

Vanderbilt Journal of Transnational Law

Volume 28
Issue 5 November 1995

Article 5

1995

Changing the Approach to Ending Child Labor: An International Solution to an International Problem

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Timothy A. Glut, Changing the Approach to Ending Child Labor: An International Solution to an International Problem, 28 *Vanderbilt Law Review* 1203 (2021)
Available at: <https://scholarship.law.vanderbilt.edu/vjtl/vol28/iss5/5>

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NOTES

Changing the Approach to Ending Child Labor: An International Solution to an International Problem

ABSTRACT

A recent study by the United States Department of Labor has revealed that oppressive child labor is a serious problem in many countries. This Note begins by examining the international scope of the child labor problem, including the underlying reasons for its continued existence. The Note then discusses measures, both unilateral and multilateral, for curtailing child labor. The author determines that these measures are insufficient to end the child labor problem and discusses potential solutions to the problem. The author concludes that the most effective measure to end child labor would be a multilateral agreement with clear standards and an enforcement mechanism. However, because such a measure is not yet in force, the author believes that child labor will likely continue in the international community for the foreseeable future.

TABLE OF CONTENTS

I.	INTRODUCTION.....	1204
II.	THE CHILD LABOR PROBLEM	1206
A.	<i>The Alarming Statistics.....</i>	1206
B.	<i>The Reasons for Child Labor.....</i>	1207
C.	<i>Justifications for United States Intervention to Curtail Child Labor Abroad</i>	1210
III.	MEASURES CURRENTLY IN USE TO CURTAIL CHILD LABOR	1212
A.	<i>Is There Customary International Law that Prohibits Child Labor?</i>	1212

B.	<i>Unilateral Measures: United States.....</i>	1217
1.	Generalized Trade Legislation	1217
2.	The Child Labor Deterrence Acts (1989-1993)	1219
3.	The Child Labor Deterrence Act of 1995	1220
C.	<i>Unilateral Measures: Other Countries' Domestic Legislation.....</i>	1222
D.	<i>Multilateral Measures.....</i>	1223
E.	<i>Factors Overlooked by Present Measures.....</i>	1227
IV.	POTENTIAL MEASURES NOT YET TAKEN	1228
A.	<i>Governmental Measures: United States.....</i>	1230
B.	<i>Governmental Measures: Other Countries' Domestic Legislation.....</i>	1235
C.	<i>Multilateral Governmental Measures</i>	1235
D.	<i>Educational Measures.....</i>	1236
E.	<i>Nongovernmental Measures.....</i>	1239
F.	<i>The Ideal Solution</i>	1240
V.	CONCLUSION	1244

I. INTRODUCTION

Over fifty years ago, the United States Congress successfully legislated against child labor by passing the Fair Labor Standards Act of 1938,¹ an act that the Supreme Court upheld in the case of *United States v. Darby*.² These actions freed U.S. children from working unconscionable hours in unhealthy environments for negligible pay. As a result, ten-year-old girls were no longer forced to slave away for fifteen-hour days in U.S. textile factories,

1. 29 U.S.C. §§ 201-219 (1988 & Supp. V 1993) [hereinafter the Act]. Congress declared that “[n]o employer shall employ any oppressive child labor in commerce or in the production of goods for commerce . . .” *Id.* § 212(c). The Act defines “oppressive child labor” as employment of a person under 16 years of age in any occupation, as well as employment of persons ages 16 to 18 in hazardous occupations. *Id.* § 203(l).

2. 312 U.S. 100 (1941). The Court held that “Congress . . . is free to exclude from the commerce articles whose use in the states for which they are destined it may conceive to be injurious to the public health, morals or welfare. . . .” *Id.* at 114. The Court specifically overruled *Hammer v. Dagenhart*, 247 U.S. 251 (1918), which had held that Congress possessed no power to regulate child labor. *Darby*, 312 U.S. at 115-17.

the exits nailed shut to prevent escape.³ For over fifty years, such conditions have not existed in the United States.⁴

The same cannot be said for other countries. For example, thirteen-year-old Praiwan in Bangkok makes leather handbags from eight o'clock in the morning until eleven o'clock at night, with only hour-long breaks for lunch and dinner.⁵ After waiting in line for a shower, he finally goes to bed at one o'clock in the morning.⁶ He is given only two days off each month and earns a mere twenty-four dollars per month for his labor.⁷ Thirteen-year-old Lesly in Honduras works up to eighty hours a week making sweaters.⁸ For her thirty-eight cents per hour she suffers through beatings, choking dust, locked bathrooms, unreachable quotas, and factory managers who "like to touch the girls."⁹

The countries in which these factories operate, where children suffer abuses each day, are either unable or unwilling to stop the abuses. In fact, the factory where Praiwan and two hundred other children work won the industry's "Best Exporter Award" four years in a row,¹⁰ despite Thailand's child labor laws that limit children aged thirteen to fifteen to light work.¹¹ Something more needs to be done to end the abuse of child labor worldwide.

For the purposes of this Note, the term "child labor" does not refer to all of the activities in which children engage that could be

3. Numerous accounts of such child labor abuses in the United States in the early twentieth century are related in EDWIN MARKHAM ET AL., *CHILDREN IN BONDAGE* (1914).

4. This is not to say that child labor no longer exists in the United States. A recent U.S. Department of Labor investigation of Food Lion stores revealed almost 1,400 child labor violations, most of which involved teenagers working on dangerous machinery and minors working excessive or late-night hours. *Food Lion Will Pay Record \$16.2 Million: Child Labor, Overtime Case Is Settled*, BOSTON GLOBE, Aug. 4, 1993, at 43. See also Dole v. Fountain, 120 Lab. Cas. (CCH) ¶ 35,582 (S.D. Miss. Feb. 12, 1990) (finding child labor law violations where the president of a children's home engaged those children in unpaid construction work under threat of punishment). For a less serious example, see *He's Out of There*, BOSTON GLOBE, May 25, 1993, at 57, reporting that the Georgia Labor Department ordered the Savannah Cardinals minor league baseball team to fire its 14-year-old batboy, because that employment violated child labor laws.

5. Lynn Kamm, *How Our Greed Keeps Kids Trapped in Foreign Sweatshops*, WASH. POST, Mar. 28, 1993, at C5.

6. *Id.*

7. *Id.*

8. Mitchell Zuckoff, *Free Trade, Human Rights Clash Over GATT*, BOSTON GLOBE, Oct. 30, 1994, at 77.

9. *Id.*

10. Kamm, *supra* note 5.

11. U.S. DEPT OF STATE, HOUSE COMM. ON FOREIGN AFFAIRS & SENATE COMM. ON FOREIGN RELATIONS, 103D CONG., 2D SESS., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1993, at 748 (Joint Comm. Print 1994) [hereinafter COUNTRY REPORTS].

classified as work. This Note limits the discussion to child labor in industry, the area fraught with the most potential dangers to a child's health.¹² Areas of labor such as working on a family farm and the performing arts receive no consideration.¹³ Likewise, this Note does not concern itself with the distressing number of young children involved in prostitution.¹⁴ Child labor in industry is the type that can most easily be influenced by outside forces and, therefore, is the focus of this Note.

Part II of this Note provides a brief overview of the child labor problem, including both the reasons for its continued existence and the justifications for its curtailment by the international community, especially the United States. Part III examines the unilateral and multilateral measures that are currently in use, as well as those that are being proposed, to combat oppressive child labor and concludes with a discussion of why these measures fail to solve the child labor problem. Finally, Part IV considers measures that likely would be more effective than those currently in use, and proposes one possible solution for implementation of such measures.

II. THE CHILD LABOR PROBLEM

A. *The Alarming Statistics*

In late 1994, the International Labor Organization (ILO) estimated that there were 200 million child laborers in the world's

12. Some common examples of these dangers include poor lighting, which leads to near-blindness; poor ventilation, which leads to oxygen deficiency; toxic fumes, which lead to asthma or bronchitis; hernias; deformation of bone structure; burns; broken bones; and lost limbs. U.S. DEPT OF LABOR, BUREAU OF INT'L LABOR AFFAIRS, BY THE SWEAT AND TOIL OF CHILDREN: THE USE OF CHILD LABOR IN AMERICAN IMPORTS 37, 52, 54 (1994) [hereinafter SWEAT AND TOIL].

13. Most of this sort of labor is "light work," and most countries set a lower minimum age at which people may engage in such work. RONALD G. EHRENBERG, LABOR MARKETS AND INTEGRATING NATIONAL ECONOMIES 48 (1994). Additionally, agricultural work done on a family farm is rarely reported, since it is most often the parents who report child labor abuses.

14. Some estimates put the number of children working in Asia's sex trade at one million. Charles P. Wallace, *Widening the War on Child Sex*, L.A. TIMES, July 13, 1994, at A1. In Thailand, children make up 25% to 40% of all prostitutes. William Branigin, *Children for Sale in Thailand: Poverty, Greed Force Girls into Prostitution*, WASH. POST, Dec. 28, 1993, at A1. Although the statistics are alarming, prostitution is almost always an exclusively domestic problem. Thus, there is no way for one country to take measures to end child prostitution in another country.

work force.¹⁵ Over ninety-five percent of these workers live in developing countries.¹⁶ In Africa, approximately one out of three children work; in Latin America, the ratio drops to one in five.¹⁷ These statistics contrast sharply with earlier studies. In 1986, the ILO estimated that there were only eighty-eight million child workers.¹⁸ This dangerous increase in the amount of child labor¹⁹ illustrates the ineffectiveness of current measures to curtail child labor.

B. *The Reasons for Child Labor*

Poverty is the reason most frequently offered as a cause of child labor.²⁰ This approach posits that the dismal economic conditions in some countries force children to work to help support their families.²¹ More broadly, some writers argue that

15. Anna Quindlen, *Child Labor is World Trade's Dirty Little Secret*, DETROIT FREE PRESS, Nov. 25, 1994, at A19. The United Nations International Children's Emergency Fund (UNICEF) arrived at the same estimate. Paul Haven, *Subteen Coal Miners of Colombia Laboring in Terrible Conditions*, L.A. TIMES, Apr. 16, 1995, at A2.

16. SWEAT AND TOIL, *supra* note 12, at 2.

17. *Id.* In fact, children make up 17% of Africa's total work force. *Sale of Children, Child Prostitution and Child Pornography: Report Submitted by Mr. Vittit Muntarhorn, Special Rapporteur*, U.N. Commission on Human Rights, 50th Sess., Provisional Agenda Item 22, at 20, U.N. Doc. E/CN.4/1994/84 (1994).

18. Joseph Albright & Marcia Kunstel, *Child Labor: The Profits of Shame*, WASH. POST, July 12, 1987, at C1. Going back even further, the 1979 estimates found only 56 million child workers. *Id.*

19. By way of comparison, the annual number of births in developing countries between 1983 and 1992 increased by only approximately 15%. Compare JAMES P. GRANT, UNICEF, THE STATE OF THE WORLD'S CHILDREN, 1986, at 132-33 (1986) (listing basic demographic statistics for various countries for the year 1983) with JAMES P. GRANT, UNICEF, THE STATE OF THE WORLD'S CHILDREN 1994, at 64-65 (1994) (listing basic demographic statistics for various countries for the year 1992). Thus, the over 100% increase in child labor cannot simply be attributed to a greater number of children in the world.

20. In fact, it was the poverty in Dublin during the early eighteenth century that led one satirist to propose an offbeat use for children: food for the wealthy. JONATHAN SWIFT, *A Modest Proposal*, in JONATHAN SWIFT: A CRITICAL EDITION OF THE MAJOR WORKS 492 (Angus Ross & David Woolley eds., Oxford Univ. Press 1984) (1729). Swift's rationalizations, with a few minor adjustments, could just as easily come from those abusing child labor today:

I desire those . . . who dislike my overture . . . [to] first ask the parents of these mortals, whether they would not at this day think it a great happiness to have been sold for food at a year old, in the manner I prescribe; and thereby have avoided such a perpetual scene of misfortunes as they have since gone through

Id. at 498.

21. Int'l Labour Office, *Report of the Director-General, Child Labour*, INT'L LAB. CONF., 69th Sess., at 11 (1983).

child labor is necessary for a developing country to survive in the global market.²² Proponents of this view argue that developed countries such as the United States have, at some time in the past, made use of child labor.²³ Because developing countries cannot keep pace with more developed countries in areas such as technology, employing cheap labor—including that performed by children—is the only way those countries can remain competitive. Thus, these countries must use such labor until they can compete equally on the global market.

However, some studies have questioned whether children's contributions to family incomes are truly significant. For example, a study by the United Nations International Children's Emergency Fund (UNICEF) determined that, in Latin America, the proportion of household income earned by children rarely exceeds ten to twenty percent.²⁴ Other experts agree that, in a country such as India, while a child's income does add a stable amount to household income, it is nonetheless only a small amount.²⁵ It appears that child labor does little to alleviate the poverty that proponents often cite as an excuse for the labor.

