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Child Labor through a Human Rights Glass Brightly

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Child Labor through a Human Rights Glass Brightly*

*Burns H. Weston and Mark B. Teerink***

INTRODUCTION

It is indisputable. Child labor is a human rights problem,¹ and increasingly recognized as such the world over.² As well it ought. Of the approximately 246 million children between ages 5 and 17 estimated by the International Labor Organization (ILO) to be engaged in “child labour,”³ large though

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¹ We define “child labor” as defined in CHILD LABOR AND HUMAN RIGHTS: MAKING CHILDREN MATTER (Burns H. Weston ed. & contrib., 2005) [hereinafter “CHILD LABOR AND HUMAN RIGHTS”], to wit, as work done by children that is harmful to them because it is abusive, exploitative, hazardous, or otherwise contrary to their best interests—a subset of a larger class of children’s work, some of which may be compatible with children’s best interests (variously expressed as “beneficial,” “benign,” or “harmless” children’s work). This definition is derived in major part from Judith Ennew, William E. Myers, & Dominique Pierre Plateau, *Defining Child Labor as if Human Rights Really Matter*, Chapter 2 in CHILD LABOR AND HUMAN RIGHTS. For an alternative definition, see *infra* note 3.

² See *infra* text accompanying notes 14-25.

³ ILO, EVERY CHILD COUNTS: NEW GLOBAL ESTIMATES OF CHILD LABOUR 6, 20 (Geneva: ILO, 2001), <http://www.ilo.org/public/english/standards/ipecc/simpoc/others/globalest.pdf>. In this report, the ILO defines “child labour” to mean all “economically active children” except “children 12 years and older who are working only a few hours each week in permitted light work” and “[children] 15 years and above whose work is not classified as ‘hazardous.’” *Id.* at 6. The ILO’s estimate of 246 million children engaged in child labor, however, cannot be called exact. Indeed, because so much child labor takes place in the informal sector, such a verdict probably is impossible. At the same time, as a general proposition, the reported overall dimension of the problem and its regional distribution cannot be summarily dismissed. Of the 352 million children between 5-14 years of age that the ILO estimates to be engaged in “economic activity” worldwide (a broader concept than “child labor”), the Asian Pacific region is said to have the largest number (127 million); sub-Saharan Africa the second largest concentration (48 million); and Latin America and the Caribbean the third largest (17 million), followed by the Middle East and North Africa (approximately 13 million). The remaining 5 million “economically active” children are reported to be found in both developed and transitional economies. *Id.* It is not unreasonable to extrapolate “child labor” proportions and distributions of rough equivalence.

uncertain numbers toil in appalling conditions, are ruthlessly exploited to perform dangerous jobs with little or no pay, and thus made often to suffer severe physical and emotional abuse.⁴ They can be found in brick factories, carpet weaving centers, fishing platforms, leather tanning shops, mines, and other hazardous places, often as cogs in the global economy. They can be found—most abundantly—in domestic service, vulnerable to sexual and other indignities that escape public scrutiny and accountability. They can be found on the streets as prostitutes, forced to trade in sex against their will. They can be found as soldiers in life-threatening conflict situations. Working long hours under exploitative conditions, often beaten or otherwise abused, and commonly trafficked from one country to another, they are unable to obtain the education that can liberate and improve their lives; their health is severely threatened from years of exposure to hazardous material; many, if they survive, are deformed and disabled before they can mature physically, mentally, or emotionally. Such are the brute facts.⁵

Before the 1989 United Nations Convention on the Rights of the Child (CRC),⁶ however, the problem of child labor, even in its worst forms, was seldom addressed as a human rights problem.⁷ The practice of the ILO over the years, though long nobly sensitive and attentive to the needs and wants of immediate importance to most people, is illustrative. Reflecting the ILO's traditional labor market perspective, no ILO convention addressing issues of child labor prior to the 1989 CRC couched its

⁴ It is essential to bear in mind that, just as no one has yet credibly measured precisely all the children engaged in child labor worldwide, neither has anyone yet credibly measured precisely all the children engaged in each category or form of child labor. For example, while estimating the number of children working in industries considered hazardous, the ILO appears not yet to have determined the number of children working in non-hazardous jobs in such industries.

⁵ For substantiation, see, e.g., ILO, EVERY CHILD COUNTS . . . , *passim, supra* note 3; CHILD LABOR AND HUMAN RIGHTS, *passim, supra* note 1.

⁶ U.N. Convention on the Rights of the Child [hereinafter "CRC" or "1989 CRC"], 20 Nov. 1989, 1577 U.N.T.S. 3, *reprinted in* 3 INTERNATIONAL LAW AND WORLD ORDER: BASIC DOCUMENTS III.D.3 (Burns H. Weston & Jonathan C. Carlson eds., 5 vols., 1994–) [hereinafter "WESTON & CARLSON"]. See also Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 25 May 2000, G.A. Res. 54/263 (Annex I), U.N. GAOR, 54th Sess., Supp. No. 49, at 7, U.N. Doc. A/RES/54/263 (2000), *reprinted in* 3 WESTON & CARLSON III.D.5; Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 25 May 2000, G.A. Res. 54/263 (Annex II), U.N. GAOR, 54th Sess., Supp. No. 49, at 6, U.N. Doc. A/RES/54/263 (2000), *reprinted in* 3 WESTON & CARLSON III.D.6.

⁷ An early exception is the 1924 Declaration of Geneva on the Rights of the Child, adopted by the Council of the League of Nations Assembly, Fifth Assembly, 26 Sept. 1924, Official Journal–5, League of Nations O.J. Spec. Supp. 23, at 177 (1924), *reprinted in* 3 WESTON & CARLSON III.D.1. Paragraph IV of the Declaration, reflecting a former concerned era, provides: "The child must be put in a position to earn a livelihood and must be protected against every form of exploitation."

provisions in the language of rights, let alone mentioned “human rights,” to define its mission or achieve its goals—not even ILO Convention (No. 29) Concerning Forced or Compulsory Labor (ILO C29), nor ILO Convention (No. 105) Concerning the Abolition of Forced Labour (ILO C105), nor ILO Convention (No. 138) Concerning Minimum Age for Admission to Employment (ILO C138).⁸ The first of these important law-making initiatives, concluded in 1930, may perhaps be excused for having been adopted before human rights law began to be taken seriously in world affairs, beginning with the 1945 Charter of the United Nations⁹ and the 1948 Universal Declaration of Human Rights (UDHR).¹⁰ But not so the latter two treaties, concluded in 1957 and 1973, respectively, and joining a long list of ILO conventions that address all sorts of worker issues without engaging human rights discourse.¹¹ The reason seems clear. Although its roots can be traced to antiquity, the idea of human rights is relatively new on the world stage;¹² and, as everyone knows, social change—especially progressive social change—ordinarily takes place slowly, the more so in a context where, both nationally and internationally, command and enforcement mechanisms familiar to mature legal systems are relatively lacking.

Thus, even today a human rights understanding of child labor is not widespread. Yet there are prices to be paid—often steep prices—for human rights myopia or quiescence. As James Gross has observed regarding worker rights specifically: “This lack of [human rights] attention has contributed to

⁸ The official citation and other data pertinent to each of these conventions may be found in the ILO’s ILOLEX database at <http://www.ilo.org/ilolex/english/index.htm>. See also 3 WESTON & CARLSON III.H.2 (ILO C29), III.H.4 (ILO C105), and III.O.5 (ILO C138).

⁹ Charter of the United Nations, 1976 Y.B.U.N. 1043 (1945), *reprinted in* 1 WESTON & CARLSON I.A.1.

¹⁰ Universal Declaration of Human Rights, 10 June 1948, G.A. Res. 217A, U.N. GAOR, 3d Sess., Pt. I, Resolutions, at 71, U.N. Doc. A/810 (1948), *reprinted in* 3 WESTON & CARLSON III.A.1 [hereinafter “UDHR” or “1948 UDHR”].

¹¹ *Accord*, James A. Gross, *A Long Overdue Beginning: The Promotion and Protection of Workers’ Rights as Human Rights*, in WORKERS’ RIGHTS AS HUMAN RIGHTS 1-22 (James A. Gross, ed. 2003), at 3: “Until recently, the international human rights movement and organizations, human rights scholars, and even labor organizations and advocates have given little attention to worker rights as human rights.” See also Virginia A. Leary, *The Paradox of Workers’ Rights as Human Rights*; in HUMAN RIGHTS, LABOR RIGHTS, AND INTERNATIONAL TRADE 22-47 (Lance A. Compa & Stephen F. Diamond eds., 1996); Björne Grimsrud, *Too Much Work at Too Early an Age*, in THE NEXT STEPS: EXPERIENCES AND ANALYSIS OF HOW TO ERADICATE CHILD LABOUR 9-23 (2002). But see *infra* note 15. For further discussion of the historical disconnect between, specifically, child labor and human rights, see *infra* Section II.A (“Taking Working Children’s Rights Seriously”), at 35-41.

¹² On the history as well as the meaning and scope of human rights, see Burns H. Weston, *Human Rights*, in ENCYCLOPÆDIA BRITANNICA (2005), available from ENCYCLOPÆDIA BRITANNICA ONLINE at <http://www.britannica.com/eb/article?tocId=219350>; also on the website of The University of Iowa Center for Human Rights, at <http://www.uichr.org>.

workers being seen as expendable in worldwide economic development and their needs and concerns not being represented at conferences on the world economy dominated by bankers, finance ministers, and multinational corporations.”¹³

It is important to acknowledge, however, that, since the adoption of the 1989 CRC and particularly the 1999 ILO Convention (No. 182) Concerning the Prohibition and Immediate Elimination of the Worst Forms of Child Labour (ILO C182),¹⁴ a commitment to the abolition of child labor as a human rights imperative has taken hold and begun to spread (albeit still too slowly in our judgment). Key intergovernmental organizations (IGOs) working in the field now actively affirm the link between child labor and human rights—most prominently, even if sometimes equivocally, the ILO¹⁵ and the United Nations Children’s Fund (UNICEF).¹⁶ Also committed to a rights-based approach to child labor is the World Health Organization (WHO) whose Department of Child and Adolescent Health and Development

¹³ Gross, *supra* note 11, at 3.

¹⁴ Convention (No. 182) Concerning the Prohibition and Immediate Elimination of the Worst Forms of Child Labour, 17 June 1999, *reprinted in* 38 I.L.M. 1207 (1999) and 3 WESTON & CARLSON III.D.4 [hereinafter “ILO C182”]. The expression “the worst forms of child labour” is defined by ILO C182 in its Article 3.

¹⁵ Demonstrating the ILO’s growing commitment is, for example, 1998 ILO Declaration on Fundamental Principles and Rights at Work, adopted 18 June 1998, <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=Iloeng&document=2&chapter=26&query=%28%23docno%3D261998%29+%40ref&highlight=&queryty pe=bool&context=0>, *reprinted in* 3 WESTON & CARLSON III.O.7. Paragraph 2 of the Declaration expressly enjoins ILO members “to promote and to realize . . . the effective abolition of child labour” and to do so in accordance with the Constitution of the International Labour Organization—and therefore also the 1944 Declaration of Philadelphia Concerning the Aims and Purposes of the International Labour Organization which is annexed to, and forms an integral part of, the ILO Constitution. In addition to reaffirming worker rights specifically, the Declaration commits the ILO and its membership to all manner of human rights generally. Further, the Preamble to 1999 ILO C182 expressly recalls, *inter alia*, the 1989 CRC, the 1998 ILO Declaration, and the 1956 U.N. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 7 Sept. 1956, 266 U.N.T.S. 40, *reprinted in* 3 WESTON & CARLSON III.H.3. Finally, in a 2002 report on child trafficking, the ILO, via its International Programme on the Elimination of Child Labour (IPEC), indicated a pronounced shift to human rights discourse and strategy in at least one major respect. As ILO/IPEC’s director put it in his Foreword to the report: “The trafficking of human beings is unacceptable under any circumstances, but the trafficking of vulnerable children and young people is a violation of their rights to protection from exploitation, to play, to an education, and to health, and to family life.” Frans Röselaers, *Foreword*, in UNBEARABLE TO THE HUMAN HEART: CHILD TRAFFICKING AND ACTION TO ELIMINATE IT, at v (Geneva: International Labour Office, International Programme for the Elimination of Child Labour, 2002), <http://www.ilo.org/public/english/standards/ipec/publ/childtraf/unbearable.pdf>.

¹⁶ UNICEF has worked closely with the ILO in this realm and now is increasingly known for putting rights at the center of its child labor advocacy and field work. *See, e.g.*, UNICEF, BEYOND CHILD LABOUR, AFFIRMING RIGHTS (New York: Mar. 2001), http://www.unicef.org/publications/index_4302.html; UNICEF, HUMAN RIGHTS FOR CHILDREN AND WOMEN: HOW UNICEF HELPS MAKE THEM A REALITY (June 1999), <http://www.unicef.org/>

(CAH) recognizes that the basic health needs of children and adolescents are fundamental human rights dependent for their protection and fulfillment on the realization of other rights such as “freedom from all forms of exploitation.”¹⁷

Human rights orientations to child labor are now found also, even more conspicuously, among nongovernmental organizations (NGOs) working in this field—for example, Anti-Slavery International (formerly the Anti-Slavery Society) in respect of an estimated 8 million children suffering in slavery and slave-like circumstances worldwide;¹⁸ the London-based International Save the Children Alliance, established in 1919 but principally focused on child labor in the last decade;¹⁹ and Global March Against Child Labour, begun in 1998 and now headquartered in New Delhi.²⁰ Also noteworthy: Amnesty International relative to child soldiering;²¹ the Children's Rights Division of Human Rights Watch, largely focused on forced and bonded child labor;²² and Defence for Children International.²³ Certain regional and local NGOs, too, have become well known for combating child labor from a rights-based perspective—Child Workers in Asia as just one example.²⁴ The same is true of some national governments as well.²⁵

[mozambique/humanrightsendg.pdf](#). See also YVES BEIGBEDER, NEW CHALLENGES FOR UNICEF: CHILDREN, WOMEN AND HUMAN RIGHTS 163-72 (2001).

¹⁷ For elaboration, see the WHO website at <http://www.who.int/child-adolescent-health/right.htm> wherein the CAH identifies the following spectrum of child and adolescent rights, essentially within the framework of the 1989 CRC: non-discrimination; education and access to appropriate information; privacy and confidentiality; protection from all forms of violence; rest, leisure and play; an adequate standard of living; freedom from all forms of exploitation; and participation, including the right to be heard.

¹⁸ See Anti-Slavery International's website at <http://www.antislavery.org>.

¹⁹ The Alliance describes itself as “the world's leading independent children's rights organization.” See the Alliance's website at <http://www.savethechildren.net/homepage>.

²⁰ See the Global March website at <http://globalmarch.org/index.php>. See also the website for the International Center on Child Labor and Education based in Washington, D.C., the North American Secretariat for Global March, at <http://www.iccle.org>.

²¹ See Amnesty International's website at <http://web.amnesty.org/web/content.nsf/pages/gbroptionalprotocol>.

²² See Human Rights Watch's website at <http://www.hrw.org/children/labor.htm>.

²³ See the Defence for Children International's website at <http://www.defence-for-children.org>.

²⁴ See the Child Workers in Asia website at <http://www.cwa.tnet.co.th/whaticswa/whaticswa.htm>.

Thus, both alone and in growing combination, variously specialized IGOs and NGOs, increasingly in collaboration with national governments, have in recent years placed child labor, especially its worst forms, high among their concerns and in the process confirmed its human rights standing. Perhaps not coincidentally, these organizations also have begun to achieve some discernible progress.

But not nearly enough. The circumstance of abused and exploited children remains huge and grotesque—and sometimes seemingly intractable. Why?

A primary explanation resides, of course, in the array of economic and political forces worldwide—mostly though not exclusively nationally or locally based—whose various interests are served not by the elimination or reduction of child labor but by its perpetuation and proliferation. But let us be very clear: child labor exists also because, except for a valiant few, the world's governing elites have yet to discover not just the political and economic will that is needed to surmount the problem but, as well, the comprehensive understanding of it upon which solutions adequate to its abolition depend—a critical deficit because such understanding is essential for the vision that is needed to energize the grand will that so far is lacking.

This essay, like the collection from which it is drawn,²⁶ is intended to help offset this deficit. To this end, it therefore is premised on the following five interrelated propositions:

first, that child labor—work done by children that is harmful to them for being abusive, exploitative, hazardous, or otherwise contrary to their best interests—constitutes a major blight on human civility and welfare worldwide;

second, that it therefore begs to be abolished by all who profess ethical-moral conscience and/or pragmatic self-interest in the well-being of present and future generations;

²⁵ See, e.g., the country studies by Donald Mmari (Tanzania), Victoria Rialp (Philippines), and Benedito Rodrigues dos Santos (Brazil), in *CHILD LABOR AND HUMAN RIGHTS*, *supra* note 1, at 169-231.

²⁶ See *supra* note 1.

third, that it manifests itself in complex and diverse ways and thus requires both coextensive (multidisciplinary, multifaceted, and multisectoral) and singly focused approaches and techniques to achieve its eradication in whole or in part;

fourth, that these approaches and techniques must be informed by frank recognition that no form or level of social organization can claim “business as usual”—i.e., exemption from meaningful, even fundamental change—if the goal of abolition is genuinely to succeed in situations large or small over time; and

fifth, that such change and the benefits to human dignity that can flow from it are not likely to be achieved except episodically without a dedicated and ongoing commitment to the contextual application of human rights law and policy, including the right of children to have a say about their own lives.

The time is long overdue when, from the most local to the most global circumstance, the rights of working children—not just their needs—must be taken seriously into account in the making and shaping of agendas pertinent to their lives, and especially, of course, when such agendas affect them directly.

I. RETHINKING CHILD LABOR: A MULTIDIMENSIONAL HUMAN RIGHTS PROBLEM

As asserted at the outset of our Introduction, the problem of child labor is indisputably a human rights problem. We reaffirm this claim. The brute facts substantiate it. So does the law.

Consider, for starters, the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR),²⁷ Article 10(3) of which provides in part as follows:

Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Consider also the 1989 CRC,²⁸ so widely adopted (more so than any other human rights compact in history) that it may be said to have entered into customary international law.²⁹ Article 32(1) of the Convention is explicit:

²⁷ International Covenant on Economic, Social and Cultural Rights [hereinafter “ICESCR” or “1966 ICESCR”], 16 Dec. 1966, 993 U.N.T.S. 3, *reprinted in* 3 WESTON & CARLSON III.A.2.

²⁸ *Supra* note 6.

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

Article 32(2), requiring the states parties to take "legislative, administrative, social and educational measures" in respect of the foregoing, gives formal muscle to this human rights injunction.

Also to the point, albeit less explicitly, is 1999 ILO C182.³⁰ In its Preamble, it recalls, *inter alia*, the 1989 CRC, the 1998 ILO Declaration on Fundamental Principles and Rights at Work, and the 1956 United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.³¹ Thus it predicates its prohibitions of child labor's "worst forms" on a human rights framework, at least in part.

But particularly instructive, especially when accounting for the most egregious forms of child labor, are multiple additional provisions of the 1989 CRC, among them:

Article 3, requiring the states parties, "in all actions concerning children," to ensure "the best interests of the child," including "such protection and care as is necessary for his or her well-being";

Article 6, requiring the states parties to ensure "to the maximum extent possible the survival and development of the child";

Article 8, requiring the states parties to respect "the right of the child to preserve his or her identity, including . . . name and family relations";

Article 9, requiring the states parties to ensure that, unless otherwise provided by law, "a child shall not be separated from his or her parents against their will";

Article 11, requiring the states parties "to combat the illicit transfer and non-return of children abroad";

²⁹ As of 1 July 2006, 191 states plus Niue (a self-governing island in free association with New Zealand) were party to the 1989 CRC, a process of ratification and accession that took just over seven years, with Ghana being the first to ratify on 5 February 1990, and Timor-Leste the most recent on 16 April 2003. Only Somalia and the United States among the signatories to the CRC have yet to ratify it.

³⁰ *Supra* note 14.

³¹ For details regarding these instruments, *see supra* notes 6 and 15.

- Article 12*, requiring the states parties to assure that “the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child,” including “in any judicial and administrative proceedings affecting the child”;
- Article 13*, safeguarding the right of children to “freedom of expression,” including “freedom to seek, receive, and impart information and ideas of all kinds”;
- Article 15*, recognizing the right of children to “freedom of association” and “peaceful assembly”;
- Article 16*, protecting children against “arbitrary or unlawful interference with his or her privacy, family, home or correspondence”;
- Article 18*, requiring parents to assume “common” and “primary” responsibility for “the upbringing and development of the child,” guided by “the best interests of the child”;
- Article 19*, requiring the states parties “to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse”;
- Article 24*, recognizing “the right of the child to the enjoyment of the highest attainable standard of health”;
- Article 25*, recognizing “for every child the right to benefit from Social security”;
- Article 27*, recognizing “the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development”;
- Article 28*, recognizing “the right of the child to education”;
- Article 31*, recognizing “the right of the child to rest and leisure”;
- Article 34*, requiring the states parties “to protect the child from all forms of sexual exploitation and sexual abuse”;
- Article 35*, requiring the states parties “to prevent the abduction of, the sale of or traffic in children for any purpose or in any form”;
- Article 36*, requiring the states parties to protect the child “against all other forms of exploitation prejudicial to any aspect of the child’s welfare”;
- Article 37*, protecting children against “cruel, inhuman or degrading treatment”; and
- Article 38*, requiring state parties “to ensure that persons who have not attained the age of fifteen years do not take direct part in hostilities” and to “refrain from recruiting any person who has not attained the age of fifteen years into their armed forces.”

