CONFLICT AND IDEOLOGY IN THE INTERNATIONAL CAMPAIGN AGAINST CHILD LABOUR

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I. INTRODUCTION

The accelerating international campaign against child labour targets some of the most tragic phenomena of the contemporary world. Millions of children are economically exploited in ways that permanently harm them. The shocking stories of young children sold into the carpet industry, tied to their looms for twelve or more hours a day, or sold or lured into the sex industry, have captured the imagination of the world.¹

Activists and commentators have blamed an odd combination of deeply-embedded cultural traditions and highly contemporary economic globalism for this tragic phenomenon.² Traditional cultural attitudes which view child labour as normal, useful, and a positive form of preparation for adult life, the remnants of hierarchical social and economic arrangements such as the caste system, and certain traditional gender attitudes, are viewed as contributing toward extreme forms of child labour such as bonded child labour and even child prostitution.³ At the same time, it is frequently claimed that the globalization and internationalization of the economy has exacerbated the child labour problem, by causing children to become exploited parts of the world system of trade in ways different from, and sometimes worse than, that found under traditional forms of child labour.⁴

The child labour movement thus finds itself in the odd position of challenging two contradictory yet deeply characteristic aspects of the contemporary world: neo-traditionalism, in which ethnic identities, national sovereignty, and traditional ways of life are being re-asserted, and an international economic order based increasingly on international trade and competition.⁵ The underlying tensions between localization

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² See id. at 80.
³ See Claudia Brewster, Note, Restoring Childhood: Saving the World's Children From Toiling in Textile Sweatshops, 16 J.L. & COM. 191, 192-93 (1996); Silvers, supra note 1, at 80.
⁴ See, e.g., Silvers, supra note 1; Brewster, supra note 3, at 191, 199.
⁵ See generally Brewster, supra note 3 (arguing that the child labour problem requires an analysis from several vantage points including world economics, international law, public policy
and internationalization, between cultural particularities and economic standardization and universalism, are a striking characteristic of the contemporary world. The child labour movement is in many respects an ambitious attempt to shape the accommodation and resolution of these tensions by altering the system of international trade to include a global abolition of child labour imposed through a system of international legal instruments, while simultaneously overcoming deeply-embedded cultural traditions that facilitate child labour.

This ambitious program of altering both international and local norms, attitudes, and practices is endangered by tensions between the developed and developing world. Developing nations, while generally acknowledging that abusive forms of child labour within their borders should be abolished, are concerned that the child labour campaign will be used as a means to further disadvantage developing nations in the emerging system of international trade. This fear that the child labour campaign will lead to various kinds of trade sanctions or consumer boycotts targeting the economic products of developing nations, and indeed that the child labour movement will be used by the developed world to further exploit and repress the developing world, threatens to undermine the unity of purpose necessary to the movement.

The child labour movement is in many respects a characteristic part of the larger international human rights movement, which in recent years has created a particularly ambitious group of human rights conventions which appear to demand significant changes in traditional cultural practices. The Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW"), for example, explicitly requires state parties to "modify the social and cultural patterns of conduct of men and women" to eliminate all practices based on "stereotyped roles for men and women." The international human rights movement has in recent years focused on the rights of the child, as exemplified by the very widely ratified 1989 Convention on the

7. See id.
8. See id.; see also Silvers, supra note 1, at 85 (discussing Pakistan's acceptance of the present situation and its intent to maintain traditions which have favorably served the upper class).
9. See Freeman, supra note 6.
10. See id. (discussing North-South split).
11. See id.
Rights of the Child ("CRC"). The CRC explicitly requires State Parties to protect children from hazardous and harmful employment, to ensure that employment does not interfere with a child’s education, and to establish minimum ages for employment. Thus, the child labour movement is in many respects a part of the international child rights movement.

The terminology child labour, however, correctly suggests the related but distinct role of the labour movement as primary contributor to the child labour movement. Thus, the International Labour Organization ("ILO") has established itself as perhaps the most significant force in the child labour movement. The ILO has been active since 1919 in creating conventions related to minimum ages of employment, and therefore has had the most time to develop expertise and experience in the field. The economic and employment foci of the child labour movement also stem from the competence and credibility of the ILO in those fields. The ILO, of course, is in many respects an important actor in the modern international human rights movement, and the fact that the ILO predates both the United Nations and the modern era of international human rights law by more than a quarter-century gives the organization a certain degree of credibility and weight, particularly within its core areas of competence.

The ambitious hope of the child labour movement to create universal rules which alter the global regimen of international trade, as well as altering local economic and labour conditions throughout the world, stems from the long experience of the ILO in the fields of employment and labour conditions.

This article constitutes a critique of the child labour movement, and particularly of the developing approach of the ILO to the problem of child labour. Acceptance of a moral imperative to protect children from profoundly destructive situations and practices does not eliminate
the difficult task of carefully defining the evils involved and devising effective strategies that can combat them. The sometimes sentimental subject of children, in other words, should not be an occasion for fuzzy thinking. Thus, although many of the goals of the campaign to eliminate child labour are certainly laudable, this does not eliminate the need to closely examine and critique the campaign. Good intentions are not enough, particularly in relation to children, for children generally must live with the actual effects of efforts made on their behalf, and are in many situations unable to mitigate those effects or to protect themselves. In addition, the emotional appeal of children makes them, as a class, particularly vulnerable to ideological exploitation.\(^{20}\) An economically exploited child can become a poster child for a movement with much broader purposes than protecting children. Moreover, a mandate of “protecting children” can beg fundamental questions of value and human nature, for the question of what is “good for children” can sometimes imply presuppositions about what is good for human beings generally. For all of these reasons, the child labour movement deserves a sympathetic, yet critical, examination.

II. FUNDAMENTAL TENSIONS IMPLICATED BY THE CAMPAIGN TO ABOLISH CHILD LABOUR

The accelerating campaign to abolish child labour implicate at least four fundamental tensions which threaten to splinter the movement, paralyze its efforts, and reduce international support and enthusiasm.\(^{21}\) These four tensions include the question of linking labour standards and trade, the definition of the final goal of the movement, the conflict between norm-based international human rights and cultural, familial, and personal autonomy, and an ongoing credibility crisis within the human rights field.\(^{22}\) The capacity of the movement to navigate these tensions will determine in large part how much actual effectiveness the movement demonstrates.

A. Linkage Between Labour Standards and Trade

The campaign against child labour raises the divisive question of whether international child labour standards should be linked to inter-

\(^{20}\) See Silvers, supra note 1, at 82.

\(^{21}\) See Córdova, supra note 15, at 144.

\(^{22}\) See id.
national trade standards. The spectre of such a linkage brings to the fore underlying tensions between developed and developing nations, which are often understood as a "North-South" division.\(^2\) Since most child labourers are found in the developing world (the South),\(^4\) any fundamental division between North and South would cripple the child labour movement.\(^5\)

Developing nations have been consistently hostile for some time to any linkage between labour standards and international trade.\(^2\) Some developed nations, and particularly workers' groups within the developed world, tend to favor such linkage.\(^2\) This conflict has intensified as international trade rules have become increasingly liberalized and as the world economy has become increasingly integrated.\(^2\) This conflict goes to the heart of the theory of free trade and the definition of its opposite, protectionism.\(^2\) According to the basic economic theory of free trade, free trade maximizes the wealth of all because it encourages each nation to produce those goods and services in which it has a "comparative advantage," such that it can produce those goods and services most efficiently.\(^3\) A "comparative advantage" can be the result of natural resources or climate, or it can be the result of accumulated expertise and investment.\(^3\) Whether the product be oil, oranges, or automobiles, the costs of production usually vary from place to place, and the nation with the lowest production costs possesses a comparative advantage over other nations.\(^3\) The theory of free trade thus implies economic specialization, for it suggests that each geographic area concentrate in producing those goods and services in which it has a comparative advantage, while relying on other geographic areas for those goods and services in which it lacks a comparative advantage.\(^3\) Free trade thus theoretically allows consumers to purchase goods and services from their most efficient and low-cost producers.\(^4\)

\(^{23.}\) See Freeman, supra note 6.  
\(^{24.}\) See id.  
\(^{25.}\) See id.  
\(^{26.}\) See id.  
\(^{27.}\) See id.  
\(^{28.}\) See Freeman, supra note 6.  
\(^{29.}\) See id.  
\(^{30.}\) See id.  
\(^{31.}\) See id.  
\(^{32.}\) See id.  
\(^{33.}\) See Freeman, supra note 6.  
\(^{34.}\) See, e.g., id.; THE CASE AGAINST FREE TRADE 122, 124-26, 139-141.
Illegitimate protectionism occurs when a nation, through tariffs, taxes, dumping, or subsidies, tries to provide an unfair advantage for their national industries over those of other nations, hence inefficiently distorting the system of free trade. Nations may use protectionist measures to protect domestic jobs and industries, or because they wish to attain self-reliance in certain necessities, such as food. The difficulty with protectionism, of course, is that it builds upon itself. A nation that enacts protectionist measures to protect its own jobs is likely to produce protectionist responses from other nations.

The current world trade system permits some degree of tariffs and other protectionist measures, but seeks to avoid a spiral of protectionism by creating universally-applicable limits to such protectionist measures. The effort to produce a balanced, fair system of trade is complicated by the fact that protectionist effects can be produced in ways more subtle than the obvious means of tariffs and subsidies. Hence, issues such as Japan’s efforts (or lack thereof) to “stimulate” their economy or remove complex barriers to their markets can become a part of the free trade debate. The presence or absence of regulatory regimes that affect production costs, such as environmental controls, can also become trade issues, for it can seem both unwise and unfair for some nations to achieve a trade advantage by uncontrolled destruction of the environment.

One current difficulty with the world trade regimen, then, is that many of the factors that affect production costs are not clearly defined as either legitimate comparative advantage or illegitimate protectionism. Thus, while few would cite the absence of environmental controls as a positive “comparative advantage,” if the World Trade Organization (“WTO”) does not treat it as illicit protectionism, nations can in fact attain trade advantages through such dubious means. Regional trading agreements, such as the North American Free Trade Agreement (“NAFTA”), may, with various degrees of effectiveness, regulate such factors, but their status remains largely indeterminate.

35. See Freeman, supra note 6.
36. See id.
37. See id.
38. See THE CASE AGAINST FREE TRADE, supra note 34, at 6-11, 29.
41. See Singapore Ministerial Declaration, supra note 39, at 221.
The fundamental issue posed by a potential linkage between labour standards and trade is the degree to which the lower labour costs of the developing world constitute a "comparative advantage" which the world trade system should respect, or an illicit form of "protectionism" which should be abolished. Industries dependent on relatively low-skill labour, such as apparel, toys, and textiles, have centered production in the developing world largely because of its substantially lower labour costs. To what degree, however, are these lower labour costs an illegitimate form of protectionism comparable to subsidies?

Some within the developed world, including particularly workers' groups, consider that to the degree that labour costs are lower because of a failure to honor labour standards or the fundamental rights of workers, such lower labour costs constitute illegitimate protectionism, rather than proper comparative advantage. Workers within the developed world feel keenly the affects of the globalization of the labour market through the shifting of jobs to low-cost developing nations. The realization of workers within the developed world that they must compete with workers in the developing world naturally leads to the desire that all should compete under the same rules, including the same set of minimum labour standards and workers' rights.

Many within the developing world, however, consider their lower labour costs to be a proper comparative advantage which is an inevitable feature of their stage of economic and social development, rather than being due to the violation of universal standards or rights. In a highly competitive world market, developing nations fear that this advantage of lower labour costs will be prematurely liquidated through the arbitrary imposition of labour standards. The developing world bitterly recalls being economically exploited during the era of Northern coloni-

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42. See id.
43. See id.
44. See generally GÖTE HANSSON, SOCIAL CLAUSES AND INTERNATIONAL TRADE (1983) (studying the linkage issue).
46. See id.
47. See id. Senator Tom Harkin's negative view of the use of lower wages as a comparative advantage reflects the views of some in the North. "If a Third World country wants to compete in the global economy, what does it have to compete with? Cheap labour. And the cheapest source of labour is kids . . . . So . . . . GATT could . . . . be a stimulus to using more child labour in the third world." Mitchell Zuckoff, Free Trade, Human Rights Clash Over GATT, BOSTON GLOBE, Oct. 30, 1994, available in 1994 WL 6007501.
48. See Freeman, supra note 45.
49. See id.
zation, and tends to view world trade rules promoted by the developed world as a means of further economic exploitation of the developing world. The developing world feels keenly its economic vulnerability to organizations, such as the World Bank, International Monetary Fund ("IMF"), and the WTO, which are dominated by the richer Northern nations. Even where such organizations are theoretically established in part for the benefit of the developing world, the tendency of those Northern-dominated organizations to impose economic programs on the vulnerable Southern nations naturally produces significant resentment, particularly since such imposed economic programs often produce significant economic dislocation. Under such circumstances, the developing world tends to view any linkage between labour standards and trade as yet another Northern means to economically exploit Southern nations.

Currently, no formal linkage exists between labour standards and the world trade regime. International institutions responsible for trade, such as the WTO, have generally declaimed any expertise in regard to labour standards, while the ILO lacks any jurisdiction in regard to trade issues. Efforts to produce formal linkage has produced merely rhetorical WTO support for labour standards and for ILO expertise. Thus, it is entirely possible for a nation to flaunt ILO labour standards without being penalized through the WTO trade framework. The primary check occurs through unilateral or regional restraints, such as a recent United States ban on imports produced by bonded child labour.

50. See id.
51. See id.
52. See id. For the WTO's treatment of the linkage issue, see Singapore Ministerial Declaration, supra note 39 (discussing the WTO's treatment of the linkage issue).
54. See id. at 663 & n.7.
55. See Singapore Ministerial Declaration, supra note 39, at 221. The paragraph on "Core Labour Standards" reads:

We renew our commitment to the observance of internationally recognized core labour standards. The International Labour Organization (ILO) is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them. We believe that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards. We reject the use of labour standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question. In this regard, we note that the WTO and ILO Secretariats will continue their existing collaboration.

Id.

56. See Matt Moffett, U.S. Child-Labour Law Sparks a Trade Debate Over Brazilian Or-
forts to enforce labour standards through trade sanctions, however, are themselves subject to being treated as illicit protectionism under GATT.\(^5\)

The markedly increased ILO focus on the child labour issue, however, threatens the status quo on the linkage issue. Some, for example, have argued that at least the worst forms of child labour constitute a violation of peremptory norms of international law which must be considered implicit parts of world trade conventions.\(^6\) Some forms of activism against child labour, such as consumer boycotts of goods possibly produced by child labour, the corollary creation of labels signifying goods produced without child labour, and recent agreements reached with employer groups representing certain industries in the developed world, all have produced de facto linkages between child labour and international trade between the developing and developed world.\(^7\) The possibility of such linkages are therefore an increasingly present reality in the child labour debate.

