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“Coining Children’s Blood into Capital”:
Can Precepts of International Law End Economic Exploitation of Children?

Valerie L'Herrou

There were little faces which should have been handsome, darkened with the scowl of sullen, dogged suffering; there was childhood with the light of its eye quenched, its beauty gone, and its helplessness alone remaining; ... what an incipient Hell was breeding here!¹

Children of nine or ten years are dragged from their squalid beds at two, three, or four o'clock in the morning and compelled to work for a bare subsistence until ten, eleven, or twelve at night, their limbs wearing away, their frames dwindling, their faces whitening, and their humanity absolutely sinking into a stone-like torpor, utterly horrible to contemplate . . .²

I used to weave carpets from 5 o'clock in the morning until 10 o'clock at night. The next morning I had to wake up and follow the same routine.—Kanta, 10-year-old former rug weaver.³

SECTION I: WHAT IS CHILD LABOR?

a) Introduction

It will hardly surprise anyone to learn that the first two of the quotes above are from nineteenth century texts, describing child laborers. However, many Americans would be shocked to learn that the third quote is from the twenty-first century. When most Americans think of child labor, they likely picture children in early industrial-age English factories. Perhaps they have romantic visions of farm children helping to gather in the crops and milk the cows. Americans who are aware that children once worked in American industry would probably assume that such practices ended in

¹ CHARLES DICKENS, *NICHOLAS NICKLEBY* 88 (Oxford Univ. Press 1989) (1839).

² KARL MARX, *CAPITAL: A CRITIQUE OF POLITICAL ECONOMY* 268 (Modern Library 1906) (1867).

the United States over 100 years ago. However, economic exploitation of children continues into the twenty-first century. Federal laws to end child labor in American factories only went into effect in 1938,⁴ and even then included a specific exception for children working in agriculture.⁵ And while the vast majority of the child laborers today do not live in the United States,⁶ Americans continue to use products that were produced by children, as corporate stockholders benefit from profits made through their exploitation.⁷

Article 32 of the United Nations Convention on the Rights of the Child⁸ (“UN Convention”) states that parties to the convention must “recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.”⁹ Despite this well-intentioned document and several other treaties, conventions and protocols, millions of children around the world are subjected to varying degrees of economic exploitation, some in conditions that are akin to slavery.¹⁰

Section I will examine the problem, scope and causes of child labor. Section II will survey international law, both generally and specifically; what laws govern, and whether these laws are

³ RUGMARK Foundation, Press Kit, *available at* <http://www.rugmark.org/Press%20Kit%20for%20RM%20Website.pdf> (last visited March 30, 2005).

⁴ Fair Labor Standards Act of 1938, ch. 676, §13, 52 Stat. 1067 (1938), codified as amended at 29 U.S.C. 212 (2004).

⁵ 29 U.S.C. 212(c) (2004).

⁶ Though it is still a problem, especially among children of migrant laborers; Free the Children, *Child Labour: the Situation* (2003) available at http://www.freethechildren.com/youthinaction/child_labour_the_situation.htm [hereinafter *Child Labour: The Situation*] (last visited Dec. 10, 2004).

⁷ See, e.g., Norman Solomon, *Kathie Lee, Disney and the Sweatshop Uproar*, ALTERNET (Apr. 26, 2000), at <http://www.alternet.org/story/7517>; Charles Bowden, *Keeper of the Fire*, MOTHER JONES (July/August 2003), at http://www.motherjones.com/news/feature/2003/07/ma_447_01.html, [hereinafter Bowden]; Alka Arya, *Child Laborers Cry Penalty*, IndiaNest.com (June 4, 2002), at <http://www.boloji.com/wfs/wfs043.htm>; Sumana Chatterjee, *Chocolate Firms Launch Fight Against ‘Slave Free’ Labels*, PHILA. INQUIRER, Aug. 1, 2001, page A1 [hereinafter Chatterjee].

⁸ United Nations Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), (entered into force Sept.2 1990) [hereinafter “UN Convention”].

⁹ *Id.*

being enforced; and additionally, whether the problem countries are parties to the UN Convention or other protocols, such as the International Labor Organization Conventions 138 or 182.¹¹ Section II will also examine domestic legislation relating to child labor overseas. Section III will describe current efforts to end child exploitation, what the international community can do to ensure the enforcement of domestic laws protecting children, and delineate promising strategies for ending end child exploitation.

b) Defining the Problem

In 2000, the International Labour Organisation (ILO) estimated that there were approximately 352 million “economically active” children between the ages of five and seventeen worldwide.¹² Seventy-three million of these children are less than ten years old.¹³ While approximately five million children labor in developed or “transitional” countries, the majority of these child workers labor in Asia or Sub-Saharan Africa, as well as Latin America and the Caribbean.¹⁴ While the largest total number of child workers are in the Asia-Pacific region (127 million), the incidence of child labor is highest in Sub-Saharan Africa, where fully one third of children under the age of fifteen are in the labor force.¹⁵ The ILO estimates that approximately seven million children work essentially as slaves in forced or bonded labor, or are trafficked.¹⁶

¹⁰ *Child Labour: The Situation*, *supra* note 6.

¹¹ Convention Concerning Minimum Age for Admission to Employment (C 138) (June 6, 1973), 1015 U.N.T.S. 297 (1976), (entered into force June 19, 1976) [hereinafter “ILO 138”]; ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO No. 182), 38 I.L.M. 1207 (June 17, 1999) (entered into force Nov. 19, 2000) [hereinafter “ILO 182”];

¹² INTERNATIONAL LABOUR OFFICE, INTERNATIONAL PROGRAMME ON THE ELIMINATION OF CHILD LABOUR, EVERY CHILD COUNTS: NEW GLOBAL ESTIMATES ON CHILD LABOUR 15 (2002) [hereinafter ILO: *Every Child*]

¹³ *Id.* at 16.

¹⁴ *Id.* at 16.

¹⁵ *Id.* at 16.

¹⁶ *Id.* at 25.

There are various reasons why children work. Traditionally, the main role of child workers has been to help augment a family's resources while learning the family trade. However, in the growing "global economy," children are becoming prized as laborers because they may be minimally compensated, are easier to control than adults, and are falsely perceived to be more suited than adults to particular kinds of work, such as knotting carpets.¹⁷

Generally, references to "child labor" represent harmful or exploitative child labor, as distinguished from work performed by children that is not harmful to their wellbeing. The ILO distinguishes between the broad concept of "children at work in economic activity" and child labor, which it defines as "practices contravened by the ILO Minimum Age Convention and the ILO Worst Forms of Child Labour Convention."¹⁸ "Economic activity" includes market-oriented work that is paid or unpaid. For instance, children who are employed as domestic workers are "economically active" while children who participate in domestic chores at home are not. Labor performed by children who work for a family establishment, even if unpaid, is an "economic activity."¹⁹

Children who work in a family context are not necessarily exploited, as their labor may play a secondary role in their lives.²⁰ It is traditional for children to work with their parents in agricultural or other family businesses, and such work can be beneficial for children, helping them gain experience and skills that will assist them as they develop into responsible adults.²¹ When assessing whether particular work is exploitative, the child's age, her working conditions, and her access to

¹⁷ International Labour Organization, *Child Labor: What is to be Done?* § 41 available at <http://www.ilo.org/public/english/standards/ipec/publ/policy/what> (1996) [hereinafter *Child Labor: What is to be Done?*]

¹⁸ ILO *Every Child*, *supra* note 12 at 15.

¹⁹ ILO *Every Child*, *supra* note 12 at 29-30.

