay that, at the time of ratifying Convention No. 138, Uruguay specified under Article 2(1) of the Convention the minimum age of 15.<sup>143</sup> The Committee noted however that the Government indicated in its report submitted to the United Nations Committee on the Rights of the Child, that the minimum age is 14 according to national legislation.<sup>144</sup> The Committee urged Uruguay to clarify the situation, with particular reference to the legislative provisions actually in force on the matter.<sup>145</sup>

The Committee has reported on two representations type complaints regarding failure to comply with Convention No. 138 (along with various other ILO Conventions). The first representation was submitted in 1985 against Costa Rica by various Costa Rican worker organizations.<sup>146</sup> The complainant organizations alleged that the Legislative Assembly had adopted legal measures that constituted violations of Convention No. 138,

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<sup>141</sup> CEACR: Individual Observation concerning Convention No. 138, Minimum Age, 1973 Russian Federation (ratification: 1989) Published: 2006.

<sup>142</sup> CEACR: Individual Observation concerning Convention No. 138, Minimum Age, 1973 Togo (ratification: 1984) Published: 2006.

<sup>143</sup> CEACR: Individual Observation concerning Convention No. 138, Minimum Age, 1973 Uruguay (ratification: 1977) Published: 2006.

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> Report of the Committee set up to examine the representation made by the Confederation of Costa Rican Workers (CTC), the Authentic Confederation of Democratic Workers (CATD), the United Confederation of Workers (CUT), the Costa Rican Confederation of Democratic Workers (CCTC) and the National Confederation of Workers (CNT), under Article 24 of the Constitution, alleging the failure of Costa Rica to observe International Labour Conventions nos. 82, 95, 102, 122, 127, 130, 131 and 144.

without specifying the content of these measures or the provisions of the respective Conventions concerned.<sup>147</sup> The Committee noted that, in the absence of more specific information on the part of the complainant organizations, it was impossible for it to reach any kind of conclusions casting doubt on the application to the Convention by Costa Rica.<sup>148</sup> Thus, the representation, as far as it related to Convention No. 138 was dismissed.

The second representation was submitted in 1987 by the Oil, Chemical, Atomic Workers International Union, and the AFL-CIO, alleging non-compliance by the Federal Republic of Germany with Convention No. 138 (along with a number of other ILO Conventions).<sup>149</sup> The Committee did not consider the representation and the procedure was closed without explanation.

#### 4. ILO Efforts and Convention No. 138 in Perspective

While it is impossible to expect a single international Convention to eliminate the use of child labor, Convention No. 138 is an important international instrument with which to combat child labor. However, it is not a perfect. The major problem is the lack of flexibility regarding the light work issue under Article 7 and 8.<sup>150</sup> In some countries it is common practice for children younger than thirteen to work after school doing various odd jobs. This type work is seen as often beneficial in teaching self-reliance and responsibility.<sup>151</sup> Furthermore, this type of work is difficult to regulate. One could argue that the lack of flexibility in the light work issue explains the unwillingness of developed

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<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> Representation submitted by the Oil, Chemical and Atomic Workers International Union, AFL-CIO, alleging non-observance by the Federal Republic of Germany of Conventions Nos. 29, 62, 81, 87, 98, 99, 100, 102, 111, 132, 135, 138, 139, 144, 148, 154, 155 and 156.

<sup>150</sup> Creighton, *Supra* note 81 at 385.

<sup>151</sup> *Id.*

countries, such as the U.S., Canada, the United Kingdom and Australia, to ratify Convention No. 138.

Another problem with the Convention has been recognized by the ILO is that it does not set priorities for national action, but rather leaves this to the competent authorities in each country.<sup>152</sup> The Convention does not “specify what priorities should be given to measures geared to preventing children from finding themselves in work situations that jeopardize their development or are contrary to human rights, to withdrawing immediately those who are already in such situations and to ensure that they do not return to such work.”<sup>153</sup>

The ILO in 1992 initiated the International Programme for the Elimination of Child Labour (IPEC).<sup>154</sup> This program is designed to help member states to eliminate child labor by strengthening national capacities to address child labor problems.<sup>155</sup> The program, by giving financial support to partner organizations to develop and implement measures which aim at preventing child labor, withdrawing children from hazardous work and providing alternatives, and improving the working conditions as a transitional measure towards the elimination of child labor.<sup>156</sup> There are over 1,000 IPEC programs currently being implemented around the world.<sup>157</sup>

Despite the problems with Convention No. 138, member states should be encouraged to ratify it. If nothing else it represents a gesture that the nation intends to address the problem of child labor.