Arguably, child labor contributes to poverty, rather than ameliorating it. By working, children neglect their education, damage their health, and restrict their future earning capacity.²⁶ Consequently, children may grow up without the skills necessary for more advanced, higher-paying jobs. More broadly, because child labor promotes a future work force devoid of educated personnel, it leads to an endless cycle of lower-paying jobs and continued poverty. The fact that there would be more jobs available for adults if children were removed from the workplace further weakens this justification for child labor.²⁷

22. See, e.g., Stephen Chapman, *How Americans Can Stop Child Labor Abroad*, CHI. TRIB., Dec. 4, 1994, at C3.

23. *Id.* Such proponents seem to ignore the fact that some of the world's most successful nations, such as South Korea, have never used child labor. Zuckoff, *supra* note 8 (statement by Senator Tom Harkin).

24. V. COLBERT DE ARBOLEDA ET AL., CHILD LABOR AND BASIC EDUCATION IN LATIN AMERICA AND THE CARIBBEAN: A PROPOSED UNICEF INITIATIVE 3 (1994), cited in SWEAT AND TOIL, *supra* note 12, at 22 n.44.

25. MYRON WEINER, THE CHILD AND THE STATE IN INDIA 50 (1991) (statement of economist Nasir Tyabji).

26. International Child Labor Study Hearings Before the Bureau of Int'l Labor Affairs of the U.S. Dep't of Labor, § B-8, at 4 (1994) [hereinafter Child Labor Hearings] (statement of the International Confederation of Free Trade Unions). See generally WEINER, *supra* note 25.

27. Naturally, employers argue that adults would not want these jobs, since conditions are poor and wages are low. This ignores the fact that, if children were not available as an exploitable option, employers would have to improve conditions and raise wages to entice adult workers. Therefore, the jobs would be attractive to adults.

Another reason for the persistence of child labor is the economic self-interest of employers. Employers can take advantage of children more easily than they can adults. Experts agree that child workers are "less demanding, more obedient, and less likely to object to their treatment or conditions of work."²⁸ A child work force, accordingly, means greater profits for the employers. For example, in the Portuguese garment industry, employers pay children about ten percent of an adult's wage.²⁹ Stories of abuses in India's carpet industry further illustrate the exploitation of children for economic gain. For example, when children suffered cuts from working on the looms, employers would scrape sulfur from match heads into the wounds and then set the sulfur on fire to stop the bleeding³⁰—thereby returning the children to work sooner. In the Egyptian textile industry, seventy-three percent of children work over twelve hours per day for wages of approximately eight dollars a month.³¹ Employers are unlikely to relinquish access to such cheap, exploitable labor unless someone threatens them with effective penalties.

The real or imagined lack of alternatives for children also contributes to the problem of child labor. In societies with insufficient educational opportunities, a child's daytime activities may be limited to begging, stealing, or working.³² Of these three activities, most children and their parents view working as the most acceptable choice, for this option provides at least some hope for the future.³³ In the absence of compulsory, affordable education, working may be the only way for these children to stay off the streets.

Finally, many societies view child labor as a way of life. Such societies believe that a child will develop a skill by working at a young age, and that this skill will lead to learning a trade that will support the child throughout life.³⁴ In Africa, people look upon child labor as a form of education that initiates the child into a path of communal life and work, a path that African society

28. SWEAT AND TOIL, *supra* note 12, at 3.

29. Interview with Jose Fernando Teixeira Silva, Member of the National Board, Textile Federation (May 18, 1994), cited in SWEAT AND TOIL, *supra* note 12, at 144 n.10.

30. Stephan Wagstyl, *The Child Victims of India's Slave Trade*, FINANCIAL TIMES, Dec. 19, 1992, at I.

31. ADEL AZER ET AL., TRAINING AND WELFARE OF WORKING CHILDREN IN SHUBRA EL KHEIMA 74 (1993), cited in SWEAT AND TOIL, *supra* note 12, at 64 n.10.

32. Unfortunately, those societies lacking educational opportunities appear to be in the majority. See discussion *infra* Section IV.D.

33. Parents hope that their working children will learn a trade that will serve as a career when they reach adulthood. However, this is rarely the case. See *infra* note 39.

34. SWEAT AND TOIL, *supra* note 12, at 24.

values highly.³⁵ Many Asian societies believe that "children should work to develop a sense of responsibility and develop a career, rather than become street urchins and beggars"³⁶ Likewise, Pakistani parents push their children into work at a young age to avoid vagrancy.³⁷ Throughout India, children's participation in work is entirely consistent with the indigenous cultural tradition, because work has always been an important socializing device.³⁸ Regardless of whether or not these beliefs are sound,³⁹ they remain prevalent among certain societies.

C. Justifications for United States Intervention to Curtail Child Labor Abroad

Before the United States or any other country can take measures to combat child labor outside its borders, it must have a justification for its actions.⁴⁰ How the rest of the world reacts to the attempted intervention depends largely upon the grounds that support the country's actions. The justifications for acting outside one's borders in response to the child labor problem may be classified as economic⁴¹ or humanitarian.⁴²

35. Michel Bonnet, *Child Labour in Africa*, 132 INT'L LAB. REV. 371, 377 (1993).

36. SWEAT AND TOIL, *supra* note 12, at 24.

37. *Child Labor Hearings*, *supra* note 26, § B-16 (statement of Omar Noman, Senior Research Economist, Oxford University).

38. See Leela Dube, *The Economic Roles of Children in India: Methodological Issues*, in CHILD WORK, POVERTY AND UNDERDEVELOPMENT 179 (Gerry Rodgers & Guy Standing eds., 1981).

39. Most experts agree that these beliefs are unfounded. Rather than preparing a child for a future trade, most jobs for children require only unskilled labor. Assefa Bequele & Jo Boyden, *Child Labour: Problems, Policies and Programmes*, in COMBATING CHILD LABOR 1, 6 (Assefa Bequele & Jo Boyden eds., 1988).

40. Note that a justification only explains a country's actions; it does not necessarily make those actions valid. The United Nations Charter states that members should refrain from the "threat or use of force against the territorial integrity or political independence of any state" U.N. CHARTER art. 2(4). The Charter does not define the term "force," and that term may be broad enough to encompass economic measures. LOUIS HENKIN ET AL., INTERNATIONAL LAW: CASES AND MATERIALS 892 (3d ed. 1993). See also Oscar Schachter, *The Right of States to Use Armed Force*, 82 MICH. L. REV. 1620 (1989) (discussing the meaning of Article 2(4)).

41. See, e.g., Stephen M. DeLuca, Comment, *The Gulf Crisis and Collective Security Under the United Nations Charter*, 3 PACE Y.B. INT'L L. 267, 275-76 (1991) (mentioning economic interests as one alleged justification for Iraq's invasion of Kuwait). Although the United Nations has stated that economic considerations do not justify acts of aggression, *Definition of Aggression*, G.A. Res. 3314, U.N. GAOR, 29th Sess., Supp. No. 31, at 142, art. 5, U.N. Doc. A/9631 (1974), it defines aggression as the use of armed force against the sovereignty of another state. *Id.*

Current United States measures aimed at ending child labor have a primarily economic thrust.⁴³ Most United States legislation cites the elimination of unfair competition as a justification for ending child labor in foreign countries that export to the United States.⁴⁴ If companies that employ cheap child labor can undercut the costs of production of U.S. companies, then the products produced in those countries will enter the United States market priced lower than those manufactured in the United States. Thus, U.S. companies are at a competitive disadvantage if other countries allow the use of child labor.

However, an economic justification for intervention does not allow for correction of the underlying problem. To alleviate the competitive disadvantage, the United States need only impose a tariff on the incoming products. Although such a measure effectively ends the unfair competition problem, the greater problem of child labor remains. Countries need only pay higher tariffs, not terminate the practice of child labor within their borders. If the United States desires an end to child labor practices, it must base its actions on a different justification.

Humanitarian justifications have greater appeal to the average citizen of a developed country like the United States.⁴⁵ A common example of a humanitarian justification is the claim that child labor robs children of a normal childhood.⁴⁶ Most United States citizens have a particularly idealized view of childhood, and a child toiling in a sweatshop for twelve hours a day does not correspond with that view. Additionally, the abuse that occurs

art. 1. It is doubtful that such a definition is broad enough to encompass economic sanctions.

42. See, e.g., Nancy D. Arnison, *International Law and Non-Intervention: When Do Humanitarian Concerns Supersede Sovereignty?*, 17 FLETCHER F. WORLD AFF. 199 (1993); Joan Fitzpatrick, *Flight From Asylum: Trends Toward Temporary "Refuge" and Local Responses to Forced Migrations*, 35 VA. J. INT'L L. 13, 34-35 (1994). See generally ENFORCING RESTRAINT: COLLECTIVE INTERVENTION IN INTERNAL CONFLICTS (Lori F. Damrosch ed., 1993) (discussing the tensions between state sovereignty and the growing influence of humanitarian grounds for international action).

43. Although there is rhetoric about the humanitarian justification in the debates on passage of the measures, see 139 CONG. REC. S3179 (daily ed. Mar. 18, 1993) (statement of Sen. Tom Harkin), even a cursory reading of the measures reveals that they do nothing to end the underlying causes of child labor, an important element of humanitarian justifications.

44. See *infra* text accompanying notes 91-95 and 122.

45. Additionally, human rights groups such as Amnesty International take this approach. But, because they lack the resources of a government such as the United States, they have little impact on the problem. All that these groups can do is hope to sway governments away from the economic justification.

46. Of course, this ignores the fact that what constitutes a "normal" childhood is a cultural variable.

along with some forms of child labor⁴⁷ offends popularly-held perceptions of human rights in general, and the young age of the abused only worsens the effect.

Measures enacted in furtherance of a humanitarian justification are more likely to attack the heart of the problem. While an economic justification will end only the importing of products made by child labor, a humanitarian justification will make great strides toward eliminating child labor itself by improving education and alleviating poverty. Such an approach removes the underlying reasons for resort to child labor, a much more effective way to end the problem. However, because most current measures are of the economic variety, oppressive child labor will likely persist.

III. MEASURES CURRENTLY IN USE TO CURTAIL CHILD LABOR

A. *Is There Customary International Law that Prohibits Child Labor?*

Before looking at present measures, it may be helpful to address whether restrictions on the use of child labor are part of the universal body of public international law. Most nations have enacted domestic legislation against child labor,⁴⁸ however, that legislation is enforceable only by the country that enacts it, not by outside parties. Each nation is sovereign over its territory,⁴⁹ and interference from other countries flies in the face of national sovereignty.⁵⁰ Thus, third parties must rely on more than just domestic legislation to combat child labor in foreign countries.

There are three primary sources of international law: treaties, general principles, and custom.⁵¹ Of these, treaties may be the strongest because they are written, binding agreements between nations. A significant drawback to treaties, however, is that a particular treaty binds only those nations party to it.⁵² Without

47. See *supra* text accompanying notes 5-9, 30.

48. See *infra* Section III.C.

49. MALCOLM N. SHAW, INTERNATIONAL LAW 276 (3d ed. 1991).

50. *Id.* at 276-77.

51. Some scholars argue that a fourth source, called general international law, now exists. Jonathan I. Charney, *Universal International Law*, 87 AM. J. INT'L L. 529, 546 (1993). This source is similar to customary international law, but has no requirement of state practice. Put simply, the law may arise from a "strongly endorsed declaration at a near-universal diplomatic forum." *Id.*

52. Vienna Convention on the Law of Treaties, May 23, 1969, art. 26, U.N. Doc. A/CONF.39/27, 8 I.L.M. 679 [hereinafter Vienna Convention]. Additionally, "[a] treaty does not create either obligations or rights for a third State without its

custom for support,⁵³ treaties are a poor source of international law among outside parties.⁵⁴ Thus, treaties incorporate restrictions on child labor into the international law between certain nations,⁵⁵ but not all nations that make use of child labor are parties to the treaties.

General principles are a rarely used source of international law, as many of the leading scholars debate whether such principles can *ipso facto* be international law.⁵⁶ In theory, these principles form a common thread through the domestic laws of individual states;⁵⁷ they reveal that the states are in agreement in legislating against a particular wrong. According to Article 38 of the Statute of the International Court of Justice (I.C.J.), the general principle must be common to all the principal legal systems of the world.⁵⁸ Courts have rarely drawn on general principles as an autonomous and distinct source of international law.⁵⁹ Nevertheless, they are an unqualified primary source under the I.C.J. Statute.⁶⁰ Thus, because all the principal legal systems have domestic legislation against child labor,⁶¹ the

consent." *Id.* art. 34. A "third State" is one that is not party to the treaty. *Id.* art. 2(1)(h).

53. "Nothing . . . precludes a rule set forth in a treaty from becoming binding upon a third State as a customary rule of international law, recognized as such." *Id.* art. 38.