²⁰ Human Rights Watch, *Promises Broken: An Assessment of Children's Rights on the 10th Anniversary of the Convention on the rights of the Child* (1999), available at <http://www.hrw.org/campaigns/crp/promises/index.html> [hereinafter *Promises Broken*].

²¹ *Id.*

education are all factors to consider.²² However, even children who perform “beneficial” work in a family setting may be harmed if the nature of the work is hazardous. For example, in 1998, there were approximately 727,194 “farm household youth” working on farms in the United States (excluding hired “non-household youth” and children who live but do not work on farms). Among these youth, there were an estimated 10,253 injuries in 1998.²³

Beyond the physical dangers of hazardous work, labor that is harmful to children is that which deprives them of their right to develop, to play, or to have access to education.²⁴ This harmful type of labor may take place within the family context, or outside of it.²⁵ However, the most egregious type of child labor occurs when children labor outside the family unit, where they are exploited by those who have no thought for their well-being, are isolated from friends and family, and are vulnerable to sexual abuse.²⁶

c) Causes of Child Labor

Poverty is the foremost cause of child labor.²⁷ For children who work within families that depend on their labor, the need for subsistence may overcome all other considerations: it is “the poorest children of the world who work every day to save themselves and their families from starvation...”²⁸ In these cases, the question of whether a child should be able to go to school or play instead of work becomes moot; the survival imperative of a family and its children dictates that a

²² *Id.*

²³ JOHN R. MYERS & KITTY J. HENDRICKS, INJURIES AMONG YOUTH ON FARMS IN THE UNITED STATES, 1998, CENTERS FOR DISEASE CONTROL (2001).

²⁴ ILO 138, *supra* note 11, art. 6 (describing non-harmful labor).

²⁵ Child Labor: What is to be Done? *supra* note 17, §§ 6, 17.

²⁶ Child Labor: What is to be Done? *supra* note 17, § 29.

²⁷ Bozena Maria Celek, Note, *The International Response to Child Labor in the Developing World: Why Are We Ineffective?* 11 GEO. J. POVERTY LAW & POL'Y 87, 96-97 (2004) [hereinafter Celek].

²⁸ *Id.*

child cannot play or learn if she must work to survive. For these families, developmental, health and safety concerns may be luxuries.²⁹

Beyond survival concerns for families who are barely subsisting, the most pressing human rights concern is the estimated 8.4 million children exploited for financial gain through force or coercion, trafficking, prostitution or other illicit activities—as well as children who participate in armed conflict and hazardous work.³⁰ These children may be kidnapped from their families, orphaned, or lured with false promises into slavery. Still others may be required to work, or even sold, by their families, who may be misled about the conditions under which their children will work, or the compensation they are to receive. Some are tricked or coerced, some along with their families, into indentured servitude.³¹ Many of these children labor in circumstances that would be considered abusive or oppressive even if imposed upon adult workers.³² Further, exploited children often work in conditions that are harmful to their health.³³ Unlike family members, those who exploit children for gain have no concern for children's health, well-being, or safety. Many children are literally slaves,³⁴ forced to work and kept captive.³⁵ In the United States, children are trafficked from Asia, Mexico and other countries for prostitution.³⁶ Others are used in illicit activities such as drug trafficking.³⁷

²⁹ U.S. DEPT. OF LABOR, BUREAU OF INTERNATIONAL LABOR AFFAIRS, VOL. VI., BY THE SWEAT AND TOIL OF CHILDREN: AN ECONOMIC CONSIDERATION OF CHILD LABOR 19 (2000) [hereinafter *Sweat and Toil*].

³⁰ *Id.* at 25.

³¹ Mary Ross Hendriks, *Modern Slavery and the Production of Consumer Goods in a Global Economy: Consumer Choice—Not Law—Will Trigger the Next Diaspora*, 20 T.M.COOLEY L. REV. 436, 444-45 (2003) [hereinafter Hendriks].

³² ILO *Child Labor*, *supra* note 19 at §§ 20-33.

³³ ILO *Child Labor*, *supra* note 19 at § 27.

³⁴ Hendriks, *supra* note 31 at 431.

³⁵ Hendriks, *supra* note 31 at 440-41.

³⁶ Amy O'Neill Richard, "International Trafficking in Women to the United States: A Contemporary Manifestation of Slavery and Organized Crime," (Center for the Study of Intelligence) April 2000 at 21-22.

³⁷ ILO *Every Child*, *supra* note 12 at 26.

d: How do Children Become Exploited?

There has been international recognition of the fact that excessive labor is harmful to children since the nineteenth century when the writings of Dickens and Marx brought it to public attention. International recognition, in the form of legal protections, has existed at least since 1919 when the ILO Convention No. 5—Minimum Age (Industry) was placed in force.³⁸ The Geneva Declaration of the Rights of the Child was passed a few years later, in 1924.³⁹ However, nearly a century later, many children continue to be exploited.

As noted above, poverty frequently creates the conditions in which children can be exploited; either through a family's dependency on its children for survival, or its inability to protect its children from exploitation.⁴⁰ Some families are coerced into a form of slavery known as debt-bondage.⁴¹ Still others have been kidnapped and trafficked into actual forced slavery.⁴² Regions experiencing population explosions, war, natural disasters or other civil upheaval, may see children forced into labor.⁴³

However, more than the absolute poverty of a country, income disparity between rich and poor is a contributing factor to child labor.⁴⁴ There is a positive correlation between unequal distribution of income and the incidence of child labor.⁴⁵

The complexity of the child labor issue is compounded by the poverty faced by families whose children are exploited, as well as misguided attempts to ameliorate the problem. For instance,

³⁸ See generally, Convention Fixing the Minimum Age for Admission of Children to Industrial Employment (ILO No. 5) Nov. 28 1919 (*coming into force* June 13, 1921).

³⁹ Geneva Declaration of the Rights of the Child of 1924, *adopted* Sept. 26, 1924, League of Nations O.J. Spec. Supp. 21, at 43 (1924).

⁴⁰ *Sweat and Toil*, *supra* note 29 AT 17-19.

⁴¹ Hendriks, *supra* note 31 at 437-38.

⁴² Hendriks, *supra* note 31 at 443.

⁴³ See Hendriks, *supra* note 31 at 436-37; "Child Labor Report Details Disasters," *Washington in Brief*, WASH. POST, Sept. 7, 2006, page A11.

⁴⁴ *Sweat and Toil*, *supra* note 29 at 18.

⁴⁵ *Sweat and Toil*, *supra* note 29 at 18.

in Bangladesh, where some twenty percent of the workforce is made up of children, the Bangladesh Garment and Manufacturers and Exporters Association (BGMEA) agreed to eliminate child labor in 1994, under pressure from the U.S. after media reports.⁴⁶ Unfortunately, the children released from factories were then left destitute.⁴⁷ The U.S. then pressured the BGMEA to retain the child workers and create schools for them, while refraining from hiring any new children. While this was happening, the International Monetary Fund (IMF) pressured the Bangladesh government to reduce expenditures for education and health, further jeopardizing these children.⁴⁸

This indicates that policies of international finance organizations such as the IMF and the World Bank may actually serve to exacerbate the practice of child labor, creating economic incentives to use children to expand the export industries of developing countries as a way to decrease their debt—while minimizing spending on healthcare and education.⁴⁹

e) Economic Costs of Child Labor

Child labor has an economic cost that is ultimately detrimental to the developing countries with the most egregious child labor problems. There is also evidence that the use of child labor, in addition to being caused by poverty, is in itself a contributing factor to poverty.⁵⁰ Families may have more children in order to have more earners within a family.⁵¹ When children work, their school attendance is lower, and accordingly, the benefits to society of an educated populace are lost.⁵² Those children, as adults, will not be capable of performing work that requires an education. The societal

⁴⁶ Vijay Prashad, *Calloused Consciences: The Limited Challenge To Child Labor*, DOLLARS & SENSE, Issue #225, September-October, 1999 [hereinafter “*Calloused Consciences*”].

