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# Ending Exploitative Child Labor Practices

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# COMMENT

## ENDING EXPLOITATIVE CHILD LABOR PRACTICES

### INTRODUCTION

On November 20, 1989, the Convention on the Rights of the Child<sup>1</sup> was unanimously adopted by the General Assembly of the United Nations.<sup>2</sup> The Convention contains forty-one substantive articles. Article 32 of the Convention requires States Parties<sup>3</sup> to recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous, to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.<sup>4</sup> The significance of Article 32 is that despite more than seventy years of conventions and legislation protecting children from economic exploitation, the incidence of

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1. G.A. Res. 44/25, U.N. GAOR, 45th Sess. Supp. No. Convention on the Rights of the Child, 28 I.L.M. 1457, 1468 [hereinafter Convention].

2. *Id.*

3. ratifying nations.

4. Convention, art. 32 *supra* note 1.

### ARTICLE 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

(a) Provide for a minimum age or minimum ages for admission to employment;

(b) Provide for appropriate regulation of the hours and conditions of employment;

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

child labor is escalating not only in underdeveloped nations, but in the major capitals of the world including the United States. Article 32 presents an opportunity for nations to guarantee children protection from hazardous and exploitative child labor, and allow children to be children. Presently, Article 32 provides for the implementation of the Convention by the States Parties through "legislative, administrative, social and educational measures."<sup>5</sup> Article 45 of section II of the Convention contains procedural recommendations "to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention."<sup>6</sup> More than one hundred forty countries, which represents over half the Member States of the United Nations, have signed the Convention since it was offered for signature on January 26, 1990.<sup>7</sup> The

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5. *Id.*

6. Convention, art. 45, *supra* note 1.

#### ARTICLE 45

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

(a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations based on information received pursuant to Articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

7. CHILDREN'S RIGHTS IN AMERICA: U.N. CONVENTION ON THE RIGHTS OF THE CHILD COMPARED WITH UNITED STATES LAW, (Cynthia Price Cohen & Howard A. Davidson eds., A.B.A. Center on Children and the Law (1990)).

United States has not yet signed the Convention, aligning itself with countries such as Iraq, South Africa and Libya. Signing the Convention indicates a promise to review the treaty with the probable intention to ratify it in the future.<sup>8</sup> The Convention has been awaiting U.S. Presidential signature for four years. Consequently, while more than one hundred countries have ratified (or acceded to) the Convention, the Convention has yet to be presented to the United States Senate for its advice and consent to ratify.<sup>9</sup>

Part I of this article discusses the historical evolution of children's rights from the early twentieth century up to the Convention, which is a comprehensive international law codification of children's rights. Part II discusses how the Convention is to be implemented. Part III discusses the reasons why child labor exists. Part IV of this article discusses the necessity for Article 32. Part V discusses the United States' reluctance to sign or ratify the Convention. Finally, part VI of this article analyzes what steps must be taken to ensure implementation of Article 32 of the Convention.

### I. HISTORY OF CHILDREN'S RIGHTS

In the early 1920's, Eglantyne Jebb, the British pioneer of child rights, began the "Save the Children Movement", a non-governmental organization for the protection of all children's rights.<sup>10</sup> In 1924, the Assembly of the League of Nations adopted the Declaration of Geneva.<sup>11</sup> It was thirty-five years before the United Nations General Assembly adopted a new declaration in 1959.<sup>12</sup> However, the United Nations member states were not bound to follow the declaration.<sup>13</sup> In 1979, the International Year of the Child, the United Nations Commission on Human Rights appointed a group to draft the Convention on the Rights

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8. *Id.*

9. A.B.A. Young Lawyers Division, *Report to the House of Delegates: United Nations Convention on the Rights of the Child*, 25 INT'L LAW 804 (Fall 1991) (discussing how this report was adopted by the House of Delegates in February, 1991).

10. Hereinafter NGO's. Thomas Hammarberg, *The U.N. Convention on the Rights of the Child and How to Make it Work*, 12 HUM.RTS.Q. 97, 98 (1990).

11. *Id.*

12. *Id.*

13. *Id.*

of the Child. The aim of the Convention was to establish more comprehensive protection for children by holding society legally accountable for such protection. The Convention, which was ten years in the making,<sup>14</sup> incorporated most of the rights of children into one comprehensive international law.<sup>15</sup> It was an unprecedented undertaking of international legislation. The drafting involved the cooperation of various United Nations specialized agencies, including the United Nations International Children's Emergency Fund,<sup>16</sup> with international government delegations and various non-governmental organizations.<sup>17</sup>

The language of the Convention differs from previous instruments in that it focuses on the rights specific to the child as an individual, not as a member of a family or group. These minimally guaranteed rights include "civil-political, economic-social-cultural, and humanitarian rights."<sup>18</sup> The Convention is comparable to a multilateral international treaty. It was offered for signature in January 1990 and then open to ratification. After ratification by more than the requisite twenty States Parties, the Convention went into effect on September 2, 1990 as binding international law amongst the ratifying nations.<sup>19</sup> The Convention created a binding obligation on each ratifying country<sup>20</sup> to apply

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14. The place of children in society varies dramatically depending on the traditions of the country. Some view children as individuals with inalienable rights; others consider children to be property. How children are perceived impacts directly on their treatment. The Convention was the result of the efforts of people of many different cultures and religious groups from different nations who labored to achieve the guarantee of rights and freedoms that at times were in direct conflict with their religious and cultural beliefs. The Islamic delegation objected to freedom of religion, adoption and foster care, since the Koran and their national legislation dictate that a child cannot choose a religion or change his religious faith; nor does the Islamic religion recognize the right to adoption. See Cynthia Price Cohen, *United Nations: Convention on the Rights of the Child, Introductory Note*, 28 I.L.M. 1448 (1989).

15. *Id.* These included the 1924 Geneva Declaration on the Rights of the Child and the 1959 U.N. Declaration of the Rights of the Child.

16. United Nations International Children's Emergency Fund [hereinafter UNICEF].

17. Cohen, *supra* note 14.

18. See Convention, art. 32, *supra* note 4.

19. CHILDREN'S RIGHTS IN AMERICA: U.N. CONVENTION ON THE RIGHTS OF THE CHILD. COMPARED WITH UNITED STATES LAW, *supra* note 7, at iii.

