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ECONOMIC EXPLOITATION OF CHILDREN: A EUROPEAN PERSPECTIVE

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INTRODUCTION

It is a well-recognized fact that child labour, certainly in its worst forms, is an enormous problem faced by the world's developing countries where, according to recent International Labour Organisation (ILO) estimates, 206 million children under 14 years are economically active.¹ The perception of the problem as involving children who work long hours weaving rugs or stitching footballs in countries like Pakistan or Guatemala, or working as prostitutes servicing the child sex tourism trade in South-East Asia is popular if distorted.² What is certain is that the enormity of the problem in developing countries is real. However, it is a misconception surrounding child labour that the phenomenon is confined to the developing world and does not affect children in industrialised or developed countries. In its Global Report for 2002, the ILO acknowledges that "contrary to popular opinion, child labour is not confined to developing or poor countries: it is found in all countries, to a greater or less extent."³ Thus, while it is acknowledged that the problem of child labour is 'most critical in developing countries' it is established that the economic exploitation of children prevails in Europe too, both in the transition economies in Central and Eastern Europe and in the relatively rich countries of the European Union. That this is so, despite the EU's economic success and the fact that social cohesion, implying respect for core labour standards, underpins the region's strategic economic and social policy objectives

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1. INTERNATIONAL LABOUR ORGANIZATION [hereinafter ILO], A FUTURE WITHOUT CHILD LABOUR: GLOBAL REPORT UNDER THE FOLLOW-UP TO THE ILO DECLARATION ON FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK para. 53 (2002).

2. According to the ILO, it is estimated that only five per cent of child labourers work in formal-economy, exported related jobs, and commercial sexual exploitation of children is dominated by local rather than by foreign customers. *Id.* para 66.

3. *Id.* para 65.

illustrates the complexity of the child labour issue.⁴ While, admittedly, Europe's children do not face the same life-threatening intensity of economic exploitation faced by children across the developing world, the problem of child labour in one of the world's wealthier regions demands closer analysis for at least two reasons. First, the protection of fundamental rights and freedoms is one of the EU's essential objectives.⁵ In this context, it is vital that alongside its economic success, the EU is able to celebrate in its economy the existence of the highest achievable labour standards, and the absence of economic exploitation, particularly of children. Second, the EU has substantial weight as a political and economic player with global diplomatic reach to promote human rights and labour standards via trade agreements and the conduct of international relations. However, if it is to use this influence effectively, the EU member states must be able to point to similarly high standards of protection at regional and national levels.

In the light of these two considerations, this paper seeks to consider the economic exploitation of children from a European perspective. It details the applicable international and European child labour standards, considers compliance with those standards in Europe, and evaluates the extent to which European states can impose those standards on third countries to achieve the elimination of child labour globally.

INTERNATIONAL STANDARDS ON THE ECONOMIC EXPLOITATION OF CHILDREN

UN Convention on the Rights of the Child

The most highly ratified international standard on children's rights is the 1989 UN Convention on the Rights of the Child (CRC).⁶ This treaty enjoys

4. See Treaty of Amsterdam Amending The Treaty on European Union, The Treaties Establishing The European Communities and Certain Related Acts, Oct. 2, 1997, Title XI, ch. 1, art. 136, O.J. (C340) 1 (1997) [hereinafter Treaty of Amsterdam]. Article 136 acknowledges, *inter alia*, the objectives of promoting employment, improved living and working conditions and proper social protection.

5. *Id.* Title I, art. 6 (confirms that the EU is "founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles that are common to the member states." It also requires that respect for these principles is required by countries applying for EU membership.); Treaty of Nice Amending the Treaty of the European Union, The Treaties Establishing the European Community, and Certain Related Acts, Feb. 26, 2001, art. 7, O.J. (C 80) 1 (2001) [hereinafter Treaty of Nice] (provides that the Council may sanction serious and persistent breaches of human rights by the EU Member states in certain circumstances by suspending their rights under the Treaty).

6. See generally OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, STATUS OF RATIFICATION OF THE PRINCIPLE INTERNATIONAL HUMAN RIGHTS TREATIES (2002) (listing the countries that have ratified the 1989 UN Convention on Human Rights of the Child) at <http://www.unhchr.ch/html/menu3/b/K2crc/htm>.

almost universal ratification, with the notable exception of the United States, and it has been ratified by all European states in both the European Union⁷ and the Council of Europe.⁸ Instead of the ILO concept of ‘child labour,’⁹ the CRC prohibits ‘economic exploitation’ of children. According to its treaty monitoring body, the Committee on the Rights of the Child, the term ‘economic’ implies the idea of a certain gain or profit through the production, distribution and consumption of goods and services.¹⁰ ‘Exploitation’ means taking unjust advantage of another for one’s own advantage or benefit, including situations of manipulation, misuse, abuse, victimisation, oppression or ill-treatment.¹¹ Article 32 of the Convention recognises that every child has the right to be protected from such exploitation.¹² It also provides that children should not perform any work that is likely to be hazardous, which interferes with the child’s education, or is harmful to the child’s health or physical, mental, spiritual, moral or social development.¹³ The Convention thus prohibits work that is harmful in the general sense, as well as work that is exploitative in nature. Furthermore, under Article 32(2) states are required to undertake legislative, administrative, social and educational measures to ensure the implementation of the provision and to this end, shall provide for a minimum age for admission to employment, appropriate regulation of the hours and conditions of work and appropriate penalties or other sanctions to ensure effective enforcement of the provision.¹⁴ States are required to take all

7. The EU currently has 15 member states including Austria, Finland, Ireland, the United Kingdom, Spain, Portugal, Greece, France, Germany, the Netherlands, Luxembourg, Belgium, Italy, Denmark, and Sweden. See EUROPA, THE EUROPEAN UNION AT A GLANCE (2003) at http://europa.eu.int/abc/eu_members/index_en.htm (last visited Apr. 30, 2003).

8. The membership of the Council of Europe, the wider political organization set up in 1949 to promote human rights in Europe, is currently 44 states. Membership includes all EU member states as well as additional states from the European regions of Scandinavia, the Balkans, Central and Eastern Europe. See COUNCIL OF EUROPE, A SHORT HISTORY OF THE COUNCIL OF EUROPE (2003) at <http://www.echr.coe.int>.

9. Child labour has been defined by the ILO as “any work, which by its nature or employment conditions is detrimental to a child’s physical, mental, moral, social or emotional development.” GLOBAL MARCH AGAINST CHILD LABOUR, OUT OF THE SHADOWS: GLOBAL REPORT ON THE WORST FORMS OF CHILD LABOUR, (2002) at <http://www.globalmarch.org/worstformsreport/world/definitions.html>.

10. *Statement by Mrs. Marta Santos Pais, General Day of Discussion: Economic Exploitation of Children*, U.N. GAOR, 4th Sess., Annex V, U.N. Doc. CRC/C/20 (1993).

11. *Id.*

12. Convention on the Rights of the Child, *adopted* November 20, 1989, art. 32, 1577 U.N.T.S. 43 (entered into force Sept. 2, 1990) [hereinafter CRC or Convention].

13. *Id.* art. 3. Article 3 of the Convention, which requires that the best interests of the child is a primary consideration in all matters concerning the child, is also relevant here given that no form of exploitation or child labour can ever be said to be in a child’s best interests.

14. *Id.* art. 32.

necessary measures required to implement the ban in Article 32 and to provide effective mechanisms for its enforcement.¹⁵

Compliance with Article 32 CRC by European States

To identify the level of European states' compliance with these standards it is necessary to look at the concluding observations of the Committee on the Rights of the Child, the body which considers periodic state reports on implementation.¹⁶

Overall, what emerges is that despite the Committee's guidelines requesting information on the implementation of all Convention provisions, many of the reports submitted to the body of experts by European states fail to address the issue of economic exploitation of children under Article 32 in a complete manner, or at all. For example, the second periodic report of Belgium makes no reference at all and the second periodic reports of the UK, Poland and Norway only briefly address the problem of child labour.¹⁷ The Report of Finland even asserts that "in general . . . there is no exploitation of children within the meaning of Article 32 of the Convention in Finland."¹⁸ In the case of state reports which address the child labour issue, many, like Denmark and the Czech Republic, do so without any reference to quantitative

15. *Id.*

16. *Id.* art. 44. The Committee on the Rights of the Child has responsibility under Article 44 of the Convention for monitoring implementation of the Convention's standards. States must submit a report on the measures taken to implement the Convention within two years of ratification and thereafter every five years. Following its consideration of the Report, the Committee issues its Concluding Observations on the measures states need to take to give further effect to the Convention in national law, policy and practice. *See also*, U.N. HIGH COMMISSIONER FOR HUMAN RIGHTS [hereinafter UNHCHR] (all of the Committee's documentation is available on the UNHCHR's website at <http://www.unhchr.ch>).

17. For example, the following reports make no reference at all to the problem of child labour: *Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Second Periodic Reports of States Parties due 1998: UK and Northern Ireland*, U.N. Committee on the Rights of the Child, UN Doc CRC/C/83/Add.3 (25 Feb. 2002); *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Second Periodic Reports of States Parties due 1998: Poland*, U.N. Committee on the Rights of the Child, U.N. Doc. CRC/C/70/Add.12 (6 Feb. 2002); *Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Second Periodic Reports of States Parties due 1998: Belgium*, U.N. Doc. CRC/C/83/Add.2 (25 Oct. 2000); *Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Second Periodic Reports of States Parties due 1998: Norway*, U.N. Doc. CRC/C/70/Add.2 (12 Nov. 1998).

18. *Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Second Periodic Reports of States Parties due 1998: Finland*, U.N. Committee on the Rights of the Child, para. 278, U.N. Doc CRC/C/70/Add.3 (18 Nov. 1998).

data,¹⁹ despite the Committee's Reporting Guidelines stressing the importance of statistical data to the task of monitoring implementation.²⁰ Not all reports are inadequate, however, and some states do, refreshingly, acknowledge the existence of the problem of economic exploitation of children, despite the absence of statistics identifying its extent. The Turkish Report, for example, states that 'children under the age of 13 are in work despite the fact that their employment is forbidden'.²¹ The Report of the Russian Federation goes further in acknowledging both the lack of statistics and the need for human rights bodies and the Russian Labour Inspectorate to be more active in this area.²² Only the reports of Italy, Greece and Portugal attempt to highlight the scale of child labour in their countries. According to the Italian report, 300,000 children work illegally under age or in violation of health and safety laws.²³ The Greek report provides data on the number of children working (estimated at nearly 0.5 million in 1995) and also provides statistics on the age distribution in employment, and distribution by branch of economic activity,

19. See *Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Second Periodic Reports of States Parties due 1998: Denmark*, U.N. Committee on the Rights of the Child, paras. 223-31, U.N. Doc CRC/C/70/Add.6 (31 Mar. 2000); *Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Second Periodic Reports of States Parties due 1999: Czech Republic*, U.N. Committee on the Rights of the Child, paras. 316-317 U.N. Doc CRC/C/83/Add.4 (17 June 2002); *Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Second Periodic Reports of States Parties due 1999: Spain*, U.N. Committee on the Rights of the Child, paras. 1483-97, U.N. Doc CRC/C/70/Add.9 (12 Nov 2001).

