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# The Exploitation of Child Labor: An Intractable International Problem?

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## I. INTRODUCTION

Children face many obstacles in today's society, including drug abuse, violence in the streets, and single parent households. One problem, however, is largely ignored by the media and policy makers: the exploitation of child labor. Although most Americans believe that the exploitation of child labor is a problem facing only developing nations, it is, in fact, a universal problem.<sup>1</sup> This Article examines the nature of the international problem of harmful child labor and the responses of the world community and the United States to it, and provides suggestions for improvements.

Part II of this Article defines the problem of child labor exploitation. Part III provides background information regarding the United States' response to child labor problems. Part IV sets forth the approach of the International Labor Organization ("ILO"). Part V analyzes the sufficiency of the U.S. response and examines whether the response satisfies the ILO guidelines. Finally, Part VI suggests how the world community could better respond to the problem of child labor exploitation.

## II. THE NATURE OF THE PROBLEM

One of the initial problems associated with the regulation of child labor is the difficulty of defining the scope of behavior that

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1. Of course, the careful reader can find evidence of the exploitation of child labor in this country. See, e.g., Michael Specter, *Illegal Child Labor Resurging in US: Immigrant School Girls Toil in Modern Day Sweatshops*, WASH. POST, Apr. 14, 1991, at A1.

requires regulation. When does the use of children as laborers become a problem? Children should attain a minimum age before being permitted to work,<sup>2</sup> and only much older children should be permitted in more dangerous occupations.<sup>3</sup> Studies have shown that, when children and adults are exposed to the same hazards, children face more serious health risks<sup>4</sup> and are more likely to suffer occupational injuries.<sup>5</sup> Furthermore, children who are employed at an early age and/or for many hours per week are harmed because they are often too fatigued to concentrate on their studies.<sup>6</sup> In many cases, they drop out of school altogether.<sup>7</sup> Although parents often believe that their children acquire valuable vocational skills from their youthful employment,<sup>8</sup> their beliefs are unfounded. In fact, most jobs for children require only unskilled labor.<sup>9</sup>

The use of child labor is exploitative because the wages paid to children are generally equal to or below the jurisdictional minimum wage.<sup>10</sup> Furthermore, children's wages are generally lower than those earned by adults engaged in the same occupation.<sup>11</sup> In addition, children usually do not receive fringe benefits or insurance, and they are not eligible for social security or

2. Part of the problem with the U.S. response to child labor may be an acceptance of a lower than optimal age. See discussion *infra* part III.

3. For example, Argentina's minimum wage laws require a basic minimum age of 14, but require a minimum age of 18 for dangerous work. INTERNATIONAL ENCYCLOPEDIA FOR LABOR LAW AND INDUSTRIAL RELATIONS 3 (2d ed. 1990).

4. See generally WORLD HEALTH ORGANIZATION, CHILDREN AT WORK: SPECIAL HEALTH RISKS (1987).

5. This increase in the rate of injury is caused by children's shorter attention spans, which make it difficult to pay attention to routine operations for long stretches of time. Children's faster development of fatigue, their insufficient knowledge of work processes, and the fact that the equipment, tools, and layout of most workplaces are designed for adults also contribute to their higher injury rate. *Id.* at 3.

6. For an excellent overview of social science research on youth and work, see I. CHARNER & B. FRASER, YOUTH AND WORK: WHAT WE KNOW, WHAT WE DON'T KNOW (1988).

7. Extensive work causes many youths to drop out of school; conversely, working a limited number of hours has been shown to keep some youths in school. Ronald D'Amico, *Does Employment During High School Impair Academic Progress?*, 57 SOC'Y EDUC. 152, 161 (1984).

8. Assefa Beguele & Jo Boyden, *Child Labor: Problems, Policies, and Programmes*, in COMBATING CHILD LABOR 1, 5 (Assefa Beguele & Jo Boyden eds., 1988).

9. *Id.* at 6.

10. *Id.* at 5.

11. *Id.*

pension programs.<sup>12</sup> In many cases, children are paid wages based on each specific job accomplished.<sup>13</sup>

The Director-General of the ILO has defined harmful child labor as

work that places too heavy a burden on the child; work that endangers his safety, health or welfare; work that takes advantage of the defencelessness 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 or training and thus prejudices his future.<sup>14</sup>

There are two primary categories of exploited child workers. The first category consists of children who are poor and must work to support themselves and, in many cases, their families.<sup>15</sup> Some of these children are orphans or runaways; some are children who have been bonded to an employer.<sup>16</sup> In the United States, many of these children are illegal aliens.<sup>17</sup> Because of their dire poverty, their lack of education, and, often, their inability to speak English, these youths are easily exploited.<sup>18</sup> Most of the over 100 million children around the globe who work under hazardous or life-threatening conditions<sup>19</sup> fall into this category. Although it may seem most prevalent among child laborers from developing countries, more children from developed nations also belong in this category<sup>20</sup> because industrialized nations face increased competition from developing countries that exploit this cheap labor. Abuse of these poor child laborers is rampant in coal mines, rug factories, textile sweatshops, and other labor intensive

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12. *Id.*

13. *Id.*

14. Report of the Director General, *Child Labor*, 69 INT'L LAB. CONF. 3, 37 (1983).

15. *Id.* at 11.