20. Multilateral Treaties Deposited with the Secretary General, ST/LEG/SER.E/10 (Status as of 12/91), /11 (Status as of 12/92), /12 (Status as of 4/93, as per Treaty Section of the Office of Legal Affairs at the United Nations).

its provisions through enabling legislation or other appropriate means and then to report regularly on its application.<sup>21</sup>

## II. IMPLEMENTATION

Implementation involves a standard report mechanism-monitoring committee model.<sup>22</sup> However, it differs in its focus by assisting State Parties' compliance with the Convention rather than sanctioning or pressuring those who fail to comply.<sup>23</sup> Article 32 requires that States Parties "shall" take the "legislative, administrative, social and educational measures to 'ensure' its implementation."<sup>24</sup> The language used in the drafting of the article was an attempt by the drafters to compromise while at the same time create a forceful instrumentation for children's rights. For example, the article contains language such as, "shall ensure" a right, which creates an obligation upon the States Parties to take affirmative steps to make sure children are protected from exploitation.<sup>25</sup>

The use of the term "appropriate" is arguably an imprecise standard. States parties are to "provide for appropriate regulation of the hours and conditions of employment" and "appropriate penalties or other sanctions to ensure the effective enforcement of the present article."<sup>26</sup> However, it allows each country leeway within its borders while providing the flexibility to expand its interpretation of "appropriate" as children's rights continue to evolve and expand.<sup>27</sup> Article 43 provides for the establishment of the Committee on the Rights of the Child within that country to interpret and apply the Convention.<sup>28</sup> "Ten experts of high moral standing and recognized competence" are chosen from among the citizens of States Parties to the Convention and act as independent authorities.<sup>29</sup>

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21. See Convention, arts. 4, 44, *supra* note 1.

22. See Convention, arts. 43, 44, *supra* note 1.

23. See *supra* note 6.

24. See *supra* note 4.

25. See Convention, art. 2, *supra* note 1.

26. See *supra* note 4, at 2(b), (c)

27. CHILDREN'S RIGHTS IN AMERICA: U.N. CONVENTION ON THE RIGHTS OF THE CHILD COMPARED WITH UNITED STATES LAW, *supra* note 7 at 37.

28. Committee on the Rights of the Child [hereinafter Committee].

29. See Convention, art. 43, *supra* note 1.

The flexible language of the Convention benefits the Committee, as the authoritative body of the Convention. The Committee may increase its requirements as to application of, and compliance with Article 32, as children's rights continue to develop and grow in all nations. Article 44 provides that States Parties must submit reports to the Committee within two years of ratification and every five years thereafter.<sup>30</sup> The reports must detail measures taken by States Parties to enforce the rights prescribed by the Convention and must offer evidence of attainment of these rights by children.<sup>31</sup> The report must include sufficient information so that the Committee may evaluate States Parties' compliance with the Convention. Each ratifying state

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#### ARTICLE 43

1. For the purpose of examining the progress made by States Parties in achieving the realization of the objections undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.

30. See Convention, art. 44, *supra* note 1.

#### ARTICLE 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights.

(a) Within two years of the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfillment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) or the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

31. *Id.* sec. 1.

must make reports available to its public.<sup>32</sup>

The Committee needs some source of outside verification. Article 45 encourages the Committee to receive outside information and assistance in monitoring compliance with the Convention from the United Nations' specialized agencies, the United Nations Children's Fund<sup>33</sup> and other appropriate competent bodies.<sup>34</sup> "Other competent bodies" refers to NGOs.<sup>35</sup> The Committee refers States Parties' requests for technical advice to these organizations. The Committee may make suggestions and recommend that studies be done on particular children's rights issues. At present, implementation relies almost exclusively on action taken by the ratifying states within their own borders.<sup>36</sup>

As a result of the Convention, there has been increased collaboration between NGOs<sup>37</sup>, UNICEF<sup>38</sup> and the United Nations

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32. *Id.* at sec. 6, art. 44.

33. While the International Labor Organization [hereinafter ILO] and the World Health Organization [hereinafter WHO] are among the "specialized agencies" of the United Nations, UNICEF could not participate in the monitoring process, because it was not specifically mentioned in art. 45. CHILDREN'S RIGHTS IN AMERICA: U.N. CONVENTION ON THE RIGHTS OF THE CHILD COMPARED TO WITH THE UNITED STATES LAW, *supra* note 7, at 47.

34. *See supra* note 6.

35. The Committee on the Rights of the Child encourages the exchange of dialogue for the implementation of the Convention and may solicit collaboration by NGOs and draw upon their expertise. NGOs fought for children's interests during the drafting process and have become a balancing factor by taking the role of advocates for children's rights. NGOs are assigned a role in the implementation process for the first time. Most in one way or another deal directly with child-related problems and issues and thus are an excellent source of current information. Hammarberg, *supra* note 10, at 102.

36. *See supra* note 6.

37. Some of the NGOs cooperating are the Defense for Children International, Save the Children, Childhope, Anti-Slavery International, Bonded Liberation Front [hereinafter BLF] and the International Society for the Prevention of Child Abuse and Neglect. U.N. CHILDREN'S FUND, UNICEF ANNUAL REPORT 46 (1990). Save the Children is a Connecticut based group that works in thirty-seven countries to facilitate improvements in childcare and protection. Licia Mouat, *Progress in Meeting Needs of Children Moves Slowly*, CHRISTIAN SCIENCE MONITOR, Dec. 20, 1990, at 1. The first National Workshop in Eradication of Child Labor in the Carpet Industry was organized in 1990 by the BLF, which is based in Delhi. The BLF also represents bonded laborers in court and appears as an advocate before the ILO and UNESCO. Jodi L. Jacobson, *Slavery, Yes Slavery*, WORLD WATCH, Jan/Feb. 1992, at 34.

38. UNICEF was established in 1946 by the international community as a short-term solution to deal with the homeless refugee children after World War II. It is a voluntary agency. Governments are not required to contribute to UNICEF as they are to the United Nations and its specialized agencies. By its own definition UNICEF is "an international co-operative on behalf of children" and is designed to make a permanent



special agencies such as the World Health Organization<sup>39</sup>, the United Nations Educational, Scientific and Cultural Organization<sup>40</sup> and the ILO<sup>41</sup>. Implementation of the Convention is predicated on the theory of the "best interests of the child."<sup>42</sup>

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contribution to child welfare. From a focus on child feeding to meet postwar emergency needs, it has evolved into long-term care of maternal and child welfare along with the U.N. specialized agencies and NGOs. CULTURAL PATTERNS AND TECHNICAL CHANGE 28 (Margaret Mead, ed., 1953) (quoting UNICEF charter).

39. "Attainment by all peoples of the highest possible level of health' is the principal objective of WHO, and health is defined as a state of 'complete physical, mental, and social well-being and not merely the absence of disease or infirmity'."

"The aims of WHO are not only to further protective measures, such as the elimination of reservoirs of communicable diseases, but also to promote measures toward positive health by means of public health education in the widest sense.

Among the principles enunciated by Member States of WHO in its charter, the following are directly relevant to the social aspects:

'Healthy development of the child is of basic importance; the ability to live harmoniously in a changing total environment is essential to such development.