54. Generally, these treaties can create customary law only "when such agreements are intended for adherence by states generally and are in fact widely accepted." RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 102(3) (1986) [hereinafter RESTATEMENT]. *But see* ANTHONY D'AMATO, INTERNATIONAL LAW: PROCESS AND PROSPECT 123-47 (1987) (arguing that treaties alone can generate custom).

55. Section III(D) of this Note discusses treaties that contain provisions against child labor and will provide a more in-depth discussion.

56. OSCAR SCHACHTER, INTERNATIONAL LAW IN THEORY AND PRACTICE 50 (1991).

57. Some general principles that writers have cited in the past include *res judicata*, *estoppel*, and the rule that people may not judge their own causes. IAN BROWNLEE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 18 (4th ed. 1990).

58. Statute of the International Court of Justice, art. 38(1)(c), 59 Stat. 1055, 1060 (1945) [hereinafter I.C.J. Statute]. *See also* RESTATEMENT, *supra* note 54, § 102 note 1.

59. SCHACHTER *supra* note 56, at 51. *See also* Right of Passage over Indian Territory (Port. v. India), 1960 I.C.J. 6 (Apr. 12). However, these principles are useful as temporary gap-filters in international law, and even more useful as a means for extending international law into new areas of international concern. SCHACHTER, *supra* note 56, at 51.

60. Notice that in the I.C.J. Statute, judicial decisions and scholarly writings are "subsidiary means for the determination of rules of law." I.C.J. Statute, *supra* note 58, art. 38(1)(d). No such designation modifies the reference to general principles of law.

61. *National legal provisions on the minimum age for admission to employment*, 10(1) CONDITIONS OF WORK DIG. 103, 147-76 (1991) [hereinafter National legal provisions] (listing countries and their domestic child labor laws).

common thread of a general principle exists in the area of child labor.

The final potential source of international law is custom.⁶² Simply put, customary international law is a mode of doing business that the international community considers a legal obligation. Showing the existence of a rule of customary international law requires two elements: state practice that reflects the rule (the generality requirement)⁶³ and state belief that following the rule is legally required (the *opinio juris* requirement).⁶⁴ Because fulfilling the generality requirement does not require practice by all states,⁶⁵ the first element is not difficult for a sympathetic court to establish.⁶⁶ However, the second element is more troublesome, mainly because it is difficult to establish *why* a state engages in a particular practice.⁶⁷ Simply demonstrating that a state follows a rule does not prove that the state believes it is subject to a legal obligation.⁶⁸ The easiest way to prove the *opinio juris* is through statements by states recognizing that they are legally bound by the rule.⁶⁹ Since such statements are rare, courts generally infer the second

62. Some scholars predict that the distinction between customary law and general principles will eventually become blurred. *E.g.*, THEODOR MERON, HUMAN RIGHTS AND HUMANITARIAN NORMS AS CUSTOMARY LAW 89 (1989).

63. Courts can find practice in various types of activities. The U.S. Supreme Court has looked to treaties, government orders to military officers, orders from military officers, and decisions of national courts as examples of state practice. *Paquete Habana*, 175 U.S. 677, 686-700 (1900). The Permanent Court of International Justice has looked to the writings of publicists, conventions, and domestic court decisions as examples of practice. *S.S. Lotus (Fr. v. Turk.)*, 1927 P.C.I.J. (ser. A) No. 9, at 26-30 (Sept. 7).

64. BROWNLEE, *supra* note 57, at 7-11; *North Sea Continental Shelf (F.R.G. v. Den.; F.R.G. v. Neth.)* 1969 I.C.J. 3, 45 (Feb. 20) [hereinafter North Sea Continental Shelf].

65. Courts have held that practice by less than a dozen states can establish customary international law. *Paquete Habana*, 175 U.S. at 687-95, 708; *S.S. Wimbledon*, 1923 P.C.I.J. (ser. A) No. 1, at 22-28 (Aug. 17). *But see North Sea Continental Shelf*, 1969 I.C.J. at 44-46 (finding that no customary rule of law existed, since most states did not acquiesce in the custom).

66. Proof of state practice varies on a case-by-case basis. For example, there is flexibility in what constitutes practice, how long such practice must continue, and the required generality of state participation. See Hiram E. Chodosh, *Neither Treaty nor Custom: The Emergence of Declarative International Law*, 26 TEX. INT'L. L.J. 87, 100-05 (1991).

67. MERON, *supra* note 62, at 53. The International Court of Justice rarely examines whether states realize that they may be creating new law. Martti Koskenniemi, *The Politics of International Law*, 1 EUR. J. INT'L. L. 4, 27 (1990); MERON, *supra* note 62, at 108.

68. For example, a country may follow a rule in order not to offend another country with which it is involved in delicate negotiations.

69. HENKIN ET AL., *supra* note 40, at 81.

element "from the constancy and uniformity of state conduct."⁷⁰ With such an amorphous standard, whether anything short of an affirmative statement recognizing the legal obligation establishes *opinio juris* is unpredictable at best, and is basically left to the court's judgment.

No court has yet considered whether a prohibition of child labor is a customary norm of international law. Most likely, no such norm exists. While there is certainly practice to support the norm, there remains a staggering amount of practice inconsistent with that norm. Furthermore, it is difficult to argue that conforming practice is due to a sense of legal obligation. Consider the failed attempts by the United States to insert child labor prohibitions into the new General Agreement on Tariffs and Trade (GATT) and the North American Free Trade Agreement (NAFTA).⁷¹ These attempts were met with such resistance by less-developed countries that it is difficult to see how these countries would ever consider themselves bound by a rule of customary international law against child labor.

Nevertheless, a sympathetic court could find support to establish a customary norm. First, practice is in accordance with such a rule.⁷² All countries place some sort of restrictions on the use of child labor, usually regulating inherently dangerous activities.⁷³ Even though countries do not always follow these restrictions, violations do not dilute the general practice.⁷⁴ Second, the state practice has resulted in the development of a

70. HANS KELSEN, PRINCIPLES OF INTERNATIONAL LAW 450-52 (Robert W. Tucker ed., 2d ed. 1966). Kelsen further states, "But to the extent that it is so inferred it is this conduct and not the particular state of mind accompanying conduct that is decisive." *Id.* Thus, these courts are missing the point as to what exactly constitutes *opinio juris*.

71. See *infra* notes 194-96 and accompanying text.

72. The quantity of evidence required may be quite low, as rights that protect "universally accepted values of humanity, and whose violation triggers broad condemnation by the international community, will require a lesser amount of confirmatory evidence." MERON, *supra* note 62, at 94.

73. See *infra* text accompanying note 134.

74. "The Court does not consider that, for a rule to be established as customary, the corresponding practice must be in absolutely rigorous conformity with the rule. . . . [I]nstances of State conduct inconsistent with a given rule should generally have been treated as breaches of that rule. . . ." *Military and Paramilitary Activities (Nicar. v. U.S.)*, 1986 I.C.J. 14, 98 (June 27). For example, all countries also have prohibitions on the use of official torture. Even so, human rights organizations put forth statistics to show that some of these countries do engage in official torture. AMNESTY INTERNATIONAL REPORT ON TORTURE 109-217 (1973). Nevertheless, a prohibition on official torture remains a customary norm of international law. *Filartiga v. Pena-Irala*, 630 F.2d 876, 884-85 (2d Cir. 1980). Simply because violations occur does not nullify the norm's validity. See Anthony D'Amato, *The Concept of Human Rights in International Law*, 82 COLUM. L. REV. 1110, 1126 (1982).

sense of legal obligation among nations.⁷⁵ When an outside party claims that child labor occurs in a country, that country's government either denies the allegation⁷⁶ or states that it is working to correct the abuse.⁷⁷ No government claims that it is free to use child labor however it wants. Therefore, one might argue that nations have acceded to the legal obligation brought on by custom.

Even if a court could find a customary norm forbidding inherently dangerous child labor,⁷⁸ its lack of specificity could lead to inconsistent application of the norm and, therefore, render the norm itself of little value. For example, no universal definition of a child exists; in some nations, childhood ends at age thirteen, while in others it continues through the age of fifteen.⁷⁹ Additionally, there is the problem of deciding exactly what conditions must be present to constitute inherently dangerous labor.⁸⁰ A court could overlook this lack of specificity in the clear

75. In discussing the role of international courts in determining customary norms that regard human rights issues, Theodor Meron states that the tendency is for the courts to ignore state practice and simply "assume that humanitarian principles deserving recognition as the positive law of the international community have in fact been recognized as such by states." MERON, *supra* note 62, at 41-42.

76. See, e.g., Michael Browning, *Chinese Leaders Angrily Deny that Children Make the Toys*, DETROIT FREE PRESS, Nov. 29, 1991, at A9. An example from a Nepalese official exemplifies these denials: "Since child labor is illegal, it cannot exist." John-Thor Dahlburg, *Trading with Tiny Hands*, L.A. TIMES, July 12, 1994, at H1, H4.

77. Somini Sengupta, *India's Young Workers; Poverty Makes Child Labor a Way of Life*, NEWSDAY, Feb. 9, 1995, at A35.

78. Indeed, such a norm might rise to the level of an *erga omnes* obligation, an obligation owed to all states. See RESTATEMENT, *supra* note 54, § 702 cmt. o (stating that obligations of customary international law involving human rights are *erga omnes* obligations). See also MERON, *supra* note 62, at 153.

79. ILO Convention No. 138 Concerning Minimum Age for Admission to Employment, June 26, 1973 [hereinafter ILO Convention 138], in INTERNATIONAL LABOUR ORGANISATION, INTERNATIONAL LABOUR CONVENTIONS AND RECOMMENDATIONS: 1919-1981, at 730 (1982) [hereinafter CONVENTIONS AND RECOMMENDATIONS] attempts to set such a minimum age for admission to employment. See *infra* notes 159-64 and accompanying text. However, that Convention is not part of the *opinio juris* and is enforceable only against countries that have signed the Convention. No minimum age exists by way of customary international law. Although many countries set the minimum age for employment when compulsory education ends, it is not enough of a "common thread" to make it a general principle of international law.

80. For example, the ILO defines hazardous work as involving "dangerous substances, agents or processes, . . . lifting of heavy weights and underground work." ILO Recommendation No. 146 Concerning Minimum Age for Admission to Employment, art. III, ¶ 10, June 26, 1973, in CONVENTIONS AND RECOMMENDATIONS, *supra* note 79, at 736. The Recommendation goes on to suggest that the definition be revised periodically in light of advancing scientific and technological

cases that involve ten-year-old boys working twelve hours a day in mines infested with toxic fumes. However, in a close case, a court would experience more difficulty in deciding whether the customary norm has been violated.

The tremendous benefits to be gained from having a customary norm restricting child labor⁸¹ outweigh the difficulty in precisely defining that norm. Although it would require that a court stretch the requirements for customary international law, concerned countries should make an attempt to establish such a norm. A customary norm prohibiting child labor would carry significant weight in the fight against oppressive child labor in the international community.

B. Unilateral Measures: United States

1. Generalized Trade Legislation

Because U.S. laws do not specifically target foreign child labor, the United States must rely on its generalized trade legislation to combat the child labor problem. Existing U.S. legislation allows for only a small degree of regulation in the realm of child labor. The Generalized System of Preferences (GSP),⁸² the Caribbean Basin Economic Recovery Act (CBERA),⁸³ and the Overseas Private Investment Corporation (OPIC)⁸⁴ condition U.S. participation in trade with developing countries upon those countries' guarantees of internationally recognized workers' rights.⁸⁵ Additionally, the Multilateral Investment Guarantee Agency (MIGA)⁸⁶ promotes the flow of capital to developing countries, provided that those countries adopt certain policies,⁸⁷ including the guarantee of internationally recognized workers' rights.⁸⁸ These rights include a minimum age requirement for the

knowledge. *Id.* Even less specific is the definition used by some countries that describes hazardous work as "dangerous, dirty, unhealthy, or detrimental to morals." Victoria Sinclair & Gabriele Trah, *Child labour: National legislation on the minimum age for admission to employment or work*, 10(1) CONDITIONS OF WORK DIG. 18, 25 (1991).

81. See *infra* text accompanying notes 187-93.

82. 19 U.S.C. §§ 2461-2465 (1988 & Supp. V 1993).

83. 19 U.S.C. §§ 2701-2706 (1988 & Supp. V 1993).

84. 22 U.S.C. §§ 2191-2200 (1988 & Supp. V 1993).

85. This provision is found in GSP in 19 U.S.C. § 2462(b)(7), CBERA in 19 U.S.C. § 2702 (b)(7), and OPIC in 22 U.S.C. § 2191(a).

86. 22 U.S.C. § 290k (1988 & Supp. V 1993).