16. *Id.*

17. Jo-Ann Mort, *A Thousand Points of Blight*, 37 DISSENT 293, 293 (1990).

18. *Id.*

19. Daniel Skolar, *Throughout the World, Children Cry . . . We Want Rights, Too*, 17 J. HUM. RTS. 30, 30 (1990).

20. Some argue that the United States should negotiate fair trade agreements with foreign countries, especially developing nations, that enforce international fair trade standards, including protective child labor laws. See, e.g., Harlan Mandel, *In Pursuit of the Missing Link: International Worker Rights and International Trade*, 27 COLUM. J. TRANSNAT'L L. 443, 448 (1989). One hopes that such trade standards will lead to a decline in the number of sweatshops in the United States.

industries.<sup>21</sup> Because most of the exploitative child labor in this category is illegal, accurate statistical data is difficult to generate. Most government statistics reflect the formal labor sector, ignoring illegal employment.<sup>22</sup>

In the United States, the number of children who fall into this category is growing, along with the increasing number of illegal sweatshops.<sup>23</sup> Union officials estimate that the number of illegal sweatshops in the five boroughs of New York City and New Jersey alone is several thousand, affecting over 150,000 workers.<sup>24</sup>

The second category of exploited child workers consists of those who work to purchase luxury goods. Developed nations, including the United States, are witnessing an increase in the number of children who fall into this category.<sup>25</sup> The employment of these youths perpetuates the belief that an insatiable desire for money and for the goods that money provides is a positive trait.<sup>26</sup>

Since 1950, the United States has witnessed steady increases in student employment.<sup>27</sup> Although part-time employment of lower- and middle-class teenagers may not seem like a problem, it is, in fact, harmful. The work that teenagers are engaged in today is not related to the work that they will do in their future careers.<sup>28</sup> Many teenagers, for example, currently work in the fast-food industry, although few of them plan future careers in restaurant management.<sup>29</sup> Teens employed in the restaurant

21. Theresa A. Amato, *Labor Rights Conditionality: United States Trade Legislation and the International Trade Order*, 65 N.Y.U. L. REV. 79, 81 (1990).

22. William E. Meyers, *Urban Working Children: A Comparison of Four Surveys from South America*, 128 INT'L LAB. REV. 321, 322 (1989).

23. Jo-Ann Mort, *Return of the Sweatshop*, 35 DISSENT 363, 363 (1988).

24. *Id.*

25. Linda Golodner, *The Children of Today's Sweatshops*, 73 BUS. & SOC. REV. 51, 52 (1990).

26. See generally LAWRENCE SHAMES, *THE HUNGER FOR MORE: SEARCHING FOR VALUES IN AN AGE OF GREED* (1991).

27. Lawrence Steinberg & Sanford M. Dornbush, *Negative Correlates of Part-Time Employment During Adolescence: Replication and Elaboration*, 27 DEVELOPMENTAL PSYCHOL. 304, 304 (1991). Today, between one-half and two-thirds of all high school juniors will hold jobs in the formal part-time labor force at anytime during the school year. Most students will have some school-year work experience prior to graduation. Over one-half of all employed high school seniors, and almost one-fourth of the juniors, will work more than twenty hours per week. *Id.*

28. ELLEN GREENBERGER & LAWRENCE STEINBERG, *WHEN TEENAGERS WORK* 64, 66 (1986).

29. *Id.* at 65.

business and other labor-intensive industries perform boring and routine tasks that do not increase their employment skills.<sup>30</sup> Furthermore, these jobs fail to place teens in situations where they interact with adults who could serve as mentors. Instead, they primarily work with other teenagers.<sup>31</sup>

The number of children in this exploited group is likely to continue to grow, unless there is some form of public intervention. As demographic forces continue to create a tight labor market, employers will try to fill jobs with younger workers.<sup>32</sup> Employers will tend to employ children whenever possible because of their docility, dexterity, and visual acuity.<sup>33</sup> Parents are also unlikely to stem the tide of working teens because they tend to encourage their children to be financially self-sufficient at an early age. They also tend to believe that working promotes maturity and responsibility.<sup>34</sup>

In summary, the problem of harmful child labor is actually two-fold: the poverty-stricken child is forced to work long hours or under hazardous conditions, and the exploited child worker works excessive hours in pursuit of an insatiable desire for material goods. The question is whether current legislation and policy are adequately addressing such problems.

### III. THE UNITED STATES' EXPERIENCE WITH THE REGULATION OF CHILD LABOR

Regulation of child labor in the United States began in the early 1900s.<sup>35</sup> By 1914, child labor committees existed in thirty-five states, and local committees were established in every major

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30. *Id.*

31. *Id.* at 88.

32. In a recent article in the *Washington Post*, the writer claimed that demographics were partially to blame for an increasing number of child labor violations, citing Census Bureau statistics that state that there were 1.2 million fewer sixteen- and seventeen-year-olds last year than in 1981. Specter, *supra* note 1, at A1. He also noted that the National Restaurant Association, desperate to replace its aging workforce, attempted to persuade the Labor Department to allow fourteen- and fifteen-year-olds to work during their school vacations and long weekends. *Id.*

33. Tanya Kucherov, *Exploitation of Children Widespread*, *ILO Reports*, 103 MONTHLY LAB. REV. 43, 44 (1980).

34. Researchers have found that working teens use their money to support a higher level of consumption than their parents would or could provide; thus, although working promotes responsibility, it is not necessarily a positive kind of responsibility. GREENBERG & STEINBERG, *supra* note 28, at 106.