Governments have a responsibility for the health of their peoples which can be fulfilled only by the provision of adequate health and social measures.'" *Id.* at 28 (quoting United Nations, WHO, "Constitution").

40. United Nations Educational, Scientific and Cultural Organization [hereinafter UNESCO].

The nations who established UNESCO believe in 'full and equal opportunities for education for all,' 'unrestricted pursuit of objective truth,' and 'free exchange of ideas and knowledge', UNESCO believes that the intellectual and moral solidarity of mankind is essential for lasting peace and the 'education of humanity for justice, liberty, and peace' are the sacred duty which all nations must fulfill. UNESCO will further:

- mutual knowledge and understanding of peoples;
- popular education and the spread of culture;
- maintenance, increase and diffusion of knowledge.

*Id.* at 27-28 (quoting United Nations, UNESCO "Constitution")

41. The ILO is one of the most advanced United Nations agencies. It was established in April, 1919 by Article 396 in Part XIII of the Versailles Treaty for the international regulation of working conditions. VICTOR-YVES GHEBALI, THE INTERNATIONAL LABOUR ORGANIZATION 9 (1989). Among its members were Germany, Austria, Brazil, Japan, Chile, Venezuela, Peru, Hungary, the U.S. and the U.S.S.R. Although the ILO cooperated closely with the League of Nations, the United Nations' predecessor, and relied on it for funding, the ILO established forever its autonomy through creative leadership, the establishment of direct contacts with labor ministries and aggressive standard setting reflected in the adoption of sixty-seven Conventions and sixty-six Recommendations over its first twenty years. *Id.* at 11-12. On May 30, 1946 the ILO signed an agreement with the United Nations which made it the first of the specialized agencies under article 57 of the United Nations Charter. *Id.* at 24.

42. Convention, art. 3, *supra* note 1, in pertinent part:

1. In all actions concerning children, whether undertaken by public or private social welfare institution, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

## III. FACTORS THAT CONTRIBUTE TO CHILD LABOR

Exploitative child labor practices continue to flourish throughout the world. Many of the countries with the highest incidence of exploitative child labor practices cite common reasons why children must work.<sup>43</sup> These factors include poverty and lack of employment opportunities for parents. Child labor flourishes proportionately to existing social inequities,<sup>44</sup> and the unavailability of credit and economic opportunity. Child labor is exacerbated by population growth.<sup>45</sup>

Although lack of legislation is often cited as a factor for continuing child labor, most countries have laws forbidding trade in human beings, and anti-slavery laws, which encompass debt bondage, sexual slavery and the "ownership" of human beings.<sup>46</sup> Additionally, most if not all of the countries that have a high incidence of child labor exploitation are in violation of their own labor laws and their own constitutions.<sup>47</sup> Ostensibly stricter legislation with stricter penalties for violation is desirable. However, enforcement is the key to the Convention's success.

Governments in these countries are often unwilling to address the child labor problem because of the devastation it would impose on their economies. There is widespread corruption at the local level.<sup>48</sup> It is endemic to their way of life that these violations exist. Often, the government itself operates the facility that employs these children in defiance of its own laws and then denies any knowledge of such practices.<sup>49</sup> Planned police raids to rescue children are frequently leaked to facility owners, so that they may avoid discovery and penalty.<sup>50</sup> Often,

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43. CHILD LABOUR: A BRIEFING MANUAL, Int'l Labour Office, Geneva, at 13 (1986).

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. See Ben Tierney, *The Carpet Boys From Bihar*, CALGARY HERALD, Oct. 13, 1991, at F2. See also, Ben Tierney, *Carpet Boys Live A Life of Squalid Slavery*, VANCOUVER SUN, Sept. 30, 1991, at A1 (discussing how India's carpet belt, which relies heavily on children as a cheap source of labor generates eighty percent of the \$265 million India earns annually from carpet exports. They have much to lose if their cheap source of labor is removed. They have engaged in deadly reprisals to those who have attempted to challenge them).

49. *Id.*

50. Members of organizations that have attempted to free bonded child slaves have

officials are disinclined to act even when they are informed of exact locations where children may be found working. Non-interference is rewarded by donations to the party coffers. This practice encourages collusion and propels corruption between politicians and industry.<sup>51</sup>

Finally, the scarcity of educational facilities and the underdevelopment of countries exacerbates poverty; and failure to enforce existing laws allows illegal child labor to continue. The lack of access to education eliminates any hope that these children will ever be able to raise themselves out of their desperate situation. Furthermore, if these countries wish to continue to compete in the international marketplace, this cycle is perpetuated since cheap labor is their best attraction and children are the best source of cheap labor. In poor countries, such as Thailand, India and Pakistan, it is unlikely that children who are politically disenfranchised will be protected from such economically profitable commerce. The industries are determined to maximize profits in total disregard of even the most minimal of children's rights.<sup>52</sup>

#### IV. NEED FOR ARTICLE 32

The fact that the Convention took only ten months to be accepted suggests that it was a much needed vehicle for the protection of children's rights. If effectively enforced, Article 32 would protect children from economic exploitation and would place child employment restrictions on States Parties.<sup>53</sup> However, even the countries who have signed or ratified the convention continue to defy not only the treaty, but their own labor

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been beaten and jailed and in countries like India, Pakistan, Nigeria and Sri Lanka have even been murdered by government backed death squads. Irwin Block, *Focus On Human Rights Ex-minister Needed if Commonwealth to Stay Relevant*, MacDonald Says, THE GAZETTE, Sept. 26, 1991, at A4 (discussing how former Conservative Cabinet Minister Flora MacDonald made public a 232 page report detailing "shocking" human rights abuses in Commonwealth countries).

Governments have disrupted and banned meetings of these organizations. Existing labor laws are largely ignored and employers have been known to shoot child workers for their disobedience or disloyalty. Angus Macswan, *Pakistan Children, Workers Virtual Slaves*, Report Says, REUTER LIBR. REP., Aug. 2, 1991, at BC Cycle.

51. Tierney, *supra* note 48.

52. *Id.*

53. See *supra* note 4.

laws by allowing children to continue to be a source of cheap labor.

Anti-Slavery International<sup>54</sup>, a human rights organization, reports that slavery flourishes throughout the world, despite anti-slavery laws and United Nations Conventions forbidding the sale of human beings.<sup>55</sup> According to ASI, there are 200 million "child slaves." The most predominant form of child slavery is the exploitation of school-age children by landowners and factory industries.<sup>56</sup> Other human rights organizations, including the ILO and the United Nations Center on Human Rights, recognize that the use of child labor is pervasive in both Third World countries and First World countries. Slavery practices include bonded laborers, who pledge their labor to pay off debts<sup>57</sup>; chattel slavery<sup>58</sup>, the "ownership" of one person by another; and sexual slavery, the sale of women and children into prostitution or forced marriage.<sup>59</sup> All these forms of slavery provide a permanent source of free or cheap labor.

