

The Negotiable Child

Marianne Dahlén

The Negotiable Child.

The ILO Child Labour Campaign 1919-1973



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Abstract

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This dissertation examines the Conventions and Recommendations to regulate the minimum age for admission to employment between the years 1919 and 1973 – the ILO minimum age campaign. The adoption process has been studied in its chronological and historical context. The dissertation has three points of departure: that childhood is a historical construction and that the legal material is part of that construction; that the minimum age campaign suffered from a ‘hang-over-from-history’, namely, the history of Western industrialisation during the 19th and early 20th centuries; and, finally, that children had a subordinate and weak position in the minimum age campaign.

The study was organised around five central themes: (1) the over-all theme of predominant conceptions of children and work; (2) the relationship between industrialised and colonised and developing nations; (3) the relationship between the child, the family and the state; (4) minimum age; and (5) the importance of school.

The most important results of the study are that: (1) In view of the revolutionary changes during the 20th century the continuity in the minimum age campaign was remarkable. In 1919, the ‘child labour problem’ was an issue mainly for the Western industrialised world. By the end of the campaign, in 1973, the transformations in societies during the century had made ‘the child labour problem’ an issue mainly for the developing world and with different conditions and implications in many respects. The content and ‘grammar’ of the minimum age campaign was however never really challenged.

(2) The study has verified that the minimum age campaign suffered from a ‘hang-over-from history’. The campaign built directly on the Western industrial experience during the 19th and early 20th centuries. The Western dominance in the ILO, the legal transplants, and the roots in the labour movement all contributed to the ‘hang-over’. (3) The minimum age campaign was modelled on the ‘norm of the Western industrialised childhood’. The norms and realities of childhood in other parts of the world were neglected or considered as provisional and inferior phases in relation to the Western ‘norm’. In this way, there were two separate childhoods in the minimum age campaign: ‘the normal’ childhood conceived for Western conditions and ‘the other’ childhood conceived for the ‘imperfect’ conditions of poor children in the colonised and developing nations.(4) In the minimum age campaign the ‘best interests of the child’ was negotiable and was subordinated in case of conflict with other interests.

Keywords: child labour, childhood history, childhood studies, labour law, children's rights, children and work, minimum age, International Labour Organisation, international labour law, ILO minimum age campaign, ILO

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Courtesy George Eastman House

To Eivor & Thomas Dahlén

Acknowledgements

Children and work are two of the most fundamental aspects of human life. In a modern Western context, the world of work and the world of children are carefully separated – and often considered to be more or less incompatible. In other contexts children and work have different meanings. Working children challenge our ideas and perception of the borders between childhood, adulthood and the world of work.

The topic of my study is the minimum age campaign that was conducted within the framework of the International Labour Organisation (ILO) from 1919 to 1973. The narrative of the ILO is in many respects the narrative of the 20th century. The organisation predates the United Nations by a quarter of a century and it brought most of the questions discussed in the world of work today to the fore as early as the 1920s. The general narrative of the ILO is in many ways a success story. The results of the concerns for working children are more ambiguous. It has been a privilege and a pleasure for me to have been given the opportunity to study these interesting and relevant questions for more than five years, for which I am truly grateful.

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Part I.

The Problem and the Framework of the Study

Chapter 1. Introduction

1.1 Child labour – an evil of the past?

In 1843 Elizabeth Barrett Browning published a poem entitled “The Cry of the Children” in *Blackwood’s Edinburgh Magazine*. The poem has been regarded as one of the first attempts at drawing attention to the dark side of industrial capitalism in describing the cruel conditions of all the children who were exploited in factories, workshops and mines and contains the following verses:

"Alas, my children, why do you look at me?"
— *Medea*

Do ye hear the children weeping, O my brothers,
Ere the sorrow comes with years?
They are leaning their young heads against their mothers,
And that cannot stop their tears.
The young lambs are bleating in the meadows,
The young birds are chirping in the nest,
The young fawns are playing with the shadows,
The young flowers are blowing toward the west —
But the young, young children, O my brothers,
They are weeping bitterly!
They are weeping in the playtime of the others,
In the country of the free.
[...]
"For oh," say the children, "we are weary,
And we cannot run or leap.
If we cared for any meadows, it were merely
To drop in them and sleep.
Our knees tremble sorely in the stooping,
We fall on our faces, trying to go;
And, underneath our heavy eyelids drooping,
The reddest flower would look as pale as snow.
For, all day, we drag our burden tiring
Through the coal-dark, underground —

Or, all day, we drive the wheels of iron
 In the factories, round and round.
 [...]
 "For all day the wheels are droning, turning —
 Their wind comes in our faces, —
 Till our hearts turn, — our heads with pulses burning,
 And the walls turn in their places.
 Turns the sky in the high window blank and reeling,
 Turns the long light that drops adown the wall,
 Turn the black flies that crawl along the ceiling,
 All are turning, all the day, and we with all.
 And all day the iron wheels are droning,
 And sometimes we could pray,
 'O ye wheels' (breaking out in a mad moaning)
 'Stop! be silent for to-day!'"

[...]

They look up with their pale and sunken faces,
 And their look is dread to see,
 For they mind you of the angels in high places
 With eyes turned on Deity! —
 "How long," they say, "how long, O cruel nation,
 Will you stand, to move the world, on a child's heart, —
 Stifle down with a mailed heel its palpitation,
 And tread onward to your throne amid the mart?
 Our blood splashes upward, O gold-heaper,
 And your purple shows your path!
 But the child's sob in the silence curses deeper
 Than the strong man in his wrath."¹

In the verses above Elizabeth Barrett Browning gives voice to her indignation about the poor children who are abandoned by God, their parents and society. She also gives an expressive illustration of what has often been described as 'Child labour as an evil of the past', *i.e.* children as victims of the industrial capitalism in the late 19th century.² Here she depicts their pale and sunken faces as well as their labour when they drag their burden in the mines or turn the iron wheels in the factories, in what appears to be a perpetual process. The children are weary of working and of lacking

¹ The original poem has thirteen verses, of which I, IV, VII and XIII are quoted here. For a full version see: Norton Anthology of English Literature, www.wwnorton.com/nael/victorian/topic_1/children.htm.

² For example, the International Labour Office wrote when suggesting a general Minimum Age Convention: "Under the influence of international standards, under the restraint of minimum age laws, under the pressure of economic and social transformation, *child labour in the classic sense of mass exploitation of children in mines and factories has become an evil of the past.*" [My italics], Grey Report (1) 1972, p. 21.

recreation, play and fresh air and their conditions are ironically contrasted to the vision of Britain, expressed in the poem as “the country of the free”.

Even if working children was not a new phenomenon – children have worked as long as history can tell – it was not until the middle of the 19th century that it became an issue for public debate.³ Industrial capitalism created new opportunities for mass production and mass exploitation of workers, including women and children. New factory towns grew up and harsh conditions, especially for the children, became more visible in society.

Elizabeth Barrett Browning was not alone in criticising the exploitation of children during the Industrial Revolution. In fact, a British parliamentary commission in 1842-43 published a report on the conditions of children working in mines and factories, from which Barrett Browning evidently drew inspiration. Nevertheless, her poem has been regarded as one of the most powerful social protests of her time. It certainly contributed to the public debate in Britain that led to the adoption of more rigorous factory laws that regulated children’s work by minimum age limits and regulation of the hours of work.⁴

1.2 The International Labour Organisation and the minimum age campaign against child labour

At the beginning of the 20th century the question of child labour and children’s rights became the focus for international concern, principally by the Minimum Age Conventions adopted by the Permanent International Labour Organisation (ILO) that was established in 1919 as a part of the Versailles Peace Treaty.⁵ After the First World War it was clear that the living and working conditions of the proletariat had become a serious threat to society. The revolutions around Europe, not least the Russian October Revolution of 1917, made the governments and industrialists in Europe acutely aware of the need to improve the workers’ living and working conditions. But they feared the competitive disadvantages that would arise from unilateral regulation of labour conditions since that would lead to higher production costs. These factors worked as incentives for international co-operation in the field of labour legislation. The overall objective for the new organisation was “the establishment of universal peace”... “based on

³ Heywood 2001, pp 121-123, de Coninck-Smith, Sandin, & Schrupf 1997, pp. 9-10 and 14. The authors explain the little attention paid to child work other than industrial work by lack of source material and a ‘cultural blindness’ that results from the “ambiguous attitude towards children’s work among adults”...“Yet, while its nature and dimensions may have changed, child labour itself remains a widespread and persistent phenomenon.”

⁴ The earliest British legislation on child labour was adopted in 1802. See *infra*, Chapter 4.2.1.

⁵ Versailles Peace Treaty, Part XIII, Labour. Text in 225 CTS 188. See Malanczuk, Peter, Akehurst’s Modern Introduction to International Law, pp. 23, 25, 209 with further references.

social justice”.⁶ In practice the assignment was to promote the worker’s rights through the adoption of an international labour code.

The protection of children was of the highest priority for the new organisation. This was confirmed by law, in the preamble to the ILO Constitution and in the so-called ‘Labour Clauses’. The ‘Labour Clauses’ enumerated nine “methods and principles for regulating labour conditions which all industrial communities should endeavour to apply” that were “of special and urgent importance”. The abolition of child labour was one of those principles, and its purpose was to permit children “the continuation of their education” and to “assure their proper physical development”.⁷

That children were a high priority for the ILO is further confirmed by the fact that the question of the employment of children was placed on the agenda of the first meeting of the International Labour Conference.⁸ In this way, the ILO began the international minimum age campaign against child labour right from the start in 1919. By 1921 the ILO had adopted six whole Conventions concerning working children, regulating minimum age for employment, prohibition of night work for children under 18 and medical examination of young workers at sea.⁹ A number of Conventions and Recommendations were adopted during the years until the latest Minimum Age Convention – to date – was adopted in 1973¹⁰.

In 1989 the ILO minimum age campaign was revitalised by the adoption of the United Nations Convention on the Rights of the Child.¹¹ Firstly, the Convention on the Rights of the Child placed the question of minimum age on the international agenda again. Secondly, in Article 32 States Parties recognise the right of the child “to be protected from economic exploitation

⁶ This was established in the preamble to the original Constitution of the ILO. It was not only the ILO that saw the protection of children as a prerequisite for international peace. Marshall writes that the Save the Children International Union “trusted that there was no more solid basis for international collaboration towards peace than the education and the protection of children”, and that the missionaries shared this conclusion, Marshall 2004, p. 279.

⁷ Article 427, (Sixth), ILO Constitution 1920.

⁸ ILO Constitution 1920, Annex, First Meeting of Annual Labour Conference 1919, “(4) Employment of Children – (a) Minimum age of employment; (b) During the Night; (c) In unhealthy processes.”

⁹ Minimum Age Convention No. 5 (Industry), Minimum Age Convention No. 7 (Sea), Minimum Age Convention No. 10 (Agriculture), Minimum Age Convention No. 15 (Trimmers and Stokers), Night Work Convention No. 6 (Industry), Medical Examination of Young Persons Convention No. 16 (Sea) adopted 1919-21.

¹⁰ Minimum Age Convention No. 138.

¹¹ United Nations Convention on the Rights of the Child adopted opened for signature, ratification and accession by GA Resolution 44/25 of 20 November 1989, 1577 UNTS 3. The Convention on the Rights of the Child entered into force 2 September 1990. Only the United States and Somalia are not parties to the Convention. See <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterIV/treatt19.asp> (visited 20/01/07). See further Detrick 1992 and 1999, Alston 1994, van Bueren 1998 and Hodgkin & Newell 2002. See <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterIV/treaty/19.asp>.

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".¹² In Article 32.2, the Convention on the Rights of the Child refers directly to the ILO Minimum Age Conventions:

State Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and *having regard to the relevant provisions of other international instruments States Parties shall in particular: (a) Provide for a minimum age or minimum ages for admission to employment* [my italics]; (b) Provide for appropriate regulation of the hours and conditions of employment; (c) Provide for appropriate penalties and other sanctions to ensure the effective enforcement of the present article.

A more indirect connection between the Minimum Age Conventions and the Convention on the Rights of the Child is that there have been many countries ratifying the Convention following its adoption. In this way, according to both the ILO and to the Convention on the Rights of the Child, 15 years is established as the universal minimum age for admission to work. The Convention is universally ratified. It applies to all human beings under the age of 18 and it lays down that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, "the best interest of the child shall be a primary consideration". Article 3 of the Convention is often referred to as one of the four cornerstones of the Convention, which means that, in addition to the 'primary' function, it also has a role as a source of interpretation of the other articles of the Convention. The other three cornerstones of the Convention are: Article 2, non-discrimination; Article 6, the child's inherent right to life, survival and development; and Article 12, the child's right to freely express his or her views in all matters that concern the child and the right to be heard in judicial or administrative proceedings that affect the child. However, according to the United Nations Committee on the Rights of the Child, *all* the articles of the Convention are interrelated and intertwined and should be interpreted in the light of each other.¹³

Furthermore, the general Minimum Age Convention from 1973 has been made one of the ILO 'core Conventions' by the Declaration on Fundamental Principles and Rights at Work and its Follow-up from 1998. That means that all member states must "respect promote and realize" the Minimum Age Convention, regardless of whether they have ratified it or not.¹⁴

¹² Article 32, Convention on the Rights of the Child.

¹³ See further van Bueren 1998, Hammarberg 2006 and Stern 2006.

¹⁴ All members, even if they have not ratified the conventions in question (freedom of association and the right to effective collective bargaining, the elimination of all forms of

The ILO has continued its involvement to abolish child labour within the International Programme on the Elimination of Child Labour (IPEC), which started to operate in 1992 and is financed outside the ILO regular budget by donor countries.¹⁵ In 1999 the ILO adopted the Worst Forms of Child Labour Convention, as an attempt to stop the gravest forms of exploitation of children.¹⁶ In the Convention, the worst forms of child labour are defined as: a) slavery, trafficking, debt bondage, serfdom, forced or compulsory labour including forced or compulsory recruitment of children in armed conflict, b) the use of or offering a child for prostitution, production of pornography in all forms, c) the use of or offering a child for illicit activities, particularly in the drug trade, and d) work which by its nature or the circumstances in which it is carried out, is likely to be harmful to the health, safety or morals of the child.¹⁷ Member states shall take “immediate and effective measures” to secure the prohibition and elimination of those worst forms of child labour.¹⁸

In spite of this extensive anti-child labour regime, elaborated over 70 years, children are still living and working under cruel conditions like those described in Elizabeth Barrett Browning’s poem. And people today are still roused to indignation when they see child exploitation, just like Barrett Browning and the people of her time. Today, a quarter of a billion children aged 5 to 14 - out of the total 2.2 billion children under 18 in the world – work full time to earn a living.¹⁹ This can be compared to the number of children without primary schooling: 104 million, of whom 56 per cent are girls. In addition, there are an estimated 130 million children who do not attend school regularly, which is closely connected to work commitments.²⁰ Not only do they work full-time or more, but a majority of the working children are also engaged in the worst forms of child labour as defined in the Worst Forms of Child Labour Convention.²¹ Consequently, there is an immense gap between the ideal established in the international standards and the real lives of a great proportion of the world’s children. And obviously the Minimum Age Conventions are not effective in stopping children from working.

The main explanation of the failure to fulfil the goal of the Conventions to abolish child labour is evidently the lack of political will and resources of

forced or compulsory labour, the effective abolition of child labour and the elimination of discrimination in respect of employment and occupation).

¹⁵ See IPEC homepage: www.ilo.org/public/english/standards/ipec, (visited 29/01/07).

¹⁶ Worst Forms of Child Labour Convention, No. 182, adopted at the 87th Session of the International Labour Conference on 17 June 1999 and came into force on 19 November 2000. Ratified by 163 member states (29 January 2007).

¹⁷ Worst Forms of Child Labour Convention, Article 3.

¹⁸ Worst Forms of Child Labour Convention, Article 1.

¹⁹ *A Future Without Child Labour*, p. 15 and *The End of Child Labour*, pp. 6-9.

²⁰ *The End of Child Labour*, p. 57.

²¹ *A Future Without Child Labour*.

nations around the world to undertake the necessary reform and to redistribute wealth and influence, both nationally and internationally. But there are further explanations and I think that part of the problem lies in the historical origins of the Conventions. In the Minimum Age Conventions, labour rights converge with children's rights. The Conventions are underpinned by – often diverging – historical employers', workers' and governments' interests that could be defined as 'industrial interests'. Because of the unique tripartite structure of the ILO, governments, and the industrial partners – trade unions and employers – all had influence over the adoption process. By contrast, children were unrepresented in the adoption process. As was usual then, neither children nor children's organisations participated in the drafting process of the Minimum Age Conventions. And nations with many child workers were less powerful in the ILO than the industrialised nations.

In a wider context, the ILO Conventions and Recommendations are part of the international human rights regime. As a matter of fact, the ILO's promotion of fairer and better working conditions was the first great step forward for international human rights.²²

All this complexity and inherent tensions have inspired me to write this dissertation. Legal history is a fruitful approach for contributing to the understanding of the international child labour regime. More precisely, the dissertation deals with the ILO Minimum Age Conventions and Recommendations that were adopted between 1919 and 1973. It deals with the drafting and adoption process and how it evolved during the period. It is also a study of how the question of children and work was debated and dealt with within the ILO. I will highlight the position of the child in that process. To put it in another way: how did the interests of the children relate to work, family, ideology, politics and economics in the minimum age campaign?

1.3 Outline of the dissertation

The purpose of this first chapter has been to introduce the subject matter of the inquiry – the ILO minimum age campaign – and to point at its historical and present context and relevance. In the remaining chapters of Part I, I will present the problem and questions and set the theoretical and methodological framework of the study. In Chapter 2 the purpose of the study will be presented and the following theoretical perspectives will be discussed: concepts of children and work; the relationship between work and school; the child, the family and the state; and industrialised, colonised and

²² Together with the guarantees of the Paris Peace Treaties of a fair treatment of inhabitants of mandated territories and for certain national minorities in Eastern and Central Europe, see Malanczuk 2002, p. 209. See also Herzfeld Olsson 2003, pp. 47-48.

developing nations. In Chapter 3 the methods and material will be presented. How and why can a methodological combination of chronology, context and a thematic approach contribute to the understanding of the ILO minimum age campaign? Chapter 4 will provide the historical origins in 19th century Europe of the ILO and the minimum age campaign: the early attempts to international cooperation concerning labour legislation; the influence of the labour movement; the early attempts to protect children and the Factories Acts; and the development of the Children's Rights Declaration. The foundation of the ILO after the First World War will also be described in the chapter.

In Part II – IV, Chapter 5 – Chapter 11, the minimum age campaign will be examined and analysed departing from the perspectives and methods presented in the first four chapters. The minimum age campaign will be presented chronologically and as three distinct stages or periods: (II) Area-specific limitations 1919-1933; (III) Raising the minimum age 1936-1965; and (IV) A general minimum age 1973. The relevant developments within the ILO as well as in the world will be presented and included in the analysis of the development of the minimum age campaign. I will discuss how war, depression, colonialism, decolonisation, trade unions, employers and governments may have influenced the minimum age campaign and the perceptions of childhood and work as well as its prioritisations.

In Part V, Chapter 12, finally, the results and conclusions of the dissertation will be presented.

Chapter 2. Purpose and Framework of the Study

2.1 Purpose

The overall purpose of this dissertation is to examine and analyse the development and growth of ILO Minimum Age Conventions and Recommendations adopted between 1919 and 1973. I am going to call the project: ‘The ILO minimum age campaign’. I will describe the adoption process and place the campaign in its historical context.

The dissertation has three points of departure. The first is that childhood is historically, socially and culturally constructed and that the legal material plays an important part in constructing childhood. I will particularly investigate how the aim of the organisation to protect children, as expressed in the preamble to its Constitution²³, was understood during the minimum age campaign.

The second point of departure is that the inefficiency of the minimum age campaign can be partly explained by the fact that it builds on the 19th century factory legislation that was adopted to stop abuse of children at the peak of the Industrial Revolution in Europe and North America and that this

²³ The original wording of the preamble to the ILO Constitution is “Whereas the League of Nations has for its object the establishment of universal peace, and such peace can be established only if it is based upon social justice;

And whereas conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required: as, for example, by the regulation of the hours of work, including the establishment of a maximum working day and week, the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of freedom of association, the organisation of vocational and technical education and other measures;

Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries”. ILO Constitution 1920. This is the original wording. The Constitution has been amended by the addition of “recognition of the principle of equal remuneration for work of equal value” that is inserted after “employed in countries other than their own”, ILO Constitution.

historical baggage has caused the Conventions and Recommendations to suffer from both Euro centrism and “a hang-over from history”.²⁴

The third point of departure is that children had a subordinate position in relation to adults when the Conventions were adopted. The weak and subordinate position in society at large which regarded children as ‘naturally’ subordinated to adults had consequences for the prioritisation of the protection of children when the Minimum Age Conventions were adopted. This standpoint is inspired by power-relational and generational perspectives²⁵ and gives topical interest to questions such as: Who defined what was ‘in the best interests of the child’? Who decided whether children should be allowed to work or not? With what were children allowed to work and under what circumstances? How much influence did children have? How were resources, in the family and in the state, distributed between adults and children and how were children who were put out of work supposed to maintain themselves? Accordingly, I will also discuss how the protection of children was negotiated and prioritised against a variety of adult interests and objectives.

When I started to go through the ILO material with this outlook, I found that the debate was centred on a number of dominating themes and that the material could easily be organised starting from these themes.

1. Predominant conceptions of children and work, which is the overall theme.

To be able to see the content of the predominant conceptions of children and work, the following sub-themes have been useful:

2. The relationship between the industrialised and the colonised nations – later the developing nations or the underdeveloped nations.²⁶
3. The relationship between the child, the family and the state.
4. Minimum age.
5. The importance of school.

²⁴ Boyden, Ling & Myers 1998, p. 25. Boyden, Ling & Myers talks about the “hang-over from history”. They argue that the regulation of children and work should be child-centered, which the Minimum Age Conventions and other legislation concerning children and work are not (p. 25, pp. 181-2, p. 213 and *Passim*). They explain the lack of child-centered perspectives by a combination of ignorance and insensitivity. This will be further developed below in the section that deals with previous research and theory and theoretical questions. In this dissertation I am going to argue that the ILO was not that ignorant about the situation of working children around the world.

²⁵ They, in turn, are strongly inspired by gender perspectives. See for example Alanen 1992 and Alanen & Mayall 2001. For an overview of the discussion of children’s perspectives, see Halldén 2003, pp. 12-23, and Näsman 2004, pp. 53-77.

²⁶ McKechnie and Hobbs speak about “the so-called underdeveloped countries (UDCs), McKechnie and Hobbs 1999.

By using these themes for my analysis of the minimum age campaign, I will illuminate and explore the historical baggage in the Conventions that consists of the underlying assumptions - ideologies - of children and childhood that prevailed in the ILO. By structuring the material around these dominating themes, I hope to be able to take the argument that the Minimum Age Conventions are a “hang-over from history” a step further. In a way it is artificial to distinguish between the different questions as they are so intimately intertwined and interrelated. But it has been necessary to do so to sort the discussion out. A further advantage of these themes is that they are more or less intimately connected to the theoretical framework that surrounds the academic discussion of children and work. In this, my study has had a ‘natural’ connection to that discussion. I will return to this below in Section 2.2.

Historically, at the time of the first Minimum Age Conventions an ‘ideology of childhood’ had developed in Western societies and in many instances that ideology of childhood still prevails. Above I have argued that childhood is a product of human thought and practices: a social construction. In contrast, the ‘ideology of childhood’ never questioned that childhood was an entirely ‘natural’ phenomenon. Childhood was a taken-for-granted biological truth. In the sections below I will develop how these predominant ideas of childhood developed during the 19th century in Europe and in North America. I will also develop the other themes of the dissertation as formulated above.

2.2 Theoretical outlook and central themes of the study

As I have stated already, I have organised my study around five central themes or predominant conceptions of: 1. predominant conceptions of children and work; 2. the relationship between the industrialised and the colonised/developing nations; 3. the relationship between the child, the family and the state; 4. minimum age; and 5. the importance of school.

There are of course several other organising principles for the material (there always are) and the central themes were not evident to me from the start. But when I studied the material, especially with the questions I had in mind from a historical and sociological study of children and work, I saw that to a high degree the discussions were centred on these themes. The distinction of the themes can therefore be regarded as a kind of result in itself.

I also soon discovered that the chosen central themes had a further advantage. In addition to reflecting the principal discussions within the ILO, they connect to the academic debate about children and work. In this way

they function as a convenient means of linking the ILO minimum age campaign to the academic discourse on children, work and the law.

As I have pointed out above, the five themes are intertwined, inter-related and cross-cutting, and, whereas for the sake of clarity I have tried to keep them separate throughout the study, they are sometimes also discussed together.

2.2.1 Predominant conceptions of children and work

2.2.1.1 The relativity of childhood

A central point of departure for the dissertation is that childhood is historically, socially and culturally constructed - there are many childhoods that vary across time and space.²⁷ The legislation is a central arena for the construction of childhoods and in this study I will try to uncover how the ILO has constructed childhood in the Minimum Age Conventions. In this particular study it implies knowledge about how the concept of childhood has been constructed and how it has changed and varied from place to place and from time to time.

This does not mean that I ignore that childhood is undoubtedly also a biological fact and that the body is of particular relevance to childhood as well as to work.²⁸ However, it is not the focus of this study. My intention is to find out what *ideas* about the effects of work on children and childhood appear in the minimum age campaign, rather than to find out whether the delegates and officials of the ILO were actually right or wrong in their assumptions and assessments of children's work (which is probably impossible anyway).

Much scholarly work has been devoted to exploring childhood and its origins and it is not necessary to describe that in detail. However, as I wish to connect historical and contemporary concepts of childhood to the minimum age campaign, it is necessary to recapitulate the central features of childhood in history.

I will start from a typical expression in connection to working children. It is that "children have the right to a childhood". I think that most Western, at least adult, people of today would agree with defining it as a time for education, preparation for adult life, play, recreation, protection and the absence of excessive responsibility. As a Scandinavian, I might add that regularly spending time in the fresh air in the countryside is a further ingredient that is critical to 'a good childhood'. The expression implies that

²⁷ About childhood as a construction, see for example Prout & James 1997, pp. 7-33.

²⁸ This does not exclude that childhood also can be understood in terms of biological immaturity. For a discussion of "the socially constructed child" and the "essential child", see Hedenborg 1997, pp. 3-14 and 254-5

childhood is a period that is of a different character and is separated from adult life.

In this way childhood is often understood as a stage or stages – with a universal and biological content. But after some further consideration one might easily question whose childhood that refers to, and who has the right to profit from it in practice. It is not, however, the kind of childhood that is experienced by the majority of children, whether today or in history. Only a minority of children in the world live, and have lived, under such conditions. As a matter of fact, it may not even be the kind of childhood that children themselves would chose, were they given the opportunity to decide for themselves.²⁹ In this way, there is not one single childhood, either in the lives of individual children, or ideologically. Instead there are many childhoods that vary over time and space.³⁰

The relativity of childhood is obvious from a first glance at the ILO Minimum Age Conventions. There, childhood is defined only in terms of age and the age limits change during the period of investigation. In the first Conventions, the age limit is 14 years; later it is extended to 15 years.³¹ The Convention on the Rights of the Child has also defined childhood in terms of age: according to the Convention “a child means every human being below the age of 18 years”. However, this limit is also relative: a supplementary provision says “unless, under the law applicable to the child, majority is attained earlier”.³² The age of maturity varies throughout the world and has varied throughout history.³³ And as we know from discussions brought to the fore by the recent upsurge in the Christian fundamentalist “pro-life movement”, not even the beginning of childhood is absolute: does it begin at the moment of conception, at the moment of birth or at any other time in between? Thus, even when defined in simple terms of age, there is no universal definition of childhood.

The modern Western concept of childhood is mainly influenced by a historical combination of biology and psychology. The biological understanding, with its evolutionary perspective regarding the body, has been mixed with a psychological perspective, also evolutionary, into what anthropologists Einarsdóttir, Norman and Poluha have called the ‘evolutionary model’.³⁴ Drawing from such contemporary biological and psychological models, childhood was regarded as a ‘natural’ phenomenon. Critics’ have challenged this essentialist view of childhood and argued that childhood should be understood as a social construction. The starting point

²⁹ Engwall 2006

³⁰ See for example Poluha, Norman & Einarsdóttir 2000.

³¹ See for example Minimum Industry Convention No. 5, Minimum Age (Trimmers and Stokers) Convention No. 15 and Minimum Age (Non-Industrial Employment) No. 33.

³² Convention on the Rights of the Child, Article 1.

³³ Nygren 2004.

³⁴ Poluha, Norman & Einarsdóttir 2000, p. 14.

was Philippe Ariès' pioneering work *L'enfant et la vie familiale sous l'ancien régime*³⁵ from 1960 where he put the questioning of childhood across both time and space on the research agenda for historians and social scientists for decades afterwards.³⁶ With reference to paintings and diaries of children from four centuries, Ariès argued that the "discovery of childhood" as a distinct phase of life was a recent event in Western history.³⁷ Since the publication of Ariès' book, childhood has been thoroughly explored, theorised about and discussed by historians, sociologists, anthropologists and educationalists and, as already mentioned, I will not give an account of their results and debates.³⁸

It would also have been of great interest to include a historical exposé of the non-Western concepts of childhood. However, the scarcity of sources has not permitted me to include such a survey.³⁹

2.2.1.2 The history of childhood

Historically, the modern Western concept of childhood as a period or a stage of life in its own right and not just as a period of preparation for adulthood (or heaven) has its roots in the major movements in European and American history: the Renaissance, the Reformation, the Enlightenment, and Romanticism.⁴⁰ The history of childhood and the history of children's rights are part of the same general historical development that can be summarised under the heading "From subject to citizen". They emerged in the aftermath of the development of nation states with Constitutions that limited the power of kings. In the new Constitutions the king was legitimised as "the first among citizens" instead of the previous absolutism. The American and French Revolutions and the Declarations of Civil and Political Rights for citizens paved the way for liberalism, industrialism and individualism. Women and children had no status as citizens, but much later the new ideas would include women (mostly) and children, at least to some extent. This development made the child come into focus as an individual in ways that were not known previously.

The new ideas of childhood grew more and more influential during the 18th century. One famous work that is connected to the childhood ideology is the educational novel *Émile* by Jean-Jaques Rousseau from 1762.⁴¹ Rousseau confirmed the new ideas by saying that "We know nothing of childhood" and he was determined that such a state of affairs had to be changed.

³⁵ Ariès 1962

³⁶ Poluha, Norman & Einarsdóttir 2000, p. 10.

³⁷ Ariès 1962, pp. 33-49.

³⁸ See Cunningham 2005. See also Ambjörnsson 1978. For a thorough critique of Ariès, see Cunningham 2005, p. 4 ff. See also James, Jenks & Prout 1998 for an excellent overview over recent developments in childhood research within in the social sciences).

³⁹ Poluha, Norman & Einarsdóttir 2000, discuss that problem, p. 9.

⁴⁰ Cunningham 2005, p. 41.

⁴¹ Rousseau, Jean-Jacques, *Emile*.

Rousseau said that when exploring childhood, it was necessary to consider a child as a child. This was an unknown idea until then. Rousseau meant by that that, when bringing up children (he was concerned only with boys), one should not “look for the man in the child”, but consider “what he is before he becomes a man”.⁴² The child was in a different category from the man, or of a different quality. Rousseau therefore argued that children should be “happy now”. To accomplish that, children should be brought up “in accordance with the ways of nature”. That meant that a child should learn from his own experience rather than being told by other people.⁴³ In this way Rousseau’s view was completely contrary to the existing models of socialisation, particularly among peasants and workers whose children were educated by apprenticeships to learn a trade and by learning from parents and other family members. And the ideology of childhood of course took a hold among the bourgeoisie rather than among the lower classes.

Nevertheless, the children of the poor were often the objects of the reformers of childhood. British historian Hugh Cunningham writes that at the beginning of the 19th century governments and philanthropists had operated policies towards children for centuries. But from 1830 a new era started that he calls “saving the children” and that went on to 1920 when the ILO was created. What had changed was that the motives of the reformers had changed. Earlier, policies were driven by two motives: to save the souls of children, and to secure future manpower for the nation. From around 1830 a further motive was added: a concern to save children because they “had a right to a childhood”. Cunningham says that this new objective to rescue the children of the poor was a result of the fact that the new ideology of childhood had begun to influence public action.⁴⁴

The philanthropists had a major influence on this development. They started schools and kindergartens, ran homes for orphans and neglected children, founded societies for the prevention of cruelty against children and organised poverty relief.⁴⁵ Their inspiration was Christianity and a messianic zeal to help people in the slums in the outskirts of the new big cities of the industrialised world. But their motives were not altogether altruistic. There was also a fear of “dangerous classes” and the famous Lord Shaftesbury, who according to legend rescued the children from factories, said that he saw “two great daemons in morals and politics, Socialism and Chartism... stalking through the land”. He said that this development could be prevented by ending the neglect of children.⁴⁶ The many working children and street

⁴² Rousseau, quoted in Cunningham 2005, p. 62.