35. Note, *Child Labor Laws—Time To Grow Up*, 59 MINN. L. REV. 575, 577 (1975).

industrial center.<sup>36</sup> Also, some type of child labor law had been enacted in forty states.<sup>37</sup> In 1938, the Fair Labor Standards Act ("FLSA"),<sup>38</sup> the federal law governing child labor, was enacted.<sup>39</sup> The FLSA was designed to eliminate oppressive child labor by placing limits on the ages of employment, the hours children work, and the type of work they perform.<sup>40</sup> In addition to this federal legislation, all fifty states and the District of Columbia have adopted child labor laws.<sup>41</sup>

Examination of the combined approach of federal and state regulations reveals that the United States basically follows the

36. *Id.*

37. *Id.*

38. 29 U.S.C. § 212 outlines these child labor provisions as follows:

(a) No producer, manufacturer, or dealer shall ship or deliver for shipment in commerce any goods produced in an establishment situated in the United States in or about which within thirty days prior to the removal of such goods therefrom any oppressive child labor has been employed: *Provided*, That any such shipment or delivery for shipment of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer, manufacturer, or dealer that the goods were produced in compliance with the requirements of this section, and who acquired such goods for value without notice of any such violation, shall not be deemed prohibited by this subsection: *And provided further*, That a prosecution and conviction of a defendant for the shipment or delivery for shipment of any goods under the conditions herein prohibited shall be a bar to any further prosecution against the same defendant for shipments or deliveries for shipment of any such goods before the beginning of said prosecution.

(b) The Secretary of Labor or any of his authorized representatives, shall make all investigations and inspections under section 211(a) of this title with respect to the employment of minors, and, subject to the direction and control of the Attorney General, shall bring all actions under section 217 of this title to enjoin any act or practice which is unlawful by reason of the existence of oppressive child labor, and shall administer all other provisions of this chapter relating to oppressive child labor.

(c) No employer shall employ any oppressive child labor in commerce or in the production of goods for commerce or in any enterprise engaged in commerce or in the production of goods for commerce.

29 U.S.C. § 212 (1988).

39. This was not Congress' first attempt to regulate child labor. A 1916 Act limiting the ability of employers to hire child laborers was struck down by the Supreme Court as unconstitutional in *Hammer v. Dagenhart*, 247 U.S. 251 (1918). A second, more circuitous law that imposed excise tax on goods manufactured by child labor was likewise struck down in *Baily v. Drexel Furniture Co.*, 259 U.S. 20 (1922). Finally, after the Great Depression, the Court became more willing to tolerate regulation of child labor, and the 1938 FLSA was upheld by the Supreme Court in *United States v. Darby*, 312 U.S. 100 (1940).

40. For specific provisions, see *infra* notes 44-50 and accompanying text.

41. Willis J. Norlund, *A Brief History of the Fair Labor Standards Act*, 39 LAB. L. J. 715, 724 (1988).

approach of the ILO.<sup>42</sup> Thus, the success of this approach in the United States provides the basis for projecting the impact of the ILO Conventions and for making recommendations to eliminate child labor worldwide.

Like the Recommendations and Conventions of the ILO, U.S. child labor laws focus on the ages of employees, the number of hours of work, the enforcement of minimum wages, and the elimination of hazardous employment. This Article will focus on the age of child laborers and their hours of work. The provisions of state and federal laws regulating these aspects of child labor will be summarized in the following sections.

While the FLSA has been amended six times since its enactment in 1938, the law regarding the age of employment has not changed.<sup>43</sup> From 1938 through the present, the FLSA has defined oppressive child labor as employment of a child under sixteen years of age, except employment of children between fourteen and sixteen years of age in nonmining, nonhazardous, nonmanufacturing occupations and under conditions that the Secretary of Labor determines do not interfere with their schooling or well-being.<sup>44</sup> For minors between the ages of sixteen and eighteen, the FLSA only prohibits work in nonagricultural occupations that are considered particularly hazardous or detrimental to their health or well-being.<sup>45</sup>

The FLSA does not absolutely prohibit the employment of children under sixteen. These children may work for a parent, or a person standing in place of a parent, during non-school hours in occupations declared nonhazardous for minors under the age of eighteen.<sup>46</sup> Moreover, children who are between the ages of fourteen and sixteen may be employed in agricultural occupations, as long as the work has not been declared hazardous for minors under eighteen and will be performed during non-school hours.<sup>47</sup> Two other areas of work permitted for children of any age are acting<sup>48</sup> and delivering newspapers to consumers.<sup>49</sup> Finally, an

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42. For a discussion of the ILO's approach, see *infra* part IV.

43. The amendments have raised the minimum wage rate and limited the power of the Act itself. Norlund, *supra* note 41, at 124.

44. 29 U.S.C. § 203(1) (1988).

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.* § 213(c)(3).



employer can apply to the Secretary of Labor for a waiver to employ children between ten and twelve years-old as hand harvest laborers during the summer.<sup>50</sup>

State regulations of employment hours vary widely, with most laws focused on keeping students from dropping out of school. When establishing the maximum daily and weekly hours and the maximum days per week for minors under sixteen years of age, several state legislatures have followed the FLSA and have distinguished periods when school is in session from those when students are not in school.<sup>51</sup>

In the majority of states, legislators typically limit the maximum number of hours a minor is allowed to work based on whether the work occurs during school periods.<sup>52</sup> During non-school periods, legislators restrict children under the age of sixteen to an eight-hour workday.<sup>53</sup> Some of these states that distinguish between school and non-school periods also limit the maximum

49. *Id.* § 213(d).