Child labour does have a significant impact on labour costs in several ways. First, child labourers are often paid a small fraction of what an adult would be paid for the same amount of work.\(^8\) Second, the large-scale inclusion of children in the labour force, particularly in the demographically young developing world, significantly raises the number of potential workers and thereby depresses the overall labour market. Workers in the developed world already resent competing with low-cost adult labour in the developing world;\(^9\) the prospect of competing with millions of ill-paid children is not a happy one for the workers of the developed world. Child labour is, of course, much more effectively regulated in the developed world than the developing world. Thus, the question of whether child labour is a "comparative advantage" of the

\(^{57}\) See Diller & Levy, supra note 53, at 689.

\(^{58}\) See id. at 664 & n.9. "A peremptory norm of international law, or *jus cogens*, permits no exceptions, even for a very small number of dissenting states, and is a customary norm accepted and recognized by the international community as a whole—that is, by a very large majority of states." Id. at 664 n.9.


\(^{60}\) See Zuckoff, supra note 47.

\(^{61}\) See Freeman, supra note 45.
developing world, or in effect illegitimate "protectionism" by the developing world of their national industries, is a relevant issue.

Developing nations generally accept that the worst forms of child labour should be abolished within their own borders. Developing nations, moreover, typically have national laws making illegal the worst forms of child labour, such as bonded labour, child prostitution, employment in particularly hazardous industries, and employment of the very young. Developing nations, however, believe that they cannot be expected, at their stage of development, to abide by labour standards equivalent to the developing world. It has often been pointed out that laws against child labour are a relatively recent feature of the developed world. It is claimed that it is hypocritical for developed nations to expect developing nations to abide by labour standards they did not attain at a comparative stage of economic and social development. Representatives of the developing world often claim that they lack the resources to implement child labour standards and that the role of the developed world should be to provide those resources. The linkage of child labour standards to world trade, by contrast, can be viewed as a form of neocolonialism intended to further impoverish the South in relation to the North.

Many within the developed world, however, are frustrated by the widespread increase in some of the worst forms of child labour in the South, despite the existence of national laws against them. They fear that certain classes within the developing world are exploiting children in a way that can never be overcome by the current system of "free trade." Indeed, it is often noted that the globalization of the world economy has exacerbated the child labour problem and the accompany-


64. See Freeman, supra note 45.
65. See id.
66. See id.
67. See id.
68. See id.
Globalization has produced markets for goods produced by child labour which have created incentives to exploit children. Hence, it is argued that it is necessary that this same system of world trade impose standards to ensure that its benefits are not produced through the exploitation of children.

It is generally admitted that developing nations cannot be held to precisely the same child labour standards as more developed nations, and the possibility of a gradation of standards has historically been a part of ILO minimum age conventions. However, there is no universally acceptable means for determining what degree of difference in child labour standards between developed and developing nations is appropriate. Thus, the attempt of the ILO to impose only relatively slight age differentials between developed and developing nations, as exemplified by the terms of the 1973 Minimum Age Convention, generally has not been accepted by the developing world. Relatively few developing nations have ratified the basic 1973 Minimum Age Convention, apparently because they believe that the age differentials between developed and developing nations permitted by the Convention are insufficient. Hence, the world community currently lacks a universally-accepted means of determining the appropriate differences in child labour standards between developed and developing nations.

This debate over linkage between trade and child labour standards must be carefully navigated if the child labour movement is to succeed. Activists in the developed world cannot simply impose their will on the developing world, no matter how noble or humanitarian the cause. Activists in the developing world are keenly aware that formal linkage could ultimately work to the disadvantage of their own societies, and lead to trade sanctions or other punishments destructive to their own


70. See id.


72. See generally id. (allowing underdeveloped nations to employ younger workers in certain sectors than their developed counterparts would be allowed to; typically, the age difference is only one year).

73. See Bacon, supra note 69.

74. See id.
Developed nations must admit that they possess a self-interested motivation which could lead them to seek to improperly liquidate even the legitimate comparative advantage of the developing world. Yet, the circumstances of millions of child labourers in the developing world is frequently tragic and seems to demand immediate action. The child labour movement will only succeed in helping these children, however, if it can overcome the North-South divide.

B. Defining the Goal: Total Abolition versus Partial Abolition with Regulation

The ILO and others active in shaping the current international campaign against child labour have effectively fused recent public awareness of particularly heinous forms of child labour, such as bonded child labour and child prostitution, with their long-standing goal of achieving the "total abolition" of child labour. This fusion has temporarily overshadowed fundamental questions regarding the ultimate goals of the movement. However, the manner in which the movement defines its ultimate goals, and the relationship which the movement expresses between ultimate and interim goals, will be critical to its success.

The ILO has been committed since its 1973 Minimum Age Convention to the "total abolition of child labour." The precise definition of the evil to be abolished, "child labour," is by no means clear. No concise definition exists within the ILO conventions. The term "labour" is used broadly in ILO documents to refer to labour, work, or activity, and hence is so broad as to be virtually limitless. The requirement, sometimes noted, that the activity be economically significant, is not much of a limitation, since most activities can be described in economic terms and deemed economically significant. The term "child" is defined in various ways in international and national law.


76. ILO C138 Minimum Age Convention, supra note 71, pmbl., art. 7.

77. See Proposed Convention, supra note 62, art. 4.


tions offered no fixed definition of the term until the most recent proposed Convention on the worst forms of child labour, which offers a fixed definition of “all persons under the age of eighteen.” Hence, it is entirely possible to view the term “child labour” as including any economically significant activity by a person under the age of eighteen. The difficulty with the literal, natural definition of the term “child labour” is that it makes the goal of total abolition ludicrous. A seventeen year old cooking a meal, setting a table, or cleaning her room is surely not an evil which should arouse the international community, and yet would come within the proposed abolition. Indeed, most would consider a sixteen year old employed part-time in formal paid employment to be a good, rather than an evil. Many would consider it entirely appropriate that a seventeen year old high school graduate be employed full-time. Yet these could come within a literal meaning of the term “child labour.”

It sometimes appears that the term “child labour” refers merely to those activities forbidden by ILO minimum age conventions. The basic 1973 ILO Minimum Age Convention, C138, in fact can permit a great deal of “child labour,” in the literal sense of economic activities by minors or persons under the age of eighteen. Hence, the goal of “total abolition” of child labour could refer simply to the goal of achieving universal ratification and effective implementation of the standards of ILO minimum age conventions. To the degree that one finds the terms of those conventions reasonable, this may appear a reasonable and laudable goal.

The difficulty with this interpretation of the term “child labour,” will be demonstrated by the analysis, in a later section of this article, of ILO minimum age and child labour conventions. In simplistic terms, the difficulty with relying on ILO prohibitions of child labour for a fixed definition of child labour is that those prohibitions are specifically designed not to remain fixed, but rather to progressively become more prohibitive. Hence, a fifteen year old being employed full-time may be “illegal” child labour in some times and places under the convention,
but not in others. The term, therefore, retains a slippery quality within the conventions which would permit it to grow progressively toward its literal meaning of any economic activity by a minor.

Finally, it is often stated or assumed that the term “child labour,” in its negative connotation, refers only to exploitation or harmful child “work.” This common sense attempt to limit the scope of the term unfortunately tends to beg the fundamental question of which child labour or work is exploitative or harmful. This latter question tends to be answered in a wide variety of ways. It is very unsatisfying to have a fundamental right and proposed universally-binding legal standard phrased in such an unsatisfying, subjective way.

The underlying difficulty is that the ILO has chosen to make a neutral or even benign phrase into a term designed to evoke universal condemnation. “All work and no play makes Jack a dull boy; All play and no work makes Jack a mere toy,” goes the familiar rhyme. The fact that children—including teenagers—work, is not generally in itself considered an evil. Children, like adults, have their work, whether it be chores, school work, or paid employment. Despite the innocuous literal meaning of the term, there is now a concerted campaign seeking to abolish child labour as though it were an evil comparable to slavery. So long as the term “child labour” evokes the miserable conditions of children employed in sweat shops during the early industrial period of the North, or the sexual exploitation of the child prostitutes of East Asia, or the bondage of the child carpet weavers of South Asia, the implicit comparison to the movement to abolish slavery seems appropriate. As it becomes increasingly clear, however, that the legal meaning of the term sweeps well beyond such images to potentially include activities considered minimally harmful or even benign, there will inevitably be a certain confusion and division of opinion.

84. See ILO C138 Minimum Age Convention, supra note 71, art. 3(1) (providing that work done by persons less than eighteen years of age is prohibited); see also id. art. 3(3) (providing for exceptions to the eighteen year old rule); id. arts. 7(1), 7(2) (providing proper work conditions for persons thirteen to fifteen years of age).

85. See, e.g., ILO, Child Labour is Growing in Africa, supra note 78 (addressing section entitled “An overwhelmingly rural phenomenon” which explains that the ILO report notes need for distinction between “appropriate work” and “normal family obligations” versus “work which gives rise to exploitation and abuse”).

86. See id.

87. Cf. ILC Report VI(2), supra note 63 (addressing paragraph entitled “France” under “General observations” of “Introduction” section). The French government, in commenting on the proposed child labour convention, that “it would be regrettable if the debate on new instruments became bogged down on details about children in highly developed countries who work for pocket
Thus, beneath the apparent agreement on the ultimate goal of abolishing "child labour" lie severe tensions as to the actual, ultimate goals of the movement. Some may hope that the world may one day reach a point of economic development where all minors are legally barred from formal, gainful employment, and where the degree of house chores to which they are assigned is explicitly limited by law. It is certainly to the advantage of workers' groups that minimum age limits be progressively raised, for such age limitations remove from the labour market a significant number of workers who are generally willing to work for relatively low wages. It is well known that in the United States, employers are now heavily dependent on high school students to take large numbers of low-paying part-time jobs in the service sector of the economy.\footnote{See Patti Bond, \textit{Signs, Signs, Everwhere Signs}, ATLANTA J. \& CONST., Mar. 8, 1999, at E1.} The progressive elimination of such forms of part-time employment would theoretically raise the pressures on employers to provide better compensation to those in the service sector. Moreover, there is genuine concern that some high school students in America are working so many hours as to interfere with their scholastic performance.\footnote{See Alex Kotlowitz, \textit{The Fruits of Teen Labor: Bad Grades, Profligacy and a Jaded View of Working?}, WALL ST. J., May 27, 1986, at A29.} Similarly, formal legal limitations on the amount of house chores to which children can be assigned would generally serve the ideological interests of those who seek more regulation of the family in the interest of women's and children's rights, and who tend to perceive the traditional family as a source of exploitation of women and children. Finally, a "total" abolition of child labour tends to appeal broadly to a modern concept of childhood and adolescence as a special time largely free of the cares and responsibilities of adulthood. Thus, the rhetoric and direction of the "total abolition" goal would tend to appeal to workers' groups, particularly in the developed world, and to those whose complex of attitudes toward children, the family, and the state make them generally supportive of high levels of state regulation of families and of the economy.

As will be discussed below, currently there is relatively little formal dissent to the broadly stated goal of the total abolition of child labour.\footnote{But see ILC Report VI(2), \textit{supra} note 63 (addressing section entitled "Form of the international instrument or instruments" which explains that Cameroon, Canadian employer's group, money . . . while in some countries they are treated as slaves, work in arduous and dangerous work or are delivered into prostitution." \textit{Id.}} However, many who formally claim adherence to the goal use
the ambiguity over the meaning of the term "child labour" for their own ends. This group, although they may formally adhere to the officially stated goal of "total abolition," in reality are arguing for a partial prohibition of child labour accompanied by regulation. This group interprets "child labour" to refer only to clearly harmful and explicitly illegal employment by children. They seek what they view as a reasonable regulatory regime of child labour, which would broadly permit benign forms of work and employment by minors, while outlawing clearly harmful economic exploitation of children. Moreover, this group would tend to be rather cautious in labeling child work as harmful "child labour."

Those in the "reasonable regulation" camp include employers' groups, who possess an economic interest in the availability of minors in the labour pool, and those who are generally suspicious of governmental economic regulation (free market advocates) and of governmental regulation within the family (social conservatives). Governments in the developing world are also often in the "reasonable regulation" camp because of their fear that an extensive international regime of child labour would lead to trade or economic penalties against them by the developed world, and would liquidate some of the "comparative advantage" of their lower labour costs by which they hope to compete in the world market.

Currently, the two camps—defined here as the "total abolition" and "reasonable regulation" camps—tend to talk past one another. Those who officially promulgate the "total abolition" goal, such as the ILO, are constantly trying to assure the world that all they seek are the reasonable and "flexible" regulations present in their minimum age conventions. On the other hand, those who seek "reasonable regulation" use the assurances of the ILO to assure the world that they too seek

New Zealand, and New Zealand trade unions argue that some child labour is not harmful, and/or oppose complete abolition of child labour.

91. See id. (addressing question seven under "Form of the international instrument or instruments" section).

92. See id.

93. See id.

"total abolition," by which they mean an extremely minimalist regulatory regime. It appears to be in the continuing interests of all, at the present time, to fudge the issue of the "end-goal" of the child labour movement. While the language of total abolition clearly draws more enthusiasm from some than from others, most currently find it in their interests to keep the meaning of their goals and terminology vague and flexible. One can expect, however, that if the movement ever attains any real success, then the underlying tensions regarding their end-goals will inevitably emerge. At such time, the only way to maintain the broad support necessary for further success would be to accept a definition of "total abolition of child labour" which defines it, ultimately, as a reasonable regulatory regime. Those who hope for a more utopian end will have to sacrifice their hopes for the good of the broader movement, or else see the movement hopelessly divided. Thus, the campaign to abolish child labour will ultimately prove itself to be, in reality, the campaign to regulate child labour.

C. Universal Human Rights versus Cultural, Familial, and Personal Autonomy

The ILO has recently adopted a declaration declaring the abolition of child labour to be one of four fundamental rights of the workplace. While this declaration will be examined more fully below, it is necessary herein to analyze the difficulties of using the language of the international human rights movement to bolster the child labour abolition campaign. While employing "human rights" rhetoric was virtually inevitable for the campaign, particularly given that the child labour issue is treated to some degree in the Convention on the Rights of the Child ("CRC"), the use of this language creates tensions and difficulties for the movement.

Employing the language of international human rights suggests that child labour is an evil, like slavery, which can and will be universally

95. See ILC Report VI(2), supra note 63 (addressing question seven of section entitled "Content of a Convention").
condemned and generally abolished. Employing human rights language therefore will tend to energize those who seek broader, more abolitionist definitions of “child labour.” Although these abolitionist goals are not practically obtainable in the foreseeable future, the embrace of such goals by activists creates a tendency to constantly expand the claimed jurisdiction of the movement to older ages and a broader range of activities through expansive definitions of terms like “child” and “labour.” This tendency will be illustrated below, as we find even in merely regulatory child labour standards attempts to expand the jurisdiction and reach of the movement.