⁴³ Cunningham 2005, pp. 62-63.

⁴⁴ Cunningham 2005, p. 137.

⁴⁵ For the history of philanthropy, see Cunningham 1991, pp. 147-48 regarding Britain, and Weiner 1995 regarding Sweden but with references to international works. See also Platt 1978.

⁴⁶ Quoted in Cunningham 1991, p. 86.

children of the factory towns were regarded as a threat to society and also as a threat to normality. In Chapter 3 I will return to the argument of the “dangerous classes” in the description of the origins of the ILO. It was the same argument that led Bismarck to his far-reaching welfare reforms in the late 1880s.

2.2.1.3 The sociology of childhood

From a sociological and psychological perspective, British childhood sociologists James, Jenks & Prout have addressed the main relevant approaches within the so-called new sociology of childhood. They talk about “pre-sociological concepts of childhood” that, although theoretically they belong to the dustbin of history, inform everyday actions and practices towards children. They distinguish a number of categories of children in the history of childhood which they connect to particular times and philosophies.⁴⁷ These are “the evil child”; “the immanent child”; “the innocent child”; “the naturally developing child”; and, finally, “the unconscious child”. “The evil child” was strongly connected to the religious concept of “original sin”, and still emerges in contemporary criminology. According to this view, it was a central objective to curb the will of the child to create “docile bodies”.

The next concept of “the immanent child” was introduced to public debate by, among others, John Locke. He regarded the child as “an empty slate”, that should be filled with qualities that made the child become a rational, virtuous member of society and, very importantly, capable of exercising self-control. Very soon afterwards, the concept of “the innocent child” emerged and these ideas attracted, among others, Jean-Jaques Rousseau. According to these ideas, the child was seen as more of an individual than before. Children had an inherent goodness and clarity of vision and Rousseau regarded them as “free and noble savages”, who should be brought up by a “natural pedagogy” that was in accordance with their cognitive development. Rousseau describes the dichotomy of responsibility and irresponsibility that became a fundamental principle of middle-class childhood from then on.

The next ideology is the “the naturally developing child”. According to James, Jenks and Prout, this was the “firm colonisation of childhood” by developmental psychology in a pact with medical, educational and governmental agencies. Furthermore, and importantly, it was an “unholy alliance between the human sciences and human nature” that generated prestige, authority and funding and not least public trust. The ideology of the naturally developing child rests on two common-sense assumptions: 1. Children are natural rather than social beings; 2. There is a process of maturation. James, Jenks and Prout explain the ideology as “a combination

⁴⁷ James, Jenks & Prout 1998, pp. 9-21.

of post-Darwinian developmental cultural aspirations” conflated with “the post-Enlightenment confusion of growth and progress”. A circumstance that probably influenced this ideology considerably was that its architect, developmental psychologist Jean Piaget, had started his career as a biologist. Piaget divided the development of a child into four stages with sub-stages, and this way of describing childhood has remained very influential. In discussions about children and childhood, the stages are referred to as developmental stages.

The final category of the “pre-sociological concepts of childhood” is “the unconscious child”. This is the Freudian model of childhood. While other childhood ideologies had a focus on the future - what the child should become as an adult - Freud’s focus was on childhood as the past of an adult. Apart from that, there was nothing new about the Freudian childhood: Also Freud posited children as incomplete beings without agency and intentionality.

2.2.1.4 The ideology of the child in the Century of the Child

According to Cunningham, by the mid-19th century, the ideology of childhood had become a powerful force in the middle classes all over Europe and North America. Cunningham describes its content:

At the heart of this ideology lay a firm commitment to the view that children should be reared in families, a conviction that the way childhood was spent was crucial in determining the kind of adult that the child would become, and an increasing awareness that childhood had rights and privileges of its own.⁴⁸

The ideology of childhood fitted in with the whole bourgeois set of ideas about the family and intimacy: a home with a wife-mother who took good care of the home and its inhabitants – the children and the husband – and the husband who worked outside in the public sphere. The importance of childhood was highlighted and this was first manifested in a firm belief in the importance of education and in a concern for the salvation of the child’s

⁴⁸ Cunningham 2005, p. 41. Some typical examples of this view and its logic are discussed in Marshall 1999. In an attempt to formulate the doctrine for the Save the Children Fund Mrs. De Bunsen wrote in an article: “Les principes dont [Miss Jebb and Mrs. Buxton] s’inspiraient sont en harmonie avec les enseignements de la science, de la philosophie et du christianisme. [...] L’enfant est en lui-même une fin. A ce titre, le monde a envers lui des obligations morales. Les besoins de sa nature tout entière, tant que physique que spirituelle, doivent être satisfaits. Si l’accord pouvait se faire universel sur les principes généraux que [la déclaration] proclame, un grand pas serait fait vers un état de choses où serait assurée à l’enfant cette première place dans l’économie humaine qui est, croyons-nous, son droit et dont, à un si haut degré, dépend l’avenir.” The quotation shows very clearly the logic of the ‘natural’ child that had ‘natural’ rights. Marshall writes that such appeal to ‘nature’ as Mrs. De Bunsen made, was part of view of the child that had become predominant in the 19th century, that saw ‘children’s right to a childhood’ at home and in school as “the solution to most social evils”. But the ‘right to a childhood’ was older than that: in 1840 one of the founders of *Punch* wrote that the factory children were “children without childhood”. Cunningham 2005, p. 145-6.

soul. It was believed that children were sent from God and that childhood was therefore the best time in life. The ideology of childhood was variously expressed in art, architecture, literature, clothing, rites and taboos. As a whole, they produced an image of childhood that we even today often take as biological facts rather than ideology, as I argued at the beginning of this Section.

The same ideas were at the centre of the work of the Swedish feminist writer Ellen Key, who advocated a revolution in the understanding of children and the rights of the child in the famous collection of essays *The Century of the Child* published in 1900 and translated from Swedish into many other languages.⁴⁹ Summarising the ideology of childhood Key stressed that childhood was a period of innocence, irresponsibility and play and that it was clearly separated from adulthood and its constraints. The child was an empty page that should be filled with content and matured separately from the adult world. In contrast to Rousseau, Key regarded childhood as a time of preparation for adult life, rather than as a period with a value for its own sake.

As Swedish historian Ronny Ambjörnsson has pointed out, Key's ideology of childhood was perfectly illustrated by the paintings of Swedish national painter Carl Larsson from his home in Sundborn; pictures of eternal and sunny summer vacations with children playing peekaboo and with wooden swords, dressing up, bathing and fishing.⁵⁰ This was of course in sharp contrast to the experiences of most children, especially the children of the poor who with few exceptions had to contribute to their own and their families' maintenance in farming and industry and learned trades by working, rather than being in school. Ambjörnsson calls it "the paradox of the class society" in that at the same time as the ideology of childhood was developed, the exploitation of working children in the industrial capitalism reached a peak in Western society.⁵¹ Children in the factories (like most adult workers) were regarded as a mere commodity. But Ellen Key, who was a social democrat, had the ambition that the working-class child should also have the ideal childhood.⁵² In this way she brought a new dimension to the ideology of childhood: universality. All children, not only the privileged ones, should have the right to a childhood.

To conclude, at the inception of the ILO in 1919, the ideology of childhood was a powerful force in the Western world and it had enormous

⁴⁹ Key, Ellen, *The Century of the Child*.

⁵⁰ Ambjörnsson 1978, pp. 62-65. Larsson, Carl, *Ett hem. 24 målningar med text af Carl Larsson*.

⁵¹ See also Cunningham 1991, p. 188 who points out that the Industrial Revolution placed the children of the poor in a visible and public situation that manifested that their upbringing was in sharp contrast to the childhood ideology from Rousseau onwards.

⁵² Ambjörnsson 1978, p. 104.

implications for how child work was regarded in society. As Cunningham says:

The magnitude of the shift that had been made needs emphasis; for most of the 18th century philanthropists and governments tried to create work opportunities for children from about the age when in the later nineteenth century they would be sent to school; for by that date few people could be found who would publicly deny that children should be saved from work.⁵³

Cunningham also writes that “In the late nineteenth and early twentieth centuries, when social reform and the future of the nation [...] became inextricably intertwined, the children of the poor were an inevitable focus of attention.”⁵⁴ Childhood had become a matter of national as well as of international attention. These circumstances made the protection of children a suitable question for the ILO to concentrate on when it started its work in 1919, because it could be expected to create little conflict: at a general level everyone was for the ‘right to a childhood’. But the point here is that the content of that childhood varied according to who was talking.

2.2.1.5 Children, work and the categories of work and age

Before the time of industrialism and of the ideology of childhood, the dominant view in Western society was that the children of the poor should work. Certainly there was criticism of certain forms of child work that were considered harmful, but there was no criticism of child work *per se*. At the end of the 18th century this ‘work line’ started to shift slowly. In particular the so-called ‘climbing boys’ climbing up and cleaning narrow chimneys, encouraged by pins stuck in their feet or a small fire lit in the grate, were noticed in public debate. The horrible conditions of these children were contrasted with the ideology of childhood, and the result was clearly “against nature”.⁵⁵

As I have described above, there was no place for work in the ideology of childhood. Children should go to school, play, rest and be protected from responsibilities and the constraints of the adult world. This was in extreme contradiction to the reality of large groups of children. This is the historical background of the term ‘child labour’. Its origins are 19th century Europe and the Industrial Revolution and its large-scale exploitation of men, women and children by industrial capitalists. Most striking was of course the exploitation of children in chimneys, mills and mines, and philanthropists and others started to advocate the protection of children. One typical example from this time is a statement by a progressive American politician who advocated the introduction of federal child labour laws in the United States. He said that

⁵³ Cunningham 2005, p. 146.

⁵⁴ Cunningham 1991, p. 5.

⁵⁵ Cunningham 1991, pp. 8-9 and p. 51.

the term 'child labour' was a paradox, because "when labour begins...the child ceases to be".⁵⁶ From then onwards, much of children's work has been described in terms of child labour.

Child labour and child work

In recent debate a distinction has often been made between 'child labour' and 'child work'. Child labour is bad for children and child work is more beneficial for children. A frequent standpoint has been the following:

Light work, properly structured and phased, is not child labour. Work which does not detract from the other essential activities for children, namely leisure, play and education, is not child labour.⁵⁷

This definition concurs more or less with the kind of child work that is prohibited under the ILO Minimum Age Convention No. 138 and the Convention on the Rights of the Child. However, the distinction between labour and work only exists in English. In for example German, French, Italian, Spanish and Swedish, there is only one word for work: *Kinderarbeit*, *travail des enfants*, *trabajo infantil*, *lavoro minorile* and *barnarbete*. Furthermore, the word 'labour' in other contexts has quite neutral connotations, for example "the International Labour Organisation", "the US Department of Labor" and "the Labour Party".

UNICEF has tried to find a definition of child labour acceptable to all nations of the world. In 1986 UNICEF reached consensus on exploitation of children:

Beginning to work at too early an age, working too long, inadequate remuneration, work which causes excessive physical, psychological and social strain, work and life on the streets, excessive responsibility at too early an age, work which hampers the psychological and social development of the child, and work which inhibits the child's self esteem.⁵⁸

UNICEF has also declared that the impact of work on a child's development is the key to determining when the work becomes a problem. The aspects of development that could be endangered were specified as physical, cognitive, emotional, social and moral development.⁵⁹

The term 'child labour' has often been criticised, both for its exclusively negative connotation and its ambiguity as well as being useless in describing the great variety of work that children perform and have performed in the

⁵⁶ Quoted in Zelizer 1994, p. 144.

⁵⁷ Fyfe 1989, p. 4.

⁵⁸ *Exploitation of Working Children and Street Children*, Executive Board Paper, UNICEF, 1986.

⁵⁹ *The State of The World's Children 1997*, p. 24.

past.⁶⁰ In short, the criticism is that the classifications only touch the surface level and are either too narrow and exclusive or too broad and diluted and that classifications underscore protectionist and moralistic priorities and assumptions of the classifiers.⁶¹

One example of this is that a classical key distinction when classifying children's work has been whether the work is performed within or outside the family. The presumption is that work that takes place in a family context is less harmful than work in other contexts. But there is no guarantee that family surroundings will protect a child from harm. For example agricultural work, that often takes place in family surroundings, has proved to be one of the most harmful occupations for children.⁶² Another problem is that the definition of 'family' varies, and anyway there is no clear evidence that working within the family means less danger.⁶³

To avoid a biased terminology, Boyden, Ling and Myers suggest that 'child work' is a more suitable term than 'child labour'.⁶⁴ 'Child labour' should be reserved for historical references, quotes and other limited uses where it is appropriate to use it because of a particular context. In the dissertation I will mainly adhere to this practice. Nonetheless, 'child labour' is a frequently used term in past and present debate about working children and, consequently, there will be many references to that term in the dissertation.

To conclude, in my opinion the focus on terminology and classification of different types of work sometimes has the character of hairsplitting that does not contribute much to solving the real problems. Instead, it polarises the discussion and makes it bureaucratic in a way that may even be counter-productive.

What is work and why do children work?

Any discussion on children and work is obviously related to general discourses about work. The Conventional definition of 'work' as contractual paid work at a workplace that went hand in hand with the liberal capital industrialism, has been challenged in recent sociological works. In terms of children and work, the old and narrow definition is in great contrast to the reality. An overwhelming majority of children work in non-contractual employment or self-employment in agriculture, street-trading, domestic work, etc. In this way, what is considered work and what is considered something else is relative and it varies across time and space in the same way as childhood varies across time and space.

⁶⁰ James, Jenks & Prout 1998, p. 108-115, Boyden, Ling & Myers, pp. 19-22.

⁶¹ James, Jenks & Prout 1998, p. 108.

⁶² James, Jenks & Prout 1998, p. 106-107.

⁶³ James, Jenks & Prout 1998, p. 106.

⁶⁴ Boyden, Ling & Myers 1998, *What Works for Working Children*, p. 19-20.

The British sociologist Anthony Giddens states that people work for many different reasons. Some people “put up with dull, poorly paid jobs because they have no other way of earning a livelihood. Others have more privileged work circumstances and may focus most of their lives upon their job.”⁶⁵ The various reasons for working that exist between these two outlooks are as relevant for understanding child work as they are for understanding adult work.⁶⁶

The debate why children work or, as it has often been expressed, ‘the root causes of child labour’, is old, and explanations vary. However, the expression ‘root causes of child labour’ implies that child work is necessarily something inherently evil. Poverty has been the dominant explanation, but that ‘truth’ has also been challenged. Although poverty and economic necessity are still considered as important factors behind child work, hand in hand with employers looking for the lowest possible production costs, modern research shows that there are also other forms of impetus for children’s work such as the importance for future survival of learning a trade at an early age and work as a crucial means of social reproduction. Other reasons for child work are personal consumption, both in industrialised Western countries and in developing or transitional economies – perhaps as surprising as the fact that there is a considerable group of children in the industrialised West whose work makes a substantial contribution to their household economy.⁶⁷ Social and economic geographer Aida Aragão-Lagergren has interviewed child workers in the informal sector in Managua, Nicaragua, who were engaged in ‘typical’ activities such as selling, guarding and washing cars, shining shoes, etc. She shows that children’s work is a well-organised activity and that it makes substantial contributions to the household economy. By analysing the children’s everyday life patterns, she also shows that the spatial relationships between school, work and home had a major impact on children’s weekly activity patterns. One particular result was the importance of the proximity to school of the workplace for children’s attendance at school.⁶⁸

To conclude, the problems caused by a narrow definition of ‘work’ can be illustrated by the following example of an ordinary day of a young African girl given by Boyden, Ling & Myers:

When she gets up an hour before sunrise to help clean the house, fetch water, and make breakfast, she is not working, according to official definitions. That is because these activities are not considered to contribute to the national economy. But when she goes outside to help her mother tend the garden from which they sell products in the local market, she now begins to work, as

⁶⁵ Giddens 1997, p. 259.

⁶⁶ See Woodhead 1998.

⁶⁷ See Dahlén 2004 p. 27 with further references.

⁶⁸ Aragão-Lagergren 1997.

indeed she still does when they go together to the market to sell some produce. However, when she takes vegetables from the same garden inside and prepares the midday meal from them, she is no longer working. Later she goes out to fetch firewood, which is heavy to carry and must be brought from over a mile away, but she is not working. Then she goes back out to gather fodder to feed the farm animals which are used for traction, and is now working again. She is also officially working when she helps her family in the fields. When she goes back inside to clean up in the kitchen and to help bed down her younger brother and sister, singing them to sleep long after sundown, she is not working. And, of course, she was not working during the three hours she spent in school.⁶⁹

The example shows that in terms of the narrow definitions of ‘work’ used for example in the ILO minimum age campaign, very little of the work performed by this little girl is considered as ‘work’. However, most people would agree that she had a much too busy day without even a minimum of time for rest and play. It also highlights problems concerning the relevance of the categories of age and work used in the law-centred and protective approaches to working children used in international and national law.

2.2.2 The relationship between work and school

Practically all the ILO Minimum Age Conventions refer to school when constructing the parameters of child work. The Minimum Age Convention No. 138 from 1973, for example, establishes that the minimum age “shall not be less than the age of completion of compulsory schooling and in any case, shall not be less than 15 years”.⁷⁰ Another example is the Minimum Age (Agriculture) Convention, No. 10 from 1921 that has ‘interference with school’ as its only criterion for not permitting work. As I intend to show in this dissertation, the whole minimum age campaign was underpinned by the idea that children should spend their days in a classroom. For example, much of the debate about the Conventions concerned the importance of avoiding a gap between the school-leaving age and the minimum age for admission to work. As I have argued in the previous section, school was the ideal scene for the ideal childhood and there was a profound fear of ‘idle children’. Cunningham and the Swedish historian Bengt Sandin see the problem of social conflicts in the towns as a central motive for the development of the national school systems. They were intended to keep working class children off the streets and to discipline them to become orderly members of their class and of society in order to strengthen the ‘national identity’.⁷¹ Many

⁶⁹ Boyden, Ling & Myers 1998, p. 21-21.

⁷⁰ Minimum Age Convention No. 138, Article 2.3.

⁷¹ Cunningham 2005, Sandin 1997.

experts, such as American political scientist Myron Weiner, see compulsory schooling as the main factor behind the end of child labour.⁷²

However, school is problematic. First of all, from a practical, political and economic point of view, in the past as well as now, school has not been available to all children under the minimum age for employment. In large areas of the world, children do not go to school, or go to school only sporadically, or drop out from school. On the other hand, in the industrialised world children go to school until they are at least 18 years old and many of them do so because of youth unemployment.

Also from a more theoretical standpoint, the dichotomy between school and work has been challenged. Giddens has defined 'work' widely. With such a wide definition of 'work', children's work in school is also included.⁷³ In the same way, the Danish sociologist Jens Qvortrup has showed that the dichotomy between work and school is not very relevant when we discuss children's work across time and space. He argues that going to school is part of the societal division of labour, but with a time-lapse. Qvortrup calls it a "diachronic division of labour". By that he means that children in industrial societies have to work to produce themselves as a societal form of embodied investment that can be regarded as "not immediately marketable capital", as Bourdieu put it.⁷⁴ School work later becomes capitalised when it is 'realised' in the form of employment.⁷⁵

In this way the relationship between school and work in the ILO minimum age campaign is right at the centre of the theme concerning industrialised and developing nations in the ILO minimum age campaign, as well as the theme of minimum age.

2.2.3 The child, the family and the state

The relationship between the child, the family and the state is central when dealing with the ILO minimum age campaign, or with any legislation concerning child work. Most of the Minimum Age Conventions have excluded work in family undertakings where a parent of the child is the employer. The Conventions on agricultural work permit much child work and most agricultural work is performed in a family context. Domestic work is also subject to many exceptions in the Conventions. The exceptions and exclusions in the Conventions for work performed within a family context, in a family business, in domestic work or in agriculture, follow historical concepts of the integrity of the family. As I have just discussed above, there was a presumption that children would be treated decently by their own

⁷² Weiner 1991, and Weiner 2000, pp. 301-302.

⁷³ Giddens 1997, p. 259.

⁷⁴ Bourdieu 1979.

⁷⁵ Qvortrup 1985, pp. 129-145.

parents – a presumption that is still often made relevant today. But there was a further obstacle to controlling the work of children in a family situation namely, family integrity. It was not regarded as acceptable for the state – or anyone else – to interfere with the business of the father and master of the family. Before the social insurance systems and the era of the welfare state it was as inconceivable to interfere with the business of employers as it was to interfere with the business of the master of the family – the father.

Enforcement mechanisms are crucial for the effectiveness of legislation.⁷⁶ The campaign built on the assumption of strong states with strong institutions: those of workers and employers, sufficiently well organised to be able to represent their members at the International Labour Conference and in the organs of the ILO; labour inspectorates that could guarantee enforcement and supervision; and, at least implicitly, compulsory school laws and institutions and social insurance systems that could guarantee the education and maintenance of children.

The question is how much of this was fulfilled in the member states during the minimum age campaign and how employers felt about being controlled in their own businesses. In one way enforcement in mills, mines and factories was easy, once a functioning labour inspectorate existed. They were controllable units, in contrast to work in the family and in agriculture which was very difficult to control even with a functioning inspectorate. But the liberal philosophy of the 19th century was negative towards state intervention in industry.

I will study in what terms these questions of enforcement and the family and the employer's integrity were discussed in the minimum age campaign, particularly how arguments concerning the protection of children stood up to arguments concerning the integrity of the family and the employer. I will also study how the issues of maintenance and school were dealt with in terms of responsibilities and abilities of the state. In that connection the position and status of the industrialised nations in relation to the colonies/developing nations is of particular interest and I will now turn to that theme.

2.2.4 Industrialised, colonised and developing nations

Probably the most difficult question throughout the ILO minimum age campaign was to find solutions that took account of the divide between the industrialised world and the non-industrialised world, which comprised the colonies at the beginning of the campaign and the 'Third World' or

⁷⁶ The campaign built on the assumption that the member states had functioning labour inspectorates, workers' organisations and, implicitly, social insurance systems that guaranteed the maintenance of children.

developing nations after the Second World War and decolonisation.⁷⁷ By the time of the first Minimum Age Conventions, 1919-1921, a few European countries still had colonies in Africa and a large part of Asia. South America had only relatively recently been decolonised. In the Western industrialised world, the living conditions of the poor were slowly getting better, even though the First World War ruined much of the progress for the years to come. The gap between the European nations and the colonies remained enormous. In many cases the gap has remained unchanged after decolonisation.

The ILO chose flexibility as the way to solve the problems of the different economic and living conditions in the member states and their colonies. First of all the ILO Constitution, Article 19 (still in force with the same wording), made it possible to modify a Convention for member states that could not live up to all the requirements of a Convention. Under the heading “Modifications for special local conditions”, it provides that:

In framing any Recommendation or draft Convention of general application the Conference shall have due regard to those countries in which climatic conditions, the imperfect development of industrial organisation, or other special circumstances make the industrial conditions substantially different, and shall suggest the modifications, if any, which it considers may be required to meet the case of such countries.⁷⁸

As a result of the wording of the provision, the ‘special local conditions’ were defined in terms of climate, undeveloped industrial organisations or ‘other special circumstances’. Accordingly, the first Minimum Age Conventions had special provisions for India and Japan.⁷⁹ Furthermore there were flexibility provisions regarding colonies in general. In accordance with Article 35 of the Original ILO Constitution⁸⁰, the first Minimum Age Conventions should each be applied in the Colonies, except “where owing to the local conditions its provisions are inapplicable” or “subject to such modifications as may be necessary to adapt its provisions to local conditions”.⁸¹ In the latest Minimum Age Convention from 1973, the flexibility provisions still exist and have been made even more flexible as will be described in Chapter 11. There, a “member state whose economy and administrative facilities are insufficiently developed may, after consultation

⁷⁷ See Hobsbawm 1995, pp. 344-371.

⁷⁸ ILO Constitution, Article 19.3. The ILO Constitution 1920 had exactly the same wording.

⁷⁹ See Conventions No. 5, Articles 4 and 5 and Convention No. 6 Articles 5 and 6.

⁸⁰ Article 35 has been amended. The passage regarding the application of Conventions in the colonies has remained with the same wording, except that the word “colonies” has been replaced with “non-metropolitan territories”.

⁸¹ See for example Convention No. 5 (1919), Article 8.

with the organisations of employers and workers concerned, where such exist, initially limit the scope of application of this Convention”.⁸²

As already mentioned, the living conditions of children in developing nations and in nations in economic transition are in many ways different from the living conditions of children in industrialised nations and, of course, this was the case also when the ILO minimum age campaign began in 1919.⁸³ But I have also argued that working children in different parts of the world also have more in common than we usually think. India was a frequent subject of debate in the minimum age campaign, and as will be demonstrated in the following chapters, arguments were quite outspoken when judged by a modern reader.

These debates must be understood in the light of colonialism and the Western apprehensions of different people of the world that was ‘normal’ and acceptable then.⁸⁴ Whereas colonialism and racism are now considered unacceptable and shocking, such practices and conceptions still exist. It is a working hypothesis of this dissertation that the minimum age campaign has “a hang-over from history”, in that the Minimum Age Conventions have a baggage from colonialism and the Industrial Revolution. I will try to demonstrate in what ways that colonial baggage informed the debates within the minimum age campaign and how the ILO delegates regarded the identity of people in the colonies as “lamentably alien” and identified with “a bad sort of eternity”, as Edward Said put it.⁸⁵

In the same way, Amartya Sen discusses the self-images or “internal identities” of Indians in his book *The Argumentative Indian*.⁸⁶ He shows how different Western discourses on India have been internalised in India. Inspired by these perspectives, I will discuss how the delegates imagined and discussed the future of the colonies/developing nations compared to the industrialised nations, and how they defined the role of the industrialised nations towards the colonies/developing nations. Important questions are: What were the arguments in the debate for and against modifications for developing countries? How did the delegates understand childhood in a colonial context compared with childhood in an industrialised nation? I will also investigate whether the arguments of the delegates from the developing nations were different from those from the West. Finally, I will examine in what terms, for example, India and African countries were discussed in the reports of the International Labour Office in comparison with the industrialised nations.

⁸² Convention No. 138 (1973), Article 5.

⁸³ Children aged 5-14 working full-time.

⁸⁴ About colonialism, missionaries and the first shift away from European children in the international children’s rights debate, see Marshall 2004.

⁸⁵ Said 1978, see for example pp. 207-208.

⁸⁶ Sen 2005, pp. 139-160 and *Passim*.

2.2.5 The significance of age limits and minimum age

The ILO minimum age campaign was firmly built on age limits. Almost all discussions seem to have resulted in the specification of age limits. Age limits therefore comprise a cross-cutting theme of the ILO minimum age campaign. Consequently, a central question is: On what grounds were these age limits specified? Of course the age limits were subject to compromises between different camps within the ILO. But how was the outline of the discussions defined?

The Swedish legal historian Rolf Nygren says that the passage of a number of age limits has always signified that the child has crossed stages of maturity, and obtained the rights and duties appertaining to them.⁸⁷ But how rational are they? Many age limits in our time are based mainly on Roman law and Jewish and early Christian ideas about children. Over that very long perspective, Nygren argues in a Swedish context that, from the time of Roman law to the 18th century, age limits were based on biological development with the main age limits being 7 and 14 years. From the 18th century, public national welfare arguments entered the scene. These arguments were connected to the ability of the young person to take economic responsibility. It was strongly connected to political efforts both to control the sexuality of young persons and to control the family patterns in the service of the nation state. In between these two basic ideologies, considerations of ‘maturity’ developed.⁸⁸

2.3 Working children in previous research

Working children is a subject that has attracted much attention in the academic world during the past decade. In a very broad sense much of this academic work is of some relevance to the questions of this dissertation. However, in this section I have tried to select the work that is of most relevance to the questions of the dissertation. I have used two criteria for that selection. The first criterion, although a little unorthodox, is written works that have been particular sources of inspiration for my own work for one reason or another. The second criterion is research that I estimated had close relevance to the subject matter of this dissertation in a stricter sense and which is mainly historical research on child work.

⁸⁷ Nygren 2004, pp. 11-18.

⁸⁸ *Op. Cit.*, p. 18.

2.3.1 Particular sources of inspiration

A main source of inspiration for the questions and approach of this dissertation is *What Works for Working Children* by the British anthropologist Jo Boyden, Swedish social worker Birgitta Ling and British educationalist William E. Myers.⁸⁹ Their work is a critical review of the contemporary international debate on working children and child labour.⁹⁰

Boyden, Ling and Myers develop a critique of the international campaign against child labour that it is based on concepts of childhood and child development formed principally by the Western industrialised nations.⁹¹ With the Convention of the Rights of the Child as a starting point, they suggest that the effects of children's work can be assessed from the principle that the child's best interests should be a paramount consideration in all actions towards children undertaken by public or private authorities of institutions (Article 3). Boyden, Ling and Myers propose that "healthy, physical, psychological, cognitive, moral social and emotional development" constitute the most obvious and direct expression of children's best interests.

As a consequence, they regard work that impedes the development of children as opposed to their best interests and regard work that promotes the development and well-being of children as being consistent with their best interests.⁹² However, the factors that are positive and negative for the development of the child vary and are defined differently in different contexts. Boyden, Ling and Myers point out the importance to children of the context of the family and of the community and that learning opportunities and child protection strategies vary in different societies. In many societies, work is a crucial mechanism for social integration and learning and work can function to promote self-actualisation, survival skills and family integration. In this way, the same type of work but in different contexts does not have the same negative and positive effects on children.⁹³

This leads to the conclusion that child protection policies should be "flexible", "sensitive to cultural difference", and "respectful of children's economic and social responsibilities". Similarly, child protection policies should not be based on prohibition or criminalisation and they should "involve and empower children". Boyden, Ling and Myers are critical of the ILO Conventions and describe them as "long overdue for a conceptual and practical re-appraisal of their relevance, empirical support, social coherence and practical effects on children and families".⁹⁴ In short, they are critical of

⁸⁹ Boyden, Ling & Myers 1998, p. 5.

⁹⁰ Boyden and Myers have also performed research presenting similar critique, both together and individually. Boyden 1990, Boyden 1994, Boyden and Myers 1995, Myers 1991, Myers 1999 and Myers 2001.

⁹¹ Boyden, Ling & Myers 1998, p. 5

⁹² *Op. Cit.*, p. 324.

⁹³ *Op. Cit.*, p. 325.

⁹⁴ *Op. Cit.*, p. 325.

the exclusive focus on law-centred instead of child-centred approaches of the ILO.

Two years later, in 1999, Myers commented on the adoption of the Worst Forms of Child Labour Convention No. 182, starting from the same points of departure. Myers's conclusion was that the "traditional modes of action" against child labour had been discredited as ineffective, but that until then there were no successfully tested alternatives available to replace them. In the interim, he wrote, the most logical strategy was the one chosen by the ILO with the adoption of the Convention No. 182, to focus on ending the worst forms of child labour.⁹⁵

In 2001 Myers returned to the subject in an article on the current debate concerning child labour and children's rights in a globalising world. In a review of the three main contemporary international Conventions dealing with child labour, the Minimum Age Convention (No. 138), the Worst Forms of Child Labour Convention (No. 182) and the Convention on the Rights of the Child (Article 32), he traces a shift away from the dominance of Northern ethnocentrism toward "more culturally inclusive and flexible formulations of children's rights standards". Myers understands it as a learning process in which the Minimum Age Convention (No. 138) was "a false start", the Convention on the Rights of the Child was "a solid but relatively unfocused step forward" and the Convention against the Worst Forms Of Child Labour (No. 182) was "a workable center of gravity for global action against child labour" and "the right rights". Myers explains it in terms of the rights enshrined in Convention No. 182 not being imposed by 'the rich' on 'the poor', and being more broadly defined and democratically adopted.⁹⁶ By this he obviously means that the content of Convention No. 182 is a result of the influence of developing nations and their demands for more reality-adjusted policies to respond to child labour.

The British Professor of Childhood Studies Martin Woodhead has pointed at the same negative effects of legislation. In a participatory research project including 318 children defined as "child labourers" according to the ILO Conventions, the children gave their views on their work and on their lives in general. All children in the study lived in Third World countries. Most of them felt that work was a normal and necessary part of childhood. They did not see work as only 'negative', and school as purely 'positive'. The large majority of the children (77 per cent) considered that their best option in view of the circumstances was to attend both school and work. The majority (65 per cent) of the children stated that they would be against a law preventing children under 15 years from working and that, in the case of enforcement of such laws, they would work 'underground'. Woodhead's study also showed that the working lives of children were strongly shaped by

⁹⁵ Myers 1999, at 24.