50. *Id.*

51. ALA. CODE § 25-8-1 (1986); ALASKA STAT. § 23 (1990); ARIZ. REV. STAT. ANN. § 23-231 (1983); CAL. LAB. CODE § 1285 (West 1971 & Supp. 1991); COLO. REV. STAT. ANN. § 80-12-101 (West 1990); FLA. STAT. ANN. § 450.011 (West 1981); GA. CODE ANN. § 39-2-1 (1991); HAW. REV. STAT. § 390-1 (1985); ILL. ANN. STAT. ch. 48, para. 31.1 (Smith-Hurd 1969 & Supp. 1986); IND. CODE ANN. § 20-8.1-4-1 (Burns 1985); IOWA CODE ANN. § 92.1 (West 1972); KY. REV. STAT. ANN. § 330.210 (Michie/Bobbs-Merrill 1986); LA. REV. STAT. ANN. § 23:151 (West 1985); ME. REV. STAT. ANN. tit. 26, § 771 (West 1988); MD. ANN. CODE art. 100, § 4 (1957); MICH. COMP. LAWS ANN. § 409.101 (West 1985); N.H. REV. STAT. ANN. § 276-A:1 (1987); N.J. STAT. ANN. § 34:2-21.1 (West 1988); N.Y. LAB. LAW §§ 130-141 (McKinney 1986); N.C. GEN. STAT. § 95-25.5 (1989); N.D. CENT. CODE § 34-07-01 (1987); OHIO REV. CODE ANN. § 4109.01 (Anderson 1991); PA. STAT. ANN. tit. 43, § 41 (1964 & Supp. 1991); S.C. CODE ANN. § 44-13-5 (Law. Co-op. 1976); TENN. CODE ANN. § 50-5-103 (1983 & Supp. 1990); VT. STAT. ANN. tit. 21, § 431 (1987); WASH. REV. CODE ANN. §§ 26.28.060 (West 1986), 49.12.121 (West 1990); WIS. STAT. ANN. § 103.64 (West 1988).

52. *See supra* note 51.

53. *See* ALA. CODE § 25-8-1 (1986); ARIZ. REV. STAT. ANN. § 23-231 (1983); CAL. LAB. CODE § 1285 (West 1971 & Supp. 1991); COLO. REV. STAT. ANN. § 80-12-101 (West 1990); GA. CODE ANN. § 39-2-1 (1991); HAW. REV. STAT. § 390-1 (1985); ILL. ANN. STAT. ch. 48, para. 31.1 (Smith-Hurd 1993); IND. CODE ANN. § 20-8.1-4-1 (Burns 1985); IOWA CODE ANN. § 92.1 (West 1972); KY. REV. STAT. ANN. § 330.210 (Michie/Bobbs-Merrill 1986); LA. REV. STAT. ANN. § 23:151 (West 1985); ME. REV. STAT. ANN. tit. 26, § 771 (West 1988); MD. ANN. CODE art. 101, § 4 (1957); N.H. REV. STAT. ANN. § 276-A:1 (1987); N.J. STAT. ANN. § 34:2-21.1 (West 1988); N.Y. LAB. LAW § 142 (McKinney 1986); N.C. GEN. STAT. § 95-25.5 (1993); N.D. CENT. CODE § 34-07-01 (McKinney 1987); OHIO REV. CODE ANN. § 4109.01 (Anderson 1991); S.C. CODE ANN. § 44-13-5 (Law. Co-op. 1976); TENN. CODE ANN. § 50-5-103 (1991); VT. STAT. ANN. tit. 21, § 431 (1987); WASH. REV. CODE ANN. §§ 26.28.060 (West 1986), 49.12.121 (West 1990).

number of hours per day that sixteen- and seventeen-year-olds may work when school is not in session.<sup>54</sup> The maximum daily hours allowed when school is out of session is typically nine<sup>55</sup> or ten.<sup>56</sup> When school is in session, most states place the maximum daily work hours for minors under the age of sixteen at three<sup>57</sup> or four.<sup>58</sup> Some state restrictions are based on the combined hours of work and school, and allow eight to ten hours as the maximum number of hours.<sup>59</sup> In states that do not distinguish between school and non-school periods, almost all limit the maximum daily hours for minors under age sixteen to eight hours.<sup>60</sup> Some states limit the hours for sixteen- and seventeen-year-olds to nine or ten hours per day.<sup>61</sup>

In sum, many states limit daily work hours for minors under age sixteen to eight hours. Some states place further restrictions by limiting these hours to a maximum of three per day when

54. *See, e.g.*, IND. CODE ANN. § 20-8.1-4-1 (Burns 1985); MICH. COMP. LAWS ANN. § 409.101 (West 1985); N.J. STAT. ANN. § 34:2-21.1 (West 1988).

55. *See, e.g.*, IND. CODE ANN. § 20-8.1-4-1 (Burns 1985).

56. *See, e.g.*, MICH. COMP. LAWS ANN. § 409.101 (West 1985); N.J. STAT. ANN. § 34:2-21.1 (West 1988).

57. *See* ALA. CODE § 25-8-1 (1986); ARIZ. REV. STAT. ANN. § 23-231 (1983); ILL. ANN. STAT. ch. 48, para. 31.1 (Smith-Hurd 1993); IND. CODE ANN. § 20-8.1-4-1 (Burns 1985); LA. REV. STAT. ANN. § 23:151 (West 1985); N.H. REV. STAT. ANN. § 276-A:1 (1987); N.J. STAT. ANN. § 34:2-21.1 (West 1988); N.Y. LAB. LAW § 142 (McKinney 1986); N.C. GEN. STAT. § 95.25.5 (1993); N.D. CENT. CODE § 34-07-01 (1987); OHIO REV. CODE ANN. § 4109.01 (Anderson 1991); S.C. CODE ANN. § 44-13-5 (Law. Co-op. 1976); TENN. CODE ANN. § 50-5-103 (1991); WASH. REV. CODE ANN. §§ 26.28.060 (West 1986), 49.12.121 (West 1990).