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Marc Ellenbogen, Note: *Can the Tariff Act Combat Endemic Child Labor Abuses? The Case of Cote d'Ivoire*, 82 TEX. L. REV. 1315, 1326-27 (2004) [hereinafter Ellenbogen].

⁵¹ *Id.*

⁵² *Sweat and Toil*, *supra* note 29 at 4-6.

benefits of education include increased adult wages, increased participation in the political process, reduced dependency on social support programs, reduced criminal activity, better health, lower mortality rates, and increased life expectancy.⁵³

f: Who is Exploiting Children?

One of the least palatable facts of child exploitation is that much of it benefits Americans, either directly or indirectly. Many of the world's children work in industries producing goods for export.⁵⁴ While most Americans would shudder to think that the products they buy cheaply—in fact, some of the toys their own children play with—come to them through the labor of young children, other Americans eagerly participate in child exploitation through child pornography⁵⁵ or visits to countries such as Thailand where they can avail themselves of child prostitution.⁵⁶ American multi-national corporations knowingly buy products made with child labor, even if they do not directly employ child labor themselves. Other American multi-national corporations may not knowingly buy materials produced with child labor, but nevertheless do not bother to ascertain that they do not. Americans benefit from child labor by buying products produced inexpensively through cheap child labor or through corporate profits gained through the cost savings of child labor.

g: Where are Children Exploited?

As noted, Asia and sub-Saharan Africa are the worst offenders. In India, for instance, it is estimated that there may be 3,000 bonded children, some as young as five, working in silk-twining

⁵³ *Sweat and Toil*, *supra* note 29 at 9-10.

⁵⁴ *Calloused Consciences*, *supra* note 46.

⁵⁵ Andrew Vachss, "Let's Fight This Terrible Crime Against Our Children," *Parade*, Feb. 19, 2006, available at http://www.parade.com/articles/editions/2006/edition_02-19-2006/Andrew_Vachss (last visited Oct. 9, 2006) [hereinafter Vachss].

⁵⁶ Hendriks, *supra* note 31 at 440-41.

factories, hand-knotting carpets under brutal conditions.⁵⁷ These practices are also endemic in Pakistan and Nepal.⁵⁸

In Pakistan, debt-bonded families work in brick kilns, where children help mix, haul and stack bricks, in high temperatures and unsafe conditions.⁵⁹ From countries in this region, including Pakistan, Bangladesh and Sri Lanka, children are trafficked to Persian Gulf states for use as “camel kids,” prized as jockeys in camels races because of their light weight.⁶⁰ In Thailand, children who have been kidnapped, tricked, sold or trapped in debt bondage work as sex slaves.⁶¹ Many come from neighboring countries, including China, Burma, Laos and Vietnam. Children are also brought into Thailand to work in sweatshops or as domestic workers.⁶²

In some African countries, traditional chattel slavery continues, with both children and adults being trafficked.⁶³ In Cote D’Ivoire and some other cocoa-producing countries in West Africa, boys as young as eleven are recruited from other African countries to harvest cocoa beans.⁶⁴ Forty-three percent of U.S. cocoa comes from Cote D’Ivoire.⁶⁵ Although most of the 109,000 children who work on cocoa farms in Cote D’Ivoire work on family farms with their parents, approximately thirty percent were found to have no family ties to their employer, and many worked in hazardous

⁵⁷ U.S. Department of State, India, Bureau of Democracy, Human Rights and Labor, COUNTRY REPS. ON HUMAN RIGHTS PRACTICES, 2002 (2003), available at <http://www.state.gov/g/drl/rls/hrrpt/2002/13311.htm> (last visited Nov. 30, 2004) [hereinafter *State Dept: India*].

⁵⁸ RUGMARK, *supra* note 3.

⁵⁹ Hendriks, *supra* note 31 at 438.

⁶⁰ State Dept: India, *supra* note 56 at §6f; *Camel Kids handed over to family*, PAKISTAN TRIBUNE, Feb. 07, 2004 available at: <http://paktribune.com/news/index.php?id=54006> (last visited Nov. 22, 2004).

⁶¹ Hendriks, *supra* note 31 at 437-438.

⁶² U.S. Department of State, Thailand, Bureau of Democracy, Human Rights and Labor, COUNTRY REPS. ON HUMAN RIGHTS PRACTICES, 2002 (2003), available at <http://www.state.gov/g/drl/rls/hrrpt/2002/18265.htm> (last visited Nov. 30, 2004).

⁶³ U.S. Department of State, Sudan, Bureau of Democracy, Human Rights and Labor, COUNTRY REPS. ON HUMAN RIGHTS PRACTICES, 2002 (2003), available at <http://www.state.gov/g/drl/rls/hrrpt/2002/18228.htm> (last visited Nov. 30, 2004).

⁶⁴ Chatterjee, *supra* note 7.

⁶⁵ Ellenbogen, *supra* note 50 at 1315.

conditions.⁶⁶ Children were trafficked into the country from Mali, Burkina Faso, Ghana, Togo, Benin, and Mauritania for indentured or domestic servitude, farm labor, and sexual exploitation.⁶⁷

Closer to home, children in the Americas are also victims of exploitation. In Guatemala, despite a constitutional provision barring employment of minors under the age of fourteen, thirty-four percent of children between the ages of seven to fourteen work.⁶⁸ In Mexico, most child labor is used in agriculture and the “informal” sector.⁶⁹ Sexual exploitation of children is a problem, with police and other officials implicated in trafficking.⁷⁰

SECTION II: IS THERE INTERNATIONAL LAW GOVERNING CHILD EXPLOITATION?

a: Defining International Law

Examining whether international law governs the exploitation of children, one must ascertain what constitutes international law. The simplest way to conceptualize international law is the natural law, or “fundamental rights” view—which maintains that international law is “a corollary of the doctrine of the ‘state of nature’”⁷¹ and that “every state, by the very fact that it is a state, is endowed with certain fundamental, or inherent, or natural, rights.”⁷² This view supposes that there is some moral “obligation indispensable”⁷³ of humans in their relation to each other, that this obligation is universally understood, and that nations are morally and legally bound by it—at least if they want to

⁶⁶ U.S. Agency for Intl.Dev., CHILD LABOR IN THE COCOA SECTOR OF WEST AFRICA: A SYNTHESIS OF FINDINGS IN CAMEROON, CÔTE D’IVOIRE, GHANA, AND NIGERIA 12 (2002).

⁶⁷ *Id.*

⁶⁸ U.S. Department of State, Guatemala, Bureau of Democracy, Human Rights and Labor, COUNTRY REPS. ON HUMAN RIGHTS PRACTICES, 2002 (2003) available at <http://www.state.gov/g/drl/rls/hrrpt/2002/18333.htm> (last visited Nov. 30, 2004).

⁶⁹ U.S. Department of State, Mexico, Bureau of Democracy, Human Rights and Labor, COUNTRY REPS. ON HUMAN RIGHTS PRACTICES, 2002 (2003) available at <http://www.state.gov/g/drl/rls/hrrpt/2002/18338.htm> (last visited Nov. 30, 2004).

⁷⁰ Vachss, *supra* note 55.

⁷¹ J.L. BRIERLY, THE LAW OF NATIONS, (6th ed., Humphrey Waldock ed., 1963) at 49, reprinted in BARRY E. CARTER, ET AL., INTERNATIONAL LAW 32-33 (4th ed. 2003).

