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CHILD LABOR AND EXPLOITATION

ALEC FYFE*

Well, thank you very much and good afternoon. This is a first for me as I have never spoken at an American university. I am one of the many Englishmen in New York. This, however, seems to be a good place to start considering what I hear about the reputation of the university.

I was very tempted by what Professor Gregory said earlier, to speak on anything I liked. So I thought I might speak on Jamaica or soccer or the films of my namesake, Alec Baldwin. However, you probably did not come to hear me speak on those subjects. What I will talk about is national law and international standards relating to child labor. Clearly, there is a strong and broadly based international commitment now to the elimination of child labor. In the last two years there have been two major international conferences held in Amsterdam and Oslo,¹ and

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As a Consultant to ICDC in Florence, Italy (1997), Mr. Fyfe designed the first UNICEF global capacity building program on child labor. He was also a Consultant to UNICEF Bangladesh (1996) and a Child Labor Officer for the ILO in Geneva (1991-95). Previously, he served as Inspector for Intercultural Education for the Hampshire County Council, U.K. (1987-91); Education Officer for the U.K. Committee for UNICEF (1982-87); Teacher of Social Sciences for the Northamptonshire County Council, U.K. (1976-81); Education Officer for OxFam U.K. (1974-75); Teacher, Wolmers High School, Kingston, Jamaica (1971-73) and Assistant Lecturer, Further Education College, Leicester, U.K. (1970-71).

Mr. Fyfe's publications include: *All Work and No Play: Child Labour Today*, UNICEF/TUC (1985); *CHILD LABOUR* (Polity Press, Cambridge 1989); *Child Labour: A Guide to Project Design*, ILO (1993); *EDUCATION FOR CULTURAL DIVERSITY: THE CHALLENGE FOR A NEW ERA* (Routledge 1993); *Trade Unions and Child Labour: A Guide to Action*, ILO (1997).

¹ See UNICEF (visited Feb. 26, 2000) <<http://www.unicef.org>>. A set of UNICEF issue and background papers were presented at the International Conference on Child Labour, Oslo, 27-30 October 1997. *Id.* Presentations dealt with social mobilization and the interrelationships between child labor and education. *Id.*; see also *International Labor*

there is a move towards adoption by the ILO of a new international convention on the worst forms of child labor.² Internationally, child labor is a very high profile subject.

In my opinion the prominence of child labor is due to two major forces or factors. First, there is the growing global concern with human rights and children's rights as part of this. Second, is the concern over the use of child labor in traded goods which has found expression in the ethical trade movement and corporate social responsibility. I hear Nike is an issue at this university too. In fact, this panel, and this symposium, is quite a good reflection of these two major streams at work.

Now, as Tony said, nearly all countries are signatories of one or more international agreements that are pertinent to child labor. First of all, there is the minimum age convention adopted in 1973, Convention Number 138,³ and the convention that UNICEF is very much guided by, the Convention on the Rights of the Child adopted in 1989.⁴ We are coming up to the tenth anniversary of that convention. I think we should also mention in this vein the World Declaration on Survival, Protection and Development of Children, which was adopted by heads of government, here in New York, in 1990.⁵

interrelationships between child labor and education. *Id.*; see also *International Labor Organization* (visited February 26, 2000) <<http://www.ilo.org>>. The ILO held the Amsterdam Child Labour Conference in Amsterdam, The Netherlands, 26-27 February 1997.

² See REPORT OF THE COMMITTEE ON CHILD LABOUR, INTERNATIONAL LABOUR CONFERENCE, RECORD OF PROCEEDINGS, 87th Sess. (1999) (reprinted at 38 ILM 1215 (1999)) [hereinafter REPORT OF THE COMMITTEE ON CHILD LABOUR].

³ C138 MINIMUM AGE CONVENTION (1973). See <<http://www.ilo.org>>.

⁴ *United Nations: Convention on the Rights of the Child*, 28 I.L.M. 1448 (1989), reproduced from the U.N. General Assembly Document A/RES/44/25 of December 5, 1989. General Assembly Resolution 44/25 was adopted without vote on November 20, 1989. The Convention is annexed to the resolution. The Introductory Note was prepared for International Legal Materials by Cynthia Price Cohen, Human Rights Internet Representative to the United Nations. "This act brought to fruition a sixty-five year push for formal international legal recognition of the human rights of children. The Convention on the Rights of the Child is a unique human rights treaty in that it protects not only the child's civil and political rights but that it also extends protection to the child's economic, social and cultural rights and humanitarian rights. It is expected that the Convention will be open for signature early in 1990. It will go into force after the twentieth instrument of ratification is deposited with the Secretary-General of the United Nations.