The 1989 CRC thus recognizes the factual truth: that the problem of child labor is not only a human rights problem, simply put, but a human rights problem that, defying narrow monolithic definition, is

multidisciplinary, multifaceted, and multisectoral—in a word, multidimensional. It recognizes it to involve practices that violate children’s rights both directly (e.g., slavery) and—more commonly—indirectly (e.g., compulsory labor that results in denial of the right to education) and, beyond that (i.e., in addition to children’s rights *per se*), to implicate the broader panoply of entitlements across the whole spectrum of rights with which, at least in theory, *all* members of the human family (children included) are endowed—i.e., the three “generations” of rights that have evolved since at least the English Bill of Rights of 1689 to the present day: (1) civil and political rights; (2) economic, social, and cultural rights; and, most recently, (3) community (or “solidarity”) group rights.³² Each has its own historical roots that track the evolution of modern industrial society, including the development of a labor class.³³ Each is thus linked to the problem of child labor in one or more of its manifestations, including such third generation rights as the right to peace,³⁴ the right to development,³⁵ and the right to a clean and healthy

³² The notion of three “generations” of human rights is the brainchild of French jurist and former UNESCO legal adviser Karel Vasak, inspired by the three themes of the French Revolution, *liberté* (civil and political rights), *égalité* (economic, social, and cultural rights), and *fraternité* (community, group, or “solidarity” rights). See Karel Vasak, *Pour une troisième génération des droits de l’homme*, in *STUDIES AND ESSAYS ON INTERNATIONAL HUMANITARIAN LAW AND RED CROSS PRINCIPLES* (C. Swinarski ed., 1984), at 837. For extensive explication, see Stephen P. Marks, *Emerging Human Rights: A New Generation for the 1980s?*, 33 *RUTGERS L. REV.* 435 (1981). See also Weston, *Human Rights*, *supra* note 12: “Vasak’s model is, of course, a simplified expression of an extremely complex historical record, and it is not intended to suggest a linear process in which each generation gives birth to the next and then dies away. Nor is it to imply that one generation is more important than another. The three generations are understood to be cumulative, overlapping, and, it is important to note, interdependent and interpenetrating.”

³³ This history is summarized in Weston, *Human Rights*, *supra* note 12, at 5-7. Cf. Hugh Cunningham & Shelton Stromquist, *Child Labor and the Rights of Children: Historical Patterns of Decline and Persistence*, in *CHILD LABOR AND HUMAN RIGHTS*, *supra* note 1, at 55.

³⁴ On the right to peace, see, e.g., Philip Alston, *Peace as a Human Right*, 11 *BULL. PEACE PROPOSALS* No. 4, at 319 (1980). See also U.N. General Assembly Declaration on the Preparation of Societies for Life in Peace, 15 Dec. 1978, G.A. Res. 33/73, U.N. GAOR, 33rd Sess., Supp. No. 45, at 55, U.N. Doc. A/33/45 (1979), *reprinted in* 3 *WESTON & CARLSON III.S.1*; U.N. General Assembly Declaration on the Right of Peoples to Peace, 12 Nov. 1984, G.A. Res. 39/11 (Annex), U.N. GAOR, 39th Sess., Supp. No. 51, 1t 22, U.N. Doc. A/39/51 (1985), *reprinted in* 3 *WESTON & CARLSON III.S.2*.

³⁵ On the right to development, see, e.g., Philip Alston, *The Right to Development and the Need for an Integrated Human Rights Approach to Development*, in *EXPERTS DISCUSS SOME CRITICAL SOCIAL DEVELOPMENT ISSUES* (U.N. Division for Social Policy and Development. U.N. Doc. ESA/DSPD/BP.2, May 1999), at 71-88; Stephen P. Marks, *The Human Right to Development: Between Rhetoric and Reality*, 17 *HARV. HUM. RTS. J.* 137 (2004); Arjun Sengupta, *On the Theory and Practice of the Right to Development*, 24 *HUM. RTS. Q.* 837 (2002); N. J. Udombana, *The Third World and the Right to Development: Agenda for the New Millennium*, 22 *HUM. RTS. Q.* 753 (2000). See also U.N. General Assembly Declaration on the Right to Development, 4 Dec. 1986, G.A. Res. 41/128 (Annex), U.N. GAOR, 41st Sess., Supp. No. 53, at 186, U.N. Doc. A/41/53 (1987), *reprinted in* 3 *WESTON & CARLSON III.R.2*.

environment.³⁶ The exploitative employment of trafficked children for commercial sexual acts, for example, flouts the right to the security of one's person, ergo first generation civil and political rights.³⁷ The exposure of working children to toxic and otherwise hazardous substances infringes directly upon the human right to health, ergo second generation economic, social, and cultural rights.³⁸ Child soldiering subverts not only the first generation right to security of one's person but, likewise, the group right to peace, ergo third generation community (or solidarity) rights.³⁹

Indeed, few provisions of the three historic instruments that constitute the "International Bill of Human Rights"—the 1948 UDHR, the 1966 ICESCR, and the 1966 ICCPR⁴⁰—are unaffected by the problem of child labor.⁴¹ This is particularly apparent when one conceives of human rights in terms of "human capabilities" in the manner of Martha Nussbaum and Amartya Sen; that is, by reference less to abstract wants (policy objectives) than to concrete and measurable needs (life functions)⁴²—e.g., life itself; bodily health and bodily integrity; senses, imagination, and thought; emotions; conscience;

³⁶ On the right to a clean and healthy environment, see, e.g., HUMAN RIGHTS APPROACHES TO ENVIRONMENTAL PROTECTION (A. Boyle & M. Anderson, eds., 1998); Edith Brown Weiss, IN FAIRNESS TO FUTURE GENERATIONS: INTERNATIONAL LAW, COMMON PATRIMONY, AND INTERGENERATIONAL EQUITY (1989).

³⁷ See, e.g., 1948 UDHR, *supra* note 10, art. 1; also Articles 7-10 of the International Covenant on Civil and Political Rights, 16 Dec. 1966, 993 U.N.T.S. 171, *reprinted in* 3 WESTON & CARLSON III.A.3 [hereinafter "ICCPR" or "1966 ICCPR"].

³⁸ See, e.g., 1948 UDHR, *supra* note 10, art. 25; also 1966 ICESCR, *supra* note 27, art. 12.

³⁹ See, e.g., 1978 U.N. Declaration on the Preparation of Societies for Life in Peace, *supra* note 34; U.N. Declaration on the Right of Peoples to Peace, *supra* note 34; and U.N. Security Council Resolution 1325 (on Women and Peace and Security), 31 Oct. 2000, U.N. SCOR, 4213d mtg., at 177, U.N. Doc. S/RES/1325 (2000), *reprinted in* 2 WESTON & CARLSON II.D.4c.

⁴⁰ *Supra* notes 10 (UDHR), 27 (ICESCR), and 37 (ICCPR).

⁴¹ Among the UDHR's rights provisions, see, for example, arts. 1, 3-9, 11-15, 22, and 25.

⁴² See, e.g., AMARTYA K. SEN, COMMODITIES AND CAPABILITIES (1985); _____ *Capability and Well-Being*, in THE QUALITY OF LIFE 30 (Martha C. Nussbaum & Amartya K. Sen eds., 1993); Martha C. Nussbaum, *Capabilities and Human Rights*, 66 FORDHAM L. REV. 273 (1997). *But see especially* Martha C. Nussbaum, *Capabilities, Human Rights, and the Universal Declaration*, in THE FUTURE OF INTERNATIONAL HUMAN RIGHTS 25 (Burns H. Weston & Stephen P. Marks eds. & contribs., 1999) [hereinafter "WESTON & MARKS"]. In the policy-oriented jurisprudence of Yale law professors McDougal and Lasswell, the distinction would be between "goal values" (rights/wants) and "base values" (needs/capabilities). See, e.g., MYRES S. MCDUGAL, HAROLD D. LASSWELL, & LUNG CHU CHEN, HUMAN RIGHTS AND WORLD PUBLIC ORDER: THE BASIC POLICIES OF AN INTERNATIONAL LAW OF HUMAN DIGNITY (1980). See also *infra* note 130 and accompanying text for further discussion of this theme.

affiliation *qua* friendship and respect; and political and material control over one's environment.⁴³ It is impossible to disassociate the problem of child labor, especially its worst forms, from any one of these most central of human capabilities and therefore, as well, from any of their human rights correlatives. A mere glance at the 1948 UDHR proves the comparative point.⁴⁴

But it is not only the multidimensionality of the child labor problem that reveals its human rights linkages. Also highly relevant is its interrelatedness with the human rights of the parents or guardians of working children,⁴⁵ a point well understood by, for example, UNICEF, which works to advance the rights of children and of women—*qua* mothers—in tandem.⁴⁶ The safeguarding of children's rights depends not merely on the promotion and protection of their rights, but on the promotion and protection of the fundamental human rights of their parents or guardians as well,⁴⁷ and “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁴⁸ Denying parents or guardians their human rights contributes to the propagation or perpetuation of child labor and thereby denials of the rights of children.

In sum, the nexus between child labor and human rights is both broad and deep. That a number of states, intergovernmental institutions, and nongovernmental organizations engaged in the struggle

⁴³ See Nussbaum, *Capabilities, Human Rights, and the Universal Declaration*, *supra* note 42, at 44-46.

⁴⁴ Thus: *life* (UDHR art. 3 on the right to life, liberty, and security of the person); *bodily health* (UDHR arts. 12 and 25 on the right to privacy, family, and home and on the right to the highest attainable physical and mental health); *bodily integrity* (UDHR arts. 3-5 and 13 on the right to security of the person, to freedom slavery or servitude, to freedom from cruel, inhuman, or degrading treatment, and to freedom of movement and residence); *senses, imagination, and thought* (UDHR art. 26 on the right to education and associated articles 18, 19, and 27 on the right to thought, conscience, religion, opinion, and expression and to participate, enjoy, and share in cultural life); *emotions* (UDHR art. 12 on the right to privacy); *conscience* (UDHR arts. 18 and 19 on the right to thought, conscience, religion, opinion, and expression); *affiliation qua friendship and respect* (UDHR arts. 1, 20, and 29 on the right to peaceful assembly and association and to community duties for the free and full development of personality, all in a “spirit of brotherhood” [*sic*]); *play* (UDHR art. 24 on the right to rest and leisure); *political and material control over one's environment* (UDHR arts. 12, 17, 19-21, and 23 on the right to privacy, property, speech, association, political participation, and to work and free choice of employment).

⁴⁵ See, for example, Article 2 of the 1989 CRC, *supra* note 6, safeguarding children “against all forms of discrimination on the basis of the . . . activities . . . of the child's parents.”

⁴⁶ See, e.g., UNICEF, HUMAN RIGHTS FOR CHILDREN AND WOMEN: HOW UNICEF HELPS MAKE THEM A REALITY (June 1999), <http://www.unicef.org/mozambique/humanrightseng.pdf>.

⁴⁷ See, e.g., 1948 UDHR, *supra* note 10, arts. 3, 6, 7, 13, 17, 23, 25, and 26.

⁴⁸ *Id.*, art. 2.

against child labor have adopted or begun to adopt rights-based policies to prosecute its abolition is thus not surprising.

Still, as previously and hereinafter noted, a commitment to a rights-based approach to child labor is not yet common in official policy or practice.⁴⁹ Skeptics assert that rights-based approaches to social ills such as child labor lack pragmatism because, it is sometimes said, they focus on unrealistic, aspirational norms that have little or no connection to the “real world.” Indeed, some suggest that, in respect of child labor at least, human rights approaches tend to be counterproductive⁵⁰ and, more generally, that the international human rights movement is part of the problem, not the solution.⁵¹

We demur and contest these claims in Section I.B, *infra*.⁵² While the skeptics certainly have some valid points (the human rights movement is, after all, a human—ergo imperfect—project), there is no denying that a rights-based approach to child labor, especially when conceived and executed from a multidimensional, holistic perspective, has strong pragmatic underpinnings and thus can have substantial beneficial results.⁵³ One can point to numerous instances in which human rights discourse and strategy have had real impact,⁵⁴ including in the area of child labor.⁵⁵ Given the continued skepticism, however, it behooves us to explain why, and to explain also why the skeptics are mistaken.

⁴⁹ See *supra* text accompanying notes 6-13; see also *infra* Section II.A (“Taking Working Children’s Rights Seriously”), at 35-41.

⁵⁰ See, e.g., Onora O’Neill, *Children’s Rights and Children’s Lives.*, in CHILDREN, RIGHTS, AND THE LAW 24, 37 (Philip Alston, Stephen Parker, & John Seymour, eds., 1992).

⁵¹ See, e.g., David Kennedy, “The International Human Rights Movement: Part of the Problem?”, 15 HARV. HUM. RTS. J. 102, 102-04 (2002). For convincing rebuttal, see Hilary Charlesworth, *Author! Author! A Response to David Kennedy*, 15 HARV. HUM. RTS. J. 127 (2002). But see also DAVID KENNEDY, THE DARK SIDES OF VIRTUE: REASSESSING INTERNATIONAL HUMANITARIANISM (2004).

⁵² See pp. 23-33.

⁵³ See, e.g., Charlesworth, *supra* note 51, at 130.

⁵⁴ See, e.g., Douglass Cassel, *International Human Rights In Practice: Does International Human Rights Law Make a Difference*, 2 CHI. J. INT’L L. 121 (2001); Ronald C. Slye, *International Human Rights Law In Practice: International Law, Human Rights Beneficiaries, and South Africa: Some Thoughts on the Utility of International Human Rights Law*, 2 CHI. J. INT’L L. 59 (2001). See also *infra* Section I.B.3 (“Contesting the Claimed Irrelevance of Public International Law to Private Actors”), at 26-28.

A. The Utility of a Human Rights Approach to Child Labor

Why is it important to think and act upon the problem of child labor as a human rights problem? What purposes are served by such an approach?

1. Human Rights as “Trumps”

In his germinal book, *Taking Rights Seriously*, legal philosopher Ronald Dworkin asserts unequivocally—and correctly—that when a claimed value or good is categorized as a “right” it “trumps” most if not all other claimed values or goods.⁵⁶ Rights discourse confers a special status of importance on claimed entitlements, juridically more elevated than commonplace “standards” or “laws” which, in contrast to “human rights,” are subject to everyday revision and rescission for lack of such ordination. A proximate analogy is the distinction between a contractual or statutory claim and a constitutional one.

Thus, when child labor is designated as a condition from which children have a *right* to be free, not merely an option for which regulating (but comparatively easily revocable) *standards* must be devised, there results an opportunity for empowerment and mobilization that otherwise is lacking. A rights-based approach to child labor elevates the “needs” and “interests” of children in this context to societal needs and interests—societal goods—with associated claims of legal and political legitimacy. As UNICEF’s 1997 State of the World’s Children report characterized the organization’s strategic decision to use rights to reduce child labor: “The idea that children have special needs has given way to the conviction that children have rights, the same full spectrum of rights as adults: civil and political, social, cultural and economic.”⁵⁷ Or as UNICEF put it two years later in its 1999 State of the World’s Children report: “What were once seen as the needs of children have been elevated to something far harder to ignore: their rights.”⁵⁸

In other words, rights are not matters of charity, a question of favor or kindness, to be bestowed or taken away at will.⁵⁹ They are high-level public order values or goods that carry with them a sense of

⁵⁵ See, for example, the country studies by Donald Mmari (Tanzania), Victoria Rialp (Philippines), and Benedito Rodrigues dos Santos (Brazil), in *CHILD LABOR AND HUMAN RIGHTS*, *supra* note 1, at 169-231.

⁵⁶ RONALD DWORKIN, *TAKING RIGHTS SERIOUSLY* 91-93, 189-91, 269 (1977).

⁵⁷ UNICEF, *STATE OF THE WORLD’S CHILDREN* 1997, at 9 (1997), <http://www.unicef.org/sowc97>.

⁵⁸ UNICEF, *STATE OF THE WORLD’S CHILDREN* 1999, at 8 (1999), <http://www.unicef.org/org/sowc99/summary2.htm>.

entitlement on the part of the rights-holder and obligatory implementation on the part of the rights-protector—inter-governmental institutions, the state, society, the family. They are values or goods deemed fundamental and universal; and, while not absolute, they are nonetheless judged superior to other claimed values or goods. To assert a *right* of a child to be free from abusive, exploitative, and hazardous work is, thus, to strengthen a child's possibility for a life of dignity and well-being. It bespeaks duty, not optional—often capricious—benevolence.

2. Human Rights as Interdependent Agents of Human Dignity

Central to the concept of human rights is the notion of a “public order of human dignity,” a public order (*ordre publique*) “in which values are shaped and shared more by persuasion than by coercion, and which seeks to promote the greatest production and widest possible sharing, without discriminations irrelevant of merit, of all values among all human beings.”⁶⁰ This notion of public order, encapsulating “the basic policies of an international law of human dignity,”⁶¹ is embedded in the 1948 UDHR⁶² which, in its Preamble, proclaims the concept of human rights to grow out of “recognition of the inherent dignity . . . of all members of the human family” as “the foundation of freedom, justice and peace in the world.”

Thus, in the struggle against child labor, a rights-based approach signals more than the alleviation of child abuse and exploitation *per se*. It signals also that notions of nondiscrimination and justice and dignity must be central in all aspects of a working child's life, including provision for her or his education, health, and spiritual, moral, or social development—precisely as the 1989 CRC envisions.⁶³ A rights-based approach to the child labor problem is part of a complex web of interdependent rights that extends protection beyond one domain to many others in a child's life. Most if not all human rights (e.g., the right to be free from inhumane labor practices) depend on the satisfaction of other human rights (e.g., the right to education) for their fulfillment. Treating freedom from abusive, exploitative, and hazardous

⁵⁹ *Accord*, MARTA SANTOS PAIS, A HUMAN RIGHTS CONCEPTUAL FRAMEWORK FOR UNICEF (Florence: UNICEF International Child Development Centre, Innocenti Essay No. 9, May 1999), at 5, <http://www.unicef.org/sowc99/summary2.htm>.

⁶⁰ Myres S. McDougal, *Perspectives for an International Law of Human Dignity*, in MYRES S. McDOUGAL & ASSOCIATES, STUDIES IN WORLD PUBLIC ORDER 987 (1960).

⁶¹ McDOUGAL, LASSWELL, & CHEN, *supra* note 42.

⁶² *Supra* note 10.

⁶³ *See supra* text accompanying notes 27-36.

child work as a human right thus raises the stakes against those who would put children in harm's way. It transforms the struggle *against* child labor into a struggle *for* human dignity and thus better captures responsible attention and heightened pressure in the search for enduring solutions.

3. Human Rights as a Mobilizing Challenge to Statist and Elitist Agendas

Because they trump lesser societal values or goods and because they are agents of human dignity, human rights challenge and make demands upon state sovereignty. Scores of human rights conventions entered into force since World War II require states actually to cede bits of sovereignty in the name of human rights. Legal obligations of great solemnity, the 1989 CRC⁶⁴ and 1999 ILO C182⁶⁵ are among them.

Proof is found, too, in the many occasions in which states, international governmental institutions, NGOs, transnational professional associations, corporations, trade unions, churches, and others have relied successfully on this “*corpus juris* of social justice”⁶⁶ to measure and curb state behavior. The legitimacy of political regimes—hence their capacity to govern non-coercively or at all—is today judged by criteria informed and refined by human rights.

All of this is well known. Keenly aware of their interdependencies, most states, however much they may resist human rights pressures from within and without,⁶⁷ are mindful that their national interests and desired self-image depend on their willingness to play by the rules and especially those rules that weigh heavily on the scales of social and political morality. Even the most powerful states are thus vulnerable to what has come to be called “the mobilization of shame” in defense of human rights.⁶⁸ The case of apartheid South Africa is perhaps the best known in this regard. There is no reason why states that encourage or tolerate abusive, exploitative, and hazardous child work cannot or should not be similarly targeted and shamed.

⁶⁴ *Supra* note 6.

⁶⁵ *Supra* note 14.

⁶⁶ Theo C. Van Boven, *Survey of the Positive Law of Human Rights*, in *THE INTERNATIONAL DIMENSIONS OF HUMAN RIGHTS*, vol. 1, at 87, 88 (Karl Vasak ed., revised and edited for the English translation by Philip Alston, 1982).

⁶⁷ *See infra* Section I.B.1 (“Contesting the Claimed Immutability of State Sovereignty”), at 23-24.

⁶⁸ *See, e.g.*, ROBERT F. DRINAN, S.J., *THE MOBILIZATION OF SHAME* (2001).

But not only states. For the same reasons that human rights challenge and make demands upon state sovereignty, so also do they challenge and make demands upon the particularist agendas of private elites.⁶⁹ Why? Because human rights have as their core value the value of respect, by definition possessed equally by all human beings everywhere.⁷⁰ They insist upon equality of treatment across the board. Writes Virginia Leary, “[e]quality or non-discrimination . . . is a leitmotif running through all of international human rights law.”⁷¹ True, no observant person would dispute the widespread disregard of these principles. Still, there is no denying the potential power of human rights discourse and strategy to stand up, dare, and defy the special economic and political interests, private as well as public, that, usually for selfish reasons, dismiss the equal treatment of all human beings and thus contribute to social ills such as child labor.