20. *General Guidelines Regarding the Form and Contents of Periodic Reports to be Submitted by States Parties Under Article 44, Paragraph 1 (b), of the Convention*, U.N. CRC, 13th Sess., 343rd mtg., paras. 7, 154, UN Doc CRC/C/58 (1996) (Paragraph 7 describes generally what needs to be submitted. Paragraph 154 describes specifically the type and amount of child labour data required in the reports).

21. *Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Initial Reports of States Parties due 1997: Addendum Turkey*, U.N. Committee on Rights of the Child, para. 523, U.N. Doc CRC/C/51/Add.4 (8 Aug. 2000).

22. *Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Second Periodic Reports of States Parties due 1997: Russian Federation*, U.N. Committee on the Rights of the Child, para. 451, U.N. Doc. CRC/C/65/Add.5 (22 Nov. 1998) (the Report also recognizes the need to strengthen sanctions against exploiting employers in order to tackle the problem).

23. *Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Second Periodic Reports of States Parties due 1998: Italy*, U.N. Committee on the Rights of the Child, paras. 329-43, U.N. Doc CRC/C/70/Add.13 (12 July 2002) (this report also breaks down violations of the minimum age for employment by region and nature of employer). *Id.* at 11 (this figure was estimated at 400,000 in 2001). See PETER DORMAN, CHILD LABOUR IN THE DEVELOPED ECONOMIES, INT'L PROGRAMME ON THE ELIMINATION OF CHILD LABOUR, INT'L LABOR OFFICE 32 (2001).

albeit from 1992.²⁴ The Portuguese report contains disaggregated data showing the changes in the child labour situation between 1990 and 1996 and also details in a quantitative manner the work carried out by the General Labour Inspectorate.²⁵ Although these figures show the number of children under 15 years old in employment has fallen from 300 in 1990 to 121 in 1996, the Report highlights that child labour in Portugal has seen a steady shift towards family-centred or home-based work “thereby intensifying the clandestine nature of that kind of work and making it more difficult to detect.”²⁶

The lack of statistical data in Reports to the Committee and the use of old data appears to confirm that many European states do not have effective systems of data collection to allow them to identify the scope of the problem of child labour there. While the Committee on the Rights of the Child has not consistently identified the lack of statistics in this area as an issue of concern,²⁷ in 2002 it recommended to both Greece and Spain that they collect and maintain precise, up-to-date data on child labour practices, which should be used to assess the nature and extent of the problem, and to devise strategies to prevent and eliminate it.²⁸ More generally, in its consideration of periodic reports, the Committee has made it clear that the collection of disaggregated data on children is vital for the effective implementation of the Convention,

24. *Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Second Periodic Reports of States Parties due 1995: Greece*, U.N. Committee on the Rights of the Child, paras. 398-402, U.N. Doc. CRC/C/28/Add.17 (25 June 2001). See further conflicting figures in *Global March Against Child Labour*, *supra* note 10, at 114-15.

25. *Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Second Periodic Reports of States Parties due 1997: Portugal*, U.N. Committee on the Rights of the Child, at 154-55, tables 68-69, U.N. Doc. CRC/C/65/Add.11 (26 Feb. 2001) [hereinafter *Second Report of Portugal*].

26. *Id.* paras 522-523 (the Report also suggests that the phenomenon of child labour in Portugal is “currently limited to marginal and clandestine sectors of the economy and survives only in certain poorly organized and small businesses and in domestic work carried out to augment the household income”).

27. With respect to the report of Portugal, for example, the Committee merely acknowledged the ratification by Portugal of ILO Convention No 182 on the worst forms of child labour and 138 on the minimum age. *Concluding Observations of the Committee on the Rights of the Child: Portugal*, U.N. CRC, para. 3, U.N. Doc. CRC/C/15/Add.162 (6 Nov. 2001) [hereinafter *Concluding Observations: Portugal*].

28. *Concluding Observations of the Committee on the Rights of the Child: Greece*, U.N. CRC, paras. 70-71, U.N. Doc. CRC/C/15/Add.170 (2002); *Concluding Observations of the Committee on the Rights of the Child: Spain*, U.N. CRC, paras. 47-48, U.N. Doc. CRC/C/15/Add.185 (2002).

and it has thus made specific recommendations that systems for data collection and indicators, including those on working children, be developed.²⁹

Overall, the Committee's concluding observations do not present a clear picture of whether the problem of economic exploitation of children exists in Europe, or its extent. This is due to the fact that many states do not readily acknowledge the existence of the problem of economic exploitation of children in their reports to the Committee, and those that do acknowledge the problem lack the necessary up-to-date and disaggregated data to enable them to identify its scope. The Committee's role in assessing the level of European state's compliance with Article 32 is undermined by both factors, with the effect that it is unable to draw definitive conclusions on the matter in most cases.³⁰

ILO Conventions on Child Labour

Further international standards in this area are set down by the International Labour Organisation under ILO Convention No. 138 dealing with the minimum age for admission to employment and ILO Convention No. 182, concerned with the elimination of the worst forms of child labour.

ILO Convention No. 138 was designed as a dynamic treaty encouraging progressive improvement in child labour standards. Article 1 places a duty on states to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level which is consistent with a child's fullest physical and mental development. According to Article 2, state parties should establish a minimum age for employment or work which should be not less than the compulsory school leaving age, and not less than 15 unless a state has an underdeveloped economy and educational system, on which basis it is entitled to set the minimum age provisionally at 14. Article 3 sets other conditions to which children are entitled in this context, including protection from harmful work. The prohibition on work for children is not absolute, however, as Article 7 permits the employment of children between 13 and 15 years of age in 'light work', which is neither harmful to their health or development, nor such as to prejudice their attendance at school, their participation in vocational orientation or training programmes, or their capacity

29. *Concluding Observations of the Committee on the Rights of the Child: Belgium*, U.N. CRC, paras. 14-15, U.N. Doc CRC/C/15/Add.178 (2002); *Concluding Observations of the Committee on the Rights of the Child: Poland*, U.N. CRC, para. 20, U.N. Doc CRC/C/15/Add.194 (2002); *Concluding Observations: Portugal*, *supra* note 27, paras. 12-13.

30. On the Committee's approach to the reporting obligation, see Ursula Kilkelly, *The UN Committee on the Rights of the Child - an evaluation in the light of recent UK experience*, 8 CHILD AND FAMILY L. Q. 105 (1996).

to benefit from the instruction received.³¹ 'Light work' is not defined, however, and the regulation of the conditions and duration of this work is left to the discretion of national authorities.

The more recent ILO Convention in this area is No 182 on the worst forms of child labour, adopted in 1999. This Convention defines the worst forms of child labour to include slavery, sale and trafficking of children; use of children for prostitution or pornography; the use of children for 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.³² It requires states to take the necessary measures to ensure the Convention's effective implementation and enforcement including the implementation of a programme of action to eliminate the worst forms of child labour and the designation of a competent authority with responsibility for its implementation.³³

Compliance With ILO Conventions by European States

In the absence of an effective system to monitor implementation of the ILO Conventions,³⁴ it is difficult to identify the levels of state compliance or the degree to which states have implemented their standards. Ratification is an obvious way of determining a state's basic acceptance of the standards, however, it is significant that all EU states have ratified ILO Conventions No. 138 and No. 182. ILO Convention No. 138 has also been highly ratified by remaining European states, although it is of particular concern that both the Czech Republic and Latvia, two of twelve states acceding to the EU in 2002, have yet to take that step.³⁵ In contrast, much lower levels of ratification of ILO Convention No. 182 can be seen in Eastern Europe, where states like the Russian Federation, Georgia, Armenia and Azerbaijan have all failed to

31. Convention Concerning Minimum Age for Admission to Employment, June 26, 1973, art. 7(1), 1015 U.N.T.S. 297 (ILO No. 138) [hereinafter ILO Convention No. 138].

32. Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, June 17, 1999, art. 1, 38 I.L.M. 1207 (ILO No. 182) [hereinafter ILO Convention No. 182].

33. *Id.* arts. 5-8.

34. *See id.* art. 14 (under Article 14 of ILO Convention No. 182, for example, the Governing Body of the ILO must present to the General Conference a report on the working on the Convention with a view to revising it in whole or in part).

35. The following states have not yet ratified ILO Convention No. 138: Andorra, Armenia, Czech Republic, Kosovo, Latvia and Liechtenstein. Up-to-date details of ratification can be found on the ILO website. *See* INT'L LABOUR ORG., at <http://www.ilo.org/ilolex/cgi-lex/ratfice.pl?C138> (last visited Feb. 28, 2003).

ratify.³⁶ EU candidates Latvia and Poland have similarly failed to take this step. While the recent nature of the Convention may explain these states' failure so far to agree to its standards, it is a matter of serious concern that ratification among the Council of Europe states is not yet universal.

EUROPEAN STANDARDS ON THE PROTECTION OF CHILDREN FROM ECONOMIC EXPLOITATION

While the international standards highlighted above bind all members of the European Union and most, if not all members of the Council of Europe, it is pertinent that the European institutions have themselves adopted further standards, which have the potential to be more specific to the economic and social conditions of the region. Children are offered varying levels of protection from economic exploitation by the laws of the European Union and the Council of Europe.

LAW OF THE EUROPEAN UNION

The Child Labour Directive

Despite the EU's long standing commitment to the promotion of core labour standards and social development more generally, and the substantial body of community law incorporating labour standards as an integral part of the European social model, there is no identifiable body of European law dealing with the issue of child labour.³⁷ In fact, the only instrument of direct relevance to the issue is a Council Directive on the protection of young people at work adopted in 1994.³⁸ Under this Directive, states must take the necessary measures to prohibit work by children and set a minimum working age which is not lower than the age of 15 years, or, if higher, the minimum school leaving age. While it is welcome that the Directive applies to any young person under the age of 18, its limitation to those who have an employment contract or an employment relationship defined by the law in force in a Member State means that it offers little protection to the majority of young people who work outside this formal setting.³⁹ Member States are required to ensure that work carried

36. Other states which have not yet ratified ILO Convention No 182 are Andorra, Kosovo, Liechtenstein, Lithuania and Moldova. See INT'L LABOUR ORG., at <http://ilolex.ilo.ch:1567/cgi-lex/ratifce.pl?C182> (last visited Feb. 21, 2003).

37. See generally ERIKA SZYSZCZAK, EC LABOUR LAW (2000).

38. *Report from the Commission on the Effects of the Transitional Period Granted to the United Kingdom Concerning Certain Provisions of Council Directive 94/33/EC on the Protection of Young People at Work*, Commission of the European Communities, para. 1.1, COM(2000) 547 final (2000).

39. See, text, *infra*, on the work carried out by young people in Europe.

out by young people is strictly regulated and that employers guarantee young people conditions of work to suit their age and to offer protection against economic exploitation and health and safety risks. The latter are defined widely, embracing physical, mental, moral, social, developmental or any risks likely to jeopardize a young person's education.⁴⁰

Compliance with EC Directive on the Protection of Young People at Work

In addition to the fact that the Directive offers little protection from exploitation to many children who work outside the framework of a contractual arrangement or relationship as it may be defined by national law, the Directive as a whole is not directly applicable in the national legal systems of the Member States. As a form of European law, therefore, it requires implementation at national level. This means that States are free to choose the means by which to achieve implementation and so enjoy much discretion, for example, as to how to define the employment relationship, that limits the Directive's scope.⁴¹ While the majority of EU Member States implemented the Directive by the deadline of 22 June 1996,⁴² each incorporated its standards into national law in different ways and in varying degrees.