⁹⁶ Myers 1999, Myers 2001, at 53.

gender. Boys earned more and had more control over their wages. Girls more often had a triple burden of work, school and domestic chores and they were much more vulnerable to harassment and sexual abuse. A further important result of the study was that it showed that the children clearly understood their own situation and that they possessed strategies to find constructive solutions and to make sense of their situation.⁹⁷

Another important source of inspiration for the dissertation has been the Swedish historian Lars Olsson and his dissertation *Då barn var lönsamma* (*When children were profitable*, my translation). Olsson describes child labour in three economic sectors in 19th century Sweden, namely, the manufacturing of matches, glass and tobacco.⁹⁸ Olsson shows that during the 19th century, in contrast to previous practice, the majority of Swedish child workers did not learn a trade or skills for the future. The children were simply exploited as cheap and docile labour, with an “obvious function in the accumulation of capital”. This was possible because of the high degree of division of labour that characterised the Industrial Revolution. By using skilled and physically strong labour with higher wages – men – only for the more advanced or heavy stages of production and unskilled and physically weaker labour with lower wages – women and children – for the less advanced and less heavy stages of production, low labour costs and high efficiency were achieved (at least in the short run). Olsson also shows that the decline in child labour in Sweden followed technological changes that reduced the demand for unskilled workers, in combination with higher wages for workers that made children’s contributions to the household economy dispensable.⁹⁹ Accordingly, the Swedish factory legislation (1881 and 1900), was a consequence of the decline in child labour, not its cause.¹⁰⁰

Like Olsson, most historical literature concerning child labour has focused on the industrial child labour in the European factory towns during the 19th century. The historical research deals with national conditions and at the centre of attention have been various explanations for its decline. The many explanations range from factory legislation, compulsory schooling,¹⁰¹ technological change,¹⁰² demographic and economic changes and changes in the family economy and strategy.¹⁰³

During recent decades historians have augmented the complexity in their analyses. One of them is Per Bohlin-Hort who has pointed out that, even if the circumstances seemed to be the same in two regions, the decline in child

⁹⁷ Woodhead 1998.

⁹⁸ Olsson 1980.

⁹⁹ *Op. Cit.*

¹⁰⁰ *Op. Cit.*

¹⁰¹ Weiner 1991.

¹⁰² Olsson 1980.

¹⁰³ Nardinelli 1990.

labour did not follow the same pattern. Bohlin-Hort shows that the power of organised adult male workers was instrumental for that differentiation.¹⁰⁴

2.3.2 Other research of great interest to this study

I will now give an account of other relevant research concerning children and work that is also highly inspirational but in which became part of my study after its initial stages.

In *Industrious Children*¹⁰⁵ the Danish, Swedish and Norwegian childhood historians Ning de Coninck-Smith, Bengt Sandin and Ellen Schrumpf approach children's past and present work from a somewhat different outlook. They explore the meaning and importance of children's work with the objective of adding new perspectives to the history of child labour. They examine children's work in the Nordic countries from 1850 to 1990, from a political and legal historical point of view as well as from a social and cultural historical point of view, and put children's work in a context of continuity and change. In this way, the history of child labour becomes as much a history of adults as a history of children. Parents, employers, school teachers, physicians, politicians and educationalists have all had their interest in children's work and children's well-being. *Industrious Children* show how children's work and its transformation connect to the social and cultural construction of modern childhood and that age limits are key elements in this construction.¹⁰⁶ The authors do not see the previous focus on industrial child labour in the historical literature as very surprising. The simple explanation is that it was only industrial child labour that was the object of concern in public debate and in the legislation. And as public debate and legislation leave abundant source material in the archives, historians have focused on these questions. In contrast, very little public attention was paid to traditional (and much more common) forms of child work such as agriculture, childminding and commerce, that has left little trace in public archives.

In this way, the majority of children's work in the past has remained invisible.¹⁰⁷ This "empirical ignorance" is correlated with a "cultural blindness" in research on child work, which derives from the Western childhood ideology.¹⁰⁸ There is an inherent contradiction between the fact that the law-centred approaches have made much of children's work illegal and created a consequential unwillingness to perceive children as workers in their own right, and the fact that at the same time there has been a

¹⁰⁴ Bohlin-Hort 1989.

¹⁰⁵ de Coninck-Smith, Sandin & Schrumpf 1997, "Introduction", pp. 8-9

¹⁰⁶ *Op. Cit.*, p. 14.

¹⁰⁷ *Op. Cit.*, pp. 10 and 14.

¹⁰⁸ *Op. Cit.*, p. 14. See also de Coninck-Smith, Ning, "The struggle for the child's time – at all time. School and children's work in town and country in Denmark from 1900 to the 1960s", in de Coninck-Smith, Sandin & Schrumpf 1997, pp. 129-153 at 153.

combination of popular tradition for child work and a strong socioeconomic dependence on it.¹⁰⁹

Cunningham has devoted much work to the history of Western childhood in general, and to poor and working children in particular.¹¹⁰ In his impressive work *Children and Childhood in Western Society since 1500*, he describes work as a part of children's lives throughout the period of investigation. One section of the book is dedicated particularly to the issue of child labour under the heading "Saving the Children".¹¹¹ It concerns the period 1830-1920, the time of the Industrial Revolution. Cunningham traces the shift in the concern for children's welfare from its being the responsibility of charitable organisations such as the philanthropic societies at the beginning of the period, to its becoming a responsibility of the state by the end of the period. He describes the debate on the Factory Acts in the context of the interplay between philanthropists, the anti-slavery-movement, the ideology of childhood, liberalism and capitalism. He shows how the concern for exploited children started by the end of the 18th century in Britain as a reaction against the cruelty inflicted on "climbing boys".

Cunningham describes how childhood was sentimentalised during the 19th century and how that sentimentalism influenced the debate on exploited children in the chimneys, mills and mines. He also shows that the concern for exploited children in Britain followed in principle the abolition debate on slavery in the West Indies. It was an effective argument for the child-saving lobby to highlight how unethical it was to advocate abolition of the 'black slavery' in the colonies while British employers exploited "the poor little White-Slaves, the children in our cotton Factories", as a contemporary romantic poet first expressed it.¹¹²

For UNICEF, Cunningham together with Pier Paolo Viazzo has edited and contributed to *Child Labour in Historical Perspective 1800-1985*.¹¹³ It focuses on how culturally different views of children and childhood have affected child involvement in factory work across time and space.¹¹⁴ The project was also an assignment to provide policy makers with "lessons from the past" to help them make well-informed decisions. However, the authors find that kind of approach problematic, because of the often fragmentary source material concerning child labour in the past, which has left – and leaves – scope for many different interpretations. Therefore, they argue:

It is just as probable (and just as appropriate) that historians will be informed in their studies, and the questions they ask, by writings on the contemporary

¹⁰⁹ de Coninck-Smith, Sandin & Schrumpf 1997, p. 14.

¹¹⁰ Cunningham 2005, Cunningham 1991.

¹¹¹ Cunningham 2005, pp. 137-170.

¹¹² Cunningham 2005, p. 140-41.

¹¹³ Cunningham & Viazzo 1996.

¹¹⁴ *Ibid.*

world as that policy makers will draw on history. A mutual exchange of views is to be encouraged.¹¹⁵

A result of the survey is that children continued to make a significant contribution to the household economy long after the “worst phases of the history of child labour” were over. In view of this, Cunningham and Viazzo argue that the crucial question is: Why did the age of employment rise? They mention ‘the usual’ factors for consideration: higher wages, technology, child labour laws and compulsory schooling.¹¹⁶ All these factors are analysed and assessed in the light of the results from individual studies and the conclusion is that the lessons that can be learned from the history of childhood are highly complex, but that it is beyond any doubt that children’s work in the past can only be understood as part of a social and cultural context.¹¹⁷

2.3.3 A profound and missing link

Although child labour has been the object for much public and scholarly debate during the last decade and earlier, the ILO Minimum Age Conventions have not been the focus of much attention. Regarding human rights in general, Lee Swepston points out that there are profound links between the standards set by the ILO and by the UN and that this is a neglected subject. The role of the ILO Minimum Age Conventions in the history of international children’s rights is likewise a neglected question. The fact is that in standard works on children’s rights there is seldom mention of the ILO Minimum Age Conventions. In the event that they are mentioned, often they are merely listed, as in Philip E. Veerman’s *The Rights of the Child and the Changing Image of Childhood*.¹¹⁸

In *The International Law on the Rights of the Child*, Geraldine van Bueren starts her account of the history of the rights of the child with the Declaration of Geneva from 1924 and does not mention the ILO Minimum Age Conventions.¹¹⁹ Later, in connection with Article 32 of the Convention she describes the links to the Minimum Age Convention (No. 138) and mentions that there were predecessors to the Convention.¹²⁰ In historical research on children and work, the ILO Minimum Age Conventions are almost conspicuously absent. In *Human Rights, an Interdisciplinary Approach*, Freeman comments on the influence of the ILO in this way:

¹¹⁵ *Op. Cit.*, p. 20.

¹¹⁶ *Op. Cit.*, p. 18-19.

¹¹⁷ *Op. Cit.*, pp. 20-21.

¹¹⁸ Veerman 1992.

¹¹⁹ van Bueren 1995, pp. 9-16.

¹²⁰ *Op. Cit.*, pp. 265-269.

International concern with human rights between the two world wars was limited mainly to some work of the International Labour Organisation on workers' rights and certain provisions in the treaties of the League of Nations for the protection of minorities, although the latter applied only to a few countries.¹²¹

Although he later admits the influence of the ILO on the Universal Declaration of Human Rights:

Before the Second World War the International Labour Organisation (ILO), established in 1919, worked for fair and humane conditions of labour. The ILO did not, however, apply the term "human rights" to its work until after the Second World War. Only a few ILO Conventions are officially classified as human-rights treaties. These deal with freedom of association, the right to organise trade unions, freedom from forced labour and freedom from discrimination in employment.¹²²

My comment on this is that the fact that a treaty is not called "a human rights treaty" cannot automatically be taken as an indication that it is not. Furthermore, the ILO has declared that freedom of association and the effective recognition of collective bargaining, the elimination of all forms of forced or compulsory labour, "the effective abolition of child labour" and the elimination of employment discrimination are fundamental rights that should be "promoted, respected and realized", "in good faith" by all members of the ILO, regardless of whether they have ratified the Conventions or not.¹²³ But whereas Freeman later admits that the ILO has "done much work to convert general economic and social rights into relatively precise standards", he directly adds that the "ILO is, however, somewhat marginal in the UN human-rights system and this may have limited its overall contribution to the improvement of human rights".¹²⁴

The American lawyer David M. Smolin has discussed the ILO minimum age campaign in two articles published in 1999 and 2000.¹²⁵ In his 1999 critique of the latest developments, particularly the Worst Forms of Child Labour Convention No. 182, he reviews the minimum age campaign from its start in 1919. Smolin is critical of the ILO's strategies over the years. He identifies the position of the "child labour movement", which I interpret to be the ILO, as being in between "neo-traditionalism, in which ethnic identities, national sovereignty, and traditional ways of life are being reasserted" and an "international economic order based increasingly in

¹²¹ Freeman 2002, p. 32.

¹²² *Op. Cit.*, p. 39.

¹²³ ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up, adopted by the International Labour Conference, 86th session, 1998.

¹²⁴ Freeman 2002, p. 52, referring to Leary and Donnelly.

¹²⁵ Smolin 2000, Smolin 1999.

international trade and competition”.¹²⁶ Smolin argues that there has been a strategic shift in the approach of the ILO from encompassing only formal employment, with broad exemptions in the Conventions in respect of work in family undertakings and agriculture, via the objective of “total abolition of child labour” with Convention No. 138 in 1973, towards what he calls the “over-reaching” and “overbroad” objectives of Convention No. 182.¹²⁷ These descriptions of “over-broad” and “over-reaching” result from the inclusion of criminal activities such as prostitution, trafficking, drugs and child soldiers in Convention No. 182 and Smolin sees it as “an attempted expansion of ILO jurisdiction”. In my study of the ILO minimum age campaign in the following chapters, I will show that this is not a formally correct description. The “abolition of child labour” was in fact on the agenda as an essential issue for the ILO right from its inception in 1919.

Smolin’s critical conclusion is that the Worst Forms of Child Labour Convention fails “to consider effectiveness in any form in its prioritisation decisions” which makes its prioritisation decisions “irrational”.¹²⁸

Two Belgian lawyers, Karl Hanson and Arne Vandaele have also studied the ILO minimum age campaign in an article published in 2003.¹²⁹ Departing from the contradictory human rights standpoints of the movements of child workers on the one hand – the right to work – and those of the ILO on the other – the abolition of child labour – Hanson and Vandaele formulate a critique of the way in which international labour law – the ILO Minimum Age Conventions – has dealt with working children.¹³⁰

According to Hanson and Vandaele, the objective of the Minimum Age Convention No. 138 from 1973 to abolish child labour totally has had paramount influence on the debate up to the present day. They adhere to the view that the abolition of child labour not only fails to protect children from exploitative child labour, but can also even put children into more intolerable forms of child labour.¹³¹ In an overview of the Minimum Age Conventions, they refer to Smolin and argue that the abolitionist goal of Convention No. 138 was new to the ILO in 1973. In the earlier ILO Minimum Age Conventions they find evidence that child work was not considered “to be intrinsically problematic”, and was even sometimes “beneficial”.¹³² They find further support for their argument in the language of the Conventions. They

¹²⁶ Smolin 1999, p. 383.

¹²⁷ Smolin, 2000, pp. 942-944 and 948.

¹²⁸ *Op. Cit.*, p. 979.

¹²⁹ Hanson & Vandaele 2003.

¹³⁰ *Op. Cit.*, p. 74.

¹³¹ *Op. Cit.*, p. 132. They refer to often quoted examples of Western boycotts towards import of products from Third World export industries using child labour that have led to much worse situations for the children involved. I find it somewhat surprising that the debate is discussed again, as it is well-known that very few working children work in the export industry.

¹³² *Op. Cit.*, p. 99.

see the fact that children over the age of 14 years (later over 15 years) are called “young people” and not “children” to be an indication of a degree of acceptance of work done by adolescents. They also see support for the interpretation that the ILO accepted much child work by its inclusion of exemptions for India and Japan in the early Conventions.¹³³ They argue that all the ILO Conventions (concerning adult workers) as well as other human rights instruments can and should apply also to children. Their solution is to leave the models and principles of the ILO Minimum Age Conventions and adopt a “participation and regulatory approach” that fully recognises working children as legal subjects and holders of rights who have the same work-related rights as adult workers.¹³⁴

On a more general and descriptive level, Thilo Ramm in *The Making of Labour Law in Europe* has described the protective legislation for children and young persons in Europe during the 19th and first half of the 20th century as well as the origins of international labour law and the ILO.¹³⁵ *The Making of Labour Law in Europe* (edited by Bob Hepple who has also made a major contribution to the book) is a standard work on comparative European labour law. The aim of the book is to describe labour law as part of a process which includes the relationships between the developments of labour law in the European countries. Hepple sees two main kinds of relationship: legal transplants¹³⁶ and “inner” social, economic and political relationship developing in parallel in Europe. In the section concerning the protection of children, Ramm shows that the British protective legislation served as a model to all the other European countries. He comments particularly on the Prussian legislation because he finds it an interesting example of the interplay between the state (at that time the bureaucracy and the King) and the industrialists. At a certain point it was ‘discovered’ that Prussian young boys were not physically fit to be soldiers because of too much work at too early an age. The industrialists on the other hand demanded labour and they were favoured because industrialisation was seen as a solution to the social problem of the time.¹³⁷ Ramm sums up the state of child protection in Europe before the First World War and establishes that it had generally reached the level of minimum ages of 12 or 13 years for employment – in some cases connected to the completion of elementary school – and some regulation of the working hours for children below the ages of 15 to 18 years. After the war, he continues, the European countries generally followed the international standards of the ILO: the Minimum Age Conventions. He does not describe the content of the Conventions in any detail, but he comments

¹³³ *Op. Cit.*, p.100.

¹³⁴ *Op. Cit.*, p. 132-133.

¹³⁵ Ramm 1986, pp. 279-285.

¹³⁶ The legal transplant was as a concept was coined by legal historian Alan Watson, Watson 1974.

¹³⁷ Ramm 1986, pp. 89-90.

on some “problems of general nature” that “appeared time and again” namely the exemptions from the minimum age standards for work in family undertakings and the link between the minimum age, vocational training and attendance at primary schools.¹³⁸

Concerning the origins of the ILO, he highlights the central position of child (and women) protection, as seen in the ILO’s early efforts to internationalise labour standards, to the establishment of the ILO. In contrast to Smolin, Hansson and Vandaele, Ramm shows that the abolition of child labour was an important objective of the ILO from the beginning and it was included in the Labour Clauses in the Treaty of Versailles as Principle six (out of nine). Ramm regards the nine Labour Clauses as a fundamental advance for international labour law.¹³⁹

To sum up, the overview of previous research has revealed three things. *Firstly*, as Cunningham & Viazzo concluded concerning the importance of history for teaching “lessons from the past”, it is both probable and appropriate that historians will be influenced by works written about the contemporary world in their studies and in the questions they ask about the past. This is just like the way in which the recent debate and critiques concerning conceptions of and policies on working children, particularly by Boyden, Ling and Myers, have served as a great source of inspiration for the questions and perspectives of this dissertation. *Secondly*, the majority of historical publications on child labour have focused on industrial child labour during the Industrial Revolution in Europe and North America and have mainly concerned explanations of its decline. This is not surprising, since the source material from the past is abundant concerning industrial child labour, and almost non-existent as regards children’s work during other periods and in occupations other than industry and industrialism. *Thirdly*, the history of *international* child labour law remains to a great extent unwritten and this cannot be explained by a lack of sources. Furthermore the role and the importance of the ILO and the Minimum Age Conventions for international human rights law has mostly been neglected. In my view this is a serious shortcoming. In this dissertation I hope to be able to fill some of the gaps as well as to point out some of the further questions that remain to be explored.

¹³⁸ *Op. Cit.*, pp. 92-94.

¹³⁹ *Op. Cit.*, pp. 282-284.

Chapter 3. Method, Material and Delimitations

3.1 Method

This dissertation is a legal historical study of how the ILO Minimum Age Conventions and Recommendations were drafted and adopted. It encompasses the time period from 1919 to 1973 and includes all eleven Conventions and ten Recommendations on minimum age that have been adopted by the ILO. The study also includes the *travaux préparatoires* of the Conventions and Recommendations.

The eleven Minimum Age Conventions and Recommendations were adopted in 1919-1921, 1932, 1936, 1937, 1959, 1965, and 1973. To make the extensive material easier to review, I have divided it into three periods that describe the main stages of activity in the minimum age campaign: 1919-32, 1936-1965 and 1973. During the first period, area-specific Conventions were adopted, starting with regulation of the employment of children in industry and followed by regulation within agriculture and at sea and concluded with a Convention regulating the employment of children in the non-industrial sector. The next period starts with the revision of all the Minimum Age Conventions that increased the minimum age. At the end of this period, two new area-specific Minimum Age Conventions were adopted. The third period is the time when the adoption of a general Minimum Age Convention encompassing all economic areas took place in 1973.¹⁴⁰

3.1.1 The context and the choice of period

As my purpose is to make an exhaustive study of the ILO minimum age campaign, it was essential that it should include all of the Minimum Age Conventions and Recommendations, from the first Conventions adopted in 1919 to the most recent one adopted in 1973. By choosing such a relatively long period of time, it has been possible to place the whole campaign in a wider historical context. The time period includes the breakthrough of modernity in terms of industrialisation, democracy and the development of the welfare state in the West. During the period, people's living and working

¹⁴⁰ Smolin has used that division in his articles about the ILO minimum age campaign, and he calls them "stage one: area-specific limitations 1919-21", "stage two: raising the minimum age limits 1936-65" and "stage three: a general minimum age 1973", Smolin 1999, pp. 408 ff. Smolin also includes a fourth stage starting from 1999: "current strategies".

conditions changed immensely, particularly in the Western societies. The ILO played a central role in dealing with the questions of working life. How did the societal changes during the 20th century affect the minimum age campaign?

The minimum age campaign started right at the time of the historical shift between “the long 19th century” and “the short 20th century”, as the historian Eric Hobsbawm calls them.¹⁴¹ The long 19th century was the century of the bourgeoisie, industrial capitalism and liberalism – bringing with it new understandings of family life, childhood and motherhood.¹⁴² It was also the century of European imperialism. A handful of European nations were still colonising practically the rest of the world by the time of the outbreak of the First World War. The medieval static structures of society were dissolved and the individual was free to transfer between professions and classes. For example the guild systems were replaced by free trade. The individual was ‘liberated’ from the collective, mostly at an ideological level, but it also had a strong impact in practice. At the same time, the labour movement started to put serious pressure on employers and governments, as did the women’s movement for universal suffrage and the religious nonconformist movements. The early decades of the 20th century contained enormous upheavals: the outbreak of the First World War; the breakthrough for democracy; and a number of revolutions of which the October Revolution had the most far-reaching effect. Throughout the period of the study dramatic events took place such as the rise of Nazism and fascism, the Second World War, and decolonisation. This is the general historical context.

At another level, a central focus for any study of children and work is childhood, or more precisely *ideas* about childhood. The ILO minimum age campaign started at a time when – I think most historians would agree – Western society had reached a consensus that childhood was a special time in life. Children were regarded as innocent, incompetent, vulnerable, and in need of protection and discipline. The ideas were not new: in fact they were dominant from at least the end of the 18th century.¹⁴³ Work had absolutely no place in that kind of childhood. By the turn of the century in 1900, the ideology of childhood – of which Elizabeth Barrett Browning’s poem quoted above is an example – had started to slowly trickle down also to the working classes and it helped pave the way for the adoption of child labour laws in Europe and North America. Children became possible holders of rights. This is the children’s rights context.

¹⁴¹ The long 19th century dates from the start of the French revolution in 1789 to the outbreak of The First World War in 1914 and the short 20th century from 1914 to the fall of the Soviet Union in 1991. Hobsbawm 1975, 1977, 2000 and 1995.

¹⁴² Ambjörnsson 1978

¹⁴³ Rousseau, Jean-Jacques, *Émile*

From a legal historical perspective it is also important to understand the minimum age campaign in a labour rights context as well as in an international human rights context. After the end of the First World War, international human rights instruments that transformed human rights into internationally binding law were adopted for the first time. The ILO was a forerunner in this development and the Minimum Age Conventions and Recommendations are situated at the intersection where three ‘classical’ fields of international human rights meet: labour rights; children’s rights; and general human rights. I use the word ‘classical’ to indicate that this classification of rights is not to be taken for granted; it is a construction that has its origins in the historical development of human rights and international organisations. The origins of the three fields are in fact intertwined and in many ways the same. At the same time each has a particular history. International labour law has its particular history as a result of the pressure of the labour movement combined with the threat of revolution in Europe after First World War as well as in its close connections to the industrial partners, namely, employers’ and workers’ organisations. Children’s rights, have their particular origins within humanitarian law and minority rights and are closely connected to the work of the Red Cross and the Save the Children International Union after the First World War.¹⁴⁴ While accounts of the origins of children’s rights always mention the Declarations on Children’s Rights from 1924 and 1959 as predecessors to the Convention on the Rights of the Child, the fact that the first Minimum Age Conventions were very early children’s rights instruments is seldom remembered. But the ILO has played an important role in ‘general’ human rights, as well as in a ‘children’s rights’ context, as the work of the ILO was a milestone in the history of human rights. This is the human rights context.

Thus, it is my ambition to interpret the minimum age campaign in *a general historical context* as well as in *a children’s rights* and *a labour rights context*.¹⁴⁵ I will return to the origins of children’s rights and labour rights in Chapter 4.

3.1.2 A chronological and a thematic perspective

As mentioned above, I have chosen to combine a chronological perspective with a thematic one, which originated from the sub-questions or themes of the study. The chronological perspective has permitted me to discover continuity and change in the material. But it did not permit me to go beneath and discover the underlying discourses in the debate. By combining the

¹⁴⁴ The legally non-binding Declarations on the Rights of the Child 1924 and 1959, see van Bueren doc. 1998. Concerning children’s rights and minority rights, see Spiliopoulou 1997 and Johnsson 2002.

¹⁴⁵ On contextualisation, see Granström 2002, pp. 21-24 with further references.

chronological approach with a thematic approach, I have been able to make the underlying discourses emerge more clearly. As a first step, the material was organised and analysed chronologically. As a second step, the investigation was taken further in a thematic analysis that departed from the themes or sub-questions described above. In practice this means that I have described the minimum age campaign from the first Minimum Age Convention in 1919 to the last in 1973 chronologically, with recurrent thematic summaries that function as partial conclusions. The final conclusions of the dissertation are organised thematically.

The source material has been very favourable. The documentation on the adoption process of the Conventions and Recommendations has been ample. The documentation has generally been complete and privileged in the sense that all stages of the formal adoption process were officially documented in verbatim records of proceedings and in reports filed in the ILO central archives in Geneva and in national libraries and archives in the member states.

3.2 Material

3.2.1 The Conventions and Recommendations

First of all, my source material consisted of the texts of the Minimum Age Conventions and Recommendations as adopted by the International Labour Conference. That material alone gave answers to many of the questions of the dissertation. All ILO Conventions and Recommendations are published in the database ILOLEX, on the ILO website (www.ilo.org). The 11 Minimum Age Conventions and 10 Recommendations are all published there in English, French and Spanish. The English and French versions of the texts are equally authoritative, which is established in the final Article of each Convention.¹⁴⁶ In this study, I have only used the English versions of the texts, except for a few cases where I have not had access to the English version and instead used the French version. In these cases I have given the French titles in the notes.

3.2.2 The *travaux préparatoires* as a legal historical source

Even though an analysis of the texts of the Conventions and Recommendations could answer several questions of the dissertation, much

¹⁴⁶ In the first Minimum Age Convention the final Article read “The French and English texts of this Convention shall both be authentic.” See for example Convention No. 5, Article 14. From 1959 the Article read: “The English and French versions of the text of this Convention are equally authoritative.” See for example Convention No. 112, article 12.

relevant information remained buried under the surface of these legal documents. In order to fulfil the purpose of the dissertation, I had to dig into deeper layers of the minimum age campaign.¹⁴⁷

For that purpose, I included the *travaux préparatoires*, in the study. From a strictly legal point of view, as codified in the Vienna Convention on the Law of Treaties, *travaux préparatoires* are not included among the general sources of public international law (Article 31) and it is disputed whether they can have a status as supplementary means of interpretation (Article 32).¹⁴⁸ But for the purposes of this study – legal history – the *travaux préparatoires* are of the greatest relevance.

A fruitful starting point to sort out the status and relevance of different sources in international law for different purposes is H. L. A. Hart's distinction between two kinds of source: the "material" or "historical" sources on the one hand, and the "formal" or "legal" sources on the other.¹⁴⁹ Sources in a 'legal' or 'formal' sense refer to the criteria for a rule to become accepted as binding law in a particular legal system (municipal, international or other). This is what practising lawyers and many legal scientists are concerned with. In contrast to the 'legal' sources, the 'historical' or 'material' sources have no legally binding status. Instead, they refer to historical or other circumstances that can help us explain and understand the existence of a certain rule. So far they are highly relevant for legal historians and others who are concerned with different and broader questions than analyses *de lege lata*.

In the standard textbook on international law, *Akehurst's Modern Introduction to International Law*, Akehurst refers to Hart and mentions as an example of the 'historical' or 'material' sources – very conveniently for

¹⁴⁷ Tuori 2002, Johnsson 2002. According to Tuori's theory there are three levels of the legal order: the surface level, the legal culture and the deep structure of law. These three levels interact: when action is taken on the surface level, the legal order is produced and reproduced, as, on the one hand, the adoption of laws: the making of judicial decisions, etc. is influenced, often unconsciously, by the legal culture and by the deep structure of the legal order and, on the other hand, action on the surface level has a sedimentation effect on the legal culture and the deep structure of the legal system.

¹⁴⁸ For a profound exploration of the status of *travaux préparatoires* as a supplementary means of interpretation in public international law, see Mårsäter 2005. Mårsäter concludes that there is ambivalence among international lawyers regarding supplementary means of interpretation and that this indicates that a strict dichotomy between the general rule of interpretation (Article 31, Vienna Convention) and supplementary means of interpretation (Article 32, Vienna Convention) does not meet with the realities of everyday work in international law. According to Mårsäter a number of traditions of interpretation, particularly historical intentional interpretations and the more progressive teleological methods, that both include reference to the *travaux préparatoires*, continue to exist together with the textual methods of interpretation, in spite of the Vienna Convention. See pp. 66-76.

¹⁴⁹ Hart 1961, pp. 246-7.

this study – sources that can make us understand the development of labour law as a result of the political activism of the trade union movement.¹⁵⁰

Thus, it can be concluded that *travaux préparatoires* as a ‘historical’ or ‘material’ source contain very relevant information for a legal historian. And therefore, whereas it is uncertain what significance *travaux préparatoires* have for deciding the legal content of the law they are of all the more importance to help us explain and understand the historical development of the ILO minimum age campaign. The *travaux préparatoires* give a complete picture of the official proceedings within the International Labour Conference and valuable information on the preparations within the International Labour Office.¹⁵¹

3.2.3 The Origins of the International Labour Organisation

There is a unique collection of documents and articles concerning the formation of the ILO and the first annual meeting of the International Labour Conference in Washington in 1919 and it has been more than useful for this dissertation, namely, *The Origins of the International Labor Organisation (OILO)* edited by the American Professor and member of the Paris Peace Conference James T. Shotwell and published in 1934.¹⁵² James T. Shotwell was also the Director of the Division of Economics and History, Carnegie Endowment for International Peace.¹⁵³

OILO consists of two parts: Part I, History and Part II, Documents. Part I deals with the historical background of the ILO, the Paris Peace Conference after the First World War, and the first meeting of the ILO in Washington in 1919. The authors of the various chapters were personally involved in the formation of the ILO as government officials, ministers or other leading politicians, or as trade union leaders and many of them were going to play leading roles in the ILO. *OILO* Part II contains a very complete set of documents appertaining to the preliminaries of the Paris Peace Conference, the negotiations at the Paris Peace Conference, the first International Labour Conference in 1919 and, finally, documents appertaining to the relationship

¹⁵⁰ Malanczuk 2002. Malanczuk describes the codification process within the International Law Commission: “the Commission’s members base work on extensive research and on an attempt to ascertain and reconcile the views of the member states of the United Nations (for example by circulating questionnaires and by inviting states to comment on their draft reports – the same procedure is followed during the preliminary work on draft conventions.” This description also goes for the codification process of the ILO.

¹⁵¹ Cf. Delimitations.

¹⁵² *OILO* Vol. I and II.

¹⁵³ In this capacity, Shotwell was the editor of a series of 150 volumes on the economic and social history of the First World War. Shotwell was also a member of President Wilson’s foreign policy brain trust called the Inquiry, which was present at the Paris Peace Conference. The Inquiry’s assignment was to collect data in preparation for the Peace Conference. See Wikipedia, http://en.wikipedia.org/wiki/James_T._Shotwell, (visited 12/01/07).

between the United States and the ILO. In all there are 83 documents in the form of resolutions, memoranda, notes, reports, minutes, news releases, letters, proposals, statements and manifestos from heads of governments, ministers and government officials, political leaders, trade unions, delegations to the Peace Conference and so on. I have used mainly the minutes of the Meetings of the Commission on International Labor Legislation, February 1 to March 24 1919.¹⁵⁴ The meetings are also described in *OILO* Part I by several of the contributors and authors.

3.2.4 Other material

To help place the Conventions in their proper historical context I have described, in most cases at the beginning of each chapter, major events within and outside of the ILO, which had relevance for the minimum age campaign. To a large extent I have drawn from the ILO Conference material itself, as it has proved to give ample information on the questions of the day. Every year there is a report submitted by the Director General in which he comments on dominant questions and challenges for the organisation. There are also inaugural and closing speeches that comment on the dominant questions and difficulties, and there are especially invited guests who deliver speeches with comments on the problems of the day. Using that material has provided a short-cut to getting important background information, but that is not the only reason I have chosen to rely on it. A strong reason for my decision to use that material is that it reflects a contemporary ILO perspective of the developments. However, sometimes it has been necessary to also consult standard historical works to make the description more complete.¹⁵⁵

3.3 Delimitations

The first limitation on the scope of this dissertation is that its focus is on the *legislative process* of the Minimum Age Conventions and Recommendations. As I have argued above, the central questions concern the ideological and pragmatic points of departure of the minimum age campaign and its underpinning of ideas and definitions of childhood. For these purposes, the Minimum Age Conventions, Recommendations and *travaux préparatoires* from the sessions of the International Labour Conference are the best material.

¹⁵⁴ OILO II, Document 34, pp. 149-323.

¹⁵⁵ Much of the material I have gathered at the ILO archives in Geneva. I have also gathered material at the Swedish Library of Parliament and in a very complete collection of ILO official material at the Swedish Ministry of Industry under the care of the Secretary to the Swedish ILO Delegation Kerstin Wiklund.

However, the fact that I have omitted the ample material of the ILO's implementation and supervisory system from the study might warrant a further comment. The implementation process is documented in annual reports on ratified Conventions from member states to the ILO under Article 22 of the ILO Constitution, reports on unratified Conventions under Article 19 of the Constitution, reports on submission of adopted Conventions to the competent authorities of the member states, the summaries of member states' reports to the next session of the International Labour Conference under Article 23 (2),¹⁵⁶ and, finally, reports of the Committee of Experts on the application of Conventions and Recommendations, including the 'Article 19 surveys' issued by the Committee on each and which give an overview of the history and interpretation of a particular Convention or Recommendation, how it is applied in member states, its ratification status and a review of the needs for its revision.¹⁵⁷ The reports contain substantial information regarding the application and interpretation of the ILO Minimum Age Conventions and Recommendations in the member states. They do, however, raise questions about the enforcement of international law that are urgent but outside the scope of this dissertation. For my purposes the supervisory material adds no relevant information.