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<sup>152</sup> ILO, What is to be done? (2005), <http://www.ilo.org/public/english/236press/ap>.

<sup>153</sup> Id.

<sup>154</sup> ILO: IPEC at a Glance, <http://www.ilo.org/public/english/90ipec/about/glance>.

<sup>155</sup> Id.

<sup>156</sup> Id.

<sup>157</sup> Id.



### C. United Nation Efforts to Curb Child Labor

The Convention on the Rights of the Child contains fifty-four articles, only one of which is directed specifically at child labor.<sup>158</sup> Article 32(1) provides that “States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.”<sup>159</sup> Furthermore, Article 32(2) “provides that States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, States Parties shall in particular: (a) Provide for a minimum age or minimum ages for admission to employment; (b) Provide for appropriate regulation of the hours and conditions of employment; (c) Provide for appropriate penalties or other sanctions to ensure the, effective enforcement of the present article.”<sup>160</sup> The Convention does not recommend a specific minimum age, which allows the parties a wide range of discretion in meeting this requirement.

Article 44 of the Convention provides that “States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measure they have adopted which give effect to the rights recognized therein and on the progress made in the enjoyment of those rights: (a) within two years of the entry into force of the Convention for the State Party concerned, (b) thereafter every two years.”<sup>161</sup> Furthermore, Article 45 provides that agencies that monitor the child labor problem, UNICEF and other UN organs, report their suggestions and recommendations to the UN

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<sup>158</sup> Convention on the Rights of the Child, G.A., res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354 (1959).

<sup>159</sup> Id. art. 32(1).

<sup>160</sup> Id. art. 32(2).

<sup>161</sup> Id. art. 44(1). Under Article 4, State parties are requested to provide information on the measures taken to harmonize national laws with the provisions of the Convention, and existing or planned mechanisms at the national or local level. Id. art. 4.

General Assembly.<sup>162</sup> This article would be triggered when a monitoring agency finds that a state is not fulfilling its Article 32 obligation.

In January, the Committee on the Rights of the Child, which is in charge of monitoring the implementation of the Convention, issued conclusions and recommendations that relate to child labor regarding two countries.<sup>163</sup> Regarding Libya, the Committee concluded that the Government should further research the situation of child labor, including conducting studies on the involvement of children in hazardous work.<sup>164</sup> Regarding the Federated States of Micronesia, the Committee expressed concern about the absence of laws regulating child labor and providing for a minimum age for employment.<sup>165</sup>

The Convention on the Rights of the Child is an important step in the process of protecting working children. However, the Convention is only as effective as its implementation process. Article 45 includes mechanisms which, if effectively employed, would allow for better enforcement of the Convention.

#### D. Unilateral Measures by the United States

The United States has several laws that seek to curtail child labor overseas. These laws have a primarily economic thrust. Their emphasis is on stopping unfair competition.

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<sup>162</sup> Id. art. 45. The General Assembly may then make recommendations to either the United Nations members or the Security Council. UN Charter art. 10. When the Security Council decides on the appropriate measures, it may require the member states to apply those measures. Id. art. 41. The measures would most likely be limited to the interruptions of economic relations provided for in Article 41, rather than the more forceful measures of Article 42 used to maintain or restore international peace and security. Id. art. 42. To date, no such measures have been taken to enforce the child labor provision of the Convention on the Rights of the Child. The ILO has never sent reports to the UN General Assembly regarding violations of Convention No. 138. Valticos & Potobsky, *supra* note 8 at 286.