In sum, ordinary norms, institutions, and procedures are not defined, typically, by the language of human rights and therefore do not have the same *gravitas* as their human rights counterparts. They therefore do not carry with them the same moral authority upon which, in democratic societies at least, governing elites depend to exercise and retain legitimacy and power. The potential for human rights discourse and strategy to dislodge or seriously burden those private exclusive interests that help to perpetuate child labor is likewise manifest.

4. Human Rights as Empowerment for Children

As noted, human rights carry with them a sense of entitlement on the part of the rights-holder. Indeed, human rights law embraces not only this sense of entitlement, but also “the right of the individual

⁶⁹ See, e.g., the Statement of Common Understanding developed at the U.N. Inter-Agency Workshop on a human rights-based approach in the context of U.N. reform, 3-5 May 2003: “In a human rights-based approach, human rights determine the relationship between individuals and groups with valid claims (rights-holders) and State and non-state actors with correlative obligations (duty-bearers). It identifies rights-holders (and their entitlements) and corresponding duty-bearers (and their obligations) and works towards strengthening the capacities of rights-holders to make their claims, and of duty-bearers to meet their obligations.” UNICEF, *THE STATE OF THE WORLD’S CHILDREN 2004*, Annex B, at 92 (2003) (emphasis added), <http://www.unicef.org/sowc04/index.html>.

⁷⁰ “[I]f a right is determined to be a human right, it is understood to be quintessentially general or universal in character, in some sense equally possessed by all human beings everywhere . . .” Weston, “Human Rights,” *supra* note 12, at 5. The universality of human rights has been much debated in recent years. For pertinent discussion, see Burns H. Weston, *The Universality of Human Rights in a Multicultural World: Toward Respectful Decision-Making*, in WESTON & MARKS, *supra* note 42, at 65.

⁷¹ Virginia A. Leary, *The Right to Health in International Human Rights Law*, in 1 HEALTH AND HUMAN RIGHTS No. 1, at 24, 37 (1994).

to know and act upon his [sic] rights,”⁷² hence a sense of duty and redress on the part of the state and other actors. The essence of rights discourse (or human rights law) is that, in Michael Freeman’s pointed alert, “if you have a right to x, and you do not get x, this is not only a wrong, but it is a wrong against you.”⁷³ This extends inexorably to children as rights-holders. CRC Article 12 expressly requires that states parties “assure to the child . . . the right to express [her or his] views freely in all matters affecting the child” and that “the views of the child [be] given due weight”⁷⁴

At least four specific ways have been identified by which human rights accomplish this empowerment.⁷⁵ Each bear obvious relevance to children and others who seek the abolition of child labor.

First, human rights provide a level of accountability that transcends that of other legal obligations. Like those obligations, human rights provide victims of rights violations with the authority to hold violators accountable, even to the point of criminal liability. However, because human rights entail fundamental values of “superior” moral order, their violation correspondingly entails greater moral condemnation than other wrongs. This is what distinguishes “rights” from “benefits” or from being the beneficiary of another’s obligation,⁷⁶ and thus what makes possible, for example, “the mobilization of shame” and the condemnation of the international community, commonly without even having to go to formal court. The “truth and reconciliation” processes of Argentina, Chile, El Salvador, Ghana, Guatemala, Haiti, Malawi, Nepal, Nigeria, The Phillipines, Serbia and Montenegro, South Africa, South Korea, and elsewhere are proof enough.⁷⁷ On occasion, they can be more effective than their more formal legal counterparts in overcoming impunity.⁷⁸

⁷² Final Act of the Conference on Security and Co-operation in Europe: Declaration on Principles Guiding Relations between Participating States, Respect for Human Rights and Fundamental Freedoms, Including the Freedom of Thought, Conscience, Religion or Belief, ¶ 7 (1 Aug. 1975), *reprinted in* 14 I.L.M. 1292 (1975) and 1 WESTON & CARLSON I.D.9.

⁷³ MICHAEL D. A. FREEMAN, HUMAN RIGHTS: AN INTERDISCIPLINARY APPROACH 61 (2002) (italics in the original).

⁷⁴ See 1989 CRC, *supra* note 6, art. 12(1) (emphasis added).

⁷⁵ For much of what follows, we are indebted to Ronald C. Slye, *supra* note 54, at 73-76.

⁷⁶ JACK DONNELLY, THE CONCEPT OF HUMAN RIGHTS 1-13 (1985); _____, UNIVERSAL HUMAN RIGHTS IN THEORY AND PRACTICE 9-12 (1989).

Second, human rights provide access to international institutions dedicated specifically to their promotion and vindication, including the human rights mechanisms of the United Nations⁷⁹ and the regional human rights regimes of Europe, the Americas, and Africa.⁸⁰ The effectiveness of these institutions as enforcement mechanisms is not consistent and often cumbersome and time-consuming, particularly at the global level. Nevertheless, they confirm that human suffering is and can be taken seriously, providing formal legal tools to remedy or otherwise mitigate abuses and thereby help to prevent future abuse. Like less formal techniques (e.g., a civil society mobilization of shame), their use can result in both specific and general deterrence, potentially ensuring individual and group rights.⁸¹

Third, human rights generate legal grounds for political activity and expression because, as already noted, they entail greater moral force than ordinary legal obligations. This is abundantly seen in the many global and regional conferences and other gatherings commonly called under the auspices of the United Nations (including the U.N.'s former Commission on Human Rights⁸²) and such regional organizations as the Council of Europe, the Organization of American States, and the African Union, each providing a forum in which the voices of human rights victims and advocates can be heard. The history of the anti-apartheid movement is replete with examples. Also illustrative are the annual conferences of the ILO and the high-level meetings of UNICEF and other intergovernmental organizations. All contribute to political empowerment, from the adoption of new resolutions and treaties to the recommendation of new norms and mechanisms to the reinterpretation of existing international and

⁷⁷ See, e.g., the website of the United States Institute of Peace at <http://www.usip.org/library/truth.html>.

⁷⁸ See TRUTH V. JUSTICE: THE MORALITY OF TRUTH COMMISSIONS (Robert I. Rotberg & Dennis Thompson eds., 2000). See also MARTHA MINOW, BETWEEN VENGEANCE AND FORGIVENESS: FACING HISTORY AFTER GENOCIDE AND MASS VIOLENCE ch. 4 (1999); John Dugard, *Reconciliation and Justice: The South African Experience*, in WESTON AND MARKS, *supra* note 42, at 399.

⁷⁹ See Stephen P. Marks, *The United Nations and Human Rights: The Promise of Multilateral Diplomacy and Action*, in WESTON AND MARKS, *supra* note 42, at 291.

⁸⁰ Stated in chronological order. See generally Dinah Shelton, *The Promise of Regional Human Rights Systems*, in WESTON AND MARKS, *supra* note 42, at 351.

⁸¹ For pertinent extended discussion, see *infra* Section II (“Abolishing Child Labor: A Multifaceted Human Rights Strategy”), at 33-70.

⁸² Replaced by the U.N. Human Rights Council on 16 June 2006. See G.A. Res. 60/251, U.N. GAOR, 16th Sess., Supp. No. __, at __, U.N. Doc. A/RES/60/251 (2006).

domestic norms and procedures—according to which, in Mary Robinson’s pithy characterization of the 1989 CRC, “[t]he more fortunate are called upon to assist the less fortunate as an internationally recognized responsibility.”⁸³ In turn, the resulting rights vocabulary and action plans help to refine the theoretical and operational foundations for human rights projects of all sorts, reinforced by the authority with which the sponsoring organizations and attending participants are regarded.

Finally, human rights discourse and strategy, which exist to promote and protect human capabilities of all sorts, encourage the creation of initiatives both within and beyond civil society that are designed to facilitate the meeting of “basic needs.” Excepting the 1975 Helsinki Accords,⁸⁴ such initiatives were not easy to find before the fall of the Berlin Wall in 1989 when tensions sacrificed these concerns on the altar of Cold War rivalries. But since then they have proliferated, especially in the human rights advocacy and scholarly communities.⁸⁵ All of which is of profound importance because the provision of basic needs provides the material basis for people to act on their rights—the very definition of empowerment.

Despite the relevance of these (and possibly other) forms of empowerment to children and others who seek child labor’s abolition, however, some scholars question whether they can in fact extend to children. Onora O’Neill, for one, is skeptical because “[y]ounger children are completely and unavoidably dependent on those [adults] who have power over their lives.”⁸⁶ Beyond perhaps the first six to eight years of childhood, we respectfully disagree, as would also most modern anthropologists, historians, and sociologists of childhood. While usually dependent on adults when very young, children are no longer “completely and unavoidably” dependent on them as they mature in age and experience. In fact, children may exhibit considerable independence and self-initiative well before adolescence. Their

⁸³ Robert V. Robinson, *Foreword*, in SANTOS PAIS, *supra* note 59, at v.

⁸⁴ Officially known as the 1975 Final Act of the Conference on Security and Co-operation in Europe, cited in note 72, *supra*.

⁸⁵ See, e.g., Laurie S. Wiseberg, *Nongovernmental Organizations in the Struggle against Child Labor*, in CHILD LABOR AND HUMAN RIGHTS, *supra* note 1, at 343.

⁸⁶ O’Neill, *supra* note 50, at 42. O’Neill asserts skepticism also because, she writes, “the ranks of childhood are continuously depleted by entry into adult life.” *Id.* at 39. Surely, however, this second argument is neutralized by the truism, curiously disregarded by O’Neill, that children, absent catastrophes such as AIDS and genocidal

growing independence may be collective as well as individual. As Michael Freeman has argued, “there are prototypes or at least germs of children’s movements already in existence.”⁸⁷ Indeed, children’s movements have long been noted among working children. In early 20th century American cities, for example, the self-organization of child newspaper vendors to defend what they saw as their interests and rights attracted much public attention, and in some places was even supported by far-sighted and creative city officials who linked it to public child protection mechanisms.⁸⁸

Present-day working children’s organizations and movements in Africa, Asia, and Latin America have been amply noted and discussed in recent literature,⁸⁹ among them organizations linked in an international children’s movement (the World Movement of Working Children and Adolescents) which maintains contact between countries and has had two international “summit” conferences, the first in 1996, the most recent in Berlin in April-May 2004, organized with adult assistance. The “Final Declaration” from the latter summit, in which the assembled working children reaffirmed their commitment to “practice protagonism” and fight for “recognition as social actors so that our voices be heard in the whole world,” is noteworthy: “We value our work and view it as an important human right for our personal development. We oppose every kind of exploitation and reject everything that hurts our moral and physical integrity. . . . [W]e reaffirm our will to continue constructing a world movement that not only fights for, defends and promotes the rights of working children, but of children in general.”⁹⁰

conflicts, continuously maintain the ranks of childhood by entering into life itself, replacing their seniors who mature into adulthood.

⁸⁷ FREEMAN, *supra* note 73, at 57.

⁸⁸ See DAVID NASAW, CHILDREN OF THE CITY AT WORK AND AT PLAY 62-87 (1996).

⁸⁹ See, e.g., MAGGIE BLACK, OPENING MINDS, OPENING UP OPPORTUNITIES: CHILDREN'S PARTICIPATION IN ACTION FOR WORKING CHILDREN (London: Save the Children, 2004); PER MILJETEIG, CREATING PARTNERSHIPS WITH WORKING CHILDREN AND YOUTH (World Bank, Social Protection Unit, Social Protection Discussion Paper Series, 2000); ANTHONY SWIFT, WORKING CHILDREN GET ORGANIZED (London: Save the Children, 1999); DAVID TOLFREE, OLD ENOUGH TO WORK, OLD ENOUGH TO HAVE A SAY: DIFFERENT APPROACHES TO SUPPORTING WORKING CHILDREN (Stockholm: Save the Children-Sweden, 1998).

⁹⁰ See Final Declaration of the 2nd Meeting of the World Movement of Working Children and Adolescents, Berlin, Germany, April 19-May 2, 2004, at http://66.102.9.104/search?q=cache:ZviZAig_KhZUJ:www.teimun.nl/2004/forum/Final%2520Declaration%2520Berlin.doc+Final+Declaration+2nd+Meeting+of+the+World+Movement+of+Working+Children+and+Adolescents+2004&hl=en.

In addition, *non*-working children have organized specifically to combat child labor. A prominent example is the Free the Children network founded by Canadian youth Craig Kielberger, the work and motto of which (“Often assumed to be the leaders of tomorrow, our generation must be the leaders of today”) also challenge skepticism of the sort expressed by O’Neill.⁹¹ Further, the Global March Against Child Labour, while an adult-led initiative to mobilize international opinion against child labor, includes ample opportunity for the participation of both working and non-working children to make their views known. At the Children’s World Congress on Child Labor organized by Global March in Florence in mid-May 2004, some 200 young persons from 10 to 17 shared their opinions and perspectives and supported the creation of a “network for worldwide, youth-driven action to press international and national efforts towards integrating world resources and responses on poverty, child labour, and education, [including] the development of strategies to enhance national support for implementation of ILO conventions 138 and 182, as well as the 2015 commitment for education for all children.”⁹²

To be sure, there is room for debate over the extent to which children can or should be self-empowered, as evidenced by the manner in which the above-noted Berlin and Florence events were organized and conducted—the first primarily by working children, the latter primarily by adults. The fact remains, however, that children—including working children—are today demonstrating increasing resolve to assert their own interests and to do so as a self-conscious expression of their universal civil and political rights to access and participate in the decision-making and policy-implementing processes that affect their lives. Indeed, direct involvement by children in the defense and promotion of their interests and rights often is key to the validity and vitality of their claims. They are themselves often the best witnesses to the harm that results from violations of their rights and thus are uniquely well-positioned to provide the most compelling evidence of the need for redress. Which is why, of course, the 1989 CRC⁹³ and human rights values generally mandate the right of children to express their views freely and where it counts. Empowerment of children is not only a result of a rights-based approach to child labor, it is, subject to their evolving capacities, virtually a requirement of it.

⁹¹ See the Free the Children website at <http://www.freethechildren.org>. See also CRAIG KIELBURGER, FREE THE CHILDREN (1998).

⁹² Quoted from the website of the Children’s World Congress on Child Labour at <http://www.globalmarch.org/worldcongress/dec.php3>. A resulting Children’s Declaration (“We are the Present, Our Voice Is the Future”) bears witness to these youth-defined intents. See <http://globalmarch.org/worldcongress/dec.php3>. Citations to ILO C138 and ILO C182 are found via *supra* notes 8 and 14, respectively.

⁹³ *Supra* note 6.

B. Contesting Resistance to Human Rights Strategy

However manifest the premise and virtues of a human rights approach to the problem of child labor, our advocacy of it would be incomplete were we not to confront the conceptual, psycho-social barriers that all too commonly are mounted to resist human rights agendas and thwart their potential often from the start (testimony, of course, to the potential of human rights law and policy in the first place). In the ensuing subsections, therefore, we respond to these conceptual barriers and to the vested interests that cluster behind them. Also, believing that there is nothing as practical as a good theory except the debunking of bad theory, we urge that human rights vis-à-vis child labor be taken seriously and actualized in everyday planning and programming. This may seem an obvious or even redundant thing to say, but it is important to appreciate completely the artfulness of one's detractors in order to weigh in confidently with a human rights orientation to child labor and thereby reap fully its benefits in the making of daily decision and policy. Much hangs in the balance.

1. Contesting the Claimed Immutability of State Sovereignty

There is no disputing that the state has diminished in relative influence in the last half century. Nevertheless, the classical international law doctrine of territorial sovereignty and its corollary of nonintervention remain the central props of our inherited state-centric system of world order. The values associated with these doctrines, however—a legal license to “do your own thing” and an injunction to “mind your own business”—resist the values associated with human rights, which tell us that “you are your brothers’ and sisters’ keeper” and therefore invite international scrutiny and outside interference in what otherwise would be internal matters.⁹⁴

In other words, “human rights qualify state sovereignty and power,”⁹⁵ and as a consequence governments are naturally resistant to embracing the language of human rights, let alone rights-based agendas. Even governments that have voluntarily consented to human rights treaties, such as the 1989 CRC and 1999 ILO C182,⁹⁶ are inclined to demur when it comes to implementation. However, it is disingenuous of them to tarry when they have committed officially to these legal promises. More

⁹⁴ HUMAN RIGHTS IN THE WORLD COMMUNITY: ISSUES AND ACTION 5 (Richard Pierre Claude & Burns H. Weston eds. & contribs., 3d ed., 2006) [hereinafter “CLAUDE & WESTON”], available at <http://www.upenn.edu/pennpress/book/14271.html>.

⁹⁵ Weston, *Human Rights*, *supra* note 12, at 4.

importantly, after more than a half-century of mounting international rejection of the claim that “the king can do no wrong,” it is no longer tenable for them to do so—least of all when, as in the case of the CRC and ILO C182, the treaty obligations involved command the support of the vast majority of the world’s states.⁹⁷

In short, a sovereignty defense against human rights violations, particularly of the worst sort, is now, at least theoretically, a thing of the past. To be sure, the radical foundation upon which the scaffolding of contemporary international human rights law and policy has been erected is yet new and fragile. But as evidenced on at least the formal agendas of most international institutions and foreign offices, to say nothing of the agendas of global civil society, the world no longer deems impunity from human rights wrongs acceptable.

2. Contesting the Claimed Sanctity of Corporate Sovereignty

Also explaining resistance to a rights-based approach to child labor is what may be called “corporate sovereignty.”⁹⁸ Just as states seek to control the territory and populations of their claimed jurisdictions, so business enterprises, in pursuit of market shares and profits, seek sovereignty over the means of production that principally define their more or less private jurisdictions (including of course their labor forces). Human rights agendas, however, tend to be costly and otherwise inconvenient to this fundamental objective and thus often are downplayed or ignored.⁹⁹ Not infrequently, business enterprises actively resist human rights agendas—as when, for example, to curry favor with host governments, they break sanctions against repressive regimes, cooperate with such regimes economically, or lend them internal political support of some kind.¹⁰⁰

⁹⁶ *Supra* notes 6 and 14, respectively.

⁹⁷ The 1989 CRC, *supra* note 6, registered 192 parties as of 1 July 2006, one more than were party to the U.N. Charter (i.e., members of the United Nations) at the same time. As of 1 July 2006, 161 states were party to 1999 ILO C182, *supra* note 14.

⁹⁸ We coin the term “corporate sovereignty” to cover a multitude of private business formations, not to single out corporations *per se*.

⁹⁹ See, e.g., Marianne M. Jennings & Jon Entine, *Business With a Soul: A Reexamination of What Counts in Business Ethics*, 20 *HAMLIN J. PUB. L. & POL’Y* No. 1, 1, 72 (1998). See also, generally, William B. T. Mock, *Human Rights, Corporate Responsibility, and Economic Sanctions: Corporate Transparency and Human Rights*, 8 *TULSA J. COMP. & INT’L L.* 15 (2000).

¹⁰⁰ See, e.g., *id.*; also Matthew Lippman, *Multinational Corporations and Human Rights*, in *HUMAN RIGHTS AND THIRD WORLD DEVELOPMENT* 250, 256-59 (George W. Shepherd, Jr., & Ved P. Nanda, eds., 1985); Mahmood

In these circumstances especially, human rights discourse itself is avoided lest it encourage outside scrutiny, possibly intervention. True, many—perhaps most—business enterprises strive to be “good corporate citizens” and thus to accept if not actually promote human rights agendas when called upon to do so.¹⁰¹ True also, corrupt governmental practices often force business enterprises to comply with discriminatory and otherwise repressive legislation. Still, the impulse of corporate sovereignty remains a powerful deterrent to a rights-based strategy opposed to abusive, exploitative, and hazardous child work, especially when large-scale enterprises with great influence are involved.¹⁰²

Corporate sovereignty, however, is an impulse to which public policy need not and should not always defer. Throughout the world, governments adopt and enforce laws to limit factory emissions, regulate product content and safety, set minimum wages, establish occupational workplace standards, and the like. Indeed, labor conditions may be the most heavily regulated of business matters. Business enterprises should not therefore expect that a grotesque problem such as child labor should be subject to any less scrutiny and control. Nor should they, in their own self-interest, want such an outcome. Most business enterprises care more about respected and stable production and marketing climates than they do about ideology, and the surest way to guarantee that such climates prevail is to safeguard the fundamental rights of the populations on which they depend for economic reward.¹⁰³

3. Contesting the Claimed Irrelevance of Public International Law to Private Actors

Monshipouri, Claude E. Welch Jr., & Evan T. Kennedy, *Multinational Corporations and the Ethics of Global Responsibility: Problems and Possibilities*, 24 HUMAN RIGHTS QUARTERLY 965 (2003).

¹⁰¹ See, e.g., Jennings & Entine, *supra* note 99, at 10-17. For exemplary illustration, see IKEA’s website at http://www.ikea.com/ms/en_US/about_ikea/social_environmental/projects.html. On 1 September 2005, the IKEA Group, the Inter IKEA Group, and the IKANO Group together formed the “IKEA Social Initiative” to ensure a greater allocation of resources to global projects supporting children and their opportunities of learning and developing, including, e.g., education, health issues, accessibility to clean water and solar energy.