87. FAYE LYLE, BUREAU OF INT'L LABOR AFFAIRS, U.S. DEPT OF LABOR, WORKER RIGHTS IN U.S. POLICY 11 (1991).

88. 22 U.S.C. § 290k-2.

employment of children.⁸⁹ The requirement is only that participating nations establish a minimum age; the law, however, does not recommend a specific minimum age.⁹⁰

After the above conditions have been met and trade has begun, the Trade Act of 1974 (Trade Act)⁹¹ allows for retaliation for violations. Section 301 of the Trade Act⁹² authorizes the United States Trade Representative to retaliate against foreign states that violate United States trade rights.⁹³ One of Section 301's provisions gives the trade representative discretion as to whether or not to take action against countries that deny workers' rights.⁹⁴ Such denial constitutes an unfair trade practice because it gives those countries a competitive advantage over the United States, which does recognize such rights.⁹⁵

A number of problems impede the use of these measures to combat child labor. Most seriously, developing countries could potentially unite and attempt to create new international worker rights. For example, if mandatory health care were an internationally recognized workers' right, the United States would be in violation of that requirement. Foreign countries could refuse to trade with the United States until it implemented a plan for mandatory health care for workers.⁹⁶ If these countries believed that the United States was pushing its values upon their sovereignty by imposing restrictions on child labor, they could

89. 19 U.S.C. § 2462 (a)(4)(D).

90. This is a common problem with generalized trade legislation.

91. 19 U.S.C. §§ 2101-2465 (1988 & Supp. V 1993).

92. 19 U.S.C. § 2411 (1988 & Supp. V 1993), as amended by the Omnibus Trade and Competitiveness Act, Pub. L. No. 100-418, 102 Stat. 1107 (codified in scattered sections of 19 U.S.C. (1988 & Supp. V 1993)) [hereinafter Section 301]. The most noticeable change the amending act made was the removal of retaliatory power from the President and the transfer of it instead to the U.S. Trade Representative.

93. *Id.* Section 301 allows the United States to threaten trade retaliation against countries to eliminate unfair trade practices, with the definition of "unfair" left to the unilateral determination of the United States. *See generally AGGRESSIVE UNILATERALISM: AMERICA'S 301 TRADE POLICY AND THE WORLD TRADING SYSTEM* (Jagdish Bhagwati & Hugh T. Patrick eds., 1990).

94. Section 301, *supra* note 92, §§ 2411(b)(1), (d)(3)(B)(iii). Those workers' rights are found in 19 U.S.C. § 2462(a)(4) and are the same rights guaranteed by the GSP, CBERA, OPIC, and MIGA.

95. *See Steve Charnovitz, The Influence of International Labour Standards on the World Trading Regime*, 126 INT'L LAB. REV. 565, 567 (1987).

96. This is not so far-fetched as it might seem. The United States is the only developed country that does not have some kind of universal health care coverage for its citizens. *See Christine Cassel, The Right to Health Care, the Social Contract, and Health Reform in the United States*, 39 ST. LOUIS U. L.J. 53, 56 (1994); Janet L. Shikles & Lawrence H. Thompson, *Strategies to Reduce Health Care Spending and Increase Coverage*, 3 STAN. L. & POL'Y REV. 103, 103 (1991).

retaliate by imposing their own values. Thus, using existing legislation to combat child labor may be unwise.

2. The Child Labor Deterrence Acts (1989-1993)

Recently, in addition to the generalized trade legislation, Congress has considered a more specific measure. Prior to the bill's revamping in 1995, Senator Tom Harkin introduced the last incarnation of the Child Labor Deterrence Act (CLDA)⁹⁷ on March 18, 1993.⁹⁸ The bill required the Secretary of Labor to identify foreign countries whose industries make use of child labor,⁹⁹ which is defined as labor performed by an individual under the age of fifteen.¹⁰⁰ The Secretary of Labor was to make this determination by reviewing information from all sources, including the ILO and other human rights organizations.¹⁰¹ The names of the violating countries and industries were to be published in the Federal Register, along with facts to support the findings.¹⁰² At that point, the Secretary of Labor would have placed a prohibition on the importation of any product from that foreign industry.¹⁰³ Any importer violating this ban would have been subject to a civil penalty of up to \$25,000¹⁰⁴ and a criminal penalty consisting of \$10,000 to \$35,000, a year in prison, or both.¹⁰⁵

The 1993 bill was substantially the same as previous versions of the CLDA.¹⁰⁶ All of these bills shared a major flaw: they violated GATT¹⁰⁷ as it then stood. GATT provided that "no prohibitions or restrictions . . . whether made effective through quotas, import or export licenses, or other measures, shall be instituted or maintained by any contracting party on the

97. S. 613, 103d Cong., 1st Sess. (1993) [hereinafter CLDA].

98. 139 CONG. REC. S3179 (daily ed. Mar. 18, 1993).

99. CLDA, *supra* note 97, § 4(a).

100. *Id.* § 8(2).

101. *Id.* § 4(a).

102. *Id.* § 4(e)(1).

103. *Id.* § 5(a)(1).

104. *Id.* § 6(b).

105. *Id.* § 6(c).

106. These previous incarnations include the Child Labor Deterrence Act of 1991, H.R. 3786, 102d Cong., 1st Sess. (1991), the International Child Labor Deterrence Act of 1990, S. 2698, 101st Cong., 2d Sess. (1990), and the Child Labor Deterrence Act of 1989, 101st Cong., 1st Sess. (1989). S. 613's companion bill in the House, H.R. 1397, 103d Cong., 1st Sess. (1993), has only one difference: the ban applies only to articles produced by an industry that "does not comply with the applicable national laws prohibiting child labor in the workplace." *Id.* § 4(a)(1).

107. General Agreement on Tariffs and Trade, *opened for signature* Oct. 30, 1947, 61 Stat. A3, 55 U.N.T.S. 187 [hereinafter GATT].

importation of any product of the territory of any other contracting party. . . ." ¹⁰⁸ The CLDA placed an absolute prohibition on products made by child labor and was therefore not within the GATT principles. ¹⁰⁹

A conflict with GATT principles does not, however, sound the death-knell for any legislation. Indeed, an inconsistent federal law enacted after GATT takes precedence over that agreement. ¹¹⁰ The United States has a history of enacting GATT-inconsistent measures. ¹¹¹ Thus, the United States could have gone forward with legislation such as the CLDA. However, the United States would have opened itself up to retaliation by its trading partners. ¹¹² This realization did not escape Senator Harkin, as the 1993 version of the CLDA, like its predecessors, died before enactment. Senator Harkin let the proposal die after experts determined that the bill would indeed conflict with GATT. ¹¹³

3. The Child Labor Deterrence Act of 1995¹¹⁴

On April 6, 1995, Senator Harkin introduced a new version of the Child Labor Deterrence Act (1995 CLDA). ¹¹⁵ The 1995 version retains the framework of the earlier bills while making significant changes in its approach to the problem of child labor. The most striking of these changes is the recognition of the underlying conditions giving rise to child labor. The 1995 CLDA recognizes that child labor is rooted in societal problems such as poverty, poor education, and low standards of living. ¹¹⁶ Thus, in addition to the trade restrictions found in the earlier versions, the 1995 CLDA takes steps to end these underlying conditions.

108. *Id.* art. XI.

109. For a detailed analysis of the 1993 CLDA, see James P. Kelleher, Note, *The Child Labor Deterrence Act: American Unilateralism and the GATT*, 3 MINN. J. GLOBAL TRADE 161, 168-88 (1994). For a detailed analysis of the 1991 CLDA, see Michael A. Tonya, Note, *Baby Steps Toward International Fair Labor Standards: Evaluating the Child Labor Deterrence Act*, 24 CASE W. RES. J. INT'L L. 631, 655-66 (1992).

110. See RESTATEMENT, *supra* note 54, § 115 (1987).

111. See generally Robert E. Hudec et al., *A Statistical Profile of GATT Dispute Settlement Cases: 1948-1989*, 2 MINN. J. GLOBAL TRADE 1 (1993).

112. Lately, such retaliation has become more likely. See William C. Duncan, *Trade Brinkmanship: A War that Could Wreak Economic Havoc*, CHI. TRIB., Sept. 21, 1994, § 5, at 21 (arguing that using Section 301 to impose trade sanctions against Japan, in blatant violation of the GATT agreement, would bring a harsh response from Japan).

113. Mitchell Zuckoff, "Rugmark" Certifies No Child Labor Was Used, CHI. TRIB., Feb. 4, 1995, § 6, at 16.

114. S. 706, 104th Cong., 1st Sess. (1995) [hereinafter 1995 CLDA].

115. 141 CONG. REC. S5404 (daily ed. Apr. 6, 1995).

116. 1995 CLDA, *supra* note 114, § 2(a)(7).

First, the 1995 CLDA supports programs that supply child workers with a primary education and alternative skills.¹¹⁷ Additionally, the bill offers aid to foreign countries to help them better enforce their own child labor laws.¹¹⁸ It also increases aid to alleviate the widespread poverty that is one of the primary causes of child labor.¹¹⁹ To do this, the 1995 CLDA authorizes the President of the United States to contribute ten million dollars to the ILO each year from 1996 to 2000.¹²⁰ It further authorizes the President to give \$100,000 to the U.N. Commission on Human Rights in the year 1996.¹²¹

The absence in the 1995 CLDA of one of the justifications used by previous bills furthers the shift in the legislative approach to the child labor problem. Prior versions of the CLDA found, as a justification for measures against child labor, that "[a]dult workers in the United States should not have their jobs imperiled by imports produced by child labor in developing countries."¹²² The absence of this language in the 1995 CLDA may signal a move away from economic justifications.

The 1995 CLDA also includes a loophole for countries that the Secretary of Labor has determined violate child labor laws.¹²³ Importers in the United States may still receive a product from such a country provided that the product contains a label stating that it was not made by child labor.¹²⁴ To obtain such a label, the country must allow an independent organization¹²⁵ to inspect the product and certify that no child labor was used in its manufacture.¹²⁶ The 1995 CLDA also includes a different definition of the term "child." Although the normal age is still fifteen years,¹²⁷ the bill reduces it to fourteen years in those countries where the national laws so define a child.¹²⁸

While the 1995 CLDA improves upon previous versions, it retains the same trade restrictions as its predecessors and,

117. *Id.* § 2(b)(2).

118. *Id.* § 2(c)(4).

119. *Id.*

120. *Id.* § 9(1).

121. *Id.* § 9(2).

122. CLDA, *supra* note 97, § 2(a)(9).

123. This is the same determination made under the previous versions of the CLDA. See *supra* notes 99-103 and accompanying text.

124. 1995 CLDA, *supra* note 114, § 5(b)(2)(A)(i).

125. These organizations would be established to inspect products for export and certify that they were not made by child labor. The organizations would be made up of representatives of nongovernmental child welfare organizations, manufacturers, exporters, and neutral international organizations. *Id.* § 5(b)(4).

126. *Id.* § 5(a)(2)(A).

127. *Id.* § 8(2)(A).

128. *Id.* § 8(2)(B).

therefore, shares the same fatal flaw as its predecessors: it is GATT-inconsistent. The 1995 CLDA must contend with the strengthened version of the GATT that resulted from the Uruguay Round negotiations.¹²⁹ Since the new GATT incorporates the older version,¹³⁰ the 1995 CLDA must still deal with the language outlawing prohibitions and restrictions on imported goods.¹³¹ Thus, the 1995 CLDA will likely die the same death as the 1993 CLDA.¹³² Overall, it is safer for the United States to avoid trade measures in the fight against oppressive child labor and instead concentrate on other means to end the problem.

C. Unilateral Measures: Other Countries' Domestic Legislation

Child labor is most prevalent in Third World developing countries.¹³³ Nearly all of the Third World countries from which the United States imports products have some sort of child labor laws.¹³⁴ Most of these countries have a minimum age for employment of between fourteen and sixteen years. However, many countries severely dilute the effectiveness of such laws by granting exceptions. For example, in Guatemala, a child may be granted a work permit if "extreme poverty" makes it essential that the child work to support the family.¹³⁵ In Brazil, judges frequently grant exceptions to the minimum age laws for apprenticeships, even though apprenticeship status suffers from a lack of regulation.¹³⁶ In Bangladesh, the twenty-five laws and ordinances that protect children "present a confusing maze of

129. Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, Apr. 15, 1994, Part I, 33 I.L.M. 1 [hereinafter Uruguay Round Act]. The United States adopted the Uruguay Round agreements in the Uruguay Round Agreement Act, Pub. L. No. 103-465, 108 Stat. 4809 (1994).

130. Uruguay Round Act, *supra* note 129, Annex 1A, ¶ 1(a).

131. See *supra* note 108 and accompanying text.

132. In fact, a recent analysis found that the 1995 CLDA has only a 26% chance of being passed by the Senate and only a 21% chance of surviving the House. Billcast for S. 706, Information for Public Affairs, Inc., available in Westlaw, Billcast (BC) database (searched on June 26, 1995).

133. *Supra* notes 16-17 and accompanying text.

134. The only exception to this appears to be Zimbabwe. However, an agreement by Zimbabwe's National Employment Council, which has the force of law, places the minimum age for mining activities at seventeen. Interview with Doug Verden, Labor Relations Manager, Chamber of Mines (June 13, 1994), cited in SWEAT AND TOIL, *supra* note 12, at 165.