<sup>163</sup> UN Press Release HR/4353 26 January 26 2007. At the next session, the Committee is scheduled to review reports from Hungary, Democratic People's Republic of Korea, Fiji, Japan, Maldives and Ecuador. Id.

<sup>164</sup> Id. It noted that "Sanctions imposed by the Security Council had adversely affected the economy and many aspects of daily life of its citizens, thereby impeding the full enjoyment of Libyans, including children, of their rights to health and education." Id.

<sup>165</sup> Id.

If companies that employ cheap child labor can undercut the costs of production of U.S. companies, then the products produced in those countries will enter the U.S. market priced lower than those manufactured here. Thus, U.S. companies are at a disadvantage if other countries allow the use of child labor.

The Generalized System of Preferences (GSP),<sup>166</sup> Overseas Private Investment Corporation (OPIC) Act,<sup>167</sup> and the Caribbean Basin Economic Recovery Act (CBERA),<sup>168</sup> call for the beneficiaries of trade with the U.S. to adhere to internationally recognized workers' rights.<sup>169</sup> These rights include a minimum age requirement for the employment of children.<sup>170</sup> The requirement is only that participating nations establish a minimum age; the law, does not provide requirements for that age. Once the conditions have been met and trade has begun, the Trade Act of 1974<sup>171</sup> allows for retaliation for violations, including the suspension of trade or foreign aid payments.<sup>172</sup>

There are several problems that impede the use of these measures to combat child labor. The first problem is that while the GSP can effectively promote the rights of workers, it still only requires nations to establish a minimum age for employment. Because the CBERA and OPIC, also only require that nations establish a minimum age (nor necessarily enforce it), it is unlikely these provisions can be used to seriously impact the international problem of child labor.

A second problem is that developing countries could unite and attempt to create new international worker rights. For example, if mandatory health care were an

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<sup>166</sup> 19 U.S.C. §§ 2461-2465 (1988 & Supp. V 1993).

<sup>167</sup> 22 U.S.C. §§ 2191-2200 (1988 & Supp. V 1993).

<sup>168</sup> 19 U.S.C. §§ 2701-2706 (1988 & Supp. V 1993).

<sup>169</sup> This provision is located in the GSP at 10 U.S.C. § 2462(b)(7), the CBERA at 19 U.S.C. § 2702 (b)(7), and the OPIC Act at 22 U.S.C. § 2191(a).

<sup>170</sup> *Id.*

<sup>171</sup> 19 U.S.C. §§ 2101-2465 (1988 & Supp. V 1993).

<sup>172</sup> 19 U.S.C. § 2411 (1988 & Supp. V 1993).

international worker right, the U.S. would be in violation of that right. Nations could then refuse to trade with the United States until it implemented a plan for mandatory health care for workers. If developing countries thought that the U.S. was imposing its values upon them, they could in retaliation seek to impose their own values on the U.S. How realistic is this scenario? It is hard to say but it is worth noting that the U.S. is the only developed country that does not have some kind of universal health care for its citizens.

In addition, to the U.S. trade legislation mentioned above, the U.S. Congress has considered legislation that more specifically seeks to curb child labor abroad. A proposed Child Labor Deterrence Act (CLDA) first introduced by Senator Tom Harkin in 1999<sup>173</sup> and reworked every year until 2006, would call for a flat-out ban on the importation of goods made with child labor.<sup>174</sup> The latest draft of the bill would require the Secretary of Labor to identify those countries whose industries make use of child labor, which is defined as labor performed by an individual under the age of fifteen (fourteen in those countries where the national law provides).<sup>175</sup> The Secretary of Labor would publish in the Federal Register a list of countries that were in violation and would institute a ban on the importation of products from that country.<sup>176</sup> Also, under the 2006 draft CLDA, the bill would authorize the President to contribute \$10 million to the ILO to help foreign countries better enforce their own child labor laws and alleviate widespread poverty that contributes to child labor.<sup>177</sup>

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<sup>173</sup> The Child Labor Deterrence Act of 1989, 101<sup>st</sup> Cong., 1<sup>st</sup> Sess. (1989).

<sup>174</sup> The Child Labor Deterrence Act of 2006, § 340, 105<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2006).