⁷² *Id.* at 49

be accepted into “the intercourse of civilized States.”⁷⁴ The “positivist” view, by contrast, holds that international law must be stated, and relates to the behavior of states. Under this view, there are no moral obligations, but rather only legal obligations to which nations are bound by their consent as a matter of law.⁷⁵

Pragmatically, international law comes from two sources: formal agreements (treaties and conventions) and custom. Conventional international law relies on formal express agreements between nations, and is therefore only binding on those nation-states that have consented to be bound. Treaties are put into force by ratification of the individual nations who become signatories to the agreement—in essence, a form of contract.⁷⁶

International law also arises out of custom. While general practices of relations between nations may not be indicative of customary law, a practice or usage may become customary law, and therefore binding, when it is general, definite, uniform, and ancient, and when it appears to be legally obligatory.⁷⁷ The rule of law is abstracted from the conduct of the states themselves.⁷⁸ Given the differing sources of international law, determining whether an existing law governs any given action may be difficult. The Restatement (Third) of Foreign Relations Law, Section 102, offers some guidance in, first, finding the sources of international law:

- (1) A rule of international law is one that has been accepted as such by the international community of states
 - (a) in the form of customary law;
 - (b) by international agreement; or
 - (c) by derivation from general principles common to the major legal systems of the world.⁷⁹

⁷³ Henfield’s Case, 11 F. Cas. 1099, 1107 (U.S. Court of Appeals, 1793) (No. 6,360).

⁷⁴ JULIUS I. PUENTE, *INTERNATIONAL LAW AS APPLIED TO FOREIGN STATES*, at 2 (Fred B. Rothman 1983)1928 [hereinafter Puente].

⁷⁵ Antony Anghie, *Colonialism and the Birth of International Institutions: Sovereignty, Economy and the Mandate System of the League of Nations*, 34 N.Y.U. J. INT’L L. & POL. 513, 530-31 (2002).

⁷⁶ Puente, *supra* note 74 at 3.

⁷⁷ Puente, *supra* note 74 at 6.

⁷⁸ Puente, *supra* note 74 at 6.

⁷⁹ RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 102 (1987)

The Restatement also offers guidance as to how to determine whether a particular principle or custom has become international law. Depending on the source of the rule, evidence as to its legal effect may be determined from:

- (a) judgments and opinions of international judicial and arbitral tribunals;
- (b) judgments and opinions of national judicial tribunals;
- (c) the writings of scholars;
- (d) pronouncements by states that undertake to state a rule of international law, when such pronouncements are not seriously challenged by other states.⁸⁰

Because child labor has come to international attention only recently, there is not a large body of judgments and opinions from which to determine whether there is customary international law governing the exploitation of children. The Restatement view of customary law, as it relates to human rights, is that only those rights “whose status as customary law is generally accepted and whose scope and content are generally agreed” upon will be afforded status as customary law.⁸¹ Since most nation-states have domestic laws prohibiting child labor,⁸² it may be that the intentions of the states to prohibit child labor are indicative of a general, definite and uniform custom that is legally obligatory. It may also be that the United Nations’ Declaration of Human Rights,⁸³ though arguably originally intended to be non-binding, has become customary law. While the signatories of the early human-rights conventions intended that international human rights law remain conventional, the concept of inalienable human rights may have evolved into customary law, as evidenced by states’ conduct.⁸⁴ In any case, there are now enough treaties, conventions, and other

⁸⁰ *Id.* § 103 (1987).

⁸¹ *Id.* § 702 (1987).

⁸² Celek, *supra* note 27 at 98.

⁸³ Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

⁸⁴ Richard B. Lillich, *The Growing Importance of Customary International Human Rights Law*, 25 GA. J. INTL. & COMP. L. 1-2 (1995-1996).

statutes and “pronouncements . . . that undertake to state a rule of international law” relating to child labor to arguably constitute customary law under the Restatement.⁸⁵

International law, whether conventional or customary, generally treats with the rights and responsibilities of nation-states, not individuals. However, the growing body of human rights law in the twentieth century, beginning with the Universal Declaration of Human Rights, indicates the intent of state parties to hold themselves, and each other, accountable for their own actions against individuals.⁸⁶

b: What International Agreements Govern Child Labor?

There are currently several international conventions that govern child labor. Most agreements relating to children are extensions of universal human rights recognized and internationally adopted after World War II, when, for the first time, the ways in which a state treated its own nationals began to be viewed as a matter for international notice and response.⁸⁷ Children’s right to special treatment is recognized in human-rights agreements including the Universal Declaration of Human Rights,⁸⁸ the International Covenant on Civil and Political Rights,⁸⁹ and the International Covenant on Economic, Social and Cultural Rights.⁹⁰ In 1956, the United Nations amended the Universal Declaration of Human Rights with the Supplemental Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, which

⁸⁵ RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW, *supra* note 77 § 102(2).

⁸⁶ Louis B. Sohn, *The New International Law: Protection of the Rights of Individuals Rather Than States*, 32 AM. U. L. REV. 1, 14-17 (1982), *reprinted in* BARRY E. CARTER, ET AL., INTERNATIONAL LAW 771-772 (4th ed. 2003).

⁸⁷ BARRY E. CARTER, ET AL., INTERNATIONAL LAW 767 (4th ed. 2003).

⁸⁸ Universal Declaration of Human Rights, art. 25(2), G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

⁸⁹ *International Covenant on Civil and Political Rights*, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. No. 16, at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, (entered into force Mar. 23, 1976).

⁹⁰ *International Covenant on Economic, Social and Cultural Rights*, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, (entered into force Jan. 3, 1976).

specifically banned child servitude.⁹¹ Other agreements specifically treating with the rights and protections of children include the Geneva Declaration of the Rights of the Child of 1924⁹² and the Declaration of the Rights of the Child,⁹³ adopted by the General Assembly of the United Nations in 1959.

More recently, the United Nations Convention on the Rights of the Child (“UN Convention”) was ratified into force in 1990, stipulating that under international law, anyone under eighteen is considered a child (subject to relevant national laws recognizing an earlier age of majority),⁹⁴ and that children are deserving of special protections and rights. The UN Convention has been ratified by 192 countries; only two countries, the United States and Somalia, have not ratified it (though they are signatories).⁹⁵ There are two optional protocols to the UN Convention; the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict⁹⁶ and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child

⁹¹ Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 226 U.N.T.S. 3, (entered into force April 30, 1957), *available at* <http://fletcher.tufts.edu/multi/texts/BH333.txt>.

⁹² Geneva Declaration of the Rights of the Child of 1924, *adopted* Sept. 26, 1924, League of Nations O.J. Spec. Supp. 21, at 43 (1924).

⁹³ Declaration of the Rights of the Child, G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354 (1959).

⁹⁴ UN Convention, *supra* note 8; *See also* UNICEF, “Convention on the Rights of the Child,” *available at* <http://www.unicef.org/crc/convention.htm> (last visited on Dec. 13, 2004) (“The Convention emphasizes that States substituting an earlier age for specific purposes must do so in the context of the Convention’s guiding principles – of non-discrimination (article 2), best interests of the child (article 3), maximum survival and development (article 6) and participation of children (article 12). In reporting to the Committee on the Rights of the Child, States Parties must indicate whether national legislation differs from the Convention with regard to the defining ages of childhood.”)