Protection from Discrimination

Although the EU law provides little specific protection for children who work, there is nonetheless an extensive body of European law on the rights of workers that could offer protection to children if it were applied without discrimination. Thus, European labour law, which protects full and part-time workers, sets health and safety standards, and equal opportunity requirements could help prevent the economic exploitation of children if applied to children as applied to adults. In this regard, it is significant that Article 13 of the EC Treaty empowers the Council to take appropriate action to combat

40. For an example of such an act in a member state, *see* The Protection of Young Persons (Employment) Act 1996, art. 1, which came into force on 2 January 1997, implements this EC Directive in Irish law (*available at* http://www.irishstatutebook.ie/1996_16.html).

41. *See e.g.*, the English case of *Ashby v. Addison & Addison* (t/a Brayton News), unreported decision (Employment Appeals Tribunal 2003) (LTL 28/1/2003) *available at* <http://www.emplaw.co.uk/frontnewstuff.htm> (last modified Feb. 1, 2003) (where the EAT found that a schoolboy was not a 'worker' for the purposes of employment legislation because he was below the compulsory school age, consequently, he was not entitled to paid annual leave).

42. Luxembourg did not meet this deadline and has to date only submitted its draft legislative proposals to the Commission. *See generally* TRANSPOSAL OF DIRECTIVE 33/94/EC CONCERNING THE PROTECTION OF YOUNG PEOPLE IN THE 15 MEMBER STATES OF THE EUROPEAN UNION *available at* http://europa.eu.int/comm/employment_social/soc-dial/labour/3394_en.pdf for full details as to how each state has implemented the Directive.

discrimination based *inter alia* on the criterion of age. The Council has adopted two Directives as a consequence, which may be useful in this regard.

The Framework Directive⁴³ establishes a general framework for equal treatment in employment and occupation and prohibits both direct discrimination covering differences explicitly based on age, and indirect discrimination relating to facially neutral provisions or practices that would disadvantage members of the protected classes.⁴⁴ Age is a prohibited class here also although the scope of the Framework Directive is limited to access to employment (including selection criteria and recruitment), vocational training, promotion, employment conditions (including dismissals and pay) and union membership, and thus excludes social security and protection schemes. A number of the Directive's provisions may limit its usefulness in the context of protecting children from exploitation. Article 4 provides that there is no discrimination where a characteristic or criterion constitutes a 'genuine and determining occupational requirement' provided that the objective is legitimate and the requirement is proportionate. More serious, however, is the exception relating to age, which permits employers to justify differences in treatment with their 'legitimate employment policy'. Described as "probably the broadest exceptions of the Framework Directive,"⁴⁵ this provision contains catch all language to justify differences in treatment when they are objectively and reasonably justified by the aim of legitimate employment policy or labour market and vocational training objectives as long as the means of achieving that aim are appropriate and necessary. This vague language arguably leaves age less protected than other classes in the Directive.⁴⁶

It is of further criticism that although Article 13 of the EC Treaty mentions several classes of persons equally worthy of anti-discrimination protection, the recent EC directives offer different levels of protection to different classes. The Commission's proposals expressly stated that the protected classes were not, and should not be ranked, yet the Directives, through varying coverage and numerous exceptions, do just that.⁴⁷ Thus, in light of the Directives, race and ethnic origin are afforded the greatest protection; gender has the next widest coverage, followed by age, religion, sexual orientation and disability where discrimination is only prohibited in the employment context, and state payment schemes such as social security are explicitly outside their scope of protection offered.

43. See Council Directive 2000/78/EC of 27 November 2000, Establishing a General Framework for Equal Treatment in Employment and Occupation, 2000 O.J. L303/16.

44. *Id.* art 2(2)(a).

45. Ralph Bednark, *Some Classes are More Equal than Others: the Expansion of the Anti-discrimination Protection in the European Union*, 2 UNIV. COLLEGE DUBLIN L. REV. 1, 8 (2000).

46. *Id.*

47. *Id.* at 13.

The EU Charter of Fundamental Rights and Freedoms

The EU Charter of Fundamental Rights and Freedoms, which was adopted in 2000, confirms the EU's aim to promote and fully integrate fundamental rights, including core labour standards, into all its policies and actions. In its preamble, the Charter recognizes the indivisible, universal values on which the Union is based – human dignity, freedom, equality and solidarity.⁴⁸ It then goes on to acknowledge the contribution made by the EU to the preservation and development of these common values and notes its objective to promote balanced and sustainable development and to ensure free movement of persons, goods, services and capital, and the freedom of establishment. These principles reflect the fact that the foundation of EU law lies in matters of economic development and integration and the establishment of an internal trade area in which workers and goods may move freely. It is a measure of how far the EU has come, therefore, that the Charter, even in non-binding form, not only reaffirms the values which underpin economic integration, but also recognizes citizens more general entitlement to protection of human rights and fundamental freedoms.

In addition to recognizing the fundamental principles of human dignity, freedom, equality and solidarity, the Charter also recognizes a whole range of rights of both a socio-economic and civil and political nature. It contains an entire provision in Article 24 dedicated to the rights of the child⁴⁹ as well as a separate provision in Chapter IV regarding the protection of children from economic exploitation. The first paragraph of Article 32 prohibits child labour and provides that the minimum age of employment may not be lower than the minimum school-leaving age.⁵⁰ This is “without prejudice to such rules as may be more favourable to young people” and limited derogations are permitted.⁵¹ Even in Europe, where high levels of economic and social development are believed to prevail, exceptions to high standards of protection for child workers are deemed necessary.

Importantly, however, the second paragraph of Article 32 goes on to provide that:

Young people admitted to work must have working conditions appropriate to their age and be protected against exploitation and any work likely to harm

48. Charter of Fundamental Rights of the European Union, pmbl, 2000 O.J. 1 (C 364/8) (2000), available at http://europa.eu.int/eur-lex/pri/en/oj/dat/2000/c_364/c_36420001218en00010022.pdf [EU Charter of Fund. Rts. or Charter].

49. *Id.* art. 24.

50. *Id.*

51. *Id.*

their safety, health or physical, mental, moral or social development or to interfere with their education.⁵²

This provision clearly takes its lead from Article 32 of the Convention on the Rights of the Child with the latter treaty's reference to hazardous work being replaced by the child's right to be protected from any work likely to harm her safety.⁵³ The inclusion of the entitlement of young people to "working conditions appropriate to their age" is an add-on to the equivalent CRC provision and in this respect it is welcome: a distinction appears to be made here between *children* who may not be employed and *young people* who may. On the negative side, Article 32 of the Charter, unlike most of the Charter's other provisions, does not use rights language⁵⁴ and contrary to parallel standards in international law, neither guarantees nor recognises the right of the child to protection from economic exploitation. Moreover, in contrast with Article 31(2) which recognises that every worker has 'the right to working conditions which respect his or her health, safety and dignity', Article 32 contains the lesser standard that "young people . . . must have working conditions appropriate to their age." Children have no right to such conditions under Article 32 unlike their adult counterparts in Article 31, and so the inclusion of a child-specific provision in the Charter could be said to offer children less protection from economic exploitation, rather than more.

The current status of the Charter means that it does not legally bind EU member states at either the national or the European level. Although the extent to which the Charter's provisions will inform the law and policy of the EU is as yet uncertain, there is little doubt that it has clear potential to bring human rights standards into the mainstream of EU law and policy. In February, 2003, the first draft of what might form part of a constitution for the European Union was published setting out the aims of the EU and the rights of its citizens.⁵⁵ Draft Article 5 of this document deals with fundamental rights and in particular states that the EU Charter of Fundamental Rights shall be part of the Constitution. Although this is not yet a definitive position, it nonetheless indicates the level of support for giving the Charter greater legal status within EU law. Giving greater legal weight to the Charter would undoubtedly have the effect of raising the profile of children's rights issues in European law. Notwithstanding the Charter's shortcomings in this area, therefore, it is

52. *Id.*

53. CRC, *supra* note 12, art. 32.

54. *See* EU Charter of Fund. Rts., *supra* note 48, art. 28 (recognising that workers have "the right to negotiate and conclude collective agreements"); *id.* art. 30 (recognising that every worker has "the right to protection against unjustified dismissal"); *id.* art. 31(2) (recognising that every worker has "the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.").

55. *See The EU Constitution*, THE IRISH TIMES, February 8, 2003, at 15.

submitted that such a move could have positive implications for protecting the rights of children from exploitation.

Overall, however, the current protection offered by EU law to child workers is disappointing insofar as it does not provide for children who work either adequate or effective protection of their rights. Despite the considerable economic success of the EU and the social model on which this success is built, EU standards on the protection of children from economic exploitation are only slightly different from international standards which were drafted with universal application and minimum levels of protection in mind. Additionally, the EU has not established a more effective system for the enforcement or monitoring of its standards than that available through UN and ILO mechanisms, even though national authorities may choose to undertake this task. The following section will consider whether the situation is any better under the Council of Europe, whose post-war origins lie not in economic integration, but in political co-operation for the specific purpose of human rights protection.

LAW OF THE COUNCIL OF EUROPE

The European Social Charter

The European Social Charter, which was drafted to complement the European Convention on Human Rights, came into force in 1961 but was revised significantly in 1991. The Charter is concerned predominantly with socio-economic rights and has been ratified by 32 states across Europe, 15 of which have ratified the Protocol revising the original treaty.⁵⁶ While supplementing the rights in the Charter as explained below, the Amending Protocol also improved the effectiveness of the machinery of the Charter, in particular by restyling the expert committee, which is responsible for monitoring state compliance with the Charter by means of a reporting system.⁵⁷ Under the revised system, the European Committee of Social Rights exercises a legal assessment of states' observance of their legal obligations under the Charter with the assistance of an observer from the International Labour Organisation. This review is periodic and thus allows for on-going and continuous monitoring of the extent to which state parties have implemented the Charter. In addition, an additional Protocol adopted in 1995 provides for a system of collective complaints, whereby international organizations, employers, trade unions or NGOs may complain to the Committee with respect to an alleged violation of one of the Charter's provisions by national law. The first collective complaint submitted to the Committee in 1998 concerned the issue of child labour in Portugal.⁵⁸ Overall, as is clear from the discussion which follows, the Charter not only provides a unique mechanism for challenging the economic exploitation of children at the international level, but it also sets clear standards which detail the level of protection such children must receive.

56. European Social Charter (Revised), May 3, 1996 (entered into force July 1, 1999), E.T.S. 163, available at <http://conventions.coe.int/Treaty/EN/Treaties/Html/163.htm> [hereinafter Revised Charter or Charter] (The following states have ratified the 1991 Protocol: Albania, Bulgaria, Cyprus, Estonia, Finland, France, Ireland, Italy, Lithuania, Moldova, Norway, Romania, Slovenia and Sweden. To date Austria, Belgium, the Czech Republic, Denmark, Germany, Greece, Hungary, Iceland, Latvia, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Spain, Turkey, and the United Kingdom have ratified the Charter, but not the 1991 Protocol. The following states have ratified neither the Charter nor the revised Protocol: Andorra, Armenia, Azerbaijan, Bosnia, Herzegovina, Croatia, Georgia, Liechtenstein, Macedonia, the Russian Federation, San Marino, Switzerland, and the Ukraine.).