<sup>175</sup> *Id.* § 5(a)(1).

<sup>176</sup> *Id.* § 5(e)(1).

<sup>177</sup> *Id.* § 9(a)(1).

The bill has generated substantial controversy. Some scholars believe that it might lead to an even worse situation for the very children it intends to help.<sup>178</sup> The fear is that a sudden ban on imports made by child labor would throw working children out of their current jobs and into even more brutal working conditions.<sup>179</sup> The primary support for this claim is the experience of the Bangladesh garment industry. UNICEF reported that in 1993 the Bangladesh garment industry, fearful of the potential effect of passage of the CLDA, fired an estimated 50,000 child workers.<sup>180</sup> Reportedly, many of those thrown out of work ended up in stone crushing jobs and hustling on the streets.<sup>181</sup> As a partial remedy, UNICEF and the Bangladesh Garment Manufacturers and Exporters Association agreed in 1995 to remove all remaining children from their work rolls and to place children removed from the garment industry in appropriate educational programs.<sup>182</sup> The mere possibility of passage of the CLDA seemed to have at least focused industry attention on the issue of child labor.

Another controversial aspect of CLDA is that it violates the rules of the World Trade Organization (WTO) and the General Agreement on Tariffs and Trade (GATT).<sup>183</sup> Under GATT Article XI, “no prohibitions or restrictions ... whether made effective through quotas, import or export licenses, or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party.”<sup>184</sup> The CLDA places an absolute prohibition on products

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<sup>178</sup> John Berlau, *The Paradox of Child Labor Reform*, *Insight Magazine*, November 24, 2006.

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> In 1995, the parties to GATT established the World Trade Organization and this institution now governs international trade.

<sup>184</sup> General Agreement on Tariffs and Trade, opened for signature Oct. 30, 1947, 61 Stat. A3, 55 U.N.T.S. 187, art. XI.

made by child labor and is therefore not within the GATT principles. Under the rules of GATT/WTO, if the bill were passed, countries affected by the legislation could challenge it as a non-tariff trade barrier. The U.S. would be forced to abandon the legislation altogether, or accept trade sanctions equivalent to the sales which countries lost in the U.S. due to the child labor import ban. The only way the U.S. could avoid this dilemma would be to quit GATT and the WTO altogether.

#### E. Unilateral Measures: Other Countries' Domestic Legislation

Almost all of the developing countries from which the United States imports products have some sort of domestic child labor laws.<sup>185</sup> Most of these countries have a minimum age for employment of between fourteen and sixteen years.<sup>186</sup> Child labor laws in developing countries have had little or no effect in stopping child labor. The problem is that many countries grant numerous exceptions or are unable to enforce their laws effectively. For many countries, they simply lack the resources and personnel to do the job. This problem is exacerbated by societal acceptance of child labor, the employers' self interest, and the developing country's desire to compete globally.

#### F. Measures Taken By Non-Governmental Organization

##### 1. Consumer Action

Private citizens can take action to curb the problem of child labor. Concerned citizens can obtain reports from various organizations, such as the National Labor Committee (NLC)<sup>187</sup> and the Child Labor Coalition,<sup>188</sup> to find out which products are made by child labor and boycott the use of those products. If enough citizens acted, the

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<sup>185</sup> ILO, *supra* note 36.

<sup>186</sup> *Id.*

<sup>187</sup> The National Labor Committee is a human rights advocacy group that focuses on the promotion and defense of worker rights. See their web page at <http://www.nlcnet.org/>.

<sup>188</sup> The Child Labor Coalition seeks to educate the public, businesses and the government on child labor abuses in the U.S. and abroad. See their web page at <http://www.natlconsumersleague.org>.

industries, faced with a falling demand for their products, would either stop their utilization of child labor or be forced out of business.