⁵ World Summit for Children was held in New York City on September 29-30, 1990, and the *Declaration* was signed and may be viewed at <<http://www.unicef.org/wsc>>. It was the largest gathering of world leaders in history assembled at the United Nations. Led by 71 heads of State and Government and 88 other senior officials, mostly at the ministerial level, the World Summit adopted a Declaration on the Survival, Protection and Development of Children and a Plan of Action for implementing the Declaration in the

These national child labor laws and the international standards derive from the first attempts to protect children in industrializing Britain in the 1830's through minimum age regulations backed by a labor inspectorate. Later in the 1860s, the first international workers congress called for an international law, and indeed an international campaign well before IPEC, to address child labor. This demand eventually led to the formation of the ILO itself in 1919. Therefore, in many ways the ILO was formed to deal with child labor internationally. Eliminating child labor remains one of its core objectives.

The ILO minimum age conventions on which national legislation is so often modeled has now been complemented by the Convention on the Rights of the Child, or CRC.⁶ This has brought a new and important perspective to the issue, complementing the labor focus with a focus on children's rights. For seventy years, child labor had been mainly viewed as a labor market issue, than as a minimum age issue. It is important to point out, that the CRC has now been signed and ratified by all countries, except two.⁷ One of those is the United States, which has signed but not ratified the convention. The other country is Somalia, which has neither signed nor ratified. Now, at least Somalia probably has the excuse of not having a functioning government. You might argue the same for the United States, during much of last year.

Now, this makes the CRC the most widely accepted human rights treaty in history.⁸ Apart from Article 32 of the convention, which says that children shall be protected from economic exploitation and any work that's likely to be hazardous or interfere with a child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social

1990s. *Id.* The Declaration is 25 declarations divided into categories: challenge, opportunity, commitment, challenge, next steps. *Id.*

⁶ G.A. RES. 44/25, U.N. GAOR, 44TH SESS., U.N. DOC. A/RES/44/25 (1989). See generally *United Nation, Convention on the Rights of the Child* (updated February 13, 1996) <<http://www.unchr.htm>>. The Convention on the Rights of the Child was developed from the 1948 United Nations Universal Declaration of Human Rights. *Id.* Under the CRC, children were recognized vulnerable group. *Id.*

⁷ See U.S. COMM. FOR UNICEF, U.N. CONVENTION ON THE RIGHTS OF THE CHILD: FREQUENTLY ASKED QUESTIONS 1 (1997).

⁸ See CONVENTION ON THE RIGHTS OF THE CHILD: SECOND REPORT TO THE U.N. COMMITTEE ON THE RIGHTS OF THE CHILD BY THE UNITED KINGDOM 1 (1999). The Convention on the Rights of the Child is the most widely ratified of all U.N. human rights instruments ratified by over 190 countries. *Id.*

development,⁹ some of the fifteen articles of the convention are also pertinent to child labor, particularly the rights to education, health and development.

Historically, the main approach to child labor has been to set minimum age legislation. In recent years, however, this traditional legislative approach has been questioned. This questioning is coming from certain elements within international non-governmental organizations who are stressing a so-called "child-centered" approach or perspective. The claim is that legislation is neither an effective tool, nor in most cases, in the best interests of most children who work.

Most child work is benign, so the argument goes, and may indeed contribute positively to child welfare and development. From this perspective, so-called universal standards like the ILO standards and the CRC are little more than a superimposition of ideas from the north on societies to which northerners are culturally alien, by those who are divorced from the facts of those children's lives.

I simply do not share that view, which has been unnecessarily divisive within the global child labor campaign. For example, it is certainly true that enforcement of legislation remains a major problem, particularly in those sectors where the worst forms of child labor are found: the informal sector, encompassing agriculture, domestic work, home-based work, and the areas of prostitution and sexual exploitation. These are the worst forms of child labor that are going to be the subject of the new ILO convention, but they are not the easiest problems to tackle by conventional means.

I do not think, however, this difficulty is an argument for abandoning legal reform or for not attempting to improve the traditional forms of enforcement via an inspectorate. Newer, more community-based approaches to monitoring child labor, where the inspectorate cannot reach are also necessary. Children themselves might play a role in such initiatives.

