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THE EFFECTS OF CHILD LABOR ON THE FAMILY IN ASIAN COUNTRIES

Bhavin Patel[†]

I. INTRODUCTION

Though we have just entered the next millennium, an irreconcilable and egregious problem, which has been present for many years, is still prevalent today. The International Labor Organization (ILO) has stated: “[f]ew human rights abuses are so unanimously condemned, while being so widely practiced, as child labor.”¹ Though many different types of legislative and private industry efforts have been promulgated, child labor seems to be an enduring problem that has persevered through the decades.

Until recent times, child labor was not viewed as wholly detrimental or even as a practice that deserved widespread condemnation.² Child labor was primarily used to teach children the roles that they would play as adults. The working children learned to assist the family and solidified their roles in the community.³ However, when paid child labor became prevalent in many societies, the notion that children should be protected against pervasive and contemptuous exploitation in labor practices became a widely held belief.⁴ This protectionist belief was largely compounded by the ubiquitous media coverage of absolutely deplorable con-

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1. *The Impact of Child Labor on Free Trade: Hearing Before the Subcomm. on Int'l Econ. Policy and Trade of the House Comm. on Int'l Relations*, 105th Cong. 3-4 (1997) (statement of Chris Smith, U.S. Representative from New Jersey) (quoting International Labour Organization Testimony at Department of Labor Hearings, U.S. Dep't of Labor, *By the Sweat and Toil of Children, Vol. 1, Executive Summary* (visited Apr. 1, 2000) <<http://www.dol.gov/dol/ilab/public/media/reports/iclp/sweat/summary.htm>>).

2. See Elias Mendelievich, *Introductory Analysis, in CHILDREN AT WORK 3* (Elias Mendelievich ed., 1979).

3. See *id.*

4. See *id.*

ditions that children endured at manufacturing and textile plants throughout the developing world.

Some authorities put the estimate of working children at nearly four hundred million.⁵ This large number drastically emphasizes the omnipresence of the problem. Estimates state that ninety-five percent of child laborers are working and live in developing countries.⁶ This statistic shows unequivocally that the problem of working children is largely one with its roots firmly grounded in the poor nations of the world. In Africa alone, it is estimated that approximately one in three children work.⁷ One seminal study has stated that by far the largest number of working children can be found on the Asian Continent.⁸ There is also strong evidence present that tends to show the activity is increasing rather than diminishing.⁹

This comment will discuss child labor in Asian countries, the effects that the activity has on the families of the child laborers, and finally the ameliorative means that have been and could be brought about by legislation and other means that have or could be promulgated to try and abolish or mitigate the most egregious forms of the practice.

Researchers have had a difficult time in giving an exact definition for the term "child labor." The first definitional problem relates to how a child should be classified. For example, should a strictly biological age basis be adopted, or should we look at when the child has completed her grade schooling? The other term that poses problems from the standpoint of definition is "labor." The next section will examine how these terms have been defined.

II. WHAT IS CHILD LABOR?

There exist many practical problems in trying to define child labor. Trying to define at what age a person is considered a child and at what age a person is considered someone that may properly participate in the

5. See Katherine Cox, *The Inevitability of Nimble Fingers? Law, Development, and Child Labor*, 32 VAND. J. TRANSNAT'L L. 115, 116 (1999) (citing UNICEF, *Shadowy Figures, in THE STATE OF THE WORLD'S CHILDREN* (1997)).

6. See Timothy A. Glut, Note, *Changing the Approach to Ending Child Labor: An International Solution to an International Problem*, 28 VAND. J. TRANSNAT'L L. 1203, 1207 (1995) (citing U.S. DEP'T OF LABOR, BUREAU OF INT'L LABOR AFFAIRS, *BY THE SWEAT AND TOIL OF CHILDREN: THE USE OF CHILD LABOR IN AMERICAN IMPORTS 2* (1994)).

7. See *id.* at 1207.

8. See Matthew C. Bazzano, *Child Labor: What the United States and its Corporations Can do to Eliminate its Use*, 18 HAMLINE J. PUB. L. & POL'Y 200, 202-03 (1996) (citing U.S. DEP'T OF LABOR, BUREAU OF INT'L LABOR AFFAIRS, *INTERNATIONAL CHILD LABOR STUDY 4* (1994)).

9. See Cox, *supra* note 5, at 116.

labor field poses a problem.¹⁰ In some areas of the world, cultures do not define age chronologically; rather, they do so based on a biological basis.¹¹ When such a definition is used, a child is considered of working age when she reaches a biological stage rather than a numerical age.¹² There also exists the problem that many ethnic groups around the world do not agree that childhood should last as long as it does in the United States and other more developed countries.¹³ Despite these culturally based definitional problems, however, there does exist a standardized definition.

The United Nations Convention on the Rights of the Child (UNCRC) has set the age of eighteen as the cut-off period for childhood, unless otherwise provided by domestic law.¹⁴ The ILO also defines childhood chronologically. The Convention Concerning the Minimum Age for Admission to Employment (Convention No. 138) states that the minimum age of employment cannot be less than the age when a child completes compulsory schooling.¹⁵ The organization states further that the age that must be met before one may become employed must not be under the age of fifteen.¹⁶

Additionally, there is the problem with how the term "work" should be defined. Some forms of work are viewed as "good," while others are seen as wholly exploitative and lacking in any virtue whatsoever. In the United States and other developed countries, it is considered proper for youngsters to engage in some form of part-time employment.¹⁷ This work, however, is not generally exploitative or performed under distressed circumstances. A further problem is whether to include the work a child may do for the family unit in the definition of child work.¹⁸ Some forms of work in which a child engages are considered "good" in that it provides a way for the child to attain foresight as to what she will be doing when older.¹⁹ This "good" work can be seen as contributing to the child's and the family's development.²⁰

10. See Jennifer Bol, *Using International Law to Fight Child Labor: A Case Study of Guatemala and the Inter-American System*, 13 AM. U. INT'L L. REV. 1135, 1139 (1998).

11. See *id.*

12. See *id.*

13. See *id.* at 1140.

14. See Convention on the Rights of the Child, Nov. 20, 1989, 28 I.L.M. 1448 (1989) [hereinafter UNCRC].

15. See International Labour Organization Convention Concerning the Minimum Age for Admission to Employment, June 26, 1973, 1015 U.N.T.S. 297 [hereinafter ILO Convention No. 138].

16. See *id.* art. 2(3), at 300.

17. See Bol, *supra* note 10, at 1141.

18. See *id.*

19. See *id.*

20. See *id.*

So what is "harmful" child labor? The Director-General of the ILO defines child labor as:

[w]ork that places too heavy a burden on the child; work that endangers his safety, health or welfare; work that takes advantage of the defenselessness of the child; work that exploits the child as a cheap substitute for adult labour; work that uses the child's effort but does nothing for his development; work that impedes the child's education and training and thus prejudices his future.²¹

Child labor, then, is that type of work that will be detrimental and harmful to the child's future. Exploitative work that takes away from the child's ability to spend time with her family or attend school are examples of child labor the ILO seeks to condemn.

A. Causes and Justifications for the Existence of Child Labor

The factors that ultimately lead children to begin working, rather than engaging in the usual behaviors of their non-working counterparts, are many and complex.²² Poverty has been described as one factor. Other factors include the inherent and ascribed characteristics of children, lack of education and extrinsic as well as intrinsic pressure from cultural elements.²³

1. Poverty cited as a Cause of Child Labor

Poverty is a commonly cited factor that is said to contribute to problems of child labor, but studies seem to question the nexus between poverty and exploitative child labor.²⁴ The arguments that espouse the view that poverty contributes to child labor reason that children often go to work so as to be able to add to the family's income.²⁵ This hypothesis is an easy one to understand. If a family, especially one residing in a developing country, has an income base that is unpredictable and does not guarantee a set pecuniary figure on a weekly or monthly basis, then members of the family who do not normally work may have to do so. It is not complicated to understand that children may be pressured or may feel responsible to take up employment so as to help the family. Concomitantly, some commentators have emphasized that children in developing countries must work to keep the country competitive in the global econ-

21. *Id.* at 1142.

22. *See Cox, supra* note 5, at 149.

23. *See id.* at 145-49 (outlining as causes of child labor poverty, economic factors, educational factors and cultural factors).

24. *See id.* at 146.