When the child labour campaign presents itself as an ultimately abolitionist part of the international human rights movement, it faces a possible backlash by those concerned with their cultural, familial, or personal autonomy. The international human rights movement perceives itself as the conscience of the current world order, but the morality which it seeks to impose would, if actually enforced, severely limit cultural, familial, religious, and personal freedom. Therefore, non-Western societies, including Muslim and Asian nations, have increasingly asserted the right to interpret “universal” human rights in terms of their own cultural and religious norms. It has become increasingly unclear whether the morality contained in international human rights documents is truly universal, or merely a variant of Western culture. The attempt to enforce Western interpretations of human rights can appear, from a non-Western perspective, as a form of neo-colonialism, and hence meet serious resistance.\(^9\)

One example of this resistance is the practice of some Muslim nations of subjecting their ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”) to reservations based on the Shariah, or Muslim law.\(^9\) Since Muslims constitute one-fifth of humanity, a perceived conflict between supposedly “universal” international human rights norms and Islam is not insignificant. The gender norms contained in CEDAW purport to affect all aspects of life, applying in both public and private spheres. For example, Article 5(a) of CEDAW requires State Parties to take:

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all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.\textsuperscript{100}

It has been noted that CEDAW "might permit States to curtail to an undefined extent privacy and associational interests and the freedom of opinion and expression."\textsuperscript{101} Moreover, because the social and cultural patterns subject to modification under CEDAW "may be patterned according to factors such as ethnicity or religion," state action mandated by CEDAW could target particular ethnic or religious minorities in a way which conflicts with "the principles forbidding discrimination on the basis of race or religion."\textsuperscript{102} Under these circumstances, it is not surprising that India conditioned its ratification of CEDAW to a reservation reiterating its policy of "non-interference in the personal affairs of any Community without its initiative and consent."\textsuperscript{103} India, as the world's largest democracy, must non-coercively unite within its borders a multiplicity of religious, cultural, and ethnic groups, and thus can hardly afford to target such groups for intrusive programs of social and cultural modification.\textsuperscript{104}

The campaign against child labour, like the broader international human rights movement with which it is associated, is also seeking to modify various social and cultural practices and attitudes.\textsuperscript{105} These cultural attitudes include the expectation that children will contribute economically to their families, the belief that children working is an appropriate preparation for adult life, and gender attitudes which affect parental decisions about the education and training of boys and girls.\textsuperscript{106} The child labour movement has correctly perceived that these attitudes can contribute significantly to child labour. The difficulty for the child labour movement is that these cultural attitudes, along with their asso-

\textsuperscript{100} United Nations: Convention on the Elimination of All Forms of Discrimination Against Women, 19 I.L.M. 33, art. 5(a) (1980) [hereinafter CEDAW].

\textsuperscript{101} THEODOR MERON, HUMAN RIGHTS LAW-MAKING IN THE UNITED NATIONS 66 (1986).

\textsuperscript{102} Id.

\textsuperscript{103} LILICH, supra note 99, at 220.19.

\textsuperscript{104} See id.


associated practices, are difficult to condemn entirely, as they are widespread, even in the developed world. For example, the concepts that children should be economically productive and that work is an appropriate preparation for adulthood can be as innocuous as requiring a child to work with her family in a weekly cleaning of their common home, or as shocking as the bonding out of a six year old to labour away from home as a carpet weaver. Furthermore, differential gender attitudes in the training and education of children remains pervasive even in the developed world, where it is sometimes trendy to educate girls separately from boys as a way of building their leadership and academic skills, and where some religious communities still educate girls separately in order to preserve their chastity or give them an education appropriate to their future domestic role. 107

The targeted attitudes therefore exist in a wide variety of forms and degrees, and not all forms or degrees can be linked to exploitative forms of child labour. Modifying the forms of those cultural attitudes and practices, which actually contribute to exploitative child labour is therefore a finely nuanced, context-specific task, which in principle can only be accomplished in local, culturally-appropriate ways. The ways and degree to which children are expected to contribute to their families, the best mix of formal education, paid employment, and apprenticeship to prepare children for adulthood, and the best way to handle biologically and culturally gender differences, are intrinsically context-orientated decisions, and therefore any attempt to modify them should be sufficiently local to take account of the particular contexts in which they occur. Further, decisions about such matters normally would fall within the spheres of family privacy, religious liberty, and cultural autonomy. Hence, attempts to modify those attitudes and practices, particularly when implemented coercively or without sensitivity to local conditions, are likely to be met with significant resistance.

One of the ironies of the international human rights movement is its largely undemocratic nature. 108 Although international human rights norms are theoretically created and embraced by representative international processes, in fact much of the process of norm creation and attempted enforcement is dominated by a small group of activists who

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107. See Board of Educ. of Kiryas Joel Village Sch. Dist. v. Grumet, 512 U.S. 687, 691 (1994) (describing gendered curriculum at private religious schools of the Satmar Hasidim as "designed to prepare girls for their roles as wives and mothers").

have created a common human rights culture and language which is distinct from the culture and values of the nations and cultures which they purport to represent.\textsuperscript{109} These activists understandably seek formal legal adherence of their respective nation-states to human rights norms, often regardless of whether those norms are actually congruent with the norms of those nations.\textsuperscript{110} For example, one of the leading American casebooks on international human rights contains a discussion of whether to continue the present “stealth” method of seeking ratification of the Covenant on Economic, Social, and Cultural Rights, under which advocates would “smuggle” the convention through the United States Senate by hiding or misrepresenting the nature of the Convention.\textsuperscript{111} The rhetoric of “universality” in the human rights movement, combined with the actuality that the ideals and practices of every nation on earth differ significantly from those norms, have habituated the human rights movement to seeking formal or theoretical adherence to its supposedly “universal” norms in ways that are, in practice, quite undemocratic.\textsuperscript{112} The odd relationship between human rights activists and their host nations and cultures means that local communities are largely unrepresented at the “international” meetings and conferences which produce supposedly “universal” international human rights documents.

The temptation for the international human rights movement has therefore been to announce rigid norms dogmatically, and then seek ways to impose them upon local communities who, in actuality, were unrepresented in the creation of those norms. The concerns which occasioned the norms are often appropriate. For example, the child labour movement is properly concerned that some families employ girls at home in full-time domestic work such that they are denied even basic or elementary education.\textsuperscript{113} The movement’s consequent desire to intrude into normally protected spheres of family privacy and community self-determination to assist these children is therefore understandable.


\textsuperscript{111} See FRANK NEWMAN & DAVID WEISSBRODT, INTERNATIONAL HUMAN RIGHTS 58-59, 65 (2d ed. 1996).

\textsuperscript{112} See Meron, supra note 110; GLENDON, supra note 110.

Nonetheless, if the movement in so doing were to, in principle and practice, attempt to establish a general power to intrude into sensitive familial, cultural, and religious areas, and were in practice to do so in highly coercive and culturally insensitive ways, a backlash against the movement would seem inevitable.

The ILO's tripartite structure, providing representation to governments, employers and workers, makes the organization somewhat more broadly representative than is typical of most international human rights institutions and organizations.\textsuperscript{114} The ILO also has much experience in working cooperatively, rather than coercively, with nations and on the local level.\textsuperscript{115} However, the ILO's abolitionist rhetoric and some of its proposed or actual standards contain elements largely disconnected from ideals and practices in many localities of the world. The challenge for the ILO and broader child labour campaign will therefore be to maintain a credible connection to local and national ideals and actualities and to work in truly democratic ways respectful of familial, cultural, ethnic, and religious autonomy.

\textit{D. Child Labour and the Credibility Crisis in the International Human Rights Movement}

The child labour movement, having cast itself as a part of the broader international human rights movement, is subject to the credibility crisis of that movement. The credibility crisis of the international human rights movement stems from the chasm between the comprehensive ideals and authority claimed in its legal documents and scholarly writings, and its generalized inability to enforce or implement those ideals or exercise that authority. "The movement presents a curious picture of legal activism and practical impotence."\textsuperscript{116}

The United Nations Charter and various human rights conventions portray the nations of the world as liberal democracies guaranteeing the full range of Western-style civil and political rights, while simultaneously promising a wide range of economic, social, and cultural rights, and prohibiting discrimination on the basis of race, color, sex, religion,
Civil and political rights theoretically guaranteed under the major human rights documents include: the right to life, liberty, and security of the person; freedom of thought, conscience, and religion, including rights to change and manifest one's religion; freedom of opinion and expression; rights of assembly and association; the right to marry and found a family; the right to own property alone as well as in association; the right to participate in genuine elections by universal and equal suffrage held by secret ballot; liberty of movement, including freedom to choose a residence and leave one's country; various rights pertaining to criminal procedure, including the right to be informed of the charges, right to counsel, confrontation of witnesses, right against self-incrimination, appellate review, ban on double jeopardy, and prohibition of ex post facto laws; privacy rights in one's family, home or correspondence.

Economic, social, and cultural rights guaranteed by the major human rights documents include: the right to compulsory and free elementary education, progressive implementation of free secondary education, and a system of higher education open to all on a merit basis; the right to work, including free choice of employment, just and favorable work conditions, and protection against unemployment; the right to form or join trade unions; and the right to rest and leisure, including periodic paid holidays; a standard of living adequate for the health and well-being of the worker and his family, including the continuous improvement of living conditions and the right to security in cases of unemployment, sickness, disability, widowhood, or old age; and the highest obtainable standard of physical and mental health.

A broad outline of the above-named civil, political, economic, social, and cultural rights can be found in the Universal Declaration of Human Rights ("Declaration"), adopted by the General Assembly of the United Nations in 1948, and hence, initially, a non-binding declaration. Human rights scholars have maintained that the Declaration, in

118. See CPR, supra note 117, arts. 6, 9, 12, 14-15, 17-18, 19, 21-23; UDHR, supra note 117, arts. 3, 10-13, 16-21.
119. See ESCR, supra note 117, arts. 7-9, 11-13; UDHR, supra note 117, arts. 22-25.
120. See THOMAS BUERGENTHAL, INTERNATIONAL HUMAN RIGHTS IN A NUTSHELL 30-33 (2d
whole or part, has attained the status of binding international law. The two major human rights conventions are the International Covenant on Civil and Political Rights, with approximately 125 nations as parties, and the Covenant on Economic, Social, and Cultural Rights, with approximately 127 nations as parties. Therefore, approximately two-thirds of the nations of the world are theoretically bound by two major conventions, and the entire community of nations is theoretically bound by all or part of the Universal Declaration.

It has been common to refer to the "three generations" of human rights: the first generation being the civil and political rights emphasized by the West, the second being the economic and social rights emphasized by Communist and authoritarian states, and the third including the rights of development and self-determination emphasized by the de-colonized third world. These Cold War and North-South divisions have not manifested themselves in logical ways. One might expect Western nations to ratify human rights conventions emphasizing civil and political rights, Communist nations to ratify the economic and social conventions, and the de-colonized world to ratify only separate human rights documents emphasizing development and self-determination. Instead, many nations (with the marked exception of the United States) have adhered to a wide variety of agreements, regardless of their actual political philosophy. For example, it is startling to find North Korea, one of the most authoritarian nations in the world, listed among the parties to both of the major conventions, and hence theoretically bound by the long list of rights given above. China recently has

ed. 1995).  
121. See id. at 32-38. The Universal Declaration of Human Rights, the two major international conventions, the optional protocol to the Convention on Civil and Political Rights, and the human rights provisions of the United Nations charter have been called the "international bill of human rights." Id. at 28. The human rights provisions of the United Nations Charter, although characterized as vague, played an important role in internationalizing human rights and providing a legal foundation for their codification and implementation. Id. at 23-28; Meron, supra note 101; Lillich, supra note 99, at 220.19.  
123. See id. at 410.  
124. See id. at 387, 410; Lillich, supra note 99.  
125. See Buergenthal, supra note 120, at 234; see also Daniel C. Turack, The Clinton Administration's Response to China's Human Rights Record: At the Half-Way Point, 3 Tulsa J. Comp. & Int'l L. 1, 1 (1995) (discussing the "Western" (First World), the "socialist" (Second World), and the "Third World" approaches).  
127. See Carter & Trimbile, supra note 122, at 387, 410.
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signed (but not yet ratified) the two major human rights conventions, and is a state party to the Convention on the Rights of the Child. Ironically, China immediately followed its signing of the International Covenant on Civil and Political Rights with a renewed crackdown on pro-democracy activists. China has not found its poor human rights record to be an impediment to signing human rights conventions, and has even specifically promised to guarantee its children freedoms of expression, assembly, association, and religion which it regularly denies to its adults. In practice, this kind of cynical or haphazard signing and ratification of human rights conventions has been common.

The credibility crisis of the human rights movement therefore stems from an overproduction of human rights instruments and standards, the apparent insignificance frequently accorded ratifications of those instruments, and the inability of the movement to successfully abolish particularly heinous human rights abuses such as genocide, slavery, and torture. The movement has appeared willing to multiply rhetorical successes, in terms of creation and ratification of human rights instruments and standards, without regard to measurable successes in implementation of even the most basic of human rights standards.

The international labour movement has apparently suffered to some degree from some of the same difficulties. Thus, at least one commentator has warned of the “excessive proliferation” of international labour standards, and another has noted that “[t]he greatest source of difficulty in the early days of the I.L.O. was . . . the tendency of some countries to accept standards for which there was little or no basis in national law and practice.” The child labour movement, with roots in both the international human rights and international labour

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131. See Farley, supra note 130.
132. See Córdova, supra note 109, at 145.
133. See id. at 138.
standards movements, will therefore have to work particularly hard to avoid suffering from the credibility crises endemic to its parent movements.

III. THE FOUR STAGES OF ILO ACTIVISM IN REGARD TO CHILD LABOUR

The ILO has been active in regard to child labour throughout its seventy-year history. The nature of its activism, and its strategies, have, however, undergone significant revision. In order to understand the current campaign against child labour, it is important to place it in the context of the prior ILO strategies.

Although current ILO documents imply that the abolition of child labour has always been a core part of the ILO mission as enunciated in the original ILO Constitution of 1919,\(^{135}\) and later in the 1944 Philadelphia Declaration of Principles,\(^{136}\) in fact those documents have almost nothing to say about the problem of child labour.\(^{137}\) The only reference to either children or child labour in the original Constitution is a statement in the preamble which refers to "the protection of children, young persons, and women."\(^{138}\) As late as 1944, the foundational Declaration of Philadelphia "concerning the aims and purposes of the International Labour Organization" neglects to mention children or child labour among the core purposes of the organization.\(^{139}\) The only reference to children is contained in subsection III(h), which references "provision for child welfare and maternity protection."\(^{140}\) Thus, although a concern for chil-

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The foundations of the [ILO's] policy on child labour are set out in the Preamble of the Constitution, the Declaration of Philadelphia and relevant international labour standards . . . .The fundamental objective of ILO policy . . . is the abolition of child labour.
The [ILO] set this as the goal in the very first year of its creation by adopting Convention No. 5 . . . .
Id.
137. See infra notes 142, 149-50, 153 and accompanying text.
138. ILO CONSTITUTION, supra note 135.
140. Id.
children is evident in the foundational documents of the ILO, the term “child labour” and the goal of abolishing it are not explicitly stated.