57. See *Election of Four Members of the European Committee of Social Rights (CEDS)*, at [http://press.coe.int/cp/2000/856a\(2000\).htm](http://press.coe.int/cp/2000/856a(2000).htm) (current membership is made up of professors of labour law and related subjects on either the business/commercial or the human rights side).

58. See *International Commission of Jurists v Portugal, Collective Complaint to the ECSR*, Application No. 1/1998, available at <http://hudoc.esc.coe.int/search> (last visited Feb 4, 2003).

The Revised Charter has a 'hard core' of rights at its center, which include a range of relevant and detailed standards on employment matters including the right to work;⁵⁹ the right to just conditions of work;⁶⁰ the right to safe and healthy working conditions⁶¹; the right to fair remuneration;⁶² the right to organize;⁶³ and the right to bargain collectively.⁶⁴ They also include a provision on child labour, which deals extensively with the right of children and young persons to protection from economic exploitation. Article 7 provides that, with a view to ensuring the effective exercise of the rights of children and young persons to protection, the Contracting Parties undertake the following:

- (1) to provide that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education;
- (2) to provide that a higher minimum age of admission to employment shall be fixed with respect to prescribed occupations regarded as dangerous or unhealthy;
- (3) to provide that persons who are still subject to compulsory education shall not be employed in such work as would deprive them of the full benefit of their education;
- (4) to provide that the working hours of persons under sixteen years of age shall be limited in accordance with the needs of their development, and particularly with their need for vocational training;
- (5) to recognise the right of young workers and apprentices to a fair wage or other appropriate allowances;
- (6) to provide that the time spent by young persons in vocational training during the normal working hours with the consent of the employer shall be treated as forming part of the working day;
- (7) to provide that employed persons under eighteen years of age shall be entitled to not less than three weeks' annual holiday with pay;
- (8) to provide that persons under eighteen years of age shall not be employed in night work with the exception of certain occupations provided for by national laws or regulations;

59. Revised Charter, *supra* note 56, art. 1.

60. *Id.* art. 2.

61. *Id.* art. 3.

62. *Id.* art. 4.

63. *Id.* art. 4.

64. Revised Charter, *supra* note 56, art. 6.

- (9) to provide that persons under eighteen years of age employed in occupations prescribed by national laws or regulations shall be subject to regular medical control;
- (10) to ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work.⁶⁵

Through its monitoring procedure, the European Committee of Social Rights has interpreted and defined the scope of the obligations which fall upon states by virtue of Article 7. The Committee's conclusions also identify the extent of compliance by European states with the Charter's standards in this area.⁶⁶

In determining whether states are effectively implementing Article 7, the Committee first reviews national law to ensure that there is a clear statutory prohibition of child labour and that the requirements of the other paragraphs of the provision are reflected therein. The view of the Committee is that a rigorous, comprehensive statutory framework is essential for compliance with these provisions, since anything less may deny the authorities an adequate legal basis to take the action necessary to prevent the exploitation of children in all economic sectors. The Committee is also aware of the need to look beyond legal provision to the situation in practice in order to identify the extent of state compliance with its obligations under the Charter, bearing in mind the complex nature of the problem of child labour, its often clandestine character and the fact that only a cohesive holistic response from a variety of actors can bring about a solution.⁶⁷

Article 7(1) Minimum Age of Admission to Employment

According to the Committee, the main purpose of this provision is to ensure that young people below the age of fifteen are effectively protected against the dangers of admission to employment which is likely to have a harmful effect on their well being. However, as it would be both impossible and undesirable to impose an absolute ban on the employment of children, not the least because of the educational value of work, the Charter provides for an exception to the general rule prohibiting the employment of children, specifying that they can be employed in light work which does not expose

65. *Id.* art. 7.

66. *See generally*, EUROPEAN COMMITTEE OF SOCIAL RIGHTS, EUROPEAN SOCIAL CHARTER CONCLUSIONS (2001), (hereinafter "CONCLUSIONS"), available at <http://hudoc.esc.coe.int>; *see also*, LENIA SAMUEL, FUNDAMENTAL SOCIAL RIGHTS: CASE LAW OF THE EUROPEAN SOCIAL CHARTER (2d ed. 2002) (detailing the Committee's emerging case law on the Charter).

67. *See* CONCLUSIONS XV-2, *supra* note 66, at 26.

them to the risks mentioned. Acknowledging this as an exception which may be liberally interpreted so as to undermine the provision, the Committee has made a number of important conclusions on the interpretation of Article 7(1). First, it has held that the paragraph applies to all categories of work including agricultural, domestic work and work in the services sector and to all types of enterprises, including family businesses. In this regard, it has found that agricultural and domestic work cannot be regarded *a priori* as 'light' work within the meaning of the provision. It has thus concluded that contracting parties such as Italy, which allow the admission of children below 15 years of age to such work, have not complied with the Charter.⁶⁸ Similarly, in the case of France, it has found the general exclusion from the prohibition of work of children who work in family businesses to be incompatible with the Charter. In this regard, it has criticised the lack of complete information on the way in which the competent authorities ensure adequate protection of children against the risks of exploitation, even within family enterprises.⁶⁹

According to the Committee, to comply with paragraph 1, a state not only must fix the minimum age of admission to employment at 15 years old, but also must take the necessary steps to ensure that this rule is adequately enforced.⁷⁰ In general, admission to any type of work is contrary to the Charter and so the types of work to which children could be admitted by derogation must be laid down clearly in an exhaustive list: the work must be genuinely 'light' and in no way prejudice the moral, welfare, health or education of the child.⁷¹ To assess compliance with these requirements, the Committee has examined the nature of the work permitted, the maximum working hours authorised, the time at which the work can be performed and the existence of a statutory rest period. For example, the Committee has criticised Portugal for its vague definition of 'light work' and pointed out that the prescription of such work could not be left to the entire discretion of the supervisory bodies. Accordingly, in the absence of a list of types of work, the Committee has found that each state must indicate in its legislation or regulations the criteria for assessing the light nature of such work, and for assessing the risks of it having an adverse effect on the child.⁷²

According to the Committee, exceptions to the general prohibition of work considered acceptable under paragraph 1 include children authorized to work in the performing arts; children following preparatory courses for

68. Italian law authorizes the employment of persons under 15 in agriculture and domestic work. See CONCLUSIONS XIII-2, *supra* note 66, at 78; CONCLUSIONS XIII-4, *supra* note 66 at 293; and CONCLUSIONS XV-2, *supra* note 66, at 291-292.

69. CONCLUSIONS VI (France), *supra* note 66, at 44.

70. CONCLUSIONS XI-2 (Spain), *supra* note 66, at 82.

71. CONCLUSIONS V, *supra* note 66, at 49.

72. CONCLUSIONS XIII-3 (Portugal), *supra* note 66, at 285.

apprenticeship during the last two years of their schooling; and children authorised to work during part of their school holidays.⁷³

The Committee has found the situation in several member states not to be in compliance with Article 7(1). France and Spain have been held to be in persistent violation of the provision on the basis that the minimum age for admission to employment does not apply to children working in family businesses. Italy has been held in breach of the Charter because its legislation authorises the employment of persons under 15 in agriculture and domestic work. The basis of Portugal's violation of Article 7(1) is the high percentage of children between 10 and 14 years of age found to be working illegally. However, Sweden and Greece have both remedied non-compliance with this provision in relation to employment in the employer's household and the exclusion of agriculture, forestry and livestock work of a family nature.

Article 7(2) Higher Minimum Age in Certain Prescribed Occupations

While the precise age for involvement in dangerous or unhealthy occupations was not identified in the original Charter, the Committee established this as 18 years.⁷⁴ This age limit was then given formal expression in the Revised European Social Charter, although according to the appendix to this provision, this does not prevent parties from allowing young persons performing this work where it is 'absolutely necessary' for their vocational training and carried out in accordance with prescribed conditions where measures are taken to protect the health and safety of these young persons.

The reference to 'prescribed occupations' makes it clear that a Contracting Party has some discretion to determine which occupations are to be treated as dangerous or unhealthy. However, when considering the German situation, the Committee rejected that jobs in certain sectors like commerce, transport or hotel and catering sectors, simply do not qualify as dangerous or unhealthy, and has found that certain jobs in these sectors are 'beyond all doubt' dangerous or unhealthy.⁷⁵ In general, under this provision the Committee has requested states to provide information for other measures designed to protect children from risks such as those incurred through chemical products, certain types of machinery, air pollution, noise and vibration etc.⁷⁶ It also looks for information on industrial or occupational accidents and diseases among young workers.

73. CONCLUSIONS V, *supra* note 66, at 55. See discussion *infra* at 18.

74. See SAMUEL, *supra* note 66, at 178-79.

75. CONCLUSIONS III (Germany), *supra* note 66, at 39.

76. CONCLUSIONS XIII-2 (Malta) (1998-89), *supra* note 66, at 287.

Article 7(3) Safeguarding the Full Benefit of Compulsory Education

The Committee has made it clear that the primary aim of this provision is to permit children and young persons to draw full beneficial effects from compulsory school attendance and to ensure that any occupational activity exercised outside school hours does not have an adverse effect on such compulsory education.⁷⁷ Thus, while accepting that work during holidays can give children valuable experience, the Committee has pointed out that the main purpose of holidays is to let young people rest after a year of study in order to derive greater benefit from the following year's courses.⁷⁸

According to the Committee's case law, this provision also applies to children under school leaving age who are related to their employer. Thus, no exception applies with respect to relatives or domestic work. Additionally, in all sectors of the economy, only light work should be permitted and conditions governing the performance of this work should be laid down to ensure that its nature and duration are suited to the age and development of those concerned.⁷⁹ According to the Committee, work over a certain number of hours per week could prevent children from benefiting fully from education without sufficient rest periods and, it held that permitting school children to work 25 hours per week was not in conformity with Article 7(3). Three hours maximum working time on school days and six to eight hours on weekdays when there was no school were also deemed to be excessive.⁸⁰

The Committee has also considered under Article 7(3) the hours which children can be required to work during their school holidays and the possibility of working throughout their holidays. In this regard, it has emphasized that the existence of a compulsory rest period would not be sufficient if the child worked for up to 8 hours a day and 40 hours a week for the entire duration of the holidays since, in such a case, the aim of the provision would not be attained. In such circumstances, it has held, uninterrupted employment during the school holidays could have adverse effects on compulsory school attendance inasmuch as it might impair the receptive capacity of a child who had not had a sufficient period of rest.⁸¹

The member states found not complying with Article 7(3) include Germany, Ireland, Malta, Norway, Spain, Sweden, Turkey, UK, Austria, Greece and Portugal. With respect to Germany, Norway and the UK, the Committee held that the mandatory rest period for children subject to compulsory education during school holidays did not ensure that they received

77. CONCLUSIONS V, *supra* note 66, at 57.

78. CONCLUSIONS XII-1, *supra* note 66, at 136.

79. *See* CONCLUSIONS VI (Italy and Norway), *supra* note 66, at 47.