## 2. Corporate Initiatives and Labeling Programs

As consumers have become more aware of the problem of child labor, corporations have responded by adopting codes of conduct for their overseas operations and participating in product labeling programs.<sup>189</sup> Codes of conduct seek to ensure that goods which imported and sold are not made by child labor. They seek to require the corporations to monitor the overseas production of the goods. The Apparel Industry Code of Conduct has been adopted by 36 of the 42 major garment manufacturers, designers and retailers in the United States.<sup>190</sup> An agreement between The Gap, an apparel retailer, and the NLC, grants human rights and religious groups the authority to inspect The Gap's Salvadoran contractor responsible for making their clothes, and to ensure it upholds The Gap's code of conduct.<sup>191</sup> However, absent assurances from independent monitors and publicly available reports, consumers have no guarantee that codes are being followed.<sup>192</sup>

Another solution is labeling programs. The Rugmark program is an international project which certifies that carpets are made without the use of child labor.<sup>193</sup> Independent monitors validate that carpet looms do not use child labor. Carpets that are certified as not being made by child labor are stamped with a "smiley face", and the small

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<sup>189</sup> Robert Weissman, *Stolen Youth: Brutalized Children, Globalization and the Campaign to End Child Labor*, *Multinational Monitor*, Jan. 11, 2006.

<sup>190</sup> *Id.*

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

additional charge for Rugmark-approved carpets is put into a fund to help children who might otherwise be making carpets pay for school.<sup>194</sup>

Another program is the FoulBall campaign. Initiated by a coalition of international trade unions and non-governmental labor rights organizations, the FoulBall program seeks to eliminate the use of child labor in the manufacturer of soccer balls. The Federation of International Football Associations (FIFA), which places its stamp of approval on top-quality soccer balls, agreed to join the campaign, and now requires all of its licensees to adhere to an extensive labor code as a condition of using the FIFA label.<sup>195</sup>

A beneficial aspect of the private actions consumer, corporations and non-governmental organizations is that they are not the actions of states and therefore do not violate any international agreements. However, while the actions by consumers and corporations may be help in curbing the use of child labor, they alone will not eliminate such a pervasive and complex problem.

## **V. Proposals for Elimination of Child Labor**

Advocates for children's rights in the ILO, UNICEF, and in various non-governmental organizations are divided as to the best strategy to address the problems of child labor. Many advocates recommend abolishing all child labor immediately; they argue that in the long run, developing countries would benefit both economically and socially from a public policy of strict enforcement of both compulsory education and

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<sup>194</sup> Id.

<sup>195</sup> Id. FIFA joined the program after thousands of young and professional soccer players in the U.S. and Europe wrote to FIFA asking that child labor be eliminated from soccer ball making. Id.



minimum age laws.<sup>196</sup> Other advocates for children's rights believe that the immediate abolition of all child labor is unrealistic and, in many cases, contrary to the interests of the children themselves.<sup>197</sup> This group is probably the majority and includes the ILO.<sup>198</sup> They recommend first abolishing the most abusive forms of child labor, and to allow individual governments to regulate the other forms.<sup>199</sup> This group argues that child labor cannot be abolished until the underlying causes of the problem no longer exist.<sup>200</sup>

Of the two strategies, the phase-out approach is clearly the more realistic. Measures adopted to end child labor should concentrate on the most abusive forms of child labor, such as slavery, child prostitution, bonded labor, and mining, and then move on the less dangerous forms.<sup>201</sup> This approach is likely to be the most effective in the long run. There are a number of measures that can be taken by the international community to assist in the phase-out strategy to eliminate child labor.

#### A. Measures by the ILO and the United Nations

The ILO is preparing a new Convention on the most intolerable forms of child labor.<sup>202</sup>

The Convention will be debated in Geneva in October 2007, for adoption in 2008.<sup>203</sup>

The proposed Convention is principally targeted at two types of child labor. First, "forms of labor that are contrary to fundamental human rights such as work performed by a child in slavery, debt bondage, or bonded labor; child prostitution; or the use of children in

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<sup>196</sup> U.S. Department of Labor, Bureau of International Labor Affairs, *By the Sweat and Toil of Children: The Use of Child Labor in American Imports* 37 (1994).

<sup>197</sup> *Id.*

<sup>198</sup> *Id.*

<sup>199</sup> *Id.*

<sup>200</sup> *Id.* at 39.