58. *See* CAL. LAB. CODE § 1285 (West 1971 & Supp. 1991); FLA. STAT. ANN. § 450.011 (West 1981); GA. CODE ANN. § 39-2-1 (1991); IOWA CODE ANN. § 92.1 (West 1972); ME. REV. STAT. ANN. tit. 26, § 771 (West 1988); MD. ANN. CODE art. 100, § 4 (1957); PA. STAT. ANN. tit. 43, § 41 (1992).

59. *See, e.g.*, ALASKA STAT. § 23.10.325 (1990) (nine hours); HAW. REV. STAT. § 390-1 (1985) (ten hours).

60. ARK. CODE ANN. § 11-6-108 (Michie 1987); CONN. GEN. STAT. ANN. § 31-13 (West 1987); DEL. CODE ANN. tit. 19, § 501 (1985); IDAHO CODE § 44-1301 (1947 & Cum. Supp. 1977); KAN. STAT. ANN. § 38-603 (1986); MINN. STAT. § 181A.04 (1993); MISS. CODE ANN. § 71-1-17 (1973); MO. ANN. STAT. § 294.011 (Vernon 1965 & Cum. Supp. 1991); MONT. CODE ANN. § 41-2-101 (1993); NEB. REV. STAT. § 48-302 (1988); NEV. REV. STAT. § 609.190 (1992); N.M. STAT. ANN. § 50-6-1 (Michie 1988); OKLA. STAT. ANN. tit. 40, § 71 (West 1986); OR. REV. STAT. § 653.305 (1989); R.I. GEN. LAWS § 28-3-1 (1986); S.D. CODIFIED LAWS ANN. § 60-12-1 (1978); TEX. REV. CIV. STAT. ANN. art. 5181.1 5a (West 1987); VT. STAT. ANN. tit. 21, § 341 (1987); VA. CODE ANN. § 40.1-78 (Michie 1990); W. VA. CODE § 21-6-1 (1989); WYO. STAT. § 27-6-107 (1977).

61. *See, e.g.*, ARK. CODE ANN. § 11-6-110 (Michie 1987) (ten hours); VT. STAT. ANN. tit. 21, § 431 (1987) (nine hours).

school is in session. States tend to be more lenient with sixteen- and seventeen-year-olds, either placing no limits on them or allowing them to work more hours than minors under sixteen years of age.

Most states also regulate the maximum weekly hours for minors under age sixteen. In states that distinguish between school and non-school periods,<sup>62</sup> it is typical for the legislature to determine that minors under the age of sixteen may work forty hours per week when school is not in session, and eighteen hours per week during school periods.<sup>63</sup> Some states allow minors who are not in school to work forty-eight hours per week.<sup>64</sup>

For states that do not distinguish school and non-school periods, the typical maximum work hours per week for minors under age sixteen are either forty<sup>65</sup> or forty-eight.<sup>66</sup> Some states allow sixteen- or seventeen-year-olds to work up to fifty-four hours per week, even when school is in session.<sup>67</sup>

All states place some limits on night work for minors under age sixteen,<sup>68</sup> although their provisions vary considerably. Some states prohibit night work only during the school year,<sup>69</sup> while the more protective states prohibit all work from nine o'clock in the evening to seven o'clock in the morning, even when school is not in session.<sup>70</sup> Several states place no restrictions on the night work

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62. See sources cited *supra* note 51.

63. See, e.g., ALA. CODE § 25-8-1 (1986); ARIZ. REV. STAT. ANN. § 23-231 (1983); KY. REV. STAT. ANN. § 330.210 (Michie/Bobbs-Merrill 1986); N.C. GEN. STAT. § 95-25.5 (1989); OHIO REV. CODE ANN. § 4109.01 (Anderson 1991).

64. See, e.g., CAL. LAB. CODE § 1285 (West 1971 & Supp. 1991); ILL. ANN. STAT. ch. 48, para. 31.1 (Smith-Hurd 1993); IND. CODE ANN. § 20-8.1-4-1 (Burns 1985); ME. REV. STAT. ANN. tit. 26, § 771 (West 1988); N.D. CENT. CODE § 34-07-01 (1987).

65. See, e.g., KAN. STAT. ANN. § 38-603 (1986); MINN. STAT. ANN. § 181A.04 (West 1993); MO. ANN. STAT. § 294.011 (Vernon 1965 & Cum. Supp. 1991); S.D. CODIFIED LAWS § 60-12-1 (1993).

66. See, e.g., ARK. CODE ANN. § 11-6-108 (Michie 1987); DEL. CODE ANN. tit. 19, § 501 (1985); NEB. REV. STAT. § 48-302 (1988); NEV. REV. STAT. ANN. §609.190 (Michie 1992); OR. REV. STAT. § 653.305 (1989); TEX. REV. CIV. STAT. ANN. art. 5181.1, § 5(a) (West 1987); VT. STAT. ANN. tit. 21, § 431 (1987).

67. See, e.g., ARK. STAT. ANN. § 11-6-110 (Michie 1987); IDAHO CODE § 44-1301 (1947 & Cum. Supp. 1977); WYO. STAT. § 27-6-101 (1977) (56 hours); VT. STAT. ANN. tit. 21, § 431 (1987) (50 hours).

68. See generally MINN. STAT. § 181A.01 (1974); N.H. REV. STAT. ANN. § 276-A:1 (1987); COLO. REV. STAT. ANN. § 80-12-101 (West 1990).