#### A. *Foreign Labor Practices That Signify the Need For Article 32*

##### (i) Physical Labor

Despite laws prohibiting child labor, half of India's child population, more than 120 million children under the age of fourteen, work.<sup>60</sup> According to current estimates, India contains

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54. Anti-Slavery International [hereinafter ASI].

55. Slaves are defined as "those made to work against their will, for little or no pay and without the freedom of choice to seek alternative employment." Jacobson, *supra* note 32, at 9, 34.

56. Jonathan Power, *Cancer of Homeless Children Has Mushroomed*, CALGARY HERALD, Oct. 26, 1991, at A5.

57. In many cases the families are victims of debt bondage. They have taken loans for as little as five dollars to pay off debts incurred as a result of sickness or to pay for a new roof, or a marriage or funeral. Interest rates as high as one hundred to two hundred percent insure the debt can never be paid off and that it is passed on for several generations. Most of these people are illiterate and thus cannot dispute records of their debts. Tierney, *supra* note 48.

58. Impoverished families sell their children to moneylenders for cash, or to pay off debts that can never be repaid. Sometimes these parents believe their children will have a better life if they sell them, because at least the children will be fed by the new employers. Tierney, *supra* note 48.

59. Jacobson, *supra* note 37, at 9, 34.

60. P.K. Balachandran, *Child Labourers Hurt, 38 People Die in Fireworks Factory*

between five and fifteen million children who are bonded laborers working to repay debts incurred by their parents.<sup>61</sup> India employs an estimated 500,000 children, ages four to sixteen, in factories where they are exposed to unfit working conditions.<sup>62</sup> Factories use nearly fifty five million Indian children working long hours, under wretched conditions, for as little as 40 cents a week to make glass<sup>63</sup>, matches, rugs<sup>64</sup> and fireworks.<sup>65</sup>

In Thailand, families sell their children (some as young as three years old), to the owners of Bangkok factories.<sup>66</sup> Thai Prime Minister Anand Panyarachun ordered an investigation of job placement agencies who were suspected of luring children into slave labor and prostitution. Officials are reviewing current child labor laws and enforcement to determine what can be done to prevent further abuses.<sup>67</sup>

Pakistan uses thousands of children in its textile mills, as

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Blaze, REUTER LIBR. REP., July 13, 1991, at 1.

61. Tierney, *supra* note 48.

62. Jacobson, *supra* note 37, at 9.

63. Children in the glass factories work amidst splintered and molten glass without safety glasses or even shoes. Scars and open wounds are clear reminders of the hazardous conditions. B.J. Cutler Scripps, *Of Child Bondage: Lots of Inspiring Words But No Hope for Millions of Children*, THE GAZETTE, Sept. 9, 1991, at B3.

64. In March 1991, three young children were rescued by the Bonded Liberation Front (BLF) after two years in bondage weaving carpets. The boys, only now between seven and nine, worked for up to eighteen hours a day in ill-lit, airless mud huts, inhaling carpet lint, in extreme temperatures and were forced to sleep on the earthen floor beside their loom. Children are coveted because their little hands can tie tiny knots. *Some 44 Million Children Working Under Sub-human Conditions in India*, XINHUA GEN. NEWS SERVICE, Oct. 4, 1991, Item no: 1004138.

65. In July 1991, children were among those seriously injured in a fireworks factory fire, uncovering India's failure to enforce its laws which ban child employment in these factories. Balachandran, *supra* note 60, at 1. Kevin Hickey, *Connecting Trade and International Labor Standards: Denial of Worker Rights as an Unfair Trade Practice*, 6 LAW & INEQUALITY: A JOURNAL OF THEORY AND PRACTICE, 127 n.1 (1988) (quoting Joseph Albright and Marcia Kunstel, *Child Labor: The Profits of Shame*, WASH. POST, July 12, 1987, at C1, Col.1).

66. Children are sold from January to March near Bangkok's main railway station. Power, *supra* note 56, at A5.

On October 31, 1991, thirty-one boys, ages 13 to 17, were rescued from a slave labor factory in Bangkok. All of the boys were victims of savage beatings and torture, were forced to work more than fifteen hours daily, given little food, very low wages and confined to squalid living quarters. Six of these boys ended up in a hospital intensive care unit as a result of their treatment. *Thai Prime Minister Declares War On Child Labor Abuse*, XINHUA GEN. NEWS SERVICE, Nov. 4, 1991, Item No: 1104075.

67. *Thai Prime Minister Declares War On Child Labor Abuse*, *supra* note 66.

carpet boys and in its brick kiln industry. Its number of bonded laborers rivals the five to fifteen million estimated to be in India.<sup>68</sup> Dire working conditions lead to the death of over half the children under the age of twelve from overwork, malnutrition and disease.<sup>69</sup> In cities like Karachi and Hyderabad, an estimated twenty percent of these children are addicted to drugs by carpet factory owners, to ensure their continued dependence on the owners.<sup>70</sup>

In the Philippines approximately one thousand children under twelve work in the smoldering Smokey Mountain garbage dumpsite scavenging for bottles, paper, plastic, wood and metal which they then sell to middlemen.<sup>71</sup> They are exposed to smoke and dust, battery contamination, cuts, punctures, burns and tetanus.<sup>72</sup>

### (ii) Sexual Exploitation

In India, failure to enforce stringent laws against child prostitution results in an estimated 300,000 minors engaged in the "flesh trade."<sup>73</sup> The main sources of child prostitution are abduction, rape, incest, fake marriages,<sup>74</sup> pimps, police and traders.<sup>75</sup>

Thailand is a world leader in the sale of children into prostitution or forced marriages. A profitable source of international

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68. State-run carpet weaving factories employ a workforce in excess of fifty thousand boys and girls aged four to twelve who earn as little as four dollars per month. Jacobson, *supra* note 37, at 9.

69. The government of Pakistan is accused of running training centers for the country's carpet-weaving industry, where children as young as four are forced to work in near slave conditions, many as bonded laborers. Tim Kelsey, *Fight to Rescue Pakistani Child 'Slaves'; Bonded Labour is Widespread in Pakistan, Where Some Workers in the Carpet Industry Are As Young As Four*, THE INDEPENDENT, Aug. 14, 1991.

70. *Id.*

71. Isagani de Castro, *Labor: No Simple Solutions to Child Scavenging*, INTER PRESS SERVICE, Aug. 5, 1991, at 1.

72. *Id.*

73. *Some 44 Million Children Working Under Subhuman Conditions in India*, *supra* note 64.

74. In August 1991, a Saudi businessman was arrested when he tried to transport a ten year old girl out of India, after he purchased her from her parents for \$240. The abduction was not unusual; the arrest was. Edward A Gargan, *Tearful Bride, Just 10, Touches India's Conscience*, N.Y. TIMES, Oct. 21, 1991, at A4.