The second limitation concerns the depth of the study. All sources have their limitations and of course, the source material of the dissertation, although so rich in information, does not contain the complete story of the ILO minimum age campaign. When the Conventions were put on the agenda of the International Labour Conference, a lot of work had already been done, probably mostly in the form of various initiatives and informal meetings and negotiations at government level, at department level, employers' and trade unions' level and privately. Our knowledge about these preliminary contacts and initiatives is very limited as most sources are tacit so far. Probably it will be possible to document at least some parts of the processes prior to the formally documented stages by digging into the deeper layers of the legislative process by research in the personal archives, diaries, etc. of people involved. I think it deserves to be done. But it has not been possible to include that kind of archival work in this study which covers a long time period and many Conventions and Recommendations – for reasons discussed above.

¹⁵⁶ This is no longer done, instead, since 1981 the International Labour Office publishes a list of the submitted reports. Bartolomei de la Cruz, von Potobsky & Swepston 1996, pp.70-71.

¹⁵⁷ The Committee of Experts has the assignment to perform a completely impartial examination of the member states' compliance with their obligations regarding conventions and recommendations under the ILO Constitution. The Committee shall particularly review to what degree a member state – legally and factually – lives up to its obligations. The Committee of Experts' submit a report of their review (called Report III) annually to the International Labour Conference, see further Bartolomei de la Cruz, von Potobsky & Swepston 1996.

The third and final limitation concerns a possible gender approach to the study. At the start of the project I had the intention of including a study on the understanding of gender in the minimum age campaign. However, this turned out to be difficult to conduct as I estimated that the source material did not contain enough relevant information. A few of the Minimum Age Conventions and Recommendations have gender-specific rules and on some occasions, gender was an issue in connection with discussions about categories of work. One result might be that girls and boys were usually regarded as a single entity, even though it seems that it was taken for granted that when discussing, for example, the Minimum Age (Sea) Convention, only boys were concerned. In these cases I have preferred to highlight the gender-specific regulation or discussion, but I have not taken the question of gender further.

Chapter 4. The Origins of the ILO and the Minimum Age Campaign

The ILO was the first permanent inter-governmental human rights organisation. In contrast to the League of Nations that was established at the same time as the ILO, it has survived, and its Constitution has remained largely unchanged.¹⁵⁸ The ILO thus predates the United Nations and the modern era of human rights law by a quarter of a century. The more precise objective of the ILO was, and is, to protect workers and to improve their working and living conditions. By means of a body of international labour standards the ILO laid the groundwork for international protection of human rights, international monitoring of state obligations, technical co-operation and an international civil service.

The ILO was founded before ‘human rights’ or ‘children’s rights’ were established notions as terms of international relations. Nonetheless, the Minimum Age Conventions adopted in 1919-1921 were the very first international and legally binding instruments concerning children’s human rights, and among the earliest concerning human rights in general.¹⁵⁹ Nearly 80 years later, in 1998, the ILO acknowledged that certain of its Conventions concern fundamental human rights. The effective abolition of child labour is one of those fundamental human rights together with the right to collective bargaining, the elimination of all forms of forced or compulsory labour, and the elimination of discrimination in respect of employment or occupation.¹⁶⁰

A point of departure of this dissertation is, as described in Chapter 2, that the ILO minimum age campaign suffers from a “hang-over from history”. 19th century European social problems such as child labour have characterised the development of the national and international labour standards. This also includes the very structure and organisation of the ILO. The direct origins of the ILO are the peace negotiations in Paris in 1919 after the First World War. Both the ILO and the League of Nations were actually

¹⁵⁸ ILO Constitution 1920.

¹⁵⁹ Before 1919 there were international declarations and treaties on the abolition of the slave trade and slavery and humanitarian law. See further Nowak 2003, pp.16-21.

¹⁶⁰ ILO Declaration on Fundamental Rights at Work and its Follow-up 1998. See further Bartolomei de la Cruz, von Potobsky & Swepston 1996, pp. 128-29.

essential components of the new world order whose establishment was aimed at by the Versailles Peace Treaty in 1919.¹⁶¹

Much of the future work of the ILO was laid down, in the Constitution and its Annex, from its inception in 1919. The protection of children was part of the programme. Children's rights and labour rights are parts of the same human rights regime and they are formally, materially and historically interconnected. The same is true about women's rights, minority rights, humanitarian rights and the anti-slavery movement. As mentioned in Chapter 2, the question of the protection of children was closely connected to the anti-slavery movement, particularly in Great Britain. As I will describe below, the protection of children had even closer connections to the women's movement.

Below I will attempt to place the ILO and the minimum age campaign in its historical context. The reason is twofold: (1) to connect the efforts of the ILO to protect children in the minimum age campaign to the early history of labour rights and to the development of children's rights, and (2) to contribute to a deeper understanding of the conflicts, debates and chosen solutions during the campaign.

To this end, I will recapitulate below the late 19th century and early 20th century historical background to the labour rights movement and the development of international children's rights.

4.1 Labour rights

The decades around the end of the 19th century and the beginning of the 20th century were industrially and technically revolutionary in Europe and in North America. It was a period of constant change. Industrialisation, democratisation, globalisation and a new conception of the world that was more influenced by modern science than by traditional values, all contributed to speed up general change. Industrialism reached its peak and great masses of people – men, women and children – had left traditional ways of living and working in agriculture and trades and moved to cities and towns to work in industry.

The technical revolution brought about the innovations and the infrastructure that made mass production and mass distribution possible. The markets were broadened. Innovations such as dynamite, the three-phase system for transmission of electricity, the light bulb, the telephone, the internal combustion engine, the wireless telegraph and the automobile became objects for mass production. By means of the new inventions,

¹⁶¹ The Constitution of the ILO is *Part XIII, Labour* of the Versailles Peace Treaty. ILO Constitution 1920.

communications improved enormously which strongly contributed to globalisation. There had been a liberalisation of trade, but that trend was changing. By the use of import restrictions, subsidies to national industries and heavy customs duties, nations started raising barriers against other nations. Britain kept its position as the leading industrial nation but was, however, under constant competition from Germany and the United States.¹⁶²

The demographic changes that followed industrialisation were dramatic, and they had consequences for the organisation of work. In the early stages of industrialism, factories were 'man-power intensive', and there was a strong demand for men, women and children as workers in the mills. Consequently, people moved into the towns in large numbers. At the same time, the birth rate declined by fifty per cent in Europe, which increased the demand for employment. With smaller families, more and more women could take part in industrial production. Later, it was the opposite: the epoch of 'housewives' and the 'the male breadwinner norm' followed: women were encouraged by low salaries and other means, by husbands and by society in general, to stay at home to take care of their husbands, children and homes.

Employers exploited workers in a way that is difficult for us to understand today. Adult and child workers alike could work sixteen-hour days and 90 hours a week for unbelievably low wages. Children were paid lower wages than adults.¹⁶³ At the same time, as a result of the exploitation of workers, employers accumulated huge profits. The accumulation of profit was in fact the prerequisite for the opening of a renegotiation of the distribution of wealth towards the end of the 19th century. By this time, the workers had gained a more powerful position than previously. They united in trade unions locally, nationally and internationally. Revolutions, that were more or less successful, took place in France in 1848, and 1870-71, in Germany in 1848-1849 and 1916, and in Russia several times and resulted in a definite transfer of power to the working class in October 1917. In the early years of the 1900s, workers all over Europe were frequently on strike. The Russian Revolution of 1905 was a source of inspiration; it had showed that mass strikes could be useful in achieving revolutionary aims. At the same time, movements for the protection of children and for the equality of women grew more influential. Universal suffrage for men was introduced in many countries and, eventually, women in most countries were allowed to

¹⁶² I have mainly consulted Alcock 1971, Bartolomei de la Cruz, von Potobsky & Swepston 1996, Gheballi 1989, Morse 1969 and Betten 1993.

¹⁶³ See for example Nygren 1982, with further references. Nygren has described the adoption of child labour legislation in 19th century Sweden. Because of the particular bureaucratic traditions of Sweden there is an exceptionally ample supply of statistical material concerning child labour. Nygren also gives an overview of several European countries and the picture was very similar there.

vote although much later and, in France for example, this happened as late as 1944.

4.1.1 Early international co-operation

The first calls for international co-operation to improve working conditions arose during the earliest stages of the Industrial Revolution. There were advocates for co-operation among intellectuals, philanthropists, doctors, liberal economists and prison wardens. Some industrialists were also engaged in the struggle to improve the life of workers, because they had become aware that the appalling conditions for workers were counterproductive for business in the long run. In the short term, however, improvements in working conditions were a threat to competitiveness in national and international markets. A consequence of improved labour conditions was inevitably higher labour costs, which meant higher production costs and higher prices for consumers.

In this way, the more humanitarian industrialists had a strong incentive to co-operate in improving working conditions. At this early stage, workers were not particularly involved because they were not allowed to organise and had no influence. However, Cunningham has shown that, at this early stage too, workers exerted enormous pressure to regulate child labour although to do so involved a great risk since workers did not have the right to organise until much later.¹⁶⁴

In historical accounts of international co-operation for labour legislation, there are a few names that are almost always mentioned. The earliest person who figures in them is the Swiss economist Jacques Necker who as early as 1778 had advocated international co-operation to address the social problems caused by industrialisation.¹⁶⁵ Robert Owen is also often mentioned. He was a British industrialist who proposed organised international co-operation for improving the conditions of workers in the first half of the 19th century.¹⁶⁶ In the middle of the 19th century, the discussion on international labour law was intensive in Switzerland, France, Germany and Belgium and the French industrialist, philanthropist and writer Daniel Legrand was a central figure. He devoted twenty years of his life fighting for the idea of international labour law¹⁶⁷. A result of the decades of effort was the first international

¹⁶⁴ Cunningham 1991, pp. 11-12.

¹⁶⁵ Jacques Necker, 1732-1804. Born in Geneva, Professor of Public Law in Geneva, banker in London and Paris, French statesman and finance minister of Louis XVI. See Alcock 1971, p. 6.

¹⁶⁶ Robert Owen, 1771-1858. Cotton manufacturer in Manchester. Later he reconstructed a Scottish community, New Lanark, where he had bought mills, into a model industrial town with good housing and sanitation, non profit-making stores, schools, and excellent working conditions. The profits of the mills increased and the New Lanark experiment became famous in England and abroad and Owen's ideas spread. See Alcock 1971, p. 5-6.

¹⁶⁷ Daniel Legrand, 1783-1859. See Alcock 1971, p. 6.

labour Conference in Brussels in 1856. It was the initiative of the General Inspector of prisons and charitable institutions in Belgium, Eduard Ducpetiaux. At the follow-up Conference in Frankfurt the following year a motion calling for Conventions laying down international labour standards was adopted.

4.1.2 The labour movement I. The socialist internationals and socialist parties

Although the workers of the European nations had made efforts to organise politically, it was not until the middle of the 19th century that the labour movement started to grow. Very soon, the workers started to co-operate across national borders. To institutionalise and internationalise the struggle of the working class, Karl Marx and Friedrich Engels founded the First International in 1864, in London. The fundamental idea was that industrialism intensified the social contrasts and in order to be stronger, the workers should co-operate across the nations, as was expressed in the notorious communist call “Workers of the world, unite!”

In 1889, a Second International started to work and it lasted until the outbreak of the First World War in 1914. By the time of the Second International, there were powerful socialist parties in many European countries.¹⁶⁸ These parties formed a solid political basis for international action for workers, which had previously been lacking.

4.1.3 The labour movement II. Trade unions

In parallel with the political organisation of the Internationals, workers organised nationally in trade unions to promote their interests more specifically against their employers. During the first half of the 19th century trade unions were illegal. However, from the middle of the 19th century, it was legal for European workers to organise and from that point they started organising on a large scale. The fact that workers started to organise in trade unions on such a large scale has been of crucial importance for the development of the ILO.

The first to organise were the skilled workers who formed so-called Friendly Societies. By the 1880s the Friendly Societies also welcomed unskilled workers to be members. In the United States, the American Federation of Labor was founded in 1886, with former child worker and

¹⁶⁸ Denmark (1871), Czechoslovakia (1872), Portugal (1875), Spain (1879), Belgium (1885), Austria and Switzerland (1888), Sweden (1889), Armenia and the Ukraine (1890), Argentina, Italy and Poland (1892), Bulgaria (1893), Holland and Hungary (1894), Lithuania (1896), Russia (1898), Finland and Georgia (1899), Great Britain (Independent Labour Party 1893, and the Labour Party which still exists today, (1900), France (1905, by unification of different socialist forces), Germany (SPD, about 1890).

cigar maker Samuel Gompers as its president.¹⁶⁹ In France, la Confédération Générale du Travail (le CGT) was founded in 1895, with Léon Jouhaux as its president from 1906.¹⁷⁰ Both Gompers and Jouhaux were later going to play important roles in the formative years of the ILO. In Great Britain various trades organised nationally from the 1840s and onwards. Two of the British trade union leaders were going to play essential parts for the ILO: George Barnes¹⁷¹ and Margaret Bondfield¹⁷².

By the end of the 19th century attempts were made among trade unions to co-operate internationally, towards improving their position in relation towards employers. In 1902, the first international Trade Union Conference took place. The purpose was to create permanent contacts between workers in different countries, exchange information, collect statistics and give mutual assistance in conflicts. In 1913 the organisation became the International Federation of Trade Unions.

During the First World War, international co-operation on labour issues was weakened. At the beginning of the war, the working class became more nationalistic than international. Just like all groups in society, the working class loyally supported their national governments. Nevertheless, the ideals of international class solidarity never died completely. By the end of the war,

¹⁶⁹ Samuel Gompers (1850-1924), co-founder and first president of the American Federation of Labor, which became the most representative organisation of workers in the US at the time, Gompers 1957.

¹⁷⁰ Léon Jouhaux, 1879-1954, Leader of the C.G.T. Force Ouvrière, President, Conseil national économique, President of the International Committee of the European Council, Vice President of the International Confederation of Free Trade Unions, Vice President of the Fédération syndicale mondiale, Member of the Council of the ILO, Delegate of the U.N. Jouhaux started working early. Started the Lycée but had to quit when his father's earnings were stopped by a strike. Entered a match factory at 16. His father had spent many years in the match industry and was blinded by white phosphorous. Jouhaux participated in his first strike in 1900, a protest against white phosphorous, and was blacklisted. Without steady employment he worked in various plants and attended classes at the Sorbonne and l'Université populaire d'Aubervilliers. In 1909 he was elected local representative in the C.G.T. and in 1909 he was appointed Secretary General of the C.G.T. a post he held until 1947. Received the Nobel Peace Prize in 1951.

¹⁷¹ George Barnes, 1859-1940, Began work as a child, at 11 years of age, in a jute mill. Went to London and found work in the docks. Started attending classes in engineering-drawing and machine construction. Joined the Amalgamated Society of Engineers, attended meetings of the Social Democratic Federation. Was injured on "Bloody Sunday" in Trafalgar Square in 1887. General Secretary of the Amalgamated Society of Engineers in 1906. Member of Parliament in 1906. In 1910 Barnes became the leader of the Labour Party, after a conflict about the support given by the leadership to women's organisations for women's suffrage, Barnes said that women's suffrage was a sidetrack. In 1916, he became Minister of Pensions and in 1917 Minister without portfolio. Barnes 1924.

¹⁷² Margaret Bondfield, 1873-1953. Youngest of 14 sisters and brothers. At 13 she started working as an apprentice in a draper's shop. Moved to London and joined the National Union of Shop Assistants, Warehousemen and Clerks where she became Assistant Secretary for ten years. Published a report on the pay and conditions of shop workers. Supported universal suffrage for women. Member of a joint delegation of the Trades Union Congress (TUC) and the Labour Party to the Soviet Union in 1920. 1923 Member of Parliament and 1929-31 Minister of Labour (the first woman to attain cabinet rank in Great Britain). Bondfield 1948.

the European trade unions started approaching governments with demands that workers' organisations should participate in the forthcoming peace negotiations. More precisely, they demanded that a permanent international labour organisation should be part of the peace treaties and that a number of 'labour clauses' concerning international regulation of working conditions should be included. Towards this end, trade unions and socialist parties held international meetings and congresses in Leeds in 1916, in Stockholm in 1917, in London in 1918 and in Berne in 1919.¹⁷³ In Berne, the "Berne Manifesto" was adopted. The Manifesto sums up the demands of the trade union movement as follows:

The necessity for the establishment of a normal basis of international labor legislation has become doubly urgent as a result of the tremendous upheaval and the great alterations which the people have suffered during the war. The remedy for this situation is to be found at present in the establishment of a League of Nations with the application of international labor legislation. The International Conference demands therefore that the League of Nations should institute and put into operation an international system for fixing labor conditions ¹⁷⁴

The Manifesto demanded that the minimum conditions already applied in several countries should be inserted into the Peace Treaty in the form of an international labour charter. There were fifteen core minimum conditions:

1. compulsory elementary education, including free secondary education, accessible to all
2. minimum age for employment 15 years and limitations for employment of young persons 16-18 years old
3. limitations on the employment of women workers, such as prohibitions on night work, dangerous work and before and after childbirth and insurance benefits
4. limitations on hours of work, maximum 8 hours a day and 48 hours a week, except in cases in which it is unavoidable for technical reasons or on account of the nature of the work
5. minimum weekly time off, normally a half-day on Saturdays and Sundays
6. limitations on and special provisions for work in dangerous industries, including a list of illicit poisonous substances (such as white phosphorus and white lead in decorative work) and obligatory automatic couplings on all railways

¹⁷³ Riegleman 1934, p. 55 ff. See also "Proposal of the American Federation of Labor to the Inter-Allied Labour and Socialist Conference, September 1918, Concerning the Peace Conference", OILO Vol. II, Doc. 13.

¹⁷⁴ "Manifesto of the International Trade Union Conference at Berne, February 10, 1919, on International Labor Legislation" OILO Vol. II, Document 39 at p. 336.

7. application of all labour laws, regulations and benefits to home industries¹⁷⁵
8. freedom of association and combination, and equal rights for immigrant workers
9. free immigration
10. minimum wages
11. unemployment insurance
12. insurance against accidents at work
13. a seamen's code
14. national labour inspectorates to enforce the labour standards, labour inspectors of both sexes
15. a permanent international organisation for labour legislation with equal numbers of delegates from the member states and from the International Federation of Trade Unions.¹⁷⁶

The Berne Congress in 1919 was the only international meeting during the war years where German and Allied workers participated together. The German presence at the Berne Congress was not accepted by the Americans and the Belgians and therefore these nations did not attend. In spite of this drawback, the Berne Congress and the Manifesto represented a very large percentage of the organised workers of the world. This was the first of four main reasons behind the relatively strong position of the trade union movement at the end of the war which enabled it to demand influence in the forthcoming peace negotiations.

The second main reason was that many of the workers had gone to war – and died there – so the workforce was smaller. At the same time, the war increased the demand for labour in order to uphold national production in spite of most men being absent fighting. In this way, there was a gap between the demand for and supply of manpower. The war made workers increasingly significant. However, by November 1918, after the defeat of the Central Powers – Germany, Austria-Hungary and Turkey – a whole generation of young men had been eradicated. The scale, expense and devastation of the war were unprecedented in history. After the war there was obviously a tremendous need for reconstruction. At the same time, there was an enormous lack of workers. Ten million people had been killed and twenty million injured. In accordance with ‘the market forces’, the low supply of and high demand for workers made governments and employers susceptible to labour demands.

¹⁷⁵ ‘Home industries’ was a common form of employment. It meant that persons worked in their own homes in for example the garment industry.

¹⁷⁶ “Manifesto of the International Trade Union Conference at Berne, February 10, 1919, on International Labour Legislation” OILO II, Document 39.

The third main reason was that, whereas other groups in society were preoccupied with narrow nationalist and imperialist interests, the labour leaders acted more responsibly and their preoccupations concerned humanity at large. The labour parties and national trade unions were in fact the only political forces in society that struggled for international co-operation. In return, governments were willing to listen to the demands of the workers and ultimately labour issues were included in the peace treaty. This was going to be confirmed by the fact that most of the trade unions' demands – concern over lower standards and limits – were going to become part of the ILO Constitution and confirmed in a number of Conventions in the years to follow.

The fourth and most 'hard-core' reason that worked strongly in favour of the demands was the threat of revolution. Governments and employers had understood well before the outbreak of war, that the enormous class gap was dangerously destabilising and therefore unsustainable in the long run. After the war, it was clear that the social differences were also clearly a threat to international peace. Revolutions and strikes all around Europe were helpful in scaremongering; if dissatisfaction increased sufficiently, the by then well-organised workers were capable of overthrowing those in power.

Because of these circumstances at the time of the Peace Conference, there was a general consensus between governments, workers and employers on the importance of the link between international peace and social justice, and governments and employers had to listen carefully to the demands of the working class.

4.1.4 Governments' initiatives in international labour legislation

Gradually, the demands for better labour conditions also attracted some attention from governments around Europe.¹⁷⁷ At the time of the First and the Second Internationals, the deeply conservative German Chancellor Otto von Bismarck tried to disarm the threatening socialist forces in his own country by adopting a social insurance system with welfare benefits previously unparalleled in any other country. The following quotation, from a draft circular written in 1885 at the request of Bismarck illustrates the pressure that governments felt from the uniting working class and recognition of the need for international co-operation between governments:

Among the demands of the working population the normal or maximum working day takes a foremost place. In every country in which the development of modern large-scale industry has produced a numerous class of workmen suffering from the pressure of present-day methods of production and free competition, this demand has uniformly come forward as one of their main wishes and has at the present date, having regard to the

¹⁷⁷ For this section I have consulted Mahaim 1934 and Delevingne 1934.

interdependence of the industrial and commercial conditions of these countries and to the close relations in which the workmen of the same class have entered with each other, obtained an international character independent of the wishes of the Government.¹⁷⁸

Bismarck had laws passed providing for sickness-, accident-, and old age-insurance, limiting women's and children's labour and establishing maximum working hours. Under the constant threat of revolution most European governments were soon convinced of the need for international labour standards.

On the initiative of the Swiss government, a non-diplomatic Conference on international labour legislation took place in Berlin in 1890. Questions such as minimum age, hours of work, and restrictions on the employment of women and children in unhealthy and dangerous industries by means of international Conventions were discussed. As it turned out, the participating governments, led by Britain and Germany, proved unwilling to commit their countries to any binding instruments and the outcome of the Conference was a number of non-binding resolutions. One of the resolutions concerned minimum age: 14 years for admission to work in industrialised nations or 12 years in "southern countries". In spite of the failure to adopt internationally binding labour standards, the Conference resulted in stimulating national labour legislation in several countries, by placing the issue of international labour law on the political agenda.

The Berlin Conference was followed by other international congresses and in 1900, the International Association for the Legal Protection of Workers¹⁷⁹ was founded, at a congress held in association with the Paris Exhibition, and the first meeting was held in Basel in 1901. The Association for the Legal Protection of Workers is considered to be the predecessor of the ILO.

The European governments were fiercely opposed to an international body of supranational character that would threaten the integrity of the nation state. Therefore, although the Association was funded by the French, Italian, Dutch, Swiss, German, Austrian and Belgian governments, it was constructed as a private organisation.¹⁸⁰ The members of the Association were mostly professors, doctors, lawyers and social workers and it therefore had a scientific and academic character. An international labour office was organised and a periodical collection of labour legislation in all countries was published.¹⁸¹

The Association found it most efficient to start its legislative work with the most uncontroversial matters: night working by women and the use of

¹⁷⁸ OILO I, Appendix I, at 459.

¹⁷⁹ In French *l'Association Internationale pour la protection légale des travailleurs*.

¹⁸⁰ Alcock 1971, p. 11.

¹⁸¹ Delevingne 1934, p. 30.

lead and phosphorous in industry.¹⁸² This strategy proved to be right and led to the adoption of two international labour Conventions in Berne in 1906.¹⁸³ The Conventions came into force in 1912 after ratification by France, Germany, Great Britain, Italy, Spain, Portugal, Denmark, Greece, Romania and Serbia.

The British government was critical of the scientific and academic character of the Association, because it wished to deal with international labour questions in a more official form that included governments, workers and employers. The British government expressed this view at the Berne Conference in 1906, but its objections found no sympathy and the Association carried on with its scientific profile. In subsequent years, its membership expanded and several European states started regulating labour questions in bilateral treaties. Two new international draft Conventions were proposed by the Association in 1913-1914: one of them prohibited night working by young persons and the other prescribed a ten-hour working day. Because the outbreak of the First World War in 1914 put an end to any effort for international labour legislation, the draft Conventions were never adopted.

Another government initiative of great importance for the formation of the ILO was that of the British government in establishing a particular ministry for labour questions, namely, the Ministry of Labour. The Ministry of Labour was part of a government war strategy to keep up maximum efficiency and to prevent fatigue and health problems in the diminished work force at a time when the majority of men were sent to war. The trade union leader George Barnes was appointed Minister of Pensions, and the government official Harold Butler¹⁸⁴ was appointed Assistant Secretary to Barnes. Both of them were going to play central roles in the formation of the ILO, and Butler was later to be appointed Director General of the ILO.

¹⁸² About the use of lead and the Convention, see Chapter 5 below. Phosphorous was the substance on the heads of matches that made the match catch fire. The match-industry workers dipped wooden sticks into phosphorous and contact with the substance and vapours from it made the bones of their faces develop necrosis.

¹⁸³ International Convention on the Prohibition of Night Work of Women, concluded at Berne in 1906. Published in *The American Journal of International Law*, Vol. 4, No. 4, Supplement: Official Documents (Oct., 1910), pp. 328-337. International Convention on the subject of the Prohibition of the use of White (Yellow) Phosphorous in the Manufacture of Matches, concluded at Berne in 1906, reproduced in the Annex to the ILO White Phosphorous Recommendation, No. 6, ILOLEX.

¹⁸⁴ Harold Butler, 1884-1951. Butler was an active participant in the preparatory work which led to the creation of the International Labour Organisation in 1919. He was Secretary General of its first Conference, Deputy Director of the Office and associate of first Director General Albert Thomas until Thomas's death in 1932, when he became Director General of the ILO until 1938. See further the ILO website, former Director Generals, www.ilo.org.

4.1.5 International women's movements, the labour movement and the protection of children

Women's associations have played a significant role in the history of the protection of children and children's rights.¹⁸⁵ The British educationalist Berry Mayall says that children's welfare in the last hundred years "has been inextricably woven into women's welfare and women's social condition" to the extent that children's welfare has been included in the concept 'women and children'.¹⁸⁶ Behind this was the idea that women and children were considered as two groups who were more vulnerable than men. Another circumstance was that women and women's organisations had a tradition of promoting the welfare of children. During the 19th century, middle-class women organised first through charitable work – philanthropy – which was directed towards women and children and then in the anti-slavery movement, the temperance movement and the women's movement. Both the temperance movement and the anti-slavery movement were directly preoccupied with the welfare of children.

The history of the ILO is a good example of the 'women-and-children' concept. In the ILO, children's welfare is both included in women's welfare and parallel to it. When the first ILO Conventions and Recommendations were adopted, the regulation of women's work and children's work were parallel: the Conventions on prohibition of night work are one example; the Conventions on toxic substances are another. The legislation on maternity protection was inclusive; it was in fact more protective of children – the reproduction of children – than protective of women.

The British, French and North American women's movements started in the second half of the 19th century. In 1848 the women's movement was consolidated by the first Women's Rights Convention in Seneca Falls, New York, where American women's social, civil and religious conditions and rights were discussed. Some decades later, in 1888 an International Women's Congress was organised in Washington with delegates from Britain, France, Denmark, Norway, Finland, India, Canada and the United States. At the Conference, the International Council of Women was set up and, within a short period, the Council had six million members.

Some of the women's groups were primarily concerned with general social reform, but women also organised to improve their own working conditions. Ideologically, working women were neglected because women and children were categorised as belonging to the private and intimate sphere in society, namely, the home. In practice, however, women often worked more than men, both inside and outside of the home. Consequently, working

¹⁸⁵ For this section I have consulted Riegelman & Winslow 1991, pp.125-139.

¹⁸⁶ Mayall 2000, p. 243.

women were fighting on three battlefronts: against tradition; against employers; and against the male trade unions. They fought against tradition because women were not supposed to take part in public life and express opinions. They fought against employers because employers were not inclined to grant women (and children) the same rights as men since they were subordinate to male workers. They fought against male trade unions because, instead of supporting women as equals with equal rights, the unions considered that women's obligations were primarily in the home as mothers and housewives.¹⁸⁷ Because of these circumstances, women started their own trade unions that worked for and not against women's interests. The first trade unions for women were established in Britain in 1874 and in the United States in 1903. In 1906 the British Women's Labour League was established with expanded objectives: to work towards obtaining direct labour representation for women in Parliament and in local bodies. The trade unions for women influenced the international women's movement; the international women's movement, however, focused primarily on civil and political rights, especially women's suffrage.

As Cunningham has pointed out, women and women's organisations were dominant in the campaign to restrict the work of children.¹⁸⁸ In this way, the question of child labour was linked to other questions on the agenda of the 'social feminists' and in particular the question of 'sweated labour'.¹⁸⁹ And it was often the activists of the women's association who started debates and campaigns against the exploitation of children in industry. For example, it was articles published by the Women's Industrial Council revealing that many school children worked long hours before and after school that restarted the enquiries about working children in Britain by the end of the 19th century.¹⁹⁰

During the war years of 1914-1918, women reinforced their positions. The shortage of male workers opened new doors for women. Women assumed the new responsibilities without any problems and therefore obtained more respect than before. Women proved to be more than capable to deal also with 'male' work. During the war, women and women's organisations were also active in obtaining protection of and better conditions for children, as described above, with people like Eglantyne Jebb at the forefront. In the next section, I will return to the efforts of women's organisations to participate in the peace negotiations concerning the establishment of the ILO and its objectives and how they promoted the protection of children.

¹⁸⁷ Riegelman & Winslow 1991, p. 13.

¹⁸⁸ Cunningham 1991.

¹⁸⁹ *Ibid.* See also Luddy 1995, Chapter 3, Saving the Child.

¹⁹⁰ Cunningham 1991, pp.13 and 176-179.

4.2 Children's rights

As described in the previous chapter, with the changes in Western societies that were brought about by the French and American Revolutions and the Industrial Revolution, childhood was emphasised in a way never seen before in history.

The earliest legal expressions of this change were the European child labour laws passed during the 19th century. Below will follow a brief introduction of the main legislative initiatives of the leading industrial nations, Great Britain, France and Germany, from the beginning of the 19th century to the First World War.

4.2.1 Early child labour legislation in Europe. The Factory Acts

As the leading industrial nation, Britain was first to introduce laws – the so-called Factory Acts – as early as 1802 and other nations soon followed the British example. Most European countries and the North American states adopted more or less similar legislation during the later decades of the 19th century. In the United States it was not until 1930 that a federal Child Labour Law for the whole territory was adopted after thirty years of political debate.¹⁹¹

The purpose of this overview is to demonstrate the similarities in construction and age limits between the European Factory Acts that regulated child labour and the first Minimum Age Conventions.

4.2.1.1. Great Britain

During the 19th century, Great Britain was the leading industrial nation in the world, in keen competition with Germany and France.¹⁹²

The British factory legislation was the outcome of a successful political campaign to which the British government had to respond. The government itself had no desire to regulate child work from the outset. The appalling situation of children in factories and mills during the Industrial Revolution made influential groups in society react strongly. The campaign against child labour had its origins in the very early textile trade unions and it drew on the romantic images of childhood that had strong support among middle- and upper-class critics of the factory system. However, it was known that much child labour, which mostly took place in the informal sector, remained unregulated. For example, the British Chief Inspector of Factories pointed out that there were “practical difficulties” in putting an end to home-working that was a common non-industrial occupation for children. During the

¹⁹¹ About the American debate, see Zelizer 1994.

¹⁹² I have consulted Cunningham 1991, pp. 50-96, 174-189, Nygren 1982, pp. 208-9 and Nardinelli 1990, pp. 105-115.

second half of the century, the British government started a modest co-operation with the reformers.¹⁹³

The first Factory Act was passed in 1802. However it did not specify a minimum age and can be regarded more as a follower of the older regulation of apprenticeship. In 1833 a new Factory Act with a minimum age was passed. It is often referred to as “the first effective Factory Act”. It mainly regulated work in the cotton mills. It differentiated between different kinds of workplaces according to the number of employed persons, etc. However, in principle, employment of children under nine was illicit and the hours of work for children from 9 to 14 years were restricted to eight a day. The legislation was related to school attendance and parents and guardians were held responsible for not letting their children under the minimum age work and for ensuring proper schooling for them. For employment purposes, children over the age of 14 were regarded as adults. The cooperation of the Factory Act was supported by a labour inspectorate.