25. *See id.*

omy.²⁶ These commentators argue that because developing countries cannot compete with their more technologically privileged counterparts, child labor is needed as a form of cheap labor to keep the developing countries in the forefront of global competition.²⁷

2. The Inherent Vulnerability and Passiveness of Children

Another factor that contributes to the prevalence of children in the labor market of many developing nations is the inherent characteristic of vulnerability and/or passiveness that is indicative of them.²⁸ This factor has been described as one of demand. It is said that many employers desire children because they do not complain about the exploitative work that they are often forced to do.²⁹ Children typically will not question the demeaning work that they are mandated to perform and are generally more complacent than their adult counterparts.³⁰ Children can be pressured more easily than adults can by the use of fear and threats of violence.³¹ Children are also less likely to be aware of the rights and privileges that they are guaranteed by the law.³² Since the chances are higher that children will be less knowledgeable about their de facto and de jure rights, they will not be as likely to complain and cause trouble for their exploitative employers.³³ Indeed child workers serve as a lucrative alternative to unscrupulous employers who relish the prospect of being able to pay a child worker a fraction of what an adult worker would have to be remunerated.³⁴ Illustrating this point, one researcher has noted:

[c]hildren . . . constitute a labour force outside the law, and consequently do not enjoy the right to claim the social benefits that should be due to them. In other words, children make up a submissive and defenseless labour force with no possibility of negotiating their conditions of work (which are usually imposed unilaterally and arbitrarily by the employer), with no trade union to defend them and with virtually no access to sickness or employment injury insurance or social security schemes.³⁵

Children are also preferred over adults because their inherent profi-

26. *See id.*

27. *See id.*

28. *See Cox, supra* note 5, at 147.

29. *See id.* at 147-48.

30. *See id.* at 147.

31. *See id.*

32. *See id.*

33. *See id.*

34. *See Glut, supra* note 6, at 1209.

35. Mendelievich, *supra* note 2, at 7.

ciencies with certain tasks make them better at certain types of work.³⁶ Children have consistently been preferred over adults in the carpet, textile, and gem industries because of a perceived dexterity due to their nimble fingers and small hands.³⁷

3. The Inadequacy of Educational Systems

The lack of proficient and adequate schooling has also been associated with the problem of child labor.³⁸ Education, it has been said, can reduce the flow of children workers into the employment arena.³⁹ If children are staying in school, then they are most likely not engaging in the exploitative or full-time labor market. It has also been remarked that "[t]he real or imagined lack of alternatives for children . . . contributes to the problem of child labor. In societies with insufficient educational opportunities, a child's daytime activities may be limited to begging, stealing, or working."⁴⁰ Hence, faced with a choice between the activities enumerated above and child labor, most parents find the act of working much more socially and morally agreeable than the alternatives.⁴¹ Most parents agree that at least working can possibly provide some skills for the child and keep the child away from the sometimes dangerous activities of stealing and begging.⁴²

Moreover, education, although it works in ameliorative ways to improve the problem of child labor, can also contribute to the problem. Free schooling may actually be very expensive and children who are given the opportunity to attend school will sometimes have to work to assist in paying for it.⁴³ The time that children would spend in school is time that they are forbearing from work.⁴⁴ Even though many children likely would prefer to attend school, the difficult situations in which they are placed might preclude them from exercising their volition because if they do not work, they may not have money to buy sustenance to eat.⁴⁵

In the countries where most child laborers reside, the educational systems are frequently unsatisfactory and leave much to be desired.⁴⁶ The

36. See Cox, *supra* note 5, at 148.

37. See Peter Nygh, *Making the World a Better Place For Children*, 19-SPG FAM. ADVOC. 15, 16 (1997).

38. See Glut, *supra* note 6, at 1209.

39. See Cox, *supra* note 5, at 148.

40. Glut, *supra* note 6, at 1209.

41. See *id.*

42. See *id.*

43. See Cox, *supra* note 5, at 148.

44. See Nicole J. Krug, Note, *Exploiting Child Labor: Corporate Responsibility and the Role Of Corporate Codes of Conduct*, 14 N.Y.L. SCH. J. HUM. RTS. 651, 654 (1998).

45. See *id.* at 654.

46. See Glut, *supra* note 6, at 1209.

indisputable fact of the ubiquitous existence of inadequate educational opportunities in those countries virtually ensures that children will not attain the requisite technical and emotional skills needed to become successful adults.⁴⁷ Underscoring this point are some disconcerting statistics. It has been asserted that "approximately one hundred and forty million children between the ages of six and eleven do not attend school [and that] twenty-three percent of primary school age children in developing countries are not going to school."⁴⁸ If the education needed for successful adult employment opportunities is not available, it seems that child labor will continue to be a phenomenon that eludes mitigation.

B. Cultural Factors and Influences

In addition to the aforementioned factors, cultural influences also effect and contribute to the existence of child labor. In many Asian societies, it is considered a virtue for children to begin working.⁴⁹ In these societies, it is often a widely held belief that children should work rather than beg for money and sustenance.⁵⁰ Some Asian countries have also traditionally viewed the participation of children in the work force as an important socializing device.⁵¹ Work is seen as a way for the child to learn skills and to learn his importance in the family. By taking up work, the child learns that his contribution to the family is necessary and will make him feel that he is performing an indispensable function. These cultural and socializing factors have persisted into contemporary times.⁵² Changing these antiquated views will require nothing short of a ubiquitous change in the social order within the respective countries.⁵³ The social groups that espouse these traditional beliefs would need to see that they are outweighed by the injustices that many young laborers suffer at the hands of exploitative and unscrupulous employers.⁵⁴

Now that some of the factors that contribute to the existence and perpetuation of child labor have been examined, the prevalence of the practice in Asia will be discussed.

47. See Anjali Garg, Note, *A Child Labor Social Clause: Analysis and Proposal for Action*, 31 N.Y.U. J. INT'L L. & POL. 473, 477 (1999).

48. *Id.* (citing UNICEF, *THE STATE OF THE WORLD'S CHILDREN* 48 (1997)).

49. See Glut, *supra* note 6, at 1210.

50. *See id.*

51. *See id.*

52. See Cox, *supra* note 5, at 149.

53. *See id.*

54. *See id.* (asserting that "[n]o matter how developed a country becomes, if it does not have the will to transform its social order, existing ideas about people's preordained 'role' in society are not likely to be altered" *Id.*).

III. THE PREVALENCE OF THE PRACTICE OF CHILD LABOR IN ASIA

It is estimated that there are at least 120 million children worldwide who work full-time in Asia.⁵⁵ The U.S. Department of Labor stated that there are substantial child labor practices exploitative in nature in Southern and Southeastern Asian countries.⁵⁶ These working children generally range in ages from five to fourteen.⁵⁷ This number is small, however, because if the number of children that engage in work as a secondary activity is added to the 120 million, the figure jumps to an astonishing 250 million.⁵⁸ Most of these children, not surprisingly, reside and are employed in developing countries.⁵⁹ The demographic breakdown in certain areas of the world is as follows: Asia is responsible for about fifty percent of child workers; Africa has a ratio of approximately one in three children who work; and Latin America has estimates that range from twelve percent to twenty-six percent.⁶⁰ Although these estimates present numbers that can be used, it is important to mention that many of the developing countries from which these estimates are drawn do not have accurate census capabilities. Also, many of the developing countries do not have the capabilities to record illegal child labor activities.⁶¹ Many hundreds of children working in illegal manufacturing plants may not be counted for purposes of child labor estimates.⁶² Indeed the problem may be much more prevalent than presently estimated.

A. Examples of Exploitative Child Labor Practices in Asian Countries

The following examples shed some light on the statistical numbers mentioned above and illustrate the nature of the work that children do, as well as the number of hours they work. As mentioned, the majority of child laborers work and reside in Asia. It is an apparent fact that the capitalization at the expense of children is much more severe in Asian countries than in other parts of the globe.⁶³ In one Pakistani region, children often work eight to ten hours a day for six days out of the week, assem-

55. See INTERNATIONAL LABOUR ORGANIZATION, CHILD LABOUR: TARGETING THE INTOLERABLE 7 (1996) [hereinafter CHILD LABOUR: TARGETING THE INTOLERABLE].