¹⁰² As Barnett and Müller pointed in their germinal exposé of the power of multinational corporations three decades ago, “[a] global corporation is able to pay an annual retainer to a Wall Street law firm to represent its worldwide interests, which is perhaps five times the entire budget of the government agencies in poor countries that are supposed to regulate it.” Richard J. Barnett & Ronald E. Müller, *Global Reach: The Power of Multinational Corporations* 138 (1974). See also Saman Zia-Zarifi, *Suing Multinational Corporations in the U.S. for Violating International Law*, 4 UCLA J. Int’l L. & Foreign Aff. 81 (1999) and documents cited therein at 84, n.6.

¹⁰³ See Jennings & Entine, *supra* note 99, at 35-36, 41-46, 60-61.

Closely related to notions of state and corporate sovereignty as explanations for resistance to a rights-based approach to child labor—indeed supportive of them—is the orthodox theory that, by definition, public international law applies only to public—not private—actors.¹⁰⁴ Given that the vast majority of the world’s working children labor on behalf of private—not public—actors, this theory is of no small consequence to the present discussion. Public international law (which includes international human rights law) simply does not apply, so the argument goes, to private business associations, including ones that employ children.

Of course, theories are but intellectual paradigms, prototypes of thought that define not only what we look at but also how we go about looking at what we look at. They do not necessarily mirror reality. So when the facts of life no longer fit the theory, it is time, as Copernicus taught us, to change the theory. In recent years, feminist scholars have urged this kind of rethinking successfully relative to the theoretical structure of international law, particularly in relation to the status of women internationally.¹⁰⁵ There is no reason why the same cannot be done relative to the status of working children in private business enterprises, making such enterprises directly accountable to international human rights norms relevant to them.

In any event, there is UDHR Article 30: “Nothing in this Declaration may be interpreted as implying for any State, *group or person* any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.”¹⁰⁶ Additionally, reflecting an emerging consensus that the large economic and political power of at least multinational corporations must be subjected to heightened international accountability, the U.N. Global Compact launched by Secretary-

¹⁰⁴ According to this theory in its purest form, reflecting the dominance of the state as the primary organizational unit of human communities on the world stage since at least the Peace of Westphalia of 1648, states are the sole “subjects” of international law, the only actors with “standing” in the international legal order, the only beings competent to create and be bound by international legal obligations. *See, e.g.*, MALCOLM N. SHAW, *INTERNATIONAL LAW* 126 (1997); MARK W. JANIS, *AN INTRODUCTION TO INTERNATIONAL LAW* 238 (4th ed., 2003).

¹⁰⁵ *See, e.g.*, HILARY CHARLESWORTH & CHRISTINE CHINKIN, *THE BOUNDARIES OF INTERNATIONAL LAW: A FEMINIST ANALYSIS* (2000). *See also* Hilary Charlesworth, Christine Chinkin, & Shelley Wright, *Feminist Approaches to International Law*, 85 *AM. J. INT’L. L.* 613 (1991); Anne Orford, *Contesting Globalization: A Feminist Perspective on the Future of Human Rights*, in WESTON & MARKS, *supra* note 42, at 157; Dinah Shelton, *Protecting Human Rights in a Globalized World*, 25 *BOSTON COLL. INT’L & COMP.L. REV.* 273 (2002).

¹⁰⁶ *Supra* note 10 (emphasis added).

General Kofi Annan in 1999, the former U.N. Commission on Human Rights,¹⁰⁷ and the U.N. High Commissioner for Human Rights, as well as growing numbers of legal scholars now urge theories of international transparency and responsibility that rewrite the relationship between international law and the private sector, including in relation to human rights.¹⁰⁸ As key beneficiaries of the new economic world order created by international law (e.g., the WTO, NAFTA, etc.), private business enterprises have no standing, it is appropriately argued, to claim immunity from the corresponding obligations established by international law; and trends in actual decision, both national and international, suggest that human rights responsibilities on the part of private persons are being increasingly recognized and enforced.¹⁰⁹

Expressly or by implication, many of the most fundamental human rights instruments recognize human rights obligations on the part of private actors *per se*,¹¹⁰ while others and cognate treaties require states parties to ensure and enforce the rights enumerated against violations by private perpetrators.¹¹¹ States often adopt laws giving domestic effect to human rights norms and standing to seek redress for their violation by private actors.¹¹² And, with increasing frequency, corporations commit themselves at

¹⁰⁷ Replaced by the U.N. Human Rights Council on 16 June 2006. See G.A. Res. 60/251, *supra* note 82.

¹⁰⁸ Regarding the Global Compact and its central purposes, see GLOBAL COMPACT, THE NINE PRINCIPLES, <http://www.unglobalcompact.org/Portal/Default.asp>. Regarding the former U.N. Commission on Human Rights, see U.N. SUB-COMMISSION ON HUMAN RIGHTS, NORMS ON THE RESPONSIBILITIES OF TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES WITH REGARD TO HUMAN RIGHTS, U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003), approved 13 Aug. 2003 by Resolution 2003/16, U.N. Doc. E/CN.4/Sub.2/2003/L.11 at 52 (2003), <http://unhchr.ch/huridocda/huridocca.nsf/0/64155e7e814b38ccc1256d63002c55e8?opendocument>. And for scholarly commentary, see, e.g., Monshipouri, Welch, & Kennedy, *supra* note 100; Jordan J. Paust, *Human Rights Responsibilities of Private Corporations*, 35 VANDERBILT J. TRANSN'L L.802 (2002); Stephen R. Ratner, *Corporations and Human Rights: A Theory of Legal Responsibility*, 111 YALE L. J. 443 (2001); Zia-Zarifi, *supra* note 102.

¹⁰⁹ *Id.*; Shelton, *supra* note 105; Office of the U.N. HIGH COMMISSIONER FOR HUMAN RIGHTS, UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, BUSINESS AND HUMAN RIGHTS: A PROGRESS REPORT (Jan. 2000), <http://www.unhchr.ch/business.htm>. See also the following pertinent websites: Business for Social Responsibility at <http://www.bsr.org>; Business and Human Rights Resource Centre at <http://www.business-humanrights.org/Home>; and Amnesty International at http://web.amnesty.org/web/web.nsf/pages/ec_home.

¹¹⁰ See, e.g., 1966 ICESCR, arts. 7 (just and favourable conditions of work) and 8 (trade unions); American Convention on Human Rights, arts. 6 (slavery and involuntary servitude) and 11 (privacy); 1966 ICCPR, arts. 8 (slavery, servitude, force or compulsory labor), 17 (privacy, family, home or correspondence)..

¹¹¹ Labor treaties that have emerged from the ILO, for example have long required governments to enact domestic legislation affecting private businesses.

least morally to human rights obligations via voluntary “codes of conduct”¹¹³ while consumers and other members of civil society invoke non-judicial mechanisms to hold private actors accountable by voting with their pocketbooks and otherwise mobilizing shame against private human rights violators.¹¹⁴

True, legal scholars differ over the extent to which developments such as these confer “international legal personality” upon corporations and other non-state actors. Moreover, old canons die hard. But resistance to a rights-based approach to child labor can no longer be justified on the basis of orthodox theory about the “subjects” and “objects” of international law. The world is now far too interpenetrating a place for that.

4. Contesting the Claimed Indeterminacy of Human Rights

Some scholars criticize the language of human rights as lacking conceptual clarity, noting that there are conflicting schools of thought as to what constitutes a right and how to define human rights.¹¹⁵ For this reason, they claim the concept to be “indeterminate”¹¹⁶ and therefore distrust its capacity to

¹¹² Examples include the U.S. Alien Tort Claims Act, 28 U.S.C. § 1350; also the German federal system’s concept of *Völkerrechtfreundlichkeit*, or “friendliness” to human rights, whereby treaties are adopted by federal statute and treated as federal law. See Stefan Oeter, *International Human Rights Law and National Sovereignty in Federal Systems: The German Experience*, 47 WAYNE L. REV. 871 (2001).

¹¹³ See, e.g., ELLIOT J. SCHRAGE, PROMOTING INTERNATIONAL WORKER RIGHTS THROUGH PRIVATE VOLUNTARY INITIATIVES: PUBLIC RELATIONS OR PUBLIC POLICY? (A Report to the U.S. Department of State—A Global Workplace Research Initiative of The University of Iowa Center for Human Rights, Jan. 2004), <http://www.uichr.org>. See also Holly Cullen, *Child Labor Standards: From Treaties to Labels*, in CHILD LABOR AND HUMAN RIGHTS, *supra* note 1, at 87; S. L. Bachman, *Translating Standards into Practice: Confronting Transnational Barriers*, in CHILD LABOR AND HUMAN RIGHTS, *supra* note 1, at 117.

¹¹⁴ See, e.g., Jennings & Entine, *supra* note 99, at 10-16. See also David Gonzales, *Latin Sweatshops Pressed by U.S. Campus Power*, N. Y. TIMES, 4 Apr. 2003, at A3 (discussing the impact of American student actions on sweatshops); John Kelly, *For Some, an Uncomfortable Fit*, WASH. POST, 14 May 14, 2002, at C14 (discussing anti-sweatshop actions against various footwear companies); Jenne Mannion, *Lobby Groups Open Ethical Attacks*, SUNDAY BUS., 9 Dec.2001, at 24 (discussing lobby groups efforts to persuade pension funds to pull investments from companies accused of not being socially responsible).

¹¹⁵ For an insightful account, with discussion of other views, see ALAN GEWIRTH, THE COMMUNITY OF RIGHTS (1996).

¹¹⁶ The concept of indeterminacy has been much discussed in several modern approaches to language and literature, contending that the meaning of a text never can be fully determined because its author’s original intention is subject to the unfixed nature of the author’s makeup and experience, because it is the consequence of the particular cultural and social background of the reader, and because language itself generates its own meaning over time. This contention, Michael Freeman points out, is prominent particularly when it comes to concepts such as “human rights”—abstract, oftentimes ambiguous, and therefore “a challenge” to the philosophical discipline of

address pragmatic, “real world” social ills effectively or at all.¹¹⁷ They observe that there are many unresolved theoretical questions about rights: “whether the individual is the only bearer of rights” (in contradistinction to such entities as families, groups of common ethnicity, religion, or language, communities, and nations); “whether rights are to be regarded as . . . constraints on goal-seeking action or as parts of a goal that is to be promoted”; “whether rights—thought of as justified entitlements—are correlated with duties”; and, not least, “what rights are understood to be rights to”¹¹⁸—a certain level of well-being? a certain access to certain resources in one's life pursuit? a certain quality of opportunity in that pursuit? The recent debate over “Asian values” and its underlying tension between cultural relativist and universalist approaches to human rights make clear that all this questioning is no idle intellectual chatter.¹¹⁹ It is very much present in the political arena as well and thus serves as another possible explanation for resistance to a rights-base approach to child labor.

The claimed indeterminacy of “human rights,” however, is less problematic than perceived. The core of the human rights concept is as well-defined and clearly articulated as any social or legal norm,¹²⁰ a fact proven by the numerous widely accepted—and increasingly enforced—human rights norms already noted. Moreover, even conceding that unresolved theoretical issues relating to human rights remain, this fact should not be allowed to distract from the broadest and most effective actualization of the fundamental principles and values on which there is virtually universal agreement—for example, the right of children to be free from abusive, exploitative, and hazardous labor.

Thus, while the concept or language of rights, like most legal language, sometimes suffers ambiguity, it is not to be discarded in the anti-child labor struggle (or any other) simply for this reason. Rather, as with any human—i.e., incomplete and imperfect—system, one must make use of those elements that are established and effective while working to finalize and perfect those that remain vague or incomplete, just as we do all other legal norms as a matter of course all the time.

conceptual analysis, which “can seem remote from the experiences of human beings.” FREEMAN, *supra* note 73, at 2.

¹¹⁷ For a seemingly nihilistic critique and a convincing rebuttal to it, see the references in note 51, *supra*.

¹¹⁸ Nussbaum, *Capabilities, Human Rights, and the Universal Declaration*, *supra* note 42, at 26-27.

¹¹⁹ On cultural relativism versus universalism in human rights law and policy, see Weston, *The Universality of Human Rights in a Multicultural World: Toward Respectful Decision-Making*, *supra* note 70.

5. Contesting the Claimed Absence of Human Rights Theory

Perhaps the most confounding of the alleged unresolved theoretical issues about human rights is the claimed absence of a theory to justify human rights.¹²¹ In the presence of ongoing philosophical and political controversy about the existence, nature, and application of human rights in a multicultural world, a world in which Christian natural law justifications for human rights are now widely deemed obsolete, one must exercise caution when adopting a human rights approach to social policy lest one be accused of cultural imperialism. It is not enough to say, argues Michael Freeman, that human beings possess human rights simply for being human, as does, for example, the 1993 Vienna Declaration and Programme of Action which proclaims that “[h]uman rights and fundamental freedoms are the birthright of all human beings.”¹²² Writes Freeman: “It is not clear why one has *any* rights simply because one is a human being.”¹²³

We do not disagree. But neither do we accept that there exists no theory to justify human rights in our secular times, ergo no theory to justify a human rights approach to child labor. The concept of human rights is or can be firmly established on sound theoretical ground.

First, there is the proposition, formally proclaimed in both the 1948 UDHR and the yet more widely adopted and revalidating 1993 Vienna Declaration, that human rights derive from “the inherent dignity . . . of all members of the human family”¹²⁴ or, alternatively, from “the dignity and worth inherent in the human person.”¹²⁵ While this proposition informs us little more than the assertion that human rights extend to human beings simply for being human, it does point the way. Unless one subscribes to

¹²⁰ See, e.g., Weston, “Human Rights,” *supra* note 12, at 4-9, but especially 4-5.

¹²¹ Richard Rorty, for one, contends that there is no theoretical basis for human rights on the grounds that there is no theoretical basis for any belief. See Richard Rorty, *Human Rights, Rationality, and Sentimentality*, in *On Human Rights* 111, 116 & 126 (Stephen Shute & Susan Hurley eds., 1993).

¹²² Vienna Declaration and Programme of Action of the World Conference on Human Rights, U.N. Doc. A/Conf.157/24, at 20-46 (June 25, 1993) [hereinafter “Vienna Declaration” or “1993 Vienna Declaration”], reprinted in 32 I.L.M. 1661 (1993) and 3 WESTON & CARLSON III.U.2.

¹²³ FREEMAN, *supra* note 73, at 60-61.

¹²⁴ UDHR, *supra* note 10, prml. ¶1.

nihilism, it is the human being's inherent dignity and worth that justifies human rights. Of course, the obvious question remains: how does one determine the human being's inherent dignity and worth?

Noteworthy in this regard is the previously noted work of Nussbaum and Sen on "capabilities and human functioning." In their search for a theory that answers at least some of the questions raised by rights talk, they have pioneered the language of "human capabilities" as a way to speak about, and act upon, what fundamentally is required to be human—*i.e.*, "life," "bodily health," "bodily integrity," "senses, imagination, and thought," "emotions," "affiliation" ("friendship" and "respect"), "other species," "play," and "control over one's environment" ("political" and "material").¹²⁶ While Nussbaum and Sen do not reject the concept of human rights as such¹²⁷—indeed, they see it working hand in hand with their concept of capabilities, jointly signaling the central goals of public policy¹²⁸—they propose emphasis on human capabilities as the theoretical means by which to restore "the obligation of result"¹²⁹ and thereby move the discussion from the abstract to the concrete without having to rely on controversial transempirical metaphysics to cut across human differences.¹³⁰ There remains, however, the question of

¹²⁵ Vienna Declaration, *supra* note 122, prmb. ¶2. The Declaration was adopted by acclamation by 171 states. "Because the [Declaration] was agreed to by virtually every nation on earth," opines Robert Drinan, "the document constitutes customary international law." DRINAN, *supra* note 59, at x.

¹²⁶ See Nussbaum, *Capabilities, Human Rights, and the Universal Declaration* and other references cited in note 42, *supra*. See also Amartya K. Sen, *Equality of What?*, in I THE TANNER LECTURES ON HUMAN VALUES 195 (1980), reprinted in AMARTYA K. SEN, CHOICE, WELFARE AND MEASUREMENT 353-69 (1982). For an early advocacy of a capabilities approach to human rights, see Bernard Williams, *The Standard of Living: Interests and Capabilities*, in THE STANDARD OF LIVING 94, 100 (G. Hathorn ed., 1987).

¹²⁷ In her essay linking the capabilities approach with the UDHR, Nussbaum acknowledges that the language of rights retains an important place in public discourse, providing a normative basis for discussion, emphasizing the important and basic role of the entitlements in question and peoples' choice and autonomy, and establishing the parameters of basic agreement. See Nussbaum, *Capabilities, Human Rights, and the Universal Declaration*, *supra* note 42, at 59.

¹²⁸ Regarding this symbiosis between capabilities and rights, see *supra* note 42 and accompanying text.

¹²⁹ Nussbaum, *Capabilities, Human Rights, and the Universal Declaration*, *supra* note 42, at 56.

¹³⁰ Similar efforts, distinguishing between "goal values" (rights) and "base values" (capabilities), have been articulated in the policy-oriented jurisprudence of the so-called New Haven School. See MCDUGAL, LASSWELL, & CHEN, *supra* note 42. Likewise research on the intersection of human rights and basic needs. See, e.g., JOHAN GALTUNG, HUMAN RIGHTS IN ANOTHER KEY (1994); Johan Galtung & Anders H. Wirak, *Human Needs, Human Rights and the Theories of Development*, in INDICATORS OF SOCIAL AND ECONOMIC CHANGE AND THEIR APPLICATIONS (UNESCO, Reports and Papers in Social Science No. 37, 1976). See also CLAUDE & WESTON, *supra* note 94, at ch. 3. But see DONNELLY, THE CONCEPT OF HUMAN RIGHTS, *supra* note 67, at 28-31. Donnelly rejects the claim that human rights are justified by human needs because there is not, he argues, any scientific way to determine a universally agreed upon set of needs.

how to distinguish those capabilities that are central to human existence—hence worthy of the title “human rights”—and those that are not.¹³¹ Control over one’s political and/or material environment, for example, can lead to some very nasty results.¹³²

Thus we dig deeper and find the work of the late John Rawls pointing the way.¹³³ Rawls proposed a thought experiment, akin to Kant’s “categorical imperative,” in which a group of thinking men and women of diverse characteristics (race, class, creed, etc.) come together in their private capacity (i.e., not as state representatives) in some “original position” to construct a just society with their personal self-interests in mind, but without knowing their own position in it (economic, social, racial, etc.). Behind this “veil of ignorance,” these “original position” decision-makers, rationally contemplating their own self-interest, freely choose a society that is fair to all, one in which benefits (rights) and burdens (duties) are distributed equally and in which a core of fundamental liberties (freedom of conscience, speech, movement, religion, etc.) and equality of opportunity are protected. This social constructionism, however, need not be restricted to Rawls’ historically Western core values favoring individual civil and political rights. Accounting for *all* the voices assembled, the “original position” decision-makers, transcending personal self-interest even while accounting for it, could equally well choose a set of basic but diverse values (rights and/or capabilities) that would win the general assent of human beings *everywhere*—a set of universal basic values of human dignity that, grounded in principles of reciprocal tolerance and mutual forbearance, define the human rights society. It is such a society that can most guarantee the fairest distribution of basic wants (rights) and needs (capabilities) among all human beings and thereby ensure that all will benefit as much as possible and, by the same token, suffer the least possible disadvantage.

And therein lies, we believe, the theoretical justification for human rights in our secular age: a kind of share-and-share-alike Golden Rule that, in an “original position” behind a “veil of ignorance” and as rational human beings contemplating our own self-interest, we would choose for ordering a society in which all of us would want to live. However interpreted and applied in real world conflict and contestation, human rights are theoretically justified because they satisfy the fundamental requirements of

¹³¹ Nussbaum and Sen go to considerable lengths to substantiate their choice of human capabilities on the basis of historical evidence, but history does not of itself answer this differential question.

¹³² *Accord*, FREEMAN, *supra* note 73, at 67.

socioeconomic and political justice. In the words of U.N. High Commissioner for Human Rights Louise Arbour before a working group on economic, social and cultural rights of the Commission on Human Rights in January 2005, “[h]uman rights are not a utopian ideal. They embody an international consensus on the minimum conditions for a life of dignity.”¹³⁴ When joined to the struggle against abusive, exploitative, and hazardous child work, they can be a uniquely powerful tool.

II. ABOLISHING CHILD LABOR: A MULTIFACETED HUMAN RIGHTS STRATEGY

In preceding Section I, we challenged a palpable if diminishing reluctance to use human rights to combat child labor. We did so, first, by calling attention to the multidimensional human rights nature of the problem; next, by detailing the virtues of human rights discourse and strategy to combat it; and finally, by contesting claims that would prevent or curtail resort to such rights talk and maneuver. These latter claims, we submit, are as unconvincing as the virtues of human rights law and policy are convincing. And thus we are driven to conclude that the core questions demanding responsible attention are not why or whether to bring human rights to the prosecution of child labor, but how and how quickly.