The following four stages of ILO activism on child labour are hopefully useful ways of understanding the development of the contemporary child labour movement.141

A. Stage One: 1919-1932: Area-Specific Age Limitations

Despite the absence of a significant focus on children or child labour in the ILO’s foundation documents, the ILO, within its first year, created its initial convention on child labour.142 These early ILO conventions, however, lack the term “child labour” or any reference to the abolition of child labour as a goal or slogan.143 Instead, the ILO approach was to divide employment into four different areas or types, and create separate conventions limiting the ages at which children could be employed in each area.144

The first convention, adopted in 1919, was the Minimum Age (Industry) Convention.145 This Convention set fourteen as the minimum age for employment in industry, but included exceptions for “an undertaking in which only members of the same family are employed.”146 The Convention included a fairly comprehensive, yet specific, definition of industrial employment.147 Japan and India were specifically granted less stringent age limitations.148 The ILO followed with the 1920 Minimum Age (Sea) Convention, setting fourteen as the minimum age for employment on vessels, “other than vessels upon which only members of the same family are employed.”149

141. This Article’s review of ILO child labour standards will concentrate on ILO Conventions and, in the interest of space, will generally bypass discussion of the accompanying, but non-binding, recommendations. See ABDUL-KARIM TIKRITI, TRIPARTISM AND THE INTERNATIONAL LABOUR ORGANIZATION 254 (1982) (explaining differences between conventions and recommendations).


143. See id.

144. See id. art. 1.

145. ILO C5 (Industry) Convention, supra note 142.

146. Id. art. 2.

147. See id. art. 1.

148. See id. arts. 5-6.

In 1921, the ILO adopted the Minimum Age (Agriculture) Convention, which established fourteen as the minimum age for children to be employed in agricultural undertakings during the school day. This more lenient rule did not restrict the use of children in agriculture “outside the hours fixed for school attendance,” except to insist that this employment not “prejudice their attendance at school.” Thus, the restrictions on agricultural employment were much less stringent than those in industrial and sea employment, and essentially lacked any minimum age for work performed outside of school hours. Finally, in 1921, the ILO also created a convention forbidding “young persons under the age of eighteen” from being employed on vessels as trimmers or stokers, with allowance for a younger minimum age for Japan and India.

These early conventions therefore limited themselves to trying to establish fourteen as the minimum age for employment in industry or at sea, and with ensuring that child agricultural workers under fourteen had the opportunity to go to school. The terminology of those under eighteen as “young persons” rather than “children” suggests uncertainty as to whether older teenagers could properly be labeled “children.” The provision of lower minimum ages for India and Japan suggested some willingness to accommodate cultural and economic conditions in the non-Western world. Exceptions for same-family employment indicated a respect for the principle of family autonomy, or at least a recognition that it was not practicable to regulate employment within a family business.

After three straight years of creating minimum age conventions, the ILO waited another eleven years before creating its next convention, the 1932 Minimum Age Convention on Non-Industrial Employment.
This Convention constituted an important step, for it defined "non-industrial" employment as all employment not covered by the prior three area conventions (industry, agriculture, and sea employment), and thus for the first time created a comprehensive regulatory regime for minimum age.\textsuperscript{157} From this time on, every form of employment would have an applicable minimum age convention.\textsuperscript{158}

The very comprehensiveness of this catch-all Convention necessitated a more complex framework. First, the Convention included the exception, used previously, for establishments "in which only members of the employer's family are employed,"\textsuperscript{159} but for the first time limited the exception where such employment was harmful to the health or normal development of children, dangerous to their life, health or morals, or prejudiced their attendance or performance at school.\textsuperscript{160} Second, the Convention excepted "domestic work in the family performed by members of that family."\textsuperscript{161} The very necessity of a "domestic work" exception acknowledged the breadth of the Convention, for it implied that normal domestic tasks undertaken within a family, such as kitchen work, cleaning, and child care, would be subject to the Convention were it not for the exception. Requiring a ten year old to set the table or clean his room would apparently be considered a forbidden form of "non-industrial employment," but for the domestic work exception.

The basic minimum age prohibition in the Non-Industrial Employment Convention was relatively complex, and, in many respects, more of a regulation than a prohibition. First, the minimum age given was fourteen, except that the age could be higher where the children were still required to attend primary school.\textsuperscript{162} Children over twelve, however, were permitted to be employed on "light work" outside of school hours.\textsuperscript{163} The extensive definition of "light work" included a limitation of two hours per day in countries with compulsory school attendance, and four-and-one-half hours otherwise, and a prohibition of such work on Sundays and legal public holidays.\textsuperscript{164} The requirement of Sunday as a day of rest appears to indicate a presumption that the Christian Sabbath should be the national day of rest; the only country

\textsuperscript{157} See id. art. 1(1).
\textsuperscript{158} See id.
\textsuperscript{159} Id. art. 1(3)(a).
\textsuperscript{160} See id. arts. 2, 3, 5.
\textsuperscript{161} ILO C33 (Non-Industrial Employment) Convention, supra note 156, art. 1(3)(b).
\textsuperscript{162} See id. art. 2.
\textsuperscript{163} See id. art. 3(1).
\textsuperscript{164} See id. arts. 3(1)(c), 3(2)(a), 3(4)(b).
exempted from this requirement was India, and this exemption was a part of a broader exemption for India, which would expire once India adopted compulsory education to age fourteen.165

The Convention further required national parties to fix higher minimum ages for employment "dangerous to the life, health or morals of the persons employed in it" and for "itinerant trading in the streets," employment in "stalls outside shops," and other "itinerant occupations."166 Consistent with prior conventions, those subject to these restrictions, who would be over fourteen, were referred to as "young persons and adolescents" rather than as "children."167

Finally, the Non-Industrial Employment Convention included an exception permitting children to be employed in public entertainment or movies, and provided some minimal regulation of such employment.168 While it would be a few more years before Shirley Temple would become world-famous, the use of children in public entertainment and movies was already well-established, and the Convention broadly protected such employment.

The relatively complex provisions of the Non-Industrial Convention thus permitted thirteen year olds to be engaged in "light work," created a general minimum age of fourteen for employment beyond light work, required authorities to create higher minimum ages for more hazardous forms of employment, and provided exceptions for same-family enterprises, domestic work by members of the family, and child performers.169 Combined with the prior three area-specific Minimum Age Conventions, the 1932 Non-Industrial Convention created a fairly comprehensive regimen. Like other international conventions, however, these minimum age conventions were only applicable to those nations which ratified them.170

B. Stage Two: Raising Minimum Ages, 1936 to 1965

The second stage of ILO activism on child labour consisted primarily of the creation of revised versions of three of the four original subject area Minimum Age Conventions. Thus, the Revised Versions of

165. See id. arts. 9(1), 9(2).
166. ILO C33 (Non-Industrial Employment) Convention, supra note 156, art. 6.
167. Id. arts. 5, 6.
168. See id. art. 4.
169. The Convention also permitted work done in "technical and professional schools" of an "educative character" and "not intended for commercial profit." Id. art. 1(2)(b).
170. See id. art. 11(1).
the Minimum Age Sea (1936), Industry (1937), and Non-Industrial Employment (1937) Conventions raised the primary minimum age from fourteen to fifteen.\textsuperscript{171} The Revised Non-Industrial Convention also raised the minimum age for light work from thirteen to fourteen.\textsuperscript{172} No revision to the Agriculture Convention was created. The term “children” now was used in a way to include those under fifteen, or still within compulsory education laws, while the term “young persons or adolescents” was also used for those beyond the basic minimum age limit.\textsuperscript{173} Thus, the second stage of ILO activism retained the regulatory framework created in stage one, while attempting to raise the minimum ages.

Twenty-two years later, the ILO created a Minimum Age Convention for Fishermen (1959),\textsuperscript{174} and then six years later, a Minimum Age Convention for Underground Work (1965).\textsuperscript{175} These new regulatory regimes were apparently intended to raise minimum ages for particular kinds of hazardous employment.

*C. Stage Three: A General Instrument on Minimum Age*

The 1973 Minimum Age Convention ("C138") represents a significant change in the ILO approach to child labour.\textsuperscript{176} Rather than try-
ing to cover the field with a group of area-specific conventions, the ILO created a general instrument designed, according to the preamble, to "gradually replace the existing ones applicable to limited economic sectors." 177 In addition, the preamble specifically stated the goal of "achieving the total abolition of child labour." 178

Article One of the new Minimum Age Convention requires each State Party 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." 179 Thus, C138 commits State Parties to both an ultimate goal—the "total abolition of child labour"—and also to a progressive implementation of that goal through periodic raising of the minimum ages for employment. 180

The endpoint of this goal, the effective abolition of child labour, is never specifically defined in the Convention. 181 The term "labour" is apparently intended to be broadly interpreted to include any "employment or work." 182 The term "child" is never defined. 183 Interpreted literally, the "total abolition of child labour" could include a prohibition on any economically significant activity performed by a person not yet an adult, regardless of whether paid or unpaid, or whether performed within or without the family. An American seventeen year old cleaning his own room, for example, could be literally subsumed under the term "child labour," since cleaning is certainly work which is economically significant, and a seventeen year old is still legally a minor. The difficulty with this literal definition is, of course, that it overreaches to the point of absurdity.

Alternatively, the term "child labour" could refer to activities specifically prohibited by the Convention. From this perspective, employment by children fifteen or older, or light work within the terms of the Convention, would not be "child labour," and hence, not subject to the goal of "effective abolition" of child labour, because they are permitted within the minimum standards of the Convention. This more reasonable construction, however, is made problematic by the specific intent of the Convention to require State Parties to engage in a progressive raising of

177. Id.
178. Id.
179. Id. art. 1.
180. See id. pmbl., art. 1.
181. See ILO C138 Minimum Age Convention (1973), supra note 176.
182. Id. arts. 2(1), 3(1) (prohibiting various kinds of "employment or work").
183. See id. pmbl., art.1.
the minimum ages, with no final “endpoint” defined specifically in terms of ages.\textsuperscript{184} Therefore, work by minors, which is not explicitly prohibited by the Minimum Age Convention, nonetheless can become prohibited “child labour” as State Parties abide by their undertaking to progressively raise their minimum age standards.\textsuperscript{185} Although the Convention, for example, only requires (for developed nations) a minimum age for full-time employment of fifteen, nonetheless the Convention creates a mechanism for raising that minimum age as a part of its commitments under the Convention.\textsuperscript{186} Therefore, if a nation raises its minimum age to eighteen, in fulfillment of its undertaking of progressive implementation, then full-time employment at age seventeen within that nation would, under the terms of the Convention, be deemed prohibited “child labour.” Similarly, matters such as domestic work within a family are not explicitly excepted from the definition of child labour, but instead are apparently left to national law, raising the possibility that they might, in certain circumstances, come within the definition of prohibited “child labour.” Thus, since the ultimate definition of prohibited “child labour” is specifically left open to expansion by the terms of the Convention, it seems impossible to deduce any fixed definition of the final goal of total abolition of “child labour” from within the Convention itself.

It would still be possible to argue that for purposes of the goal of the “total” and “effective” “abolition of child labour,” the term “child labour” only refers to that which violates the minimum standards of the Convention. However, this interpretation of the term “child labour” seems to defy the language requiring governments to “pursue a national policy designed to ensure the effective abolition of child labour and to raise, progressively, the minimum age standards for admission to employment or work to a level consistent with the fullest physical and mental development of young people.”\textsuperscript{187} This language suggests that the goal of complete abolition is not satisfied until the minimum age is raised to the point maximizing the development of “young persons.” What this point is, and indeed who “young persons” are, is also not defined.\textsuperscript{188} Hence, it seems best to conclude that the definition of “child labour,” and the ultimate goal of the Convention, is left deliberately open.

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\textsuperscript{184} See id. arts. 1, 2(2).
\textsuperscript{185} See id.
\textsuperscript{186} See id. arts. 2(2), (3).
\textsuperscript{187} Id. art. 1.
\textsuperscript{188} See ILO C138 Minimum Age Convention, \textit{supra} note 176.
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so as to make the instrument a continuing force for the progressive raising of the minimum age.\textsuperscript{189}

The intent of the Convention to replace all of the varied area specific Conventions requires a rather complex set of minimum age standards. The basic age standard given requires that the “minimum age for admission to employment or work” must be not less than “the age of completion of compulsory schooling,” and in any case “not less than 15 years.”\textsuperscript{190} The Convention immediately provides for slightly greater flexibility for developing nations by declaring that Parties “whose economy and educational facilities are insufficiently developed” may choose fourteen, rather than fifteen, as the age of minimum employment.\textsuperscript{191} At the same time, the Convention allows State Parties to choose a minimum age above that of the Convention’s minimum standards, and specifically provides that State Parties may, by subsequent declarations, progressively raise their minimum ages.\textsuperscript{192}

The Convention ameliorates its age limitations by providing that Parties may permit persons thirteen to fifteen years of age to perform light work, defined as work “not likely to be harmful to... health or development” which does not interfere with school.\textsuperscript{193} National authorities are to determine the regulations, such as maximum hour limitations, applicable to “light work.”\textsuperscript{194} Developing nations who avail themselves of the provision allowing them to choose fourteen as the minimum age of employment, may permit light work by those twelve to fourteen.\textsuperscript{195}

The ILO in prior conventions had sometimes specified particular areas of employment which, because of their hazardous nature, required higher minimum age standards.\textsuperscript{196} C138 subsumes all of these into a catch-all provision, requiring a minimum standard of age eighteen for employment “likely to jeopardize the health, safety or morals of young persons.”\textsuperscript{197} National authorities are required to determine the types of

\textsuperscript{189} \textit{See} International Labour Office Press Release, \textit{Child Labour: Action Required at the National Level} (June 1996) (“the ultimate objective ... is the total and effective abolition of any kind of work, employment or activity likely to prejudice the child's dignity, safety, health or education” (quoting \textit{Child Labour: What is to be done? Document for discussion at the Informal Tripartite Meeting at the Ministerial Level}, International Labour Office (June 1996))).

\textsuperscript{190} \textit{Id.} art. 2(3).

\textsuperscript{191} \textit{Id.} art. 2(4).

\textsuperscript{192} \textit{See} \textit{id.} arts. 2(2), 2(3).

\textsuperscript{193} \textit{Id.} arts. 7(1)(a), 7(1)(b).

\textsuperscript{194} \textit{See} ILO C138 Minimum Age Convention, \textit{supra} note 176, art. 7(3).

\textsuperscript{195} \textit{See} \textit{id.} art. 7(4).

\textsuperscript{196} \textit{See, e.g.}, ILO C123 (Underground Work) Convention, \textit{supra} note 175, pmbl.

\textsuperscript{197} ILO C138 Minimum Age Convention, \textit{supra} note 176, art. 3(1).
employment to be so considered. The C138 permits sixteen year olds to be employed in such hazardous employment where it was determined that their "health, safety and morals" could be "fully protected" and adequate training was provided.

In prior conventions, the ILO had provided broad exemptions for same-family enterprises, domestic work performed by members of a family, and agricultural work performed outside of school hours. Rather than listing any of these exclusions, Article Four of C138 permits State Parties to "exclude from the application of this Convention limited categories of employment or work in respect of which special and substantial problems of application arise." Work considered dangerous to the "health, safety or morals of young persons," for which a higher minimum age should apply, was not to be subject to such exception. One result of this approach to exceptions was to somewhat de-legitimize the prior exceptions, for they now depended on specific actions by each individual State Party. Moreover, the reason given for such exception was now related to "problems of application," rather than, for example, a principled position that certain kinds of child labour were positive rather than negative, or were in the sphere of the family, and hence, should not be subject to labour regulation.