56. See Nygh, *supra* note 37, at 16.

57. See CHILD LABOUR: TARGETING THE INTOLERABLE, *supra* note 55, at 8. The study notes the ILO's Bureau of Statistics estimation that in developing countries alone there are 120 million children between the ages of 5 and 14 who are working full time. See *id.* at 7.

58. See *id.*

59. See Bol, *supra* note 10, at 1139.

60. See *id.*

61. See *id.*

62. See *id.*

63. See Bazzano, *supra* note 8, at 203 (citing One Child's Labor, 60 Minutes, (CBS television broadcast, July 21, 1996)).

bling soccer balls.⁶⁴ In South Asian countries, it is a frequent practice for children to engage in bonded labor as a remedy to pay off their parents' incurred debts.⁶⁵

1. Child Labor in India

In India, it is estimated that there is approximately 10 to 115 million children working.⁶⁶ Another estimate puts the number at 10 to 44 million child workers in India.⁶⁷ Examples of working conditions in India paint especially bleak pictures of the environment in which children toil. Many children work in open tea stalls and roadside cafes. These stalls are usually located in busy urban areas, are very small, and have rudimentary construction. Very often, the children do not have adequate clothing or footwear and are thus susceptible to the prevalent weather conditions.⁶⁸ If the children are living on the same premises on which they work, they often sleep either in the kitchens or on the open verandas that give no protection from the weather or insects.⁶⁹

Children working in the carpet industry of India are treated in ways akin to torture. When these children suffer cuts from working on the looms, overseers rub sulfur from the heads of matches on the cuts and set the chemical on fire so that the cut will abstain from bleeding and the child can continue working under the egregious conditions.⁷⁰ Additionally, a sub-group of workers in India who are subjected to some of the most unhygienic conditions are the children who collect rags and other waste materials from the streets and other areas. One writer has described these children who collect rags and waste from the streets as follows: "[e]ven a casual look at their physique and clothing reveals the extent of their poverty and deprivation; even in the most severe winter, they can be seen working in the open without a single sweater or other protective clothing."⁷¹

2. Child Labor in Pakistan

Along with India, Pakistani children also suffer egregious injustices while laboring under exploitative conditions. In Pakistan, children working in the hand-woven carpet industry are often not given any protection from the wool dust that is absorbed into their lungs, causing tuberculo-

64. *See id.*

65. *See Nygh, supra* note 37, at 16.

66. *See Cox, supra* note 5, at 150.

67. *See id.* at 151.

68. *See K.D. Gangrade, India, in CHILDREN AT WORK* 83-84 (Elias Mendelievich ed., 1979).

69. *See id.* at 84.

70. *See Glut, supra* note 6, at 1209.

71. *Gangrade, supra* note 68, at 84.

sis.⁷² In the building and quarrying industry, children are often abducted from homes and kept in labor camps where they are closely supervised and severely punished or embarrassed for trying to escape.⁷³

3. Child Labor in the Eastern Asian Countries of Thailand and Vietnam

Two other countries, Thailand and Vietnam, also have their share of dangerous environments for working children. In Thailand's canned food industry, child workers are often made to labor in factories that have no air-conditioning and have poor ventilation.⁷⁴ Children working in the cold storage services face similar dilapidated conditions. These children often clean seafood in factories that have flooded floors, and they spend many hours on their feet.⁷⁵

In Vietnam, young teenage girls, who are paid only twenty cents an hour to make very expensive Nike tennis shoes, are often sexually harassed and fondled by their supervisors. These girls are often made to stand in the hot sun, are embarrassed and are harassed as punishment.⁷⁶ The foregoing examples illustrate, to a limited extent, the types of lives that child laborers in Asia must endure.

B. The Affects of Child Labor on the Family and the Related Social Dynamics

The severe and egregious circumstances under which Asian children work can lead to many dramatic social and familial problems. As a consequence of the long hours that Asian children must work, familial bonds are not consummated and the children do not establish social support systems within the family context. There is also a destructive educational impact for young Asian children because of long employment hours in manufacturing and other plants. These social problems that Asian children are subjected to are the next topics of discussion.

From the numerous studies and articles that have been compiled on this subject, it cannot be denied that the labor of children can have positive results, as well as destructive consequences. Both of these criteria will be discussed. For example, when the factors leading a child to make the decision to work are non-exploitative, there are many benefits that

72. See Sabeeha Hafeez, *Pakistan*, in CHILDREN AT WORK 123 (Elias Mendelievich ed., 1979).

73. See *id.*

74. See Benjamas Prachankhadee et al., *Thailand*, in CHILDREN AT WORK 142 (Elias Mendelievich ed., 1979).

75. See *id.* at 141-42.

76. See Ryan P. Toftoy, Note, *Now Playing: Corporate Codes of Conduct in the Global Theater. Is Nike Just Doing it?*, 15 ARIZ. J. INT'L & COMP. L. 905, 906 (1998) (citing *Nike Plants' Workers Are Abused*, *Says Labor Activist*, CHI. TRIB., Mar. 28, 1997, at N16).

can be attained from the experience of working as a young person.

One study has pointed out that working in traditional and semi-agrarian societies can be practice performance for adult life.⁷⁷ This study emphasized that because there is a lack of opportunity for children in rural areas to learn vocational skills, working as children and learning the skills and disciplines on the job is one way to attain such skills where alternatives are unavailable.⁷⁸ Moreover, work within the family would likely help to develop confidence and self-esteem for the working child. It can serve as a salient part of everyday family life, ultimately adding to the child's healthy development.⁷⁹ These benefits are ideal and can most likely be realized when no exploitation is present. However, children working in destructive and exploitative conditions do not have an opportunity to reap the benefits underscored above. The negative affects on the lives of working children can be very ominous.

When a child begins to work in the employment arena, she takes up a responsibility that keeps her away from home for long periods of time.⁸⁰ Accordingly, the time that the child spends at work is detrimental to the cohesiveness of the family because less time is spent in the familial environment with parents and/or siblings.⁸¹ It is perhaps obvious that when a child does not spend time with her family, she will not form the bonds that non-working children have the opportunity to form with their parents.

C. Educational Disruption as a Consequence of Child Labor

Along with the disruption to family cohesiveness, child labor is also disruptive to educational development. Studies have also shown that frequently the hours of work will clash with the hours that are usually designated for school attendance.⁸² As a result of this clash of hours, the children's schoolwork suffers. It is suggested that more often than not, the hours of work make school attendance impossible for most children workers.⁸³ Another contributor to poor schoolwork or the lack of attendance in school is fatigue. If a child is made to work an eight-hour day, which is often in reality a much smaller number than what most Asian children are working,⁸⁴ then the energy level and motivation to attend school is diminished. The exhaustion of the child will be exhibited in her

77. See Bol, *supra* note 10, at 1141 (quoting INT'L LABOUR CONF., 69TH SESS., REPORT OF THE DIRECTOR-GENERAL, CHILD LABOUR 15 (1983)).

78. See Bol, *supra* note 10, at 1141.

79. See *id.* (quoting ALEC FYFE, CHILD LABOUR 71 (1989)).

80. See Mendelievich, *supra* note 2, at 44.

81. See *id.*

82. See *id.*

83. See *id.*

84. See *id.* at 38.

lack of concentration and will ultimately have a deleterious affect on her schoolwork.⁸⁵ The ultimate result will often be the failure of the child in her schoolwork and a failure to attain the mental faculties and development necessary to become an intelligent adult. It is thus not difficult to understand the nexus between failure at school at a young age and the subjection to menial and low paying employment as an adult.⁸⁶

Arguments have also been made that working children will, in the long run, bring down the economic and social standing of the country.⁸⁷ If children are not permitted to attain an education, especially a primary and secondary education, productivity and economic development in the future may be hampered.⁸⁸ Education, therefore, has a positive effect on economic growth. If children remain uneducated because they do not have the time to both attend school and work many hours at their jobs, then the human capital will remain underdeveloped and uneducated, ultimately harming the country in the future.⁸⁹

D. Dangers to Children as a Consequence of Labor

The industries and occupations in which children are employed are often very dangerous in nature. Children often labor in conditions that are contemptuous.⁹⁰ It is estimated that the number of children working in hazardous conditions equal one half of all child laborers.⁹¹ Children are often employed in occupations that expose them to toxic fumes and harmful solvents without the benefit of any safety precautions.⁹² The immaturity of child laborers is compounded by the fact that their vulnerable bodies are subjected to the harmful consequences of working in such adverse conditions.⁹³ It is acknowledged that these children's bodies are often in severe condition, sometimes physically distorted, and often stunted.⁹⁴ A study in Japan on young workers and students revealed that children that began working before the age of fourteen were consistently shorter, by four centimeters, than the students who did not begin work at an early age.⁹⁵ All of the studies seem to have a common thesis: young workers are in more danger of becoming physically injured due to their vulnerable

85. See Mendelievich, *supra* note 2, at 45.

86. *See id.*

87. See Garg, *supra* note 47, at 478.

88. *See id.* at 479.