These core questions, we hasten to add, demand urgent as well as responsible attention. Economic globalization, which can be no more arrested than the transition from agrarian to industrial society,¹³⁵ is proceeding apace, and while it has its bright sides, it has also its dark sides, negative aspects that threaten human rights generally and the rights of working children in particular. A human rights approach to child labor, we believe, one that foresees a true culture of respect for children’s rights, can help to offset these darker forces if urgently as well as responsibly embraced and pursued.

In this section, therefore, using an established typology of decision-making functions to facilitate coverage and coherence, we recommend a more-or-less comprehensive series of concrete policies and courses of action that, in various combination especially, can be effective in combating child labor from a

¹³³ See JOHN RAWLS, *A THEORY OF JUSTICE* §§ 1-4, 9, 11-17, 20-30, 33-35, 39-40 (1972).

¹³⁴ Statement by Ms. Louise Arbour, High Commissioner for Human Rights, to the Open-Ended Working Group established by the Commission on Human Rights to consider options regarding the elaboration of an optional protocol to the International Covenant on Economic, Social and Cultural Rights, 14 Jan. 2005, <http://www.unhchr.ch/hurricane/hurricane.nsf/newsroom>.

¹³⁵ See AMARTYA SEN, *DEVELOPMENT AND FREEDOM* 240 (2000): “The one solution [to the problems caused by globalization] that is not available is that of stopping globalization of trade and economics.” See also Howard-Hassmann, *The Second Great Transformation: Human Rights Leapfrogging in the Era of Globalization*, 27 *HUM. RTS. Q.* 1 (Feb. 2005)

human rights perspective. Without disparaging smaller, incremental approaches when circumstance and opportunity permit—indeed, we wholeheartedly support them when such instances arise—we nevertheless proceed on the belief that a hugely multidimensional human rights problem such as child labor begs for a coextensively multifaceted human rights strategy for its solution, in whole or in major part. Once the human rights of working children are recognized and their legal content understood, such a strategy, we believe, can translate them into effective policies, programs, and projects that promote, it bears repeating, a true culture of respect for the rights of children. Of course, space limitations require that much of our “nuts and bolts” discussion be restricted to descriptive outline, leaving it to other occasions to fill in the gaps and flesh out the details.¹³⁶ Moreover, such recommendations as we do offer here are tendered more in tentative than definitive spirit. Making human rights work for the abolition of child labor must be understood as a continuing process of reflection and debate, open to reappraisal and redirection as time and experience dictate. It is risky to be categorical. At the same time, it is irresponsible to rest content with expressions of theoretical commitment only. Once human rights are recognized and their legal content understood, their formal expressions must be made operational.

Before engaging our “nuts and bolts” discussion, however, we choose to underscore the two central injunctions we made earlier in Section I: *first*, to accept—self-consciously and proactively—the premise and virtues of human rights law and policy on all topical and tactical fronts; *second*, to reject—again self-consciously and proactively—the psychosocial (conceptual) barriers that all too commonly are mounted to resist human rights initiatives and thus thwart their potential from the start. We choose to do so in the first instance because we believe that self-conscious and proactive *acceptance* of human rights as child labor’s moral and legal reference point can effectively counter practices that contradict children’s best interests and, at the same time, promote those practices that facilitate their human dignity, including their rights to a reasonable standard of living, to education, even to the right to work in ways that are not abusive, exploitative, hazardous, or otherwise contrary to their best interests. And we choose to do so in the second instance as well because we believe that self-conscious and proactive *rejection* of the conceptual barriers to human rights thought and action in the child labor context unleashes the contributions that states, inter-governmental organizations, NGOs, and others can and must make toward the solution of this complex and pervasive problem. These injunctions—to take children’s human rights *seriously*—are critical “nuts and bolts” in their own right, necessary first steps in any human rights strategy worthy of child labor’s abolition and of the social transformations required to make that happen.

¹³⁶ For such details, see, e.g., CHILD LABOR AND HUMAN RIGHTS *passim*, *supra* note 1.

As Marta Santos Pais has put it relative to the operationalization of UNICEF's approach to development, "[t]he expression of a solemn commitment to human rights legitimizes our work and constitutes a catalyst for our actions."¹³⁷

A. Taking Working Children's Human Rights Seriously

Although there exists today an emerging commitment to a rights-based approach to child labor (as in the case of UNICEF, for example), the fact is that, as previously noted, it is not common in official policy or practice, especially on the national plane, nor a conspicuous feature even of official rhetoric on the international plane.¹³⁸ In contrast to other approaches, it appears to be marginalized or less favored than, for example, the "labor market perspective," long "the dominant international paradigm of government child labour intervention"; the "human capital perspective," which "views the work of children through the lens of national economic development"; and the "social responsibility perspective," which is centrally concerned "with the 'exclusion' of disadvantaged groups from full participation in the protection, benefits and opportunities of society" and which thus proposes "greater social inclusion of those being excluded" by way of remedy.¹³⁹

The ILO, for key example, has been generally marginal in expressly engaging human rights law and policy over the years—except recently in respect of child trafficking¹⁴⁰—and for this reason, we believe, limited in its ability to ameliorate labor problems of a human rights nature. Virginia Leary, a long-time authority on ILO policy and practice, agrees.¹⁴¹ Leary, it is important to acknowledge, reached this conclusion in 1992, and not with reference to child labor specifically. Her assessment, therefore, must be weighed against the ILO's current avowed commitment (along with UNICEF and others) to a rights-based approach to child labor. When this is done, however, ILO practice even in relation to child labor appears more to confirm than to invalidate Leary's judgment of more than a decade ago,

¹³⁷ SANTOS PAIS, *supra* note 59, at 15.

¹³⁸ *See supra* text accompanying notes 6-13.

¹³⁹ William E. Myers, *Valuing Diverse Approaches to Child Labour*, in *CHILD LABOUR: POLICY OPTIONS* 27, 30, 34, & 36 (Kristoffel Lieten & Ben White eds., 2001).

¹⁴⁰ *See infra* note 145 and accompanying text.

¹⁴¹ Virginia A. Leary, *Lessons from the Experience of the International Labour Organization*, in *THE UNITED NATIONS AND HUMAN RIGHTS: A CRITICAL APPRAISAL* 580 (1992).

emphasizing, as the ILO tends to do, negotiable “standards” more than inalienable “rights.” The recent—and useful—ILO study titled *Action Against Child Labour*¹⁴² underscores the point dramatically. Responding to no less than “the need for comprehensive and practical information on planning and carrying out action against child labour,”¹⁴³ it mentions human rights only in circumstantial passing and thus seems to eschew the very idea of mainstreaming a rights-based approach to child labor altogether. Not even the more recent report of the ILO Director-General explicitly following up on the ILO’s 1998 Declaration on Fundamental Principles and Rights at Work takes the forthright human rights step.¹⁴⁴ Only the 2002 report of the ILO’s International Programme on the Elimination Child Labour (IPEC) on the more limited (though huge) problem of child trafficking, it appears, has taken such a self-conscious stand.¹⁴⁵

Indeed, even activists and scholars sympathetic to a rights-based approach to child labor have eschewed the language of rights when making the very point. “Although its intellectual and organizational influence seems to be growing,” William E. Myers has written, “the ‘*child-centered perspective*’ [that is, a rights-based approach to child labor] remains surprisingly marginalised in official national policy and programmes guiding child labour action. . . . One might expect from virtually universal ratification of the [Convention on the Rights of the Child] that *a child-centered view* of child labour would have by now become more present in official child labour policy.”¹⁴⁶

In sum, despite a new-found commitment to combat child labor from a human rights perspective, evident since the adoption of the 1989 CRC and especially since the adoption of 1999 ILO C182, the idea of human rights discourse and strategy as an effective tool in this struggle still meets with palpable

¹⁴² ACTION AGAINST CHILD LABOUR (Nilien Haspels & Michele Jankanish eds., Washington, DC: Brookings Institution, 2000). .

¹⁴³ *Id.*, at v.

¹⁴⁴ See generally REPORT OF THE DIRECTOR-GENERAL, A FUTURE WITHOUT CHILD LABOUR: GLOBAL REPORT (ILO, 2002).

¹⁴⁵ In his Foreword to the 2002 report, ILO/IPEC’s director put it thus: “The trafficking of human beings is unacceptable under any circumstances, but the trafficking of vulnerable children and young people is a violation of their rights to protection from exploitation, to play, to an education, and to health, and to family life.” Röselaers, *supra* note 15, at v.

¹⁴⁶ Myers, *supra* note 139, at 41 (emphasis added).

hesitancy, even among well-wishers. Doubtless this uncertainty is a function of bureaucratic inertia or even general disinterest at least in part—and surely, as well, of incomplete understanding of the virtues of human rights discourse and strategy in the first place. It probably is a function, too, of strongly held beliefs in the minimum age/labor market approach to children’s work represented by 1973 ILO C138. We believe, however, that it is also—perhaps even primarily—a function of the statist, elitist, patriarchal, and paternalistic logics that shape our worldviews and lives. Through many years of psychosocial acculturation, they have come to define not only what, specifically, we see to be possible but also, more generally, how we go about seeing what is possible.

As long as we continue in this way, however, we never will achieve the social transformations that are needed to abolish the abuse and exploitation of working children, in whole or in part, on an enduring basis. The time is long past due when we must unreservedly champion the rights of children not simply as *children’s* rights, so labeled at risk of marginalization, but as *human* rights which, at their core, evince concern for the alleviation of *all* human suffering—and therefore also, in Costas Douzinas’ evocative phrase, “concern for the unfinished person of the future for whom justice matters.”¹⁴⁷ UNICEF’s Innocenti Research Centre comes close in its call for “a new global ethic for children.”¹⁴⁸ But not, we sense, close enough. Needed is a wholesale paradigm shift not only in the way we think about children specifically, but also—guided by an ethos of species (human) identity—in the way we think about social governance generally, and therefore a shift away from the statist, elitist, patriarchal, and paternalistic logics that stand in the way of the genuine alleviation of child and other human suffering. The need is for an internalized worldview or mindset that, on behalf of working children and in continuously persevering ways, actively embraces the premise and virtues of human rights discourse and strategy,¹⁴⁹ consistently contests the psycho-social (conceptual) barriers that impede their operation,¹⁵⁰ and systematically mainstreams the full human rights agenda (civil, political, economic, social, cultural, and communitarian) in each and every policy that is devised and in each and every measure that is

¹⁴⁷ COSTAS DOUZINAS, *THE END OF HUMAN RIGHTS: CRITICAL LEGAL THOUGHT AT THE TURN OF THE CENTURY* 15 (2000).

¹⁴⁸ Quoted from the Innocenti Research Center website at <http://www.unicef-icdc.org/aboutIRC/>. See also SANTOS PAIS, *supra* note 59.

¹⁴⁹ As detailed in *supra* Section I.A (“The Utility of a Human Rights Approach to Child Labor”), at 14-23.

¹⁵⁰ As detailed in *supra* Section I.B (“Contesting Resistance to Human Rights Strategy”), at 23-33.

taken—all to ensure that children’s best interests are served, not as a matter of charity or privilege that may benefit some, but as a matter of right that can benefit all. In short, the need is for a culture of respect for children’s human rights, a culture of human rights as a way of life.

It is, indeed, this kind of rethinking that appears first to have shaped the Declaration and Programme of Action of the 1993 Vienna World Conference on Human Rights,¹⁵¹ that later, in 1997, guided U.N. Secretary-General Kofi Annan, as part of his program for U.N. reform, to summons all U.N. entities to mainstream human rights into the activities and programs that fell within their mandates; and that, as a result, found expression ultimately in a May 2003 Statement of Common Understanding of a U.N. “Inter-Agency Workshop,” outlining a human rights-based approach to the development planning and programming of U.N. agencies.¹⁵² While intended for U.N. development agencies specifically, this May 2003 SCU points the way as well for all who would seek to abolish child labor by way of human rights discourse and strategy.

First, it identifies several key “human rights principles” to “guide all programming in all phases of the programming process”¹⁵³—which itself is defined to include “assessment and analysis, programme planning and design (including setting of goals, objectives and strategies); implementation, monitoring and evaluation.”¹⁵⁴ Specifically, it articulates and explains the following principles: “universality and inalienability; indivisibility; interdependence and interrelatedness; non-discrimination and equality; participation and inclusion; accountability and the rule of law.”¹⁵⁵

Next, but first cautioning that “the application of good programming practices does not by itself constitute a human rights-based approach,”¹⁵⁶ the SCU cites four “required additional elements” deemed

¹⁵¹ *Supra* note 122.

¹⁵² See UNICEF’s edition of the Statement of Understanding (hereinafter “SCU”) in, UNICEF, *THE STATE OF THE WORLD’S CHILDREN 2004*, Annex B, at 91-93.

¹⁵³ Quoting from UNICEF’s edition of the May 2003 Statement of Understanding, *supra* note 140, at 91.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at 92.

by the May 2003 U.N. Inter-Agency Workshop to be “necessary, specific, and unique to a human rights-based approach:”¹⁵⁷

- a) Assessment and analysis [to] identify the human rights claims of rights-holders and the corresponding human rights obligations of duty-bearers, as well as the immediate, underlying, and structural causes when rights are not realized.
- b) Programmes [to] assess the capacity of rights-holders to claim their rights, and of duty-bearers to fulfill their obligations, [and the development of] strategies to build these capacities.
- c) Programmes [to] monitor and evaluate both outcomes and processes guided by human rights standards and principles.
- d) Programming [that] is informed by the recommendations of international human rights bodies and mechanisms.

Finally, the SCU lists thirteen other elements deemed “essential” for a human rights-based approach to development planning and programming. We quote them in full, modestly amended to demonstrate their especial relevance to the struggle against child labor:¹⁵⁸

1. People [*including all working children*] are recognized as key actors in their own development, rather than passive recipients of commodities and services.
2. Participation is both a means and a goal.
3. Strategies are empowering.
4. Both outcomes and processes are monitored and evaluated.
5. Analysis includes all stakeholders.
6. Programmes focus on marginalized, disadvantaged, and excluded groups [*including among working children*].
7. The development process [*relative to working children*] is locally owned.
8. Programmes aim to reduce disparity [*between working and non-working children and others*].
9. Both top-down and bottom-up approaches are used in synergy.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at 93.

10. Situation analysis is used to identify immediate, underlying, and basic causes of development problems [*including the causes of child labor*].
11. Measurable goals and targets are important in programming.
12. Strategic partnerships are developed and sustained.
13. Programmes support accountability to all stakeholders.

All of the foregoing “required” and “essential” elements of the May 2003 SCU can and should be understood to be part of the human rights discourse and strategy that can and should be directed against child labor. At a minimum, a human rights approach to the abolition of child labor requires: (1) reliance upon human rights criteria and norms when selecting and establishing anti-child labor program priorities, standards, tactics, and strategies; (2) the identification of child labor claims-holders and whether they have the capacity to articulate and advocate for their rights and participate in the process; (3) the identification of duty-bearers and their capacity to meet their anti-child labor obligations as well as constraints on their ability to perform; and (4) the establishment of mechanisms for monitoring, assessing, and redressing child labor situations, with human rights norms all the while in mind, shaping one’s outlook and purpose. Proceeding according to this or like-minded designs, programs and projects directed toward the abolition of child labor, even if not conceived initially in human rights terms, become, *ipso facto*, human rights programs and projects by virtue of their deliberate conceptual reorientation. To the extent that the strategic design is adhered to, and regardless of the substantive measures implemented, it works naturally to protect, promote, and fulfill children’s human rights, including the human rights of working children.

In sum, an ethos of species identity that takes working children’s suffering seriously, unaffected by considerations irrelevant of merit, is what is needed if the abolition of child labor is to succeed—a primary even if evolutionary first step in any human rights strategy worthy of child labor’s abolition and of the social transformations that are required to make that happen. It is children’s human *rights* we are defending, not just their human *needs*. And we must do so not only in matters of substance but, as well, in matters of procedure—in the invention, design, implementation, monitoring, and evaluation of policies and programs directed against child labor, giving particular consideration to such core human rights values as transparency, accountability, participation, and non-discrimination.¹⁵⁹ If the abolition of child

¹⁵⁹ Such is the approach of the United Nations Development Programme (UNDP) in the context of development and from which we draw inspiration. See UNDP, INTEGRATING HUMAN RIGHTS WITH SUSTAINABLE HUMAN DEVELOPMENT: A UNDP POLICY DOCUMENT (1998); UNDP, GUIDELINES FOR HUMAN RIGHTS-BASED REVIEWS OF

labor is truly the goal, nothing less will do. Even incremental measures, if they are to succeed enduringly, depend on such human rights outlook and strategy.

**B. Invoking and Inventing Legal and “Extra-Legal” Means and Mechanisms
to Promote and Protect Working Children’s Rights**

This subsection, to minimize redundancies, focuses on the promotion and protection of the rights of working children largely on the international plane. It is essential to appreciate, however, that all that has been said up to now and that much of what has yet to be said applies as well to national policy- and decision-making. Indeed, the implementation of human rights doctrines, principles, and rules on behalf of working children is, generally speaking, probably most efficiently and effectively achieved at the national or even sub-national level via the institutions and procedures that obtain within each country’s own legal-political order system—broadly defined to include *both* the formal and informal mechanisms that avail human rights in this setting. The authority of a domestic legal-political order that provides effective formal and informal “remedies” for violations of international human rights obligations (as well as their national counterparts) can serve richly the promotion and protection of human rights where there is moral and political will. This is as true for working (and non-working) children’s human rights as it is for any other category of human rights. And the examples abound: in the formulation and execution of national strategies and agendas for the implementation in the 1989 CRC and 1999 ILO C182; in efforts at national and sub-national policy and law reform based on these same and cognate human rights instruments; in the development of independent governmental institutions at the national level for promoting and protecting the rights of working (and non-working) children;¹⁶⁰ and so forth. Further examples are suggested in Section II.B, *infra*. Still others are found in the chapters that precede and follow. The majority and probably most effective are “extra-legal” in kind and therefore merit the lion’s share of responsible attention.

UNDP PROGRAMMES (1 Oct.2002). *See also* UNICEF, GUIDELINES FOR HUMAN RIGHTS-BASED PROGRAMMING APPROACH (New York, F/EXD/1998–04, Apr. 1998); Dorothy Rozga, Applying A Human Rights Based Approach to Programming: Experiences of UNICEF (UNICEF Presentation Paper prepared for the Workshop on Human Rights, Assets and Livelihood Security, and Sustainable Development, London, 19-20 June 2001), http://www.crin.org/docs/resources/publications/hrbap/Applying_Human_Rights_Approach_to_Programming.pdf.

¹⁶⁰ In this connection, see the so-called “Paris Principles” relating to the status, competence, and responsibilities of national institutions for the promotion and protection of human rights, annexed to U.N. General Assembly Resolution 48/134 (on National Institutions for the Promotion and Protection of Human Rights), 20 Dec. 1993, G.A. Res. 49/134, U.N. GAOR, 48th Sess., Supp. No. 49, at 9, U.N. Doc. A/RES/48/134 (1994).

Partly for editorial reasons, however, we here focus first, even primarily overall, on the formal legal mechanisms both the global and regional levels for the promotion and protection of human rights (including the human rights of working children). But there is another, more important reason for so doing. Perhaps for lack of sufficient knowledge about them, or because of a preference for consensual diplomacy over adversarial advocacy, or perhaps for both reasons, a comparative few appear to have been pressed into anti-child labor service so far. It seems therefore useful to explicate, however briefly, the explicit human rights enforcement arrangements that, on the international plane and in appropriate instances, can assist child labor's abolition in fact—and potentially to genuine profit.

1. Human Rights Action via Formal Legal Mechanisms and Procedures

While resort to formal legal mechanisms may seem inconsistent with goals of social transformation because they represent established officialdom, they should not be dismissed for this reason. To the contrary, if used wisely and with tolerance for quasi- and non-legal devices, they have the potential to assist the anti-child labor struggle nobly, both as change agents in their own right and as catalysts for change. Indeed, resorting to them even only occasionally among the many elements that comprise a human rights approach to child labor's abolition can send a much needed signal that the anti-child labor movement means to be taken seriously, sending ripples of persuasion that cut across all levels of resistance in the world system, from the most global to the most local. They deserve, therefore, thoughtful consideration, particularly among persons not trained in the law who tend often to be skeptical (not altogether without justification) about the capacity of legal process to mete out justice and otherwise serve humane values. Some of these formal mechanisms are found at the global level, others at the regional level. In each case, we make specific recommendations that we believe can enhance their ability to help end child labor.

a. Human Rights Action within the United Nations System

Within the United Nations, the only forum in which *any* country's human rights violations can be challenged, three arenas available specifically to monitor and enforce human rights present themselves as obviously relevant to the abolition of child labor (apart from UNICEF as the U.N.'s chief system-wide promoter of children's well-being and rights): the Committee on the Rights of the Child; the U.N. Commission on Human Rights and its Sub-Commission on the Promotion and Protection of Human Rights; and, though largely without resort to the language of rights, the ILO relative to the implementation of 1973 ILO C138 and 1999 ILO C182 (as well as other ILO conventions). Also available within the U.N. system, though presently in a supervisory rather than enforcement mode, is the

Committee on Economic, Social and Cultural Rights, established in 1987 by the Economic and Social Council.

i. The Committee on the Rights of the Child

The Committee on the Rights of the Child, established under the 1989 CRC to oversee its implementation,¹⁶¹ has no mandate to receive and consider in quasi-judicial manner “communications” (i.e., complaints, applications, or cases) from individuals or groups of individuals who claim to be victims of violations of the CRC. Instead, the Committee recommends children or their representatives to refer to the four U.N. “treaty bodies” that have such competence to date and that are relevant to the claim or claims involved: the Committee on the Elimination of All Forms of Racial Discrimination; the Human Rights Committee; the Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; or the Committee on the Elimination of Discrimination against Women.¹⁶² Also, since 1992 when it adopted an “urgent action procedure” to deal with “serious” CRC violations though in non-accusatory fashion,¹⁶³ the Committee has several times responded diligently to urgent children’s appeals always on an ad hoc basis and mostly confidentially with a view to sensitizing the states parties to their treaty obligations so as to prevent a further deterioration of the contested situation and thereby safeguard children’s rights as much as possible under the circumstances.