⁹⁵ Office of the United Nations High Commissioner for Human Rights, “Status of Ratifications of the Principal International Human Rights Treaties as of 09 June 2004,” *available at* <http://www.unhchr.ch/pdf/report.pdf> (2004) (hereinafter *UN Status of Ratifications*)

⁹⁶ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts, G.A. Res. 54/263, Annex I, 54 U.N. GAOR Supp. (No. 49) at 7, U.N. Doc. A/54/49, Vol. III (2000), (entered into force February 12, 2002).

prostitution and Child pornography.⁹⁷ These have been signed by 117 and 124 countries, respectively.⁹⁸

The International Labour Organization (ILO) is an organization that grew out of the Commission on International Labour constituted by the Treaty of Versailles in 1919.⁹⁹ The ILO was originally part of the League of Nations, and is now an independent organization under the umbrella of the United Nations.¹⁰⁰ The ILO has adopted two conventions relating to child labor through its International Programme on the Elimination of Child Labour (IPEC).¹⁰¹ The first, ILO Convention 138, the Minimum Age Convention, was adopted in 1973, combining several existing conventions that were economic-sector specific.¹⁰² It stipulates minimum ages for child workers in various types of employment.¹⁰³ While most countries conform legally to Convention 138, in that they set a basic minimum age for employment, only 135 of 177 member countries have actually ratified it.¹⁰⁴

Even fewer countries actually enforce their own laws relating to minimum age.¹⁰⁵ Some of the countries with high levels of child labor, including Afghanistan, Bangladesh, India, Myanmar, and Pakistan have not ratified Convention 138 (nor has the United States).¹⁰⁶ Of fifty-three African

⁹⁷ Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, G.A. Res. 54/263, Annex II, 54 U.N. GAOR Supp. (No. 49) at 6, U.N. Doc. A/54/49, Vol. III (2000), (entered into force January 18, 2002).

⁹⁸ *UN Status of Ratifications*, *supra* note 75.

⁹⁹ International Labour Organization Brochure, "The ILO: What it is. What it does" (2004) at 4. (Hereinafter "ILO Brochure").

¹⁰⁰ *Id.* at 4, 8.

¹⁰¹ *Id.* at 16 (ILO Conventions 138 and 182).

¹⁰² ILO 138, *supra* note 11 at 298, 300.

¹⁰³ ILO 138, *supra* note 11, Article 2, Paragraph 3: "The minimum age specified in pursuance of paragraph 1 of this Article shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years"; Article 3, Paragraph 1: "The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than 18 years"; other Articles give specific exemptions for light work under specified conditions for younger children, or a lower age standard for developing countries that are moving toward compliance.

¹⁰⁴ INTERNATIONAL LABOUR ORGANIZATION, RATIFICATIONS OF THE FUNDAMENTAL HUMAN RIGHTS CONVENTIONS BY COUNTRY (2004), (hereinafter *ILO Ratifications*).

¹⁰⁵ Right to Education, At What Age?, Minimum Age Table, available at <http://www.right-to-education.org/content/age/table.html> (last visited Oct. 9, 2006).

¹⁰⁶ ILO Ratifications, *supra* note 104.

member nations, only forty-three have ratified Convention 138; and only twenty-four of forty-four Asian member nations have.¹⁰⁷ In 1999, ILO Convention 182, the Worst Forms of Child Labor Convention, was entered into force and, as of 2004, has been ratified by 150 countries (including the US) seeking to curtail the most harmful kinds of child labor, defined as slavery or practices similar to slavery, including trafficking and debt bondage; forced recruitment of children for use in armed conflict; prostitution or pornography; illicit activities including drug trafficking; and work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.¹⁰⁸ This convention has had more support from problem countries, which have made an effort to participate in an IPEC “time-bound” program to eliminate these forms of child labor within a specific time-frame of ten years or less.¹⁰⁹

Additionally, there are regional treaties that control state actions. For example, the African Charter on Human and People’s Rights,¹¹⁰ adopted through the Organization of African Unity, the official body of the African states, established the African Commission on Human and People’s Rights, which is supposed to protect human rights in African states. All fifty-three member African nations are parties to the Charter.¹¹¹ Although the Charter does not treat specifically with rights and protections of children, the African Charter on the Rights and Welfare of the Child¹¹² does (though only thirty-two member nations have ratified this charter).¹¹³ However, there are not enforcement

¹⁰⁷ ILO Ratifications, *supra* note 104.

¹⁰⁸ ILO Ratifications *supra* note 104; ILO 182, *supra* note 11.

¹⁰⁹ ILO Brochure, *supra* note 99 at 20.

¹¹⁰ African Charter on Human and Peoples’ Rights, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) (entered into force Oct. 21, 1986).

¹¹¹ African Commission on Human and People’s Rights, *at* http://www.achpr.org/english/_doc_target/documentation.html?../ratifications/ratification_court_en.pdf (last visited on Oct. 9, 2006).

¹¹² African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990) (entered into force Nov. 29, 1999).

¹¹³ African Commission on Human and People’s Rights, *at* http://www.achpr.org/english/_doc_target/documentation.html?../ratifications/ratification_child_en.pdf (last visited on Dec. 9, 2004).

mechanisms in either charter, and promotion of rights, rather than the enforcement of them, is the main purpose behind them.¹¹⁴

The United States, while avowedly in favor of human rights, and a promoter of human rights through its own Constitution, as well as human rights internationally through economic and military pressure,¹¹⁵ has an inconsistent record when it comes to consenting to be bound by international human rights standards. For instance, it has still not ratified the UN Convention on the Rights of the Child.¹¹⁶ Although it has signed and ratified several other important treaties (though not the Minimum Age Convention), the U.S. has ratified several of them only conditionally, subject to reservations. The U.S., after originally signing the Rome Statute creating the International Criminal Court (ICC), has since decided not to ratify it.¹¹⁷ It has also refused to consent to the jurisdiction of the International Court of Justice (ICJ) in treaties which would make the ICJ the adjudicatory body for claims arising under such treaties.¹¹⁸

c: Applicability of International Law

In general, international law does not apply to the actions of individuals, but rather to actions by nations or their representatives.¹¹⁹ International law also usually seeks to protect states' interests, rather than individual ones. Generally, the protection of individuals under international treaties has been left to those nations party to a given agreement, or otherwise bound by international law. Most

¹¹⁴ HENRY J. STEINER AND PHILIP ALSTON, INTERNATIONAL HUMAN RIGHTS IN CONTEXT 920-923 (2d ed., 2000), reprinted in BARRY E. CARTER, ET AL., INTERNATIONAL LAW 831-833 (4th ed. 2003).

¹¹⁵ BARRY E. CARTER, ET AL., INTERNATIONAL LAW 789-799 (4th ed. 2003).

¹¹⁶ Office of the United Nations High Commissioner for Human Rights, Status of Ratifications of the Principal International Human Rights Treaties (2004) at 11.

¹¹⁷ Curtis Bradley, *U.S. Announces Intent Not to Ratify International Criminal Court Treaty*, ASIL INSIGHTS, May 2002, American Society of International Law, at <http://www.asil.org/insights/insigh87.htm> (last visited Dec. 13, 2004).

¹¹⁸ Curtis A. Bradley & Jack L. Goldsmith, *Treaties, Human Rights and Conditional Consent*, 149 U. PA. L. REV. 399, 422-423 (2000), in BARRY E. CARTER, ET AL., INTERNATIONAL LAW 802-804 (4th ed. 2003).