80. CONCLUSIONS IV (Austria), *supra* note 66, at 54.

81. CONCLUSIONS VIII (Sweden), *supra* note 66, at 109.

sufficient rest to enable them to benefit from their education. In Germany, for example, persons over 15 who are still subject to compulsory education may work during school holidays for a maximum of 4 weeks, with holidays lasting only 6 weeks.⁸² In the UK, the fact that the mandatory rest period for children in compulsory education was less than half the holiday period brought practice there outside what was acceptable under the Charter.⁸³ A similar conclusion was drawn regarding Ireland.⁸⁴

With regard to working hours, the Committee has criticised the fact that in the Netherlands, children of compulsory school age who are over 15 may work throughout the holidays for up to 8 hours per day and 40 hours per week and they can deliver newspapers beginning at 6am for up to 2 hours per day, 5 days per week before school.⁸⁵ The UK has also been criticized for permitting excessive working hours of children still subject to compulsory education given that children are allowed to work from 7am and for up to 25 hours per week if under 15.⁸⁶

The Committee has also found states in violation of Article 7(3) for permitting exclusions from the protection of this provision. In particular, Ireland was criticised for excluding children related to their employer from the protection of paragraph 3,⁸⁷ and Greece was similarly found not to comply regarding employment in forestry, agriculture and livestock.⁸⁸

Article 7(4) Working Hours For Children Under 16 Years

This provision is concerned with the employment of persons under 16 who have left school, and is aimed at protecting children and young people from occupational hazards arising from their immaturity. It provides that the working hours of those under 16 years of age shall be limited in accordance with the needs of their development and particularly their need for vocational

82. ADDENDUM TO CONCLUSIONS XV-2 (Germany), *supra* note 66, at 38.

83. CONCLUSIONS XV-2 (United Kingdom), *supra* note 66, at 586-87.

84. *See* CONCLUSIONS XIII-2 (Ireland), *supra* note 66, at 85; CONCLUSIONS XIII-4 (Ireland), *supra* note 66, at 297-98; ADDENDUM TO CONCLUSIONS XV-2 (Ireland), *supra* note 66, at 13-14 (The Protection of Young Persons (Employment) Act, 1996 extends the minimum rest period granted to children during the summer holidays from 14 days to at least 21 days).

85. *Compare* CONCLUSIONS XIII-2 (Netherlands), *supra* note 66, at 85, *and* CONCLUSIONS XIII-4 (Netherlands) (1996), *supra* note 66, at 298, *with* CONCLUSIONS XII-1 (Norway), *supra* note 67, at 136 (Norway has also been found to be in violation of paragraph 3 on the ground that children over 13, still subject to compulsory education, could work during the school term for a total of 49 hours at school and out of school which was excessive for children of that age. The situation has been remedied).

86. CONCLUSIONS XV-2, *supra* note 66, at 586 (this position is under review).

87. CONCLUSIONS XIII-2 (Ireland), *supra* note 66 at 85.

88. CONCLUSIONS XIII-2 (Greece), *supra* note 66, at 84-85; CONCLUSIONS XIII-4 (Greece), *supra* note 66, at 297.

training. According to the Committee, the daily and weekly working hours for young persons under 16 years of age have particular significance not only because of their development needs, but also in view of their specific needs in regard to vocational training, which is so important in today's work world.⁸⁹ The Revised Charter has raised the minimum age-limit provided for by this provision to 18 years of age.

No uniform or precise rule has been fixed with regard to the limitations on working hours required by this paragraph, which applies to all economic sectors and types of work. In order to assess compliance, the Committee looks for quantitative data on working hours and limiting working hours to 8 per day and 40 per week. This has been regarded as insufficient to meet the requirements of the Charter as this does not allow young persons to enjoy the benefit of vocational training.

States not in compliance with Article 7(4) include Italy and Luxembourg, both of which allow young people up to 16 years of age to work up to 40 hours per week, which the Committee has held to be excessive.⁹⁰ Moreover, Ireland has been criticised on the ground that despite the restriction of working up to 8 hours per day, and 40 hours per week for employees under 16, more than two thirds of 15 year olds worked for 40 hours per week or more. The Committee regarded this as excessive and likely to harm the development of these young people.⁹¹ Finally, Turkey has been found to be non-compliant because it makes no provision for any limitation of working hours regarding children under 16 no longer attending school.

Article 7(5) The Right to a Fair Wage for Young Workers and Apprentices

This paragraph prevents young workers and apprentices from being employed as cheap labour. The Committee has acknowledged that what constitutes a 'fair wage' is a difficult issue and in practice, it has distinguished between young workers and apprentices by virtue of their different circumstances and the value to be attached to training for apprentices. More generally, it has evaluated the existence of fairness by relating the wage paid to young workers and apprentices to that paid to adults doing the same job at the beginning of their career. At the same time, the Committee has accepted that

89. See COMMITTEE OF INDEPENDENT EXPERTS, SECOND REPORT ON CERTAIN PROVISIONS OF THE CHARTER WHICH HAVE NOT BEEN ACCEPTED 10, art. 7(4) (1982)

90. CONCLUSIONS XIII-2 (Netherlands), *supra* note 66, at 88; CONCLUSIONS XIII-4 (Italy), *supra* note 66, at 301-02; CONCLUSIONS XII-5, *supra* note 66, at 124; ADDENDUM TO CONCLUSIONS XV-2 (Luxembourg), *supra* note 66, at 70.

91. See CONCLUSIONS XIII-2 (Ireland), *supra* note 66, at 87; CONCLUSIONS XIII-4 (Ireland), *supra* note 66, at 301 (the situation is currently under review following the passing of new legislation introducing a tougher regime which prohibits the employment of those under 16 with some exceptions).

paragraph 5 does not require the same wages for young people as for adults and has held that certain reductions may be justified. These should not be too substantial, however, and should be for a limited period only.

States found not in compliance with this provision include Belgium, Ireland, Luxembourg, Spain and the UK. In each case, the Committee concluded that the minimum wage for either apprentices or young workers was too low. For example, in Ireland a young worker aged 16 was, on average, paid 40% of the basic wage of an adult worker, while a 17 year old worker received 50% of this amount on average.⁹² In Spain, workers under 18 years earn 34% less than those over 18, a reduction which is excessive according to the Committee. In the UK, while the wages of young workers represented an adequate percentage of adult wages, the fact that adult wages themselves could not be considered as meeting the requirements of Article 4 of the Charter meant that the wages of young people were also insufficient.⁹³

Article 7(6) Treatment of Time Spent in Vocational Training Must Form Part of the Working Day

This provision is intended to facilitate the vocational training of young people, afford them fair conditions of work and protect their health. The danger is that young people might be discouraged from taking up vocational training – which has become increasingly necessary – if it involves lower remuneration or additional working hours. What this paragraph requires, therefore, is that the time spent by young people on their vocational training during working hours be remunerated either by the employer or the state. It should not give rise to any form of recuperation which would result in the total number of hours of the person concerned being extended accordingly.

While the Committee has been unable to reach firm conclusions as to the compatibility of the situation in Turkey, Spain and the Netherlands in this area, it has expressed concern that no specific provision in legislation ensured that time spent in vocational training is treated as part of working time and remunerated as such. The Committee has repeatedly been unable to reach such a conclusion in respect to some parties, which is due, in most cases, to the absence of precise data on the percentage of young persons other than apprentices receiving training in accordance with this paragraph.⁹⁴

Article 7(7) Annual Holidays

92. CONCLUSIONS XIII-4 (Ireland), *supra* note 66, at 302-03.

93. CONCLUSIONS XI-1 (United Kingdom), *supra* note 66, at 28; CONCLUSIONS XII-1 (United Kingdom), *supra* note 66, at 140-41.

94. CONCLUSIONS XIII-4 (Spain), *supra* note 66, at 307; CONCLUSIONS XII-1 (Netherlands), *supra* note 66, at 152; CONCLUSIONS XIII-2 (Netherlands), *supra* note 66, at 93-94; CONCLUSIONS VII-1 (United Kingdom), *supra* note 66, at 50.

While the original text of Article 7(7) provided that young workers were entitled to not less than three weeks annual holiday with pay, the Revised Charter increases this entitlement to four weeks. Overall, the provision is intended to ensure that young workers' annual holidays are longer than the two weeks provided for in respect of adult workers under Article 2(3). This change is designed to protect young workers' physical and mental health at a time when they are still growing and could be experiencing psychological difficulties that are an acknowledged feature of adolescence.⁹⁵

Article 33 of the Charter notes that states will comply if they can show that the great majority (80%) of employed persons under 17 are treated in accordance with the paragraph by virtue of legislation, collective agreements or otherwise. There have been no cases of non-compliance with this paragraph due to the fact that states can show that less than 20% of young workers are excluded. This is the case with Finland, for example, where the categories of young workers not covered by the paragraph amount to less than 20%.⁹⁶

Article 7(8) Prohibition of Night Work

Article 7(8) of the Charter read together with its appendix requires a state to comply with the Charter if it finds by law that the great majority of workers under 18 shall not be employed in night work. In order to assess compliance in this regard, the Committee has requested states to provide the following information:

1. the period defined in national regulations as 'night';
2. the occupations in which night work by minors is permitted;
3. the extent of any derogation;
4. hours during which night work is altogether prohibited;
5. the numbers of all young people under 18 at work and of young people normally required to work at night.⁹⁷

The situation in a number of countries has come under scrutiny with respect to the permitted exceptions to ban night work. Both Cyprus and Portugal, for example, have been found in violation of Article 7(8) due to the fact that the prohibition of night work byworkers aged between sixteen and eighteen is limited to industrial work and is subject to the possibility of exemption.⁹⁸ Similarly, in Turkey, although night work is prohibited in industry for young workers, the ban does not apply to other categories of work,

95. COMMITTEE OF INDEPENDENT EXPERTS, THIRD REPORT ON CERTAIN PROVISIONS OF THE CHARTER WHICH HAVE NOT BEEN ACCEPTED 29-30.

96. CONCLUSIONS XVIII-5 (Finland), *supra* note 66, at 70.

97. CONCLUSIONS I, *supra* note 66, at 46.

98. CONCLUSIONS XIII-2 (Cyprus), *supra* note 66, at 96-97; CONCLUSIONS XIII-5, (Portugal) *supra* note 66, at 191; CONCLUSIONS XV-2 (Portugal) *supra* note 66, at 480-481.

in particular agricultural work and service sectors, which, according to Turkish statistics, employ many young workers.⁹⁹

Article 7(9) Medical Control for Young Workers

Regarding the requirement to provide regular medical control for workers under 18 years of age, the Committee requires a list of occupations in which medical examinations are prescribed in order to consider compatibility with the provision. Regular medical control means periodic medical examination on a continuing basis. A German law which makes compulsory only the pre-recruitment examination and an exam which takes place after one year of employment is not in keeping with the provision.¹⁰⁰ While it is up to national legislation to prescribe the occupations concerned, the Committee insists on examining this list and has, as in the case of the UK, considered that a greater number of occupations should be covered by the requirement of medical control.¹⁰¹ Medical examinations must also be compulsory and so a Swedish regulation providing the possibility of a regular medical check was not in compliance with the Charter because, according to the Committee, “the medical exam is an important aspect of social protection that should not be left to the parties concerned or even the protected parties themselves.”¹⁰²

Regarding the personal scope of protection, the Committee has held that this provision applies to young workers employed in family businesses who do not have the status of paid employees as well as young self-employed workers.¹⁰³ The fact that the Spanish legal provision did not guarantee the specific provision required by paragraph 9 in family businesses, and those who do not have the status of paid employees, meant that it violated the Charter. Similarly, the Turkish situation was held to be non-compliant with Article 7 because the requirement of medical control did not apply to young people working in agriculture, craftsmen or shop assistants.¹⁰⁴ Moreover, the Swedish situation was held to breach paragraph 9 because there was no guarantee in practice that those admitted to certain prescribed occupations of a hazardous nature would receive a regular medical examination.¹⁰⁵

Article 9(10) Special Protection Against Physical and Moral Dangers

99. CONCLUSIONS XIII-1 (Turkey), *supra* note 66, para. 8.

100. CONCLUSIONS VI (Germany), *supra* note 66, at 57.

101. CONCLUSIONS VI (United Kingdom), *supra* note 66, at 58.

102. See CONCLUSIONS XIII-1 (Sweden), *supra* note 66, at 170; CONCLUSIONS XIII-2, *supra* note 66, at 100; CONCLUSIONS XII-4, (Sweden), *supra* note 66, at 310-311.