69. See, e.g., COLO. REV. STAT. ANN. § 80-12-101 (West 1990).

70. See, e.g., MINN. STAT. § 181A.01 (1974); N.H. REV. STAT. ANN. § 276-A:1 (1987).

of sixteen- and seventeen-year-olds,<sup>71</sup> while others enact regulations that reflect a concern that students should not perform night work.<sup>72</sup>

Recently, some states have demonstrated increasing concern for the academic performance of working minors.<sup>73</sup> For example, the New Hampshire legislature amended its Youth Employment law to require a satisfactory level of academic achievement before the state can issue a work certificate.<sup>74</sup> If the working minor does not maintain a satisfactory level of academic achievement, the state must revoke the certificate.<sup>75</sup> The New Hampshire legislature also placed restrictions on the number of hours that sixteen- and seventeen-year-olds may work during the school week.<sup>76</sup> The state also created a committee to study the relationship between academic achievement and work.<sup>77</sup>

Thus, the United States, through the FLSA and state laws, has adopted various restrictions to prevent the exploitation of child labor. The following section considers whether these laws enacted in the United States are consistent with ILO guidelines.

#### IV. THE INTERNATIONAL LABOR ORGANIZATION

##### A. *The ILO's Approach to Child Labor*

From its very inception, the ILO has advocated the regulation and ultimate eradication of child labor.<sup>78</sup> In the Preamble to its Constitution, the ILO calls for the protection of children and young persons.<sup>79</sup> The ILO's approach is threefold. First, the

71. See, e.g., GA. CODE ANN. § 39-2-1 (1991); IDAHO CODE § 44-1301 (1947 & Cum. Supp. 1977); LA. REV. STAT. ANN. § 23:151 (West 1985); MINN. STAT. § 181.A01 (1974); N.D. CENT. CODE § 34-07-01 (1987); VT. STAT. ANN. tit. 21, § 431 (1987).

72. See, e.g., FLA. STAT. ANN. § 450.011 (West 1981); KAN. STAT. ANN. § 38-601 (1986); N.J. STAT. ANN. § 34:2-21.1 (West 1988); N.Y. LAB. LAW §§ 130-141 (McKinney 1986); N.C. GEN. STAT. § 95-25.5 (1989); PA. STAT. ANN. tit. 43, § 41 (1964 & Supp. 1991); TENN. CODE ANN. § 50-5-103 (1983 & Supp. 1990).

73. See Richard R. Nelson, *State Labor Legislation Enacted in 1989*, 113 MONTHLY LAB. REV. 35 (1990) [hereinafter 1989 *Legislation*]; see also 28 RICHARD R. NELSON, THE BOOK OF THE STATES 449 (1990-91) [hereinafter THE BOOK OF THE STATES].

74. 28 THE BOOK OF THE STATES, *supra* note 73, at 449.

75. *Id.*

76. *Id.*

77. *Id.*

78. INTERNATIONAL LABOR ORGANIZATION, CHILD LABOR AND THE ILO 1 (1989) [hereinafter THE ILO].

79. *Id.*

organization attempts to document the nature, extent, and causes of harmful child labor.<sup>80</sup> Second, based on its research, the ILO adopts conventions that member nations are encouraged to sign and implement as law in their countries.<sup>81</sup> Third, the ILO attempts to formulate and implement practical policies and programs to combat child labor.<sup>82</sup>

The primary element of the ILO's work for the abolition of child labor has been its standard-setting work.<sup>83</sup> Since 1919, the ILO has passed a series of conventions<sup>84</sup> and recommendations<sup>85</sup> dealing with the employment of children.

The main subject of ILO standards has been the minimum-age requirement for employment. The most recent comprehensive Minimum Age Convention of 1973 (No. 138)<sup>86</sup> basically prohibits wage employment of children under the age of thirteen.<sup>87</sup>

Convention No. 138 was supplemented by Minimum Age Recommendation 1973 (No. 146), which seeks to define certain

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80. *Id.* at 3-4.

81. *Id.* at 2.

82. *Id.* at 2-3.

83. *Id.*

84. Conventions are comparable to multilateral international treaties. Once they are ratified by member states, they create binding obligations. Prior to ratification, a convention is treated as a recommendation. Once ratified, however, the member states are expected to pass necessary laws to implement the convention. The government of each ratifying state is expected to report regularly on the implementation of the convention.

85. The recommendation serves as a guideline for the states. Member states are expected to submit the texts of the recommendation to their legislative bodies for adoption, and report to the governing body of the ILO regarding progress with respect to implementation of the recommendation. There are, however, no substantive obligations entailed.

86. Prior to Convention No. 138, ten conventions pertaining to minimum age had been adopted. These conventions include the following: Minimum Age (Industry) Convention, 1919 (No. 5); Minimum Age (Sea) Convention, 1920 (No. 7); Minimum Age (Agriculture) Convention, 1921 (No. 10); Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15); Minimum Age (Non-Industrial Employment) Convention, 1932 (No. 60); Minimum Age (Sea) Convention (Revised), 1936 (No. 58); Minimum Age (Industry) Convention (Revised), 1937 (No. 59); Minimum Age (Non-Industrial Employment) Convention (Revised), 1937 (No. 60); Minimum Age (Fisherman) Convention, 1959 (No. 112); and Minimum Age (Underground Work) Convention, 1965 (No. 123). *The Emerging Response to Child Labor*, 1 CONDITIONS WORK DIG. 69 (1988).