¹¹⁹ PUENTE, *supra* note 74 at 7-8.

of the treaties that protect children are not self-executing.¹²⁰ Rather, states create domestic laws pursuant to the precepts to which they have bound themselves under international law, and these domestic laws, whether granting rights or imposing duties, will then apply to the citizens of those individual nations party to the agreement or custom.¹²¹

However, since the Nuremberg Tribunal in 1946, it has been recognized that “crimes against international law are committed by men, not abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced.”¹²² There are several ways in which individuals may be held accountable under international law. For instance, under customary international law, there are a limited number of crimes to which universal jurisdiction applies. These include trafficking in children.¹²³ The application of universal jurisdiction is also recognized for the core crimes of the Rome Statute, over which the International Criminal Court has jurisdiction.¹²⁴

Additionally, under some treaties, individual or corporate actors may be held directly liable for their actions. For instance, the UN Convention on the Prevention and Punishment of the Crime of Genocide, Article 4, states that private individuals can be punished for enumerated acts prohibited by the Convention.¹²⁵ Article 25 of the Rome Statute states that the ICC has jurisdiction over *individuals* who have committed any of the enumerated crimes over which the Court has jurisdiction.¹²⁶ The Rome Statute also specifically includes crimes against children in its enumerated

¹²⁰ Nancy Morisseau, *Seen but not Heard: Child Soldiers Suing Gun Manufacturers Under the Alien Tort Claims Act*, 89 CORNELL L. REV. 1263, 1286 (2004).

¹²¹ PUENTE, *supra* note 74 at 8.

¹²² 1 Trial of the Major War Criminals 171, 223 (1947).

¹²³ WILLIAM A. SCHABAS, AN INTRODUCTION TO THE INTERNATIONAL CRIMINAL COURT 60 (2001).

¹²⁴ *Id.* (trafficking in children would arguably fall under the core crime of “crimes against humanity”).

¹²⁵ UN Convention on the Prevention and Punishment of the Crime of Genocide, art. 4, 78 U.N.T.S. 277 (entered into force Jan. 12, 1951).

¹²⁶ Rome Statute of the International Criminal Court, art 25, 2187 U.N.T.S. 3 (entered into force July 1, 2002) [hereinafter “Rome Statute”].

crimes.¹²⁷ In addition, some actors have been held responsible for human rights violations through *ad hoc* criminal tribunals that have prosecuted crimes against humanity in various countries—such as the International Criminal Tribunal for the Former Yugoslavia,¹²⁸ and the International Criminal Tribunal for Rwanda.¹²⁹

d) Enforcement of International Law Governing Child Labor

The nations entering into these treaties and conventions have theoretically agreed to abide by their terms by creating laws to regulate the economic exploitation of children—and most countries do have such laws.¹³⁰ These usually include age restrictions, restrictions on the number of hours that children can work, and the kinds of work children can do.¹³¹ They usually also mandate education for children under a certain age.¹³² Unfortunately, many countries lack the resources or political will to enforce their own laws.¹³³

Additionally, treaties and conventions may be considered a form of contract, rather than stemming from an enforcing body of authority. Thus, actually abiding by the terms of the treaty may in effect be discretionary, unless the treaty contains provisions for criminal sanctions, or a specific crime falls under the jurisdiction of a specific body, such as the ICC. While nations entering into the treaty or convention are consenting to be bound by the terms of the agreement, individual nations' intentions in signing the convention may or may not be directly related to the purpose of the convention. The act of signing may not necessarily signify an intention to actually comply with the convention's provisions. In addition, a country may reserve a specific exemption for itself, even

¹²⁷ *Id.* at art. 7-8.

¹²⁸ SCHABAS, *supra* note 123 at 81.

¹²⁹ SCHABAS, *supra* note 123 at 33.

¹³⁰ Celek, *supra* note 27 at 90.

¹³¹ Celek, *supra* note 27 at 90.

¹³² Celek, *supra* note 27 at 90.

while consenting to be bound by the general terms of the agreement. For instance, in the United States, President Clinton ushered the ratification of ILO Convention 182 through Congress and created a domestic law pursuant to the Convention by signing an executive order¹³⁴ preventing the U.S. government from purchasing goods made by the “worst forms” of child labor.¹³⁵ He then exempted from the order goods made in Mexico and countries who are members of the World Trade Organization.¹³⁶

Some countries, including the United States and Canada, also have domestic laws that allow prosecutions or civil actions against individuals who commit international wrongs. In the United States, the Alien Tort Claims Act (ATCA)¹³⁷ has long been used to give plaintiffs redress against individuals (U.S. citizens or others) who have committed wrongs against them. ATCA was created as a clause in the Judiciary Act of 1789, which “carried forward the concept of parallel civil and criminal sanctions for law of nations violations, granting federal courts jurisdiction over common-law crimes ... includ[ing] crimes in violation of international law ... and a cause of action for alien tort claims.”¹³⁸ The use of ATCA to address violations of international laws relating to child labor will be discussed later in this article.

Canada has amended its criminal law code to enable it to prosecute Canadian citizens who travel abroad and engage in sexual offenses against children. As of 2003, no cases had been prosecuted because of a provision requiring permission from the country where the wrong occurred. However, this provision has since been removed.¹³⁹

¹³³ Celek, *supra* note 27 at 98-99.

¹³⁴ Exec. Order 13126, 64 Fed. Reg. 32383 (June 16, 1999) [hereinafter “Exec. Order”].

¹³⁵ *Calloused Consciences*, *supra* note 46.

¹³⁶ Exec. Order, *supra* note 134 (sec. 5(b)).

¹³⁷ 28 U.S.C.A. § 1350 (2005).

¹³⁸ John Haberstroh, *The Alien Tort Claims Act & Doe v. Unocal: A Paquete Habana Approach to the Rescue*, 32 DENV. J. INT’L L. & POL’Y 231, 241 (2004).

¹³⁹ Hendriks, *supra* note 31 at 441.

The U.S. also has several laws that prohibit the importation of goods made with child labor. For instance, the Tariff Act of 1930, prohibiting the importation of goods made with forced labor, was amended in 1997 to apply to products made with “forced or indentured child labor”.¹⁴⁰ The Trade and Development Act, signed into law in May 2000, affords special trade benefits to Sub-Saharan Africa Countries, but denies trade preferences to countries that fail to enforce minimum age standards.¹⁴¹

Some countries may intend to abide by the terms of an agreement, but lack either the political will or the ability to do so. While there are various enforcement mechanisms (mainly economic sanctions) under international law which parties to a treaty may employ to pressure those signatories who do not comply, most non-compliant countries have not come under sanctions. In the U.S., new provisions of the Generalized System of Preferences (GSP), enacted in 1984, removed U.S. trade preferences from countries that systematically deny internationally recognized workers’ rights.¹⁴² These rights included a prohibition of any form of forced or compulsory labor and acceptable conditions of work.¹⁴³

In addition to the lack of sanctions or other enforcement responses to violators of the conventions, there remains the problem of those countries that are not signatories. If nations have not consented to be bound by minimum age standards, or concepts of children’s rights, then what governs activity taking place within their borders?

¹⁴⁰ 19 U.S.C.S. § 1307 (1997).

¹⁴¹ 19 U.S.C.S. § 3703 (2000).

¹⁴² *See generally*, Office of the United States Trade Representative, Generalized System of Preferences (GSP), at http://www.ustr.gov/Trade_Development/Preference_Programs/GSP/Section_Index.html (last visited Oct. 9, 2006).