89. *See id.*

90. *See id.* at 476.

91. *See id.*

92. See Garg, *supra* note 47, at 476.

93. *See id.*

94. See CHILD LABOUR: TARGETING THE INTOLERABLE, *supra* note 55, at 3.

95. See Mendelievich, *supra* note 2, at 47.

physiological make up.⁹⁶ If a child were to become afflicted with tuberculosis or were to become maimed, the finances of an already penurious family would be stretched even further.⁹⁷

The foregoing discussion has highlighted the many detrimental affects of child labor upon the child, as well as upon the social institutions to which the child belongs. The individual child's health can be placed in irreconcilable jeopardy by the exploitative labor practices to which the child is subjected. The child also suffers from the lack of attention that she would have been given had she been able to spend more time with her parents and siblings. The child's attachments and psychological ties to her family members will not attain the fruition that they would have if the child were not working full time.

IV. THE MEANS THAT COULD BE EMPLOYED TO REDUCE THE EXISTENCE OF EXPLOITATIVE CHILD LABOR PRACTICES IN ASIA

In light of the aforementioned problems of exploitative and unjustified child labor, what means are available to emasculate the practice? To begin with, the general public must be made aware of the inherent nature of children. Perhaps one writer explained this notion best by stating:

[t]he general public must therefore be taught that whilst, on the one hand, the child willingly carries out little jobs for his parents—jobs which form part of the socialization process and which, moreover, makes him feel that he is useful and that he is sharing in the family effort—on the other hand, “work” as such has an irreversible effect on his health and constitution and mortgages his whole future. The general public must also be made aware of the fact that, to ensure his balanced development, it is essential not only that the child must *not* work but also that he must have the opportunity to play. Work is often harmful for a child; healthy recreation is of benefit to him and enriches his life.⁹⁸

The writer additionally argues that the child should not be viewed as a “small adult,” but rather as a person whose constitution and ascribed physical characteristics are much weaker than those of her adult counterparts.⁹⁹ Hence, if any ameliorative changes are to be taken, a salient step must be an effort to inculcate upon the minds of the general public that children are physically and psychologically different from adults. This

96. *See id.* at 45.

97. *See id.* at 46.

98. *Id.* at 56.

99. *See id.*

knowledge, which is often lacking among the persons and employers who choose to use child labor, will serve to assist in the mitigation of the destructive practice. If the general public and the perpetrators of the practice are shown the harm that is ultimately caused upon the children and the social institutions as a whole, then it is hoped that the realization of the destructiveness of the practice will be acknowledged.

A. The National and Worldwide Organizational Legislative Efforts That Have Been and Could be Taken to Reduce Child Labor Practices

Notwithstanding the above essentially non-legislative method of reducing the prevalence of child labor, there are also minimizing legislative efforts that have been undertaken. Since public sentiments were awakened about the prevalence of exploitative child labor practices in Asian countries, several national and worldwide organizational initiatives have been taken or proposed to eradicate the practice. The ILO has initiated some of these ameliorative measures. Another measure is the application of United States law to extraterritorial locations where U.S. corporations are benefiting from the use of child labor. One other measure seeks to use the sanction power of the World Trade Organization¹⁰⁰ (WTO) to enforce ILO Conventions. UNCRC is an additional measure. The Child Labor Deterrence Act¹⁰¹ (CLDA) and the Refugee Act of 1980¹⁰² are also analyzed as ways to reduce manufacturer dependence on child labor. Finally, another measure is to require developing Asian countries to respect and perpetuate fair labor standards before trade concessions and tariff breaks are awarded.

100. See *World Trade Organization* (visited Mar. 20, 2000) <<http://www.wto.org/wto/inbrief/inbr02.htm>>. The WTO has as its overriding objective the assistance of the free and predictable flow of trade. It accomplishes this objective by administering trade agreements; acting as a forum for trade negotiations; settling trade disputes, reviewing national trade policies; assisting developing countries in trade policy issues through technical assistance and training programs; and cooperating with other international organizations. The WTO has more than 130 members, accounting for over 90 percent of world trade, and over 30 others are negotiating membership to join the institution. See *id.*

101. The Child Labor Deterrence Act (CLDA) is a legislative measure that has been proposed in various forms since 1989. The latest version of the Act was proposed in 1997. See The Child Labor Deterrence Act of 1997, S. 332, 105th. Cong. (1997) [hereinafter CLDA-1997]. It would prohibit the importation into the United States of products produced by child laborers. The background and potential scope of the CLDA is discussed *infra* notes 145-54.

102. See Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (codified as amended in scattered sections of 8 U.S.C.).

1. The 1973 ILO Minimum Age Convention

One of the early efforts made by the ILO was Convention No. 138. Convention No. 138 sought to set up a minimum age that would serve as a frame of reference. Children under the age, which would be accepted in accordance with the Convention, would not be permitted to be employed by manufacturers and other employers.¹⁰³ Unfortunately, the Convention was not quite as beneficial as may have been expected prior to its inception. The major weakness with the Convention was that it was only sparsely accepted by many developing nations.¹⁰⁴ The seminal reason many developing nations refused to ratify the Convention was that they felt the age differentials permitted by the Convention with respect to developed and developing nations were insufficient.¹⁰⁵ The developing nations that refused to accept the Convention felt the age that was accepted for them was unfair and unreasonable.¹⁰⁶ Developing nations feared that if they were required to ameliorate the circumstances in which young workers were employed or abstain from using child laborers entirely, their products would be priced out of foreign markets.¹⁰⁷

Other problems also existed, which ultimately led to many nations refusing to accept Convention No. 138. The Convention did not define the term "labour" and the term "child" unequivocally.¹⁰⁸ The term "labour" is defined so broadly in the Convention that it would seem to prohibit virtually limitless activities.¹⁰⁹ The term "labour" is used in the Convention to refer to labor, work or activity, and thus is too encompassing a definition for many nations.¹¹⁰ The term "child" was also not precisely defined in the Convention. These definitional problems consequently led many nations to reject the Convention and to turn a blind eye to the plight of many laboring children.

2. The Extraterritorial Application of U.S. Law

One possible legislative effort that could be taken to try and eradicate, or at the least, minimize the practice of child labor, is to apply U.S. laws extraterritorially.¹¹¹ Persons who subscribe to this effort state that a

103. See ILO Convention No. 138, *supra* note 15, pmbi., art.1, at 298-300; see also David M. Smolin, *Conflict and Ideology in the International Campaign Against Child Labour*, 16 HOFSTRA LAB. & EMPLOYMENT L. J. 383, 393 (1999).

104. See Smolin, *supra* note 103, at 393.

105. See *id.*

106. See *id.*

107. See Molly Ivins, *Battle for World Labor Standards*, CHICAGO SUN-TIMES, Nov. 29, 1999, at 33.

108. See Smolin *supra* note 103, at 394.

109. See *id.*

110. See *id.*

111. See Krug, *supra* note 44, at 659.

rationale for it is that corporations should not be allowed to practice illegal endeavors overseas that they would be prohibited from engaging in if they were operating in the United States.¹¹² If the laws of the federal government of the United States were thus made to apply to U. S. corporations operating abroad and violations occurred, these corporations would be open to sanctions and punitive efforts.¹¹³ This effort, because it requires just an extension of the laws and statutes already promulgated in the United States, would not require the creation of new legislative schemes. The law as it currently exists in relation to labor law in the United States would simply be extended extraterritorially to apply to U.S. corporations operating in other countries. Though this effort may be useful in curtailing the practices of American corporations in Asia and other countries, it would not penalize foreign corporations, not subject to the laws of the United States, from engaging and perpetuating the practice of exploitative child labor.¹¹⁴ Other measures would be needed to assuage the use of exploitative labor by corporations not under the purview of U.S. laws and statutes.