The justification for 14 years as the end of childhood was that this related to a law that permitted corporal punishment from that age and also because important changes were believed to take place in children’s ‘domestic conditions’ then: at 14, children ceased to be under the complete control of their parents or guardians. At this age, children were to be considered as ‘free agents’, capable of making contracts and having responsibility for their own food and lodging.¹⁹⁴

In 1844 and 1878 new Factory Acts were passed that lowered the permitted hours of work for children under 14 to six-and-a-half hours a day. This was the legal framework for the so-called half-time system, which permitted factory owners to employ two children to cover a working day of twelve hours in total and allowed children to attend school every day. Because the half-time system fitted the organisation of work of factories so well, it became very popular. It was not abolished until 1918, mainly as a result of opposition from school teachers complaining that the ‘half timers’ were too tired to learn when in school.¹⁹⁵

The 1878 Factory Act applied to all industries and the minimum age was raised to ten years. The 1878 Factory Act also provided for compulsory schooling up to ten. In 1891 the minimum age was raised to 11 years and night working by children was not allowed in principle. However, there were ample exemptions both in respect of the minimum age and the prohibition on night work. Boys were allowed to work at night in certain economic sectors such as iron, glass and paper. The hours of work could be adjusted because of the demands of a certain industry.

¹⁹³ Cunningham 2005, pp. 46-50.

¹⁹⁴ Cunningham 1991, pp. 70-83, 94-95.

¹⁹⁵ Cunningham & Viazzo 1996, pp. 46-50, Bolin-Hort 1989, pp. 138-148.

4.2.1.2. France

In France too the child labour laws originated from the appalling situation of children in the cotton industry.¹⁹⁶ There had been scandals about children becoming ill through their work and even committing suicide in textile centres and the question had been affecting public opinion in France since the late 1820s.¹⁹⁷ Child labour reform was a fundamental social and political concern in France. It was advocated by a strong reform movement that was dominated by a formal coalition of two groups within the elite who normally had completely diverging interests: paternalistic middle-class liberals and religious traditionalists. They believed to be morally and socially superior and therefore responsible for protecting the children of the poor, almost like a parent-children relationship between the upper classes and the underclass.¹⁹⁸ Child labour was directly connected both to *la question sociale*, which was the object of much concern at the time, not only in France, and the new ideology of childhood and family life. Children were seen as the hope for the future, the defenders of the country and as an investment for industrial development. Therefore it was easy to achieve consensus concerning child labour reform. The French reformers saw government intervention as neither desirable nor sufficient to protect the children of the poor. They were aware of the need to cope with the living conditions and misery of the working class primarily by methods other than legislation. Child labour laws were seen as a limited means aimed at specific problems.¹⁹⁹ However, there was a further impetus for regulating child labour: the demand of the army for healthy young men.²⁰⁰ This was particularly so after France had been defeated by Germany in 1870-1871.²⁰¹

The First French Child Labour Law was passed in 1841, under strong opposition from employers. The minimum age for employment in factories and workshops was eight years. Up to 12 years, the hours of work were limited to eight. Between 12 and 16 years, the maximum hours of work were twelve. For employment of a child under the age of 12, parents had to prove that the child attended school. Children over 12 years were admitted into employment only if they had a certificate confirming that they had completed primary school. There were also provisions for a higher minimum age, 16 years, for employment in dangerous work. Like in Britain, the law was backed up by a factory inspectorate, but in practice the inspectorate was very inefficient. A more efficient Child Labour Law was passed in 1874 and the minimum age raised to 12 years. However, a lower minimum age, 10 years, could be specified by law for particular branches of the economy.

¹⁹⁶ Weissbach 1989 and Nygren 1982, pp. 209-10.

¹⁹⁷ Ramm 1986, p. 92.

¹⁹⁸ Weissbach 1989.

¹⁹⁹ *Op.Cit.*, pp. 227-29.

²⁰⁰ *Op. Cit.*, p. 182.

²⁰¹ *Ibid.*

4.2.1.3 Germany (Prussia)

In Germany, children worked in factories under the same conditions as in England and France. The provision in *Preussisches Allgemeine Landrecht*, that all children who did not receive instruction in their homes should go to public schools from the age of five, did not prevent the exploitation.²⁰²

The German child labour reform movement was supported by an unholy alliance of educational and military institutions. On the other hand, the King favoured the industrialists as industrialism was believed to be the solution to the social problems – in a way that people of our time may find cynical. As a police inspector pointed out in a census, parents needed the wages of the children; without them they would become eligible for poor relief. That was how industrialism could solve the social problems.

The background to the involvement of the military authorities in the reform movement was that, by the end of the 1820s, the industrial areas failed to provide enough young boys sufficiently fit for the *Landwehr*. The military authorities blamed the employers for this and claimed that it was because they let children do night work in the factories. The King intervened and demanded the Ministers of Education and Trade to investigate. The Minister of Education responded by proposing legislation to regulate the work of children. The Minister of Trade, on the other hand, replied that the problem was not caused by employers but by school: too much school crippled children more than work did. Not until 1839 was an Act regulating child labour passed. According to the Act, which was never strictly enforced, children between the ages of 9 and 16 were allowed to work a maximum of ten hours a day in factories. The Act included all kinds of factory. There were exceptions: it was, for instance, possible to prolong the working day by one hour during a period of four weeks. The young workers had to be registered and the registers submitted for police inspection. As mentioned above, school was compulsory, which meant five hours of school in addition to a ten- or eleven-hour working day.

In a new Act in 1853 the minimum age was raised from 9 to 12 years and the minimum working day was reduced to seven hours for children under 14 years. The time for instruction was also reduced to three hours a day. At this time, the first steps towards having a factory inspectorate were taken.

4.2.1.4 The European Factory Acts. Concluding remarks

Britain, France and Germany and, thereafter, many of the European nations passed laws that regulated the work of children. The European laws were modelled on the British Factory Acts and included many provisions similar to the British legislation. Only industrial work was regulated and the regulation consisted of minimum ages and maximum hours of work. The exemptions were many and were based on the demands of the employers.

²⁰² For this section I have consulted Ramm 1986, pp. 89-92 and Nygren 1982, pp. 210-211.

The child labour laws were connected to compulsory school laws. Their enforcement relied on police or labour inspection, but the enforcement was not strict.

This was confirmed by the ILO, for example in a study published in 1935, *Children and Young Persons under Labour Law*.²⁰³ The introduction of the study contained a thorough historical overview of the origins and development of child labour regulation in Great Britain, France and the United States. The overview commented as follows:

It seems unnecessary to trace the growth of child and juvenile labour legislation elsewhere. The French law of 1840 was among the first of the continental laws, and these developed mostly upon the lines of English and French practice. Regard for education of working children seems to have been the mainspring of these early laws; it led both to a minimum age for employment and to a minimum of school attendance as a condition of this employment.²⁰⁴

Another common point was that the legislation was a result of national reform movements or campaigns backed by more or less unholy alliances between various influential groups in society who had a common interest in the welfare of children: the army; the church; teachers; and paternalistic liberals.

This was the state of the legal protection of working children when the first declaration on the rights of the child, the Declaration of Geneva, was adopted after the First World War. Although the Declaration of Geneva did mention that children should be protected from exploitation and “put in a position to earn a livelihood”, the 19th century child labour laws are never mentioned as a background to it.

4.2.2 “Mankind owes to the child the best it has to give”. The Declaration of Geneva 1924

The protection of children was an important objective for the League of Nations. A contributory factor for the significance of children and child protection was that, when the project of the new international society was introduced after the First World War, it was easier to get consensus on the situation of children – a vulnerable group who had suffered immensely during the war – than on any other question that had to be dealt with.

The Declaration of Geneva was mainly the result of the work of the famous English schoolteacher Eglantyne Jebb.²⁰⁵ Jebb founded the Save the

²⁰³ Report 1935. The introduction of the study contained a thorough overview of the child labour regulation, pp. 1-9.

²⁰⁴ *Op. Cit.*, p. 8.

²⁰⁵ Veerman 1992, For an account of the origins of the Declaration of Geneva, see Marshall 1999.

Children International Union in Geneva in 1920, with the assistance of the International Committee of the Red Cross. It was an alliance of national Save the Children organisations and it managed emergency relief to assist children in areas devastated by the war. The International Council of Women and its Charter on the Rights of the Child from 1922 promoted Jebb's efforts.²⁰⁶ The Charter was "based on the principle that every child is born with the inalienable right to have the opportunity of full physical, mental and spiritual development". This was the duty of parents but if the parents should fail in their responsibilities, 'the community' should "secure the fulfilment thereof". The Charter suggested a Children's State Department in every nation and periodical international conferences on how the policies of the Charter were to be carried out. There were five sections dealing with: pre-natal care; care of mothers and children up to school age; children of school age; children in employment; and delinquent children. Regarding children in employment, the Charter suggested the minimum age for industrial work as 14 years and the prohibition of night work and dangerous work for children less than eighteen years of age.²⁰⁷ Regarding school, the Charter suggested that states should provide adequate systems of education from kindergarten, continuation schools, technical and vocational schools to universities, with free elementary schools, full-time education up to the age of 14 and part-time attendance until the age of eighteen. It also contained provisions about the sanitary and safety conditions of schools, school meals and medical examinations and health care for school children.²⁰⁸

The Declaration of Geneva was adopted by the General Assembly of the League of Nations in 1924.²⁰⁹ It is short, simple and universal: it should apply to every child without exception, but it is not legally binding. It consists of a preamble and five principles. The preamble recognised that the conditions of children were one of the most important questions in society by the famous sentence "mankind owes to the child the best it has to give". It further established that "men and women of all nations declare and accept it as their duty [that] beyond and above all considerations of race, nationality or creed". The child should be given the means required for its normal development, materially and spiritually (Principle 1), children should have the right to food and healthcare, "backward" children be "helped", delinquents be "reclaimed" and orphans be sheltered and secured (principle 2).

²⁰⁶ Published in Veerman 1992, pp. 439-443.

²⁰⁷ The Children's Charter of the International Council of Women (1922), published in Veerman 1992, Appendix VIII.

²⁰⁸ Part II, School Children, see Veerman, *Op. Cit.*

²⁰⁹ Declaration of the Rights of the Child, adopted 26 September 1924, League of Nations O.J. Spec. Supp. 21 at 43 (1924). Further reading on the Declaration, see van Bueren 1998, pp. 6-9, and Veerman 1992, pp.159-180.

It was also established that children should be the first to receive relief “in times of distress” and that the “child must be put in a position to earn a livelihood and protected against exploitation (Principle 4). Finally, a child should be brought up “in the consciousness that its talents must be devoted to the service of its fellow men” (Principle 5).

In association with the adoption of the Declaration, the Secretariat of the League of Nations appointed a Committee for the Protection of Children. Ten years later, in 1934, the Declaration was reaffirmed by the League of Nations. In France it was even decided that a copy of the Declaration should be put up in every school.

The British professor of International Human Rights, Geraldine van Bueren, explains why the Declaration of Geneva was so important for the development of children’s rights, in spite of its legally non-binding character. It was the first human rights instrument ever adopted by any inter-governmental organisation - it preceded the Universal Declaration of Human Rights by 24 years.

Furthermore, the Declaration was important because it established the international concept of the rights of the child in international human rights law. The Declaration paved the way for future international instruments concerning children’s rights and, ultimately, the Convention on the Rights of the Child in 1989. Van Bueren also highlights the fact that the Declaration contains economic and social entitlements and that it acknowledges the link between child welfare and the rights of the child.²¹⁰

In the words of Canadian historian Dominique Marshall, the Declaration of Geneva was the “direct ancestor of the United Nations Convention on the Rights of the Child” and it made social work for children’s welfare “an official object of international relations”.²¹¹ According to Marshall, the inclusion of child welfare within the League of Nations indicated progress for democratic social policies. That progress was made possible by traditions and interests older than the war together with the fact that the vulnerability of children and “the special nature of childhood” had been highlighted by the war. Marshall writes that “the devastation of war gave new credence to the child in distress as the symbol of the problems of social life; equality of all children in front of disasters added a new legitimacy to the idea of social action devoted to all children”.²¹² In my opinion, the same is true regarding the ILO Minimum Age Conventions. However, neither van Bueren nor Marshall mentions the ILO Minimum Age Conventions in this connection.

²¹⁰ Van Bueren 1998, p. 8.

²¹¹ Marshall 1999, pp. 103-104 and 145.

²¹² *Ibid.*

4.2.3 “A happy childhood”. The United Nations Declaration on the Rights of the Child 1959

During the Second World War the “Children’s Charter for the Post-War World” was adopted by an Inter-Allied Conference of Educational Fellowship, a Pan-American Child Congress adopted the “Declaration of Opportunity for Children”, and directly after the Second World War there was a lobby of the Economic and Social Council of the United Nations (ECOSOC) to confirm and update the Declaration of Geneva.²¹³

Within the United Nations, it was generally thought that the Declaration of Geneva was not up to date, particularly concerning the fields of health-care and child welfare, where major changes had taken place in Western society since 1924. In 1948 the Secretary General of the United Nations asked for advice from the Social Commission of the ECOSOC on how to go further and it was decided to transform the Declaration of Geneva into a Charter of the Rights of the Child that would include the concepts of child welfare.²¹⁴ Eleven years later, in 1959, the new Declaration of the Rights of the Child was adopted unanimously by the General Assembly of the United Nations.²¹⁵

The Declaration consists of a Preamble and ten principles. The Preamble refers to both the Charter of the United Nations and the Universal Declaration of Human Rights. It affirms that the rights and freedoms of the Declaration apply to everyone “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”. At the same time it establishes the child’s need for protection and care “by reason of his [*sic*] physical and mental immaturity”.²¹⁶ The protection should apply “before as well as after birth”. There is no definition of ‘child’ in the Declaration and it is particularly noteworthy that the start of childhood is defined in this way. The explanation is that it was the result of lobbying by some catholic countries. Their argument was that life begins right at the moment of conception.²¹⁷ The Preamble reaffirmed the Declaration of Geneva and proclaimed that the purpose of the Declaration was that the child “may have a happy childhood and enjoy for his [*sic*] own good and for the good of society” the rights and freedoms set forth in the Declaration. The ideology of childhood was thereby acknowledged and at the same time, it was acknowledged that “good

²¹³ Van Bueren 1998, p. 9.

²¹⁴ Veerman 1992, pp.159-160.

²¹⁵ Declaration of the Rights of the Child G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354 (1959). Further reading on the Declaration, see van Bueren 1998, pp. 9-12, and Veerman 1992, pp.155-159.

²¹⁶ Children were consequently referred to as “he” or “him”.

²¹⁷ Veerman 1992, p. 167.

childhood” was not only for the good of the child but also for the good of society.

The 1959 Declaration on the Rights of the Child kept the emphasis on the protection of children. The Declaration established that children should be granted special protection in order for them to be able “to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner” (Principle 2). Furthermore, in laws enacted for such protection “the best interest of the child” should be “the paramount consideration” (Principle 2): this requirement was later made one of the cornerstones of the Convention on the Rights of the Child. It is noteworthy there was a proposal to change the wording so that “*solely* [my italics] the best interests of the child” should be considered when enacting child protection legislation, but that proposal failed because of lack of support.²¹⁸

It was established that children should be protected from “cruelty, neglect and exploitation” (Principle 9). The Declaration also pays attention to the question of children and work. It established that “The child should not be admitted to employment before an appropriate minimum age” and that “he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education or interfere with his physical, mental or moral development”. This is the direct forerunner of Article 32 of the Convention on the Rights of the Child and it uses the same construction as the Minimum Age Conventions – a minimum age and a provision that occupations harmful to the development of the child should not be allowed.

During the drafting process there were proposals that the Declaration should specify a minimum age of 14 years, in accordance with the ILO Minimum Age Conventions. The proposals were dropped as they were opposed by several countries and because the ILO representative who had been particularly invited to the deliberations supported the text without a specific age being mentioned.²¹⁹

The central provisions on child welfare in a wide sense concern free and compulsory education, social security benefits, family allowances and special education and care and treatment for “physically, mentally or socially handicapped” children (Principles 7, 4 and 5).

Geraldine van Bueren writes that, even though the Declaration of the Rights of the Child from 1959 has the form of a legally non-binding General Assembly resolution, it must be accorded greater weight than other resolutions. The unanimous adoption implies that it has a “moral force” that is based on the approval of all the member states of the United Nations. This was confirmed when the General Assembly acknowledged in 1979 – the International Year of the Child - that the principles of the Declaration had

²¹⁸ *Op. Cit.*, p. 170.

²¹⁹ *Op. Cit.*, p. 178.

played an important role in the promotion and shaping of children's rights all over the world.²²⁰

4.2.4 Rights-oriented child rights. The Convention on the Rights of the Child 1989

The Convention on the Rights of the Child was adopted unanimously by the General Assembly of the United Nations on 20 November 1989.²²¹ A number of the states that took part in the drafting of the 1959 Declaration on the Rights of the Child would have preferred a legally binding Convention on the Rights of the Child instead of a declaration. One of those states was Poland. However, in 1959 the majority of states opposed a legally binding document. Twenty years later, opposition to a legally binding document on the rights of the child no longer existed and, after a formal proposal from Poland, the work on a Convention started in 1979.²²²

From the start, the project mainly concerned economic, social and cultural rights. Over the years, the project developed beyond the original draft and the final result was the first human rights Convention that encompassed both civil and political rights *and* economic, social and cultural rights in a single document.

Another aspect that can be considered as somewhat of a revolution is that the Convention, although retaining concern about the protection of children, has a clearly rights-oriented perspective. In the Preamble, the Convention recognises that all human beings, including children, have the same inherent dignity and inalienable rights. A very good example of the new rights-oriented character of the Convention is Article 12, which lays down that children have the right to express freely their views in all matters that affect them and that due weight should be given to those views (in accordance with the age and maturity of the child).²²³

The importance of the Convention on the Rights of the Child can hardly be overestimated, although many of its provisions are not complied with. Evidence for that is that it is universally ratified. All of the nations in the world, except two, have ratified the Convention.²²⁴ As mentioned in Chapter 1, the Convention also has a provision concerning children and work: Article 32 that refers to the ILO Minimum Age Conventions.

From the perspective of this dissertation, one could say that the circle has been closed by Article 32 of the Convention on the Rights of the Child. The

²²⁰ van Bueren 1998, p. 12.

²²¹ Convention on the Rights of the Child. General Assembly resolution No. 44/25 of 20 November 1989. Further reading, see Detrick 1999, pp. 13-21.

²²² van Bueren 1998, p.12.

²²³ See further Van Bueren 1999. Concerning Article 12 of the Convention, see Stern 2006.

²²⁴ As mentioned *infra* neither the United States nor Somalia have ratified the Convention, but both countries have signed the treaty.

ILO Conventions are an integral part of the Convention on the Rights of the Child and, at the same time, the ILO Minimum Age Conventions are part of the history of the Convention on the Rights of the Child.

After this short excursus to 1989 I will now return to 1919, and the foundation of the ILO.

4.3 The foundation of the ILO in 1919

The foundation of the ILO was one of two fundamental components in the Paris and Versailles Peace Treaties after the First World War in 1919. The other fundamental component was the foundation of the League of Nations. The ILO started to function directly after the peace negotiations and before the start of the League of Nations (in 1920). It was the hope of the founders that these two organisations should be able to guarantee a more peaceful world. The League of Nations was to guarantee international peace and security between nations by a system of collective security, the pacific settlement of conflicts and a collective guarantee of independence of the member states.²²⁵ The preamble to the ILO Constitution, which was included in the Versailles Peace Treaty as Part XIII, established that the ILO should guarantee internal peace and security within nations by the promotion of social justice.²²⁶

In this section, I will recapitulate the foundation of the ILO, in order to show that the protection of children was a central issue for the ILO right from the start and that neither the priority nor the form of child protection was questioned. I also wish to indicate the dominant nations and voices and how the various interests were ultimately balanced and reconciled.²²⁷

4.3.1 Preparations

4.3.1.1 The International Labour Commission

At the Peace Conference in Versailles, international labour legislation was the third item on the agenda, directly after the questions of responsibility of the authors of the war and penalties for war crimes. In order to deal with the various items of the peace settlement, the Peace Conference appointed a number of Commissions. Among them the Commission on International

²²⁵ Published at www.yale.edu.lawweb/avalon/leagcov.htm

²²⁶ ILO Constitution 1920.

²²⁷ When the war began, the most important Allies were Britain, France, Italy, and Russia. In 1917, due to the Revolution, the Russians withdrew from the war, and the United States entered as an 'associated' nation. The League of Nations Covenant was conceived under the same circumstances: only representatives from the Allies were involved.

Labour Legislation was assigned the task of preparing the questions of the framework of the permanent international labour organisation, the ILO, and content of the international labour legislation.

The Commission on International Labour Legislation (the Labour Commission) consisted of representatives from the Five Great Powers: the United States, Great Britain, France, Italy, and Japan, together with representatives from “the powers with special interests”, namely Belgium, Cuba, and Czechoslovakia.²²⁸ Thus there was a preponderance of Western industrialised nations on the Commission. Consequently, the basis for the design of the new international organisation and labour legislation was clearly that of the Western experience.²²⁹ The delegates had paramount influence on the formation of the ILO.

The delegates were mainly government representatives. The United States, however, was represented by people from the workers’ and the employers’ organisations, the President of the American Federation of Labor, Samuel Gompers²³⁰, the Director of the American Shipping Board, A.N. Hurley and Professor James T. Shotwell of Columbia University, and member of President Wilson’s special agency for foreign policy called the Inquiry.²³¹ The British delegates represented the government and were George Barnes and Sir Malcolm Delevingne. Barnes’s background, however, was entirely in the British trade union movement. Harold Butler, a future Director General of the ILO, substituted for Barnes at times. The French delegates also represented government and were the Minister of Labour, M. Colliard, and the Minister of Industrial Reconstruction, M. Loucher. After a while they were replaced by Arthur Fontaine, who was going to be Chairman of the Governing Body of the ILO,²³² and by a trade union leader, Léon Jouhaux²³³. Samuel Gompers was elected chairman of the Labour Commission.

The Commission met during February and March for thirty-five sessions.²³⁴ The work of the Commission was concluded in a proposed draft Constitution of the permanent international organisation for labour

²²⁸ For terms of reference and constitution of the Commission, see “Report on International Labour Legislation, March 24 1919”, in OILO II, Document 48. For a thorough account of the work of the Commission, see Phelan 1934 pp. 128-129.

²²⁹ Gheballi 1989, p.8.

²³⁰ See *supra* Section 4.2.3.

²³¹ See *supra* Section 3.2.4.

²³² Arthur Fontaine, 1860-1931, Director of Labour in the French Ministry of Labour and Social Insurance, Chairman of the ILO Governing Body 1919-1931.

²³³ See *supra* Section 4.2.3.

²³⁴ The work of the Commission is carefully documented in minutes published by the International Labour Office in the Official Bulletin, Vol. I, and reproduced in OILO II, Document 34.

legislation, the ILO, and a Declaration of nine fundamental principles: the so-called labour clauses.²³⁵

The British Ministry of Labour had followed the trade union congresses during the war, and knew that the question of international co-operation in labour issues would come up in the peace negotiations. Therefore, the British Ministry of Labour started considering its contribution to a British plan for the Peace Conference as early as 1918. During the last year of the war, the British and French governments corresponded with each other and had personal consultations about a permanent international labour organisation. This resulted in a draft British proposal that was thoroughly discussed and fully supported by the French government.²³⁶ This contributed to strengthen the British government influence on the form and content of the new organisation and there were no great changes in the final documents compared with the original British proposal.

However, there were several amendments and additions to it. The discussions in the Commission were difficult, mainly because of the substantial differences in opinion concerning the nature of the international labour legislation. For Constitutional reasons, the United States could not accept that the ILO should adopt legally binding Conventions whereas all the other nations were for legally binding instruments. These differences threatened to create a complete deadlock in the negotiations. Eventually the conflict was settled by the introduction of a legally non-binding instrument: the Recommendation. By broadening the methods of work of the organisation in this way, the United States could participate without being committed to legally binding international legislation.²³⁷

²³⁵ ILO Constitution 1920. The labour clauses are enclosed in the Annex to the ILO Constitution, Section II, Article 427. The Commission did not have the competence and mission to decide on specific questions relating to labour conditions and to work out detailed solutions but, all the same, they recognised certain fundamental principles as necessary for social progress. Therefore they decided to submit the labour clauses, with the purpose that they should be considered at the beginning of the work of the ILO, to the Peace Conference for insertion in the Peace Treaty. See OILO II, Document 48.

²³⁶ Delevingne 1934, p. 54.

²³⁷ More precisely, there were two important and problematic questions for the Commission. The first problematic question concerned tripartism, and it divided the governments and the workers' and employers' groups. The workers opposed the proposed model with two government representatives and one each for workers and employers, because it would make the workers powerless. Governments argued that an equal distribution of power, one each from the three groups, would create proposals for labour legislation that would lack support in the member states, thus making the organisation powerless. The final draft, however, kept the two-one-one concept of tripartite representation. The question that divided the United States from the other representatives in the Commission was the question of binding labour law. The problem was ideological and historical. The American view in labour matters was that regulation should be voluntary. Workers and employers were considered to be two contracting parties who were free to deal with their own matters. Furthermore, international labour legislation was considered unconstitutional because it could not be legally binding on the federal states. The European labour movement, on the other hand, saw government and institutional intervention as necessary to improve the conditions for the working class.

The protection of children

The protection of children at work was considered a major issue for the new organisation right from the start. The minimum age regulation of child labour was proposed as an agenda item in the various proposals to the Peace Conference from the British, French, and American governmental delegations.²³⁸ Not surprising, as there was a basis of national legislation to regulate the work of children in the industrialised nations. According to an American proposal on international labour law submitted to the Peace Conference by James T. Shotwell, twenty-three countries in Europe had enacted minimum age legislation by 1918, and thirteen of them had made 13 or 14 years the minimum age for employment.²³⁹

The labour movement also demanded regulation of child work, which was expressed in the manifestos with a view to international labour legislation that was adopted during the war. The first clause of the Berne Manifesto, adopted by the International Trade Union Conference at Berne in February 1919, stated that elementary education should be compulsory in all countries with secondary education being free and accessible to all. The second clause dealt with ‘juveniles’. Children aged 15 to 18 years should not be allowed to work more than 6½ hours per day. The third clause concerned female workers. Female workers should not work at night and were not allowed to work as many hours a week as male workers. Female workers should be forbidden to work three weeks before and four weeks after having a baby. Following these clauses there were the more classical trade union demands for the regulation of hours of work, labour protection, freedom of association and wages that allowed people to make a decent living.²⁴⁰

The prioritisation in the Berne Manifesto cannot be interpreted in any other way than that it was concerned with the interests of male workers rather than the protection of women and children. The concern was for demobilised soldiers. After the war, hundreds of thousands of men returned home. It was extremely difficult to find occupation for the returning soldiers. Many women and children had worked – and increased production – the nations depended on their work during the war whereas, after the war,

Their battle cry was: “agitate, educate, legislate!”. See McCune Lindsay 1934, pp. 337-339 and pp. 158-59, 196-97 and Phelan 1934, pp. 127-198.

²³⁸ See for example “Note from the French Minister of Labor to the Premier and the Minister for Foreign Affairs, January 20, 1919”, OILO II, Document 28, The American experts’ recommendation, “Recommendations Relative to Legislation in Regard to International Labor, Submitted by James T. Shotwell to the American Delegation at the Peace Conference, January 21, 1919”, OILO II, Document 29, and “Draft Convention Creating a Permanent Organisation for the Promotion of International Regulation of Labour Conditions, Prepared by the British Delegation, January 21, 1919”, OILO II.

²³⁹ “Recommendations Relative to Legislation in Regard to International Labor, Submitted by James T. Shotwell to the American Delegation at the Peace Conference, January 21, 1919”, Table I. OILO II, Document 29,

²⁴⁰ “Manifesto of the International Trade Union Conference at Berne, February 10, 1919, on International Labour Legislation”, OILO II, Doc. 39.

women and children were a threat as they competed with the returning men on the employment market.

The Commission discussed the protection of children in connection with the agenda of the first International Labour Conference.²⁴¹ It was proposed as the third of three points on the agenda. The first and second items were (1) hours of work: eight hours' per day and 48 hours per week, and (2) the right to employment or support during unemployment and the prevention of unemployment. Item (3) was women's employment (a) before and after childbirth, (b) during the night, and (c) in unhealthy industries.

As regards night working by women, according to the minutes, "there were some women's organisations that objected to special measures of protection for women".²⁴² But Barnes replied that the protection of women was demanded "by public opinion and by the most responsible representatives of the women themselves".²⁴³ Jouhaux also thought it important that the exploitation of children should be added to the agenda of the first annual meeting of the International Labour Conference.²⁴⁴

Shotwell and Jouhaux expressed a wider understanding of the question of child protection and stressed that the question of minimum age was closely related to general and technical education and apprenticeship and therefore required more thorough consideration.²⁴⁵

However, Shotwell proposed that the protection of children should be a separate item on the agenda with the wording: "Application of the principle that no child under 14 years should be allowed to work in industry."²⁴⁶ Barnes objected to the specification of the minimum age being on the agenda of the Conference and suggested the use of a more general formula.²⁴⁷ He referred to the Berne Manifesto that had proposed 15 years as the minimum age for employment, and to laws in certain American states specifying a minimum age of 16 years.

Vandervelde argued that the formula should not be too general. Barnes raised objections to limiting the question to the employment of children in industry only. It was eventually agreed that the protection of children should be included on the agenda as item (4) and that the wording should be "Employment of children (without any mention of industry): commencing age: prohibition of night work: prohibition of employment in unhealthy trades."²⁴⁸

²⁴¹ "Minutes of the Meetings of the Commission on International Labour Legislation, February 1 to March 24, 1919", OILO II, Document 34 (Minutes of Labor Commission), pp. 241-49.

²⁴² *Op. Cit.*, p. 242.

²⁴³ *Op. Cit.*, pp. 242, 246.

²⁴⁴ *Op. Cit.*, p. 247.

²⁴⁵ *Ibid.*

²⁴⁶ *Op. Cit.*, p. 248.

²⁴⁷ *Ibid.*

²⁴⁸ *Ibid.*

Then the question was raised of including the Berne Conventions of 1906 on the prohibition of the use of white phosphorous in the match industry and of the night working by women in industry as well as the draft Berne Conventions of 1913, not yet signed, on the prohibition of night working by young persons in industry and on the hours of work for young persons in industry. Fourteen nations had already signed the 1906 Berne Conventions and several other nations had subsequently accepted them.

The Commission, however, considered that the Conventions needed to be reconfirmed because, after the war, former states had disappeared and new states had appeared. As regards the hours of work for women and ‘juveniles’, that question was already covered by item (1) on the agenda, namely the application of the principle of an eight-hour’ day (or 48-hour week) for everyone. The question of night work for young persons was already on the agenda as the recently agreed item (4). Finally, a proposal from Shotwell to include the 1906 Berne Convention on the prohibition of white phosphorous in the match industry as item (5) on the agenda was adopted.²⁴⁹

The Labour Commission concluded its work by the end of March 1919. The Report of the Labour Commission with the draft treaty of the Constitution of the International Labour Organisation was submitted to the Plenary Session of the Peace Conference on April 11.²⁵⁰ The Peace Conference adopted the report and the draft treaty unanimously and the draft treaty was inserted in the Versailles Peace Treaty as Part XIII, Labour.²⁵¹

4.3.1.2. The labour clauses

In an annex to Part XIII of the Peace Treaty were the so-called Labour Clauses. It was the programme for future action of the International Labour Organisation. When the Labour Commission started its work there were nineteen points. These nineteen points had been put together by a sub-committee to the Labour Commission from all the different proposals and programmes that had been submitted to the Peace Conference by the American, French, British, Italian, and Belgian delegations as well as from the international trade union movement.²⁵² The nineteen points put together by the sub-committee to the Labour Commission concerned:

1. Eight-hour day and forty-eight hour week.
2. Minimum age for employment of children to be 14 years.
3. Freedom of association.

²⁴⁹ *Op. Cit.*, p. 249.

²⁵⁰ Phelan 1934, p. 208.

²⁵¹ ILO Constitution 1920.

²⁵² Phelan 1934, p. 212. See also “Clauses Suggested for Insertion in the Treaty of Peace, March 13 to 15, 1919”, Document 43, OILO II.

4. Adequate wages that permit a reasonable standard of living.
5. Weekly rest including Sunday.
6. Equal treatment of foreign workers.
7. Equal pay to men and women for equal work.
8. Maximum weekly work hours for agricultural workers.
9. National systems of labour inspection.
10. Freedom of migration.
11. Standardisation of provisions concerning health and social insurance.
12. Prevention of unemployment and provision for unemployed workers.
13. The labour of a human being cannot be treated as merchandise or an article of commerce.
14. No involuntary servitude²⁵³ except as punishment for crimes for which the person had been convicted in court.
15. The right for seamen to leave their ships while in port
16. Prohibition of international commerce relating to goods manufactured by prison labour.
17. Prohibition of trade relating to articles manufactured by home working.
18. Recognition of reciprocity of action between voluntary organisations for assistance and protection of workers.²⁵⁴

The question of the legal status of the Labour Clauses made the discussions in the Commission difficult. The British view was that the Peace Treaty could only contain binding obligations and that each one of the Labour Clauses would be a treaty in itself. Consequently, the clauses contained obligations that were too onerous to be put into the Treaty because the Peace Conference was not the right forum in which to discuss international labour regulations. The right forum to discuss labour legislation was the permanent International Labour Organisation, where workers, employers and governments were represented. In contrast, the Americans found it of vital importance to pin down the Labour Clauses in the Peace Treaty, because the International Labour Organisation that was going to be set up by the Peace Treaty needed certain guiding principles, particularly concerning children and sailors, who were two exploited groups.²⁵⁵ All members of the Commission except the British delegation shared the American view.