<sup>201</sup> *Id.*

<sup>202</sup> Governing Body of the ILO, *Proposals for the Agenda of the 2007 Session of the Conference* (2006).

<sup>203</sup> *Id.*

drug-trafficking or in pornography.”<sup>204</sup> Second, “work which, because of its nature or the conditions in which it is usually performed, exposes children to particularly grave hazards to their safety or health or prevents them from attending school normally.”<sup>205</sup> Ratifying states would be obliged to take immediate action to ensure the withdrawal of children from such work, and to protect them from the risk of returning to it in the future.<sup>206</sup> While the new Convention is to address primarily intolerable forms of child labor, a proposed Article would require states to “commit themselves to formulating and implementing a national policy aimed at gradually eliminating other forms of child labor.”<sup>207</sup>

Along with the adoption of this new Convention, the ILO should continue to encourage member states to ratify Convention No. 138. A country that ratifies Convention No. 138 is undertaking its intention to eliminate child labor within its borders. While Convention No. 138 is not a perfect instrument to combat child labor, it is the best instrument at present.

The ILO should continue its recent trend of publishing more observations on member states that are failing to comply with their ILO obligations under Convention No. 138. In so doing, the ILO will beam its spotlight on countries that consistently fail to comply, which will hopefully shame them into stricter compliance.

The United Nations has done a great job of getting nations to ratify the Convention on the Rights of the Child. With almost universal acceptance, it is indeed an

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<sup>204</sup> Id.

<sup>205</sup> Id.

<sup>206</sup> Id.

<sup>207</sup> Id.

impressive document.<sup>208</sup> However, the UN could do more in the way of using its enforcement mechanism to ensure adherence to the Articles of the Convention.

#### **B. Proposed Unilateral Measures**

The U.S. could also increase trade sanctions through stronger legislation against the importation of goods produced by child labor. However, the problem of such legislation violating GATT/WTO remains. The enactment of child labor legislation would potentially subject the U.S. to sanctions from its trading partners.

Overall, it is best to stay away from the use of unilateral measures. Other countries often see these actions as attempts by the United States to interfere in another country's sovereignty.

The United States under the recently signed GATT/WTO treaty is in a position to negotiate side agreements with countries to ensure recognition of worker's rights, including those of children.<sup>209</sup>

#### **C. Comprehensive Educational Action**

Education is clearly one of the most important keys to combating child labor.<sup>210</sup> The establishment of compulsory education is a critical step to curbing child labor. Without compulsory education governments are unable to enforce child labor laws. If the school-leaving age is lower than the age of admission to employment, children are likely to illegally seek employment, making the enforcement of child labor laws more difficult.<sup>211</sup> It is worth noting that no country has successfully ended child labor without first making education compulsory and enforcing these laws.<sup>212</sup>

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<sup>208</sup> Only the United States and Somalia have yet to ratify the Convention. See the UN web site at [www.un.org/](http://www.un.org/).

<sup>209</sup> John Jackson, William Davey, Alan Sykes, *INTERNATIONAL ECONOMIC RELATIONS: CASES, MATERIALS, AND TEXT* 589, 3d ed. (1995).

<sup>210</sup> Department of Labor, *supra* note 196.

<sup>211</sup> *Id.*

<sup>212</sup> *Id.*

Furthermore, in many countries there are not enough schools.<sup>213</sup> This gives children not in school too much free time, free time that is often filled by working. Under these conditions, it is easy to recognize why parents would rather their children work than to run the streets with nothing to do.