3. Setting up a Scheme of Enforcement of ILO Conventions through the Sanction Power of the WTO

Another effort that could be taken would be to create a scheme of enforcement that is operated jointly by the WTO and the ILO.¹¹⁵ One commentator has observed that, "[t]he combined power of both organizations can control child exploitation by enforcing ILO labor conventions with the sanction power of the WTO trade rules."¹¹⁶ The ILO has since its inception promulgated some one hundred seventy-seven conventions related to protecting laborers from exploitation.¹¹⁷ The one ILO convention which is specifically dedicated to the protection of children from harmful labor practices, Convention No. 138, mandates that countries which have adopted the convention explicitly state the minimum age a person must be to begin employment.¹¹⁸ Writers argue that Convention No. 138, among others, are weak efforts in eradicating exploitative labor practices because not every country has adopted the tenets of the various conven-

112. *See id.*

113. *See id.*

114. *See id.* at 660.

115. *See id.* at 661.

116. Krug, *supra* note 44, at 661 (citing Daniel S. Ehrenberg, *From Intention to Action: An ILO-GATT/WTO Enforcement Regime for International Labor Rights*, in HUMAN RIGHTS, LABOR RIGHTS, AND INTERNATIONAL TRADE 163 (Lance A. Compa & Stephen Diamond eds., 1996)).

117. *See* Krug, *supra* note 44, at 662.

118. *See* Glut, *supra* note 6, at 1225; *see also* Krug, *supra* note 44, at 662.

tions.¹¹⁹ Only countries that have adopted conventions would be held to their standards. In addition, there is an "escape provision" within Convention No. 138¹²⁰ which allows countries that have rudimentary developed economies and administrative agencies to circumvent and limit the scope of the Convention.¹²¹ Countries may be motivated by this provision to try and establish that they should be allowed to avoid the mandates of the Convention.

Convention No. 138 also does not have any enforcement provisions within it to deal with violating countries.¹²² The instant proposal, then, argues that if the Convention had the enforcement arm of the WTO behind it, it could be an effective tool in minimizing exploitative labor practices.¹²³ Since the WTO has the authority and power to impose trade sanctions upon countries that violate its rules, it could also be given the authority of enforcement of the provisions of the ILO. The result may be a lessening of deleterious labor practices.¹²⁴ Countries would probably think twice before they contemplated violating Convention No. 138 for fear of the imposition of trade sanctions by the WTO. This proposal could serve as a strong impediment to the use of child labor.

4. The ILO Forced Labor Convention and the ILO Abolition of Forced Labor Convention

Other ILO initiatives have also been taken with the hopes of realizing a reduction in the numbers of child laborers in Asia. Children are often subjected to forced or mandatory labor and international efforts have been made to try and abolish this exploitative form of child labor.¹²⁵ These extreme forms of child labor are inclusive of slavery and slavery-like practices, which are akin to debt bondage.¹²⁶ Also included are the practices of selling and trafficking in children, the prostitution of young children and using children to create child pornography.¹²⁷

The ILO has sought to mitigate the practice of forced labor in its adoption of two conventions. The Forced Labour Convention (No. 29)¹²⁸

119. See Krug, *supra* note 44, at 663.

120. See ILO Convention No. 138, *supra* note 15, art. 5, at 302.

121. See Krug, *supra* note 44, at 662.

122. See *id.*

123. See *id.* at 663.

124. See *id.*

125. See Janelle M. Diller & David A. Levy, *Child Labor, Trade and Investment: Toward the Harmonization of International Law*, 91 AM. J. INT'L L. 663, 669 (1997).

126. See *id.*

127. See *id.*

128. See International Labour Convention (as modified) (No. 29) Concerning Forced or Compulsory Labour, June 28, 1930, 39 U.N.T.S. 55 [hereinafter Forced Labour Convention].

and the Abolition of Forced Labour Convention (No. 105)¹²⁹ were promulgated by the ILO to deal specifically with the subset of child labor that is known as compulsory or forced employment.¹³⁰ The Forced Labour Convention has been ratified by 139 state parties and is characterized as the most widely ratified ILO Convention.¹³¹ It establishes that all forms of forced labor must be abolished. This abolition is inclusive of forced child labor and bonded labor.¹³² This subset of child labor is defined as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."¹³³ The Convention called for the immediate abolition of compulsory labor for male youths that were under the age of eighteen and for the abolition of labor for all girls and women, regardless of age.¹³⁴ It also required member states to punish the perpetrators with criminal penalties for their violations.¹³⁵

By 1996, the Abolition of Forced Labour Convention had been ratified by 117 parties.¹³⁶ This convention is similar in its motivation to abolish forced exploitative labor and has done so with respect to five particular forms of labor.¹³⁷ One of these five forms deals expressly with child labor. The convention specifically precludes "forced or compulsory labour as a means of mobilizing and using labour for purposes of economic development."¹³⁸ Under these conventions, the possibility that criminal punishments could be imposed would seem to be a strong motivator for perpetrators to cease in the practice of child labor. If punitive damage awards were to be meted out, a corporation or employer would be wary of engaging in child labor.

5. The U.N. Convention on the Rights of the Child

The UNCRC is also an effort that has taken active steps in reducing the practice of child employment. The UNCRC has been widely ratified and has been accepted by the majority of the world's countries, as well as

129. See International Labour Convention (No. 105) Concerning the Abolition of Forced Labour, June 25, 1957, 320 U.N.T.S. 291 [hereinafter Abolition of Forced Labour Convention].

130. See Diller & Levy, *supra* note 125, at 670.

131. See *id.*

132. See *id.*

133. Forced Labour Convention, *supra* note 128, art. 2, at 58.

134. See *id.* art 11(1), at 64 (interpreted according to the rule *expressio unius est exclusio alterius*).

135. *Id.* art. 26, at 74-76.

136. See Diller & Levy, *supra* note 125, at 671.

137. See *id.*

138. Abolition of Forced Labour Convention, *supra* note 129, art. 1(b), at 296.

by almost all of the contracting parties to the WTO.¹³⁹ The United States, however, has not yet ratified the UNCRC.¹⁴⁰ One commentator has characterized the UNCRC as providing for very explicit obligations upon the countries that have accepted it in minimizing the extreme forms of child labor.¹⁴¹ The UNCRC states that children should be protected from economic exploitation that will have a negative effect upon the child's education, spiritual, moral or social development.¹⁴² The UNCRC thus covers a broad area of potential harm to a child's interests.

Article 32 specifically illustrates how children may be protected from extreme forms of labor by expressly requiring countries that have adopted the UNCRC to recognize children's rights and to protect them from detrimental exploitation and harmful employment practices.¹⁴³ Anything that has a negative affect on the child is to be prohibited. Since the convention has been so widely accepted, it seems to have much more force than some other efforts that do not share such ubiquitous acceptance. However, since the United States has not yet acceded to the UNCRC, the strength of its mandates may not be fully realized. If a first world global power, such as the United States, does not ratify the UNCRC, then other countries that have not yet accepted it may not feel any pressure to do so.¹⁴⁴ By accepting the UNCRC, the United States could exhibit its full support, and consequently, other non-acting countries may feel added pressure to also become members.

6. The Child Labor Deterrence Act

There is also another potential legislative effort that, if consummated, would provide efficacious safeguards to working children. Congressman Donald Pease (Democrat-Ohio) proposed another measure in 1991.¹⁴⁵ In seeking to gain support for the CLDA he stated, "access to the American marketplace is powerful leverage and should be used positively to encourage foreign producers and importers to treat defenseless children with dignity."¹⁴⁶ The CLDA would seek to eliminate the United States market for products manufactured by children working under exploitative

139. See Diller & Levy, *supra* note 125, at 674.

140. See *id.* The United States did, however, become a signatory to the UNCRC on February 16, 1995. See *id.*

141. See *id.*

142. See UNCRC, *supra* note 14, art. 32(1), at 1468.

143. See *id.*; see also Maureen Moran, Comment, *Ending Exploitative Child Labor Practices*, 5 PACE INT'L L. REV. 287 (1993).

144. See Moran, *supra* note 143, at 306.

145. See Michael A. Tonya, Note, *Baby Steps Toward International Fair Labor Standards: Evaluating the Child Labor Deterrence Act*, 24 CASE W. RES. J. INT'L L. 631, 632 (1992).