²⁵³ What can “voluntary slavery” be then? Obviously the idea of the “happy slave” was acceptable to the sub-committee.

²⁵⁴ “Minutes the Meetings of the Commission on International Labor Legislation”, OILO II, pp. 297-8 ff.

²⁵⁵ Phelan 1934.

Jouhaux even wished that the whole Berne Manifesto would be inserted in the treaty and become immediately binding.²⁵⁶

At the same time, there was a lot of pressure by the labour movement which made a quick decision necessary. It was probably a well-founded belief that any attempt to drop or to substantially modify the Labour Clauses would lead to “dangerous disappointment” in the labour movement.²⁵⁷

After lengthy discussions, all members of the Commission eventually accepted a draft of the Labour Clauses. An agreement was reached that there should be a limited list of Labour Clauses annexed to the Treaty. The list contained nine points covering matters that were generally accepted by the most industrially advanced countries. The Commission never came to a conclusion about the binding effect of the Labour Clauses, nor did it reach a common understanding of the role of the clauses at the Peace Conference and in the International Labour Organisation.

The nine points accepted by the Labour Commission were:

1. Eight-hour day and forty-eight hour week.
2. Minimum age for admission to work to be 14 years.
3. The right of association.
4. Adequate wages to permit a reasonable standard of living.
5. Weekly rest of at least twenty-four hours, including Sunday.
6. Equitable treatment of all workers resident in the country.
7. Equal pay to men and women for equal work.
8. National systems of labour inspection.
9. The work of a human being is not merchandise or a commodity.²⁵⁸

The exact wording of point 2, employment of children, was:

2. No child should be permitted to be employed in industry or commerce below the age of 14 years, in order that every child may be ensured reasonable opportunities for mental and physical education. Between the years of 14 and 18, young persons of either sex may only be employed on work which is not harmful to their physical development and on condition that the continuation of their technical or general education is ensured.²⁵⁹

However, the clauses would go through further substantial changes before being finally adopted by the Peace Conference. In the version that was finally adopted by the Plenary Session of the Peace Conference on 28 April

²⁵⁶ *Ibid.*

²⁵⁷ *Ibid.*

²⁵⁸ *Ibid.*

²⁵⁹ Minutes of the Labour Commission, OILO II, Document 34, p. 304.

1919, the same matters were listed, but they had changed position and wording in order to make them more ‘palatable’ for the Conference:

1. Labour is not a commodity.
2. The right of association.
3. Adequate wages that permit a reasonable standard of living.
4. Eight-hour day and forty-eight hour week as the standard to be aimed at where it has not already been attained.
5. Weekly rest of at least twenty-four hours, including Sunday.
6. Abolition of child labour (no age limit specified).
7. Equal pay to men and women for equal work.
8. Equitable economic treatment of all workers resident in the country.
9. National systems of labour inspection.²⁶⁰

The clause on children’s work had changed place from point two to point six. The wording was also completely changed. There was no age limit specific for admission into employment and the “minimum age” was changed to “abolition of child labour”:

6. The abolition of child labour and the imposition of such limitations on the labour of young persons as shall permit the continuation of their education and assure their proper physical development.²⁶¹

In this version, there were no details. The reference to education was also removed.²⁶² One can only speculate as to what considerations led to this total change, because there is no explanation in the source material. Most probably, it was considered too difficult to get the Peace Conference’s approval for a detailed provision with a minimum age fixed at 14. This would make modifications for the non-industrialised nations difficult. With the new wording the decisions regarding child protection were left to the permanent International Labour Organisation.

4.3.1.3 The women’s movement, the protection of children, and the ILO

As I have mentioned above in Section 4.2.5, the women’s movement was not only concerned with women’s rights but was also concerned with the protection of children. In this section I will therefore give an account of how a number of women’s associations tried to participate in the peace

²⁶⁰ Phelan 1934, p. 216, and OILO II, Document No. 52. For the final English and French texts of June 28 1919, see “Labor in the Peace Treaties, B. Final Texts of the Labor Section”, OILO I, p. 425-50 at 448-50.

²⁶¹ Phelan 1934, p. 216.

²⁶² Phelan 1934, 199-220.

negotiations after the First World War, and how they tried to promote both women's and children's interests in that process. The women who had travelled to Paris expected to be listened to in the same way as the labour movement did after the war – women had entered the workforce during the war and made major contributions to their countries while the men were in the trenches and battlefields. However, as I am going to show below, their position was not as strong as they had hoped and expected and accordingly, their efforts did not produce many results. The women's delegations were never admitted to the formal peace negotiations and their demands were paid very little attention.

Women were not formally represented either at the Peace Conference or in the Labour Commission. Nonetheless, a number of women's organisations from several countries gathered in Paris at the time of the Peace Conference 1919 in order to exercise at least some influence on the peace process in general and on the work of the Labour Commission.²⁶³ This proved to be difficult and only at a very late stage did the Labour Commission receive them.

The difficulties for women in obtaining recognition at the peace negotiations might be explained by a lack of broad organisational strength and by the lists of demands being too disparate and lacking focus. While one group of women was concerned with the labour organisation, another group was lobbying for the representation of women in the discussions about the Covenant of the League of Nations and some groups did both.²⁶⁴ After several requests, the women's organisations were finally accorded a hearing before a plenary session of the Commission drafting the Covenant of the League of Nations.

Six of the delegations from the women's organisations that had gathered in Paris were admitted also to one of the meetings of the Labour Commission. The delegations represented the International Women's Council, the Conference of Allied Women Suffragists and four French women's organisations. In spite of the reluctance to let the women in, the President of the Labour Commission, Gompers, welcomed the women's delegations to the session assuring them of the Commission's "entire sympathy with the women's cause, and of their sincere desire to give satisfaction to [their] claims" in favour of women, children, "and even of men".²⁶⁵ But when criticised for the absence of women in the peace negotiations, his excuse was bleak: it was not the Commission's fault that it was composed solely by men, "because they had not appointed themselves".²⁶⁶

²⁶³ Riegelman & Winslow 1990, pp. 20-24.

²⁶⁴ *Op. Cit.*, pp. 20-21.

²⁶⁵ Minutes of the Labor Commission, OILO II, Document 34, p. 274.

²⁶⁶ *Op. Cit.*, p. 284. Lubin & Winslow 1990 pp. 20-21 and 24.

The delegations presented a series of joint resolutions to the Labour Commission demanding provisions concerning duration of work, unemployment, hygiene and child labour. The American women's organisations demanded compulsory education for children up to 18 years, abolition of child labour, an eight-hour working day and a forty-four hour week, prohibition of night work for women, equal pay for equal work, equal opportunities for men and women in trade and technical training, social insurance, old-age benefits, pensions and maternity benefits.²⁶⁷ There were also proposals for the right to half-time work for married women. With a half-time solution, it was argued that a woman could work without "abandoning her children and her household". In this connection, the importance of equal pay for equal work was emphasised.²⁶⁸

There were also more radical proposals that a number of women should be represented on the Governing Body of the International Labour Organisation and that there should be national female committees of only women in all member states to which all legislative matters concerning women should be submitted for advice.²⁶⁹

Concerning the protection of children, the principal resolution had the following wording:

Considering the absolute necessity of preventing the too early exploitation of juvenile labour and the right of a child to general and technical education; ... That for apprentices the age of leaving school should be fixed at 15 years, and that from 15 to 18 years they should continue their vocational education and follow technical and supplementary courses.²⁷⁰

In another resolution, child protection was further elaborated, with a very clear focus on education:

Free primary education shall be obligatory in every country to the age of 15 years. It shall be the same for all without distinction of sex, class, race or religion.

Primary practical training shall be established with a view to developing any vocational bent during the educational period.

In agricultural districts practical agricultural and domestic training shall be organised.

Physical training and the medical inspection of such training shall be obligatory in all educational establishments.

The inspection of the corporal hygiene of children shall be obligatory up to the age of 15 years.

²⁶⁷ Lubin & Winslow 1990, p. 23.

²⁶⁸ Minutes of the Labour Commission, Document 34, OILO II, p. 279.

²⁶⁹ *Ibid.* p. 276.

²⁷⁰ *Ibid.* p. 275.

Elementary instruction in contagious diseases, and particularly on tuberculosis and venereal diseases, shall be imparted to young people.

Vocational education shall be open to all and organised on a basis of equality for the two sexes.

Vocational training for such branches of industry as are subject to long seasons of inactivity shall allow for the acquisition of two alternate specialties.

Children under the age of 15 shall not be employed in industry, commerce or any other salaried work.

Medical examination shall be obligatory before any work is entered upon.

Young people from 15 to 18 years of age shall not be employed for more than six hours a day – vocational and supplementary education shall be compulsorily secured for them during these three years.

The employment of young people between the ages of 15 and 18 shall be prohibited: -

Between 8 p.m. and 6 a.m.;

In unhealthy industries;

In underground work in mines.

Heavy unskilled labour shall not be allotted to young people, but shall be done by machinery or by unqualified adults.²⁷¹

The women's delegations were not very successful with their claims at the Paris Peace Conference. The meeting with the Labour Commission, in combination with an earlier personal meeting between Margaret Bondfield and George Barnes, produced some results in the Constitution of the International Labour Organisation.²⁷² Bondfield and Barnes knew each other: they had been colleagues in the British labour movement for many years. The Commission as a direct consequence of the talks between Bondfield and Barnes adopted two amendments. The first was that in case of discussions within the organisation concerning any question dealing with women directly, one of the advisers should be a woman.²⁷³ The second was that the Director of the International Labour Office should be required to employ a certain number of women on the staff.²⁷⁴ This was a very early or perhaps the

²⁷¹ Minutes of the Labour Commission, Document 34, OILO II, p. 282.

²⁷² Lubin & Winslow 1990, p. 23.

²⁷³ Both in the original and the present ILO Constitution, Article 3: "When questions specially affecting women are to be considered by the Conference, one at least of the advisers should be a woman."

²⁷⁴ Both the original and the present ILO Constitution, Article 9 reads as follows: "A certain number of these persons [the staff] shall be women." In the minutes of the Labour Commission, it says "on *his* [my Italics] staff", presupposing that the Director is always a

first example ever of affirmative action. Furthermore, a provision on equal remuneration for equal work for men and women was included in the ILO Constitution.²⁷⁵

To conclude, two important observations can be made. The first is that the promotion of child protection was a major objective for the women's movement that had gathered in Paris in 1919. The different proposals quoted above clearly show their deep concern for children. The women's organisations demanded measures directed exclusively towards children, such as the abolition of child labour under the age of 15 years, compulsory education and the right to vocational training up to the age of 18 years. In addition to this, many of their programmes were directed towards social welfare measures – measures that were in practice indispensable for the protection of children – and towards keeping children out of work. It is noteworthy that the women's associations put a lot of stress on the need for social welfare while the Labour Commission never paid any attention to these questions in connection with child protection.

The second observation is that the presence of the women's associations in Paris did not have a great effect on the peace negotiations. The suggestions for female representation in the ILO led to two amendments in the ILO Constitution. The Peace Conference did not accept any of the other proposals and resolutions.

4.3.2 The ILO Constitution

The Labour Commission submitted the draft Constitution of the ILO to the Peace Conference and the Plenary Session of the Peace Conference unanimously adopted the Constitution and the Labour Clauses on 28 June 1919 as Part XIII, Labour, of the Peace Treaty. In this section, I will provide an overview of the ILO Constitution. The ILO Constitution has been amended a number of times since 1919, but it has largely remained unchanged. The most important amendment was the Declaration of Philadelphia in 1944, which widened the objectives and methods of the organisation. The Declaration of Philadelphia will be further discussed in Chapter 10.

I will refer below to both the Constitution of 1919 and the amended Constitution. In many instances, the articles are identical, or had their wording changed to adjust to various changes in the world since 1919. When there are differences I refer to both the old version from 1919 and the new version as it is in 2006.

man. That has also always been the case. Minutes of Labour Commission, Document 34, OILO II, p. 219.

²⁷⁵ ILO Constitution 1920, Annex, Section II, Article 427 *Seventh*. Labour.

The ILO Constitution establishes the organs of the ILO and specifies how the ILO functions. Furthermore, in the Labour Clauses, it lays down general principles for international labour law. In 1944, the Labour Clauses were extended and incorporated into the Declaration of Philadelphia.

The preamble to the Constitution confirms the objectives and the scope of the ILO:

Whereas the League of Nations has for its object the establishment of universal peace, and such a peace can be established only if it is based upon social justice;

And whereas conditions of labour exist involving such injustice, hardship, and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required: as, for example, by the regulation of the hours of work, including the establishment of a maximum working day and week, the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of freedom of association, the organisation of vocational and technical education and other measures;

Whereas the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries.

The High Contracting Parties, moved by sentiments of justice and humanity as well as by the desire to secure the permanent peace of the world, agree to the following...²⁷⁶

Hence, it is laid down that the motive behind the ILO was the establishment of universal peace. To guarantee universal peace, social justice was an absolute prerequisite. To obtain social justice, working conditions had to improve. A vital component for social justice was – among other vital components such as freedom of association, regulations of hours of work etc. – improvement of the conditions of women and children. To make it possible for the nations to introduce the necessary regulation, international co-operation was necessary. In this way, competition should not be an obstacle for the development of better working conditions.

Article 1 of the Constitution confirmed the links between the ILO and the League of Nations (now the United Nations). The original members of the League of Nations were identical to the original Members of the ILO. Membership of the League of Nations carried with it membership of the ILO.

²⁷⁶ ILO Constitution 1920, Annex, Section II, Article 427.

Articles 2 and 3 give the organisational structure of the ILO with the three organisational bodies: the International Labour Conference; the Governing Body; and the International Labour Office. The procedure of the ILO was not included in the Constitution: it was postponed to the first annual meeting of the International Labour Conference in Washington later in 1919.²⁷⁷ At the Washington Conference the Standing Orders of the ILO, which contained the procedural rules of the Organisation, were adopted.

4.3.2.1 Tripartism

The ILO has a tripartite structure. This means that it is composed of four representatives from each member state: two government representatives and one representative each from the workers and the employers in the Conference and the Governing Body (Articles 3 and 7). In this way, governments have two votes and the workers' and the employers' representatives have one vote each. This composition was - and still is - unique to the ILO. The representatives of the workers' and of the employers' organisations in the ILO are now often defined as "the social partners". Each delegate is "entitled to vote individually on all matters which were taken into consideration by the Conference" (Article 4). The delegations are entitled to have advisers and as a concession to the demands of the women's associations, one of the advisers should be a woman when considering questions especially affecting women (Article 3).

Tripartism was not an entirely new concept in 1919. It goes back at least to the German Social Councils that were founded under Bismarck in the middle of the 19th century as a means of creating stability in society. The more direct origins of tripartism were British and French.²⁷⁸

In Britain, the labour movement had demanded a particular ministry for labour questions for many years and, in 1916, in the middle of the First World War, the labour government set up the Ministry of Labour. One of the first achievements of the Ministry of Labour was to establish joint councils for industrial relations, known as the Whitley Councils.²⁷⁹ Both workers and employers were represented in the councils. The idea was that employers, workers and the state should co-operate in creating better working conditions and industrial relations.²⁸⁰

²⁷⁷ Standing Orders of the ILO, adopted on November 21 1919, Report of Proceedings, First Session the International Labour Conference, 1919, ILO Constitution 1920.

²⁷⁸ Alcock 1971, p. 14-15.

²⁷⁹ The Ministry also reconstituted the Committee on Production, the tribunal for arbitrating industrial disputes, with two panels, consisting of a neutral chairman and one representative each from employers and workers. Alcock 1971, p.14.

²⁸⁰ *Ibid.*

In France, the Minister of Munitions, Albert Thomas²⁸¹ advocated similar ideas. He encouraged employers in the national defence industry to set up worker's delegations in their firms, which resulted in 350 delegations.²⁸²

Tripartism was fundamental to the ILO from the start and the tripartite structure was never questioned. The main reason for this was the sacrifices made by the workers during the war and particularly the fact that they had refrained from the right to strike which was their sole means of power. In the Berne Manifesto, the workers' representatives expressed their demands for participation in the new international organisation for labour legislation and they wanted equal representation between states, trade unions, and employers. Consequently, in the British proposals to the Labour Commission in Versailles, decision-making in the new labour organisation was tripartite.

Nevertheless, there was disagreement about the forms of tripartism. The workers' organisations, as mentioned, wanted equal representation by the three partners. Governments, however, were unwilling to grant that because they feared being outvoted in the event of the workers' and employers' representatives co-ordinating their votes.²⁸³ The worker's organisations had reached the limit of their power to influence the construction of the ILO and the voting balance remained two-one-one.

The inclusion of workers and employers in the decision-making processes of the ILO is unique and it is often claimed that this is one of the main reasons for its success. However, other groups who are also concerned with the actions of the ILO were excluded. One example is the women's organisations that tried to participate in the peace negotiations but were not admitted. The ILO has been criticised for this trade union and male dominance, and it can be said that, in this way, the tripartism is both a strength and a weakness of the ILO.

4.3.2.2 The International Labour Conference

The International Labour Conference (the Conference) is the principal and legislative body of the ILO. The Conference adopts Conventions and Recommendations (Article 19), follows the application of Conventions (Articles 22-23), decides the admission of new member states (Article 1), and it sets the programme and budget of the ILO.²⁸⁴ It adopts Conventions and Recommendations by a two-thirds majority (Article 19) and makes other decisions by a simple majority, except where otherwise expressly provided

²⁸¹ Albert Thomas, 1878-1932. French socialist leader. After studies at the Ecole Normale Supérieure became a journalist at *l'Humanité*. Disciple of Jean Jaurès of the Popular Front. Minister of Munitions during the First World War. Thomas was the first Director of the ILO from 1919 until his death in 1932. He was a believer in "the policy of presence and spent much time travelling to obtain support for the objectives and functions of the organisation, both in Europe, North and South America, China and Japan.

²⁸² Alcock 1971, p. 15 with further references.

²⁸³ See Minutes of the Labour Commission, Document 34, OILO II, *Passim*.

²⁸⁴ 11 bis, Standing Orders of the ILO. ILOLEX, www.ilo.org.

for in the Constitution (Article 17 Para. 2). The quorum is half of the number of delegates attending the Conference (Article 17 Para. 3). The Conference meets annually.

Conference Committees

To make the work of the ILO more efficient, the Conference can appoint various Committees to examine and report on the matters referred to them (Article 17.1 ILO Constitution). Both the appointment and work of the Committees are regulated in the Standing Orders of the Conference in Articles 8-10, and in Part II, Section H, Articles 56-68. The Committees are tripartite and the three groups have the same balancing of votes (2-1-1). Special Committees are regularly appointed for the respective items of the agenda. As regards the adoption of Conventions and Recommendations, the special Committee examines the question on the basis of the proposals of the Office, and submits a report with the proposals of the Committee to the Conference. Then the Conference *in plenum* has a more limited or focused discussion, and eventually decides whether to adopt or reject the Convention or Recommendation in question. In this way, a matter can be discussed in-depth in the special Committee with a shorter debate in the plenary session where time is very limited.

During the first stage of the minimum age campaign, the Conference Committees were called ‘Commissions’. During the second stage of the campaign, the term was changed to ‘Committee’. In contrast, the French term ‘Commission’ has never been changed. Thus, in the beginning, the term was identical in the English and French versions of the Records, whereas by 1932, when the Minimum Age (Non-Industrial Employment) Convention was discussed, the term was ‘Committee’ in English. The change of term had no significance, however, it is important to clarify change in terminology to avoid confusion.

There is also a Drafting Committee which is responsible for the final drafting of the texts of Conventions and Recommendations, and for ensuring agreement between the English and French versions – that are equally authoritative (Article 6 Standing Orders).

4.3.2.3 The Governing Body

The Governing Body is the executive body of the ILO. It co-ordinates the activities of the ILO and takes policy decisions, decides the agenda of the Conference, adopts a draft programme and budget of the Organisation for submission to the Conference, and elects the Director-General. In 1919 the Governing Body had more of an administrative role than a policy-making

one. Now it has 56 members: in 1919 it had 24 members.²⁸⁵ The seats on the Governing Body, however, were distributed according to the same principles in 1919. In accordance with the tripartite structure of the ILO, 12 of the 24 members represented governments, six represented the workers' organisations and six represented the employers' organisations. Of the 12 government seats, eight were assigned to the eight member states of "chief industrial importance" and the remaining four were left to the other member states (Article 7).²⁸⁶ Today, ten of the 28 government seats are assigned to member states of "chief industrial importance".

In 1919 the question of the distribution of seats on the Governing Body caused much discussion. The Organizing Committee at the Washington Conference proposed that the United States, United Kingdom, France, Germany, Italy, Belgium, Japan and Switzerland were the states of "chief industrial importance".²⁸⁷ First of all, there was a problem with the United States and Germany because it was unclear whether they were going to become members of the League of Nations and the ILO. Germany was admitted to the ILO by a decision at the Washington Conference,²⁸⁸ but the United States was not going to join the organisation until 1934. There was criticism of the total dominance of the Governing Body by European countries. India, Canada and China had hoped for representation on the Governing Body and argued that such European dominance was against the whole idea of the ILO. Not until 1922 did the Council of the League of Nations determine the official list of the eight states of chief industrial importance. Both India and Canada were included on that list.²⁸⁹

As mentioned above, the Governing Body decides the agenda for the annual meeting of the Conference. The Governing Body has an obligation, however, to consider any suggestions made by the member states' governments or by the workers' or the employers' organisations (Article 14). Member states' governments also have a right to object to the inclusion of an item or items on the agenda but, if a two-thirds majority of the Conference still wishes to include such an item, it will be included. If two-thirds of the Conference wishes to include a matter on the agenda, it shall be included on the agenda for the following meeting (Article 16 Para. 1-3). The Governing Body also appoints the various committees that examine the issues on the agenda of the Conference.

²⁸⁵ After reforms the Governing Body consists of 56 members. Standing Orders of the ILO, ILOLEX.

²⁸⁶ International Labour Conference, First Annual Meeting 1919, pp. 137, 151-53.

²⁸⁷ The criteria being: "industrial population" (which must have meant the number of industrial workers), motive power employed, length of railways in operation per thousand square kilometers and foreign trade. Delevingne 1934 p. 302.

²⁸⁸ Record 1919, p. 15 ff.

²⁸⁹ Butler 1934, p. 323 with further references.

4.3.2.4 The International Labour Office

The International Labour Office is the permanent secretariat of the ILO. According to the ILO Constitution, the International Labour Office's function is to collect and distribute information relating to the international adjustment of labour conditions and industrial life: particularly the examination of subjects with a view to the adoption of international Conventions (Article 10). This work is presented to the member states and to the International Labour Conference in the form of reports. The examination of a particular subject with a view to the adoption of a Convention or Recommendation often starts with a survey of national legislation and conditions concerning that particular question. This is usually followed by a questionnaire from the Office to the member states' governments. The replies of the governments are analysed by the Office and published in a second report. Usually there is a double-discussion procedure, which means that the adoption of a Convention or Recommendation is discussed during two consecutive annual meetings of the Conference. If this procedure is followed, the Office prepares two more reports including the proposed text for a draft Convention or Recommendation, which is circulated to the member states' governments before the meeting of the Conference.²⁹⁰

The Office also has the task of preparing the agenda for the annual meetings of the International Labour Conference and editing and publishing a periodical on industrial and employment questions of international interest (Article 10).

The Director General of the International Labour Office is appointed by the Governing Body (Article 8). The Director General appoints the staff of the Office (Article 9). This staff should, "so far as is possible with due regard to the efficiency of the work of the Office", include persons of different nationalities (Article 8). A "certain number" of the staff must be women (Article 9). As with the provision above concerning female advisers to the delegates this was a concession to the demands from women's associations gathered at the peace negotiations in Paris.

4.3.2.5 Conventions and Recommendations

The main assignment of the ILO is to adopt internationally binding labour law in the form of Conventions and Recommendations. The International Labour Conference decides whether an item on the agenda should take the form of a Convention or a Recommendation (Article 19). As mentioned above, the International Labour Conference adopts the Conventions and Recommendations at its annual meeting. A Convention is legally binding and should be submitted to the member states with a view to ratification, while a Recommendation is not legally binding and is submitted to the

²⁹⁰ See Article 39, Standing Orders of the International Labour Conference, ILOLEX, www.ilo.org.

member states with a view to “effect being given to it by national legislation or otherwise” (Article 19). Thus, the Conventions create legal obligations for the states that ratify them. The Recommendations have no mandatory force, but they are guides to national action. In practice, however, there is not an absolute distinction between the Conventions and Recommendations, as much of the practical effect of Conventions is both standard-defining and obligation-creating.²⁹¹

There are three special and characteristic features of the ILO Conventions as distinct from other international treaties. The first is that the ILO Conventions are adopted by the International Labour Conference which has much in common with a parliamentary assembly. Furthermore, the ILO Conventions are adopted by a two-thirds majority, whereas other treaties are adopted unanimously in diplomatic negotiations.

The second special feature of ILO Conventions is that the Conventions are not adopted by member states’ governments’ representatives only, but also by social partners, workers’ and employers’ representatives, which gives them a different kind of legitimacy. As a consequence of the tripartite structure, reservations to the ILO Conventions in connection with ratification are not permitted.²⁹²

The third special feature of the ILO Conventions is a number of characteristics that relate to the desire to make the Conventions effective. These are that a two-thirds majority is sufficient to adopt Conventions and Recommendations, which the member states must submit to their competent authorities (the parliamentary assembly normally) and the system of supervision.²⁹³

The Double-Discussion Procedure

As mentioned above, Conventions and Recommendations are normally adopted by the Conference after a so called ‘double-discussion procedure’ (Article 34.4 Standing Orders). The double-discussion procedure was introduced after a number of constitutional reforms during the 1920s. Asexpressionist name suggests, according to the double-discussion procedure an item on the agenda of the Conference is discussed at two consecutive annual meetings before reaching a decision. The purpose of the double-discussion reform was to prevent adoption of badly or too quickly drafted texts.²⁹⁴ Accordingly, as a preparation for the first discussion the Office prepares a preliminary report describing law and practice in the member states, together with any other useful information and a questionnaire. Based on the replies of the governments, the Office prepares a

²⁹¹ Valticos & von Potobsky 1995, p. 49.

²⁹² See further Spiliopoulou & Mårsäter 2005, pp. 514-517.

²⁹³ Valticos & von Potobsky 1995, p. 50.

²⁹⁴ Valticos 1969, pp. 201-237.

second report to the Conference. The reports, the so-called ‘Grey Reports’, are submitted to the Conference for a first discussion. If the Conference so decides, the question is then placed on the agenda for the following session of the Conference for a second and final discussion (Article 39.1-4, Standing Orders).

On the basis of the replies to the questionnaire and the first discussion by the Conference, the Office prepares one or more Conventions or Recommendations and communicates them to the governments of the member states. On the basis of the replies of the governments, the Office prepares a final report to be submitted to the Conference, the so-called ‘Blue Report’. (Article 39.6-8, Standing Orders).

After decision by the Governing Body, a question can be discussed and finally decided in one session of the Conference: the so-called ‘single-discussion procedure’. In this case, the Office prepares a preliminary report to the governments of the member states, with the same content as described above. The Office then draws up a final report to be submitted to the Conference that may contain one or more Conventions and Recommendations (Standing Orders, Article 38).

In the minimum age campaign, the single-discussion procedure was applied when the first Conventions were adopted in 1919-21, before the Constitutional reforms. The single-discussion procedure was also applied when the Minimum Age Conventions (Industry), (Sea) and (Non-Industrial Occupations) were partially revised in 1937-37. All the remaining Conventions were adopted by the double-discussion procedure.

Flexibility

As mentioned above, the ILO does not accept treaty reservations. It was also mentioned that this is a consequence of the unique tripartite structure of the organisation, which includes non-governmental representatives and thereby alters the otherwise state-centered reciprocity model of international treaties.²⁹⁵ To make universal ratification and acceptance of the Conventions and Recommendations possible the ILO Constitution has flexibility clauses. The flexibility clauses concern both the framing and the application of Conventions and Recommendations. When framing a new draft Convention or Recommendation, the Conference must consider countries with a difficult climate, low levels of industrial development, or “other special circumstances” that “make the industrial conditions substantially different” and suggest modifications to meet the requirements of those countries (Article 19). This provision has not been amended and the wording is exactly the same as it was in 1919. The flexibility clauses in the Conventions and Recommendations concerned the colonies in 1919. It was provided that the

²⁹⁵ See Spiliopoulou & Mårsäter 2005, pp. 514-517.

member states should apply the Conventions and Recommendations also “in their colonies, protectorates and possessions” (Article 35, original wording).

After decolonisation, the wording of the provision was adjusted to the new situation. The new wording is that the Conventions and Recommendations must be applied also to “the non-metropolitan territories for whose international relations they are responsible, including any trust territories for which they are the administering authority, except where the subject matter of the Convention is within the self-governing powers of the territory”, but the content is the same (Article 35, amended wording). It is that in these territories, the Conventions and Recommendations must be applied, except when they are estimated to be inapplicable owing to the local conditions, or subject to modification that is estimated necessary (Article 35, old and new versions).

The divide between the industrialised West and the developing countries was a main theme in the ILO minimum age campaign and accordingly, it is one of the main themes of the dissertation. It was the ambition of the ILO to make international labour regulation universal. The flexibility clauses were the principal method for achieving that universality.

Annual Report and Complaints

As a means of ensuring compliance with adopted Conventions and Recommendations, the Constitution of the ILO lays down two kinds of reporting obligations for the member states in respect of the ILO. There is also a complaints procedure.

The first reporting obligation is that, after the adoption of a Convention, a member state must bring the Convention before its competent authorities within one year from the end of the session. In exceptional cases, the time limit is extended to 18 months (Article 19). In the event of a member state not ratifying a Convention, the member state must inform the Director General of the ILO about the law and practice regarding the matters dealt with in the Convention, at certain intervals. In 1919, the only obligation appertaining to Recommendations was to inform the Secretary General of the Conference of the measures taken (Article 19 old version). Following an amendment, there is now a similar obligation for Recommendations (Article 19.6, new version).

The second kind of reporting obligation for member states is to make an annual report to the International Labour Office on the implementation of Conventions and Recommendations. It is the Governing Body that decides what should be reported (Article 22). The Director General of the ILO must then make a summary of the reports and submit it to the next meeting of the Conference (old Article 22, new Article 23).

Then there is the complaints procedure. Employers’ organisations, workers’ organisations (Article 23, old version, Article 24, new version) and member states governments (Article 25 old version, Article 26 new version)

have the right to file a complaint to the International Labour Office against a member state for non-compliance with a Convention. The Governing Body can then invite the government in question to make a statement. The Governing Body can also refer the complaint to a Commission of Inquiry for consideration and make a recommendation (Articles 25-28 old version, Article 26 new version). The report of the Commission must be communicated to the Governing Body and the government concerned. The government must then inform the Director General of the ILO whether it accepts the recommendations in the report or whether it proposes to refer the complaint to the International Court of Justice (Article 29. In 1919 it was the Permanent Court of International Justice of the League of Nations).

4.4 Concluding remarks. Western dominance, trade union influence and the protection of children

In this Chapter, I have described the origins of the ILO. Its origins are a number of concurring historical developments and events that shaped the functioning and the programme of the organisation. In the previous sections I have highlighted the early rights movements – the labour movement, the women’s movement, and the movement for children’s rights. In Chapter 2, I have described the earlier stages of the movement for the protection of children. In this chapter, I have also given a short description of the principal development of the European Factory Acts. I have also described how social unrest around Europe in the aftermath of Industrial Revolution and the First World War played a crucial role in the foundation of the ILO.

My purpose with this Chapter has been to argue that the ILO minimum campaign should be understood and analysed in the light of the historical context and that it is a part of the developing labour law and children’s rights law.

The first conclusion to be drawn from this chapter is that Western dominance in shaping of the ILO was total and that Europe was more dominant than the United States in many ways. The First World War strongly affected the plans and the victorious nations could dictate many of the conditions. The Paris Peace Conference was the result of negotiations between the allied and associated nations: Britain, France, Italy and the United Nations. The former ally, the Russian Empire, no longer existed at the time of the peace talks and the Soviet leaders were not involved. The Central Powers (Germany, Austria-Hungary, Bulgaria and the Ottoman Empire) were not invited to participate in the negotiations but Germany made proposals and followed the discussions. Thus, the peace treaties, and the ILO as a part of that, were exclusively a product of the biggest Western industrial nations. Great Britain and the United States were clearly the most

influential nations at the peace negotiations. President Woodrow Wilson, a Democrat deeply committed to peace and social justice, was particularly influential.