103. CONCLUSIONS XIII-2 (Spain), *supra* note 66, at 100.

104. CONCLUSIONS XIII-1 (Turkey), *supra* note 66, at 232; CONCLUSIONS XIII-1 (Turkey), *supra* note 66, at 232.

105. CONCLUSIONS XV-2, vol. 2 (Sweden), *supra* note 66, at 550-551.

The scope of this provision is far broader than the other provisions of Article 7, which cover the protection of children and young people mainly from the point of view of employment and working conditions. According to the Committee, as well as the work world, this provision also extends its protection to include all dangers of a physical and moral kind to which children and young people are exposed. As a result, states are required to provide in their reports information on measures specifically designed to protect children against such dangers in the family at school and in society as a whole, as well as in the world of work, from the age at which they are required to attend school until the age at which they become adults.¹⁰⁶

The Committee has emphasized the need for parties to supply information on preventive measures taken in the fields of drug addiction, alcoholism and juvenile delinquency, as well as measures taken with a view to safeguarding children employed in the performing arts or other occupations with moral dangers.¹⁰⁷ In particular, the Committee has taken the opportunity under this provision to monitor the increased involvement of children and young people in the sex industry in a number of European countries. It considers that Article 7(10) requires a clear prohibition against such practices and against the sexual exploitation of children and their economic exploitation through begging. Despite this, however, there are as yet no cases of non-compliance with this provision.

Significance of the Charter

The significance of the European Social Charter in this context lies both in its standard setting and its enforcement capacities. It provides arguably the highest standards on the protection of children and young people from exploitation in Europe, which have been augmented considerably by the growing jurisprudence of the European Committee of Social Rights in its consideration of state reports and collective complaints. The Committee's willingness to look in detail at the practice behind law and policy is equally important, given its view that the existence of a law is in itself insufficient to protect children from economic exploitation, unless that protection is effectively secured. Both the language and the approach of the Committee illustrate considerable potential for the Charter's enforcement. Its on-going monitoring role permits it to identify persistent offenders and monitor situations until they are rectified. The Committee's authority in pursuing this approach is strengthened by its use of unequivocal language with respect to states' non-compliance with the Charter.

106. CONCLUSIONS V, *supra* note 66, at 73.

107. CONCLUSIONS VIII, *supra* note 66, at 122; CONCLUSIONS X-1, *supra* note 66, at 90.

The Social Charter has the potential to improve standards relating to issues of child labour in Europe not least because the Committee's influence reaches beyond the EU to states of Central and Eastern Europe which have ratified the Charter or the Amending Protocol. Many states remain outside the Charter's remit, however, and among those states yet to ratify the Charter either in its original or revised form are those which aspire to membership to the European Union. Thus, of the twelve candidate countries expected to join the EU in 2003,¹⁰⁸ six have not yet ratified the Revised Charter.¹⁰⁹ This situation is examined further below.

THE EXTENT OF ECONOMIC EXPLOITATION IN EUROPE

A picture of the true extent of child labour in Europe is difficult to draw, mainly because despite the monitoring work of the European Committee for Social Rights and the Committee on the Rights of the Child and their recommendations, there is still an overwhelming lack of data on child workers in Europe.¹¹⁰ In fact, both Committees' reports confirm the lack of credible, up-to-date disaggregated data on children who work in Europe and the lack of sophisticated systems for monitoring children in this area. As elsewhere in the world, attempts to quantify the problem must overcome the fact that most of these children work in the informal economy - in private homes and family businesses, and in illegal and underground activities - where their presence is difficult to detect. Further obstacles to the collection and maintenance of detailed and reliable data are created by the fact that the population of children who work changes constantly and the work that they do comes in various forms.¹¹¹ The following analysis divides the problem in half and deals separately with the issue of economic exploitation of children in Western Europe and the growing problems of a more serious nature in Eastern Europe.

Western Europe

Very little data exists on the extent or nature of the problem of child labour in industrial or developed countries.¹¹² The difficulty comparing national data

108. This group comprises Bulgaria, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia and Malta.

109. They are the Czech Republic, Hungary, Latvia, Malta, Poland and Slovakia.

110. See discussion *infra* pp. 28-29.

111. See DORMAN, *supra* note 23, para. 47 (in its latest statistics the ILO distinguishes between children engaged in any time of economic activity and in light work; children engaged in all types of child labour to be abolished in line with Conventions No. 138, 146 and 182; children engaged in hazardous work which jeopardizes their health, safety or morals and children engaged in the unconditional worst forms of child labour).

112. The ILO Statistical Information and Monitoring Programme on Child Labour (SIMPOC) concentrates on less developed parts of the world for obvious reasons.

together with the complexities of defining child labour act as barriers to identifying the scope of the problem. While the ILO has refrained from standardizing a definition of child labour for international use so as not to impose restrictive standards on countries with differing circumstances, the absence of such indicators makes it almost impossible to assess levels of child labour worldwide or across different regions.¹¹³ Figures compiled by the ILO and the Organisation for Economic Co-operation and Development (OECD),¹¹⁴ show large reported disparities between countries in Europe.¹¹⁵ For example, OECD data indicates that in the UK and Denmark over 50% of 15-19 year olds are in paid employment, while only 8.8% and 11% of this age group work in Greece and Italy respectively.¹¹⁶ Moreover, ILO figures indicate that in Western Europe there is a complete absence from economic activity of children under 14 years.¹¹⁷ Even allowing for varying degrees of economic and social development between these countries, such figures and the dramatic differences in the labour force participation rates which they reflect, are scarcely credible. This skepticism is supported by reports to the Committee on the Rights of the Child and the European Committee of Social Rights, which confirm the existence, if not the extent, of the problems of economic exploitation of children in Europe.¹¹⁸

Despite the existence in most Western European countries of effective labour regulatory systems, many children are involved in informal or illegal work, which is outside the scope of health and safety legislation and hidden from national monitoring systems.¹¹⁹ In addition to the obstacles to data collection already identified, attempts to quantify the problem must also overcome the fact that, in addition to those children who are forced to work, a significant number of children in Europe choose to work largely for the supplementary income necessary to meet their consumer desires and the

113. See UNICEF, INDICATORS FOR GLOBAL MONITORING OF CHILD RIGHTS 16-17 (1998).

114. The OECD is an international organization with 30 members drawn mainly from the industrialized world including all EU states, the U.S., Canada, Japan, Mexico, Australia and Korea. For a list of member-states, see OECD, MEMBER COUNTRIES, available at <http://www.oecd.org/EN/countrylist/0,,EN-countrylist-0-nodirectorate-no-no-159-0,00.html>. While its objective is to monitor and promote economic development and good governance, it is best known for its research and statistical publications, see generally OECD, at <http://www.oecd.org>.

115. See DORMAN, *supra* note 23, at 12-13.

116. *Id.*

117. *Id.* at 14.

118. See *supra* text accompanying notes 66-107.

119. UNICEF INNOCENTI RESEARCH CENTRE, SOCIAL MONITOR 12 (2000).

demands of peer pressure.¹²⁰ While such children do not work involuntarily, or are at least not driven to it by their socio-economic status or economic pressure on their families,¹²¹ as children they are equally vulnerable to exploitation. This is confirmed by the conclusions of the European Committee of Social Rights with respect to children working long hours both during school term and during the holidays. Research suggests, therefore, that while the traditional factors used to account for child labour such as poverty and culture are present in Europe, the modern phenomena of consumerism and demand are also at work.

Anecdotal evidence about the nature of the work children do suggests that as well as employment in the construction and agriculture industries, children in Western Europe commonly work a wide variety of jobs which might be described as light work, but are perhaps more accurately defined as low skill.¹²² Such work in the catering trade (cafes, restaurants and bars), babysitting or childminding, gardening, delivery and as home or domestic help, is typical of the work undertaken by young people still in school. While the work may not be considered harmful to their welfare, it usually has some or all of the following characteristics: a lack of on-the-job training, whether skilled or safety oriented; job insecurity and a high turnover rate; very little scope for discretion or application of skill; less worker input either as part of a union or otherwise; and uncertainty in hours, low and irregular pay and few benefits. These jobs may also be illegal, insofar as they involve the employment of children below the minimum age in circumstances outside those permitted by the law, or outside the relevant health and safety laws of which children may be unaware. Notwithstanding the lack of up-to-date disaggregated data, therefore, it is apparent that children in Europe are employed in jobs which have no educational or vocational value and in unsafe, illegal and exploitative conditions.

Eastern Europe

120. European Trade Union Confederation Resolution on Child Labour in Europe, at 2.2 (Oct. 25-26, 2000) [hereinafter European Trade Union Confederation], available at <http://www.etuc.org/en/Decisions/ecenglish/youth/childlabour.cfm>.

121. See Dorman, *supra* note 23, at 26. In fact, it appears from available studies on the UK and the U.S. that better-off children work more.

122. Most EU countries permit young children to perform light paid work or domestic work which does not interfere with their schooling. For example, in Ireland 14 and 15 year olds may undertake light work, in Denmark children between 10 and 15 years may perform light paid work, in Austria children over 12 may perform light and occasional work, in Italy children may be employed as domestic workers at 14 although few countries define its meaning. See further below.

ILO statistics from 2000 indicate that 2% of the child population in developed countries is economically active.¹²³ It is logical to assume that this figure also applies to EU countries. While it still compares very favourably with Sub-Saharan Africa, where 29% of children work, or Latin America where 16% of children are employed, it is a worrying trend that the scale of the problem in transition economies has been identified as twice the European rate at 4%. Similarly, the percentage of 5-9 year olds who are economically active in transition economies has increased to 3.1% of the working population (also double that of the developed countries) while children in the 10-14 age group category (not including children in light work) now make up 4.2% of the working population (2.8% for developing countries). For 15-17 year olds¹²⁴ the figures rise to nearly one third of the working population - the same in both developed and transition economies where the majority of children are victims of sexual exploitation, prostitution and trafficking.