146. 135 CONG. REC. H2162, (daily ed. May 24, 1989) (introducing H.R. 2485, 101st Cong., 1st Sess. (1989)).

conditions.¹⁴⁷ The CLDA would punish corporations domiciled in the United States for importing products from foreign manufacturers that use child labor as a means for cheap labor.¹⁴⁸

The CLDA is different from other efforts to reduce child labor in that it is focused on the demand segment rather than the manufacturing arena. Since many corporations employ children surreptitiously, and are therefore difficult to sanction, by targeting the demand for the products made under suspicion of exploitative labor practices, even the hard to punish manufacturers could be effectively dealt with. The CLDA would be a legislative effort with great efficacy in curtailing both legal and illegal child labor practices.

The CLDA would require the Secretary of Labor to compile an annual report that would identify countries that use and perpetuate the use of child labor.¹⁴⁹ The list would be compiled after the Secretary studied all available information with respect to a country's exploitative labor practices.¹⁵⁰ The Secretary is permitted to use a wide variety of authorities in determining whether a country is condoning child labor.¹⁵¹ The Secretary would not be limited only to look at the laws that the respective country has on the books, but may also consider the actual practices that are being employed.¹⁵² As a consequence, the Secretary would be free to overlook the ineffective laws that exist in the particular country and concentrate on what a country is actually doing.¹⁵³ Once a country has been listed as one employing exploitative child labor, products from that country would be prohibited from being imported into the United States. Individuals as well as corporations operating in the United States would be precluded from importing any products from the countries that are enumerated in the list of child labor condoning countries.¹⁵⁴

By attacking the demand and flow of products made by the use of child labor into the United States, the CLDA would create a situation where manufacturers in Asian countries using child labor would lose a large market for their products. The loss of profits to these manufacturers and the loss of revenue to the country in which they are situated would greatly mitigate the problem. The loss of the U.S. market would be a strong incentive for particular countries to cease the practice of child labor and engage in socially non-destructive employment practices.

147. See Tonya, *supra* note 145, at 632.

148. See *id.*

149. See *id.* at 655.

150. See *id.*

151. See *id.* at 664.

152. See Tonya, *supra* note 145, at 664.

153. See *id.*

154. See CLDA-1997, *supra* note 101; see also Tonya, *supra* note 145, at 632.

7. The Refugee Act of 1980

The Refugee Act is also a potentially strong way for children to be protected from exploitative labor. One writer has noted, however, that the Refugee Act in its present form could not be used to protect children from the egregious labor practices they are fleeing.¹⁵⁵ As the Refugee Act currently stands, the term "refugee" is defined to include any person who is outside of the country in which she previously resided.¹⁵⁶ The refugee must demonstrate persecution or a well-founded fear of persecution should they return to their native country,¹⁵⁷ and the fear must originate from issues involving race, religion, membership in a particular social group, political opinion, or nationality.¹⁵⁸ An individual establishing the elements in the aforementioned definition may seek asylum within the borders of the United States; however, since the term "refugee" is not defined broadly to include age based persecution or exploitation, exploited children are wholly excluded from the Act's award of clemency.¹⁵⁹ Writers have criticized this narrow definition of the term "refugee" and have urged that the term be given a more broad and liberal meaning so as to be inclusive of many other groups that need assistance and seek refuge from invidious persecution.¹⁶⁰ As it has been argued that the Refugee Act "[i]s the only human rights measure enacted by the United States government that could potentially protect exploited children,"¹⁶¹ it must be made more expansive so as to include children within its protective provisions.

Since its inception, many courts have used the Refugee Act. Unfortunately, the record is replete with situations where persons not fitting into its narrowly construed definitional elements were denied vindication.¹⁶² Though the term "refugee" to lay persons would mean a person who is escaping any number of situations that threaten bodily harm, the courts have chosen to apply a very narrow and restricted meaning to the term.¹⁶³ If the meaning were expanded to include children, the Refugee Act could become a potentially powerful effort to provide children with an alternative to remaining in the deleterious, and in all likelihood, very dangerous environments.¹⁶⁴

155. See Jill C. Stroguiludis, *The Refugee Act of 1980: An Empty Promise to Exploited Children*, 29 J. MARSHALL L. REV. 995, 997 (1996).

156. See 8 U.S.C. § 1101(a)(42)(A) (1994).

157. See *id.*

158. See *id.*

159. See Stroguiludis, *supra* note 155, at 1011.

160. See *id.*

161. *Id.* at 1008.

162. See *id.* at 1011.

163. See *id.*

164. See Stroguiludis, *supra* note 155, at 1024.

Many reasons could be given for the narrow construction of the Refugee Act to exclude exploited children and other groups in danger of persecution and physical harm from protection. One reason is that the United States is simply not willing to extend residency to a large number of persons whom are seeking to flee dangerous and destructive situations.¹⁶⁵ However, the number of children entering the United States might not be as suffocating as imagined. Many potential refugees would not seek to enter the United States simply because they do not have the pecuniary means to do so.¹⁶⁶ Other children, who could possibly seek asylum in the United States, would probably not do so because they would never become fully aware of the extension of clemency that is offered to them.¹⁶⁷ Consequently, the Refugee Act, if the definition of term "refugee" is broadened to include exploited children, could be a powerful way for the victims of child labor to escape their dire situations without jeopardizing the current practical application of the statute.

8. The International Programme on the Elimination of Child Labor

In addition to the ILO Conventions that were discussed earlier, the ILO-created International Programme on the Elimination of Child Labour (IPEC) could also be a powerful tool in the abolition of child labor on a worldwide scale. IPEC provides individual countries with technical assistance in abstaining from using child labor.¹⁶⁸ The countries would enter into Memorandum of Understandings with the ILO and then would receive assistance from that organization in reducing the prevalence of child labor used throughout that particular country.¹⁶⁹ Researchers have noted that the ILO has succeeded in procuring funding from developing nations that are using child labor, and the organization has also entered into memoranda of understandings with many Asian countries that use widespread child labor.¹⁷⁰ The Asian countries that have entered into the memoranda of understandings include India, Bangladesh, Nepal, Pakistan, Thailand, and some other countries from Latin America and Africa.¹⁷¹

IPEC seems to be a very active and widely accepted method, chosen by many of the countries that have the greatest number of child laborers,

165. *See id.*

166. *See id.*

167. *See id.*

168. *See* International Labour Organization, *IPEC at a Glance* (visited Feb. 23, 2000) <<http://www.ilo.org/public/english/standards/ipec/index.htm>> [hereinafter *IPEC at a Glance*]; *see also* Smolin, *supra* note 103, at 419.

169. *See* Smolin, *supra* note 103, at 419.

170. *See id.*

171. *See generally* *IPEC at a Glance*, *supra* note 168, for a complete listing of participating countries.

to reduce the number of laboring children within their respective borders.¹⁷² One reason for the wide acceptance of IPEC may be because it is not a mandate that requires the developing countries to immediately put a stop to the problem of laboring children. Rather, it is a cooperative technical assistance program to help the individual countries mitigate their use of child labor. Developing nations are more likely to entertain the notion that they should reduce, if not completely eliminate, the practice of child labor when a cooperative communication conducive method such as IPEC is implemented. On the contrary, if there is a declaration that the nations should immediately abstain from the use of children in the work force, it is not likely to be accepted. Thus, although IPEC may prolong the time period that children must endure in their respective fields of work, because it is a cooperative initiative rather than a contemptuous declaration against developing nations, nations will be more willing to accept and implement the initiative over time.