A second conclusion is that the European labour and trade union movements had a remarkable influence on the form and content of the ILO. The trade union influence can only be explained by the exploitation of workers during the Industrial Revolution, their successful organisation, the strong position of the trade union and labour movements that followed during the late 19th and early 20th centuries, the threat of revolution, and the contributions of the workers during the war. Governments and employers were susceptible to the demands of the trade unions because they clearly felt the need to stabilise the political situation in the industrialised nations. When the demobilised soldiers returned from the war they needed employment and demanded decent living conditions as recognition of their sacrifices and loyalty during the war. In short, the labour and trade union movements were in a historically unique position of power at the time of the end of the First World War. More or less the same factors acted as catalysts for the process of democratisation in Europe.

The third conclusion is that a number of coinciding and concurring interests promoted the protection of children. Firstly, the earliest labour legislation, the European and American Factory Acts, concerned the protection of children. As I have argued in previous sections, the situation of exploited children became visible during the Industrial Revolution and, for many reasons, people of different convictions were sensitive to children in distress. This coincided, however, with less altruistic motives. The women and children competed with the male workers and after the First World War this was particularly acute because of demobilisation. This was a strong impetus for the trade unions to act against child labour. The consequence of all this was that it was never questioned that the abolition of child labour was a central and urgent issue for the ILO and that action should be taken directly.

In the following parts of the dissertation I will describe and analyse the ILO Minimum Age Conventions. In the analysis, I will return to my main themes as formulated and discussed in Chapter 2. I will also return to the three conclusions above. They are: (1) that the ILO, and the minimum age campaign, was completely dominated by the winners of First World War which were all Western industrialised nations; (2) that the trade union movement had a remarkable influence; and (3) that the protection of children had a particular position because it was the easiest question to agree on.

Part II
Area-Specific Limitations 1919-1933

Chapter 5. The Washington Conventions 1919

During the first three years of the ILO, activity was extremely high. No fewer than 16 Conventions and 18 Recommendations were adopted at the first annual meetings of the International Labour Conference. A relatively large number, seven Conventions²⁹⁶ and three Recommendations²⁹⁷, directly concerned the protection of children and adolescents. The question of the protection of children was to a great extent dealt with in parallel with the question of the protection of women, and three of the Conventions²⁹⁸ and three of the Recommendations²⁹⁹ adopted between 1919 and 1921 directly concerned the protection of women.³⁰⁰ Thus, ten out of the 16 Conventions adopted concerned the protection of women and children. This further proves the great importance that the ILO attached to the protection of children in the early years.

As I will argue, the Minimum Age Conventions that would follow over the years were largely modelled on these first Conventions. It is therefore of great relevance to study the conflicts, debates and the arguments of the delegates at the first three annual meetings of the International Labour Conference in 1919, 1920 and 1921. I will also argue that the Minimum Age Conventions are related to the national Factory Acts regulating the work of children in the industrialised nations.

²⁹⁶ Minimum Age (Industry) Convention No. 5, Night Work of Young Persons (Industry) Convention No. 6, Minimum Age (Sea) Convention No. 7, Minimum Age (Agriculture) Convention No. 10, White Lead (Painting) Convention No. 13, Minimum Age (Trimmers and Stokers) No. 15, and Medical Examination of Young Persons (Sea) Convention No. 16.

²⁹⁷ Lead Poisoning (Women and Children) Recommendation No. 4, Night Work of Children and Young Persons (Agriculture) Recommendation No. 14, and Vocational Education (Agriculture) Recommendation No. 15.

²⁹⁸ Maternity Protection Convention No. 3, Night Work (Women) Convention No. 4, White Lead (Painting) Convention No. 13.

²⁹⁹ Lead Poisoning (Women and Children) Recommendation No. 4, Maternity Protection (Agriculture) Recommendation No. 12, and Night Work of Women (Agriculture) No. 13.

³⁰⁰ White Lead (Painting) Convention No. 13 and Lead Poisoning (Women and Children) Recommendation No. 4 dealt with women *and* children.

5.1 The Washington Conference 1919

The first annual meeting of the International Labour Conference (the Conference) laid the foundations for an international labour code. There were five items on the agenda and item (4) concerned the employment of children:

1. The 8-hour day/48-hour week;
2. Unemployment;
3. Women's employment (a) before and after child-birth, including the question of maternity benefit, (b) during the night, and (c) in unhealthy processes;
4. The employment of children: (a) minimum age of employment, (b) during the night, (c) in unhealthy processes; and
5. The extension and application of the Berne Conventions of 1906 concerning the prohibition of night working by women in industry and of white phosphorous in the manufacture of matches.³⁰¹

Organisation of the Conference

The meeting was planned to be held in Washington in October, but the situation was complicated. The United States' Senate passed the Peace Treaty, but only after having made alterations that were unacceptable to President Wilson. Because of this, the United States never ratified the Peace Treaty. The United States did not become a member of the ILO until 1934 when President Franklin D. Roosevelt took office and it never became a member of the League of Nations.³⁰²

In spite of this difficult situation, the first meeting of the Conference could take place in Washington as planned from October 29 to November 29, 1919. The American Secretary of Labor, William B. Wilson, hosted the meeting. An International Organizing Committee carried out most of the organising of the Conference. This was a provisional measure since the International Labour Office was not yet organised.³⁰³

The Organizing Committee had seven members, appointed by the United States, Great Britain, France, Italy, Japan, Belgium and Switzerland.³⁰⁴ The

³⁰¹ ILO Constitution 1920.

³⁰² McCune Lindsay 1934, pp. 330-367.

³⁰³ Report of the Organizing Committee, Record 1919, pp. 12-19.

³⁰⁴ *Ibid.* The original members of the Organizing Committee were: James T. Shotwell, Professor, Columbia University, United States; Malcolm Delevingne, Assistant Under-Secretary of State, Home Office, Great Britain; Arthur Fontaine, Counsellor of State, Director of Labour in the Ministry of Labour and Social Insurance, France; Castiglione di Palma, Inspector of Immigration, Italy; M. Oka, formerly Director of Commercial and Industrial Affairs at the Ministry of Agriculture and Commerce, Japan; Ernest Mahaim, Professor, Liège University, Belgium; and William E. Rappard, Professor, Geneva University, Switzerland. Delevingne points out that "the first-hand knowledge of industrial administration possessed by the majority of the members greatly facilitated the work of the Committee". The

Committee compiled reports covering the items on the agenda that were sent out to the member states' governments with questionnaires. There was not much time for preparation. Nonetheless, many of the member states' governments replied and the replies were compiled in second reports to the Conference. The reports were called 'Blue Reports' because of the blue colour of the cover paper.

According to Harold Butler, the preparations presented in the Blue Reports made it possible to assess the extent to which general agreement already prevailed among the member states' governments and to concentrate on the points that required "detailed negotiation and compromise".³⁰⁵ In Section 5.2.1, I will return to the report concerning item (4) on the agenda of the Conference, namely, the employment of children.

During the Washington Conference, Albert Thomas was elected the first Director of the International Labour Office and Arthur Fontaine elected the first Chairman of the Governing Body. The Washington Conference also elected the first Governing Body of the ILO. Albert Thomas remained as director until his death eleven years later in 1930.

Participation

Forty out of the 45 member states of the League of Nations were present at the Conference. Considering both the short notice of the Conference and the communications of that time, this number is high.³⁰⁶ Obviously, the delegates had to travel by boat and train to the Conference because only short trips were possible by aeroplane.

Most of the European nations were represented in Washington, with the exception of the Soviet Union, Germany, Austria, Hungary and Bulgaria. At the third session of the Conference a resolution was adopted that Germany and Austria would be admitted into membership of the ILO on the same conditions as the other member states. German and Austrian delegates were invited to the Washington Conference but due to shipping problems the delegates only made it to Stockholm from where they had to return to Germany.³⁰⁷

Several of the Asian countries had sent delegates to the Conference. China, India, Japan, Persia and Siam, were all represented. All the countries of South America were there, except Mexico.³⁰⁸ This group of countries was openly referred to as being industrially backward. To give an example, the Conference had appointed a Commission on Special Countries that discussed

high representation of university professors is noteworthy in this context. The British government provided officers and technical assistance for the Organizing Committee in London. The French government also provided assistance by their officials.

³⁰⁵ Butler 1934, p. 327.

³⁰⁶ List of Delegates and Advisers, Record 1919.

³⁰⁷ OILO II, Documents 66 and 67.

³⁰⁸ List of Delegates and Advisers, Record 1919.

the particular problems connected with the application of a Convention of the hours of work in Japan, India, China, Persia, Siam, South Africa and "Tropical America".³⁰⁹

The host nation, however, the United States, was not represented by a delegation at the Conference, because of the non-ratification of the Peace Treaty.

South Africa, which was a British colony, was the only country present from the colonised African continent.³¹⁰

Women in Washington

Not only African countries were conspicuous by their absence at the Conference. So were women. There were 73 government delegates present at the meeting, 25 worker's delegates and 25 employer's delegates, giving a total of 123 delegates. All of them were men.³¹¹

However, a small number of the technical advisers to the delegates were women.³¹² Two of them were the Swedish factory inspector Kerstin Hesselgren³¹³ and her Norwegian colleague Betzy Kjelsberg.³¹⁴ The female technical advisers may have been appointed to make it possible to live up to the provision in the ILO Constitution that, when dealing with questions specially affecting women, at least one of the advisers should be a woman.³¹⁵ In the Committees dealing with the employment of women and children the proportion of women was higher.

Outside the Conference, European and American women continued their work through an organised approach to international co-operation and the first International Congress of Working Women was held in Washington in connection with the International Labour Conference. The women's organisations had hoped to be able to promote the rights of women and the protection of children in the new labour organisation.³¹⁶ However, their efforts did not have any direct effect on the decisions of the Conference.

³⁰⁹ Report of the Commission on Special Countries, Record 1919, pp.229-233.

³¹⁰ List of Delegates and Advisers, Record 1919.

³¹¹ *Ibid.*

³¹² *Ibid.*

³¹³ Kerstin Hesselgren (1872-1964). Swedish factory inspector. The first Swedish woman in Parliament.

³¹⁴ Betzy Kjelsberg (1866-1950). Norwegian factory inspector. President of the Norwegian National Women's Council.

³¹⁵ Article 3, ILO Constitution 1920. See *infra*, Section 4.3.2.

³¹⁶ Riegelman & Winslow 1990, p. 25.

5.2 The Blue Report on employment of women and children

The employment of women and children was dealt with in the same Blue Report, but in two distinct sections.³¹⁷ In the report, the basis for the first Minimum Age Convention was laid down. It was based on a survey of the replies of the member states' governments to a questionnaire concerning the national minimum age legislation and legislation concerning night working by children.³¹⁸ There was also a survey into the attitudes of the member states' governments on the passing of laws with higher standards in conformity with the proposed draft Conventions. In all, there were more or less complete replies from 29 of the 45 member states.³¹⁹

5.2.1 Minimum age

As regards the minimum age for admission to work, the survey showed that the legal minimum age for employment in industry was 14 years in 13 member states: the United States;³²⁰ Belgium; Great Britain; Bulgaria; Czechoslovakia; Denmark; Greece; Norway; Serbia; Sweden (girls); Switzerland; five of the Australian states; and New Zealand.³²¹ The legal minimum age for employment in industry was 13 years in France, Germany, the Netherlands, Sweden (boys), and parts of Australia,³²² and 12 years in Argentine, Brazil, Italy and Japan. The legal minimum age for industrial employment was 11 years in Romania, 10 years in Spain and 9 years in India.³²³ Five member states had legal provisions that children should have reached a certain level of education before admission to work in industry.³²⁴ However, the reported age limits were optimistic – or exaggerated. In the case of Greece, for example, this was revealed by the Greek government's

³¹⁷ Blue Report 1919/I, Blue Report 1919/ II. The report was also published in English. The English version is however missing from the ILO Archives and library in Geneva.

³¹⁸ Blue Report 1919/I, Annexe I. Circulaire et questionnaire adressés par le Comité d'organisation sur les questions 3,4 et 5 de l'ordre du jour, p. 69 ff., and Rapport No. IV. Société des Nations. Rapport supplémentaire (Concernant les pays dont les réponses sont parvenues trop tard pour être insérées dans les rapports Nos. I, II et III), préparé par le Comité d'Organisation de la Conférence Internationale du Travail, Washington, 1919.

³¹⁹ Blue Report 1919/ II, Annexe VIII, Résumé des dispositions relatives à l'âge minimum des jeunes ouvriers, at 121-5.

³²⁰ Blue Report 1919/ II, p. 121. There was minimum age legislation with various minimum ages in the American states. Federally however, children's work was only regulated by a tax law that levied a tax of 10 per cent on all production where children under the age of 14 years took part.

³²¹ Blue Report 1919/I, p. 46.

³²² *Ibid.*

³²³ *Ibid.*

³²⁴ Blue Report 1919/ I, p. 47.

representative himself, admitting in his speech during the plenary session that the minimum age in Greece was 12 years.³²⁵

There were many exceptions that permitted employment of children at ages below the minimum age: in most cases for work that was not judged dangerous, in family-related occupations such as domestic and agricultural work and if a medical certificate was presented. In the case of Argentina there was an exemption for cases when a child's economic contribution was necessary for the subsistence of the family.³²⁶ Furthermore, there were higher legal minimum ages for work considered more dangerous such as mining.³²⁷

As regards the attitudes towards raising the minimum age, Czechoslovakia and the Netherlands were in the process of raising the legal minimum age to 14 years. In France there was a Recommendation to the Chambre des Députés to the same effect and the French government was positive towards it. In the United States, there were suggestions that the minimum age should be as high as 16 years. Poland and Sweden declared themselves prepared to raise the legal minimum age to 14 years, but Argentina was only prepared to raise it from 12 to 13 years.³²⁸

The survey was concluded by a proposed draft Convention for the admission to employment in industrial undertakings.³²⁹ The proposed minimum age was 14 years and there was a long discussion on the definition of 'industrial undertaking'. The discussion resulted in a provision that the fine line of division between industrial and other undertakings should be left to the competent national authorities. Children between 13 and 14 years of age should be provided with technical and vocational training.

To facilitate the enforcement of the Convention, employers should be obliged to keep a register of children employed. In the countries with "special climatic conditions, imperfect development of industrial organisation or other special circumstances that made the industrial conditions substantially different", modifications should be allowed as foreseen in the ILO Constitution. As none of the countries concerned had replied to the questionnaire, the Organising Committee made no suggestions as to the content of such modifications.³³⁰

5.2.2 Night working by children

As regards night working by children, the objective of the ILO was to adopt a Convention in accordance with the draft adopted by the Conference of the

³²⁵ See *infra*, section 5.1.3.

³²⁶ Blue Report 1919/ II, p. 121.

³²⁷ Blue Report 1919/ I, p. 47.

³²⁸ *Op. Cit.*, pp. 48-50.

³²⁹ Projet de convention fixant a 14 ans l'age d'admission des enfants dans les travaux industriels. *Op. Cit.*, pp. 50-52.

³³⁰ *Ibid.*

International Association for Labour Legislation in Berne in 1913. According to the replies to the questionnaire, 15 member states had adopted laws that prohibited night working by children under the age of 16 years: United States, Argentina, Belgium, Germany, five of the Australian states, New Zealand, Poland, South Africa and Spain, and nine member states had adopted laws with a higher minimum age.³³¹ In Brazil, Great Britain, Denmark, France, Norway, Sweden, Switzerland and three of the American states, the minimum age for night work in industry was 18 years. In Italy, Japan and Romania the minimum age for night work was 15 years. All member states that had replied to the questionnaire, with the exception of France, agreed to an absolute minimum age for night work in industry of 14 years, under which no derogations whatsoever should be allowed.

In the draft Convention concerning night working by children proposed by the Organizing Committee, the minimum age for night working by children in industry was 18 years.³³² The definition of ‘industrial undertaking’ was identical to the draft Convention on the minimum age for employment (as well as the draft Convention on the 8-hour day and 48-hour week). The period of rest during the night should be at least 11 consecutive hours including the period between 10 p.m. and 5 a.m. The prohibition of night work could be derogated in the case of (a) its being necessary because of the interests of the state (“*si l’intérêt de l’état ou de la collectivité l’exige*”), or (b) *force majeure*. The draft Convention ended with the same opportunity for modifications for climate, etc. as in the draft Convention regulating minimum age in industry described above.

The next step was submission of the Blue Report to the Conference. Before the plenary discussion, the Conference referred the report to the special Commission on Employment of Children.

5.3 The Commission on Employment of Children

In accordance with the Standing Orders of the Conference, a special Commission on Employment of Children was appointed (Original Standing Orders, Article 7).³³³ As mentioned above in Chapter 4, at the first stage of the minimum age campaign the term ‘Commission’ was used both in the English and in the French versions of the Conference Records. By 1932, the term ‘Commission’ had been replaced by the term ‘Committee’ in the English versions of the Conference Records, whereas in the French versions

³³¹ Blue Report 1919/ I, p. 53.

³³² *Projet de convention internationale interdisant le travail de nuit des jeunes gens dans l’industrie. Op. Cit.*, pp. 54-55.

³³³ ILO Constitution 1920, p. 19-27, at 22.

the term was unchanged (and remained ‘Commission’). This change of term in English is of no material significance – it is noticed only for the sake of clarity.

The Commission on Employment of Children consisted of 21 members. Seven of the members were government delegates, all men, and seven were employers’ delegates, all men, and seven were workers’ delegates, six men and one woman. The Chairman of the Commission was the British government’s delegate Malcolm Delevingne and the Secretary was Grace Abbott from the United States.³³⁴ The work of the Commission was summarised in two reports, one concerning the minimum age for admission of children to employment, and one concerning the employment of children at night. In the reports, the discussions of the Commission were only summarised briefly.³³⁵

5.3.1 Minimum age

As regards the minimum age for the employment of children, the Commission decided to recommend to the Conference that it adopt the draft Convention proposed by the Organizing Committee, subject only to minor modifications.³³⁶

The first point of discussion presented in the report of the Commission was what minimum age should be specified for admission to work. There were proposals within the Commission to raise the minimum age to 15 or even 16 years. These proposals were rejected. Those advocating a high minimum age, however, declared that they had voted for the lower minimum age of 14 years only because it would bring about a considerable advance over the present conditions and that it should be regarded as “a transitional measure toward the adoption of a higher limit later on”.³³⁷ One may find it noteworthy that a minimum age as high as 16 years and the concept of a transitional minimum age with an aim to progressively raise it was introduced and discussed as early as the first gathering of the ILO.³³⁸

³³⁴ Commission on Employment of Children, Record 1919, p. 247.

³³⁵ Report of the Commission on Employment of Children, Record 1919, pp. 247-249, and Report of the Commission on Employment of Children During the Night, Record 1919, pp. 249-253.

³³⁶ See Section 5.1.1. *supra*.

³³⁷ Record 1919, p. 248.

³³⁸ *Cf.* Article 1, Minimum Age Convention No. 138 (1973): “Each Member for which this Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons”, and Para 7 of the pertaining Minimum Age Recommendation (No. 146): “Members should take as their objective the progressive raising to 16 years of the minimum age for admission to employment or work specified in pursuance of Article 2 [a minimum age of 15 years] of the Minimum Age Convention, 1973”

The second point of discussion presented in the report of the Commission was the scope of the Minimum Age Convention. There were proposals to extend the scope to include not only industry, but also commerce, agriculture and 'all other kinds of employment'.³³⁹ However, many of the members of the Commission considered that this question should not be dealt with at the Conference because it was not duly prepared, and because there were no representatives of agriculture and the other economic sectors concerned present at the Conference. It was therefore recommended that the Convention be limited to industrial undertakings and that the question of the minimum age in commerce, agriculture and other kinds of employment should be referred to the International Labour Office for consideration with a view to the question being brought up at the next year's Conference.

The third point of discussion presented in the report of the Commission concerned exceptions from the minimum age provisions in the form of transitional provisions. The Belgian employers' delegate, supported by the Italian government's delegate and the Spanish employers' delegate, proposed that there should be a transitional period for countries where elementary education was completed below the age of 14. During the transitional period, the employment of children aged 13 and 14 should be allowed until the countries concerned had time to adjust their educational system to the standards of the Minimum Age Convention. The Commission reached an agreement that the International Labour Office should be assigned the task of considering the question of a gap between the minimum age for employment, as proposed by the Convention, and the age of completion of compulsory education, and to approach the governments concerned.

Points four to six of the discussion concerned the definition of 'industrial undertaking', the exception from minimum age for vocational training and the obligation for employers to keep a register of employed children and their dates of birth. The Commission decided that it should not deal with the definition of 'industrial undertaking', because of identical definitions in other Conventions mentioned above. As for the provision on vocational training, the Commission had no principal objections but found the proposed text of the Organizing Committee unclear. The Commission therefore suggested that the wording should exclude vocational training in technical schools from the minimum age provisions provided that the competent national authorities approved. As for the obligation for employers to keep a register of child workers, there were no comments.

The seventh point of discussion concerned the application of and possible modifications to the Convention in countries with special climatic conditions or other difficulties. The purpose of modifications was to facilitate universal ratification of and compliance with the ILO Conventions (see above, Section

³³⁹ Record 1919, p. 248.

4.3.2). Because this was a controversial issue, it was referred to a sub-commission. The members of the sub-commission represented the countries concerned: India; China; Japan; Persia; and Siam.

The sub-commission made a number of suggestions. For Japan, it suggested that children over the age of 12 could be admitted to employment provided that they had completed elementary schooling. For “India and other oriental countries”³⁴⁰ the sub-commission noted that the Indian government “was at the present moment considering the question, which was closely bound up with the introduction of an educational system into India, and had not arrived at a decision”.³⁴¹

A special complication of the Indian participation was that the questionnaires and reports of the Organizing Committee had not arrived in India before the delegation left for Washington, which meant that the Indian delegates had not been able to consult their government. Therefore, the Commission made no recommendation to the Conference concerning India and its fellow “oriental countries”. Instead, the Commission decided to refer the question to the next annual meeting of the Conference.³⁴²

The government delegate from South Africa pointed out that there was a similar situation in South Africa concerning “the employment of Indian and native labor in South Africa”, and that the decision of the South African government therefore would depend on the policy adopted by the Indian government.³⁴³

5.3.2 Night working by children

The Commission also recommended to the Conference that it should adopt the proposed draft Convention on night working by children and that the age limit should be 18 years. However, the Commission recommended that exceptions should be made for a number of industries working with special processes: industries that had to avoid waste of material or fuel and industries where the work was carried out day and night by a succession of shifts.³⁴⁴

Here the interests of industry and the protection of children were set directly against each other. As presented in the report of the Commission, there seems to have been no discussion about the prioritisation of the

³⁴⁰ *Ibid.* I quote this because in India the right for all children to free and compulsory education was not introduced until 2002. The Constitution (93rd Amendment) Act (No. 93 of 2005) was passed by the Indian Parliament on 20 January 2006. See Stern 2006, p. 231.

³⁴¹ Record 1919, p. 248.

³⁴² *Ibid.* Mary McArthur, leader in National Federation of Women Workers and British representative on the Commission on Employment of Children, fought hard against any exceptions to the minimum age in certain countries, but without success, according to Riegelman & Winslow 1990, p. 30.

³⁴³ Record 1919, p.248.

³⁴⁴ Record 1919, p. 249.

interests of the industrial employers. The motivation of the Commission makes clear that it is not the interest of the child that is protected:

It is the almost universal custom in these industries [in which it is necessary, by reason of the nature of the process or to avoid waste of material or fuel, to carry on the work day and night by a succession of shifts] for the shifts to take turns on night work and where boys are employed with men in work of this kind, it is necessary that they should be able to take their turns of night work with the men of their shift. The exceptions recommended have been carefully considered in consultation with the technical experts and it will be observed that the wording of the exceptions has been so phrased as to limit them to the actual work or process in the industry which is necessarily continuous. No permission should be given in other work in the industries mentioned which is not necessarily continuous.³⁴⁵

Looking back, the quotation gives rise to the question of whether there were not enough adult workers to keep the processes going around the clock. One may question whether the exceptions were accepted because young workers were convenient for the process.³⁴⁶

The Commission then discussed the definition of 'night'. An exception from the proposed definition, 11 consecutive hours between 10 p.m. and 5 a.m., was proposed for industries that used a two-shift system: it should be possible to postpone the period of rest by one hour in these industries. The Commission also added a paragraph providing that a shorter night period could be defined for countries with a tropical climate, where work was suspended during the middle of the day.

The Commission proposed a lower age limit of 15 years for night work in the countries with climatic and other special conditions. After three years, the age limit should be raised to 16 years in these countries. In respect of India, the Commission proposed an even lower age limit of 14 years for boys, and 18 years for girls. As regards China, Persia and Siam, the Commission considered that it was not possible to make any recommendation because the information available was insufficient. The Commission therefore suggested that the question should be postponed to the next meeting of the Conference.

The Commission also discussed a proposal from the Belgian employers' delegate, supported by the French employers' delegate, that exceptions from the prohibition of night by working boys between 14 and 16 years should be allowed for certain kinds of glass manufacture and in steel mills for a transitional period of ten years. The motive was that Belgian industry had suffered from war and occupation and that a prohibition of night working by children under 18 would be detrimental to its reconstruction.³⁴⁷ The

³⁴⁵ *Ibid.*

³⁴⁶ *Cf.* Olsson 1980.

³⁴⁷ Record 1919 p. 250.

Commission, however, was not willing to grant such a delay, but proposed that the progress of reconstruction in the regions afflicted by war should be followed, and that the decision on night working by persons between 14 and 16 years in those regions should be postponed to a later meeting of the Conference.³⁴⁸

5.4 The Plenary Session of the Conference

The Chairman of the Commission submitted the report to the Conference. He explained that the object of the Commission was twofold. One was to obtain a real advance over the existing conditions for children and the other was to make proposals that could obtain general acceptance by the Conference and by the member states.³⁴⁹ If an instrument with a minimum age of 14 years could be adopted, this would mean considerable progress for the protection of children in most countries, including the most industrially advanced ones. It was emphasised that the protection of children was fundamental for the ILO. By the adoption of Conventions on minimum age for admission to work and on the prohibition of night working by children, the first stones “in the edifice of labour legislation” were laid down, he declared.³⁵⁰

Five speakers took the floor to debate the question of the protection of children. These were: the adviser to the British workers’ delegation, Margaret Bondfield; the Indian government representative Atul Chandra Chatterjee; the South African government representative H. Warington Smyth, the Indian workers’ delegate Narayan Malhar Joshi; and the Greek government delegate John Sofianopoulos.

India was the first subject brought up for discussion. It was also the subject that caused most debate. Essentially, the debate did not concern *what* minimum age could be specified for India, but *when* a minimum age could be specified.

Bondfield, the first speaker on the floor, moved an amendment that had been proposed by the British workers’ delegation. To her, it was unacceptable that Indian children should be left without protection pending the outcome of the following year’s Conference. The question of child labour had been discussed by the whole world and it was therefore implausible that the Indian government should have been as detached from

³⁴⁸ *Ibid.*

³⁴⁹ Record 1919, p. 92.

³⁵⁰ *Ibid.*

world discussions as not to be prepared for a discussion on the subject in 1919.³⁵¹

The amendment provided that there should be a modification for India, providing that children under 12 should not be employed (a) in factories working with power and employing more than ten persons, (b) in mines and quarries, (c) on railroads, or (d) on docks.

Bondfield foresaw two objections against a minimum age of 12 years in India that she wished to meet. The first was the special nature of Indian industry. Bondfield explained that by excluding industries that could be considered as 'purely native' or as 'small industries' from the application of the Convention, the proposed amendment had taken the special nature of Indian industry into account. Bondfield did not define what she intended by a 'purely native industry' and it is difficult to know which one of the categories (a)-(d) of the amendment covered it. However, Bondfield argued that the amendment was drafted to refer only to industries of a Western model that were under the control of factory legislation and mainly supervised by officials of British origin. The idea was that when Western methods of industry were introduced into an Eastern country, Western safeguards should accompany them.³⁵²

The second objection foreseen by Bondfield was that Indian parents would oppose any legislation that prevented their children from working. Bondfield drew a parallel with the debate when the half-time system in British textile mills was abolished.³⁵³ The same objections had been made in the British debate, so the parent argument was not a purely 'Eastern' argument. Bondfield recognised that the lack of elementary education in India did make a difference, but she saw the abolition of child labour as a way of speeding up the process of organising a functioning educational system.³⁵⁴

The next speaker, the Indian government representative, Atul Chandra Chatterjee³⁵⁵ was against the British workers' amendment and he supported the Commission's proposal to postpone the question to the next International

³⁵¹ Record 1919, p. 93.

³⁵² *Ibid.*

³⁵³ The half-time system was discussed *supra* in Section 4.2.1.1.

³⁵⁴ Record 1919, p. 94.

³⁵⁵ Sir Atul Chandra Chatterjee, 1874-1955. Bengalese politician. Educated in Calcutta and Kings College, Cambridge, as Government of India Scholar. 1919 Chatterjee was Acting Chief Secretary, United Provinces Government, India. He was a member of the Indian Board of Industries and Munitions 1920, Secretary to the Government of India, Department of Industries 1921, Member of Indian Legislative Assembly 1921-24, High Commissioner for India in the UK 1925-31 etc. Chatterjee was government delegate to the International Labour Conference 1919, 1921, 1923-33. He was President of the Conference 1927 and member of the Governing Body 1926-31, Vice-President 1932 and President 1933. He was leader of the ILO delegation to the World Economic Conference 1932. He also was a member of various boards and committees within the League of Nations.

Labour Conference in 1920.³⁵⁶ Chatterjee's speech essentially concerned the connection between school and minimum age legislation. He did not go into other relevant questions such as the economic contribution of children to their families and the maintenance of children who were put out of work.

Chatterjee argued that the entire future of India depended on the gradual and progressive development that improvements in industrial and social conditions could bring. The amendment, however, had to be objected to, because of the great differences between India and Europe. Because of the differences, the Indian government needed time and consideration for its special conditions to be able to adopt the proposed minimum age standards.

The need for time concerned the need to "influence public opinion". The special conditions of India were defined as no schools, shortage of teachers, reluctance of parents to send children to school and the "early development" of Indian children. Because of the insufficient schooling facilities in India, an occupational gap would emerge if children were not allowed to work. This situation was not so much the result of the lack of action on the part of the Indian government as it was the result of the unwillingness of the lower castes to send their children to school. While it was the "earnest desire" of the Indian government to introduce compulsory education, parents did not have the same desire. Chatterjee referred to his own experiences:

I have myself, as a private individual and as a Government officer, had much to do in establishing schools and persuading the people to send their children to school, and I can tell you that I have had the greatest difficulty in this respect amongst what are known as the lower castes in our country.³⁵⁷

In this way Chatterjee put the responsibility for the unsatisfactory school situation on the lower castes rather than on the Indian government. Until adequate educational facilities were available for children in India, and children could be "compelled to avail themselves of the facilities" the raising of the minimum age of employment would only throw children onto the street. In this way, not only the parents of poor families, but also the children themselves, were pinpointed as responsible for the situation.³⁵⁸

In respect of 'early development', Chatterjee explained that Indian children developed much earlier than in the North or in the West. Chatterjee related this to Indian customs that, he said, did not permit Indian mothers to look after their children as well as Western mothers did. The logic of this was not further explained but, because of it, the result of a minimum age of 14 years would be "more disastrous to the children than otherwise."³⁵⁹ No medical or other evidence was presented to underpin the idea of 'early

³⁵⁶ Chatterjee's speech, Record 1919, pp. 94-95.

³⁵⁷ Record 1919, p. 94.

³⁵⁸ *Ibid.*

³⁵⁹ *Ibid.*

development', either concerning development in itself or of its consequences. I will, however, return to the question of 'early development' of children in India and other countries in the following chapters, as it was a recurring theme in the minimum age campaign.

Regardless of his objections to the proposed amendment, Chatterjee concluded his speech with a declaration that a Minimum Age Convention would not affect industry in India in any serious way, because very few Indian children actually worked in industry. The children who did so only performed 'light' and half-time work.

The next speaker on the floor was the South African government representative H. Warington Smyth.³⁶⁰ His speech also concerned India and he supported the Commission's proposal to postpone the question to the next meeting of the International Labour Conference in 1920.

Like Chatterjee, Warington Smyth focused on the importance of schooling for the question of the employment of children. Warington Smyth was pessimistic in respect of any possible progress in India. The great diversities within the country concerning climate, culture, language, religion and the caste system created enormous difficulties for the adoption of a compulsory school system at short notice. He particularly highlighted the caste system as an obstacle of schooling, because the caste system did not allow people from different castes to have anything to do with each other.