75. *Some 44 Million Children Working Under Sub-human Conditions in India*, *supra* note 64.

exchange in Thailand is "sex tourism."<sup>76</sup> The Thai Center for the Protection of Children's Rights estimates there are some 800,000 female prostitutes between twelve and fifteen years of age in Bangkok.<sup>77</sup> Although the sex business is illegal, brothels freely advertise the availability of young girls in newspapers. These girls are acquired through kidnapping or are sold by their own prostitute mothers into the trade. Although the Thai government is aware of these enslaved children, it chooses to look the other way.<sup>78</sup> Neither India nor Thailand have signed nor ratified the Convention. Pakistan ratified the Convention on December 11, 1990. The Philippines ratified the Convention on August 8, 1990.<sup>79</sup>

*B. United States Labor Practices That Signify the Need for Article 32*

The United States advocates the protection of human rights throughout the world and strongly criticizes any government that it perceives is violating these basic human rights. Nevertheless, the United States continues to allow the exploitation of children in the work force within its own borders in violation of its Federal Labor Standards Act.<sup>80</sup> Accurate statistics depicting the incidence of children working in the United States from the New York sweatshops of Chinatown and the Garment District,<sup>81</sup>

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76. Jacobson, *supra* note 37, at 34.

77. *Id.*

78. Added to the horrors of this life is the fact that more than one-half million of the females in this business have AIDS. Jacobson, *supra* note 37, at 34; Scripps, *supra* note 63, at B3.

79. INTERACTION, AM. COUNCIL FOR VOLUNTARY INT'L ACTION, STATUS OF THE CONVENTION ON THE RIGHTS OF THE CHILD, Feb. 6, 1992, at 2.

80. Federal Labor Standards Act [hereinafter FLSA].

FLSA was originally enacted in 1938 to "eliminate labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency and the general well-being of workers"; it was amended in 1966 to "prohibit oppressive child labor in agriculture" and again in 1974 to "prohibit nearly all agricultural employment of child laborers under age 12." Jeanne Glader, *A Harvest of Shame: The Imposition of Contractor Status on Migrant Farmworkers and Its Ramifications for Migrant Children*, at 1462 n.41 (quoting Fair Labor Standards Amendments of 1966, Pub. L. No. 89-601, 203 (codified as amended at 29 U.S.C. at 213(c)) (Supp IV 1965-68); *Id.* at 1464 n.59 (quoting Fair Labor Standards Amendments of 1974, Pub. L. No. 93-259, at 25, 88 Stat. 72 (1974) (codified as amended at 29 U.S.C. 212-213 (1988))).

81. Children from poor families, instead of attending school, have been discovered working for barely minimum wage in modern illegal sweatshops, in garment factories and

as well as the Florida citrus groves and California farms are not available.<sup>82</sup> Children, some as young as four years old, are forced to join their migrant farmworker parents in the fields.<sup>83</sup> Law enforcement officials, aware of the situation, chose to look the other way.<sup>84</sup> In some cases, the law is used to circumvent protection of these children.<sup>85</sup> The major reason most migrant children

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other manufacturing businesses. Children under sixteen are enslaved as prostitutes on the streets of the major cities of the United States. Children as young as six are running drugs on the streets for big-time traffic dealers. Stephen Green, *The Shame of Child Labor*, L.A. DAILY J., Apr. 25, 1990, at 6.

82. In the fall of 1989, an estimated 22,508 children, the highest number since the enactment of FLSA, were discovered working in violation of the law; 7,000 children were found working under illegal conditions in the spring of 1990. Michael Specter, *Illegal Child Labor Resurging in U.S.; Immigrant Schoolgirls Toil in Modern-Day Sweatshops*, WASH. POST, April 14, 1991, at A1.

83. Migrant children live below the poverty level in substandard living conditions. Poor nutrition and water deprivation lead to malnutrition. Their poor physical condition increases the toxic effect of the pesticides to which they are exposed. They are more prone to upper respiratory infections, parasitic conditions, skin infections, chronic diarrhea, and vitamin A deficiency. There is a high infant mortality rate and most children are below average height. Glader, *supra* note 80, at 1457 (quoting Edward R. Raybal, *After 30 Years, America's Continuing Harvest of Shame: Hearing Before the House Select Committee on Aging*, 101 Cong., 2d Sess. 2 (1990)).

84. Green, *supra* note 81, at 6.

85. FLSA's "family farm exemption" excludes protection of children when they are employed by members of their "immediate family." Growers evade liability for violation of FLSA by requiring migrant parents to sign an "independent contractor" agreement as a condition of employment, even though the reality is that the farmworker has no control over the management of the operation. Glader, *supra* note 80, at 1484 (quoting *S.G. Borello & Sons, Inc. v. Dep't of Indust. Relations*, 769 P.2d 399, 410 n.15 (1989)). The child is no longer considered an employee of the grower but is viewed as working for a parent. Child labor provisions and other protection afforded employees under FLSA including minimum age requirements, minimum wage, overtime pay, FICA, state workers' compensation, disability or unemployment insurance no longer apply. *Id.* at 1483 (quoting *Donavan v. Brandel*, 736 F.2d 1114, 1115 (6th Cir. 1984)).

The migrant worker's only way to avoid such abuse is to take the employer to court and challenge the "independent contractor" status. Thus far, both federal and state courts decide these challenges on a case by case basis, which encourages growers to continue to classify their migrant workers as "independent contractors" because it is almost impossible for these workers to gain access to the court to challenge the classification. *Id.* at 1478 (quoting *Donavan v. Gillmore*, 535 F.Supp. 154 (N.D. Ohio 1982)(growers held liable for violations of the FLSA child labor provisions using the six-part test of *Borello & Sons*) and *Donavan v. Brandel*, 736 F.2d 1114 (6th Cir. 1984)(reached opposite conclusion focusing on same factors under nearly identical factual circumstances)).