Indeed, I think more effort needs to go into consolidating child labor laws and regulations in order to eliminate inconsistencies. For example, in many countries the age for completion of compulsory education is not consistent with the minimum age of

⁹ See *United Nations: Convention on the Rights of the Child*, *supra* note 4, at art. 32.

employment. This has been pointed out, by the way, in a recent U.S. Department of Labor report. It has been a cornerstone of ILO policy for over fifty years to eliminate these inconsistencies.

In fact, it has long been claimed that the best child labor laws may well be those that make basic education compulsory.¹⁰ In fact, it was a prominent member of the U.S. Child Labor Committee who made that argument over a century ago. Perhaps the best child labor laws are education laws.

For example, education is not compulsory in India, where forty to forty-five percent of the global child labor population is found.¹¹ Two-thirds of those 250 million child laborers Professor Gregory spoke about are found in South Asia. In India less than seventy percent of children are enrolled in or attend primary school. Legislation to make birth registration compulsory would also considerably assist efforts at eliminating child labor by assisting access to education and the enforcement of child labor laws. In many countries, children cannot go to school unless they have a birth certificate. And how can you gauge what the age of a child is? I have been around garment factories in Bangladesh where the ILO monitors had to guess by looking at a girl whether she was 13 or 14. If she was 14, she could work legally in that factory. If she was 13, she could not. How can you tell?

I mean, one monitor at one stage looked at me while we were looking at this girl, and asked me, "Do you have any suspicions?" I felt like saying, "No, only about myself. What am I doing here?" In the end the problem of eliminating child labor is not a matter of legislative reform or of enforcement. Indeed, it is not even a matter of economics, but one of a government's will to act and to make the right choices in the interest of all children. India is again perhaps the classic example. Listen to this exchange between a worker's delegate from England and a representative of the Government of India at an ILO conference debating the

¹⁰ See, e.g., COMMITTEE ON THE RIGHTS OF THE CHILD, REPORT ON THE TENTH SESSION, UN DOC. CRC/C/46, para. 194 (1995); U.S. DEP'T LABOR, BUREAU OF INT'L LABOR AFFAIRS, BY THE SWEAT AND TOIL OF CHILDREN: THE USE OF CHILD LABOR IN AMERICAN IMPORTS 23 (1994).

¹¹ See, e.g., 141 CONG. REC. E1, 507-01 (1995) (statement of Rep. Burton) (noting estimates of child labor in India at around 50 million); Peter J. Spielman, *Child Slavery: Millions of Asian Kids Caught in Long, Cruel Labor*, DENVER POST, Sept. 19, 1995, at A2 (reporting estimates that between 73 and 115 million children are working in India); John Stackhouse, *Little Match Girls Parents Blamed for Child-Labor Abuses in India*, CHI. TRIB., Jan. 30, 1994, at 4 (noting large scale child labor in South Asia).

adoption of a new child labor convention. This is an extract of the worker's delegate:

"I recognize the fact that in India the education machinery is so entirely defective. That, of course, is another grave responsibility of the Indian government. But I venture to suggest that one of the quickest ways of securing the speeding up of education provisions in India is by the prohibition of child labor."

Now, the representative of the Government of India replied, "In India, even the parents have at present, in the vast majority of cases, no education at all. And it takes a much longer time to accomplish the same object of educating public opinion in these matters than it took in England. We are all doing our best, but we cannot accomplish wonders without some elapse of time. And we only ask for a little time."

Now, when do you think that exchange took place? Well, you might be forgiven for thinking that it was part of the first discussion last year in Geneva on the new ILO convention. I was there. In fact, this exchange took place on the 19th of November, 1919, in Washington, at the first ILO conference during the first discussion of the first minimum age convention, 80 years ago¹². We're still hearing the same arguments batted backwards and forwards. "Just give us a little more time."

The best reply to this, I think, comes from one of the poems of Gabriela Mistral, the Chilean Nobel laureate for literature in 1945, which is inscribed on a wall at the entrance of UNICEF's headquarters in New York. Come in and have a look at it.

She said, "[m]any things can wait. Children cannot. To them we cannot say tomorrow. Their name is today."¹³ Thank you very much.

¹² C5 MINIMUM AGE (INDUSTRY) CONVENTION (1919). See <<http://www.ilo.org>>.

¹³ Gabriela Mistral, THEIR NAME IS TODAY (1945).