135. Codigo de Trabajo [Labor Code], Decree 1441, art. 11 (1961) (Guat.), translated in GENERAL SECRETARIAT, ORGANIZATION OF AMERICAN STATES, A STATEMENT OF THE LAWS OF GUATEMALA IN MATTERS AFFECTING BUSINESS 113, 122 (1975). Indonesian laws contain a similar exception. COUNTRY REPORTS, *supra* note 11, at 652.

136. SWEAT AND TOIL, *supra* note 12, at 40.

conflicting provisions regarding child labor," placing the minimum age for employment at anywhere from twelve to sixteen.¹³⁷

In addition to granting exceptions, most countries are unable to enforce their labor laws effectively. Countries most frequently blame the problem on a lack of resources and personnel in the agencies responsible for policing child labor.¹³⁸ However, this is not the only reason for ineffective enforcement. For example, in China, underage children frequently use counterfeit identification cards to circumvent the laws.¹³⁹ In Guatemala, labor courts are backlogged and understaffed, with defendants frequently free to choose the judge before whom they appear.¹⁴⁰ Often, the lack of effectiveness is due to "[s]heer callousness, almost bordering on sadism, on the part of enforcement officials. . . ."¹⁴¹

Child labor laws in developing countries have had little or no effect. These countries are either unable or, in some cases, unwilling to enforce their laws. This is likely due to the problems this Note discusses earlier.¹⁴² Societal acceptance of child labor leads to little reporting of child labor violations. Employers' economic interests in perpetuating child labor frequently lead to the bribing of public officials to ignore the violations. Finally, a developing country's desire to compete in the global marketplace encourages further acceptance of child labor in that country.

For the developed countries that have no serious child labor problems, the sparse attempts at ending child labor abroad are generally confined to trade measures like those employed by the United States.¹⁴³ Those measures have the same weaknesses as U.S. measures: they conflict with GATT and do not focus on the underlying causes of child labor.¹⁴⁴ Therefore, developed countries should look to other means for ending child labor.

D. Multilateral Measures

As this Note states above, treaties are the best multilateral measure for curtailing child labor abuses.¹⁴⁵ While a general

137. *Id.* at 32.

138. *Id.* at 4.

139. *Id.* at 48.

140. *Id.* at 71.

141. PHARIS HARVEY & LAUREN RIGGIN, TRADING AWAY THE FUTURE: CHILD LABOR IN INDIA'S EXPORT INDUSTRIES 18 (1994) (quoting NAT'L LABOR INST., WORKING CHILDREN IN INDIA 3 (1993)).

142. See *supra* Section II.B.

143. These are the sorts of measures that the Brussels-based International Confederation of Free Trade Unions has proposed. Dahlburg, *supra* note 76.

144. Naturally, a conflict with GATT is relevant only if that country is a party to the GATT agreement.

145. See *supra* text accompanying notes 51-55.

customary norm against child labor may exist, this norm lacks the specificity that a treaty can provide. While the customary norm is unclear as to exactly what ages are involved, treaties can clearly set a minimum age. Additionally, a treaty can provide for a clear enforcement mechanism that administers definite penalties for violations of treaty provisions. Because of these and other benefits, a multilateral treaty is one of the best devices for eliminating child labor.¹⁴⁶

Several treaties currently attempt to curtail child labor abuses. The Convention on the Rights of the Child (U.N. Convention),¹⁴⁷ unanimously adopted by the U.N. General Assembly on November 20, 1989,¹⁴⁸ attempts to protect children on several different fronts. Article 32 of that document deals with child labor and requires states to implement "legislative, administrative, social and educational measures"¹⁴⁹ to protect children's "physical, mental, spiritual, moral [and] social development."¹⁵⁰ In particular, the U.N. Convention requires states to establish a minimum age for admission to employment,¹⁵¹ regulate the hours and conditions of employment,¹⁵² and provide penalties and sanctions to enforce these provisions.¹⁵³

The greatest weakness of the U.N. Convention is the lack of an enforcement mechanism.¹⁵⁴ Article 45 comes the closest to

146. An added benefit of such treaties is that they help to define and create customary international law. See *North Sea Continental Shelf* (F.R.G. v. Den.; F.R.G. v. Neth.) 169 I.C.J. 3, 41 (Feb. 20) (discussing treaty provisions that may pass "into the general *corpus* of international law and [that may be] accepted as such by the *opinio juris*, so as to have become binding even for countries which have never and do not, become parties" to the agreement). Thus, treaty provisions can, over time, become international law. See generally SCHACHTER, *supra* note 56, at 66-72.

147. Nov. 20, 1989, U.N. GAOR 3d Comm., 44th Sess., Annex, Agenda Item 108, U.N. Doc. A/44/736 (1989), reprinted in 28 I.L.M. 1456 (1989) [hereinafter U.N. Convention].

148. *Adoption of a Convention on the Rights of the Child: Report of the Third Committee*, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, at 166, U.N. Doc. A/44/49 (1989).

149. U.N. Convention, *supra* note 147, art. 32(2).

150. *Id.* art. 32(1).

151. *Id.* art. 32(2)(a). Again, the U.N. Convention recommends no specific minimum age, which allows states a wide range of discretion in meeting the requirements. The CLDA is the only measure that sets a specific minimum age.

152. *Id.* art. 32(2)(b).

153. *Id.* art. 32(2)(c).

154. Child labor conventions are not the only international agreements that commonly lack enforcement agreements. For example, international intellectual property agreements also contain few enforcement mechanisms. Anne D. Waters, Note, *Trade, Intellectual Property, and the Development of Central and Eastern Europe: Filling the GATT Gap*, 26 VAND. J. TRANSNAT'L L. 927, 948 (1993). Nevertheless, the lack of an enforcement mechanism is a serious weakness. In

providing for enforcement, by requiring agencies that monitor the child labor problem to report their suggestions and recommendations to the U.N. General Assembly.¹⁵⁵ This article would be triggered when a monitoring agency finds that a state is not fulfilling its Article 32 obligations. Article 32 of the U.N. Convention, which is the provision aimed specifically at child labor, directs that the states themselves shall enforce the labor laws passed under the provision.¹⁵⁶ Considering these states' poor history of child labor law enforcement,¹⁵⁷ there likely would be little change. Once Article 45 has been invoked, the General Assembly must decide on a course of action.¹⁵⁸

Aside from the U.N. Convention, there are other multilateral measures in effect. The ILO has produced several conventions dealing with child labor. ILO Convention No. 138 Concerning Minimum Age for Admission to Employment (ILO Convention 138)¹⁵⁹ requires each party to specify a minimum age for employment. This minimum age must not be less than the age of completion of compulsory schooling, with an absolute minimum age of fifteen years.¹⁶⁰ ILO Convention 138 allows for an initial minimum age of fourteen years if the country can show a need,¹⁶¹ but the country must eventually raise the minimum age to at least fifteen years. In addition, ILO Convention 138 sets a minimum age of eighteen years for employment that endangers a young person's health, safety, or morals.¹⁶² ILO Convention 138 allows exceptions to the minimum age requirements, but only for

short, it is like passing a series of criminal statutes and then neglecting to hire a police force. In the absence of enforcement mechanisms, parties must rely on the maxim *pacta sunt servanda* ("agreements are to be observed") to ensure that states follow the treaty. See TASLIM O. ELIAS, THE MODERN LAW OF TREATIES 40-45 (1974) (discussing the concept of *pacta sunt servanda* and its application to treaty observance).

155. U.N. Convention, *supra* note 147, art. 45(d).

156. Specifically, the provision states that parties to the Convention shall "[p]rovide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article." *Id.* art. 32(2)(c).

157. See *supra* text accompanying notes 138-41.

158. The General Assembly may then make recommendations to either the United Nations members or the Security Council. U.N. CHARTER art. 10. When the Security Council decides on the appropriate measures, it may require the member states to apply those measures. *Id.* art. 41. Most likely, such measures would be limited to the interruptions of economic relations provided for in Article 41, rather than the more forceful measures of Article 42 used to "maintain or restore international peace and security." *Id.* art. 42.

159. ILO Convention 138, *supra* note 79.

160. *Id.* art. 2(3).

161. *Id.* art. 2(4). This exception is available only for "a Member whose economy and educational facilities are insufficiently developed" and only "after consultation with the organisations of employers and workers concerned." *Id.*

162. *Id.* art. 3(1).

activities such as artistic performances¹⁶³ and work that would neither jeopardize the children's health nor interfere with school attendance.¹⁶⁴

ILO Convention 138 contains an escape provision in Article 5, which allows countries with insufficiently developed economies and administrative facilities initially to limit its scope.¹⁶⁵ Countries doing so must specify to which industries they will apply the full scope of the Convention.¹⁶⁶ This requirement implies that those countries are expected to progressively widen the scope as their economies and facilities develop.¹⁶⁷

Other multilateral agreements involving child labor include the 1941 ILO Convention No. 59 Fixing the Minimum Age for Admission of Children to Industrial Employment (ILO Convention 59)¹⁶⁸ and its predecessor, the 1921 ILO Convention No. 5 Fixing the Minimum Age for Admission of Children to Industrial Employment (ILO Convention 5).¹⁶⁹ Although ILO Convention 138 incorporates the provisions of these earlier agreements, they remain important for several reasons. First, many countries that are party to one or both of these agreements have not signed ILO Convention 138.¹⁷⁰ Second, the older agreements reveal the subsequent increase in the suggested minimum age for employment. ILO Convention 5 sets a minimum age of fourteen,¹⁷¹ while ILO Convention 59, passed twenty years later, sets a minimum age of fifteen.¹⁷² Third, like ILO Convention 138, neither of the earlier conventions contains provisions for its enforcement, which reveals the primary weakness of multilateral agreements over the last seventy-five years.

163. *Id.* art. 8(1).

164. *Id.* art. 7(1)(a) & (b).

165. *Id.* art. 5(1).

166. *Id.* art. 5(2).

167. For example, art. 5(4) requires that countries periodically report progress made toward full application of the provisions.

168. June 3, 1937 [hereinafter ILO Convention 59], in CONVENTIONS AND RECOMMENDATIONS, *supra* note 79, at 720.

169. Oct. 29, 1919 [hereinafter ILO Convention 5], in CONVENTIONS AND RECOMMENDATIONS, *supra* note 79, at 713.

170. These countries include India, Colombia, Pakistan, and China, among others.

171. ILO Convention 5, *supra* note 169, art. 2.

172. ILO Convention 59, *supra* note 168, art. 2 (1). Notice that Convention No. 138, passed 32 years later, retains the same minimum age. ILO Convention 138, *supra* note 79, art. 2(3).

E. Factors Overlooked By Present Measures

Existing United States measures ignore several realities of child labor. First, the industrial sector is not the only field that exploits child labor. Children often work as domestic servants, as street vendors, in restaurants, and in other jobs that do not export products to foreign countries.¹⁷³ The CLDA and similar, trade-related measures deal only with the importing of products and would, therefore, have no impact on child labor in the nonexport fields. This demonstrates a weakness with measures justified by purely economic concerns: child labor that does not hurt United States competitiveness goes undeterred.

A second major flaw with existing U.S. measures is that, in dealing with products that are shipped to foreign markets, they concentrate on the finished product, rather than on the individual parts. Thus, an industry can employ child labor to construct parts and then ship the parts elsewhere for assembly by labor that does not violate the agreements. For example, reports indicate that the leather tanning industries in Africa, Asia, and Latin America, which likely employ child labor, frequently ship leather to other countries where it is made without child labor into such things as shoes and handbags that are then exported to the United States.¹⁷⁴ In addition, child labor is frequently utilized in the manufacture of carpets.¹⁷⁵ Since Germany is a major center for worldwide distribution of carpets, it is possible that many of those carpets were first imported from countries where child labor was used.¹⁷⁶ Current United State trade measures would not affect the importation of these carpets.

A third flaw in existing U.S. legislation is that it only attempts to stop child labor used in goods that are exported to the United States. Many countries and industries that use child labor may do little exporting to the United States, but may export a considerable quantity of goods to other nations. Conversely, those industries may do little exporting at all, yet still use child labor in producing the sort of goods that United States trade measures would penalize if exported. Existing legislation does nothing to curtail such instances of child labor. For example, there is little U.S. trade with African countries in products that child labor could produce.¹⁷⁷ And yet, the ILO estimates that some twenty-five percent of children work on the African

173. SWEAT AND TOIL, *supra* note 12, at 2.

174. *Id.* at 16.

175. *Id.* at 2.

176. *Id.* at 16.

177. *Id.* at 6.

continent, with some countries having rates as high as fifty percent.¹⁷⁸

The United States trade measures leave tremendous room for continued child labor abuse. The U.N. Convention solves this problem by requiring an end to child labor in general, whether or not exported products are involved.¹⁷⁹ However, the lack of an effective enforcement mechanism considerably dilutes the U.N. Convention.¹⁸⁰ Additionally, the U.N. Convention leaves to the states the choice of a minimum employment age,¹⁸¹ thereby allowing the cultural values of the individual societies to perpetuate the regimes. The drafters of the U.N. Convention seem to be unaware that what is needed is not new child labor laws, but rather a means to enforce the ones that are already in place.