87. Article 6 of Convention No. 138 excludes from the Convention's regulation work done by children in vocational or training programs. *Id.* at 32. In addition, Article 7 states that national laws may permit the employment of youths aged thirteen to fifteen for light work that is not likely to be harmful to their health or development and not likely to prejudice their attendance at school. *Id.*

policy elements related to child labor.<sup>88</sup> First, this recommendation sets a national policy by stating that policy makers should give high priority to meeting the needs of children by extending economic or social measures to alleviate poverty, developing social security and family welfare measures, and ensuring appropriate education and vocational training.<sup>89</sup> The recommendation also states that national law should require and effectively ensure full-time attendance at school or vocational training up to the minimum age for employment.<sup>90</sup>

Second, the recommendation focuses on the minimum age requirement for employment. The recommendation sets the uniform minimum-age for employment at sixteen, and it urges lawmakers to take urgent steps to raise the age limit to fifteen in places where the minimum age for employment is presently below fifteen years.<sup>91</sup> The recommendation also emphasizes that the minimum age for hazardous employment, such as that involving dangerous substances, the lifting of heavy weights, or underground work should be set at eighteen years.<sup>92</sup>

Third, the recommendation emphasizes satisfactory conditions of employment for children. The recommendation states that employers of children should limit work hours and prohibit overtime to ensure adequate time for school, homework, leisure, and rest.<sup>93</sup> For instance, laws should grant a minimum of twelve consecutive hours for rest per night, adequate medical care, and proper safety and health standards.<sup>94</sup>

Finally, the recommendation suggests that lawmakers should enforce these standards by strengthening labor inspections to detect abuses of child employment.<sup>95</sup> Public authorities should maintain a system of birth registration and require employers to keep birth records of their employees.<sup>96</sup>

The ILO also makes recommendations regarding night work. Night Work of Children and Young Persons (Agricultural)

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88. 56 ILO Official Bull., No. 1, at 34-37 (1973).

89. *Id.* at 34.

90. *Id.*

91. *Id.* at 35.

92. *Id.*

93. *Id.* at 36.

94. *Id.* at 35.

95. *Id.* at 36.

96. *Id.*

Recommendation, 1921 (No. 14) suggests that member nations regulate the agricultural night work of children to ensure a period of rest compatible with their physical needs, and consisting of not less than ten consecutive hours for those under age fourteen, and not less than nine consecutive hours for those aged fourteen through eighteen.<sup>97</sup> For non-industrial occupations, the ILO recommends that youths under age fourteen, and youths over age fourteen who are still subject to compulsory full-time schooling, be prohibited from working at night during a period of at least fourteen consecutive hours, including the interval between eight o'clock in the evening and eight o'clock in the morning.<sup>98</sup>

Additional conventions and recommendations focus primarily on safe working conditions for youths, sometimes ensuring their safety by raising the minimum age for youths in hazardous occupations.<sup>99</sup>

## V. ANALYSIS

Like most other industrialized nations, the United States has followed the basic guidelines of the ILO in setting minimum age restrictions for young workers. As previously detailed, these restrictions place fewer limitations on lighter work and restrict the number of hours per week that young people can work.<sup>100</sup>

Whether these restrictions have succeeded in abolishing child labor related to poverty is unclear. Initially, the new standards

97. 4 ILO Official Bull., No. 22, at 492-93 (1991).

98. Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 79).

99. These conventions include the following: Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16); Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77); Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78); Medical Examination of Young Persons (Underground Work) Convention, 1965 (No. 124); Medical Examination of Young Persons Recommendation, 1946 (No. 79); Conditions of Employment of Young Persons (Underground Work) Recommendation, 1965 (No. 125); White Lead (Painting) Convention, 1921 (No. 13), art. 3, para. 1; Radiation Protection Convention, 1960 (No. 115), art. 7; Social Policy (Non-Metropolitan Territories) Convention, 1947 (No. 82), art. 19; Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117), art. 15; Maximum Weight Convention, 1967 (No. 127), art. 7; Benzene Convention, 1971 (No. 136), art. 11, para. 2; Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152), art. 38, para. 2; Lead Poisoning (Women and Children) Recommendation, 1919 (No. 4), paras. 1, 2; and Unemployment (Young Persons) Recommendation, 1935 (No. 45), para. 1. *The Emerging Response to Child Labor*, *supra* note 86, at 70.

100. See discussion *supra* part III.

succeeded in reducing the number of child laborers; however, the reduction was not solely the result of child labor legislation. Laws designed to help eradicate poverty, such as social welfare programs providing food stamps and supplemental income payments,<sup>101</sup> have reduced the need for children to work to provide for their families, and have, therefore, helped to reduce the number of child laborers.

There appears to be a correlation between the number of families in poverty and the number of child labor law violations. An analysis of the increase in the number of families living in poverty since the Reagan Administration came into power<sup>102</sup> reveals a corresponding increase in the number of poor children engaging in harmful child labor.<sup>103</sup>

This correlation indicates that, in order to eradicate child labor, the level of poverty must be reduced because minimum-age standards alone are insufficient.<sup>104</sup> Without social programs to help reduce poverty, the passage of minimum-age laws alone cannot end harmful child labor.

Examination of the U.S. regulation of child labor reveals another important factor in reducing child labor: enforcement. Although the enactment of laws provides a foundation to protect children in the work area, these laws will fail to make an impact if they are not enforced. Yet, in the United States, enforcement is not easy, and there has been a significant increase in the number of illegally employed children since the 1970s.<sup>105</sup> This increase resulted from a government policy shift toward greater freedom for business and less stringent enforcement of existing regulations.

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101. For a history of U.S. welfare programs, see *Evolution of Federal Welfare Programs*, 67 CONG. DIG. 34 (1988).

102. See David Whitman, *The Rise of the Hyper Poor*, 109 U.S. NEWS & WORLD REP. 40, 40 (1990).

103. Golodner, *supra* note 25, at 54.

104. Researchers have noted that poverty is an important factor affecting the existence of harmful child labor. See, e.g., Beguele & Boyden, *supra* note 8, at 12.