¹⁴³ *See* Office of the United States Trade Representative, Generalized System of Preferences Guidebook, available at http://www.ustr.gov/assets/Trade_Development/Preference_Programs/GSP/asset_upload_file890_8359.pdf (last visited Oct. 9, 2006) (the GSP originally authorized approximately 4,284 products from 140 developing countries, including India, Nepal and Pakistan, to enter the U.S. market duty-free).

e) Domestic Laws in Pursuance of International Treaties

Most countries, including some of the worst offenders, have domestic laws that regulate or forbid the use of child labor, many of which were created specifically pursuant to the UN and ILO Conventions. These laws often are ignored or poorly enforced. Some countries may not have the resources to enforce their own laws, or look the other way, in the belief that child labor is an economic necessity.¹⁴⁴ Even when domestic laws are enforced, penalties may be so nominal that they do not deter child exploiters, for whom it may simply be a cost of doing business.¹⁴⁵ Finally, a country's legislation frequently fails to address certain forms of child labor, such as domestic servitude (i.e., household servants). In some countries, child labor offenders avoid detection and thereby prosecution by locating in "underground" areas.¹⁴⁶

f: How Are the Laws Enforced?

While some international agreements contain enforcement provisions, The UN Convention on the Rights of the Child provides for a committee, to which member countries are to report on the measures they have taken to protect children's rights, and the progress they have made in ensuring them.¹⁴⁷ The parties are to report within two years of entry into force of the Convention, and every five years thereafter.¹⁴⁸ The Committee then makes reports to the General Assembly of the UN every two years.¹⁴⁹ The Convention also provides for "competent bodies," including the United Nations Children's Fund, to be informed of nations' progress and to provide expert advice to the

¹⁴⁴ Celek, *supra* note 27 at 90, 98.

¹⁴⁵ Anjali Garg, Note: *A Child Labor Social Clause: Analysis and Proposal for Action*, 31 N.Y.U. J. INT'L L. & POL. 473, 515 (1999).

¹⁴⁶ Hendriks, *supra* note 31 at 439.

¹⁴⁷ Convention on the Rights of the Child, *supra* note 8, at art. 44.

¹⁴⁸ Convention on the Rights of the Child, *supra* note 8, at art. 44.

¹⁴⁹ Convention on the Rights of the Child, *supra* note 8, at art. 44(5).

committee.¹⁵⁰ However, nowhere in the Convention does there appear a provision for enforcement against state parties who do not report as stipulated, whose reports do not reflect reality, or who do not take steps to ensure the rights delineated in the Convention.

SECTION III: WHAT CAN BE DONE?

a) Non-Legal Solutions

1: Public Awareness

Thus far, one of the most effective mechanisms for stopping the use of child labor has been the pressure of consumer groups. There was a public outcry a few years ago against sport manufacturers such as Nike for their knowing use of child labor in the manufacture of sports equipment.¹⁵¹ The International Labour Organisation and UNICEF, along with other child welfare organizations, negotiated an agreement with the world soccer federation, Federation Internationale de Football Association (FIFA). The agreement states that the FIFA seal will no longer be placed on soccer balls made by children.¹⁵²

ARTSANA, a multi-national toy manufacturer, has also signed an agreement that protects basic human and trade union rights in addition to international labor and environmental regulations. The deal, reached with Italian trade unions, includes a provision establishing a minimum age for workers, an end to forced labor, and a safe working environment.¹⁵³ The widely-publicized fact that Walmart was producing a line of clothing under celebrity Kathy Lee Gifford's name brought her

¹⁵⁰ Convention on the Rights of the Child, *supra* note 8, at art. 45.

¹⁵¹ Bowden, *supra* note 7.

¹⁵² See FIFA, Press Release, New Agreement to Stop Child Labour in Football Production," at <http://www.fifa.com/en/fairplay/index/0,1255,37343,00.html?articleid=37343> (last visited on March 30, 2005).

¹⁵³ *Child Labour: The Situation*, *supra* note 6.

unwanted attention, along with her promise to join the fight against child labor.¹⁵⁴ In response to publicity about child labor in rug-making, rug manufacturers in India, Nepal and Pakistan created the “RUGMARK” labeling program which provides assurances to consumers that such labeled rugs were not made with child labor.¹⁵⁵ The RUGMARK program appears to be effective, because the organization inspects manufacturing sites, and members must sign a contract allowing unannounced inspections by RUGMARK and non-affiliated child advocacy organizations. The RUGMARK foundation also works to reunite children with their families and to provide education and rehabilitative programs to children.¹⁵⁶ However, only about ten percent of looms are believed to be covered by RUGMARK or other industry-based initiatives.¹⁵⁷

To date, knowledge of the forced labor of children by cocoa producers has not reached a level of awareness in the United States resulting in public censure of chocolate manufacturers. It may be that this will happen soon; however, in the meantime, U.S. chocolate manufacturers are resisting a labeling initiative that would provide assurance to consumers, for fear that it might cause a level of awareness that might trigger such a boycott.¹⁵⁸

2: *Labor Unions and Organizations*

Another powerful method for ending child exploitation is through trade and union organizations, whose members naturally do not want their jobs taken from them and given to poorly-paid child workers. For instance, in the European Union, the European Confederation of the

¹⁵⁴ Norman Solomon, *Kathie Lee, Disney and the Sweatshop Uproar*, ALTERNET, Apr. 26, 2000, at: <http://www.alternet.org/story/7517> (last visited Nov. 30, 2004).

¹⁵⁵ See generally RUGMARK Foundation, at <http://www.rugmark.org/about.htm> (last visited March 30, 2005) [hereinafter RUGMARK].

¹⁵⁶ See RUGMARK Foundation, Press Kit p. 3; at <http://www.rugmark.org/Press%20Kit%20for%20RM%20Website.pdf> (last visited March 30, 2003) (outlining RUGMARK’s financing of educational opportunities and community-aimed rehabilitation efforts).

¹⁵⁷ Hendriks, *supra* note 31 at 439-440.

¹⁵⁸ Chatterjee, *supra* note 7.

Footwear Industry and the European Trade Union Federation of Textiles, Clothing and Leather, created a “Child Labor Charter” which, among other things, commits member unions to requesting that their respective governments ratify and enforce the UN Convention and the ILO Convention 138, in addition to ensuring that affiliated companies do not employ workers under age fifteen either directly or indirectly.¹⁵⁹

In the United States, the AFL-CIO expressed its concerns about the effect of the Central America Free Trade Agreement (CAFTA) by responding to Congress’ “Request for Information Concerning Labor Rights in Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua and their Laws Governing Exploitative Child Labor.”¹⁶⁰ The AFL-CIO’s Union of Needletrades, Industrial and Textile Employees submitted a report to the U.S. Trade Representative, which includes information on child labor in Costa Rica, El Salvador and Guatemala.¹⁶¹

b: Legal Solutions

There are a few promising legal options for enforcing international standards relating to child labor. Generally, before plaintiffs can seek legal redress under international law, they must have exhausted all local remedies.¹⁶² However, while some treaties contain express provisions for the local remedy rule,¹⁶³ the main treaties relating to protection of children do not. The purpose of the rule is

¹⁵⁹ European Trade Union Federation of Textiles, Clothing and Leather, *A Charter by the Social Partners in the European Textile and Clothing Sector*, available at <http://www.itcilo.it/actrav/actrav-english/telearn/global/ilo/guide/etuf.htm> (last visited Oct. 9, 2006).

¹⁶⁰ 68 Fed. Reg. 19580 (April 21, 2003).

¹⁶¹ See AFL-CIO, *Central America: Labor Rights and Child Labor Reports Pursuant to the Trade Act of 2002*, Section 2102(c)(8)-(9).

¹⁶² A.A. CANÇADO TRINDADE, *THE APPLICATION OF THE RULE OF EXHAUSTION OF LOCAL REMEDIES IN INTERNATIONAL LAW* 6-7 (Sir Robert Y. Jennings ed. 1983).