9. The Declaration on Fundamental Principles and Rights at Work

The ILO has also tried to address countries that have not ratified and accepted its prior enacted conventions. Though many nations have accepted and ratified the Conventions, many of the countries that have the most ubiquitous child labor problems have not accepted all of them.¹⁷³ At the 86th Annual International Labour Conference, held in June of 1998, the ILO passed and accepted the Declaration on Fundamental Principles and Rights at Work.¹⁷⁴ This initiative was created to serve the purpose of promoting social justice, development and progress, while taking into account issues such as trade liberalization and the global economy.¹⁷⁵

The Declaration mandates that all ILO participants, consisting of one hundred and seventy-four nations, have endorsed the principles and rights enumerated in the ILO Constitution and the 1944 Declaration of Philadelphia by joining the organization.¹⁷⁶ It also requires that the member nations must undertake measures towards attaining and achieving the overall goals and objectives of the ILO.¹⁷⁷ The Declaration also states that the principles and rights that member nations must respect and try and achieve are the ones underscored and expressed in Conventions that have

172. See Smolin, *supra* note 103, at 419.

173. See *id.* at 421. For example, only a minority of such nations has acceded to ILO Convention No. 138. See *id.*

174. See International Labour Conference, *ILO Declaration on Fundamental Principles and Rights at Work*, 86th Session (June 1998) ¶ 2 (visited Feb. 20, 2000) <<http://www.ilo.org/public/english/standards/re/m/ilc/ilc86/com-dtxt.htm>> [hereinafter *ILO Declaration on Rights at Work*].

175. See Smolin, *supra* note 103, at 420.

176. See *ILO Declaration on Rights at Work*, *supra* note 174, at ¶ 1(a).

177. See *id.*

been enacted by the ILO.¹⁷⁸ Though not every nation that still engages in the practice of using children in the work force has ratified the ILO enacted Conventions, the Declaration requires those nations that are members of the ILO still must respect and promote the principles concerning axiomatic and basic human rights which are the subject matter of the Conventions.¹⁷⁹ Of the seven Conventions that have been promulgated by the ILO, one specifically addresses the effective abolition of children working in the labor pool.¹⁸⁰

Thus, the Declaration applies to countries that have ratified and accepted the Conventions taken up by the ILO and applies to countries that have not ratified the Conventions but are still members of the ILO.¹⁸¹ In this way, even if countries refuse to accept the Conventions for their own reasons, they must act in such a way as to promote the Conventions merely because they are members of ILO.

10. The ILO Convention on the Elimination of the Worst Forms of Child Labor

The ILO additionally hoped to adopt a new convention and recommendation in June of 1999 that would have as its primary goal the abolition of some of the worst forms of child labor.¹⁸² The Convention was to target the worst forms of child labor and then take steps towards the abolition of those forms of labor.¹⁸³ This Convention, it was hoped, would be more widely accepted than the Convention No. 138.

The new Convention was adopted unanimously at the International Labour Conference during the summer of 1999.¹⁸⁴ The countries that ratify the new Convention must take steps to prevent children from becoming involved in some of the worst forms of child labor.¹⁸⁵ The new Convention defines the following as the worst forms of child labor: any forms of slavery or activities akin to slavery such as the sale and trafficking of children; debt bondage; forced compulsory labor; and work that is likely to harm the health of children.¹⁸⁶ If this new Convention is ratified and

178. *See id.* at ¶ 1(b).

179. *See id.* at ¶ 2

180. *See* ILO Convention No. 138, *supra* note 15, 1015 U.N.T.S. at 297.

181. *See* Smolin, *supra* note 103, at 421.

182. *See id.* at 428.

183. *See id.*

184. *See* International Labour Organization Convention Concerning the Prohibition and Immediate Elimination of the Worst Forms of Child Labour, June 17, 1999, 38 I.L.M. 1207. *See also* *New Convention and Campaign to Eliminate Worst Forms of Child Labour* (visited Mar. 23, 2000) <<http://www.ilo.org/public/english/region/asro/bangkok/newsroom/pr9906.htm>> [hereinafter *New Convention to Eliminate Worst Forms of Child Labor*].

185. *See* *New Convention to Eliminate Worst Forms of Child Labor*, *supra* note 184.

186. *See id.*

accepted with more approval than the Minimum Age Convention, it is hoped that the measures it requires member states to take will benefit children suffering under some of the worst forms of child labor.

11. Mandating Compliance with Fair Labor Standards before Trade Concessions are Awarded to Developing Asian Nations

There has also been some discussion relating to the conditioning of certain trade concessions to bring developing countries into compliance with notions of fairness and equity with respect to the abolition of child labor.¹⁸⁷ The developed countries that import their goods give many developing countries trade concessions.¹⁸⁸ If these awards of low tariffs could be conditioned on the recognition of certain fair labor standards by the developing nations, then the nations using child labor may be persuaded to cease or reduce the practice. The loss of the valuable trade concessions would be a substantial bargaining tool in the hands of the developed nations. The developing countries would stand to lose a precious and economically beneficial commodity if they choose not to comply with the standards of fair and equitable labor.

An example of U.S. trade law having an effect on international labor rights can be seen through analysis of the U.S. Generalized System of Preferences (GSP). The GSP provides nations that have been designated as beneficiary developing countries with a break in the tariffs that have to be paid on imports.¹⁸⁹ The purpose of this program is to encourage economic development in the developing nations.¹⁹⁰ The program was extended by the Trade and Tariff Act of 1984,¹⁹¹ and respect for internationally acknowledged worker rights was made a part of the extension.¹⁹² In order for developing countries to be awarded the status of beneficiary developing countries under the system of preferences, the countries would have to recognize certain worker rights.¹⁹³ Worker rights were defined to include the following: the right of workers to associate; the right to organize and engage in collective bargaining; the preclusion of compulsory or coercive employment; the establishment of a minimum age for child workers; and the establishment of acceptable working conditions for

187. See Toftoy, *supra* note 76, at 911 (discussing R. Michael Gadbow & Michael T. Medwig, *Multinational Enterprises and International Labor Standards*, in HUMAN RIGHTS, LABOR RIGHTS AND INTERNATIONAL TRADE 141, 147 (Lance A. Compa & Stephen Diamond eds., 1996)).

188. See *id.*

189. See *id.*

190. See *id.*

191. See Trade and Tariff Act of 1984, Pub. L. No. 98-753, §§ 501-08, 98 Stat. 2984, 3018-24 (codified as amended at 19 U.S.C. §§ 2461-66 (1994)).

192. See 19 U.S.C. §§ 2461, 2462(b)(7) (1994).

193. See Toftoy, *supra* note 76, at 911.

minimum wages, hours of work and occupational safety and health.¹⁹⁴ The GSP authorizes the President to restrict or to abrogate an individual country's beneficiary developing country status if it does not comply with the fair labor standards.¹⁹⁵

The conditioning of tariff breaks to developing Asian nations using child labor can be a strong force to reduce the prevalence of child employment. The measure would work if it were implemented in conjunction with other developed nations. If other developed nations did not agree to implement a similar program, then the developing country using child labor would simply take the losses as to the nation that will not extend tariff relief and begin more trade with a nation that does not have such a program. If other developed countries implemented this type of conditional tariff relief measures then surely there would be a decrease in the use of child labor by many Asian countries.

B. Private Sector and Corporate Initiatives to Reduce Child Labor

In addition to the national and worldwide organizational efforts that have been taken, there have also been some private industries that have taken on the initiative to combat child labor. These private industry efforts would probably be more conducive to the actual mitigation or elimination of child labor, since the private corporations do not need to gain the ratification or acceptance of their methods by the Asian countries in which they are conducting business. These corporate measures are a recent phenomenon because most businesses in the past viewed the child labor problem as one that must be dealt with by the government.¹⁹⁶ At present, due largely to an ostentatious public outcry for the recognition of equitable worker rights, many businesses are changing their perspectives and actually proactively doing something about the problem of child labor. Most corporations do not want to see a reduction in their profits as a consequence of the public threat of boycotts if they do not handle the child labor problem effectively. Whatever the reasons are for the actions taken by the corporations, if the plight of millions of Asian children can be assuaged, the measures are welcomed.

Corporate institutional efforts can have greater impact on the practice of child labor due to their proximity to the problem. Corporations would be able to access information about whether their far-flung multinational manufacturing plants are engaging in child labor easier than a governmental body. Corporations could also be more efficacious in promulgating remedial measures to reduce or wholly eliminate the practice from their manufacturing plants. Some of the measures that have been taken,

194. *See id.*

195. *See* 19 U.S.C. §§ 2461, 2462(b)(7).

196. *See* Toftoy, *supra* note 76, at 912.

and others that would also be effective, are discussed below.