Article Five of the Convention allows for additional limitations or exceptions to the Convention based on the insufficient development of some nations' "economy and administrative facilities." This provision apparently was intended as a replacement for the prior tendency to name particular developing nations, such as India, for lesser standards. Article Five, however, specifically named economic areas where the Convention, as a minimum, must apply. These included "mining and quarrying; manufacturing; construction; electricity, gas and water; sanitary services; transport, storage and communication; and plantations and other agricultural undertakings mainly producing for commercial purposes, but excluding family and small-scale holdings producing for lo-

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198. See id. art. 3(2).
199. Id. art. 3(3).
200. See, e.g., ILO C60 (Non-Industrial Employment) Convention (Revised), supra note 171, art. 3.
201. ILO C138 Minimum Age Convention, supra note 176, art. 4(1).
202. Id. art. 3(3).
203. See id. art. 4(1).
204. Id. art. 5(1).
205. See id. art. 5(3).
cal consumption and not regularly employing hired workers.” The inclusion of most forms of agriculture here indicated a significant expansion of regulation from the 1921 Agricultural Convention, which had broadly permitted employment not interfering with school. Many smaller agricultural undertakings involve cash or export crops and some employment of hired workers, and therefore would fall within the mandatory coverage of the Convention.

C138 retained the prior exceptions for public performances and for work related to education (such as vocational education), although some of the terminology was altered. These provisions required significant regulatory involvement (such as individual permitting), presumably to avoid abuse.

The complex and comprehensive regulatory regime created by C138 has yet to be accepted by most members of the ILO. By 1996, only forty-nine of ILO’s 173 Member Nations had ratified C138, and none of the countries of Asia, where a high proportion of child labourers live, had ratified the instrument. Thus, although the ILO currently considers C138 to be among its seven “core” Conventions, the instrument by the early 1990’s appeared to have failed to achieve its purposes. With the globalization of the economy and the increase in world trade bringing the issue of child labour increasingly to public attention, the ILO decided to alter its strategy.

206. ILO C138 Minimum Age Convention, supra note 176, art. 5.
208. See ILO C138 Minimum Age Convention, supra note 176, art. 5(3).
209. See id. arts. 6, 8.
210. See id.
212. See id.
213. See id.
214. See id. The ILO proposed increased technical cooperation between the ILO and its member States in order to bring national laws and practices more in line with international labour standards.
D. Current ILO Strategies

1. Child Labour as a Core ILO Mission

During the 1990's, the ILO has pushed the campaign to abolish child labour to the center of its mission.\textsuperscript{215} The new activism of the ILO on the issue of child labour represents an ambitious attempt to abolish a practice involving literally hundreds of millions of people, a practice supported not only by tradition but also a facet of the emerging globalization of the world market.

The humanitarian purposes of the ILO in targeting child labour are apparent, but the campaign also is a strategic part of a broader purpose and ideology. The campaign to eliminate child labour has become the poster child of the broader ILO purpose of promoting "social justice" within the progressively integrated world trade system.\textsuperscript{216}

In 1992, the ILO created the International Programme on the Elimination of Child Labour ("IPEC"), which provides technical assistance to countries who enter into Memorandum of Understandings ("MOU") with the ILO.\textsuperscript{217} The ILO has succeeded both in obtaining significant funding for IPEC from developed nations, and in entering into memoranda of understandings with many of the developing nations with the largest numbers of child labourers.\textsuperscript{218} Thus, the ILO has entered into MOU's with nations in critical regions such as South Asia (India, Bangladesh, Nepal, and Pakistan), Southeast Asia (Thailand), Latin America (Brazil), and Africa (Kenya).\textsuperscript{219} IPEC is therefore active in assisting nations in producing plans and programs to combat child labour in many of the most affected countries of the developing world.\textsuperscript{220}

The ILO, however, has not been content to combat child labour through its program of cooperative technical assistance.\textsuperscript{221} Instead, it has

\textsuperscript{215.} See id.
\textsuperscript{216.} See ILO Press Release, International Action: Standards Need Reinforcing, supra note 211.
\textsuperscript{217.} See id. (addressing section entitled "Childhood: a fundamental human right").
\textsuperscript{218.} See id. (addressing section entitled "Expanding technical cooperation").
\textsuperscript{219.} See id. (addressing section entitled "Childhood: a fundamental human right").
\textsuperscript{221.} See generally id. (discussing the ILO's commitment to the Declaration on Fundamental Principles and Rights at Work, the likely adoption of a new ILO Convention on action against the
worked, particularly since 1996, to place the abolition of child labour at the core of ILO purposes, and to define new standards and strategies to eliminate at least the most extreme forms of child labour. In the process, the ILO appears to be attempting to circumvent the failure of most nations to adhere to their general 1973 Minimum Age Convention.

Thus, at the closing plenary session of the 86th Annual International Labour Conference, held during June of 1998, the ILO adopted an "ILO Declaration on Fundamental Principles and Rights at Work." The purpose of this declaration, as explained within the document, is to promote social justice, development, and progress within the context of trade liberalization and a globalizing economy. The Declaration states that all ILO members (174 nations) in joining the organization have thereby "endorsed the principles and rights" in the ILO Constitution and the 1944 Declaration of Philadelphia, and also have "undertaken to work towards attaining the overall objectives of the Organization . . . ." These ILO "principles and rights," according to the 1998 Declaration, "have been expressed and developed in the form of specific rights and obligations in Conventions recognized as fundamental both inside and outside the Organization." Therefore, all ILO members, "even if they have not ratified the Conventions in question, have an obligation arising from the very fact of [ILO] membership . . . to respect, to promote and to realize . . . the principles concerning the fundamental rights which are the subject of those Conventions . . . ." The seven core conventions include C 138 and the 1973 Minimum Age Convention. Moreover, the seven core conventions are understood to include four fundamental rights, including "the effective abolition of child labour."

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222. See id.


225. ILO Declaration on Rights at Work, supra note 223, at 1(a).

226. Id. at 1(b).

227. Id. at 2 (emphasis added).

228. Id. at 2(c). The other three fundamental rights are: "freedom of association and the ef-
Thus, the Declaration appears to commit all 174 ILO nations—which include the vast majority of nations of the world—to the abolition of child labour, despite the fact that only a minority of such nations have ratified the 1973 Minimum Age Convention which first established this as an official goal. Thus far, the ILO's campaign to increase ratifications of their "seven core conventions" has increased ratifications of the Minimum Age Convention from forty-nine ratifications in 1996 to sixty-three in June 1998, which suggests that the goal of general ratification of the 1973 Convention is not in immediate view.\textsuperscript{229} The continuing failure to achieve general ratification of the Minimum Age Convention underscores the potential significance of the Declaration on the subject of child labour.

The 1998 Declaration creates a paradoxical situation in regard to ILO members and the goal of abolishing child labour. It is a general principle, stated in ILO Conventions, that the Conventions only bind those nations which ratify them.\textsuperscript{230} Yet the Declaration appears to state that the mere fact of ILO membership, in effect, commits all nations to the principles and rights of the 1973 Convention on Minimum Age, though not to the detailed regulatory regime of that Convention. The central "principle and right" in the Minimum Age Convention is that of effectively abolishing child labour.\textsuperscript{231} It is by no means easy, however, to define this goal, particularly outside the context of the specific regulations of the Minimum Age Convention.

The controversial question of whether the 1998 Declaration creates new obligations has been obscured, rather than clarified, by the rhetoric of the Declaration, and of the ILO Director-General. This rhetoric claims, in effect, that everything in the Declaration exists, at least in implicit form, in the ILO Constitution and the 1944 Declaration of Philadelphia, and therefore that the Declaration is doing no more than making more explicit the principles and rights implicit in ILO membership, and applying them to the current context of "growing economic

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\textsuperscript{230} See \textit{id.} pmbl.

\textsuperscript{231} See \textit{id.} pmbl.
interdependence.” In regard to child labour, this claim attempts to ground the “effective abolition of child labour” in brief statements in the ILO Convention and the Declaration of Philadelphia regarding the welfare and protection of children. It is true, of course, that the abolition of child labour is seen, by its promoters, as a means of protecting children. It is not true, however, that everyone who seeks to protect children, and to promote child welfare, thereby necessarily agrees that abolishing child labour is a necessary means to that end. Therefore, it is simply wrong to say that all ILO members, in being committed to the protection and welfare of children, must necessarily be committed to the abolition of child labour.

Of course, if the term “child labour” included only the most exploitative forms of child labour, such as bonded labour, child prostitution, and hazardous work, then it would be easier to argue that there is a self-evident link between prior commitments to child welfare, and new declarations on the abolition of child labour. The term “child labour,” however, in the 1973 Minimum Age Convention is a much broader term which could easily encompass work or activity which many ILO members might consider harmless, or even beneficial, to children and their families. Indeed, the ambiguity of the term “child labour” within the Minimum Age Convention and the Fundamental Principles Declaration make it unclear precisely the extent of the supposed commitment of all ILO members to work for child labour’s “effective abolition.”

The Declaration consolidates recent ILO efforts to push the child labour issue from the periphery to the core of its mission.232 Invoking the abolition of child labour as one of only four named fundamental human rights at work is a significant change of focus from the ILO Constitution and 1944 Philadelphia Conventions, where the term “child labour” was non-existent, and where the protection of children was mentioned but not emphasized. As late as 1996, an ILO brochure summarized the “basic human rights” protected by ILO Conventions without mentioning the abolition of child labour.233

232. See ILO Declaration on Rights at Work, supra note 223, at 2(c).
233. See International Labour Organization, International Labour Organization: Bureau for Workers’ Activities (brochure) (visited Feb. 8, 1999) <http://www.ilo.org/public/english/230actra/child/proj/actrbroc.htm> (discussing that ILO conventions cover basic human rights including “freedom of association, the right to organize and bargain collectively, the abolition of forced labour, and the elimination of discrimination”). This brochure included the “employment of children” as an issue addressed by ILO conventions, but excluded the issue from its listing of “basic human rights.” See id.
The difficulties facing this shift of focus to child labour is exemplified by the fact that the 1973 Minimum Age Convention is by a wide margin the least ratified of the seven “core” conventions. As of June 1998, the other six core conventions had ratification rates between seventy percent and eighty-four percent of ILO members, while only thirty-six percent of ILO members had ratified the Minimum Age Convention. The apparent intent of the Declaration to define adherence to the 1973 Convention as a question of fundamental human right, therefore faces significant resistance from ILO member states.

This resistance is generally implicit, rather than explicit, due in large part to the ambiguity of the term “child labour.” The possible meanings of the phrase “child labour” have been examined in detail above. The term is elastic enough to encompass abolitionists who hope for the progressive raising of minimum age standards virtually until the age of majority, minimalists who would argue that child labour has been “abolished” when employment by minors is subject to minimal regulation, and all those in-between. These ambiguities apparently persist because they serve multiple interests and keep the movement intact. Employers and developing nations apparently feel relatively little need to vigorously dissent from the formal statement of the goal of abolition, because they believe they retain the right to define the goal of “abolition” in terms of a regulatory regime largely of their own choosing.

The failure of employers’ groups and developing nations to vigorously resist the ILO elevation of “effective abolition of child labour” to a universal fundamental right should not lull anyone into believing that there is no resistance to the enforcement of vigorous standards against child labour. The international human rights movement in recent years has continuously multiplied the list of supposedly fundamental human rights, and the world has become awash in an ever-growing tide of international human rights conventions, declarations, and pronouncements. Developing nations and multi-national corporations are quite familiar with the rhetorical excesses of the human rights movement, and with the failure of the world to achieve effective implementation or en-

235. See id.
236. See supra notes 76-88 and accompanying text.
237. See generally ILO Press Release, Fundamental Rights Declaration Clears Final Hurdle, supra note 224 (giving a summary of such conventions, declarations and proclamations).
forcement of the ever-growing list of "rights." It would be difficult even for a heart-felt advocate of the international human rights movement not to grow somewhat cynical at the gap between rhetoric and reality in the field of human rights. Hence, it may be that some actors in the international community no longer consider it important to actively resist human rights pronouncements with which they disagree, particularly when those pronouncements are left ambiguous enough to be made harmless through interpretation.

It is therefore not surprising that some of the fiercest debate on the ILO Fundamental Rights Declaration occurred on matters touching on its implementation. The most important issues, it appeared, were not the substantive definition of human rights, but rather the question of whether there would be any effective enforcement of those rights.

Thus, the tension between developed and developing nations was revealed by the fierce debate at the 1998 ILO Conference on language in the Fundamental Principles Declaration which would pertain to a possible linkage between labour standards and trade, or between labour standards and international financial assistance. As noted above, developing nations are extremely sensitive to any possible linkage between the ILO and the WTO, the IMF or World Bank. This concern emerged in regard to paragraph three of the Declaration, which in its final form recognized an obligation of the ILO to encourage other international organizations "with which the ILO has established relations" to support the efforts of member nations to attain ILO objectives. This

238. See generally id. (discussing the seven conventions, a variety of workplace rights and the failure to achieve universal ratification of any of those conventions).

239. See generally Jankanish, supra note 229 (discussing the proposed new international standards on child labour and how they will be implemented); see also ILO Press Release, Fundamental Rights Declaration Clears Final Hurdle, supra note 224 (addressing section entitled "Discussions on the worst forms of child labour").

240. See Jankanish, supra note 229, at 12-15.

241. See generally International Labour Conference, Report of the Committee on the Declaration of Principles (Committee Report), 86th Session (June 1998) (visited Feb 1, 1999) [hereinafter ILO Report on Declaration of Principles (Committee Report)]. The purpose of the Convention was "to answer the basic question of whether the Conference could achieve a meaningful Declaration and effective follow-up . . . ." Id. ¶ 7. Of particular importance and concern was the follow-up mechanism. Without effective follow-up procedures, any Declaration would carry little weight. However, members fear that organizations other than the ILO will be used to enforce labour standards through economic and trade pressures. See id. ¶¶ 10, 13, 19, 21.

242. See id.

243. See ILO, Declaration on Rights at Work, supra note 223, ¶ 3.
final formulation did not satisfy all of the developing nations. Some assurance was provided by the controversial paragraph five, which [s]tresses that labour standards should not be used for protectionist trade purposes, and that nothing in this Declaration and its follow-up shall be invoked or otherwise used for such purposes; in addition, the comparative advantage of any country should in no way be called into question by this Declaration and its follow-up.

Egypt, for example, was not satisfied with the assurances found in paragraph five, and would have preferred language “more specific and categorical in denying the use of this Declaration and its follow-up mechanism to justify or in any way assist in the adoption of trade or economic measures or restrictive or punitive measures of any kind which negatively affect the process of economic and social development.” Thus, the developing nations sought strong assurances that they could not be economically punished in any way for alleged failures to implement ILO standards or fundamental rights.

By contrast, the position of the United States, while also opposing “protectionism,” was to seek “an accelerated collaboration between the ILO and WTO.” Further, the United States viewed the denial of workers’ fundamental rights as itself a form of protectionism. Thus, the United States emphasized that neither paragraph five of the Declaration, the ILO, or the WTO, could impinge “on the ability of the United States to condition the extension of trade benefits on labour standards.”