¹⁶³ See, e.g., African Charter on Human and Peoples’ Rights, *supra* note 92; International Covenant on Civil and Political Rights, *supra* note 72 (Article 41 (c): “The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with

to protect the sovereignty of the state,¹⁶⁴ and, procedurally, to utilize local resources before taking the more expensive step of international intervention.¹⁶⁵ It has also been asserted that the rule has caused an improvement in the administration of justice in the countries most responsible for human rights abuses.¹⁶⁶ Nevertheless, the rule has been a hurdle for the protection of human rights generally.¹⁶⁷ The absence of a local-remedies provision in child-protecting treaties may be an acknowledgment of the relative importance of protections for children, or of the unavailability of local remedies. Given the problem of insufficient enforcement of domestic laws against child labor previously discussed, it would seem that regardless of the reason that express references to the rule have not been included in international child protection agreements, this is one barrier to redress that child plaintiffs will not have to hurdle.

As previously mentioned, the Alien Tort Claims Act (ATCA) may hold some promise for the civil redress of international wrongs committed against children. The ATCA gives federal district courts “original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.”¹⁶⁸ The ATCA had only been utilized a few times since its creation in 1789 until the *Filartiga* case,¹⁶⁹ in which a federal district court of appeals found the Paraguayan defendant to be liable for the wrongful death of the plaintiff’s son, which occurred by deliberate state torture.¹⁷⁰ Following the *Filartiga* decision, the ATCA has been utilized in other human rights cases.¹⁷¹ Most recently, the ATCA was used to provide a cause of action to plaintiffs

the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged...”).

¹⁶⁴ TRINDADE, *supra* note 161 at 7.

¹⁶⁵ ALWYN V. FREEMAN, THE INTERNATIONAL RESPONSIBILITY OF STATES FOR DENIAL OF JUSTICE 407 (1970).

¹⁶⁶ TRINDADE, *supra* note 161 at 47.

¹⁶⁷ TRINDADE, *supra* note 161 at 52.

¹⁶⁸ 28 U.S.C. § 1350 (2005).

¹⁶⁹ *Filartiga v. Peña-Irala*, 630 F.2d 876 (2d Cir, 1980)

¹⁷⁰ *Id.* at 878, 889-90.

¹⁷¹ See, e.g., Lucien J. Dhooge, *The Alien Tort Claims Act and the Modern Transnational Enterprise: Deconstructing the Mythology of Judicial Activism*, 35 GEO. J. INT’L L. 3 (2003); Morisseau, *supra* note 120 at 1289.

attempting to hold a U.S. multinational corporation, Unocal, responsible for its knowing use of forced labor in Myanmar, though the final disposition of that case is still uncertain.¹⁷² The Act has also been invoked against another multinational, Talisman Energy (a Canadian corporation), for its activities in Sudan, where the use of slave labor is widespread and notorious.¹⁷³ It has also been argued that a lawsuit by child soldier plaintiffs against gun manufacturers under the ATCA would succeed.¹⁷⁴ However, the Act's usefulness in holding perpetrators of international wrongs accountable may be limited. First, damage awards are difficult to collect if the wrongdoer resides in another country. Second, the U.S. Department of Justice under the Bush administration has argued against the use of the Act,¹⁷⁵ perhaps fearing that it might be invoked against violations of human rights in Iraq.

Another possible approach is to use the recently enacted provisions of the Tariff Act of 1930.¹⁷⁶ The International Labor Rights Fund (ILRF) recently filed a petition with the United States Customs Service regarding forced child labor in Cote D'Ivoire cocoa harvesting.¹⁷⁷ However, given that there have been only eight cases in which the requisite probable cause under the Act have been established,¹⁷⁸ this is not likely to be a particularly powerful tool—unless it mobilizes the American cocoa industry to act before a ban on cocoa importation can be enacted.

¹⁷² Doe v. Unocal Corp., 395 F.3d 978 (9th Cir. 2003); Doe v. Unocal Corp., 395 F.3d 932 (9th Cir. 2002); Doe v. Unocal Corp., 963 F.Supp. 880 (C.D. Cal. 1997).

¹⁷³ Presbyterian Church of Sudan v Talisman Energy, Inc, No. 01 CV 9882 (AGS) (SDNY filed Nov 8, 2001; *Defendant's motion to dismiss denied*, 2004 U.S. Dist. LEXIS 17030 (S.D.N.Y., 2004); see also Amanda Bixler, *Private Enforcement of International Human Rights Laws: Could a Small Church Group Successfully Combat Slavery in the Sudan?* 3 CHI. J. INT'L L. 511 (2002).

¹⁷⁴ Morisseau, *supra* note 120 at 1301.

¹⁷⁵ Human Rights Watch, *U.S.: Ashcroft Attacks Human Rights Law: Justice Dept. Undermining Key Precedent* (2003) available at <http://www.hrw.org/press/2003/05/us051503.htm> (last visited Dec. 10, 2004).

¹⁷⁶ 19 U.S.C. § 1307 (2005); 19 U.S.C. § 3703, *supra* notes 140 & 141.

¹⁷⁷ See Ellenbogen, *supra* note 50 at 1315 (2004)

¹⁷⁸ U.S. Customs Serv., *Convict/Forced/Indentured Labor Issuances: Detention Orders & Findings*, at http://www.cbp.gov/xp/cgov/enforcement/ice/investigations/forced_labor/detention_orders_findings.xml (last visited Dec. 10, 2004).

Finally, a new tool which may prove to be effective, through its pressure on transnational corporations, is the draft Norms on the Responsibility of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, recently adopted by the UN Commission on Human Rights (Norms).¹⁷⁹ Under the Universal Declaration of Human Rights, every “organ of society” has a responsibility to “to secure their universal and effective recognition and observance.”¹⁸⁰ Human rights violations may be perpetrated by state or non-state actors. Multi-national corporations, even if not participating in the abuses themselves, often benefit from them, as in the *Unocal* and *Talisman* cases discussed above. The Norms place express responsibility on corporations to assure themselves and their shareholders that their corporate profits are not gained at the expense of human rights. While many human-rights agreements have lacked enforcement provisions, the Norms attempt to address this problem by delineating specific duties which are intended to be legally binding.¹⁸¹ As yet, the mechanisms for enforcement are unclear, but because multi-national business organizations are objecting to the norms, their eventual enforceability seems anticipated.¹⁸²

c: Conclusion

Although millions of the world’s children are currently exploited and unable to experience what we know as childhood, the international community has evinced a clear intention to protect children and enforce their rights. Existing conventional and customary law exists, but enforcement

¹⁷⁹ Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights, U.N. ESCOR, 55th Sess., 22d mtg., at Agenda Item 4, U.N. Doc. E/CN.4/Sub2/2003/12/Rev.2 (2003), available at <http://www1.umn.edu/humanrts/links/norms-Aug2003.html> (last visited Dec. 13, 2004); See also Julie Campagna, *United Nations Norms on the Responsibility of Transnational Corporations and Other Business Enterprises with regard to Human Rights: The International Community Asserts Binding Law on the Global Rule Makers*, 37 J. Marshall L. Rev. 1205 (2004).

¹⁸⁰ Universal Declaration, *supra* note 83, preamble.

¹⁸¹ Campagna, *supra* note 178 at 1231.

¹⁸² See Campagna, *supra* note 178 at 1207.

mechanisms have been lacking. However, recognition of the role that American complicity plays in the perpetuation of this problem (in the form of corporate, shareholder and consumer benefits from child labor), may be the first step in combating it. Solutions include industry agreements to monitor labor practices, enforcement of existing laws such as the Tariff Act, as well as civil suits and the U.N. Norms may be used where appropriate to end the use of children to further the global economy.