According to the ILO, the transition to a market economy taking place in the states of the former USSR, the Balkans and Central and Eastern Europe places strong new pressures on children, especially among the poor, to contribute to family income or provide for themselves. These countries have seen “an increase in poverty, family disintegration, migration and population displacement, erosion of social safety nets, deterioration in health and education services and increases in delinquency and drug use among young people” while at the same time, “opportunities for children to participate in the largely unregulated labour market have rapidly multiplied, especially in the expanding informal (and often illegal) economy.”¹²⁵ The interplay of these factors has, according to the ILO, led to an upsurge in child labour in all its forms.¹²⁶ Although this has not yet been translated into an official increase in the numbers of working children, it appears to be inevitable given that government institutions that have limited or no experience in dealing with child labour are ill-equipped to devise effective responses to the problem.

Global March reports that child trafficking in Europe is increasing as traffickers from African, Asian and East European countries use EU countries as both transit and destination points.¹²⁷ Sexual exploitation of children as a result of the trafficking of children into child prostitution and the prohibition of

123. ILO, A FUTURE WITHOUT CHILD LABOUR, *supra* note 1, at 19.

124. This category includes all children in hazardous work and other worst forms of child labour such as bondage, prostitution, armed conflict, trafficked children.

125. ILO, A FUTURE WITHOUT CHILD LABOUR, *supra* note 1, at 40.

126. *Id.*

127. See GLOBAL MARCH AGAINST CHILD LABOUR, *supra* note 9 (reporting the trafficking of children into countries such as Belgium, Finland, France, Germany, Greece, Italy, the Netherlands, and the UK.).

child pornography in Europe or elsewhere are problems of growing concern.¹²⁸ While these problems have been documented recently in transition economies where they are increasingly prevalent,¹²⁹ little attention is paid to extent of these problems in Western Europe so that the overall scale of the worst forms of child labour in the region remains unclear.¹³⁰

In the countries of Central and Eastern Europe, the transition to a market economy, increasing poverty and the restructuring of the welfare system have made economic exploitation of children more likely. There are particular problems with the trafficking of children who end up in slavery, prostitution or pornography in Western Europe and on this basis, the problems faced by East European countries become, more directly, the problems of Western European countries.¹³¹ According to the ILO, HIV/AIDS is also emerging as a key factor affecting children and the pattern of child labour.¹³² Both UNICEF and UNAIDS have documented increases in the presence of the virus in Central and Eastern European countries. These increases were dramatic in Estonia, the Russian Federation, Ukraine and Latvia.¹³³ Moreover, evidence shows that the HIV epidemic in the region is overwhelmingly affecting young people.¹³⁴ Apart from the problems this creates at a national level, the phenomenon also represents a significant risk to children in the wider European region, given that AIDS can both lead to child labour by requiring orphaned children to work to support their families, and can be spread through the commercial, sexual exploitation of children.¹³⁵

Despite the fact that few European states acknowledge either the economic exploitation of children or the worst forms of child labour as issues of domestic

128. *See id.* (highlighting the existence of child prostitution in Belgium, Finland, France, Greece, Italy, the Netherlands, and the UK).

129. UNICEF INNOCENTI RESEARCH CENTRE, *supra* note 119, paras. 128-135.

130. *See* DORMAN, *supra* note 23, at 1. In this regard, Dorman's report presents a very useful account of the international research to date, but equally acknowledges the difficulty in drawing a comprehensive picture.

131. ILO, A FUTURE WITHOUT CHILD LABOUR, *supra* note 1, at 32 (the ILO reports that the Republic of Moldova, Romania, and the Ukraine are major source countries for trafficked girls and women, who are then brought to Bosnia and Herzegovina, Kosovo or Albania where they are sold to local gangs to be trafficked to Western Europe for prostitution).

132. *Id.* at 41-43.

133. *See* European Centre for the Epidemiological Monitoring of AIDS, *HIV/AIDS Surveillance in Europe*, (2001), available at <http://www.unaids.org>. Cumulative reported HIV infections per million population in Eastern European countries 1993-2001.

134. *See* UNICEF INNOCENTI RESEARCH CENTRE, *supra* note 119, at 23-25.

135. *See* Monitoring the AIDS Pandemic (MAP), The Status and Trends of HIV/AIDS/STI epidemics in the World, 2000, at www.unaids.org; *see also* UNICEF, Statistics from 2001, HIV/AIDS, Prevention Among Young People, at <http://www.unicef.org/aids/young.htm> (last visited Feb. 25, 2003) (which states that there are approximately one half million children with HIV/AIDS in Eastern Europe and Central Asia).

concern, anecdotal evidence demonstrates that both problems are present in Europe. The problems of child labour range from the employment of children in exploitative conditions to trafficking and sexual exploitation. The factors underlying the phenomenon in Europe range from poverty to peer pressure. While the extent of child labour in Europe, of both the indigenous and imported kind is uncertain, the complexity of the problem cannot be doubted. While it may be academically convenient to identify the lesser problems of exploitation with countries in the West and the more serious life threatening forms with states in Central and Eastern Europe, this ignores the migratory nature of the problem, as well as the entire region's responsibility for it. In other words, the existence of a pan-European problem confirms the need for a pan-European solution.

THE ROLE OF THE EU IN THE ELIMINATION OF CHILD LABOUR

Having set out the applicable standards in this area and the extent of European states' compliance with them, this part of the paper looks at the role of the EU in the elimination of child labour in third countries both in Europe and beyond. There are at least two reasons why the EU is in an appropriate position to promote the protection of children from economic exploitation on a global level. First, Europe occupies the position, albeit not exclusively, as a potential standard-setter for less developed countries in the world. The ability to establish Europe as a model, not only of economic efficiency, but as a trading system with social justice, including core labour standards, at its heart, is vital to the issue of global social governance, of which respect for children's rights is a part. This has been recognised by the European Union.¹³⁶ Second, the EU can use its political and economic position to impose core labour standards on non-EU countries with a view to eliminating child labour on a wider scale. In general terms, it is submitted, the EU can seek to promote compliance with child labour standards among third countries in at least two areas - trade and diplomatic relations.¹³⁷ While it might be argued, in light of the above conclusions, that the EU should first seek to implement its own standards before imposing them on others, it is important that all EU Members have ratified all available international standards in this area, and have committed themselves to the systems by which they are monitored. Moreover,

136. See e.g., *Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee: Promoting Core Labour Standards and Improving Social Governance in the Context of Globalisation*, Commission of the European Communities, at 13-21, COM(2001) 416 final, at <http://europa.eu.int> [hereinafter *Promoting Core Labour Standards*].

137. See generally Philip Alston & J.H.H. Weiler, *An 'Ever Closer Union' in Need of a Human Rights Policy: the European Union and Human Rights*, in *THE EU AND HUMAN RIGHTS* 3, 45-52 (Philip Alston ed., 1999).

the EU is at the forefront in recognising that sustainable economic growth goes hand in hand with social cohesion - which implies respect for core labour standards – as this principle underpins the EU's strategic economic and social policy goals.¹³⁸ The legitimacy of an EU approach which seeks to impose these standards on other states is supported further by the fact that the mutually reinforcing nature of social and economic policy, including employment matters, is at the heart of the EU's social policy agenda.¹³⁹ The existing recognition of the link between trade and labour rights at the international, as well as at the European level, means that this approach is neither bold nor new.

The interface between trade and labour issues has been confirmed by collaboration at the international level between the World Trade Organisation (WTO) and the ILO,¹⁴⁰ highlighted most clearly in 1996 by the Singapore WTO Ministerial Declaration.¹⁴¹ However, subsequent efforts to place the link between trade and labour standards on the WTO agenda have failed in the face of opposition from developing countries which argue that labour rights provisions serve to disguise protectionist policies and erode the competitive advantage which they enjoy in relation to labour costs. No progress was made on this issue at the Doha Ministerial Conference in 2001, although a challenge to labour related trade law, like the U.S. Trade and Development Act, 2000, under the WTO dispute settlement system may well provide the motivation for a formal agreement.¹⁴²

The growing emphasis on the social aspects of globalisation, or the need for an ethical globalisation, has continued to inform dialogue and practical

138. See generally Silvana Sciarra, *From Strasbourg to Amsterdam: Prospects for the Convergence of European Social Rights Policy*, in *THE EU AND HUMAN RIGHTS*, *supra* note 137, at 473-501 (describing the history and current status of labour standards and social rights in Europe).

139. *Id.* at 496-97; See also Catherine Barnard, *EC 'Social' Policy*, in *THE EVOLUTION OF EU LAW* 479 (Paul Craig & Grainne de Burca eds., 1999).

140. See Raj Bhala, *Clarifying the Trade-Labor Link*, 37 *COLUM. J. TRANSNAT'L L.* 11, 32 (1998).

141. At the Singapore Ministerial Conference, WTO members acknowledged the significant role of trade in promoting core labour standards and although no decision was taken to form a working party on trade and labour, the members did agree to encourage collaboration between the ILO and the WTO. More importantly, perhaps, the members did not exclude the possibility that the WTO dispute settlement body might enforce labour standards. See Matthew T. Mitro, *Outlawing the Trade in Child Labor Products: Why the GATT Article XX Health Exception Authorizes Unilateral Sanctions*, 51 *AM. U.L. REV.* 1223, 1232-33 (2002).

142. See generally Benjamin James Stevenson, Comment, *Pursuing an End to Foreign Child Labor Through U.S. Trade Law: WTO Challenges and Doctrinal Solutions*, 7 *UCLA J. INT'L L. & FOREIGN AFF.* 129 (2002).

initiatives designed to encourage socially responsible corporate behaviour.¹⁴³ These initiatives include the UN's Global Compact, which is a voluntary corporate citizenship initiative launched by the Secretary General Kofi Anan at the World Economic Forum in 1999. Its objective is to make the Nine Principles, of which Principle Five concerns the effective abolition of child labour, part of business strategy and operations.¹⁴⁴ While these initiatives are positive and welcome developments, they must be matched by equivalent commitment at the state level. It is in this context, for example, that the European Trade Union Confederation adopted a resolution in October 2000 on the issue of child labour in Europe. The resolution calls on states to ratify, implement and enforcement existing ILO and EU laws on child labour, but recognizes that employers and trade unions also have a role to play in combating economic exploitation of children in Europe.¹⁴⁵

While the EU Commission has proposed several initiatives designed to move forward international actions in this area, including making the ILO more effective, increasing support for multilateral technical assistance and launching a forum for international dialogue, it is submitted that incorporating into the EU's trade and external affairs policies a commitment to children's rights standards has the most potential to bring about change in this area. In 2001, the Council of the EU took an important step in this direction when it reaffirmed its commitment to mainstreaming human rights and democratisation into EU policies and actions.¹⁴⁶ In addition, it has committed itself to focusing on other key issues, such as the rights of the child, of which it has acknowledged the importance of a child rights perspective to EU work on human rights and democratisation policy.¹⁴⁷ In relation to the implementation of these commitments, it is submitted that this can, and to an extent is already being done on a number of levels relevant to the way the EU trades and negotiates with all third countries.

143. See *Communication from the Commission Concerning Corporate Social Responsibility: A Business Contribution to Sustainable Development*, Commission of the European Communities, at 3, COM(2002) 347 final, at <http://europa.eu.int>.

144. See THE GLOBAL COMPACT, OVERVIEW, at <http://www.unglobalcompact.org>; see generally Ruth Wedgwood et al., *Peace Building: The Private Sector's Role*, 95 AM. J. INT'L L. 102 (2002); Beth Stephens, *The Amoralism of Profit: Transnational Corporations and Human Rights*, 20 BERKELEY J. INT'L L. 45, 79 (2002) (discussing the private sector's role in protecting human rights).