105. According to the General Accounting Office, the number of children illegally employed was almost 22,500, up from 9200 in 1983, and far above the 1970 level. Golodner, *supra* note 25, at 51. Many of these violations resulted from the increased number of illegal sweatshops, which some believe are partially attributable to Bush-Reagan policies of deregulation of homework and less stringent enforcement of child labor laws. *Id.*



Harmful child labor occurs not only in the United States<sup>106</sup> but also in other countries engaging in illegal operations,<sup>107</sup> and most countries lack effective mechanisms to enforce their child labor laws. In the Philippines, for example, there are fewer than 200 inspectors nationwide for almost 400,000 employers.<sup>108</sup> Enforcement of child labor laws in the Philippines is also difficult because the enforcement division is not accountable to the body responsible for the formulation and implementation of child labor policy.<sup>109</sup>

To complicate matters further, while governments have effectively abolished illegal child labor in areas where employment is highly regulated, illegal child labor has flourished in informal sectors such as sweatshops and agriculture.<sup>110</sup> The passage of stringent child labor laws forces child labor "underground."<sup>111</sup> In India, for example, work previously done in factories is now subcontracted to small firms or cottage-based production units that are excluded from the regulations.<sup>112</sup> This is similar to the situation in the U.S. garment industry. Garment manufacturers subcontract work to smaller, informal subcontractors because the manufacturers are not liable for the misdeeds of the subcontractors.<sup>113</sup> Thus, the passage of child labor laws is only the initial solution.

While the passage of recommendations and conventions is important for the eradication of child labor, the enactment of legislation alone is insufficient to reduce the problem of poverty-related harmful child labor. These laws must be accompanied by their adequate enforcement, a government dedicated to the eradication of child labor, and programs to reduce the need for child labor. The countries with the greatest amount of harmful child labor also have the greatest level of poverty.

Unfortunately, the U.S. experience demonstrates that reduction in poverty-driven child labor will not totally eliminate the problem. The second category of harmful child labor,

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106. Mort, *supra* note 23, at 363.

107. Beguele & Boyden, *supra* note 8, at viii.

108. *Id.* at 12.

109. *Id.*

110. *The Emerging Response to Child Labor*, *supra* note 86, at 13.

111. Beguele & Boyden, *supra* note 8, at 5.

112. *Id.* at 13.

113. Mort, *supra* note 23, at 363.

involving children who work in pursuit of luxuries, is an unavoidable consequence of a country's increasing affluence. As a nation becomes increasingly affluent, the line between necessities and luxuries becomes difficult to distinguish.<sup>114</sup> Understandably, that line is especially blurred for children in their teenage years.

The child labor laws promulgated in the United States and encouraged by the ILO contain very few work restrictions on children above the age of sixteen, as long as the activity is not hazardous.<sup>115</sup> Although work in many states is restricted to non-school periods,<sup>116</sup> children who are sixteen years of age or older are permitted to work.<sup>117</sup> As Mario Cuomo, the Governor of New York, stated: "Young people who spend more time flipping burgers and stacking boxes than preparing for a meaningful career may be hindering their own futures, and the future of this country."<sup>118</sup> The ILO permits teenagers to place work as a priority,<sup>119</sup> thus allowing them to neglect their education and opportunities to pursue a long-term career.

Neither the ILO recommendations and conventions nor the child labor laws of the United States adequately address the second category of harmful child labor in which teens work in pursuit of luxury items. While this oversight may now be a problem only for industrialized nations, other countries will also face this problem as they become more industrialized. Therefore, the ILO should also address this category of child labor.

The State of New York has enacted some child labor law provisions that address this form of child labor. This law is the first in the country to require schools to give written permission before a sixteen- or seventeen-year-old student may work after ten o'clock in the evening on school nights.<sup>120</sup> Students are limited to twenty-eight hours of work per school week.<sup>121</sup> Furthermore, the New York statute mandates much stricter penalties for violating the law.<sup>122</sup> Clearly, child labor laws need to be revised

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114. Steinberg & Dornbush, *supra* note 27, at 304.

115. See *supra* notes 57-77 and accompanying text.

116. See *supra* note 51 and accompanying text.

117. See *supra* note 64 and accompanying text.

118. *New Law Limits Teen Work Hours*, POST-STANDARD, Aug. 22, 1991, at B8.

119. See THE ILO, *supra* note 78, at 32.

120. N.Y. LAB. LAW § 143.1(C) (McKinney 1994).

121. *Id.*

122. N.Y. LAB. LAW § 142.1(C) (McKinney 1994) (providing a penalty of up to \$1000 for the first child labor violation, \$2000 for the second violation, and \$3000 for the third

to place greater restrictions on the ability of teenagers to work excessive hours. These restrictions can be accomplished only through stringent prohibitions on the number of hours that teens may work and by enforcement of those prohibitions. These laws must be accompanied by severe penalties and an effective enforcement mechanism.

## VI. CONCLUSION

Despite the ILO's emphasis on abolishing harmful child labor, this problem remains pervasive in both industrialized and developing nations. Often, as an undeveloped nation becomes more industrialized and affluent, the number of children working out of necessity may diminish, only to be replaced by another equally harmful form of child labor—children who choose to work to obtain extra income. Due to the vast number of child labor violations, a concerted effort by governments is required to protect working children.

The ILO's conventions and recommendations provide a strong foundation to eliminate the exploitation of child labor. These laws, however, will fail to eliminate harmful child labor unless they accomplish the following: (1) ratification of more stringent conventions to regulate the work of older teens, (2) universal adoption of effective enforcement procedures, and (3) implementation of social programs to reduce poverty. The successful achievement of these goals requires the commitment and active cooperation of employers, employee organizations, lawmakers, and the world community as a whole.