First, it has been noted that once consumers gain awareness of the injustices that have been visited upon many children in Asian countries, they demand that certain corporations proactively do something to remedy the situations.¹⁹⁷ A spokesperson for Reebok, an athletic shoe manufacturer has stated that consumers are holding companies accountable for both the quality of the product and the way the product was made.¹⁹⁸ Since consumers would act to the detriment of a corporation that has been exposed as using, or at least looking the other way when their manufacturing plants use child labor, the corporation will be motivated to enact precautions to protect children.¹⁹⁹

1. The Rugmark Label Initiative

One industry that was motivated to act so as to avoid the loss of profits was the carpet industry in India.²⁰⁰ The carpet and rug industry in conjunction with exporters and human rights advocates launched the Rugmark label, which is only affixed to products that are not made with the use of child labor.²⁰¹ By participating in this voluntary labeling initiative, the corporations that have chosen to abstain from using child labor can market and advertise their products in such a way as to appeal to consumers who find child labor invidious. Consumers given the choice of choosing between materials made using child labor and materials that are certified made without the use of child labor will most likely choose the latter. The incentives for corporations to engage in voluntary labeling are thus evident given a well-informed consumer base. This type of labeling is also effective because it can be used with a wide variety of products. Corporations that want to declare ostentatiously to the world that their products are made justly could use the labeling on virtually any product that is manufactured. It is important to note that certification would be required as proof that the manufactured items are indeed produced in a socially acceptable way, without the use of a young labor force. The manufacturers could potentially work closely with the respective governments of many Asian countries to certify the employment practices so that an outside entity is participating in ensuring that child labor is not being used. Consumer knowledge about the initiative would serve as a strong impetus in motivating manufacturers to begin the process of abol-

197. See Krug, *supra* note 44, at 669.

198. See *id.* (quoting Lance A. Compa & Tashia Hinchliffe Darricarrere, *Private Labor Rights Enforcement Through Corporate Codes of Conduct*, in HUMAN RIGHTS, LABOR RIGHTS, AND INTERNATIONAL TRADE 183 (Lance A. Compa & Stephen F. Diamonds eds., 1996)).

199. See Krug, *supra* note 44, at 669.

200. See *id.*

201. See *id.*; see also Strogiludis, *supra* note 155, at 1028.

ishing child labor from their plants if they do not want to lose business.

2. Levi Strauss and Company

The American corporation Levi Strauss and Company has also endorsed corporate methods for ensuring that only workers of the proper ages are being used to manufacture its products.²⁰² As a private corporation, Levi Strauss has implemented more labor reform in a short period of time than most other corporations engaging in manufacturing abroad have done.²⁰³ The corporation appointed a task force that reviewed the U.N. Universal Declaration of Human Rights before corporate guidelines were adopted and implemented in relation to abusive labor practices.²⁰⁴ The Levi Strauss initiative consisted of a two-part instrument.²⁰⁵ One section dealt with general employment issues, and the other dealt with specific issues like child labor.²⁰⁶ There was also a "terms of engagement" section that included the following issues: environmental requirements, ethical standards, health and safety, legal requirements, and employment practices, to the extent controlled by business partners or foreign subcontractors.²⁰⁷

Additionally, the company also incorporated an employment practices section into its code of conduct document addressing specifically six types of employment conditions: wages and benefits, working hours, child labor, prison labor, forced labor, and discrimination and disciplinary practices.²⁰⁸ Moreover, the company, even above the measures enumerated above, took further steps to eliminating child labor from its manufacturing plants and from its subcontractors. It promoted internal audit and monitoring systems that rigidly enforced the declarations made in the corporate code of conduct.²⁰⁹ Individuals from the company would conduct audits of the manufacturing facilities and the facilities of the subcontractors.²¹⁰ Persons would also visit the plants unannounced so that compliance with the code of conduct could be furthered and ensured.²¹¹ If violations were discovered during these audits or unannounced visits, the contracts of subcontractors could be terminated or their employment practices forced to reform.²¹²

202. See Krug, *supra* note 44, at 671; see also Toftoy, *supra* note 76, at 915.

203. See Toftoy, *supra* note 76, at 915.

204. See Krug, *supra* note 44, at 670-71.

205. See *id.* at 671.

206. See *id.*

207. See *id.*

208. See *id.*

209. See Krug, *supra* note 44, at 671.

210. See *id.*

211. See *id.*

212. See *id.*

The Levi Strauss initiative could be an example to many other companies that use multinational manufacturing plants. Companies willing to avoid the use of child labor for morality justifications or for pecuniary reasons could set up a system similar to the one adopted by Levi Strauss. If contractors and manufacturing plants fear termination of their profitable contracts by the parent corporation that has hired them, they will be much more apprehensive in using child labor. Voluntary measures, not unlike the one taken by Levi Strauss, are more flexible and able to emasculate the existence of child labor than are the governments of individual countries or international organizations. Governments would need to engage in many types of beaurocratic measures before action could be taken. Corporations, on the other hand, could implement programs quickly and with little effort.

3. The Apparel Industry Partnership

The Apparel Industry Partnership is a joint venture between multinational corporations and the White House.²¹³ The venture is a U. S. policy initiative to fight unfair labor practices in many Asian countries and in the United States. It was organized so that present labor violations could be addressed, and the topic of the amount of child labor used to manufacture materials could be moderated.²¹⁴ The initiative addressed the need to implement a corporate code of conduct to help in addressing the amount of hours children work and to address the ages of children presently employed by the apparel industry.²¹⁵ The "Workplace Code of Conduct" that was to be implemented was to prohibit forced labor and child labor.²¹⁶ The Code was also going to establish a maximum work week, create a minimum wage standard, not permit overtime to exceed 12 hours, promote a safe and healthy work environment, ensure the freedom to associate and collectively bargain, and ensure that physical, sexual or mental harassment would not exist.²¹⁷ The Code also required companies that wished to adhere to and honor its mandates to allow independent, external monitors unrestricted access to the facilities to ensure that labor violations were not exhibited.²¹⁸

213. See Lena Ayoub, Note, *Nike Just Does It—And Why the United States Shouldn't: The United States' International Obligation to Hold MNCS Accountable for Their Labor Rights Violations Abroad*, 11 DEPAUL BUS. L.J. 395, 437 (1999).

214. See *id.*

215. See *id.*

216. See *id.*

217. See *id.*

218. See Ayoub, *supra* note 213, at 437.

4. Nike's Labor Practices Department

On October 1, 1996, Nike created its Labor Practices Department to make sure its contractors were adhering to the company's code of conduct.²¹⁹ The Labor Practices Department has two purposes. The first is to establish standards that Nike's contractors must act within.²²⁰ The second purpose is to provide Nike employees with the authority and skills necessary to ensure that the contractors are adhering to the mandates of the company's code of conduct.²²¹

Nike claims to have individuals in its primary manufacturing Asian countries to carry out the standards of the code of conduct.²²² A director from the Labor Practices Department is responsible for the Asia-Pacific region, and managers have been appointed to be responsible for four primary Asian countries: Vietnam, Indonesia, China, and the Philippines.²²³ The overall supervision of contractor adherence to the code of conduct of the corporation is given to a global director who facilitates with regional directors and individual country managers to ensure compliance.²²⁴ Nike uses unannounced visits and independent auditors, as well as its own production management staff to ensure that its contractors do not engage in child labor practice.²²⁵ If a contractor is found to be in violation of the mandates of the code, then Nike may implement its penalty system to sanction the violating party. The penalty system is imposed to ensure compliance with the code; however, if the contractor has manifested its intent to do nothing about the improper workplace, then Nike will ultimately cease the contract with the violating contractor.²²⁶

V. CONCLUSION

Child laborers number in the hundreds of millions throughout the world.²²⁷ Of these millions of children for whom life is an endless, dreary task of working and suffering in dilapidated manufacturing plants, the majority of them are in Asian countries.²²⁸ The family, education, and social life of these children are intolerable. It is unequivocally clear that something must be done to ameliorate the environment these children work and live in.

219. See Toftoy, *supra* note 76, at 920.

220. See *id.*

221. See *id.*

222. See *id.*

223. See *id.*

224. See Toftoy, *supra* note 76, at 920.

225. See *id.* at 921.

226. See *id.* at 922.

227. See Garg, *supra* note 47, at 475.

228. See *id.*

Though many avenues have been implemented to try and better the plight of working children, it is imperative that entities such as the UN, the WTO, the ILO, and private corporations actively employ legislative and private means to try and end or at least mitigate the practice of child labor. The futures of many young Asian children, as well as the futures of many children from other countries, are at stake.