145. European Trade Union Confederation, *supra* note 120.

146. See General Affairs and External Council, Dec. 10, 2002, available at http://europa.eu.int/comm/external_relations/human_rights/gac.htm.

147. See Council Conclusions on the European Union's Role in Promoting Human Rights & Democratisation in Third Countries, EXTERNAL REL., June 25, 1001, para. 21 at http://europa.eu.int/comm/external_relations/human_rights/gac.htm.

EU TRADE AND DEVELOPMENT POLICY

Relevant EU policy governing the relations of the EU with third countries comprises international agreements, including both bilateral and multilateral association agreements, the Generalised System of Preferences (GSP), programmes for the provision of financial and technical aid for Asian and Latin American countries, as well as thematic actions in areas such as food aid, humanitarian aid and the fight against AIDS. The significance of these in the context of the elimination of child labour is explored below.

Generalised System of Preferences (GSP)

The EU's GSP scheme, which provides market access on a preferential basis to developing countries,¹⁴⁸ is recognised as an important instrument for the promotion of core labour standards.¹⁴⁹ The GSP addresses the issue of core labour standards in two ways. First, it provides a special incentive scheme whereby effective compliance with core labour standards (the so called social clause) qualifies for additional trade preferences. These incentives are available to developing countries which can show that their laws incorporate the substance of the eight ILO Conventions, including Convention No. 138, as well as the measures taken in order to implement those laws. The country is not required to have signed and ratified those conventions, rather it is sufficient that the substance of the standards concerned is incorporated in the domestic legislation. The Commission's examination of such a request takes into account reports of the relevant organisations and agencies, including ILO and international trade unions, and its conclusion as to whether the conditions for granting additional preferences may be postponed to give the developing country more time to comply.¹⁵⁰

Second, the GSP allows for a temporary withdrawal of preferences from beneficiary countries, in whole or in part, for a variety of reasons.¹⁵¹ In particular, where the Commission's investigation considers it justified in the light of serious or systematic violations of the principles in the 1998 ILO

148. Developing countries are defined by their membership of the "Group of 77" (today amounting to twice that figure) in UNCTAD, *see* www.unctad.org.

149. Council Regulation (EC) No 2501/2001 of 10 December 2001 Applying a Scheme of Generalized Tariff Preferences for the Period from 1 January 2002 to 31 December 2004, 2001 OJ L/346/1.

150. *See User's Guide to the European Union's Scheme of Generalised Tariff Preferences*, GSP GUIDE, Feb. 2003, sec. 8, at <http://europa.eu.int/comm/trade>.

151. This should be done in accordance with Council Decision 1999/468/EC [1999] OJ C203/01.

Declaration on Fundamental Principles and Rights at Work,¹⁵² it may recommend temporary withdrawal to the Council. Significantly, this Declaration refers to the fact that all ILO members have by virtue of their ILO membership a duty to promote and realize the principles set out in ILO Conventions, even if they have not formally ratified them. One of the four principles identified by the ILO in this context is the effective abolition of child labour.

Proposed improvements to the special incentive scheme include that the EU reinforce its policy in this field. In particular, the Commission has recommended that the EU consider ways of further strengthening the impact of the GSP on the promotion of core labour standards in its next review of the scheme in 2004.¹⁵³ Among the proposed areas for review are enhancing the links between the GSP scheme and ILO core conventions, including giving particular attention to the incorporation in domestic legislation of the substance of the core ILO Conventions, including Conventions 138 and 182 on child labour.¹⁵⁴ The implementation of these recommendations would undoubtedly enhance the potential of the GSP scheme to bring about improved standards with regard to the economic exploitation of children in developing countries.

Development Policy

The framework for the EU's development policy is set out in a joint statement on the subject adopted by the Council and the Commission in November 2000.¹⁵⁵ This statement makes clear that the principal objective of the EU's policy in this area is poverty reduction, the pursuit of which is grounded on the principle of sustainable, equitable and participatory human and social development. The policy makes clear, therefore, that the aim of poverty reduction cannot be met without social development, including employment and social integration. It is submitted that respect for core labour standards, including the protection of children from economic exploitation and the promotion of children's rights generally, must be an integral part of this process.

152. See generally INTERNATIONAL LABOUR ORGANIZATION, *ILO Declaration on Fundamental Principles and Rights to Work*, ILO Document CIT/1998/PR20A available at http://training.itcilo.it/ils/foa/library/declaration/decl_en.html (last visited Feb. 21, 2003).

153. See Promoting Core Labour Standards, *supra* note 136, at 16.

154. *Id.* at 17. Other incentives would accrue to those developing countries which take measures to make their procedures more transparent and streamlined and by making the GSP scheme more attractive by widening the additional trade preferences under the scheme.

155. See generally The European Community's Development Policy - *Statement by the Council and the Commission*, 2000 at http://europa.eu.int/comm/development/lex/en/council20001110_en.htm

In 2000, the EU and the ACP (African, Caribbean, Pacific) states signed an agreement to replace the Lome Conventions, which had provided a framework for their trade, development and other relations since 1975. The Lome Conventions had been amended periodically, notably to incorporate issues such as culture and human rights and gender issues, but international conditions, changing socio-economic conditions in ACP states and the spreading of poverty meant that a rethinking of the cooperation between the two parties had become necessary. According to the EU, the innovative approach taken in the partnership agreement signed between the EC and the ACP countries in Cotonou in 2000 provides a model for the future of EU development policy.¹⁵⁶ The Cotonou Agreement's strong linkage of political dialogue, trade and development aid represent an approach which the EU must seek to replicate. According to the Commission, social development and the promotion of core labour standards is part of the overall development strategy of the Cotonou Agreement, which provides that co-operation shall aim at *inter alia* "encouraging the promotion of participatory methods of social dialogue as well as respect of basic social rights."¹⁵⁷ Significantly, the Cotonou Agreement includes a specific provision confirming the parties' commitment to core labour standards as defined by the ILO, specifically including the elimination of the worst forms of child labour.¹⁵⁸ The Agreement also acknowledges that cooperation shall support policies, measures and operations aimed at protecting the rights of children and youth.¹⁵⁹

While the extent to which this Agreement will protect children in ACP countries from economic exploitation is as yet unclear, it is certain that its potential to protect children is enhanced by the express provision eliminating child labour in the context of ACP cooperation and trade relations with the EU. What is more promising, however, is the acknowledgement by EU institutions that this Agreement provides a template for the negotiation of future association agreements. The adoption of a mandatory child labour clause in all association agreements concluded by the EU would serve to promote the elimination of child labour, particularly within the context of the EU's development policy. Indeed, in 2001, the Commission recommended

156. *Id.* para 5.

157. The Cotonou Agreement: Partnership Agreement Between the Members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, June 23, 2000, art. 25(1)(g).

158. *Id.* art. 50 (the parties agree to enhance cooperation in this area in particular in the following fields: exchange of information on the respective legislation and work regulation; the formulation of national labor legislation and strengthening of existing legislation; educational and awareness-raising programs; enforcement of adherence to national legislation and work regulation).

159. *Id.* art. 26(a).

expressly that the EU should extend the Cotonou approach to other agreements by seeking to include specific provisions on core labour standards.¹⁶⁰ The fact that such an approach would not be new - the EU has been incorporating a mandatory human rights clause into its association agreements since a Council Decision to that effect in May 1995 - provides further support for this approach.

EU Enlargement

EU plans for enlargement over the next ten years will see its membership double to almost 30 states, including countries in the Balkans and Central and Eastern Europe. The conditions to be met by those states seeking to join the European Union were established at the European Council meeting in Copenhagen in 1993 and they include assessment on the basis of a number of criteria including democracy, the rule of law, human rights, respect for minorities, a functioning market economy, and the capacity to cope with competitive pressures and the ability to apply effectively the EU's rules and policies. Accession negotiations have been underway with respect to twelve candidate countries and those countries ready for membership are expected to join at the end of 2002. It is clearly important that respect for human rights is one criterion to be fulfilled before states can accede to the EU. The fact that all candidate countries have ratified the European Convention on Human Rights is evidence of the positive effect which accession can have on human rights protection. However, as was highlighted above, countries' preparations for accession have not included ratification of the Social Charter, its Amending Protocol or ILO Conventions No. 138 or 182. Nor has the Commission, which negotiates with such states on the EU's behalf, made it clear that such legal measures are expected of candidates. So, for example, the Commission's report of Latvia's progress towards accession did not mention its failure to ratify either the Revised Social Charter amending the Social Charter, or either ILO Conventions on child labour.¹⁶¹ Similarly, while the Commission's review of developments in the Czech Republic noted the state's failure to ratify the Revised Social Charter, it made no specific recommendation to this effect. Nor did it highlight its failure to ratify ILO Convention No. 138, although trafficking in human beings and labour rights received modest attention, albeit without specific reference to children.¹⁶² Clearly, there is

160. See Promoting Core Labour Standards, *supra* note 136, at 18.

161. See 2002 Regular Report on Latvia's Progress towards Accession, Commission of the European Communities, SEC (2002) 1405.

162. See e.g., 2002 Regular Report on Czech Republic's Progress Towards Accession, Commission of the European Communities, at 26-34, SEC (2002) 1402; see also 2002 Regular Report on Poland's Progress Towards Accession, Commission of the European Communities, at 31, SEC (2002) 1408.

much the Commission can do in this area to encourage, if not force candidates to give consideration to the ratification of legal instruments designed to eliminate child labour. At the very least, it is recommended that the EU take a more strategic approach to the ratification of such treaties by candidate countries, particularly given that this approach is entirely consistent with the fulfillment of its objectives to promote human rights protection, including labour standards.

CONCLUSIONS

Notwithstanding the hazy picture which emerges from this paper on the extent and nature of economic exploitation of children in Europe, a number of conclusions can be drawn here. The first patently obvious observation is that efforts to improve systems for the collection and maintenance of up-to-date, disaggregated data on the number of children who suffer economic exploitation or worse forms of child labour in Europe must remain a priority. In this regard, it appears that the bodies already collating information in this area – UNICEF, ILO, the European Committee on Social Rights and the UN Committee on the Rights of the Child – must undertake greater levels of co-operation in this area with respect to presenting a clearer picture of the extent of the problem. The difficulty of this task is not underestimated given the hidden and informal nature of the work children perform and the variety of national approaches used to identify children at risk of exploitation.

The fact that its causes are varied and its extent uncertain also makes tackling the problem of economic exploitation in Europe a complex one. Fortunately, as this paper demonstrates, there are a variety of mechanisms available for this task at national, European and international levels, including private and public initiatives. What this paper also shows is the potential of an approach which combines detailed standards with effective systems for enforcement. The work of the Committee for Social Rights, for example, could thus be more effective if its conclusions were used by the EU as a benchmark when evaluating whether conditions have been met by candidate countries for accession. Similarly, the EU has a range of trade and diplomatic devices available to influence states' ratification of the various legal instruments in this area. Such convergence of approaches and cross-fertilisation of standards across the European, international and national legal systems has clear potential to challenge the various forms of economic exploitation of children which exist in Europe. It is time this potential is fully explored.