The economic tensions underneath these conflicts are delineated in detail above. Much of the “comparative advantage” of the developing world lies in its lower labour costs. From the perspective of some in the developed world, however, some of these lower labour costs are an un-

244. See generally ILO Report on Declaration of Principles (Committee Report), supra note 241 (discussing throughout the developing nations’ dissatisfaction with paragraph three of the Declaration and their desire to reaffirm the sole competence of the ILO in setting and dealing with international labour standards).

245. ILO, Declaration on Rights at Work, supra note 223, ¶ 5.


247. Id. (statement of Mr. Samet, United States Government Delegate).

248. See id.

fair competitive advantage caused by the failure of the developing world to honor basic labour standards and fundamental workers' rights. This issue is quite germane to the issue of child labour, for child labour significantly reduces labour costs. To the degree that lower labour costs in the developing world reflect violations of international labour standards and fundamental workers' rights, some in the developed world consider those lower costs as an illegitimate advantage, and hence as a form of "protectionism."  

Developing nations, by contrast, believe that it is hypocritical for developed nations to expect developing nations to abide by labour standards they did not attain at a comparative stage of economic and social development. The developing world often claims that it lacks the resources to implement child labour standards, and that the role of the developed world should be to provide a significant share of those resources. The developing world fears that the developed world will attempt to use labour standards to nullify the comparative advantage of the developing world, and to further enrich itself at the expense of the developing world. From this point of view, labour standards evoke the memories of colonialism, when the wealth of the Southern developing world was exploited for the benefit of the rich nations of the North.

This underlying economic tension was also evident in the debate over the "follow-up" to the Declaration, contained in an Annex, which provided several new reporting mechanisms. These reporting mechanisms provided a means of making all members of the ILO accountable for all four of the areas of fundamental rights enunciated in the Declaration, even if they had not ratified one or more of the applicable Conventions developing those rights. While the language of the Annex spoke of the follow-up as being merely "promotional" and intended to


251. See id.

252. See id.

253. See id.


256. See id.
"encourage" Member nations in their efforts, the developing nations clearly fear that they will suffer economic or trade retribution based on the new reporting mechanisms. Such retribution would be expected to be imposed not by the ILO itself, but rather by organizations such as the WTO, or bilaterally by developed nations. Hence, the difficulty faced by the developing nations is that any guarantees as to the nature of the reports within the Declaration cannot prevent the reports from being used as standards by organizations other than the ILO in assigning trade or economic benefits or punishments. Therefore, the issue of the reports is inseparably linked to that of "linkage" to other international organizations.

A cynic would say that most of the debate in regard to the Declaration was not over the substantive rights enunciated, but rather over the question of whether those rights would be merely rhetorical. Workers' groups, particularly in the developed world, were understandably eager to see the strongest possible implementation of fundamental rights in the workplace, and hence would ultimately perceive linkage to international organizations and to world trade rules as entirely appropriate means of attaining social justice in the context of liberalized world trade. Otherwise, the violation of workers' rights in the developing world would cause the loss of workers' rights, jobs, and bargaining position in the developed world. Wealth produced through the violation of workers' rights is not necessarily a good, and anyway probably will not do much to alleviate poverty, from the perspective of some workers.

However, the position of the developing world should not be reduced to a cynical desire to avoid all accountability. While that desire may certainly exist—being a virtual universal human failing—even a sincere workers' advocate in the developing world may fear that the developed world would exploit issues such as child labour or labour standards for their own purposes of improving the competitive trade position of the developed world. This fear is based not only on a distrust of the developed world, but also from the unresolved ambiguities of the

257. See id. Annex § I ¶ 1, 2.
259. See generally ILO Report on Declaration of Principles (Committee Report), supra note 241 (outlining the general dissatisfaction among developing nations with the idea of any organization but the ILO having responsibility for the follow-up mechanisms of the Declaration).
260. Cf. id. ¶ 378 (discussing Mr. Samet's, United States Government Delegate, statement that ILO members retain the "right to condition the extension of trade benefits on labour standards").
linkage issue. Most would admit, for example, that it would be unfair to subject the developing world to precisely the same labour standards as the developed world. But there is no general agreement on the precise point at which lower minimum age or other labour standards constitute an unfair trade advantage for developing nations. Moreover, the limited provisions within the Minimum Age Convention for developing nations to apply lower standards have not induced many developing nations to adhere to the Convention.261 The attempt of the Declaration to make developing nations accountable for so-called “fundamental rights” in Conventions they have not ratified thus raises an unresolved issue of how much variance developing nations should be permitted from child labour and other labour standards before some kind of punitive trade or economic measures are employed.

2. Proposed Convention on the Elimination of the Worst Forms of Child Labour

a. Introductory Considerations

The ILO hopes to adopt in June 1999 a new convention and accompanying recommendation on the abolition of the worst forms of child labour, a draft of which was discussed at the June 1998 International Labour Conference.262 The purpose of this Convention is to target the worst forms of child labour for immediate elimination.263 Thus the ILO, while adhering to its long term goal of the progressive and complete elimination of child labour, is attempting in this Convention to identify and target the most extreme or intolerable form of child labour

261. See ILO C138 Minimum Age Convention, supra note 230, art. 4(1) (allowing for nations to exclude limited categories of work from the application of the Convention if problems of application arise); id. art 5(1) (allowing insufficiently developed nations to limit the scope of the application of the Convention).


263. See Proposed Convention, supra note 262, pmbl.
for prioritized action. The proposed Convention must, of course, be placed in the context of existing international legal standards on child labour. The 1973 Minimum Age Convention and Recommendation remain, according to the draft preamble of the proposed new Convention, the “fundamental instruments with a view to achieving the total abolition of child labour.”

The difficulty with the 1973 Convention, however, is the paucity of ratifications, and particularly the lack of ratifications from developing countries containing the majority of child labourers. Thus, the ILO, without admitting to defeat in regard to its campaign to increase ratifications of Minimum Age Convention, is clearly acknowledging that it does not anticipate general ratification of the Minimum Age Convention in the near future.

The 1989 Convention on the Rights of the Child (“CRC”) has, however, achieved very wide ratification. Article 32 of the CRC requires State Parties to protect children 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.” Article 32 further requires State Parties to provide for minimum ages for employment and regulation of the hours and conditions of employment. Article 34 of the CRC requires State Parties to protect children from sexual exploitation, including prostitution and pornography. Article 35 requires State Parties to prevent the abduction, sale, and traffic in children, and therefore addresses various forms of child slavery. The preamble to the proposed ILO Convention references the CRC. In view of the overlap between the CRC and the ILO proposed Convention, the obvious question is whether the proposed Convention adds anything useful to existing international standards.

264. *Id.*
266. *See generally* CRC, Status: The First Nearly Universally Ratified Human Rights Treaty in History, at 1 (visited Feb. 4, 1999) <http://www.unicef.org/crc/status.htm> (indicating that only two States, the United States and Somalia, have not yet become party to the Convention) [hereinafter CRC, Status].
268. *See id.* art. 32 (2).
269. *See id.* art. 34.
270. *See id.* art. 35.
271. *See Proposed Convention, supra* note 262, pmbl.
The preamble to the draft Convention also references the ILO Forced Labour Convention of 1930 and the United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956). These pre-existing international conventions also substantially overlap with the proposed new ILO Convention, and again raise the issue of what the proposed Convention adds to existing international law.

b. Substantive Provisions: Defining and Eliminating the “Worst Forms of Child Labour”

The relevant text of the proposed Convention requires ratifying State Parties to “take measures to secure the prohibition and immediate elimination of the worst forms of child labour,” which are defined as:

(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, forced or compulsory labour, debt bondage and serfdom;

(b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

(c) the use, procuring or offering of a child for illegal activities, in particular for the production and trafficking of narcotic drugs and psychotropic substances as defined in the relevant international treaties;

(d) any other type of work or activity which, by its nature or the circumstances in which it is carried out, is likely to jeopardize the health, safety or morals of children.

A “child” is defined as “all persons under the age of 18.” This creates an international definition of “child” which would apparently override national definitions with younger ages of majority. Even in the United States, someone underage who marries may achieve adult status.

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272. See id.
273. Id. art. 1.
274. Id. art. 3.
275. Id. art. 2.
The ILO proposed definition is more rigid than that in the CRC, which defines a child as "every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier." The justification of the rigid definition is theoretically that the proscribed forms of labour are so heinous that a clear and fixed age-line should be drawn.

The fixed international definition of "child" may cause difficulties in regard to the prohibitions against child prostitution and child pornography, particularly for nations with a lower national age of majority and/or consent and no legal prohibition of adult prostitution or pornography. Indeed, even where adult prostitution and pornography are illegal, they generally would be treated much more leniently than child prostitution and child pornography, and hence it is critically important where the line between adult and child is drawn. If a nation generally considers a sixteen or seventeen year old an adult, it may be culturally and legally awkward to define their employment in prostitution and pornography as the heinous crimes of child prostitution and child pornography. A seventeen year old in many societies may not appear to be a "child" in regard to sexual matters, yet may appear indistinguishable from someone in the "adult" age range of eighteen to twenty. This problem is greatest for those who take an amoral or libertarian position in regard to adult prostitution and pornography, while seeking to maintain a highly moral and prohibitory position on child prostitution and pornography. For those who generally view prostitution as exploitative and destructive of the prostitute, and both prostitution and pornography as destructive of the broader society, the difficulty posed is much less severe, as the fixed definition of "child" may effectively broaden the scope of the prohibition against these evils. Regardless of one's moral or ideological position on these matters, it is clear that enforcement at the upper ages could be difficult, particularly in societies where the methods of registering birth are still unreliable and hence where the exact ages of many are uncertain. Moreover, just as "statutory rape" laws with high ages of consent are widely ignored and violated where adult fornication has been de-criminalized and is culturally common, international child prostitution and pornography laws applicable through age

276. CRC, Part I, supra note 267, art. 1.
seventeen may prove difficult to enforce in societies where prostitution and pornography are widespread.

The substantive definition of the "worst forms of child labour" include most of the practices which are broadly considered particularly egregious, such as bonded child labour, forced child labour, child prostitution, and particularly hazardous forms of employment. For example, the Chair's Summary of the February 1997 Amsterdam Child Labour Conference had defined the most intolerable forms of child labour as "slavery and slave-like practices, forced or compulsory labour, including debt bondage and serfdom, the use of children in prostitution, pornography and the drugs trade, and their employment in any type of work that is dangerous, harmful or hazardous." The Amsterdam Conference had also called for prohibitions of work that "interferes with [children's] education," and a "total prohibition of work by the very young," but these are not specifically included in the draft Convention.

Sections (a) and (b) of the definition of "worst forms of child labour" concerning various forms of bonded child labour, child prostitution and child pornography apply to some of the most universally condemned forms of child labour. The subject matters of these sections are already covered by other provisions of international law. There are several significant ILO and other human rights instruments on all forms of slavery or slavery-like institutions that would already encompass the prohibitions of section (a) on child slavery, bonded labour, and serfdom. Similarly, the subjects of child prostitution and child pornography are already covered in the CRC and other related efforts.

278. See Amsterdam Labour Conference, Putting an End to Child Abuse (speech by Minister Pronk) (Feb. 26, 1997) (visited Feb. 11, 1996) <http://www.crin.org/802566b9003596...22a82802565680051fd2/OpenDocument> (addressing section entitled "Ban on the most intolerable forms") [hereinafter Minister Pronk].


280. Id.

281. See Proposed Convention, supra note 262, art. 3.


283. See CRC, Part I, supra note 267, art. 34.
and pornography, which are generally classified as criminal matters, in an ILO instrument on labour standards. It will seem odd to some to consider these activities as a form of "labour" or to regulate it as a part of international labour standards. The official ILO position on this question appears to argue that it is useful to encompass all of these matters in one instrument, and that since they involve economic transactions these activities can be considered "labour." Nonetheless, it is clear that the ILO is venturing into areas typically handled as criminal, rather than labour, matters. Moreover, the Convention uses encompassing terms like "practices," "activity," and "activities" as implicit definitions of "labour," again indicating a willingness to expand its jurisdiction beyond matters usually considered as "labour."

Section (c) of the definition of the "worst forms of child labour" appears unwisely broad. While the Amsterdam Conference spoke particularly of children in prostitution, pornography, and the drug trade, the proposed Convention creates a separate category of "illegal activities," of which the drug trade is a "particular" instance. The language is somewhat ambiguous, in that it almost seems to imply that the drug trade is the only prohibited activity, while at the same time creating a broader category of using children in "illegal" activities which is potentially quite broad. Presumably there would be no need to create the broader category of "illegal activities" if the specified instance of drug use was the only item in the category. Banning the "use, procuring or offering of a child for illegal activities" has the benefit of going beyond the drug trade to encompass other potentially dangerous uses of children, but also has the corresponding difficulty of becoming a prohibition that suffers from overbreadth. The most obvious example of possible overbreadth (for an American) would be the deliberate decision by the Reverand Martin Luther King, Jr., to use children as protesters

284. See International Labour Conference, Report VI(2) on Child Labour, 86th Session (June 1998) (visited Feb. 25, 1999) <http://www.ilo.org/public/english/ilo/ilc86/rep-vi.htm> (addressing "Subparagraphs (a) and (b)" of question seven of section entitled "Content of a Convention" which discusses the fact that some countries raised concerns about referring to child pornography and prostitution as "work" and that putting them in a labour convention might devalue their criminal aspect) [hereinafter ILC Report VI(2)].

285. See Minister Pronk, supra note 278 (addressing sections entitled "Facilitation" and "Step-by-step approach").


287. Id.
during the course of his Birmingham civil rights campaign, a decision that, under the laws of that time, probably involved the use of children in “illegal activities.” A political campaign that employed seventeen year olds to post campaign posters on public property near roads (which is widely done, but technically illegal, in some jurisdictions) would come under this prohibition. Given the broad number of activities deemed “illegal” in the modern world, it seems rather too encompassing to brand as an “extreme form of child labour” every such “use, procuring or offering.” This is particularly true, in that the fixed definition of a child as including every person under eighteen could encompass some persons judged as adults under their national law. This section again illustrates the tendency of the Convention to go beyond matters usually included within labour standards to encompass traditional areas of criminal jurisdiction. Here, however, since the term “illegal” arguably may include civil, as well as criminal violations, the broad language of the proposed Convention threatens to sweep into virtually every subject area regulated by law.

The difficulty with the breadth of section (c) was recognized by the International Labour Office, which noted that the provision might encompass a “theatrical production for children that involved a breach of copyright.” The Office has proposed the prohibition of “illicit,” rather than “illegal,” activities. It is not clear, however, that this change would resolve the potential overbreadth and vagueness of this provision.