These workers are economically dependent on their employers, are ignorant of their rights, do not have access to legal services, have no political influence since they cannot vote, and fear retaliation. Even if they can determine where to go to get assistance, they must then hope they will get a sympathetic judge. *Id.* at 1477.



are vulnerable to exploitation, is that their meager wages are needed by the family for survival. Furthermore, they are often in the United States illegally and thus are precluded from seeking recourse to an appropriate governmental agency for fear of deportation.<sup>86</sup> Only four percent of the Labor Department's enforcement activities are directed to child labor.<sup>87</sup> Current penalties for child labor violations in the United States are limited to \$1,000 per offense.<sup>88</sup> These and other child labor problems could be remedied through ratification of the Convention, which would make Article 32 the law and would protect all children from exploitive labor practices. As Senator Bill Bradley of New Jersey suggests, this may be one of the primary reasons why the United States is reluctant to ratify.<sup>89</sup>

Furthermore, the horrific labor practices existing in less developed countries are not so far removed from the United States' influence as might be imagined. In various ways, the United States plays a significant part in maintaining oppressive child labor practices. The United States consistently grants most favored nation status, duty-free benefits and other trade benefits under the generalized system of preferences to countries which repeatedly violate internationally recognized worker rights.<sup>90</sup>

Additionally, hundreds of thousands of jobs are provided by United States' transnational corporations to less developed nations. These transnational corporations encourage less developed countries to continue their exploitative behavior since they will generally not do business in countries that they believe over-regulate business practices. In order to maximize profits these corporations seek countries where cheap labor can be found, no matter how oppressive its labor practices might be. They are drawn to countries that have little regulation, so they can take advantage of the cheap labor that results when the population of a country is poor and must work under whatever conditions pre-

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86. Sandra Parker, *Rules Against Alien Children*, L.A. DAILY J., June 21, 1990, at 1.

87. Don J. Pease, *Labor Secretary's Proposals Not Nearly Tough Enough*, L.A. DAILY J., Apr. 25, 1990, at 6.

88. *Id.*

89. Sen. Bill Bradley, *Why is the U.S. Ignoring the World's Children?*, CHRISTIAN SCIENCE MONITOR, Feb. 4, 1992, at 18.

90. *AFL-CIO opposes Benefits for Nations That Allegedly Violate Workers Rights*, INT'L TRADE REP., Oct. 9, 1991, at 1462; Hickey, *supra* note 65, at 127-28.

vail. The profits that are generated through the exploitation of these children are then removed from the country depriving it of any chance of development. The United States aggravates this problem when it offers trade benefits to these countries, thus increasing their desirability as sources of cheap labor.<sup>91</sup>

## V. UNITED STATES' FAILURE TO SIGN THE CONVENTION

The President has yet to sign the Convention, even though the United States worked closely on its development and voted for its adoption in the General Assembly,<sup>92</sup> and despite urging in the Fall of 1991 by both houses of Congress and the American Bar Association.<sup>93</sup> President Bush reviewed the Convention for more than a year and never submitted it to the Senate.<sup>94</sup> Bush's failure to sign the Convention left the United States trailing behind all its Western Allies<sup>95</sup> in the protection of children and instead aligned itself with other non-signatories like Iraq, Libya, Cambodia and South Africa.<sup>96</sup> President Clinton has not yet acted on this Convention.

### A. *Opposition to Signing the Convention*

Various concerns regarding the United States signing the Convention have been raised. Pro and anti-abortion forces are concerned with specific language used in two parts of the Convention. The first occurs in the Preamble, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth."<sup>97</sup> It is unlikely that this would prevent ratification, since the Preamble has no binding legal force. The drafters included a statement in the legislative history that neutralizes

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91. Hickey, *supra* note 65, at 127-31.

92. Cohen, *supra* note 14.

93. A.B.A. YOUNG LAWYERS DIVISION, *supra* note 9.

94. *Id.*

95. Bradley, *supra* note 89, at 18.

96. *Id.*

97. Convention, *supra* note 1, resolution 1386 (XIV), third pmbl. para. 6

#### PREAMBLE 3

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth."

the language in the Preamble, so that each country may define the beginning of childhood according to its own law.<sup>98</sup> The second occurs in Article 6 which states that, "every child has the inherent right to life."<sup>99</sup> The fear is that this language might impose on nations some position on the issue of abortion. The preponderance of the evidence suggests the drafters of the Convention left it up to States Parties to determine whether the definition of a "child" is to include the gestation period.<sup>100</sup> Drafters only intended to protect children from the time of birth from dangers of infant mortality, malnutrition and epidemics.<sup>101</sup> Additionally, there is a federalism concern, since many of the Convention's enunciated rights fall within areas that have traditionally been left to the authority of the states.<sup>102</sup> Primarily it is argued that Article 37 of the Convention<sup>103</sup> might interfere with a state's right to allow capital punishment or life imprisonment for children under 18 years of age.<sup>104</sup> Since under our Constitution ratified treaties become federal law, there is a fear that the Convention would ultimately supersede some United States laws; or at least diminish existing rights that currently are within the states' jurisdiction, most especially those previously

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98. In adopting this preambular paragraph, the Working Group does not intend to prejudice the interpretation of art. 1 or any other provision of the Convention by States Parties. U.N. Doc. E/CN.4/1989/48 (1989), para. 43.

99. Convention, art. 6, *supra* note 1. In pertinent part that Art. 6 states:  
"1. States Parties recognize that every child has the inherent right to life."

100. A.B.A. YOUNG LAWYERS DIVISION, *supra* note 9, at 16.

101. *Id.*

102. Gary L. Bauer, *Watch Out for the Children's Rights Treaty*, Family Research Council, WASH. WATCH, Mar. 1991, at 4; Bruce Fein, *Mischievous Tune from the U.N. Piper? Sour Notes in the Score*, WASH. TIMES, May 21, 1991, at Comt. E.

103. The Convention's restrictions on capital punishment conflict with the United States' sanction of the use of capital punishment for children under eighteen years of age. Convention, art. 37, *supra* note 1. In pertinent part:

ARTICLE 37

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.

104. The United States allies itself with Iraq, Iran and Bangladesh in continuing to allow the killing of children. Hugh Downs, *Most Vulnerable, Least Protected*, L.A. TIMES, Feb. 10, 1991, at M5.

discussed and parents' rights regarding their children.<sup>105</sup>

There are a number of ways problems could be avoided. Ratification could be conditioned upon a federal-state clause.<sup>106</sup> Alternatively, the Senate could include separate reservations or declarations of non-adherence<sup>107</sup> with respect to those instances when there is a conflict. The separate provisions could state that the Convention would not be applied in any way that will affect a specific law, as long as it does not compromise the spirit of the Convention, and that when there is a conflict, the Constitution or the state law would prevail.<sup>108</sup>

105. Bauer, *supra* note 102; Fein, *supra* note 102.

106. CHILDREN'S RIGHTS IN AMERICA: U.N. CONVENTION ON THE RIGHTS OF THE CHILD COMPARED WITH UNITED STATES LAW, *supra* note 7, at 57, note 2 (quoting RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES, 302 reporter's n. 4 (1986), 71:

Federal-state clauses. Federal states such as Canada or Switzerland sometimes have sought special provisions in international agreements to take account of constitutional restrictions on the power of their central government to deal with some matters by international agreement. For international agreements of the United States, such provisions are not required by the Constitution. . . Constitutional requirements apart, federal states, including the United States, have, for domestic political reasons, sometimes sought provisions modifying their obligations so as to take account of their federal character. . .