Beyond these limited interventions, however, the Committee’s competence is reportorial and recommendatory only. It receives reports required to be submitted to it by states and other parties to the CRC on measures taken to give effect to the rights set forth in the Convention;¹⁶⁴ it may request further information from the parties if it so chooses;¹⁶⁵ and, on the basis of these communications, it reports to the

¹⁶¹ 1989 CRC, *supra* note 6, art. 43(1).

¹⁶² I.e., the Committee on the Elimination of Racial Discrimination established under Article 8 of the International Convention on the Elimination of All forms of Racial Discrimination, 21 Dec.1965, 660 U.N.T.S. 195, *reprinted in* 3 WESTON & CARLSON III.I.1; the Human Rights Committee established under Article 28 of the 1966 ICCPR, *supra* note 37; the Committee against Torture established under Article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 Dec. 1984, 1465 U.N.T.S. 85, *reprinted in* 3 WESTON & CARLSON III.K.2; and the the Committee on the Elimination of Discrimination against Women, established under Article 1 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 15 Oct. 1999, G.A. Res. 54/4 (Annex), U.N. GAOR, 54th Sess., Supp. No. 49, at 4, U.N. Doc. A/54/4 (1999), *reprinted in* 39 I.L.M. 281 (2000) and 3 WESTON & CARLSON III.C.16.

¹⁶³ *See* Report of the Second Session of the Committee on the Rights of the Child (Sessional/Annual Report of Committee), 19 Oct. 1992, CRC/C/10, ¶¶ 54-58.

¹⁶⁴ 1989 CRC, *supra* note 6, art. 44(1).

U.N. General Assembly every two years on its activities.¹⁶⁶ Additionally, it is authorized to “invite . . . competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention . . . [and] United Nations organs to submit reports on the implementation of the Convention . . .”¹⁶⁷ Further, it may recommend that the General Assembly request the Secretary General to study “specific issues relating to the rights of the child” and may “make suggestions and general recommendations based on the information received,” which recommendations are to be transmitted to any party concerned and reported to the General Assembly.¹⁶⁸ A recent example, highly pertinent to the issue of child labor, was the Committee’s request for an international study on the question of violence against children, honored in February 2003 by the U.N. Secretary-General’s appointment of an “independent expert” (Paulo Sergio Pinheiro) to lead a global study on the subject, on-going at this writing.¹⁶⁹

These measures afford the Committee, which is at the hub of child labor activities in the U.N. system, significant opportunity to pressure states that engage in, or fail to take steps to correct, violations of the rights enumerated in the CRC and its two optional protocols on the involvement of children in armed conflict¹⁷⁰ and on the sale of children, child prostitution, and child pornography.¹⁷¹ This includes, of course, Article 32 which proclaims “the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.” To enhance the struggle against child labor, however, we recommend that the Committee significantly increase its surveillance and exposé not only of violations of the CRC’s child labor-specific Article 32 but, as well, violations of all those CRC provisions that are implicated by child labor.¹⁷² To the same end, we urge that

¹⁶⁵ *Id.*, art. 44(4).

¹⁶⁶ *Id.*, art. 44(5).

¹⁶⁷ *Id.*, art. 45(a).

¹⁶⁸ *Id.*, art. 45(b)-(c).

¹⁶⁹ For details, see the website of the Office of the U.N. High Commissioner for Human Rights, at <http://www.unhchr.ch/html/menu2/6/crc/study.htm>.

¹⁷⁰ *See supra* note 6.

¹⁷¹ *Id.*

the Committee appoint special rapporteurs and/or working groups to study, report on, and recommend solutions to all forms of abusive and exploitative child work, and not only the most scandalous. Particularly helpful, we believe, would be a focus on child labor at the intersection of international human rights law and economic globalization.

Finally, we recommend—strongly—that the CRC be amended to empower the Committee to receive and consider individual and group complaints in quasi-judicial manner and to sanction those countries that are found to be in CRC violation.¹⁷³ Without prejudice to the Committee’s “urgent action procedure” noted above, the precedent of the 1999 Optional Protocol to the 1967 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), belatedly extending quasi-judicial authority to receive and act upon complaints to the Committee on the Elimination of Discrimination against Women, is instructive.¹⁷⁴ This step would measurably enhance the opportunity for children themselves, as well as their representatives, to defend and promote their rights against abusive and exploitative child work. The direct involvement of claims-holders in the defense and promotion of their rights usually is key to the validity and vitality of their claims.¹⁷⁵

**ii. The U.N. Human Rights Council and the Sub-Commission
on the Promotion and Protection of Human Rights**

On 16 June 2006, pursuant to a resolution adopted by it on 15 March 2006,¹⁷⁶ the U.N. General Assembly abolished the U.N. Commission on Human Rights created in 1946 as a subsidiary body of the U.N.’s Economic and Social Council (ECOSOC) and replaced it with a new Human Rights Council established under its aegis. In so doing, however, it retained, at least temporarily, most of the innovative mandates and mechanisms of the former Commission, among them the special investigatory and

¹⁷² For a catalogue of these provisions in addition to CRC Article 32, *see supra* text in paragraph following note 31.

¹⁷³ The CRC Committee on the Rights of the Child is reported to be “keen to establish a permanent mechanism for interaction with state parties, in addition to the reporting system called for under the CRC.” Report of the Expert Consultation on The Impact of the Implementation Process of the Convention on the Rights of the Child (Florence: UNICEF Innocenti Research Centre, Apr. 6-7, 2004).

¹⁷⁴ *See* 1999 Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, *supra* note 162, art. 1.

¹⁷⁵ For pertinent discussion, *see supra* Section I.B.4 (“Contesting the Claimed Indeterminacy of “Human Rights”), at 28-29.

¹⁷⁶ G.A. Res. 60/251, *supra* note 82.

complaints procedures established under ECOSOC Resolution 1235 of 6 June 1967,¹⁷⁷ ECOSOC Resolution 1503 of 27 May 1970,¹⁷⁸ and “special procedures” put in place by resolutions first adopted in 1979 to address “country” situations and “thematic” issues involving specific violations of human rights. Pursuant to these innovations, the U.N. Commission on Human Rights and its Sub-Commission on the Promotion and Protection of Human Rights were authorized to perform several different operations on behalf of human rights generally,¹⁷⁹ ergo on behalf of those rights implicated by child labor. This mandate belongs now to the new Human Rights Council and the Sub-Commission under it (or whatever successor expert-advice mechanism may ultimately replace the Sub-Commission).

Under ECOSOC Resolution 1235 and by virtue of General Assembly Resolution 60/251¹⁸⁰ establishing the Council, the Council and the Sub-Commission are empowered “to examine information relevant to gross violations of human rights and fundamental freedoms.”¹⁸¹ Precisely what it means to “examine information” and precisely what constitute “gross violations” are not explicitly clarified by Resolution 1235, but in Paragraph 3 the Resolution authorized the Commission “[to] make a thorough study of situations which reveal a consistent pattern of violations of human rights, as exemplified by the policy of *apartheid* . . . and racial discrimination . . . and [to] report, with recommendations thereon, to the Economic and Social Council.” The widespread abuse and exploitation of working children would seem to fit this mold. In any event, the operational essence of “the 1235 procedure,” as it has come to be

¹⁷⁷ U.N. Economic and Social Council Resolution (No. 1235) Concerning Questions of the Violation of Human Rights and Fundamental Freedoms, Including Policies of Racial Discrimination and Segregation and of Apartheid, in All Countries, with Particular Reference to Colonial and Other Dependent Countries and Territories, E.S.C. Res. 1235, U.N. ESCOR, 6 June 1967, 42d Sess., Supp. No. 1, at 17, U.N. Doc. E/4393 (1967), *reprinted in* 3 WESTON & CARLSON III.T.3 [hereinafter “ECOSOC Resolution 1235”].

¹⁷⁸ U.N. Economic and Social Council Resolution (No. 1503) Concerning Procedures for Dealing with Communications Relating to Violations of Human Rights and Fundamental Freedoms, 27 May 1970, E.S.C. Res. 1503, U.N. ESCOR, 48th Sess., Supp. 1A, at 8, U.N. Doc E/4832/Add.1 (1970), *reprinted in* 3 WESTON & CARLSON III.T.6 [hereinafter “ECOSOC Resolution 1503”]. The procedures established under Resolution 1503 were reformed during the 56th session of the Commission on Human Rights in 2000. See <http://www.unhchr.ch/html/menu2/8/1503.htm> on the website of the Office of the U.N. High Commissioner for Human Rights.

¹⁷⁹ The procedures made possible by these resolutions broke new ground in the protection of human rights via the U.N. system at the time of their creation, significantly changing the functions the U.N. Commission of Human Rights which before 1967 had no power to take any action relative to complaints concerning human rights.

¹⁸⁰ *Supra* note 82.

¹⁸¹ ECOSOC Resolution 1235, *supra* note 177, ¶ 2.

called, is a public debate that, though entirely in the hands of U.N. Member States (not private individuals or groups) and thus influenced by political considerations, can lead to the establishment of a mechanism (“working group,” “observer delegation,” “special rapporteur,” “special representative,” “special envoy,” or “representative of the Secretary-General”) for study of a country’s human rights situation and to the adoption of a resolution concerning the country situation examined or studied. In addition, the Sub-Commission can debate specific country situations and adopt resolutions expressing concern about them. These resolutions, while not comparable to judicial orders, are not without consequence. They therefore can assist the anti-child labor struggle. “Even a Sub-Commission resolution that does no more than express concern about a particular country’s human rights situation,” writes Sir Nigel Rodley, “can serve . . . important functions”¹⁸²—especially, he adds, “where the Commission has not yet dealt with it.”¹⁸³ Sir Nigel continues: “first, it may give political impetus to further action by the Commission; second, even if the Commission is unwilling to act, a Sub-Commission resolution represents the opinion of a formally-constituted U.N. body of human rights experts (which is not without independent influence); and, third, it may build up an official documentary record by requesting a report from the Secretary-General on the situation.”¹⁸⁴

ECOSOC Resolution 1503, a direct response to the Sub-Commission’s reliance upon information derived from non-governmental organizations (NGOs) under the 1235 procedure, gave the human rights complaint initiative for the first time to individuals and NGOs and initially, in contrast to the 1235 procedure, in strict confidence. Limited to general situations that reveal “a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms” (a “worst form” of child labor?), it nevertheless was seen by many around the time of its adoption as “an enormously valuable precedent, a breach in the citadel of the mutual protection society, one that could be progressively enlarged.”¹⁸⁵ In practice, however, the 1503 procedure, though not without some notable successes, has fallen short of its promise. While it has sometimes facilitated gradually increased pressure on offending governments

¹⁸² Nigel S. Rodley, *United Nations Non-Treaty Procedures for Dealing with Human Rights Violations*, in GUIDE TO INTERNATIONAL HUMAN RIGHTS PRACTICE 61, 63 (Hurst Hannum ed., 3d ed., 1999).

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ Tom Farer, *The U.N. and Human Rights: At the End of the Beginning*, in UNITED NATIONS, DIVIDED WORLD: THE U.N.’S ROLES IN INTERNATIONAL RELATIONS 240, 279 (Adam Roberts & Benedict Kingsbury eds., 2d ed., 1993).

(often as a precursor to action under ECOSOC Resolution 1235), it is, in the words of Newman and Weissbrodt as long ago as 1990, “painfully slow, complex, secret, and vulnerable to political influence at many junctures.”¹⁸⁶ The utility of the 1503 procedure relative to, say, a “worst form” of child labor is, therefore, open to serious doubt. Nevertheless, with the Sub-Commission formally authorized to receive and act upon complaints and the Council, in place of the former Commission on Human Rights, now empowered to make “a thorough study” or to initiate “an investigation by an ad hoc committee” subject to “the express consent of the State concerned,”¹⁸⁷ the 1503 procedure is available to the struggle against child labor at least in principle. If a pattern of human rights abuse in a country remains unresolved in the early stages, it can be brought to the world’s attention through the United Nations human rights system, the procedures of which are more or less transparent. At a minimum, therefore, the potential of the 1503 procedure in relation to child labor should be explored. Given the almost unanimous endorsement of the 1989 CRC and the rapidly growing popularity of 1999 ILO C182, it is not beyond credulity to imagine that the struggle against child labor could even result in the 1503 procedure’s reform and reinvigoration.¹⁸⁸

Unlike the public procedures authorized by ECOSOC Resolution 1235 and the confidential procedures authorized by ECOSOC Resolution 1503, each of which deal with general *situations* of human rights violation, the thematic mechanisms (or mandates) developed since 1979 to investigate specific violations of human rights can deal with individual *cases* of human rights violation, both actual and threatened. And for the most part they do so, typically via special rapporteurs and working groups and particularly in countries where the violations are widespread. Generally they operate impartially, such that their annual reports to the Commission reveal no bias based on the identity of the country being

¹⁸⁶ FRANK C. NEWMAN & DAVID S. WEISSBRODT, *INTERNATIONAL HUMAN RIGHTS: LAW, POLICY, AND PROCESS* 122 (1990). No less than the Bureau of the former Commission on Human Rights has described the 1503 procedure as “increasingly ineffectual [and] highly cumbersome.” See Report of the Bureau of the 54th Session . . . [hereinafter “Report of the Bureau”]. For convenient debate about the pros and cons of the 1503 procedure, see HENRY J. STEINER & PHILIP ALSTON, *INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS* 612-19 (2d ed., 2000).

¹⁸⁷ ECOSOC Resolution 1503, *supra* note 178, ¶ 6 (a) & (b).

¹⁸⁸ See Philip Alston, *The Commission on Human Rights*, in *THE UNITED NATIONS AND HUMAN RIGHTS: A CRITICAL APPRAISAL* (Philip Alston ed., 1992), who concludes, at 151, that the “shortcomings” of the 1503 procedure “are so considerable, its tangible achievements so scarce, the justifications offered in its favour so modest, and the need for an effective and universally applicable petition procedure so great” that it should be either radically reformed or abolished.

investigated. They operate also relatively efficiently. In these ways, too, they contrast sharply with the 1235 and 1503 procedures, which, as indicated, often are influenced by political considerations and tend to be cumbersome and slow. They thus are ripe for use in the anti-child labor struggle.

To our best knowledge, however, only one of the above three human rights enforcement techniques has been pressed into service on behalf of the worldwide struggle against child labor to date. Several of the thematic mechanisms (mandates that have proliferated markedly in recent years) have dealt with child labor issues or issues related to child labor, e.g., the right to education (2002),¹⁸⁹ children and armed conflict (2002),¹⁹⁰ and the sale of children and child prostitution and pornography (2001).¹⁹¹ Probably the fact that the 1235 and 1503 procedures are cumbersome and slow, and perhaps also that the 1503 procedure is secret, has dissuaded child labor abolitionists from invoking them. Additionally, direct participation in the Commission's (now Council's) and Sub-Commission's Geneva-based sessions is expensive. "Engaging rapporteurs or working groups is easier," Sir Nigel Rodley writes, "and such an approach is more likely to lead to success in individual cases."¹⁹² Nevertheless, the problem of child labor is of such magnitude as to require, as part of a comprehensive abolitionist strategy, at least

¹⁸⁹ See ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON THE RIGHT TO EDUCATION (Katarina Tomaševski), Commission on Human Rights, 58th Sess., Provisional Agenda Item 10, at 1, U.N. Doc. E/CN.4/2002/60 (2002), <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/ff9709c1d502132ec1256b810058ca6d?OpenDocument>. See also REPORT OF THE SPECIAL RAPPORTEUR ON THE RIGHT TO EDUCATION (Katarina Tomaševski), Commission on Human Rights, 59th Sess., Provisional Agenda Item 10, at 1, U.N. Doc. E/CN.4/2003/9 (2003), [http://www.unhchr.ch/huridocda/huridoca.nsf/AllSymbols/4550CAC4B8A69C0CC1256CF0002FA69D/\\$File/G0310495.doc?OpenElement](http://www.unhchr.ch/huridocda/huridoca.nsf/AllSymbols/4550CAC4B8A69C0CC1256CF0002FA69D/$File/G0310495.doc?OpenElement).

¹⁹⁰ See ADDITIONAL REPORT OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL FOR CHILDREN AND ARMED CONFLICT (Olara A. Otunnu), Commission on Human Rights, 58th Sess., Provisional Agenda Item 13, at 1, U.N. Doc. E/CN.4/2002/85 (2002), <http://www.hri.ca/fortherecord2002/documentation/commission/e-cn4-2002-85.htm>.

¹⁹¹ See REPORT OF THE SPECIAL RAPPORTEUR ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY (Juan Miguel Petit), Commission on Human Rights, 58th Sess., Provisional Agenda Item 13, at 1, U.N. Doc. E/CN.4/2002/88 (2002), <http://ods-dds-ny.un.org/doc/UNDOC/GEN/G02/105/92/PDF/G0210592.pdf?OpenElement>. See also REPORT OF THE SPECIAL RAPPORTEUR ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY (Juan Miguel Petit), Commission on Human Rights, 59th Sess., Provisional Agenda Item 13, at 1, U.N. Doc. E/CN.4/2003/79 (2003), <http://ods-dds-ny.un.org/doc/UNDOC/GEN/G03/100/90/PDF/G0310090.pdf?OpenElement>.

¹⁹² Rodley, *supra* note 182, at 80-81. The Bureau of the Commission on Human Rights has recommended collapsing the existing non-treaty structure for dealing with human rights violations into a single body of independent experts that would meet twice annually to determine the "situations" that should be referred to the Commission (now Human Rights Council). See REPORT OF THE BUREAU OF THE 54TH SESSION OF THE COMMISSION ON HUMAN RIGHTS PURSUANT TO COMMISSION DECISION 198/112, U.N. Doc. E/CN.4/1999/104 (1999).

consideration of all the enforcement techniques that are provided by the Council and Sub-Commission, and certainly sensitivity to the fact that there are occasions when child labor issues or issues related to child labor must be addressed vis-à-vis countries that are not party to treaty-based complaint procedures. In any event, there can be no question that at least some of the worst forms of child labor, as defined by 1999 ILO C182, meet the 1235 and 1503 jurisdictional test of “a consistent pattern of gross violations of human rights.”¹⁹³ At the least, the Council’s country and thematic mandates should be given increased and more diverse responsibility for child labor issues—including, in collaboration with the Committee on the Rights of the Child as suggested above,¹⁹⁴ a focus on child labor at the intersection of international human rights law and economic globalization, an intersection in which dwell, we believe, not a few consistent patterns of gross violations of children’s rights.

iii. The International Labor Organization¹⁹⁵

“The procedures developed by the International Labor Organization,” writes Lee Swepston, Chief of the Equality and Employment Branch and Coordinator for Human Rights Questions of the Geneva-based International Labour Office, “form part of what may be the most effective and thorough international mechanism for the protection of human rights”¹⁹⁶—though almost completely, it must be added, without benefit of rights language per se. The procedures, predicated on the adoption of conventions and declarations enunciating principles and standards pertinent mainly to organized and unorganized labor¹⁹⁷ (including 1973 ILO C138 and 1999 ILO C182¹⁹⁸) are of two distinct but

¹⁹³ While of course a function of context, such language is not indeterminate. For pertinent comment, *see supra* Section I.B.4 (“Contesting the Claimed Indeterminacy of “Human Rights”), at 28-29.

¹⁹⁴ *See supra* Subsection A.1.a.i in this Section (“The Committee on the Rights of the Child”), at 43-45.

¹⁹⁵ The ILO is composed of three organs: (1) the General Conference of representatives of member states (the “International Labour Conference”); (2) the Governing Body; and (3) the International Labour Office.

¹⁹⁶ Lee Swepston, *Human Rights Complaint Procedures of the International Labor Organization*, in GUIDE TO INTERNATIONAL HUMAN RIGHTS PRACTICE 85 (Hurst Hannum ed., 3d ed., 1999). We indebted to Mr. Swepston’s scholarship for much of the ILO summary here.