Section (d) of the definition of “worst forms of child labour” in the proposed Convention largely tracks a similar prohibition of hazardous employment by all under the age of eighteen in the Minimum Age Convention. However, although the phrase “likely to jeopardize the health, safety or morals” is identical in both Conventions, the 1973 Minimum Age Convention allows for the employment of sixteen year olds in such employment where protections and training are available, whereas the proposed Convention appears to contain a rigid prohibition. Indeed, a prior draft of the Convention specified that children “should not be used or engaged in such work or activity under any cir-

288. Id. art. 3(c).
289. See id. art. 2.
290. Proposed Convention, supra 286, art. 3.
291. See id.
292. See ILO C138 Minimum Age Convention, supra note 282, art. 3(3).
293. See id.
294. See Proposed Convention, supra note 286, art. 3(d).
Although this language was deleted, the portion remaining still lacks an exception provision parallel to that present in the Minimum Age Convention. This conflict between the Minimum Age Convention and Proposed Convention provisions on hazardous employment was explicitly recognized in discussions at the 1998 ILO Conference. Thus, it appeared that the ILO was trying to gain an implicit repeal of that part of the Minimum Age Convention allowing sixteen and seventeen year olds to be employed in hazardous categories of work where sufficient protections and training are provided. This implicit repeal appears related to the change in terminology for those in this sixteen to seventeen year old age group, from “young persons” in the Minimum Age Convention to “children” in the proposed Convention. This change of terminology reflects the possible policy direction of the ILO, for the ambiguity in terminology regarding sixteen and seventeen year olds reflects the unresolved issue of whether the ILO hopes to eventually make eighteen the minimum age of employment as a part of its “effective abolition of child labour.”

It is somewhat surprising to find that a convention designed to draw far wider ratification than the Minimum Age Convention is designed to stiffen, in at least one respect, the requirements of that Convention. However, when this conflict with the Minimum Age Convention was pointed out at the June 1998 ILO Conference, ILO officials admitted the conflict but then suggested that the exception in the Minimum Age Convention would be respected. Thus, the Convention removed the language specifying no derogation, and ILO officials suggested that the language referring to the “nature” or “circumstances” of the child labour would implicitly include the exception for sixteen and seventeen years olds in the Minimum Age Convention. Under this interpretation, hazardous work which could be made safe for sixteen year olds through protective measures and training would be considered to be done under such “circumstances” so as not to be deemed hazardous by the Convention on the Worst Forms of Child Labour. The difficulty

295. ILC Report VI(2), supra note 284 (addressing “Subparagraph (c)” of question seven of “Content of a Convention” section).
296. See discussion supra p. 434 and notes 292-93.
297. See ILC Report VI(2), supra note 284 (addressing question six of section entitled “Content of a Convention”).
298. See id. (addressing paragraph “Yemen” of question six of section entitled “Content of a Convention”).
299. See id. n.15.
300. See id.
with this interpretation is that the “nature or circumstances” phrase is identical in both the 1973 Minimum Age Convention and the proposed Convention on the Worst Forms of Child Labour, and yet in the former Convention the phrase is not deemed, in itself, to create an exception to the prohibition, but instead reliance is placed on an explicit exception. Reading an exception into the identical language in the subsequent convention would seem somewhat illogical, even if the language itself might seem to offer some basis for it. If an exception equivalent to that in the 1973 Minimum Age Convention is intended, then it should be explicitly stated in the proposed Convention, so as to remove any possible doubt as to the relationship between the two conventions in this area.

Another slight difference between the provisions in the 1973 Convention and the proposed Convention banning hazardous work is that the 1973 Convention refers to “employment or work,” whereas the proposed Convention refers to “work or activity.” This use of the word “activity,” as noted above, tends to broaden the reach of ILO conventions far beyond the traditional jurisdiction of labour standards. For example, there are a number of recreational activities which could literally come within the broad language of an “activity which, by its nature or the circumstances in which it is carried out, is likely to jeopardize the health, safety or morals of children.” It is difficult to believe that the ILO intends to take jurisdiction over issues such as the physical safety of contact sports or dirt biking for minors, or the moral safety of various forms of recreational activities such as viewing violent or pornographic visual or audio media, but the literal language is broad enough to encompass such issues. The ILO can attempt to diffuse these difficulties by simply noting that it only has jurisdiction over labour standards, but the question of what comes within ILO jurisdiction is already blurred by the proposed Convention’s reach into criminal matters such as the drug trade, prostitution, and pornography. It would be more appropriate for the ILO to clarify matters by returning to the 1973 “employment or work” language and eliminating broad references in the proposed Convention to “activities.”

The definition of the “worst forms of child labour” can be seen as a combination of somewhat disparate elements. Sections (b) and (c) regarding child prostitution and pornography and the use of children in

301. ILO C138 Minimum Age Convention, supra note 282, at art 3(I).
302. Proposed Convention, supra note 286, art. 3(d).
303. Id.
the drug trade and other illegal activities involve criminal conduct.\textsuperscript{304} Section (a) concerns various forms of slavery or slavery-like practices involving children, which have long been considered illegal under international law.\textsuperscript{305} Section (d) imports from the 1973 Minimum Age Convention a ban on hazardous employment for those under eighteen, but broadens the prohibition by eliminating the exception in the Minimum Age Convention for work made safe through regulation and training, and by applying the prohibition to all such "activity."\textsuperscript{306} The Convention therefore essentially bans child slavery, the use of children in the sex or drug trades or other illegal activities, and work or activities hazardous to children.

The Convention's stated purposes are to identify the "worst forms of child labour" for prioritized and immediate national and international prohibition and elimination.\textsuperscript{307} As noted above, the substantive definitions generally include most of the kinds of child labour commonly acknowledged as most egregious, such as bonded labour and child prostitution.\textsuperscript{308} However, the Convention does not in specific terms prohibit at least two closely-related forms of child labour which could be considered particularly egregious: full-time employment by the very young, such as children under the age of ten, and employment which makes it impossible for children to receive at least a primary education. Instead of particularly targeting employment of the very young, and employment interfering with education, which were named in the Chair's summary of the February 1997 Amsterdam Child Labour Conference,\textsuperscript{309} the proposed Convention simply adopted a stiffened version of the 1973 Minimum Age Convention's ban on hazardous employment.\textsuperscript{310} While it could be argued that employment of the very young, or employment which interferes with education, is hazardous to the "health" of children, particularly given the broad World Health Organization definition of health as total well-being of the person, this result is far from certain. After all, unless the definition of "health" receives some more limited definition, the prohibition of "hazardous" employment would make illegal all employment which did not maximize the entire well-being of

\begin{thebibliography}{9}
\bibitem{304} See id. (addressing section entitled "Proposed Recommendation concerning the prohibition and immediate elimination of the worst forms of child labour").
\bibitem{305} See id. art. 3(a).
\bibitem{306} See id. art. 3(d).
\bibitem{307} See Proposed Convention, \textit{supra} note 286, pmbl., art. 1.
\bibitem{308} See discussion \textit{supra} p. 436 and notes 304-06.
\bibitem{309} See Amsterdam Conference, Chair's Summary, \textit{supra} note 279.
\bibitem{310} See Proposed Convention, \textit{supra} note 286, art. 3.
\end{thebibliography}
children, an impossibly broad definition for a convention supposedly aimed at only the “worst” forms of child labour. Thus, the prohibition’s lack of specificity may prevent it from targeting effectively some forms of child labour deemed particularly egregious by the international community, including employment of the very young and employment interfering with education. At the same time, the vagueness and potential breadth of the prohibition of hazardous employment may undermine the Convention’s goal of receiving broad ratification. Countries which have refused to ratify the 1973 Minimum Age Convention might refuse to ratify a convention which contains a more prohibitive version of one of the key provisions of that Convention.

One can speculate as to why the drafters of the Proposed Convention included a ban on hazardous employment but rejected a specific provision on employment of the very young. Given the large number of developing nations which have not ratified the 1973 Minimum Age Convention, there may have been fear that including a specific age within the proposed Convention would implicitly legitimize employment above that age, thereby undercutting the ultimate goal of total abolition of child labour. In addition, the Amsterdam Convention had called for a “total prohibition of work by the very young,” which would have required a definition of “work.” Defining “work” is a delicate matter, for it raises the controversial issue of domestic chores. The ILO is keenly aware that some children—particularly girls—are kept so busy by domestic chores that they are not even permitted to attend school. Yet, attempting to regulate domestic chores brings one into the heart of family autonomy, and also raises the ridiculous spectre of regulating simple matters like a child setting the table. The ILO drafters set aside these difficulties and concentrated instead on borrowing the hazardous employment provision of their Minimum Age Convention. Inclusion of the “hazardous” employment provision in the new Convention could contribute to the ILO’s long term goal of a “total abolition” of child labour as a broad-scale regulation or prohibition of all work or activity by minors. Thus, instead of undercutting their ultimate

311. ALC, Chair’s Summary, supra note 279.
313. See ILC Report VI(2), supra note 282 (addressing “Hazardous Work” subsection of section entitled “Proposed Conclusions with a view to a Recommendation”).
goal of total abolition with the enactment of a new, and very young, age limit, or getting caught in the controversial quagmire of defining “work” in the context of domestic chores, the ILO drafters chose to advance their long-term interest in asserting “child labour” jurisdiction over the work or activities of minors until the age of eighteen.

Although the choices made by the ILO in drafting the substantive definitions are quite understandable, some degree of over-reaching is present which may endanger the goal of obtaining broad ratification of the Convention. This article therefore proposes four alterations of the text. First, section (c) of the definition of “worst forms of child labour” should be re-drafted so as to delete the general inclusion of illegal activities, with the remaining part referring only to drugs. Second, section (d) of the substantive definition, concerning hazardous activities, should delete the reference to “activity,” which is too broad a term, and retain the language of the Minimum Age Convention, which refers to “employment or work.” Third, the following section which requires the national authorities to identify the areas of hazardous employment should be amended by adding the exception present in the Minimum Age Convention for employment of sixteen and seventeen year olds which can be made safe through regulation and training. Fourth, the Convention should employ the definition of “child” used in the CRC, which permits majority to be attained earlier than the age of eighteen under national law. This definition would prevent the anomaly of persons who have, through age or marriage, become adults under national law, being simultaneously considered “children” for international and national child labour purposes.

While these changes narrow somewhat the reach of the Convention, they would strengthen it, by allowing it to retain its focus on the “worst” forms of child labour. Language which makes the reach of the Convention unusually broad, such as the prohibitions of “illegal activities,” and any hazardous “activity,” the failure to explicitly include a mitigating exception present even in the unpopular Minimum Age Convention, and the use of a rigid definition of child broader than the CRC, threaten to undermine the goal of broad ratification and to dissipate support through the raising of side-issues. The definitions of the core evil must be limited and clear, so that all may concentrate on the critical issue, discussed immediately below, of implementation.
c. Implementation

Given that essentially all of the work or activities condemned as the "worst forms of child labour" are already condemned in other international instruments, and are almost universally condemned under national laws even in developing nations, the primary benefit of the new instrument must come from its implementation. The ILO has traditionally relied on reporting mechanisms to enforce adherence to its conventions. The ILO reporting mechanisms have been somewhat more effective than those of some of the reporting mechanisms in non-ILO human rights conventions, perhaps because of the ILO expertise in the gathering of relevant data, and ILO's tripartite structure of governments, employers, and workers. Thus, there is some hope that the reporting mechanisms of the ILO, in combination with the proposed Convention, will be a helpful step, even if they do not, in itself, bring about the abolition of these "worst" forms of child labour.

The proposed Convention requires State Parties to implement "programmes of action to eliminate as a priority the worst forms of child labour." As is typically the case with ILO conventions, the proposed Convention requires such programs to be designed in consultation with employers’ and workers’ organizations. "Monitor[ing]" of the "application of provisions" toward that end of eliminating the worst forms of child labour is also required.

Beyond these general undertakings, the proposed Convention specifically requires all "necessary measures," including the "provision and application of penal and other sanctions, as appropriate." The specific mention of penal sanctions is not surprising, given that the Convention ban covers activities, such as prostitution, pornography, and the drug

317. See id. art. 6(2).
318. Id. art. 5.
319. Id. art. 7(1).
trade, that are already usually covered under penal law.\textsuperscript{320} This provision underscores the reach of this "labour standard" into areas of traditional criminal jurisdiction.

In addition, the Convention states that State Parties shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures to:

(a) prevent children from engaging in the worst forms of child labour;

(b) provide the necessary and appropriate direct assistance for their removal from work, rehabilitation and social reintegration through, inter alia, access to free basic education; and

(c) identify and reach out to children at special risk and take account of the special situation of girls.\textsuperscript{321}

These provisions on prevention and rehabilitation understandably emphasize education, for one of the basic harms of many forms of child labour is that they effectively prevent children from receiving an education, and thereby severely limit the future prospects of the child.\textsuperscript{322} Some wanted the category of work which "interferes with [children's] education" to constitute one of the "worst forms of child labour" banned by the Convention. As a substitute, the Convention emphasized education in the implementation section.\textsuperscript{323} In some developing nations with large numbers of child labourers, the system of primary education is quite inadequate.\textsuperscript{324} Often there are no schools or other formal education available for large numbers of children, and much of the education that is available is of a low quality.\textsuperscript{325} Hence, many parents in those societies

\textsuperscript{320} See Proposed Convention, \textit{supra} note 316, ¶ 11-12 (addressing section entitled "Proposed Recommendation concerning the prohibition and immediate elimination of the worst forms of child labour").

\textsuperscript{321} \textit{Id.} art. 7(2).

\textsuperscript{322} See discussion \textit{supra} p. 440 and note 316.

\textsuperscript{323} See Proposed Convention, \textit{supra} note 316, pmbl., ¶ 14.


\textsuperscript{325} See id.
have yet to perceive any benefit, to either the child or family, of withholding the child from early employment.\textsuperscript{326}

The educational, prevention, and rehabilitative services demanded by the proposed Convention are arguably the most important provisions of the Convention. Most of the “worst forms of child labour” banned by the proposed Convention are already illegal, under national laws, in the nations where they are most prevalent.\textsuperscript{327} For example, bonded labour, and employment by children in hazardous industries, are illegal in India and Pakistan,\textsuperscript{328} and child prostitution is illegal in Thailand.\textsuperscript{329} If all the Convention required were the existence of national laws making these practices illegal, the Convention would be an empty exercise, for those laws already exist. Adding a requirement that laws exist, to the law’s existence, is hardly a noble calling for the international community.

The difficulty with the Convention’s requirement of educational, prevention, and rehabilitative services is that such services require substantial financial resources. Obviously, developing nations are often not in the best position to provide the financial resources necessary to achieve these goals. It therefore becomes a very real question as to whether developing nations can, in good conscience, commit to providing such services in adequate amounts. While such nations can point to some number of existing or pilot projects providing preventive or rehabilitative services to small groups of at-risk or rescued children,\textsuperscript{330} such small-scale projects cannot fulfill the requirements of the Convention to provide services adequate to achieve the “immediate elimination of the worst forms of child labour.” In some nations there are literally millions of children already subject to the “worst forms of child labour,” and tens of millions of other children who are “at-risk.”\textsuperscript{331} The services which would actually be necessary to rescue and rehabilitate all of the current child labourers, and provide preventative services to all who are at-risk, are staggering. The requirement of “immediate elimination,”

\begin{thebibliography}{9}
\bibitem{326} See id.
\bibitem{328} See id.
\bibitem{331} See Silvers, \textit{supra} note 327, at 81.
\end{thebibliography}
coupled with the requirement of services, therefore would present an extremely expensive commitment, if taken seriously.