Neither the existing unilateral nor the existing multilateral measures is sufficient to end the child labor problem. Therefore, instead of relying on these measures, countries concerned with the problem of child labor need to develop new solutions. These solutions should use elements of the existing measures that do work in combination with new ideas that strike at the underlying causes of child labor. The next section of this Note discusses the elements necessary for an effective solution to the child labor problem.

IV. POTENTIAL MEASURES NOT YET TAKEN

There are two schools of thought in devising potential strategies for ending child labor: those who want the immediate abolishment of child labor, and those who want a slower phasing-out of child labor.¹⁸² The former claim that such a strategy would benefit developing countries both economically and socially, and they recommend a policy of strict enforcement of both compulsory education and minimum age laws.¹⁸³ Such a policy would be easier to administer and less open to corruption than a policy of regulation.

178. *Id.*

179. U.N. Convention, *supra* note 147, art. 32.

180. See *supra* notes 154-58.

181. U.N. Convention, *supra* note 147, art. 32(2)(a). It should be noted that this is also one of the strengths of the Convention. By requiring individual states to set their own minimum age, the Convention allows for each state's different cultural and societal values relating to children to influence the effect of the Convention. Unfortunately, many of those values need to be changed if child labor is ever to be eradicated, and the Convention may leave too much room in this regard.

182. SWEAT AND TOIL, *supra* note 12, at 5.

183. *Id.*

Those favoring the phase-out approach advocate a regulatory policy. This group, probably the majority, realizes that the immediate abolition of child labor is unrealistic. They propose to abolish the most abusive forms of child labor and to allow individual governments to regulate the other forms.¹⁸⁴ This group argues that child labor cannot be abolished until the underlying causes of the problem no longer exist. Thus, the phase-out advocates believe that child labor should be allowed to continue, but only in a strictly regulated form.

In comparing the two strategies, the phase-out approach is clearly the most workable. Although countries should ideally eradicate child labor immediately, this goal is unrealistic. Measures adopted to end child labor should concentrate on the most abusive forms of child labor, such as slavery, bonded labor, and mining, and then move on to the less dangerous forms. Countries can abolish these at a later date, once the early measures successfully deal with the underlying causes. The most effective solution likely will take this approach.

It is also important to establish the existence of a customary international norm prohibiting child labor. For those countries not party to any treaty involving child labor practices, a customary norm is the only means by which restrictions may be applied against them. For example, countries such as Iran, Iraq, and Syria have not become parties to any treaties regarding child labor.¹⁸⁵ In the absence of a customary international norm, child labor within those countries is a purely domestic matter. Other countries can take no action without violating the national sovereignty of the state.¹⁸⁶

However, if there is a customary norm against child labor, then it becomes international law. In this way, even countries that are not party to child labor treaties are bound by the law. A violation¹⁸⁷ of this law then allows the international community to

184. *Id.*

185. There is little information available on the incidents of child labor in these countries. However, based on the products exported by these countries and the way such products are made in other countries, it is a safe assumption that they use child labor in making the products. For example, Iran has a 35% share of the Persian carpet market, compared to India's 14.5% share. Nora Boustany, *Foreign Journal; In Iran, "A Poor Man's Carpet is the Ground, and His Blanket is the Sky,"* WASH. POST, Nov. 7, 1994, at A17.

186. See *supra* notes 49-50 and accompanying text.

187. Even though child labor violations are usually committed by a private, nongovernmental actor, the international community may still take action against the state. The state is responsible because it did not make diligent efforts to prevent the violation or punish the violator on its own. MERON, *supra* note 62, at 171. Thus, the state violates its international obligations by allowing the violations to occur. *Id.* at 170.

take various countermeasures.¹⁸⁸ The most effective countermeasure would be some type of collective sanction, taken by aggrieved states through joint or parallel action.¹⁸⁹ Common collective sanctions include trade boycotts and the severance of diplomatic relations.¹⁹⁰ Although such actions may in some cases violate a treaty or other obligation owed to the state, they may nonetheless be justified as a reprisal by the injured states.¹⁹¹

The violating state may try to argue that measures by other states constitute intervention in "matters which are essentially within the domestic jurisdiction of any State."¹⁹² However, the United Nations has rejected this argument, concluding that human rights violations are not a domestic matter.¹⁹³ Therefore, a customary norm allows for the abolishment of child labor in all countries, not just those party to a treaty.

A. Governmental Measures: United States

The United States took an important first step in eradicating child labor by approving the new GATT treaty. Although human rights groups lost the battle to make recognition of certain workers' rights a condition for trade under the agreement,¹⁹⁴ the United States is now in a much better position to secure such restrictions through side agreements. This situation is similar to that involving the passage of NAFTA.¹⁹⁵ There, opponents also were unable to include recognition of workers' rights in the

188. *Id.* at 153. Countermeasures are an important tool in combatting human rights violations; states rely on them more often than judicial remedies. *Id.* at 233-34.

189. HENKIN ET AL., *supra* note 40, at 581.

190. *Id.*

191. *Id.* The states engaging in the sanction need not have suffered an actual injury. If the violation affects a collective interest of the international community (certainly the case when dealing with a customary norm of international law involving human rights), states may take action against the offender for its violation of the *erga omnes* obligation. *Id.* See also MERON, *supra* note 62, at 235 (indicating that all states, not just those directly affected, may take countermeasures against states violating *erga omnes* obligations).

192. U.N. CHARTER art. 2(7).

193. See Louis Henkin, *International Law: Politics, Values and Function*, 216 RECUEIL DES COURS D'ACADEMIE DE DROIT INTERNATIONAL [R.C.A.D.I.] 266 (1989).

194. Third world developing countries such as India led the fight against these restrictions, arguing that the measures were protectionist and an attempt to hinder these countries from competing in the global market. Zuckoff, *supra* note 8. They also argued that such measures were punitive when the child might be the only wage earner in a family. Quindlen, *supra* note 15.

195. North American Free Trade Agreement Implementation Act, Pub. L. No. 103-182, 107 Stat. 2057 (1993) (codified in scattered sections of 19 U.S.C.).

agreement.¹⁹⁶ However, subsequent to NAFTA's passage, the Clinton Administration was able to negotiate side agreements guaranteeing Mexico's adherence to those rights, including a limitation on child labor.¹⁹⁷ Likewise, the United States can now negotiate similar side agreements to the GATT. Had the United States not signed the treaty, it would have "never [had] an opportunity to ban child labor on an international basis."¹⁹⁸

Thus, the United States should make it a priority to negotiate these side agreements. The United States may undertake such negotiations through the World Trade Organization (WTO)¹⁹⁹ that GATT created.²⁰⁰ The WTO provides a forum for further discussions relating to trade and also provides for strengthened dispute settlement procedures.²⁰¹ Thus, much as it did in the case of NAFTA, the United States should continue its push for the recognition of workers' rights, including those of children, in this new forum.

Another possible avenue for reform would be to increase trade sanctions through stronger child labor legislation. For example, rather than just disallowing a country's imports made by child labor, more effective legislation would disallow all of an abusing country's imports. Before resorting to such extreme measures, however, the United States must be sure that it can deal with the consequences. Trade sanctions are a blatant violation of GATT. Although the United States has violated previous versions of that agreement with few repercussions,²⁰² the new GATT presents greater problems. Under the previous GATT treaties, imposing a penalty on a violator required the unanimous consent of all parties.²⁰³ However, the latest GATT requires unanimous consent to *not* impose a penalty.²⁰⁴

196. John Dillin, *Campaign Over NAFTA Comes Down to the Wire*, CHRISTIAN SCI. MONITOR, Nov. 16, 1993, at 1.

197. EHRENBERG, *supra* note 13, at 94.

198. Zuckoff, *supra* note 8 (statement by John Boidock, Executive Director of the Alliance for GATT Now).

199. *Id.*

200. Agreement Establishing the World Trade Organization, Apr. 15, 1994 [hereinafter WTO], in Uruguay Round Act, *supra* note 129, Part II.

201. WTO, *supra* note 200, art. III. See also Karel van Wolferen, *Will the New World Trade Organization Work? No Chance—East and West Trade Won't Meet*, WASH. POST, June 26, 1994, at C3 (suggesting that the WTO will be unable to perform its prescribed function, as it presupposes a commonality of purpose that does not exist).

202. Robert A. Senser, *Danger! Children at Work*, COMMONWEAL, Aug. 19, 1994, at 12.

203. Zuckoff, *supra* note 8. Obviously, under such a regime, the United States could simply vote against imposing a sanction on itself.

204. *Id.*

This change results from a modification in the decision-making process involving trade disputes. Under the old GATT, the parties reached decisions by consensus.²⁰⁵ In this way, members adopted a decision only when no member objected.²⁰⁶ This practice developed despite the requirement that all decisions be made by majority vote.²⁰⁷ Under this framework, the United States could block a sanction against itself simply by objecting to its adoption. The new GATT reverses this pattern. According to the Understanding on Rules and Procedures Governing the Settlement of Disputes (USD),²⁰⁸ dispute resolution is a three-stage²⁰⁹ process: consultation,²¹⁰ a panel phase,²¹¹ and appellate review.²¹² If consultation among the disputing parties is unsuccessful, a panel may be established to decide the matter.²¹³ When a panel renders its decision, that decision, if not appealed, is adopted unless members decide by consensus not to adopt it.²¹⁴ This "reverse consensus" system virtually guarantees the adoption of panel decisions.²¹⁵ Therefore, under the new system, the United States can no longer block the adoption of a decision imposing a sanction against it.

The enactment of extreme child labor legislation would potentially subject the United States to various sanctions from its trading partners. Under the new GATT, these sanctions range from the painless to the potentially debilitating. The offending country may be required to compensate the injured state.²¹⁶ If the parties cannot agree on compensation, the injured party may request retaliation.²¹⁷ This permits the injured party to suspend its obligations toward the violator in regard to the same sector

205. Gardner Patterson & Eliza Patterson, *The Road from GATT to MTO*, 3 MINN. J. GLOBAL TRADE 35, 37 (1994).

206. OLIVIER LONG, LAW AND ITS LIMITATIONS IN THE GATT MULTILATERAL TRADE SYSTEM 55 (1987).

207. GATT, *supra* note 107, art. XXV, para. 2.

208. Dec. 15, 1993 [hereinafter USD], *in* Uruguay Round Act, *supra* note 129, Part II, Annex 2.

209. A fourth stage, binding arbitration, is optional. USD, *supra* note 208, art. 25.

210. *Id.* art. 4.

211. *Id.* art. 12.

212. *Id.* art. 17.

213. *Id.* art. 4(7).

214. *Id.* art. 16(4). The decision of the appellate body is adopted in the same way. *Id.* art. 17(14).

215. *Results of the Uruguay Round Trade Negotiations: Hearings Before the Senate Comm. on Finance*, 103d Cong., 2d Sess. 199 (1994) (statement of John H. Jackson, professor of law at the University of Michigan Law School).

216. USD, *supra* note 208, art. 22(2).

217. *Id.*

and agreement.²¹⁸ Finally, the injured state may request cross-retaliation. This permits the injured state to suspend its obligations toward the violator in regard to sectors and agreements other than those affected by the violator's actions.²¹⁹

The United States could try to impose trade restrictions and claim that they do not violate the GATT treaty. For example, the protection of an *erga omnes*²²⁰ right may take precedence over the GATT provisions.²²¹ This requires that the protection of children from the dangers of child labor be classified as an *erga omnes* right. Because these rights derive from the "rules concerning the basic rights of the human person,"²²² the U.N. Convention on the Rights of the Child almost certainly classifies the protection of children as an *erga omnes* obligation. A country signing on to the Convention accepts such an obligation. For those countries, then, this *erga omnes* obligation may override the GATT provisions.

The United States may also sidestep retaliation under GATT by classifying the imposed sanctions as a general exception under GATT Article XX.²²³ In the case of child labor, the statistics would show that the production of goods via child labor is harmful to human health.²²⁴ The difficulty here is the word "necessary" in Article XX(b). GATT Dispute Panels have

218. *Id.* art. 22(3)(a), (b). The USD defines the different sectors as goods, services, and trade-related intellectual property rights. *Id.* art. 22(3)(f).

219. *Id.* art. 22(3)(c). If an injured party resorts to this option, the violator has the opportunity to refer the matter to an arbitrator to ensure that such retaliation is justified. *Id.* art. 22(6).

220. *Erga omnes* rights are those rights that have such importance that all states have a legal interest in their protection. *Barcelona Traction, Light and Power Company, Limited (Belg. v. Spain)*, 1970 I.C.J. 3, 32 (Feb. 5) [hereinafter *Barcelona Traction*].