¹⁹⁷ Exceptionally, the ILO also has adopted and supervises declarations and conventions dealing with the rights of indigenous and tribal peoples. *See, e.g.*, ILO Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries, 27 June 1989, 2 ILO CONVENTIONS & RECOMMENDATIONS 1919-66, at 1436, 72 ILO OFF. BULL. 59 (1989), *reprinted in* 3 WESTON & CARLSON III.F.2; Draft Declaration on the Rights of Indigenous Peoples, 26 Aug. 1994, U.N. Doc. E/CN.4/1995/2; E/CN.4/Sub.2/1994/56 (Oct 28, 1994), *reprinted in* 3 WESTON & CARLSON III.F.4.

interdependent types: (1) regular and systematic monitoring by the ILO Committee of Experts on the Application of Conventions and Recommendations and the ILO Conference Committee on the Application of Conventions and Recommendations; and (2) complaint procedures premised on the ILO Constitution¹⁹⁹ and ILO basic principles.²⁰⁰

The first of these procedures is defined more by advocacy, encouragement, and technical cooperation than by adversarial confrontation. It involves mainly five sequential monitoring operations, the first three at the hands of the ILO Committee of Experts: (1) the examination of governmental reports on ILO convention compliance;²⁰¹ (2) essentially quiet diplomacy in the form of “Direct Requests” where compliance is found wanting; (3) published “Observations” where non-compliance is deemed serious or persistent; and, in the most severe cases of non-compliance, either (4) mandatory appearance before the ILO Conference Committee (which reflects the ILO’s tripartite structure of governmental, workers’, and employers’ representatives) for a public accounting of the reasons for non-compliance or (5) “direct contacts” between the International Labor Office and the delinquent government to resolve the problem without public criticism.

The second (complaint) procedure entails any one of three essentially adjudicative operations. They include: (1) “representations” to the ILO Governing Body by trade unions or employer organizations (not necessarily associated with the subject of the complaint) as authorized by Article 24 of the ILO Constitution whenever a country “has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party”; (2) “complaints” to the ILO Governing Body (and an assisting Commission of Inquiry usually established by the Governing Body) by governments, International Labor Conference delegates, or the Governing Body itself on its own motion, as authorized by Article 26 of the ILO Constitution, alleging that a country is not “securing the effective observance” of a convention it has ratified; and (3) “complaints” directly to the ILO Governing Body’s

¹⁹⁸ *Supra* notes 8 and 14, respectively.

¹⁹⁹ See Constitution of the International Labor Organization, <http://www.ilo.org/public/english/about/iloconst.htm>.

²⁰⁰ See, e.g., ILO Declaration on Fundamental Principles and Rights at Work, *supra* note 15.

²⁰¹ Since the follow-up to the 1998 ILO Declaration on Fundamental Principles and Rights at Work, *supra* note 15, there is in place a system of gathering information through the Annual Reports from those countries that have

Committee on Freedom of Association (CFA) and indirectly via the CFA to an assisting Fact-Finding and Conciliation Commission on Freedom of Association (FFCC) by governments or by employers' or workers' organizations alleging violations of the ILO's basic principles on freedom of association whether or not the state concerned is a party to any ILO convention on the subject.²⁰²

The last mechanism mentioned above—the complaint procedure involving the ILO Governing Body's CFA—is reliably reported to be “one of the most widely used international complaint procedures for the protection of human rights,”²⁰³ and “[t]he most widely used ILO petition procedure.”²⁰⁴ This comes as no surprise. The principle of freedom of association, including but not limited to the right to form trade unions and to collective bargaining, is fundamental to the protection of worker rights generally.²⁰⁵ It also is critical to children who are the victims of abusive and exploitative labor practices. Not only do they or their surrogates need its protection to resist particular abuses, they need its protection also to safeguard the right of children under CRC Article 12 “to express [their] views freely in all matters affecting the child,” including “in any judicial and administrative proceedings affecting the child.”²⁰⁶ It is essential to the empowerment of child workers and to their direct involvement in the vindication of their rights. A strategy that seeks the abolition of abusive and exploitative child work on a comprehensive basis must therefore embrace the ILO's CFA procedure to the maximum extent needed.

Much the same may be said of the ILO's “representations” and “complaints” procedures under articles 24 and 26 of the ILO Constitution. It appears, however, that these procedures have not been

not yet ratified the relevant fundamental conventions, or on Global Reports on a specific theme each year. For example, child labor was the subject of the report presented to the ILO Conference in June 2002.

²⁰² According to Swepston, *supra* note 196, at 95, the FFCC may also examine complaints referred to it by ECOSOC against states that are not members of the ILO.

²⁰³ *Id.* at 88.

²⁰⁴ *Id.* at 95.

²⁰⁵ Swepston conveniently summarizes: “The principle of freedom of association includes, *inter alia*: the right of workers and employers to establish organizations; free functioning of such organizations; the right to join federations and confederations and to affiliate with international groupings of occupational organizations; the right of organizations not to be suspended or dissolved by administrative authorities; protection against anti-union discrimination; the right to collective bargaining; the right to strike; and the right to basic civil liberties, which are necessary pre-condition to the free exercise of trade union rights.” *Id.* at 96.

²⁰⁶ 1989 CRC, *supra* note 6, art. 12(1) & (2).

widely used, although for reasons that have more to do with the ILO's successful monitoring and supervision of its many standard-setting conventions than with any ineffectiveness that might be attributed to these procedures. Writes Swebston:

If these procedures are used relatively infrequently, it is because they are but one part of a comprehensive and active system of regular supervision. . . . It is . . . rare that governments do not cooperate fully in the ILO's investigations Even if a government does not implement the ILO's conclusions immediately, in the longer term the government often adopts legislation and practices that closely follow the recommendations made.²⁰⁷

When it comes to the implementation of ILO C138 and ILO C182,²⁰⁸ however, credit must be given particularly to the ILO's International Programme on the Elimination of Child Labour (IPEC), established in 1992 and, as of this writing, now active in 60 countries worldwide. Working toward the elimination of child labor through a phased, multi-sectoral strategy of technical cooperation that includes a Legal Unit for monitoring and evaluation, it reinforces the ILO's supervisory system and, along the way, confirms that technical cooperation and normative action can be complementary.²⁰⁹ In fact, in part because of its monitoring and evaluation procedures, IPEC has hastened ratifications of both 1973 ILO C138 and 1999 ILO C182.²¹⁰ True, in the years preceding IPEC, work to eliminate child labor barely existed at the global level even after the entry into force of ILO C138 in 1976, and when it did it was slow and incoherent. Still, it is wise not to leap hastily to the conclusion that the ILO's "representations" and "complaints" procedures need never be pressed into service on behalf of the struggle against child labor. To the contrary, a comprehensive strategy to abolish child labor, by definition multifaceted, requires that they be placed in active reserve. The ILO's supervisory procedures probably would not be nearly as effective as they are without the threat of its adversarial procedures lying in wait.

Finally, as it is not easy for human rights NGOs to gain access to the ILO's enforcement machinery, cooperation with trade unions is strongly recommended, especially with those that are human rights oriented. At the same time, however, we urge greater ILO leniency toward human rights advocacy

²⁰⁷ Swebston, *supra* note 196, at 100.

²⁰⁸ *Supra* notes 8 and 14, respectively.

²⁰⁹ See generally, e.g., IPEC ACTION AGAINST CHILD LABOUR: IMPLEMENTATION REPORT 2002-03 (Geneva: ILO, 2003), <http://www.ilo.org/public/english/standards/ipec/index.htm>.

²¹⁰ *Id.* at.14, 28.

groups, preferably as part of an ILO policy shift that, like UNICEF in 1997 and 1999,²¹¹ would signal a strategic decision to use rights discourse to abolish or at least reduce child labor.

iv. Committee on Economic, Social and Cultural Rights

Article 10 of the 1966 ICESCR, which provides for the “widest possible protection and assistance . . . to the family,”²¹² decrees, as noted earlier, that “[s]pecial measures of protection and assistance should be taken on behalf of all children and young persons”;²¹³ that [c]hildren and young persons should be protected from economic and social exploitation”;²¹⁴ that “[t]heir employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law”;²¹⁵ and that “States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.”²¹⁶ Like all the other of the provisions of the ICESCR that bear upon the problem of child labor,²¹⁷ the implementation of this provision is monitored by the Committee on Economic, Social and Cultural Rights (CESCR).

Established in 1987 by ECOSOC,²¹⁸ the CESCR is not, at this writing, empowered to receive and adjudicate complaints of violations of the ICESCR, as is, for example, the Human Rights Committee under the companion ICCPR. The absence of a direct complaints procedure, the CESCR has noted, “places significant constraints on the ability of the Committee to develop jurisprudence or case-law and, of course, greatly limits the chances of victims of abuses of the ICESCR obtaining international redress.”²¹⁹ Accordingly, the CESCR has promoted for adoption an optional individual complaints

²¹¹ See *supra* text accompanying notes 16,57-58, 137, and 148. See also UNICEF, GUIDELINES FOR HUMAN RIGHTS-BASED PROGRAMMING APPROACH, *supra* note 159.

²¹² 1966 ICESCR, *supra* note 27, art. 10(1).

²¹³ *Id.*, art 10(3).

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*, art. 10(3).

²¹⁷ See, e.g., *id.*, art. 6 (the right to work), art. 7 (the right to just and favorable conditions of work), art. 8 (the rights of workers to organize and bargain collectively), art. 11 (the right to an adequate standard of living), and art. 13 (the right to education).

²¹⁸ The CESCR is the only human rights treaty body not created directly by its own treaty.

protocol similar to the one provided for in the first Optional Protocol to the ICCPR.²²⁰ Thus far unsuccessfully, however; and as a consequence the CESCR has signaled that, “[p]ending the addition of an optional protocol, beneficiaries of the rights contained in the Covenant may still have recourse to the general procedures of the Committee, and may utilize what has been called an “unofficial petition procedure” based on the modalities of the Committee.”²²¹ Also, the Committee has drawn up a “Plan of Action to Strengthen the Implementation of the International Covenant on Economic, Social and Cultural Rights” with emphasis on “substantive, analytical, expert, and general support (a) to facilitate the Committee's work with States parties in relation to the reporting process; (b) for the preparation of various substantive background papers to enable the Committee to contribute effectively to the various activities which it is increasingly being called upon to perform; [and] (c) to enable the Committee to work constructively with States parties and United Nations agencies and others in following up on its recommendations designed to enhance the realization of economic, social and cultural rights.”²²²

Meanwhile, the CESCR's legal competence is to oversee the ICESCR's state reporting process.²²³ Pursuant to ICESCR Articles 16 and 17, the states parties to the ICESCR are obligated to submit periodic reports to the CESCR on the programs and laws they have adopted and on the progress they have made in protecting the rights pronounced in the ICESCR. With the help of state delegations, specialized U.N. agencies, and relevant NGOs on behalf of civil society, the CESCR reviews the reports, entertains both written and oral testimony, and then concludes its consideration of a state party's report by issuing “Concluding Observations.” The “Concluding Observations” constitute the CESCR's decision and

²¹⁹ OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, FACT SHEET NO.16 (Rev.1) § 8. [hereinafter “Fact Sheet No. 16”].

²²⁰ See Draft Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, 18 Dec. 1996, U.N. Doc. E/CN.4/1997/105 (Annex), *reprinted in* 3 WESTON & CARLSON III.A.6. For the Optional Protocol to the 1966 International Covenant on Civil and Political Rights, 16 Dec. 1966, see G.A. Res. 2200 (Annex), 999 U.N.T.S. 171, 999 U.N.T.S. 302, *reprinted in* 3 WESTON & CARLSON III.A.4.

²²¹ Fact Sheet No. 16, *supra* note 219, § 8.

²²² UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS AND THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, PLAN OF ACTION TO STRENGTHEN THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, <http://www.unhchr.ch/html/menu2/6/action.htm>.

²²³ For detailed clarification of the state reporting process, see Anne Bayefsky, *How to Complain to the U.N. Human Rights Treaty System*, in BAYEFSKY.COM, THE UNITED NATIONS HUMAN RIGHTS TREATIES: HOW TO COMPLAIN ABOUT HUMAN RIGHTS TREATY VIOLATIONS, Ch. VIII, http://www.bayefsky.com/complain/47_state_reporting.php.

variously include both positive and negative assessments of a state party's performance together with suggestions and recommendations for improvement. A possible Committee conclusion is that a state party has failed to comply with an ICESCR obligation and, hence, is in violation of the Covenant.²²⁴ It is important to note, however, that the CESCR's Concluding Observations are not technically binding and that, to date, there is no method to enforce them. At the same time, the CESCR has stated that "for States parties to ignore or not act on such views would be to show bad faith in implementing their Covenant-based obligations" and that "in a number of instances, changes in policy, practice and law have been registered at least partly in response to the Committee's concluding observations."²²⁵

Finally, it is important to note that, at its third session in 1988, in response to an invitation from ECOSOC, the CESCR began to prepare and issue "general comments" on the rights and provisions contained in the ICESCR for the purpose of assisting states parties to fulfill their ICESCR reporting obligations, and also to provide greater interpretative clarity as to the intent, meaning and content of the Covenant. The CESCR views the adoption of such comments as a way to promote the ICESCR's implementation of the Covenant. It also sees them as a way to generate a consensual jurisprudence relative to the ICESCR's substantive provisions.

To date, however, the CESCR has issued no general comment on Article 10's proscription of child labor. We urge it to do so as an important and potentially persuasive further element in a comprehensive human rights strategy for child labor's abolition. Additionally, and to the same end, we urge the CESCR to move swiftly in winning acceptance of its proposed individual complaints procedure. Even though many economic, social, and cultural rights are perhaps best secured via group action, individual complainants as victims or representatives of victims of abuse can speak with unmatched moral authority. Meanwhile, we urge the CESCR to fulfill its Plan of Action and use its existing supervisory power over the state party reporting process to heighten its scrutiny of dubious labor practices involving child workers and thereby energize states parties, international organizations, and civil society to work yet harder at Article 10's full realization.

²²⁴ The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, U.N. Doc. E/CN.4/1987/17 (Annex) and the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, *reprinted in* 20 HUMAN RIGHTS Q. 691 (1998) stipulate what may constitute a violation of the ICESCR, *supra* note 37.

²²⁵ Fact Sheet No. 16, *supra* note 219, § 6.

v. Concluding Thoughts on the U.N. Human Rights System

While the Committee on the Rights of the Child, the ILO, and UNICEF, along with several rapporteurs and working groups, currently dominate anti-child labor activity within the U.N. system, there is no apparent reason why responsibility for this issue should not extend to other United Nations mechanisms and procedures where appropriate. For example, it is well known that children from lower socioeconomic status, especially when from disfavored ethnic or tribal groups, often suffer severe discrimination and other abuse at the hands of unscrupulous parties and that, as a consequence, they commonly end up working on the street and in other abusive contexts rather than going to school. In such a setting, it seems appropriate that the Committee on the Elimination of Racial Discrimination (CERD), established under the 1965 International Convention on the Elimination of All forms of Racial Discrimination²²⁶ and with authority to adjudicate claims of violation under that convention, could and should have a role to play in the anti-child labor struggle. Equivalent conclusions might be reached about the similarly constituted Committee against Torture established under the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.²²⁷ Our point is simple. Given the multidimensionality, interrelatedness, and interdependencies of the worldwide child labor problem, the entire U.N. human rights system, especially at the committee level, should be brought to bear in the anti-child labor struggle in a comprehensive and coordinated way—and, what is more, in a fashion that invites the active participation of interested governments and civil society. It is this kind and degree of reordering and mobilization that is needed to ensure child labor's abolition, perhaps with the help of a working children's ombudsperson in the form, say, of a new U.N. High Commissioner for Children (analogous to, for example, Norway's Cabinet-appointed Ombudsman for Children²²⁸). The Committee on the Rights of the Child, the ILO, and UNICEF are indispensable actors, without a doubt. But they cannot alone win the day. Needed is a kind and degree of reordering and mobilization within the U.N. system that can raise the moral and legal stakes dramatically higher on the scales of human aspiration and endeavor.

b. Human Rights Action within Regional Human Rights Systems

²²⁶ See 1965 International Convention on the Elimination of All forms of Racial Discrimination, *supra* note 162, art. 8.

²²⁷ See 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *supra* note 162, art. 17.

²²⁸ Norway established a commissioner, or ombud, with statutory rights to protect children and their rights in 1981 and was the first country in the world to do so. Since 1981, the Ombudsman for Children in Norway has worked continuously to improve national and international legislation affecting children's welfare. For details, see Ombudsman for Children in Norway website at <http://www.barneombudet.no/english>.

There exist today three regional human rights systems, each with state-to-state and individual complaints procedures for judicial or quasi-judicial redress of human rights violations: *in Europe*, pursuant to the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms²²⁹ and the European Social Charter (Revised);²³⁰ *in the Americas*, pursuant to the 1948 Charter of the Organization of American States (OAS)²³¹ and the 1969 American Convention on Human Rights;²³² and *in Africa*, pursuant to the 1981 African Charter on Human and Peoples Rights²³³ and 1990 Charter on the Rights and Welfare of the Child.²³⁴ Space does not allow a detailed analysis of these complaint procedures.²³⁵ A brief summary, however, is helpful, as all are relevant to child labor's abolition.

i. The European Human Rights System

Of the three regional human rights systems, the most established is the European. After more than four decades of implementing the European Convention via both a commission and a court, Protocol No. 11 to the European Convention²³⁶ established a unified, full-time European Court of Human Rights with jurisdiction extending to both inter-state and private petitions alleging Convention violations. What matters here, of course, is that this juridical machinery—involving the encouragement of “friendly settlements” and the rendering of final and binding judgments on the merits enforced by the Committee of Ministers to the Council of Europe, even to the point of threat of expulsion from the Council—is

²²⁹ European Convention for the Protection of Human Rights and Fundamental Freedoms, 4 Nov. 1950, 213 U.N.T.S. 221, E.T.S. 5, *reprinted in* 3 WESTON & CARLSON III.B.2 [hereinafter “European Convention” or “1950 European Convention”].

²³⁰ European Social Charter (Revised), 3 May 1996, E.T.S. 163, *reprinted in* 3 WESTON & CARLSON III.B.4.

²³¹ Charter of the Organization of American States, 30 Apr. 1948, 119 U.N.T.S. 3, *reprinted in* 1 WESTON & CARLSON I.B.14 [hereinafter “OAS Charter”].

²³² American Convention on Human Rights, 22 Nov. 1969, 1114 U.N.T.S. 123, OASTS 36, *reprinted in* 3 WESTON & CARLSON III.B.24 [hereinafter “American Convention” or “1969 American Convention”].

²³³ African Charter on Human and Peoples Rights, 27 June 1981, OAU Doc. CAB/LEG/67/3 Rev. 5, *reprinted in* 3 WESTON & CARLSON III.B.1.

²³⁴ African Charter on the Rights and Welfare of the Child, Jul. 1990/29 Nov. 1999, OAU Doc. CAB/LEG/153/Rev. 2 (1990).

²³⁵ For detailed discussion of the three regional human rights systems, see Dinah Shelton, *The Promise of Regional Human Rights Systems*, in WESTON & MARKS, *supra* note 42, at 351.

²³⁶ Protocol No. 11 to the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, 11 May 1994, E.T.S. 155 *reprinted in* 3 WESTON & CARLSON III.B. III.B.16a.

available for the adjudication of the rights of working children. While the European Convention focuses primarily on “first-generation” civil and political rights, it is nonetheless relevant to the consideration of child labor in that, as argued in our Chapter 1 in this volume, child labor practices impinge potentially on *all* human rights (for example, freedom of speech and expression). Moreover, specific rights enumerated in the European Convention—*e.g.*, the right to life²³⁷ and the prohibition of slavery and forced labor²³⁸—manifestly are implicated by certain “worst forms” of child labor.

In contrast to the European Convention and its focus on civil and political rights, the European Social Charter (Revised) specifically covers “second generation” economic, social and cultural rights, including many that are of particular relevance to working children.²³⁹ Again, therefore, the anti-child labor movement should take notice. Under the Social Charter, the parties commit to the rights set forth in it “by all appropriate means, both national and international in character.”²⁴⁰ Under an additional protocol that provides for a system of collective complaints,²⁴¹ non-governmental organizations of employers, trade unions, and others may file a complaint with a Committee of Independent Experts alleging violations of the Charter by a state party²⁴² (indeed, the first complaint filed in this context alleged violation of Social Charter Article 7 prohibiting the employment of children below age 15²⁴³). The

²³⁷ European Convention, *supra* note 229, art. 2.

²³⁸ *Id.*, art. 4.

²³⁹ *See, e.g.*, Pt. I (2)-(7), (17), (22), (24) and (26) of the European Social Charter (Revised), *supra* note 216, meant to safeguard rights to just conditions of work; safe and healthy working conditions; fair remuneration sufficient for a decent standard of living; freedom of association; collective bargaining; special protection for children against physical and moral hazards; appropriate social, legal and economic protection for children; a role in determining and improving working conditions and environment; protection in cases of termination; and dignity at work.

²⁴⁰ *Id.*, Pt. I, chapeau.

²⁴¹ Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, 9 Nov. 1995, E.T.S. 158.

²⁴² *Id.*, arts. 1-5.

²⁴³ Council of Europe, Complaint No. 1/1998 by the International Commission of Jurists against Portugal (Sept. 1999), http://www.coe.int/T/E/Human_Rights/Esc/4_Collective_complaints/List_of_collective_complaints/RC1_on_merits.pdf. For a convenient brief summary of this case and its disposition, see Robin R. Churchill & Urgan Khaliq, *The Collective Complaints System of the European Social Charter: An Effective Mechanism for Ensuring Compliance with Economic and Social Rights?*, in 15 EUR. J. INT’L L. No. 3, at 417 (2004), also <http://www.ejil.org/journal/Vol15/No3/chh301.pdf>, at 142-43, 148-49.