**Some indicators of the extent of child labor in countries where national surveys were conducted recently**

Indicators	Proportion of children 5-14 years of age		
	Both sexes %	Boys %	Girls %
Economically active children	25	27	22
Boy/Girl ratio at work	100	56	44
Children attending school	39-87	49-90	23-84
of whom			
with economic activity	00-33	00-25	00-42
Not attending school	13-61	10-51	16-77
of whom:			
in economic activity only	39-56	56-74	23-38
in housekeeping activity only	12-32	8-14	15-49
working 40 hours or more per week	37-38	41-42	24-32
working 49 hours or more per week	14-17	11-19	12-17
working 56 hours or more per week	11-13	9-15	8-13
completely idle (not going to school, nor with economic or housekeeping activity)	29-32	27-37	23-37
Children whose work is hazardous	34-68	33-67	27-69
Sectors where actual incidence of injuries/illnesses is higher than 10%:			
Construction	26	26	35
Mining/quarrying	16	12	21
Transport/storage/communication	18	19	n/a
Agriculture	12	12	16
Children:			
whose work is stressful		up to 50% of working children	
who came home from work exhausted		up to 60% of working children	
who have no day off/no free time		up to 80% of working children	

Source: ILO Bureau of Statistics (Geneva, 1997)

The fewer the schools the greater the inconvenience for many children to even get to school. Without school nearby, parents may prefer that their child works rather than travel far away for school.<sup>214</sup>

<sup>213</sup> Id.

<sup>214</sup> Id.

Finally, the imposition of school fees in some countries inhibits school attendance.<sup>215</sup> For families that cannot afford to send their children to school, child labor becomes an alternative. Countries should follow the example set by Sri Lanka which, with a ninety percent literacy level, provides free education up to the university level and also pays for school supplies, meals and uniforms.<sup>216</sup>

Governmental and non-governmental organization can assist developing countries combat the problems of child labor by providing aid through donations or loans that will then allow those countries to build more schools and to reduce the costs of obtaining an education.

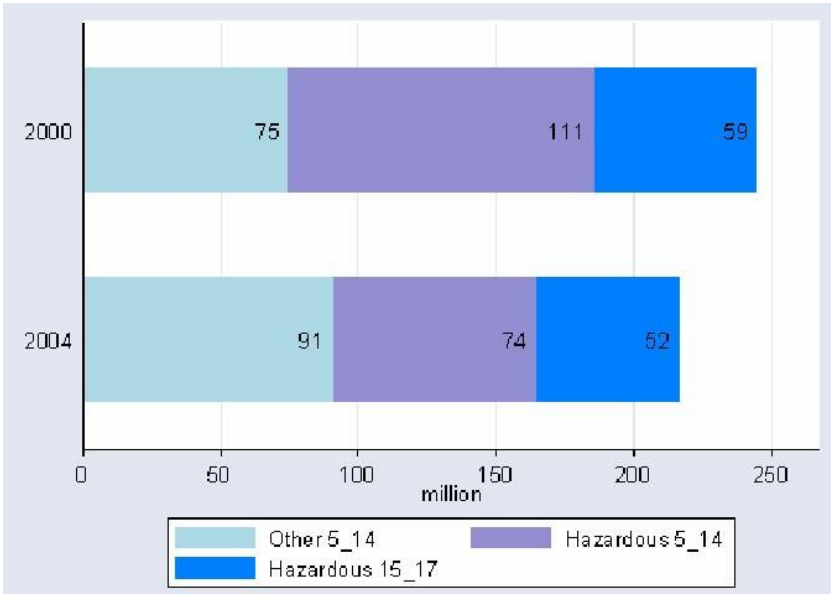
## **VI. Conclusion**

In conclusion, child labor is a serious and complex problem. There are no simple solutions. But, the international community can play a part in curbing the problem of child labor. The ILO and the UN should continue to encourage nations to ratify the present and future Conventions that address the issue, and also provide aid to help those countries already parties to the various convention to comply with their obligations to combat child labor. Furthermore, corporations and private citizens can take action to reduce the use of child labor through boycotts, the adoption of labor codes, and participating in labeling programs. While the problem is complex, the efforts of the international community have led to some improvements.

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<sup>215</sup> Id.  
<sup>216</sup> Id.

**Global trends in child labor by form of work and year (million)**



Source: Source: Frank Hagemann, et al. Global child labour trends 2000 to 2004, International Labour Office

Nevertheless, there remain further measures that can be taken by the international world to curb and eventually eradicate child labor.

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122, 127, 130, 131 and 144. The Committee has published 12 observations on ratifying states in 2006. (See ILO web page at <http://ilolex.ilo>).

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