221. The European Community has stated that "the [GATT] Panel could not ignore that the General Agreement was an international agreement which had to be interpreted on the basis of generally accepted principles and practices of international law." *GATT Dispute Settlement Panel Report: EEC—Quantitative Restrictions Against Imports of Certain Products from Hong Kong*, GATT Doc. L/5511 (July 12, 1983), in GATT, *BASIC INSTRUMENTS AND SELECTED DOCUMENTS*, 30th Supp. 129, 134 (1984).

222. *Barcelona Traction*, 1970 I.C.J. at 32. See also *RESTATEMENT*, *supra* note 54, § 702 cmt. o.

223. The relevant portion of that article provides that "nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures . . . necessary to protect human, animal, or plant life or health. . . ." GATT, *supra* note 107, art. XX. This exception is "[s]ubject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade . . ." *Id.* art. XX.

224. For a list of some potential harms, see *supra* note 12.

interpreted this as meaning the least-GATT-inconsistent alternative that a country could reasonably be expected to employ to achieve its overriding public policy goals.²²⁵ Further, inconsistencies with GATT must be "unavoidable."²²⁶ This is a difficult standard to meet,²²⁷ and it is likely that a GATT Panel would find that alternatives such as a product labelling requirement²²⁸ foreclose the availability of other trade sanctions.

The passage of the new GATT places additional burdens on a country attempting to claim exceptions. The Agreement on Technical Barriers to Trade (TBT Agreement)²²⁹ takes a stern view of technical regulations, defined as those that mandate compliance with "product characteristics or their related processes and production methods . . ."²³⁰ Much like Article XX of the older GATT, the TBT Agreement states that such regulations may only be applied to fulfill a legitimate objective, including the protection of human health and safety, and must not be more trade-restrictive than necessary to fulfill that objective.²³¹

Further, it is difficult to impose those regulations on less-developed countries, which is where most child labor occurs. A country such as the United States must "take into account the special development, financial and trade needs of developing country Members . . ."²³² and must ensure that its regulations "do not create unnecessary obstacles to exports from developing

225. *GATT Dispute Settlement Panel Report: Thailand—Restrictions on Importation of and International Taxes on Cigarettes*, GATT Doc. DS10/R (Nov. 7, 1990), in *GATT, BASIC INSTRUMENTS AND SELECTED DOCUMENTS*, 37th Supp. 200, 223 (1991).

226. *Id.*

227. For example, in the *Dolphin I* case, a GATT panel found that international cooperative arrangements were an available alternative to United States trade restrictions. *GATT Dispute Settlement Panel Report: United States—Restrictions on Imports of Tuna*, GATT Doc. DSS21/R (Feb. 18, 1992), in *GATT, BASIC INSTRUMENTS AND SELECTED DOCUMENTS*, 39th Supp. 155, 199 (1993). The Panel ignored the fact that the United States had unsuccessfully struggled to reach such an arrangement for 15 years, and constantly had met with resistance from other countries. If this is an "available" alternative, there may be little that could be called "unavailable."

228. In fact, Indian carpet manufacturers have started the Association of Carpet Manufacturers Without Child Labor to label members' carpets "child labor-free." Lucy Komisar, *Buy Products "Made Without Child Labor,"* CHRISTIAN SCI. MONITOR, Oct. 26, 1993, at 19. Thus, this is almost assuredly an available alternative.

229. Dec. 13, 1993 [hereinafter TBT Agreement], in *Uruguay Round Act, supra* note 129, Part II, Annex 1A-6.

230. TBT Agreement, *supra* note 229, Annex 1, ¶ 1.

231. *Id.* art. 2, para. 2.2.

232. *Id.* art. 12, para. 12.2.

country Members.”²³³ Further, a country may not impose the regulation immediately, as it must “allow time for producers in exporting Members, and particularly in developing country Members, to adapt their products or methods of production . . .” to the new requirements.²³⁴

Overall, it is best to avoid unilateral trade measures. Too often, other countries see these measures as attempts to interfere with another nation’s sovereignty. A far less hazardous—and potentially more productive—course would be the negotiation of international agreements.²³⁵

B. Governmental Measures: Other Countries’ Domestic Legislation

Developed countries should follow the same strategies this Note outlines above for the United States. For developing countries where child labor occurs, the governments must strengthen their existing domestic child labor laws.²³⁶ If laws do not yet prescribe a minimum age for employment, countries must pass laws that set a minimum age. Further, the countries must effectively enforce these laws. This means an end to the corruption that currently impedes the enforcement of child labor laws in developing countries.²³⁷ In this respect, the U.N. Convention serves as a good starting point for the international monitoring of states’ enforcement of the laws.²³⁸ Additionally, the international community must impose real penalties on those countries in which enforcement is substandard. If the international community can rely on countries to enforce their own child labor laws, the community is free to concentrate on alleviating the underlying causes of child labor.

C. Multilateral Governmental Measures

Any country that is truly concerned with the problem of child labor should sign the U.N. Convention on the Rights of the Child. Although the document is far from perfect, it does represent a

233. *Id.* art. 12, para. 12.3.

234. *Id.* art. 2, para. 2.12.

235. See *infra* Section IV.C.

236. Although measures such as the CLDA may have some impact, “[o]nly the strictest domestic legislation in each foreign country could overcome [the] pressing needs and lack of alternative activities.” Tonya, *supra* note 109, at 665.

237. As an example, some violators of India’s law are released with only a two dollar fine. Stan Grossfeld, *Trapped in a Hellhole*, BOSTON GLOBE, Dec. 29, 1994, at A8. The government must end the corruption on both sides, both the enforcing officials who take bribes and the factory owners who offer them. Perhaps outside supervision is the best way to achieve an end to the corruption.

238. U.N. Convention, *supra* note 147, art. 45.

valuable initial effort. At a minimum, signing the U.N. Convention is a symbolic gesture that signifies a country's dedication to ending child labor. Although over 140 countries have signed the U.N. Convention, the United States is not among them.²³⁹ By not signing the Convention, unilateral measures of the United States, such as the CLDA, appear hypocritical.²⁴⁰

The U.N. Convention provides a party with substantial certainty. As this Note discusses earlier, any norms of customary international law restricting child labor are, at best, general in scope, and lack the specificity necessary for effective enforcement. The U.N. Convention provides both the specificity and the potential to enforce it. By signing the U.N. Convention, a state can hold another state accountable for its uses of child labor. Thus, rather than simply banning the importation of certain products, a concerned country can take real steps toward ending the problem.

By signing the U.N. Convention, a country signifies its intention to protect children's rights in general. However, countries must go further and create more specific agreements dealing solely with child labor.²⁴¹ This allows greater attention to the details necessary for an effective attack on child labor. Such an agreement would resemble ILO Convention 138, but would include an effective enforcement regime.²⁴²

D. Educational Measures

Effective educational systems are the key to eliminating child labor. Education attacks the problem on a number of levels. First, if countries keep children in school for longer periods, those children cannot enter the work force at such a young age. Second, the education that the children receive will assist them in finding more rewarding employment in the future. Third, education provides an alternative to working, begging, or stealing. Finally, education is the most effective way to break the cycle of

239. Maureen Moran, Comment, *Ending Exploitative Child Labor Practices*, 5 PACE INT'L L. REV. 287, 288-89 (1993). The reasons most commonly cited for the failure of the United States to sign the treaty are the possible imposition of a position on abortion and the possible usurpation of states' rights. *Id.* at 303-04.

240. In other words, the United States appears to want to force other countries to abolish child labor, but is unwilling to subject itself to similar standards.

241. The Convention on the Rights of the Child contains fifty-four articles, only one of which is directed specifically at child labor. The other articles cover everything from a child's freedom of expression (Article 13) to a child's rights in criminal proceedings (Article 40).

242. As it now stands, ILO Convention No. 138 contains no provision dealing with enforcement of the obligations imposed by the agreement.

poverty that keeps underdeveloped countries in a disadvantaged position.

In most countries with pervasive child labor, the educational system has many problems. In some instances, the age when compulsory education ends is lower than the age for admission to employment. When children in these countries finish their education, they are likely to seek illegal employment. For example, education is compulsory in Bangladesh only through the fifth grade,²⁴³ while the minimum age for employment ranges between twelve and sixteen.²⁴⁴ In Lesotho, children must attend school through age thirteen,²⁴⁵ while fifteen is the minimum age for employment.²⁴⁶ The same is true in the Philippines.²⁴⁷ Children who finish their compulsory education at such an early age have little choice but to go to work soon thereafter.

In addition, many countries do not have enough schools to accommodate all children. The fewer the schools, the more common the inconvenience of travelling to a school far away. In rural areas, schools are often located a long distance from the children's homes,²⁴⁸ making a daily trek to school a considerable burden. Without a school closer to their homes, parents are likely to prefer that their children work, rather than make the long journey to a distant school.

Additionally, the number of school hours and days is extremely low in many developing countries.²⁴⁹ In Brazil, children are able to attend school and still have enough time to work an eight-hour shift.²⁵⁰ In Egypt, public schools operate on a shift schedule in which children go to classes in three sets for four hours a day.²⁵¹ This leaves too much free time for children, free time that is too often filled with child labor.

The considerable cost for families to send their children to school raises additional barriers to education. In Egypt, many families struggle to afford rising school costs²⁵² and, regardless of the expense, parents see little hope for a return from education in

243. COUNTRY REPORTS, *supra* note 11, at 1331.

244. SWEAT AND TOIL, *supra* note 12, at 32.

245. Sinclair & Trah, *supra* note 80, at 40.

246. *National legal provisions*, *supra* note 61, at 131.

247. COUNTRY REPORTS, *supra* note 11, at 722. See also SWEAT AND TOIL, *supra* note 12, at 140.

248. SWEAT AND TOIL, *supra* note 12, at 23.

249. DE ARBOLEDA ET AL., *supra* note 24, at 23, cited in SWEAT AND TOIL, *supra* note 12, at 24.

250. SWEAT AND TOIL, *supra* note 12, at 24.

251. *Id.* at 66.

252. Carol Berger, *After War, Egypt's Poor Get Poorer: Rising Unemployment and Tough Austerity Measures Push Children into Economic Front Line*, CHRISTIAN SCI. MONITOR, Apr. 24, 1991, at 3.

terms of preparing their children for future employment.²⁵³ In Latin America, a recent requirement that families pay a greater portion of the costs for educating their children has deterred enrollment of the poorer children.²⁵⁴ In contrast, Sri Lanka, with a nearly ninety percent literacy level,²⁵⁵ provides free education up to the university level and also pays for school supplies, meals, and uniforms.²⁵⁶ For families that cannot afford to send their children to school, child labor becomes a viable alternative.

As a study by the U.S. Department of Labor concluded, "No country has successfully ended child labor without first making education compulsory and enforcing these laws."²⁵⁷ Although some countries such as Nepal do not mandate minimum levels of education,²⁵⁸ most countries do have compulsory education laws. However, if these laws are to have any effect, countries must enforce the laws more strictly. For example, in Brazil, although the law requires education through the age of fourteen,²⁵⁹ only twenty-two percent of people complete primary school, one of the lowest rates in the world.²⁶⁰ India also requires education through the age of fourteen,²⁶¹ but with one of the highest illiteracy rates in the world and a very high dropout rate,²⁶² the law obviously lacks enforcement.

The educational systems in developing countries must be improved. Whether through constructing additional schools,

253. It is for this reason that UNICEF's Interministerial Committee on Child Labor concluded that "[e]ducational policies have to provide children with concrete benefits and develop their aptitudes in a way that is functional to them and to their families." NATIONAL CENTER FOR SOCIAL AND CRIMINOLOGICAL RESEARCH, UNICEF, REPORT OF THE INTERMINISTERIAL COMMITTEE ON CHILD LABOUR IN EGYPT 39 (1989). The Committee suggested that Egypt needs "an integrated plan to achieve a balance between the output of the educational system and the needs of the labour market." *Id.* at 40.

254. SWEAT AND TOIL, *supra* note 12, at 23.

255. COUNTRY REPORTS, *supra* note 11, at 1397.

256. Michael M. Burns, *Lessons from the Third World: Spirituality as the Source of Commitment to Affirmative Action*, 14 VT. L. REV. 401, 410 (1990). Despite the educational development in Sri Lanka, a recent study estimated that there were as many as 500,000 child laborers in the country. Peter J. Spielmann, *Millions of Children in Asia Forced to Work in Sweatshops*, S.F. CHRON., Sept. 21, 1995, at A13. Nevertheless, 75% of these children work in agriculture, which Sri Lanka law does not prohibit. *Children Are Placed on the Line: Toil in Near Slavery on Subcontinent*, DETROIT FREE PRESS, July 27, 1995, at 5A.

257. SWEAT AND TOIL, *supra* note 12, at 23.

258. *Id.* at 124.