Committee reviews the complaint, may hold a hearing, and reaches a decision on the merits.²⁴⁴ The decision is forwarded to the Committee of Ministers of the Council of Europe, which may recommend specific measures to redress any violation.²⁴⁵

ii. The Inter-American Human Rights System

The American Convention on Human rights also addresses primarily civil and political rights, calling only for the “progressive development” of measures by the states parties to achieve the “full realization” of economic and social rights.²⁴⁶ However, among the civil and political rights enumerated in the Convention are the right to life, freedom from slavery, freedom of association, and measures of protection specifically for children.²⁴⁷ Moreover, an optional Additional Protocol in the Area of Economic, Social and Cultural Rights²⁴⁸ entered into effect in 1999 and boasts 13 ratifications at this writing (July 2006). The OAS Charter, in addition, commits all OAS member states to “devote their utmost efforts to accomplishing . . . basic goals,” including, in pertinent part, fair wages, acceptable working conditions, and expansion of educational opportunities.²⁴⁹ OAS member states also obligate themselves to “dedicate every effort” to the application of such “principles” as “a right to material well-being . . . and spiritual development under circumstances of liberty, dignity, equality of opportunity, and economic security”; work under conditions of “fair wages, that ensure life, health, and a decent standard of living”; and the right of association and collective bargaining.²⁵⁰ Furthermore, the OAS Charter requires member states to “exert the greatest efforts . . . to ensure the effective exercise of the right to education.”²⁵¹

²⁴⁴ *Id.*, arts. 6-8.

²⁴⁵ *Id.*, art. 9.

²⁴⁶ 1969 American Convention, *supra* note 232, art. 26

²⁴⁷ *Id.*, arts. 4, 6, 16, and 19.

²⁴⁸ Additional Protocol in the Area of Economic, Social and Cultural Rights, 17 Nov. 1988, OASTS 69, *reprinted in* 28 INT’L L. MATS.156 (1989) and 3 WESTON & CARLSON III.B.25

²⁴⁹ OAS Charter, *supra* note 231, art. 33(g) and (h).

²⁵⁰ *Id.*, art. 45(a)-(c).

²⁵¹ *Id.*, art. 49.

The American Convention provides for two organs to enforce the rights set forth in the Convention and Additional Protocol—the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. Both are potential tools for implementing the above-mentioned human rights norms in support of working children.

The Commission is charged under the Convention with promoting “respect for and defense of human rights.”²⁵² In addition, as an organ also of the OAS Charter, it is charged to “promote the observance and protection of human rights and to serve as a consultative organ of the [OAS] in these matters.”²⁵³ Thus, while the Commission’s authority under the Convention is limited to those states parties to the *Convention*, as an organ of the *Charter* its purview includes the activities of all OAS member states, including those not party to the Convention. The Inter-American Commission receives individual petitions against any state party and inter-state petitions involving states parties, determines admissibility, conducts fact-finding, and attempts to reach friendly settlement of cases, whereupon it reports to the OAS Secretary-General and the parties regarding the facts and friendly settlement. Such reports are made public. Under the Convention, where friendly settlement is not achieved, the Commission, after preparing a confidential report, may offer proposals and recommendations, and may submit the case to the Inter-American Court of Human Rights.

The Inter-American Court interprets and applies the American Convention via contentious and advisory jurisdiction. When exercising its contentious jurisdiction (as in the case of claims of human rights violations), the Court may order compensation and/or issue injunctions, but then only with regard to states parties that have consented to such jurisdiction. The Commission brings claims to the Court, and the Court’s judgments are final and binding. Judgments are enforced via the OAS General Assembly, which may adopt whatever sanctions it deems appropriate.²⁵⁴

iii. The African Human Rights System

²⁵² 1969 American Convention, *supra* note 232, art. 41.

²⁵³ OAS Charter, *supra* note 231, art. 106.

²⁵⁴ *Id.*, art. 9.

Under the African Charter, not only are civil/political and economic/social/cultural rights recognized, so also are third generation community or solidarity rights.²⁵⁵ Specifically, the Charter binds the states parties to recognize and give effect to, *inter alia*, the rights to dignity and freedom from exploitation such as slavery, association, work under equitable and satisfactory conditions and equal pay for equal work, the best attainable state of physical and mental health, education, and protection of morals²⁵⁶—all relevant, of course, to the safeguarding of the rights of working children. And this task is left to both an African Commission on Human and Peoples’ Rights and, since January 2004, a new African Court on Human and Peoples’ Rights. In addition to promotional functions (providing information, offering conferences and seminars, assisting national governments in formulating policy), the Commission has both contentious and advisory jurisdiction to consider complaints lodged with it under the African Charter. In contentious cases, the Commission may resort to “any appropriate method of investigation,” receive, investigate, report on, and make recommendations concerning alleged violations of the Charter, pursuant to either inter-state or individual communications involving any state party to the Convention.²⁵⁷ For its part, pursuant to the protocol that established it, the Court may receive complaints submitted to it by the Commission, by a state party that has lodged a complaint to the Commission, by a state party whose citizen is an alleged victim of a human rights violation, or by one of the African Intergovernmental Organizations.²⁵⁸ Further, the Court is authorized to “entitle relevant Non Governmental Organizations (NGOs) with observer status before the Commission, and individuals to institute cases directly before it” vis-à-vis states parties that have consented to such jurisdiction.²⁵⁹ The Court will hear cases, try to reach amicable settlement, and may order remedies/reparation,²⁶⁰ deemed final and binding on the parties.²⁶¹ It remains, of course, to be seen how the Court develops in practice.

²⁵⁵ See *supra* notes 32-39 accompanying text.

²⁵⁶ 1981 African Charter, *supra* note 233, arts. 5, 10, 15-17.

²⁵⁷ *Id.*, art. 45-59.

²⁵⁸ See Article 5 of the Protocol to the African Charter on Human & Peoples’ Rights on the Establishment of an African Court on Human and Peoples’ Rights, 12-13 Dec. 1997, OAU/LEG/MIN/AFCHPR/PROT 1, rev.2 (1997), reprinted in 3 WESTON & CARLSON III.B.1a.

²⁵⁹ *Id.*

²⁶⁰ *Id.*, arts. 6-9, 26-28.

²⁶¹ *Id.*, art. 28, 30.

But clearly, given the high incidence of child labor in Africa, both the new Court and the Commission should be taken seriously and thoroughly explored in the struggle against African child labor.

Likewise relevant to the safeguarding of the rights of working children and therefore to be taken seriously is the African Charter on the Rights and Welfare of the Child which entered into force in November 1999 and which obligates the parties to it to recognize, and take steps to give effect to, the rights enumerated in it.²⁶² Many of them, not surprisingly, are applicable to the problem of child labor generally, e.g., rights to free association, education, rest and leisure, and the best attainable state of health.²⁶³ But the Charter also addresses child labor specifically, requiring states parties to take legislative and administrative measures to establish minimum ages of employment and regulation of hours and conditions,²⁶⁴ and prohibiting the recruitment of children for armed conflict, their sexual exploitation, and their abduction and trafficking.²⁶⁵

To serve all these rights-based objectives, the Charter establishes a Committee on the Rights and Welfare of the Child empowered to receive communications “from any person, group or non-governmental organization recognized by the [OAU²⁶⁶], by a Member State, or the United Nations”²⁶⁷ Like the African Commission on Human and Peoples’ Rights, the Committee may use “any appropriate method of investigating” matters brought to its attention, and, further, is required to report its activities to the Assembly of Heads of State and Government every two years.²⁶⁸ Also, according to Charter Article 42(a), the Committee is empowered to (a) “interpret the provisions of [the Charter] at the request of a State Party, an Institution of the [AU] or any other person or institution recognized by the [AU], or any State Party”; (b) “monitor the implementation and ensure protection of the rights enshrined”

²⁶² 1990 African Charter on the Rights and Welfare of the Child, *supra* note 234, art. 1.

²⁶³ *Id.*, arts. 8, 11, 12, and 14.

²⁶⁴ *Id.*, art. 15.

²⁶⁵ *Id.*, arts. 22, 27, and 29.

²⁶⁶ Now known as the African Union (AU) [and therefore “AU” hereinafter].

²⁶⁷ *Id.*, art. 44.

²⁶⁸ *Id.*, art. 45.

in the Charter; and (c) “where necessary give its views and make recommendations to Governments.” All of which constitutes broad power to investigate violations of child-labor-related human rights and both to report on such violations and to make specific recommendations to states parties on redressing them. However, the Committee has only just begun operating in the last few years so that, as in the case of the African Court on Human and Peoples’ Rights, only time will tell whether the Committee lives up to its potential. A thoroughgoing commitment to child labor’s abolition, however, would make sure that it does.

iv. Concluding Thoughts on the Regional Human Rights Systems

Notwithstanding the lofty goals espoused by the instruments establishing the regional human rights systems discussed above, each of these systems has been criticized for failing to protect human rights effectively or efficiently. In the case of the European system, for instance, huge backlogs and insufficient resources caused cases to drag out over years—providing the impetus for reforming the system with a single, full-time human rights court.²⁶⁹ Similar criticism, coupled with charges of ineffectiveness, propelled the member states of the OAU (now AU) to establish the Court of Human and Peoples Rights.²⁷⁰ Only time will tell whether these courts will become the effective and efficient arbiters of human rights contests that their architects hope.

Despite the well-founded criticisms of the three regional systems, however, it is clear that, for reasons of cultural and geographic propinquity, these systems have had a positive effect on human rights promotion and protection in their respective regions. Indeed, it is fair to say that the enforcement of human rights at the regional level has proven generally more effective than at the global level. On the whole, states have responded cooperatively to the judgments of the regional tribunals, complying with their orders and changing their laws and practices as a result.²⁷¹ Moreover, the regional systems collectively encourage further development and improvement of the global human rights system via interaction and collaboration.²⁷² It thus is clear that the regional human rights systems are another potentially useful tool for addressing abusive, exploitative, or hazardous labor practices affecting children. Their enforcement or implementing potential in the anti-child labor struggle should be actively

²⁶⁹ See 1994 Protocol No. 11, *supra* note 236.

²⁷⁰ 1990 African Charter on the Rights and Welfare of the Child, *supra* note 234.

²⁷¹ See Shelton, *supra* note 235.

²⁷² *Id.* at 391.

explored and invoked, in terms of both their direct impact and their catalytic ripple or demonstration effect.

2. Human Rights Action via “Extra-Legal” Means

As international lawyers, we naturally gravitate toward juridical solutions to the problem of child labor. However, though formal legal institutions and procedures created specifically to promote and protect human rights are indispensable components of a comprehensive strategy for the abolition of child labor, by no means are they the only components—indeed, possibly not even the most effective or important components in many instances. As previously stated, the abolition of child labor requires broad and deep social change, and for this is needed far more than the law and its formal arrangements, even when dedicated specifically to the promotion and protection of human rights. Legal solutions tend frequently to be “top-down” or “elitist” solutions, often suspect because they are inclined to overlook disparities in power—especially at points of conflict—between those who prescribe solutions and those who, typically less powerful, are on the receiving end of them. Though nonetheless indispensable, they are not likely to make much headway against abusive and exploitative child work without calling into collaborative service a host of more or less informal approaches to the problem. Many of these are “bottom-up” or “grass roots” approaches. Generally they are of an “extra-legal” (quasi- and non-legal) sort that interface closely with education, international trade, and other such societal infrastructures—and commonly, too, with those who daily fight in the trenches on behalf of working and non-working children: intergovernmental organizations such as the ILO and UNICEF; NGOs such as Anti-Slavery International, Save the Children, Global March; and a host of others from civil society—trade unions, business enterprises, consumer groups, children’s service providers, working children’s groups/organizations, faith-based groups, women’s organizations, academic institutions, and so forth.

Increasingly scholars and activists expert in these “extra-legal” realms are bringing their expertise publicly to bear on the problem of child labor.²⁷³ For this reason and because of space limitations, we limit ourselves here to outlining a *multifaceted problem-solving/policy-implementing typology* whose individual elements, we believe, hold out the potential for child labor’s true abolition, especially when they are conceived in human rights terms²⁷⁴ and when they are acted upon as fully and with as much

²⁷³ For insightful detail, see Wiseberg, *supra* note 76; Cullen, *supra* note 113, at 100-10; Bachman, *supra* note 113; and Frank J. Garcia & Soohyun Jun, *Trade-Based Strategies for Combating Child Labor*, in CHILD LABOR AND HUMAN RIGHTS, at 401

²⁷⁴ As detailed in Section I, above, and at the outset of this Section II.

coherence and coordination as possible likewise in such normative terms. And this is so even if these elements are not perceived by their owners as components of a comprehensive human rights strategy against child labor. If this be the case, it is simply that their owners have not yet fully understood or internalized the power of a human rights outlook on child labor, in which event human rights education becomes the first imperative. Indeed, given the necessity of social transformation in the child labor context, human rights education— particularly that kind of human rights education that, from the nuclear family to the cosmopolitan state, impels all levels of social organization and action to view human rights as *a way of life*²⁷⁵—may be the single most important thing that anyone can do at this time. To each facet of each function recorded or capable of being recorded in our problem-solving/policy-implementing typology must be brought all of the conceptual and tactical elements we noted earlier that define what we mean by a human rights approach to the abolition of child labor.²⁷⁶

It is, at any rate, from this perspective that we identify in summary fashion the problem-solving/policy-implementing functions and their principal components that, including formal legal institutions and procedures, must be pursued if child labor is ever to be abolished or significantly reduced. The problem of child labor, we recognize, is a polychromatic problem that insists upon polychromatic solutions. In no way do we presume to have exhausted the options. Nor do we presume that our cataloguing of them reflect an always precise, exclusive fit. What follows is meant to be heuristic, suggestive—*not* definitive.

Information-retrieval and Dissemination on behalf of working children's rights

Improved methodologies (case studies, correlation studies, experimental studies, prototypes, etc.) for the systematic gathering, analyzing, and processing of data about child labor and its impact on the child laborers, their families, and their communities, including increased reliance for such data upon working children themselves P Expanded/strengthened NGO “watchdog” monitoring and trade union surveillance initiatives competent to retrieve, process, and disseminate accurate

²⁷⁵ For eloquent expression and advocacy of this notion of human rights education, see the website of The People's Movement for Human Rights Education, formerly People's Decade for Human Rights Education (PDHRE) at <http://www.pdhre.org/index.html>. For scholarly treatment, see Richard Pierre Claude, *The Right to Education and Human Rights Education*, SUR, INTERNATIONAL JOURNAL ON HUMAN RIGHTS No. 2 (2005), also <http://www.surjournal.org/eng/?PHPSESSID=59eb818edd9759689e0065a0c22d84b8>, reprinted in abridged form in CLAUDE & WESTON, *supra* note 94.

child labor data P Enhanced methods of social accounting/auditing P Improved/broadened curricular initiatives for K-12 and college level courses P Improved/broadened adult education programs, particularly for trade unions and business enterprises P Improved/broadened mass media programming (including, e.g., documentary films) P Improved/broadened artistic and other intuitive programming (e.g., “art” films, popular theater, photographic exhibits, etc.) P Other

Promotion/Advocacy on behalf of working children’s rights

Improved coordination of anti-child labor agendas, definitions, and procedures among, *inter alia*, the UN, ILO, UNICEF, IMF, World Bank, FTAs, and regional human rights systems P Enhanced coordination/competition among long-standing and emerging NGO lobbies working to eradicate child labor P Expanded/strengthened private sector lobbies specialized to particular child labor practices P Expanded/strengthened trade union capacity to campaign against child labor P Enhanced mechanisms and opportunities for working children to speak and act in their own defense (including trade union organizing) P Other

Prescription on behalf of working children’s rights

Broadened/strengthened domestic (national and local) plans and legislation prohibiting child labor and related abusive practices, coupled with the creation of permanent governmental institutions competent to ensure the effective implementation of human rights norms applicable to working children P Expanded insinuation of “core labor standards” social clauses (prohibiting abusive/exploitative/hazardous children’s work) in IMF/World Bank/WTO/FTA agreements and rules P Broadened/strengthened corporate codes of conduct prohibiting abusive/exploitative child labor P Broadened/strengthened industry codes of conduct prohibiting abusive/exploitative child labor P Other

Invocation on behalf of working children’s rights

Strengthened national and international (global and regional) complaint procedures (including shareholder and tort actions) P Expanded NGO “watchdog” monitoring groups such as the US-based Fair Labor Association (FLA) and Worker Rights Consortium (WRC) competent to challenge violations of the rights of working children P Enhanced mechanisms and opportunities for working children and others to protest when norms for their protection are violated P Other

²⁷⁶ See *supra* Section I and the beginning of this Section II.

Application/Enforcement on behalf of working children's rights

Expanded ratification and enforcement by states of international law-making instruments directed at the elimination of child labor P Strengthened enforcement mechanisms and procedures among the UN, ILO, UNICEF, IMF, World Bank, FTAs, regional human rights systems, and other relevant IGOs P Strengthened domestic law enforcement mechanisms and procedures, including the effective coordination of governmental institutions charged to implement human rights norms applicable to working children P Enhanced economic strategies such as consumer boycotts, economic embargoes, and trade sanctions P Improved/expanded product/social labeling or certification schemes P Other

Termination on behalf of working children's rights

Broadened/strengthened national and international initiatives directed at the repeal of public laws and policies that encourage, support, or otherwise tolerate child labor P Enhanced interception and cancellation of private contractual and other social arrangements that encourage, support, or otherwise tolerate child labor P Other

Appraisal/Recommendation on behalf of working children's rights

Strengthened evaluation of the short- and long-term effectiveness of anti-child labor norms, institutions, and procedures (local, national, and international) and revision or repeal of those proven misguided or unsuccessful, accompanied by concrete recommendations, both reformist and transformist in character, for enhanced performance in this regard and including:

Reformist Recommendations on behalf of working children's rights

Strengthened developmental strategies (including debt relief and foreign assistance) that facilitate the rehabilitation and social integration (including education) of working children and their families P Expanded/enhanced training of parents, teachers, social workers, medical authorities, police officials, and others responsible for protecting working children's best interests P Income substitution via public subsidies targeted for families of working children P Improved educational cost/opportunity/quality for children and enhanced support of them through education of families, employers, and communities P Provision of real economic and social advancement opportunities for children and their families P Broadened beneficial/non-

exploitative work alternatives for children in need of income P Expanded/enhanced training of abused/exploited children to facilitate their social reintegration consistent with their individual dignity and potential P Other

Transformist Recommendations on behalf of working children's rights

Expanded strategies of humane governance that seek persuasively, both within and outside households, to change the myths and values that affect the way people think and act relative to abusive/exploitative/hazardous children's work, and that therefore commonly extend beyond the capacity of traditional enforcement means and mechanisms (e.g., innovative educational and work strategies that help children in their own efforts to change their life conditions, that help whole communities comprehend child labor in holistic public health terms, etc.) P Broad and deep human rights education—both “top-down” and “bottom-up”—to encourage human rights as a way of life and thereby nurture a culture of respect for children's rights P Other

We repeat: a strategy worthy of child labor's abolition requires a multitude of mechanisms and techniques—from systematic research and documentation, to education and schooling, to domestic legislative programs, to national and international enforcement measures, to long-term initiatives of social transformation—and at all levels, from the most local to the most global, and on all fronts. It also must engage all elements of society (individuals, families, communities, academic institutions, trade unions, business enterprises, faith-based groups, non-governmental organizations and associations, government agencies, intergovernmental organizations). Perhaps most importantly, it must proceed always self-consciously and proactively in the knowledge and determination that all the imagination and energy required to succeed must be applied in service to children's human rights as well as their human needs.

CONCLUSION

On final analysis, the abolition of child labor requires broad and deep initiatives at social transformation. A human rights understanding and approach to the problem of child labor, presupposing an holistic and multifaceted orientation to the individual child and society, is therefore indispensable. Conceptualizing child labor as a human rights issue alone “raises the stakes”; it changes the dynamic in positive ways and gives claims of abuse and exploitation greater legal and moral force.

However, reorienting one’s worldview, while essential, is not sufficient to bring about the broad-based change we believe is required to eradicate the workplace abuse and exploitation of children. Thus we have sought to identify a wide range of practical mechanisms and measures, both legal and “extra-legal,” that may be adopted or adapted in the planning, creation, implementation, and assessment of anti-child labor initiatives. Some of these mechanisms and measures draw on the human rights vocabulary and vocation; others do not, though with appropriate imagination and will can be made to do so by reconceptualizing the task at hand and its solutions. Diverse mechanisms and measures drawn from multiple disciplines, founded on core human rights principles, maximally fine-tuned and coordinated, and guided by the values of transparency, accountability, participation, and non-discrimination offer, we believe, humankind’s best hope for righting the wrong of child labor. And when one contemplates the brute statistics, and especially when one puts a child’s face on them (imagine, for example, a little Cambodian boy or girl scavenging barefoot atop the huge Stung Meanchey garbage dump on the outskirts of Phnom Penh), it becomes eminently clear that the time is long past due to take children’s human rights seriously and abolish child labor without further delay. Nobel laureate Seamus Heaney says it just right:

Two sides to every question, yes, yes, yes . . .
But every now and then, just weighing in
Is what it must come down to . . .²⁷⁷

²⁷⁷ From Seamus Heaney, *Weighing In*, in *THE SPIRIT LEVEL* 22-23 (1996).