107. *Id.* at 72, n. 4 (quoting RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES, 313(3) which provides:

(3) a reservation established with regard to another party in accordance with Subsection (2)(c) modifies the relevant provisions of the agreement as to the relations between the reserving and accepting state parties but does not modify those provisions for the other parties to the agreement *inter se*.

Similarly, article 21 of the Vienna Convention on the Law of Treaties, opened for signature May 23, 1969, art. 21(d), 1155 U.N.T.S. 331F (entered into force Jan. 27, 1980) provides:

1. A reservation established with regard to another party in accordance with articles 19, 20 and 23:

(a) modifies for the reserving State in its relations with that other party the provisions of the treaty to which the reservation relates to the extent of the reservation; and

(b) modifies those provisions to the same extent for that other party in its relations with the reserving State.

2. The reservation does not modify the provisions of the treaty for the other parties to the treaty *inter se*.

108. SAWYER ROGER, CHILDREN ENSLAVED 176 (1988).

### B. *Proponents For Signing the Convention*

There is support within the United States for ratification of this convention.<sup>109</sup> Senator Bill Bradley suggested that former President Bush's reluctance to sign the treaty may have resulted from the fear that the Convention would have required the United States to live up to the goals of improving the quality of life for its children and that its compliance, or lack thereof, would have been scrutinized by the world. Senator Bradley contends that the Convention, far from conflicting with our laws, "mirrors our Constitution, asserting the rights of freedom of expression and religion, nationality and family ties, and the highest attainable standards of health and basic education."<sup>110</sup> Given the United States' active participation in the drafting of the Convention, and its perceived role as an advocate of human rights, President Clinton must soon take action on the Convention, if the United States wishes to maintain its credibility in the international community.

## VI. PROPOSALS FOR EFFECTIVE IMPLEMENTATION OF THE CONVENTION

Aggressive and cooperative acceptance and adherence to the value that, "the child by reason of his physical and mental immaturity needs special safeguards and care, including legal protection. . ." is the ideal of the Convention.<sup>111</sup> Ratification of the Convention is not enough to guarantee these safeguards. Effective enforcement of Article 32 is essential to ensure the end of current practices that have encouraged the widespread and escalating incidences of exploitative child labor in both Third World and First World countries.

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109. Among those who support ratification are the Senate, the House of Representatives, the American Bar Association, Senator Bill Bradley, D-N.J. as co-chairman of the Advisory Council on the Rights of the Child, Hugh Downs as chairman of the United States Committee for UNICEF, the Children's Defense Fund, Save the Children Federation and over one hundred and fifty other American and international organizations including religious and professional groups and children's advocates throughout the world. Downs, *supra* note 104; MOUAT, *supra* note 37 at 2. USC for UNICEF, *Organizations That Support the Children's Convention*, Updated Nov., 1991, Feb. 7, 1992; Interaction, American Council for Voluntary Int'l Action, Wash. D.C.

110. Bradley, *supra* note 89, at 18.

111. For the full text of Pmbl. 6, *see supra* note 97.

### A. *Implementation By States Parties*

In many developing countries a gradual implementation of improved working conditions may have to suffice initially, since compelling immediate and complete change might devastate their economies and lead to greater poverty or starvation. To effectuate enforcement within ratifying countries, reports of existing conditions should be made available to the public for consideration and input before submission to the Committee. Where exploitation in a country is exposed, the population should be encouraged to respond and offer suggestions to remedy the situation. Additionally, those most affected, the children, must be involved in the process. All children must be informed of their rights as protected under the Convention through schools, through health organizations, through their families, through media exposure and finally through free access to ombudsmen acting as their spokespersons. The ombudsmen should be independent and neutral individuals, who are expert and trained negotiators empowered to ensure that the children's best interests are always a foremost consideration. The ombudsmen should be accessible to the children and permitted to speak freely on their behalf when exploitation is suspected. A complaint mechanism must be available where individuals who are aware of abuses, and more importantly, children who are victims of exploitation, are free to report without fear of discovery or reprisal.

### B. *Global Implementation*

At the present time implementation relies almost entirely on action taken by States Parties within their own borders. However, the Convention has already increased collaboration between States Parties, the Committee on the Rights of the Child, UNICEF, the United Nations specialized agencies and the hundreds of NGOs that exist throughout the world.<sup>112</sup> The flexible language of Articles 32 and 45 allows sufficient opportunity for the Committee, as the authoritative body, to work together with those other parties to determine what legislative, administrative, social and educational measures must be taken to ensure imple-

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112. For full text of art. 45, see *supra* note 6.

mentation of Article 32 and the evolution of a strong mechanism for enforcement.

In order to effect changes and ultimately eliminate child labor, certain policies must be enacted internationally. First, economic and social measures must be taken to alleviate the poverty that leads to exploitation of children as a source of cheap labor. Solutions for poverty must come from government programs funded and executed through cooperation between the various international agencies, including international banks, to provide loans to those countries or individuals who do not have access to funds elsewhere.<sup>113</sup> It is UNICEF's concern that "the need of children should have first claim on the extra resources which might become available in a more peaceful world."<sup>114</sup>

With a general decrease in arms spending as a result of the demise of Communism, more money should be available. Work is constantly going on to access these resources through the various agencies, whose interest is in guarding children's rights. The ILO has increasingly become one of the most recognized United Nations organizations responsible for the implementation of international standards.<sup>115</sup>

Second, there is a direct correlation between investment in health and education for children and improved economic conditions.<sup>116</sup> Therefore, a universal compulsory education system that correlates with the minimum age at which a child may work

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113. Child labor flourishes where there is a lack of economic opportunity, including the availability of jobs and credit. *CHILD LABOUR: A BRIEFING MANUAL*, *supra* note 43.

114. "Children are the greatest longterm investment which the human race could make in its future economic prosperity, political stability and environmental integrity." *Supra* note 38.

115. For years ILO and the Philippine Labor Department have been working together to keep children from scavenging to earn money. The most recent collaboration is a social experiment funded by a \$300,000 grant from the United Nations Development Program (UNDP) that focuses on assisting the children. Parents must sign a contract promising not to let their children scavenge in order for their children to be allowed to participate in an integrated system of interventions including a "drop-in center" providing free food, water, first aid and recreation. The project also offers opportunities to earn income, financing for education and weekend excursions to expand the children's life experiences. This first child labor project organized by the ILO has shown great success that it will be duplicated in other countries like Mexico and Brazil who have similar problems. Isagani de Castro, *Labor: No Simple Solutions to Child Scavenging*, INTER PRESS SERVICE, Aug. 5, 1991.

116. Mouat, *supra* note 37.

is essential to eradicate poverty and the need for child labor.<sup>117</sup> Education provides children with a way out of poverty and when children must attend school, they cannot work instead.