259. Sinclair & Trah, *supra* note 80, at 35.

260. JAMES P. GRANT, UNICEF, THE STATE OF THE WORLD'S CHILDREN 1994, at 70 (1994).

261. INDIA CONST. art. 45.

262. David Housego, *Neglect of Schools Could Hold Back Growth*, FINANCIAL TIMES, June 26, 1992, § 2, at 10.

extending the school day, or raising the age for compulsory education, developing countries must effect some sort of change. Although only the country itself can change its educational laws, both outside governmental and nongovernmental bodies can assist in providing more schools for the children. This assistance could take the form of loans or donations to the countries, or volunteer efforts by human rights groups. Whatever the choice, an improved educational system is a prerequisite to ending child labor.

E. Nongovernmental Measures

Attempts to end child labor need not be confined to the governmental sphere. Private citizens can certainly take their own measures to stop the problem.²⁶³ Private actions also sidestep obligations under trade treaties. For example, consumer boycotts of the offending products are not the actions of a state and therefore do not violate any international agreement. Concerned citizens need only seek out reports by organizations such as the ILO to discover which countries and which products use child labor. Such industries, faced with a falling demand for their products, would either cease their use of child labor or be forced out of business. On the down side, this could result in the child laborers being thrown out into the streets to fend for themselves.²⁶⁴

A far more ambitious undertaking would involve businesses joining with the public to create new schools and day-care centers for the former child laborers. The businesses could contribute the funding, and the public could provide the labor. A joint private-public sector undertaking would improve businesses' public relations.

All of these potential measures focus rather narrowly on solving the problem of child labor. A truly effective solution must expand the focus. The international community must work to

263. Unfortunately, such actions can sometimes be hazardous. For example, Iqbal Masih, a 12-year-old crusader against child labor in Pakistan, was recently shot to death while riding his bicycle. *Child Labor Crusader Had World in Hands Until Gunned Down*, TENNESSEAN, Apr. 19, 1995, at A3. Members of the carpet industry—notorious for child labor abuses—had made repeated threats toward Masih for his actions, actions that had led to the closure of dozens of carpet-weaving factories in the area. *Id.* Although the shooters have yet to be found, Ehsan Ullah Khan, the chairman of the Bonded Labor Liberation Front, believes that Masih's death was a "conspiracy by the carpet mafia." *Id.* However, an independent human rights group found no evidence to support these claims. *Group: Pakistan Business Interests Didn't Kill Boy*, BOSTON GLOBE, May 26, 1995, at 13.

264. Kamm, *supra* note 5.

eliminate the climate that creates the need for child labor in developing countries. The two primary forces behind this climate are poverty and societal acceptance of child labor.²⁶⁵ Measures to effect such a change are beyond the scope of this Note. Nevertheless, work must be done in these areas if the steps taken to eliminate child labor are to have a lasting effect.

F. *The Ideal Solution*

The most effective solution will combine the more successful elements of current measures with the establishment of a prohibition against child labor as customary international law. Since most countries have signed the new GATT agreement,²⁶⁶ the first move must be to negotiate a multilateral agreement under the auspices of the WTO. The United States would likely have the support of the European Community (EC) in these negotiations, as the EC has pushed for protection of workers' rights in previous trade negotiations.²⁶⁷

Developing countries are likely to oppose attempts to link trade to labor standards. They might fear that the developed countries are simply trying to bar competition from countries where labor is cheap. Thus, the negotiations must aim at measures that do not weaken the competitive position of the developing countries, yet still work to eradicate child labor. The agreement must therefore adopt a phase-in approach, attacking many different levels of the overall problem. With this in mind, negotiators would be well-advised to structure the agreement toward the *elimination* of child labor rather than the *prohibition* of child labor. Rather than simply declaring child labor to be illegal, the ideal agreement must instead remove the need for child labor in the first place.

As a first step, the most dangerous forms of child labor must be abolished immediately. If countries refuse to do this, the international community should apply multilateral trade sanctions. If these fail, the U.N. Security Council should push for more forceful action. At any rate, ILO Convention 138's allowance for time limit extensions to particularly pressured countries

265. Elizabeth B. Moore, *Child Labor and National Development: An Annotated Bibliography*, in CHILD DEVELOPMENT AND INTERNATIONAL DEVELOPMENT: RESEARCH-POLICY INTERFACES 87, 90 (Daniel A. Wagner ed., 1983).

266. An updated list of parties to the GATT is printed on the inside front cover of the yearly periodical *International Trade*, published by the GATT Secretariat.

267. U.S. Standing at the Center of Stormy Meeting on GATT, CHI. TRIB., Apr. 13, 1994, sec. Business, at 1.

should play no part.²⁶⁸ Once countries abolish these harsh forms of child labor, they must legalize and strictly regulate the remaining forms of child labor. The international community should establish agencies to oversee the regulation, and if a country becomes lax in its enforcement, the agencies should ask the international community to consider multilateral sanctions. In this way, developing countries will not lose the competitive advantage provided by child labor, while the labor that continues will be under safer conditions.

During these governmental negotiations, nongovernmental actors must play a part in curtailing the demand for products made by child labor. Consumers should boycott goods from those countries that are lax in enforcing child labor laws.²⁶⁹ Nongovernmental organizations can also play a role by encouraging countries to sign child labor treaties.²⁷⁰ Additionally, these groups can organize fundraising to pay for the creation of educational facilities in impoverished countries.²⁷¹ These preliminary governmental and nongovernmental measures should set the stage for future actions.

In the second step, the WTO-negotiated agreement should implement multilateral measures that attempt to remove the underlying causes of child labor. Most importantly, children must be given alternatives to working. The best of these alternatives is compulsory, affordable education. Concerned

268. That allowance is in Article 2(4). The rationale for this allowance simply does not apply in the area of dangerous forms of child labor. The provision allows struggling countries to gradually implement the new limitations so as to not cripple their economies. Further, it serves to allow some children to continue working until more satisfactory educational facilities can be constructed. If children are forced out of dangerous work environments, there are plenty of adult workers capable of taking their place. Thus, the economy does not suffer.

269. Some consumers and companies have already made a start in this area. Indian manufacturers may now place a label called the Rugmark, consisting of a simple smiley-face symbol, on rugs made without child labor. The rugmakers place the label on those products that UNICEF inspectors certify were made without child labor. Zuckoff, *supra* note 113. In this way, consumers can avoid rugs not bearing the mark and instead they can purchase those made by law-abiding producers.

270. For example, in February of 1995, UNICEF, the ILO, the Asian American Free Labor Institute, and local charities began negotiations with Bangladesh to end child labor in the production of clothes for export. *Bangladesh May End Some Child Labor*, S.F. CHRON., Feb. 17, 1995, at A14.

271. Mohammed Alangier, the director of Focus, an advocacy group that runs part-time schools and health clinics for child workers in Calcutta, has suggested that the ILO establish loans to enable children to attend school. Sengupta, *supra* note 77. However, M.P. Joseph, ILO's coordinator for India, warns that monetary incentives are not the best avenue to reform. He stresses that child labor is not driven by poverty alone, but by habit as well, and that societal attitudes must also be changed to make an impact. *Id.*

countries must encourage developing nations to build new facilities and require school attendance through a minimum age. Additionally, the agreement must alleviate the poverty that forces some children to work to support their families. Although an imposing task, the reduction of poverty is an essential step in the elimination of child labor in other countries.

The final step follows the removal of the underlying causes of child labor. Once those causes no longer exist, the agreement should require the abolishment of the remaining forms of child labor. This action should be easier once the underlying causes of child labor have been removed, because there would be little need for children to work. With the causes of child labor effectively eliminated, there would be no impediment to the complete abolishment of all forms of child labor. Developing countries would no longer need child labor to gain a competitive advantage, because all countries would be competing on a more level playing field. Any country that continues to resist should be penalized heavily under the GATT provisions.

Once negotiations on the agreement have been completed, use of the WTO may aid in quicker passage of the measures. Although the general rule remains that the WTO will make decisions by consensus,²⁷² in cases in which a decision cannot be reached by consensus, the issue will be decided by a vote.²⁷³ In these situations, each country has one vote,²⁷⁴ and the majority wins.²⁷⁵ Further, in cases of amendments to the agreements making up the new GATT, a three-fourths majority may decide that the amendment is of such a nature that any member that does not accept it is free to withdraw from the WTO.²⁷⁶ Thus, a country could present the proposed agreement as an amendment to the TBT Agreement, and passage would bind even those parties that opposed the amendment.

At least in theory, then, the WTO agreement allows for the binding of states to agreements without their consent.²⁷⁷ Since this conflicts with established international law,²⁷⁸ it may not

272. WTO, *supra* note 200, art. IX(1).

273. *Id.*

274. *Id.*

275. *Id.* When the WTO, in its role as the Dispute Settlement Body, makes a decision, that decision is by consensus, not by vote. USD, *supra* note 208, art. 2(4).

276. WTO, *supra* note 200, art. X(3). The Act excepts certain agreements from this possibility. *Id.* art. X(2).

277. Of course, although countries may automatically become parties to the agreement, they will not see it as binding on them until they ratify it themselves, an action not within the province of the WTO.

278. See, e.g., Vienna Convention, *supra* note 52, art. 34 ("A treaty does not create either obligations or rights for a third State without its consent.").

work in actual practice. It would be more effective and lead to more certainty if the agreement were negotiated in such a way that all parties could give their approval before being bound. In other words, the new agreement would take the form of a treaty open to all countries to sign, and only by signing the agreement would a country be bound by its terms.

Further, because not all nations are party to the new GATT, prohibitions against child labor must quickly be established as customary international law binding on all nations. This goal may be accomplished by applying the theory of contemporary international lawmaking called universal international law.²⁷⁹ Under this theory, multilateral fora²⁸⁰ serve as a substitute for the state practice and *opinio juris* normally required to create customary international law.²⁸¹ At such a forum, during the discussion of important issues of global concern, a rule may emerge as a way to address the problem. If this rule receives sufficient support at the forum,²⁸² the rule is presented to the larger international community. If received positively,²⁸³ the rule enters into the greater body of public international law.²⁸⁴

While this theory of lawmaking has its critics,²⁸⁵ it has been borne out in several recent examples.²⁸⁶ Nothing can be lost by attempting to accelerate a prohibition against child labor into public international law. The most public forum in which to propose such a rule would be the United Nations. The unanimous adoption of the Convention on the Rights of the Child by the General Assembly reveals a willingness to make efforts to end abuses against children. Thus, a rule against child labor would likely receive great support at this forum and, shortly thereafter, enter into public international law.

If these efforts prove unsuccessful, the failure will simply delay the eventual adoption of a customary rule. Once the multilateral agreement negotiated by the WTO enters into its final

279. Charney, *supra* note 51.

280. Such fora include the U.N. General Assembly, regional organizations, and other specialized international organizations. *Id.* at 543-44.

281. *Id.* at 543.

282. A consensus of the parties present may suffice to meet this requirement. *Id.* at 544.

283. Even tacit approval may be sufficient. *Id.* at 547.

284. *Id.*

285. See, e.g., Prosper Weil, *Towards Relative Normativity in International Law?*, 77 AM. J. INT'L L. 413, 438 (1983)(arguing that such a theory destroys the safeguards of customary lawmaking).

286. See Charney, *supra* note 51, at 548-49 (listing examples in the fields of the law of the sea, the environment, human rights, and the law of treaties). See also Oscar Schachter, *United Nations Law*, 88 AM. J. INT'L L. 1 (1994) (discussing how lawmaking by the U.N. has contributed to public international law).

stages, state practice will support a rule against child labor. Likewise, there would be solid support for the *opinio juris* element. Thus, child labor prohibitions would eventually enter into public international law.²⁸⁷ Once this occurs, countries that still have not signed the multilateral agreement will nevertheless be bound by international law. Thus, violations of this law can result in heavy sanctions by the international community, bringing these straggling countries into conformity with the rest of the international community. The international community will then have achieved the admirable goal of ending child labor.

V. CONCLUSION

If the United States is to succeed in ending child labor in foreign countries, it must cease its disturbing reliance on unilateral trade measures. Not only do such measures affect only one strain of child labor, but they also draw cries of protectionism from developing countries and can lead to strained trade relations. Trade measures may be more palatable if imposed on the multilateral level, but these are likewise ineffective in dealing with the underlying causes of child labor.

Additionally, the United States cannot expect that signing the U.N. Convention on the Rights of the Child will solve the problem. Although a multilateral measure such as this is a better solution than unilateral trade measures, its lack of effective enforcement provisions likely means that it would be no more successful in solving the problem.

What is needed, then, is a multilateral measure with teeth, one that sets standards and has an enforcement regime to back up its requirements. This Note proposes only one such measure. Until concerned parties develop other measures, millions of members of the world's future generations will continue to toil away under dangerous conditions, working for countless hours and receiving minimal benefits for their energy.

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287. See *supra* text accompanying notes 62-70.

* The Author would like to thank Professor Jonathan I. Charney for his helpful comments on draft sections of this Note; the *Journal's* Student Writing and Authorities Departments for their editing; his mother, father, and brother for their encouragement and support; and Michelle Morseman for her editing, patience, and understanding.