Developing nations, like developed nations, differ significantly in their allocation of national financial resources to human services such as education. Some developing nations could certainly be criticized for not putting a sufficient percentage of their national resources into the development of their future human capital, their children. Thus, the Convention could be seen as a way of prodding nations toward placing more resources into education and services for children and families.

However, developing nations are understandably going to consider that they could not be expected to provide, on their own, sufficient resources to launch massive new educational, prevention and rehabilitation programs. Rehabilitation programs are particularly expensive for it takes far more money to rescue and rehabilitate a child than to provide, in the first instance, a basic primary education. Rehabilitation programs tend to be small, often involving at most a few hundred children, and yet some nations have literally hundreds of thousands, if not millions, of children who should, under the terms of the proposed Convention, receive such services. Expecting nations which currently fail to provide an adequate primary education to millions of children to provide far more expensive rehabilitative services to hundreds of thousands of children seems less than realistic.

The services commitments of the proposed Convention thus could not be accomplished without a massive reallocation of resources within those nations. Even with such a re-allocation, large-scale infusions of outside financial resources would almost certainly be required. Yet, there is no provision within the Convention for such a large-scale infusion of financial resources. The Convention’s statement that ILO members “shall ... assist one another in giving effect to the provisions of this Convention through international cooperation or assistance” falls far short of a concerted program to channel billions of dollars of immediate assistance toward massive new education, prevention, and rehabilitative programs.

The proposed Convention’s section on education, prevention, and rehabilitation therefore points in the correct direction but threatens, when coupled with the Convention’s emphasis on immediate elimina-

332. See id. at 7 (discussing Pakistan’s failure to provide schooling for more than a third of its children despite its relative prosperity); see also Jennifer Bol, supra note 330, at 1182 (discussing different levels of social spending, including education, in Central American countries).

333. Proposed Convention, supra note 316, art. 8.
tion, to create a credibility crisis. Such credibility gaps, as discussed above, are common in the human rights field, where nations seem to frequently ratify human rights conventions with little regard or concern as to actually abiding by their terms.\footnote{See, e.g., Gustavo Capdevila, Human Rights: U.N. Accuses Governments of Double Talk on Migrants, Inter Press Service (Nov. 30, 1998), available in 1998 WL 19901747.} These credibility crises have been severe in regard to civil and political rights, for it is generally considered that nations should be able to control whether they suppress free speech or engage in torture, and therefore should be able to bring themselves into immediate compliance with their human rights commitments in such areas.\footnote{See, e.g., Frank Ching, U.S.-China Ties Make Headway, FAR E. ECON. REV., Apr. 2, 1998, at 35 (discussing that China has signed human rights conventions, yet the U.S. Congress has passed nonbinding resolutions urging President Clinton to mount another attempt to condemn China’s human rights record).} Traditionally, however, credibility crises have arisen less often in regard to positive economic and social rights, such as rights guaranteeing adequate food, education, or health care. Conventions concerning positive economic or social rights have wisely been phrased in terms of progressive implementation, based on the understanding that such positive rights require a long-term process of economic and social development for their implementation.\footnote{See International Covenant on Economic, Social and Cultural Rights, G.A. Res. 200A, U.N. GAOR, U.N. Doc. A/6316, art. 2(1) (1966) [hereinafter ESCR].}

The proposed Convention is an oddity in the field of human rights for it guarantees positive economic rights, enactment of laws barring certain practices, and criminal and civil enforcement of those laws, while claiming to demand immediate compliance with its standards. It will not be difficult for ratifying nations to meet their commitment to enact the relevant laws making these forms of child labour illegal because, as noted above, such national laws are already nearly universal. Finding and allocating the necessary resources for services, however, is a matter which normally could not occur “immediately.” Further, effective enforcement of laws making these forms of child labour illegal is likely to take a period of time, if it is accomplished at all, in nations where it has become customary for enforcement to be ineffective and lax.

The undertaking demanded by the Convention is to “take measures to secure the prohibition and immediate elimination of the worst forms of child labour.”\footnote{Proposed Convention, supra note 316, art. 1.} Nations which adhere to the Convention will undoubtedly claim that they have “taken steps” toward the goal. The
credibility crisis will emerge from the fact that anything short of a massive infusion of resources into both services and enforcement efforts will obviously fall short of immediate abolition. Indeed, it is hard to believe that immediate abolition is a credible goal, given the significant financial and cultural obstacles toward abolishing practices such as bonded labour, employment of children in hazardous industries, and child prostitution.

In addition, there is a danger that efforts toward abolition could do more harm than good, if they are not undertaken in a phased and controlled way.338 For example, large factories are the easiest target for enforcement efforts, and hence governments may be inclined to demonstrate compliance through removing children immediately from a few large factories. If children are merely removed from formal factory jobs, however, without rehabilitation, educational, and income-replacement services being available, then they will likely move to less regulated, more hazardous, and more poorly-paid forms of employment.339 Hence, child labour may simply be moved further underground, and children subject to greater, rather than lesser, dangers.340 Therefore, efforts at abolishing the “worst forms of child labour” should ensure that enhanced enforcement efforts are provided in coordination with increased services. The provision of necessary services, however, is unlikely to occur “immediately,” but can only develop as funds and adequate planning and implementation permit.

For all of these reasons, it seems that the Convention’s goal of immediate elimination of the “worst forms of child labour” must be taken less than literally. Much good will have been done, and a credibility crisis avoided, if a decade after enactment the evils against which the Convention is aimed, such as bonded child labour, the use of children in the sex and drug industries, and the employment of children in hazardous industries, have been significantly and progressively reduced through an integrated program of significantly increased enforcement of national child labour laws and expanded services. Even accomplishing this much will require extraordinary efforts. On the other hand, if a decade later there is no significant reduction in these practices, national child labour laws continue to receive only sporadic and symbolic en-

339. See id. at 666.
340. See id.
forcement efforts, and increases in educational, prevention, and rehabilitative services are limited to a few pilot projects, then the proposed Convention will join the ranks of merely rhetorical efforts in the human rights field.

IV. CONCLUSION

As the above analysis indicates, recent ILO efforts to place child labour in the center of the organization’s efforts evidence a certain measure of over-reaching, in that they assume or seek to impose a degree of consensus not actually present in the international community. Thus, ILO efforts to bind all of their member nations to the abolitionist goal of the unpopular 1973 Minimum Age Convention through the new Human Rights Declarations violate the principle that nations are only bound by the conventions they ratify. Similarly, some of the terms used to define the “worst forms of child labour” in the proposed Convention on this subject are overbroad and appear to represent an attempted expansion of ILO jurisdiction even beyond that of the unpopular Minimum Age Convention, making it less likely that this Convention will overcome the resistance of developing nations to ratification of child labour conventions.

This overreaching is unlikely to produce any significant resistance at the present time, largely because the definitions of human rights found in international declarations and conventions are so often regarded as largely rhetorical exercises, and therefore as not particularly significant. In addition, since there understandably are no reputable actors in the international arena willing to publicly defend the more egregious forms of child labour, activists against such evils generally are afforded a certain measure of tolerance for over-reaching and rhetorical excess in pursuit of their laudable goals.

The ILO and other activists in the child labour movement currently lack any mechanism for effectively enforcing their ever-growing number of conventions and declarations. The child labour movement, like


342. See Ehrenberg, supra note 314, at 389. “The lack of sanctions is a major weakness in the
the human rights movement, generally relies on a combination of reporting, publicity, research, and volunteer efforts to enforce its norms. These efforts are significant but have thus far failed to stem the economic forces, international and local, which make egregious forms of child labour such a pervasive part of the contemporary world. Unfortunately, economic growth in itself does not guarantee a lessening of child labour because its benefits may be controlled by elites and therefore may fail to provide any immediate improvement in the lives of the masses of poor in the developing world. In addition, economic growth and free trade can increase markets for the goods and services created by child labour, and thus increase local demand for child labourers. The economic forces unleashed by economic growth are, however, at least theoretically capable of being directed to the alleviation of social evils such as child labour, because they create an extra margin of wealth in both the developed and developing world which conceivably could be re-directed to the alleviation of human suffering. The relentless advocacy of the child labour movement is thus theoretically capable, in good economic times, of producing a significant reduction of child labour. By contrast, however, economic crises are almost certain to exacerbate the child labour problem because they remove the resources and focus necessary to the movement, and re-direct them to issues of crisis management and simple survival. Hence, the current economic crisis in Asia may pose a significant danger to the movement. If the economic crisis widens and spreads economic pain throughout the developing world, then the prospects for making headway against child labour, using the very limited enforcement mechanisms of the human rights community, will be slight indeed.

The parts of the world where child labour is most endemic are subject to extremely high rates of economic and cultural change which make their present societies relatively unstable and their futures quite uncertain. Hundreds of millions of people throughout the world are in transition from age-old agricultural and village patterns of life to vari-


345. See id.

ous forms of modern, industrial, and post-industrial conditions. Much of the developing world is experiencing in a few generations changes which occurred over several hundred years in the developed world. This high rate of change has produced in many peoples an identity crisis and an accompanying resurgence of ethnic and religious identity, as people are forced to explicitly choose and value that which they may have previously taken for granted. Under these conditions, the norms and ideals by which people govern their lives are in significant flux, and change is not always in the direction of Western individualism. At the same time, the global economic system is unrelenting and unforgiving in its constant intrusion into the lives of peoples throughout the world, making it increasingly difficult for local communities to maintain control over their own fates.

Under these circumstances, the prospects for producing a fixed condemnation of child labour in all of the emerging and re-emerging value systems of the world seems dim. Every society values at least some of their children, but not every society agrees on what is good for children, or on the correct mix of work and education which best fulfills children's present duties toward their families while preparing them for adulthood.

The multiplicity of values manifest in the resurgent ethnic and religious communities of the world suggests that resistance to the universalizing moralism of the human rights community are inevitable at the local level. It is this local level which is least represented in international and human rights documents, for those documents almost inevitably are the products of those privileged few who participate in international institutions. Some international efforts to implement human rights carefully nourish support and relationships in the local communities in which they work. However, there is no foreseeable possibility that the innumerable villages and poor urban neighborhoods of the developing world will each be reached by international efforts to work cooperatively with local leaders in planning and implementing local improvements. Therefore, when international human rights documents and conferences take aim at altering local attitudes in order to conform them to international norms, they generally speak as virtual strangers to those

347. See id.
348. See id.
349. See id.
350. See id. at 193, 196.
351. See FRANK NEWMAN & DAVID WEISSBROT, INTERNATIONAL HUMAN RIGHTS 516 (2d ed. 1996).
to whom they address. The local communities, filled with people who have the “wrong attitudes” on matters like child labour, family size, and gender, are more demonized than converted, dictated to rather than collaborated with. Under these circumstances, the child labour movement, like the international human rights movement with which it has cast its lot, is unlikely to universalize its norms through cooperative work on the local level. Given the movement’s limited resources, its local projects, however laudable and successful, will generally remain pilot or relatively small-scale projects which reach only a small minority of child labourers, and its capacity to implement its norms will therefore come primarily from forces outside of those communities.

The child labour movement, however, unlike much of the rest of the human rights movement, has potentially available an international institutional mechanism powerful enough to actually enforce its norms. Since the child labour issue is an economic issue with significant impact on the world trade system, it could theoretically seek enforcement of child labour standards from the institutions of the world trade system, such as the WTO, or from other international economic institutions, such as the World Bank or International Monetary Fund. These international institutions are generally subject to significant control by the developed world and have a demonstrated capacity to impose their will, through the power of wealth, upon developing nations. Institutions powerful enough to force developing nations to alter their domestic economic policies in ways that create significant economic pain to the national population, or to enforce a regimen of international trade governing sensitive matters such as tariffs on imports and subsidies for local industries, probably possess the raw power to actually force developing nations to significantly step up their enforcement efforts against various forms of child labour. Indeed, in the current era national governments appear to possess less and less authority even within their own borders, while international economic actors such as multi-national corporations and world trade and economic institutions are growing increasingly powerful. Under such circumstances, the use of such international economic institutions in the campaign against child labour could be quite strategic.

So far, however, the child labour campaign has made only piece-meal use of the international trade strategy. Consumer boycotts, consumer labeling efforts, agreements worked out with national export in-

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352. See id.
industries such as the Pakistan Carpet Exporters, and Codes of Conduct imposed by multi-national corporations upon their suppliers have recently been employed by child labour advocates. Most of these efforts are too new to be fairly evaluated for effectiveness, but it is already apparent that they possess real potential power. Their main danger, however, is that they will salve the conscience of Northern consumers and activists without actually substantially assisting the children of the developing world. Such efforts are likely to target the more visible—and sometimes less heinous—forms of child labour found in larger factories and plantations, with the primary effect of simply driving children into forms of labour which are less visible but even more hazardous. In addition, Northern demands to monitor all phases of production in the developing world may force some businesses to move away from their current use of family, village, and small shop production. Such a change could produce severe hardships for those families who had previously been able to earn their living in their own homes and localities, and force a centralization of labour into larger, more easily regulated units, with complex and intrusive effects in many communities. Finally, although most of these trade-oriented attacks upon child labour purport to coordinate the provision of education, rehabilitation, and income-replacement services with the abolition of child labour, it is likely that the provisions of services will lag far behind the removal of child labourers, as firing a worker is much cheaper and easier than supplying services to children and their families.

Activists involved in the varied piece-meal trade-oriented attacks on child labour are presumably aware of these difficulties. Evaluating their work will be complex. Some forms of child labour are so heinous that they justify virtually any method of stopping them; in other cases, however, one has to carefully evaluate whether the positive changes outweigh the negative. What is intriguing about such efforts, however, is that they involve non-governmental efforts to employ the economic power of the developed world, and of world trade, to force changes in labour practices in the developing world.

In the long term, however, the child labour movement may be tempted to seriously pursue formal linkage between child labour standards and the World Trade Organization or other major international economic actor. At present, serious obstacles to this path include the general failure of linkage between labour standards and trade standards, the unpopularity of the Minimum Age Convention, and the intense opposition of many developing nations to such linkage. These factors are apparently sufficient to avoid formal linkage at present. If, however, the proposed Convention on the “worst forms of child labour” is widely ratified by developing nations, and the piece-meal efforts to use trade to enforce child labour standards are markedly successful, then in time the world community may come to consider that some forms of child labour are, like slave labour, sufficiently serious to merit formal linkage. At that time, a test case could develop in which a small nation with a significant export industry which still relied to a large degree on one of the worst forms of child labour would be targeted for trade sanctions. Hence, the Convention on the worst forms of child labour may ultimately be the vehicle through which linkage is finally accomplished. To further this end, there will probably be further claims that abolition of many of the worst forms of child labour constitute peremptory norms binding on the entire world community, including the world trade regime. In the meantime, however, the ILO is in the paradoxical position of reassuring the developing world that it will never work in other than a completely cooperative, voluntary manner with developing nations, and hence would never try to employ the economic muscle of the developed world or of international trade or economic institutions to implement child labour standards.

The campaign to abolish child labour is in most respects one of the more admirable social movements of the late twentieth century. One can only hope that as it moves into the twenty-first century, it will successfully navigate the various tensions and temptations to which it is subject, and succeed in freeing millions of children from the exploitation and degradation to which so many are now tragically subject.