Exploitation of children is encouraged when there is a marketplace that demands volume production of cheap agricultural and manufactured goods.<sup>118</sup> As long as a profitable market exists the exploitation will continue. An effective remedy advocated by human rights groups is a boycott of all products that do not display a label guaranteeing production was "free of child labor."<sup>119</sup> Boycotts would eliminate the temptation of using child labor, and those jobs would become available to the adults as the only source of available labor. Finally, trade policies must be directly connected with child labor standards. Favored nation status and other trade benefits must be withheld from those countries that are guilty of violating the standards established by the Convention.<sup>120</sup>

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117. *Id.* Assefa Benquele, the top child labor officer for the ILO advocates "universal compulsory education" as the most important measure to remove children from the child labor market and keep them out. CHILD LABOUR: A BRIEFING MANUAL, *supra* note 43, at 13. BLF has founded seventy-seven schools funded by UNICEF in an attempt to educate children and offer them a way out of their poverty. Tim Kilsey, *Fight to Rescue Pakistan Child Slaves; Bonded Labour is Widespread in Pakistan, Where Some Workers in the Carpet Industry Are As Young As Four*, INDEPENDENT FOREIGN NEWS, Aug. 14, 1991 at 10. London based Anti-Slavery International (ASI) established in 1839 continues to work to eradicate the commonest form of slavery, the industrial and agricultural exploitation of school age children as a source of cheap labor. Jacobson, *supra* note 37, at 34.

118. Rugs made by enslaved children find their way to Europe, the United States and Canada where they are sold for as much as \$4,000. Bertrand Marotte and Dave Todd, *Retailers Hit With Mounting Criticism*, CALGARY HERALD, SOUTHAM NEWS, Oct. 13, 1991 at F2.

119. *Id.* A Christmas nationwide "boycott" of such popular children's toys as Barbie and Teenage Mutant Ninja Turtles was urged by consumer groups and organized labor to protest the purchase of the toys made in China allegedly by children under sixteen who are forced to work under oppressive conditions. China exports about \$1.6 billion worth of toys to the United States annually and it is estimated that child and prison labor account for between 16 and 19 percent of these exports. Amanda Morrall, *Turtles, Barbie Are Targets for Human Rights 'Boycott'*, CALGARY HERALD, Dec. 14, 1991 at B1; *Labor, Consumer Coalition Launches U.S. Boycott of Toys Imported From China*, BNA INT'L BUS. DAILY, Nov. 26, 1991.

120. The Inter-Governmental Group on Indonesia (IGGI) which contacts institutions and rich countries that provide Jakarta, Indonesia with cheap loans, suggests that IGGI withhold loans from those factories who engage in unfair labor practices and use illegal child labor. To secure lucrative contracts from U.S. companies like Reebok and Nike, many Asian factories pay wages as low as the equivalent of sixty cents a day. Eliza-



The United Nations has the political power to play an increasingly important role in effecting these changes. However, the United Nations is only as strong as its members and only wields the power those members are willing to delegate.<sup>121</sup> The Convention holds society legally accountable for the protection of children. It is up to all nations of the world to ensure a safer, healthier and happier world for our children. Through the protection offered by Article 32, each child would be afforded the right to stay in school, to have his or her childhood protected, and to be protected from exploitation. All nations must ratify the Convention. States Parties must then agree to submit to the monitoring procedures devised by the Committee and must comply with the sanctions imposed, if they are found in violation. UNICEF, United Nations specialized agencies and NGOs must be allowed to report abuses when they see them, without fear of reprisal.<sup>122</sup> Administration should occur through the International Court of Justice, as the principal judicial organ of the United Nations.<sup>123</sup>

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beth Pisani, *Western Nations Must Push Indonesia to Allow Unions*, REUTER LIB. REP., May 17, 1991.

121. The United Nations system is based on two fundamental principles of international law: the sovereign equality of states and the duty to cooperate. Roger, *supra* note 108 at 183 n. 5 (quoting Professor Abe-Saad, *Progressive Development of the Principles and Norms of International Law Relating to the New International Economic Order*, G.A. doc. A/39/504/Add/1 1984). The General Assembly is comprised of representatives of all its Members. The General Assembly elects two-thirds of the Members of the Security Council and the other one third are in permanent Membership. Subject to veto by the major powers, the Security Council, in compliance with the Charter, singularly has the power to impose its will on Member States. *Id.* at 176.

122. Presently, United Nations organizations like UNESCO, UNICEF and the ILO are powerless to interfere in the affairs of sovereign states unless invited to do so. (eg. UNICEF is limited to how much it can accomplish once it is within a country's borders. As long as it does not instigate, it is welcome. While it receives hundreds of millions of taxpayers' money to protect children, if it wants to continue to assist in its efforts to alleviate the country's children's hunger and disease, it must often ignore human rights violations). *Id.* UNICEF is inhibited from comment as well as action within the bounds of the resolution of the General Assembly that approved its establishment. *Id.* at 183.

123. U.N. Charter art. 92.

#### ARTICLE 92

The International Court of Justice shall be the principal judicial organ of the United Nations. It shall function in accordance with the annexed Statute, which is based upon the Statute of the Permanent Court of International Justice and forms an integral part of the present Charter.

## CONCLUSION

It is evident that despite centuries of legislation by nations throughout the world forbidding exploitative child labor practices, the incidences of abuse continue to exist and are currently escalating dramatically. Abject poverty and a great demand in the marketplace for volume products, produced by cheap child labor to maximize profits, encourage the continued employment of children in the workforce.

The Convention on the Rights of the Child is a dramatic step in the process of protecting children from such abuses universally. However, the Convention is only as effective as its implementation process. Article 45 includes mechanisms which, if effectively employed, would ensure successful enforcement in conjunction with States Parties, UNICEF, the United Nations' specialized agencies and "other competent bodies."<sup>124</sup>

While it is imperative to respect the cultures and laws of all countries, the ultimate purpose of the Convention is to establish those human rights that are basic, and should be provided to all children no matter where they might live. However, by leaving it to individual countries, the Convention's drafters encourage powerful industry owners, corrupt officials, and owners of bonded laborers to continue to exercise their powers without fear of sanction.<sup>125</sup> The only answer to eliminating exploitative child labor practices will be found in international cooperation through ratification, implementation and enforcement procedures, as well as sanctions that will make it impractical to employ children illegally.

The success of the Convention does not rest on ratification by the United States, since it was the result of an international agreement amongst many nations of the world. However, it is disappointing that the United States, a country which so strongly advocates human rights for other countries, such as China and India, should fail to take the affirmative step to ratify the most comprehensive of all human rights documents written

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124. For full text of art. 45, see *supra* note 6.

125. Kilsey, *supra* note 117, at 10.

for children thus far. After all, who is more important to the future of the world than the children?

**Maureen Moran**