Warington Smyth fully agreed with Chatterjee that the difficulties for the Indian government in introducing compulsory schooling depended on the backward population of the country and the problems of influencing public opinion. The following quotation is illustrative of how Europeans could regard the people of India, and of other colonies, during the first half of the 20th century. Warington Smyth was of British nationality and an official of the British Empire in South Africa and had also had appointments in other British colonies:

The problem, therefore, before the Indian Government as regards education, which is, as every speaker has admitted, closely mixed up with this question of employment – the problem before them is, I say, a very great one. Now, sir, the very idea to-day of education in India is hardly understood. You may travel for days – nay, for weeks – in India and never see a white man and may never see a railway. To those people modern ideas have not permeated at all, and those who to-day hold the advanced views of educated men like my friend the last speaker [Chatterjee] can be counted in thousands among the millions of that great country. Consequently, Mr. President, education, modern ideas, modern developments, are only surface deep in India, and the Indian Government, however advanced it may be, has the immense problem before it of trying to create public opinion among those masses before it can advance. If you were to go to them to-day with a scheme of education of the

³⁶⁰ Record 1919, p. 95.

very best kind, you could not get them to accept it because their intellectual out-look is entirely incapable of understanding what you are aiming at, and it would only be thought that you were making some attack on their religion, their caste, or their tradition.³⁶¹

To illustrate the Indian culture and customs he gave the following example from mining in Bengal:

The coal mines of Bengal are, a large number of them, shallow. They are worked by families of workers who come from the country around – fathers, mothers, and children. They all come in a family party. You would think they would work underground by day. Not a bit of it. They all go down at night, because then it is cooler to carry on their work; and they go down – mother and father, women and children, daughters and babies in arms. Now, you can not apply regulations about underground work offhand to a condition of mining such as that.³⁶²

Warrington Smyth concluded that, because of these circumstances, a rule that laid down a minimum age of 12 years would not be worth the paper it was written on.³⁶³ He did not go into why this made the implementation of minimum age legislation impossible. Was it that these customs could not be changed, or that people who lived and worked in those conditions could not be reached by legislation, or was it something else? With the benefit of hindsight, it seems that the exact opposite would be the case, namely, that strict regulation would be urgently required for mining under those conditions.

The next speaker, Narajan Malhar Joshi, the Indian workers' delegate, supported the amendment moved by Bondfield.³⁶⁴ His speech also essentially concerned the importance of compulsory schooling for eliminating child labour. Offended by Warrington Smyth's accusations that the Indian population was backward and uneducated, he argued that education was well known to the Indians:

Let me ask you if there was education anywhere in the world before it was in India? The idea of education is not new to India. Indians were educated, Indians wrote books on most difficult subjects some thousand years, at least two or three thousand years, before perhaps any other people began to write books and think on these subjects.³⁶⁵

³⁶¹ *Ibid.*

³⁶² *Ibid.*

³⁶³ *Ibid.*

³⁶⁴ Joshi's speech, Record 1919, pp. 95-97.

³⁶⁵ Record 1919, p. 96.

Joshi also questioned the idea that Indian public opinion would have to be educated:

Let me again tell you that the Government of India is not very much influenced by public opinion in the country. It is to the present day an autocratic or a bureaucratic government. If the Government means to-morrow to introduce certain legislation in the country, they can do it even if the whole public opinion of the country is opposed to it. Therefore, the argument that the Government waits to educate public opinion holds no water at all. But Indian public opinion as expressed by the educated Indians is certainly not against education. A bill for compulsory education in India was introduced in the legislative council of the country some 10 years ago by Mr. Gokhale, and the opposition to it did not come from the educated people of the country, but the opposition came from the Government itself.³⁶⁶

However, Joshi agreed that it would be impossible to educate a country as vast as India within a year. But exactly because of this, it was meaningless to postpone the question of the employment of children for one year. Furthermore, with a minimum age of 12 years, the opposition of the capitalists to compulsory schooling would “melt away at once” because the children could also go to school if they could not be used in the factories.

Joshi defended the Indian population from the accusations of Warrington Smyth that it was backward and uncivilised. He reminded the Conference of the fact that the responsibility for the conditions in India lay not in India, but within the British Parliament. His frankness is both surprising and refreshing:

But let me request this Conference to remember that India has been governed by the British Parliament for over 100 years, and in some Provinces for over 150 years. The British Parliament, than which there is no more democratic governing institution in the world, is responsible for the government of India. And can you believe, if you are told that under that Government for over 100 years India could not have made any greater progress than that which has been pictured to you by Mr. Warrington Smyth?³⁶⁷

Joshi also drew attention to the fact that factory legislation for the protection of children already existed in India and that the proposed amendment would not demand any extreme progress in India but rather progress stage by stage. The minimum age for employment in industry was 9 years. Children between 9 and 14 years were allowed to work six or seven hours. Joshi argued that it would not be so difficult for India to raise the minimum age to 12 years, in some well-organised sectors such as railways, mines and docks, where supervision by government inspectors would be easy.³⁶⁸

³⁶⁶ *Ibid.*

³⁶⁷ Record 1919, p. 95.

³⁶⁸ Record 1919, p. 96.

Joshi strongly rejected the argument about ‘early maturity’ in tropical climates. He said that:

I admit we have more of the sun than western countries. But are you going to believe that in India children of 9 years of age are as well developed as children of 14 years of age in western countries? Do you think that climate can make that great difference, that children of 9 can be as well developed as children of 14 in Europe? I need not say anything about this argument. Only I put to you whether it is possible.³⁶⁹

In any case, Joshi argued that in view of the factory legislation already adopted in India, it would be easy to raise the minimum age from 9 to 12 years immediately in accordance with the proposed amendment and then to reach the final goal in stages.

Joshi went on to a critical speculation of the reasons why the Indian government wanted to postpone the question of minimum age regulation. He was not very diplomatic in his criticism. His explanation of the government’s standpoint was that it was a tactic of constant postponements and that the government had not given the true reasons for its request for delays:

My only guess, if you will allow me to say so, is that they wanted to get a postponement for one year, and, if possible, to get further postponements. Moreover, the Government delegates are likely to accept certain definite proposals as regards the hours of work. The Government had time to consider such an intricate question as the hours of work, but they had no notice to consider the simple question of raising the age of children’s employment.

We are assured – and I must accept the assurance – that no economic considerations weigh with the Government, and perhaps even with the employers, in considering the age limit of children in India. Their motive in opposing the raising of the age limit is to safeguard the interests of children. If that is so, may I ask them why they object to the employment of children between 6 and 9? Do they not go in the streets for want of education?³⁷⁰

Joshi finished his speech by emphasising the colonial relationship between India and Great Britain, and the role of Great Britain in bringing the International Labour Organisation into existence. Therefore he was convinced that the government of India would “not treat a Convention passed by this Conference very lightly”, and that India would be inclined to accept the Conventions.³⁷¹

³⁶⁹ *Ibid.*

³⁷⁰ *Ibid.*

³⁷¹ Record 1919, pp. 96-97.

The last speaker of the session was Sofianopoulos, the Greek government representative.³⁷² Sofianopoulos did not comment on India, but spoke of the difficulties in getting acceptance of a minimum age of 14 years in Greece. As pointed out earlier this was not in accordance with the reply of the Greek government to the questionnaire sent out by the Organizing Committee, in which a minimum age of 14 years was indicated. However, there is nothing in the record of proceedings to comment on or explain this discrepancy.³⁷³

Sofianopoulos joined the previous speakers in linking the difficulties in complying with a minimum age of 14 years exclusively to inadequate schooling facilities. He requested the Conference to accept an amendment granting countries that had not yet systematically introduced vocational training a three-years' delay from the time the Conventions came into force.³⁷⁴

More precisely, Greek children finished school at 12 years, which meant that there would be a gap of two years, given a minimum age of 14 years. Without vocational schools that could take care of the children aged 12 to 14 years, these children risked being "exposed to the dangers of idleness, and that, too, at a very immature age".³⁷⁵

For some reason, Sofianopoulos's speech principally concerned the motives and justifications behind the current Greek minimum age legislation, but that subject was not connected with the previous speeches.³⁷⁶ His argumentation, however, is interesting because it gives an indication of how one of the government representatives regarded children and work.

First of all, Sofianopoulos established that child labour could harm and prevent the normal development of the body of the child, thereby exhausting the future working capacity of the child. Child labour could prevent children from getting elementary instruction, thereby creating "ignorant generations at a time when all over Greece the primary education is not only the right and duty of every citizen, but also an obligation on the part of the State".³⁷⁷ Furthermore, an "excessive use" of child labour would lower the wages of adult skilled workers and thereby injure national industry. By employing "weak and ignorant labour", Greece would not be in a position to attain the necessary quality and efficiency in production to compete with other nations.

Sofianopoulos also commented on the fact that work in family undertakings was excluded from the Greek minimum age legislation. The

³⁷² Sofianopoulos speech, Record 1919, pp.97-98.

³⁷³ See Section 5.1.1 *supra* about the Report of the Organizing Committee.

³⁷⁴ Record 1919, p. 98.

³⁷⁵ Record 1919, p. 97.

³⁷⁶ It may have been because he was reading a document that had been printed and distributed to the delegates several days earlier, thus he did not connect to the plenary debate that was going on. This was pointed out to him by the President of the Conference. *Ibid.*

³⁷⁷ *Ibid.*

motive for the exception was that the “family sentiment” would prevent children from being exploited:

The law, however, takes into consideration the fact that in those enterprises where the father is at the head, or where only near relatives are employed, family sentiment will prevent the illegal exploitation of the child worker.³⁷⁸

Sofianopoulos finished by pointing at the importance of uniform but flexible provisions. Without flexibility through the opportunity for modifications, the ILO Conventions risked being ignored by many of the national parliaments because of the special conditions in those countries.³⁷⁹

The amendment that had been moved by Bondfield concerning special provisions for India was approved by the Conference by 39 votes to 21.³⁸⁰ In contrast, the Greek request for the benefit of a three-years’ extension from the time of the entry into force of the Conventions was not put to a vote by the Conference because of a procedural problem.³⁸¹

5.5 The Conventions

The International Labour Conference in Washington 1919 adopted six labour Conventions, sometimes called “the Washington Conventions”:

Hours of Work (Industry) Convention No. 1;
Unemployment Convention No. 2;
Maternity Protection Convention No. 3;
Night Work (Women) Convention No. 4;
Minimum Age (Industry) Convention No. 5; and
Night Work of Young Persons (Industry) Convention No. 6.

The Conference also adopted six Recommendations:

Unemployment Recommendation No. 1;
Reciprocity of Treatment Recommendation No. 2;
Anthrax Prevention Recommendation No. 3;
Lead Poisoning (Women and Children) Recommendation No. 4;
Labour Inspection (Health Services) Recommendation No. 5; and
White Phosphorous Recommendation No. 6.

³⁷⁸ *Ibid.*

³⁷⁹ *Ibid.*

³⁸⁰ Record 1919, p. 98.

³⁸¹ *Ibid.*

In accordance with the plans, the Conventions and Recommendation covered all items of the agenda of the first meeting of the Conference.

The Minimum Age (Industry) Convention No. 5 and Night Work of Young Persons (Industry) Convention No. 6 will be described in some detail below.

5.5.1 The Minimum Age (Industry) Convention No. 5.

Convention No. 5 was adopted on 28 November 1919, and came into force on 13 June 1921, after ratification by Greece and Romania. Great Britain ratified the Convention one month later followed by Bulgaria, Switzerland, Estonia, Denmark, Poland and Belgium. To date, the Convention has been ratified by 72 states.³⁸²

The Convention contains 14 Articles. Article 2 establishes that children under 14 years shall not be employed or work in any public or private industrial undertaking. In Article 1, 'industrial undertaking' is defined, and it includes many and various kinds of industrial activity:

- (a) mines, quarries and other works for the extraction of minerals from the earth;
- (b) industries in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed; including shipbuilding, and the generation, transformation, and transmission of electricity and motive power of any kind;
- (c) construction, reconstruction, maintenance, repair, alteration, or demolition of any building, railway, tramway, harbour, dock, pier, canal, inland waterway, road, tunnel, bridge, viaduct, sewer, drain, well, telegraphic or telephonic installation, electrical undertaking, gas work, water work, or other work of construction, as well as the preparation for or laying the foundations of any such work or structure;
- (d) transport of passengers of goods by road or rail or inland waterway, including the handling of goods at docks, quays, wharves, and warehouses, but excluding transport by hand.

The line of division that separates industry from commerce and agriculture is left to the competent authorities of the member states to define (Article 1, Para. 2).

There are general exceptions to the standard minimum age of 14 years: employment in workplaces where only members of the same family are

³⁸² For a list of ratifications, see www.ilo.org/ilolex/english/convdisp1.htm (visited 30/01/07).

employed (Article 2) and work performed in technical schools that is approved and supervised by a public authority (Article 3).

Article 5 provides a special modification for Japan: a minimum age of 12 years, provided the child has finished elementary school. Article 6 provides the modifications for India, in accordance with the amendment proposed by the British workers: a minimum age of 12 years and a narrower scope of the Convention. Accordingly, the only industries covered in the case of India are

- (a) manufactories working with power and employing more than ten persons;
- (b) mines, quarries or other works for the extracting of minerals from the earth; and
- (c) transport of passengers, goods or mail by rail; or in handling of goods at docks, quays, and wharves, but excluding transport by hand.

Article 4 deals with enforcement. It places an obligation on the member states to ensure that every employer in an industrial undertaking is required to keep a register of all employed persons under the age of 16 years and their dates of birth. To this should be added the above-mentioned general obligation on member states to submit reports on the application of the ILO Conventions and Recommendations in accordance with Article 22 of the ILO Constitution.

According to Article 8, each member state that ratifies the Convention must apply it to its colonies, protectorates and possessions that are not fully self-governing. In this case also, however, there are generous exceptions: "where owing to the local conditions its provisions are inapplicable" or "subject to such modifications as may be necessary to adapt its provisions to local conditions".

Articles 9 to 11 deal with the entry into force of the Convention (after two ratifications). Article 12 deals with renunciation (which can only occur ten years or more after ratification). Article 13 provides that the Governing Body shall present a report on the operation of the Convention to the International Labour Conference at least every ten years, giving consideration also to a possible revision or modification of the Convention. Article 14 prescribes that the French and English texts of the Convention shall both be official.

5.5.2 The Night work of Young Persons (Industry) Convention No. 6

Convention No. 6 was also adopted on 28 November 1919 and came into force on 13 June 1921 after ratification by the same two member states, Greece and Romania, followed by India, Burma, the United Kingdom,

Switzerland, Estonia, Bulgaria, Denmark, Italy and France within the next few years. To date, the Convention has been ratified by 59 countries.³⁸³

Convention No. 6 contains 15 Articles. In Article 2 it is established that young persons under 18 years of age shall not be employed during the night in any public or private industrial undertaking. In Article 1 'industrial undertaking' is defined. The definition is identical to the definition in Convention No. 5.

In Article 3.1 'night' is defined as a period of at least eleven consecutive hours, including the interval between ten o'clock in the evening and five o'clock in the morning. In 'tropical countries' in which work is suspended during the middle of the day, the night period may be shorter than eleven hours, provided compensatory rest is allowed during the daytime (Article 3.4).

There are numerous further exceptions from the minimum age limit for night work. As in Convention No. 5, workplaces where only members of the same family are employed are excluded from the application of the Convention. Furthermore, the employment of children over 16 years of age is permitted also during the night "on work which, by reason of the nature of the process, is required to be carried on continuously day and night":

- (a) manufacture of iron and steel; processes in which reverberatory or regenerative furnaces are used, and galvanising of sheet metal or wire (except the pickling process);
- (b) glass works;
- (c) manufacture of paper;
- (d) manufacture of raw sugar;
- (e) gold mining reduction work.

There are further exceptions from the minimum age for night work. In coal and lignite mines, children were allowed to work during the period defined as 'night', provided there is an interval of 15 hours and, in exceptional cases, 13 hours, between two periods of work. There is no minimum age limit for such work (Article 3.2).

Then there are the exceptions for particular countries. There is an exception from the 11 consecutive hours of night rest for "those tropical countries in which work is suspended during the middle of the day". In these countries, the period of night rest may be shortened, provided compensatory rest is accorded during the day (Article 3.4).

As in Convention No. 5, there are modifications for Japan and India. Japan is accorded a lower minimum age limit for night work, initially 15 years, rather than 16 years from 1925 (Article 5). India is accorded a

³⁸³ For a list of ratifications, see www.ilo.org/ilolex/english/convdisp1.htm (visited 30/01/07).

narrower scope of application including only ‘factories’ as defined in the Indian Factory Act. The minimum age for boys is lowered to 14 years (Article 6).

Convention No. 6, unlike Convention No. 5, excludes two particular situations from the application of the Convention. The first situation is: “in case of emergencies which could not have been controlled or foreseen, which are not of a periodical character, and which interfere with the normal working of the industrial undertaking” (Article 4). In this case, night working by children aged 16 to 18 is permitted. The second situation is when: “in case of serious emergency the public interest demands [the night work of children]” (Article 7). In that case the prohibition of night working can be suspended by the government and no lower age limit is specified.

Unlike Convention No. 5, Convention No. 6 has no enforcement provision. There is the general obligation, however, to submit reports concerning the application of the Convention according to Article 22 of the ILO Constitution.

Articles 8 – 15 deal with formalities and are identical to the Convention No. 5.³⁸⁴

5.6 Concluding remarks

Summarising the work of the first annual meeting of the International Labour Conference with regard to minimum age, two questions in particular emerged. The first question concerned the minimum age in relation to schooling facilities and the need for transitional provisions to allow time for the countries concerned to make the necessary educational arrangements. The second question concerned modifications to the Conventions for countries with special climatic or industrial conditions. Fundamentally, both questions concern the fact that certain of the member states of the ILO were going to have serious problems in complying with the provisions of the Conventions.

A general comment is that the Western industrialised nations were over-represented at the Conference, particularly on the Organizing Committee. This was a consequence of the Peace Treaties giving the victorious nations such a great influence in shaping the post-war world. As regards the particular problems of the non-industrialised world, however, the sub-committee that was appointed to examine the question was composed exclusively of representatives from those countries.

The material also clearly indicates that the minimum age limits, the general exceptions and the entire construction of the Conventions were based on the existing legislation in the industrialised nations.

³⁸⁴ Convention No. 5, Articles 7 – 14.

The two Minimum Age Conventions adopted in Washington specified 14 years as the general minimum age for employment in industry and 18 years for night work. As described above, there were far-reaching exceptions for India and Japan that excluded those countries from much of the scope of the Conventions and allowed them lower minimum age limits of 12, 14 and 16 years. Furthermore, there was a number of general exceptions for vocational training, work within the family and, concerning night work, for work that by reason of “the nature of the processes, is required to be carried on continuously day and night”.

To a certain extent, the debate about the Minimum Age Conventions implied that work was harmful for the development of children. The differences in development and maturity of children, in particular, between Europe and countries with a tropical climate, such as India, were discussed. However, nothing in the material reveals the criteria for harmfulness. Nor was the ‘normal’ development of a child defined in terms of age and maturity. Instead, the argumentation built on how much schooling the member states could offer their children. In particular, the discussion concerned how much schooling the non-industrialised nations were able to offer to their children. In contrast, there is nothing in the material that indicates any discussion of the question of how many hours, months and years children *ought to* spend in school in terms of the child’s best interests.

In this way, the question of employment of children was seen as entirely dependent on the provision of school facilities. All the debaters feared the emergence of a gap between the school-leaving age and the minimum age for employment because of the dangers of ‘idle children’. A child without a proper occupation – such as school or work – was considered to be a moral problem. The idleness would, as one of the delegates quoted above said, ‘damage’ the child, which implied that the child would develop morally undesirable behaviour. As will be discussed in the following chapters, there were concerns about morally undesirable behaviour also in relation to children working in certain occupations such as street-trading and work in bars, restaurants and public entertainment. In fact, the fear of ‘idle children’ is a recurring theme in the minimum age campaign.

To conclude, there was clearly a view that children should ideally be at school up to 14 years of age. The delegates were, however, aware of the fact that large groups of children did not attend school up to this age. This was regarded as a great difficulty for the implementation of minimum age legislation and the solution was to make the Conventions flexible.

The distinction between industrialised and colonised countries

As described above, the Washington Conventions contained far-reaching modifications for India and Japan. In fact, the entire discussion at the plenary session of the Conference concerned India.

The debate indicates that it was generally accepted, or at least it was not questioned, that the protection of children could be discussed in terms of different protection between countries as well as within countries. In this way, two standards developed. One standard was adopted for children in the industrialised world and a different standard was adopted for children in the colonies and non-industrialised world where there were lower minimum ages and the implicit acceptance of children spending less time in school. The standard of childhood for the industrialised nations was underpinned by the modern ideas of childhood and, particularly, the idea of the developing child.

The lower standard for the rest of the nations was justified by arguments such as the economic and administrative difficulties for countries like India to organise a functioning school system within a reasonable time because of the 'backwardness of the population', the caste system, and the 'early maturity' of children in tropical climates. Perhaps the argument concerning the 'early maturity' of children in 'tropical climates' was a way of applying the logic of the ideas on development to children in these countries also. Or maybe it was the logic of racism. In any case, one could call it either a kind of realism, allegedly in the best interest of children, or part of a tactic of postponements, as did one of the delegates, in a strategy to create permanently lower standards.

The many remarkably frank and undiplomatic statements in the debate about 'certain countries', both on the part of the government and the workers' delegates, deserve a short comment. The Indian and South African government delegates' descriptions of India and its population are clearly expressions of unveiled racist colonialism that may have been quite acceptable, at least by the colonialists, at the time. The way the delegates blamed the problems of child labour and the lack of schools on the 'backward' and uneducated Indian population is nonetheless quite shocking to the modern reader. In contrast, the modern reader may find the Indian workers' delegate's comments on the British colonial government remarkably courageous and straightforward, especially considering his doubly subordinate position as both a colonial subject and a worker. In the same way, it is difficult for the modern observer to understand how the South African government delegate could feel free to speculate about the situation in India, which was the exclusive topic of his speech. I find no other explanation but colonialism. The South African government delegate was most certainly a representative of the British Empire who had 'circulated' and occupied posts in a number of the British colonies.

Chapter 6. Minimum Age at Sea. Genoa 1920

Boats nowadays are not nutshells but floating towns and therefore it takes more than children to look after the welfare and security of these floating towns.³⁸⁵

The quotation above is from one of the speakers, a seamen's representative, at the second session of the International Labour Conference on maritime questions held in Genoa, Italy from 15 June to 10 July 1920. The quotation illustrates the incredible expansion of sea traffic that took place during the final decades of the 19th century and which the steam engine had made possible. It also illustrates the classical claim of trade unions that adult male workers should have a prioritised right to employment – which went hand in hand with the increasing demand for skilled workers and the decreasing demand of unskilled (child) labour.

Shipping was crucial to the development of the industrial and colonial nations in the 19th and early 20th centuries. The invention of the steam engine was revolutionary for sea traffic and, through the introduction of the steamship, the cost of carrying goods by ship fell by over 70 per cent in a period of 50 years. The first experimental steamships were built as early as the 18th century, but it was not until the end of the 19th century that steamships were ready to cross the oceans. By then, it was Britain that dominated the seas.

Work at sea was no exception when it came to the employment of children. Many young boys were sent to sea to earn a living, or as a disciplinary measure. What was life on board ship like for young boys at that time? Judging from the Conference material that will be described in this Chapter, the answer depends entirely on who is talking. In contrast to the ILO debate concerning the minimum age for employment in industry, it was not exclusively the negative effects on children that were discussed. Like agricultural work, work at sea was considered to have many good effects on children, or for some boys at least.

³⁸⁵ Auguste Montagne, technical adviser to the French seamen's delegation at the Genoa Conference, Record 1920, p. 132.

Two quotations below outline the span of the discussions in Genoa concerning the minimum age for employment at sea. The first quotation is a description of life at sea by the Greek shipowners' delegate. In his view, life at sea was both strengthening and educational for young boys. It was better to go to sea than to work in agriculture on the 'poor and torrid' Greek islands:

What the [ship] owners propose is not for their own good. We do not derive any benefit from having these children on board our steamers. But we wish to have them on board so that they may breathe the fresh air of the sea, have nutritious food on board ship and be educated like men. We want to produce and regenerate the sailor, that valiant sailor who is ready to perform his duty, instead of men who do not understand for what they have come on board the steamer. That is our object: to produce the ideal sailor.³⁸⁶

According to the speaker, to offer employment to young boys on ships was fundamentally an act of humanity. Nevertheless, the majority of ILO delegates were of the opinion that life at sea was a hard life unfit for children.

The second quotation concerns the work performed by the men and boys called trimmers and stokers, who tended to the engine furnaces. This was particularly hard work. The trimmers and stokers kept the fire burning around the clock by shovelling huge amounts of coal into the engine furnaces. This is a description of their work presented by one of the government delegates at the Conference:

On board all big ships there is, as a rule, hard work for the stokers to do, but all ships do not come in the same category. According to our law, on a smaller ship which uses only 2 to 4 tons of coal in 24 hours, there must not be less than 3 firemen if she runs for more than 16 hours continuously. That means that a man has about one and a half tons allotted to him in 8 hours; and I consider that it should be allowable for young men to go aboard these smaller ships, but I do not think anyone should be allowed to go into the stokehold below the age of 17 years.³⁸⁷

Obviously, shovelling these amounts of coal during one shift in the tremendous heat from the furnaces seriously threatened the health of seamen.

Health problems were touched on at the Conference. Tuberculosis and bronchitis were rife among sailors and, according to the Conference material they were caused by working with the furnaces. In reality, they may also have been caused by contamination and by the humid climate on board. Furthermore, venereal disease was associated with the trade. Although venereal disease was much of a 'life-style' problem and not directly

³⁸⁶ The Greek shipowners' delegate Nicolas Kyriakides, Record, 1920, p. 120.

³⁸⁷ Norwegian Government delegate, Lars Hansen, Record 1920, p. 135.

considered to be an occupational disease, it was discussed at the Conference. The 'venereal policy' of the ILO was (1) information (particularly to boys in training establishments), prevention and free medical treatment and drugs and (2) the provision of 'adequate facilities for recreation' at all large ports.³⁸⁸

6.1 The Genoa Conference

At the Peace Conference in Versailles, the Commission on International Labour Legislation had already decided that questions concerning minimum conditions for seamen might be dealt with by a special session of the International Labour Conference. The Governing Body therefore decided that the second session of the Conference should be a special Seamen's Conference, entirely dedicated to the affairs of seamen.³⁸⁹ In this way, it was possible to gather together delegates and advisers from the maritime sector who were fully competent to deal with questions concerning the sea and who had the confidence of the shipowners' and seamen's organisations.³⁹⁰

Accordingly, the delegates present in Genoa were shipowners, sailors and government representatives concerned with maritime questions. As a result, most of the members of the delegations in Genoa had not attended the Washington Conference in 1919.

There were four items on the agenda of the Genoa Conference:

1. Limiting the hours of work for seamen to eight hours a day and forty-eight hours a week.
2. Supervision of articles of agreement (the Seamen's Employment Agreement).
3. Application to seamen of Convention No. 5 adopted in Washington prohibiting the employment of children under 14 years of age.
4. The possibility of drawing up an international seamen's code.³⁹¹

As expressed in the wording of the agenda, the objective for the Conference was to extend the provisions of Minimum Age (Industry) Convention to the sea. The Genoa Conference resulted in the adoption of three Conventions in all. One of them was the Minimum Age (Sea) Convention No. 7. The other Conventions concerned unemployment insurance for seamen and employment agencies for seamen. The major issue of the Conference, the

³⁸⁸ See for example Resolution Concerning Venereal Diseases, Record 1920, p. 595-6.

³⁸⁹ Circular letter from Albert Thomas to the member state's governments dated 3 February 1920, Record 1920, pp. XII-XIII. See further Phelan 1934, pp. 191-4.

³⁹⁰ Circular letter from Albert Thomas to the member state's governments dated, 3 February 1920, Record 1920, pp. XII-XIII.

³⁹¹ A Conference on venereal disease was held in Genoa at the same time, to which the delegates of the labour Conference were all invited. Record 1920, p. 67.

proposed Convention on hours of work at sea, did not lead to the adoption of a Convention because the required two-thirds majority was never reached.³⁹² Instead, the question was dealt with in two Recommendations (not legally binding on the member states) concerning hours of work in fishing and hours of work in inland navigation.

The Conference also adopted two Recommendations concerning national seamen's codes and unemployment insurance.³⁹³ Finally, the Conference adopted seven resolutions, three of which concerned children: a higher minimum age for trimmers and stokers; compulsory medical examination of children employed on board ships; and the need for technical schools in harbours. The Conference decided to postpone decisions on the minimum age for trimmers and stokers and medical examination of young persons at sea to the next meeting of the Conference in 1921.³⁹⁴

Twenty-seven delegations from the member states were present in Genoa. Many of the member states that had been represented in Washington were not represented. Many of the absent nations were from Latin America. Argentina, Venezuela and Uruguay, however, sent delegations to Genoa. South Africa and China, that had been present in Washington, were not present in Genoa but there were three 'new-comers': namely, Australia, and Germany, who had not arrived in Washington in time the year before, and Serbia, Croatia and Slovenia, which was one of the new nations after the First World War.³⁹⁵

There was not a single woman among the delegates and advisers to the Conference, and only one woman, a Miss Westbrook, on the staff of the Secretariat.³⁹⁶ If labour questions in general were 'masculine', the sea obviously was an exclusively masculine affair. As I will show below, the Conference material refers to boys and men exclusively.

6.2 The Blue Report on employment of children at sea

The Genoa Conference agenda was distributed to the governments of the member states together with a circular letter, dated 3 February 1920 and

³⁹² It would take 78 years before a Convention on the hours of work at sea was adopted *and* come into force: Seafarers' Hours of Work and the Manning of Ships Convention No 180, adopted in 1996. Conventions on the hours of work at sea had been adopted and revised on several occasions previously, but none of them ever came into force, due to lack of (the two necessary) ratifications: Convention No. 57 (1936), Convention No. 76 (1946), Convention No. 109 (1949) and Convention No.109 (1958). www.ilo.org/english/index.htm

³⁹³ Conventions No. 7, No. 8 and No. 9 and Recommendations No. 7, No. 8, No. 9 and No.10. Record 1920, Appendix VII, Draft Conventions and Recommendations adopted by the Conference, pp. 572-86.

³⁹⁴ Record 1920, Appendix IX , Resolutions adopted by the Conference, p. 593-94.

³⁹⁵ List of the Members of the Delegations, pp. XI-XXXV, Record 1920.

³⁹⁶ *Ibid.*

signed by Director General Albert Thomas.³⁹⁷ The governments were requested to answer a questionnaire concerning national regulation of children's work at sea and to provide their replies within two months. The Office then had about one month in which to prepare the Blue Report.³⁹⁸ The Blue Report consisted of a survey of the governments' replies and the Office's own conclusions in the form of a proposed draft Convention on the minimum age at sea. The short delays indicate that the minimum age regulation was a high-priority question for the ILO.

The survey. National legislation and governments' attitudes

The Blue Report consisted of three parts: Part I, national regulation; Part II, the attitudes of the governments to minimum age at sea legislation; and Part III, the draft Convention concerning minimum age for employment at sea.

Initially, the Office stated that the question of the minimum age at sea was not regulated by the Washington Convention, because only "inland navigation" was included in the scope of the Convention (Article 1, Convention No. 5). Nonetheless, it was in the spirit of the ILO that it should be included in a Convention.³⁹⁹

According to the replies of the governments, the regulation of the minimum age at sea varied in the member states and was dealt with either by special minimum age legislation, by general legislation concerning children or by other administrative measures. The replies from the member states that had passed special legislation indicated that the minimum age for employment at sea was 14 years in Germany, Austria, Belgium, Spain and Sweden. Sweden also had a higher minimum age limit of 16 years for working as a trimmer or stoker. France and the Netherlands had special legislation prescribing a minimum age at sea of 13 years. Legislation in Portugal and the United States prescribed a minimum age of 12 years.⁴⁰⁰ In the United States, however, the legislation only concerned apprentices. According to the U.S. government's reply, apprenticeship at sea was uncommon because children embarked not as apprentices, but as 'boys'. The difference between 'boy' and 'apprentice' was, however, not explained or commented on in the report.⁴⁰¹ The British government reported that the employment of school-age children at sea was prohibited. Norwegian law only regulated the work of trimmers and stokers, prescribing a minimum age of 17 years. Finland and Greece replied that legislation was under preparation: in Finland the proposed minimum age was 14 years and, in Greece, it was 12.

³⁹⁷ Circular letter from Albert Thomas to the member states' governments dated 3 February 1920, Record 1920, pp. XII-XIII.

³⁹⁸ Blue Report 1920.

³⁹⁹ *Op. Cit.*, pp. 3-4.

⁴⁰⁰ *Op. Cit.*, pp. 6-8.

⁴⁰¹ *Op. Cit.*, p. 7.

Great Britain, France, Norway, New Zealand and the Netherlands replied that it was mainly their school laws that regulated children's employment at sea. According to the survey, school was compulsory up to 14 years or age in all of these countries.⁴⁰²

As regards the attitudes of the member states' governments to the adaptation of national legislation to provide a minimum age of 14 years for employment at sea, the reactions were generally positive. The replies indicate that the governments considered it relatively easy to modify their legislation to meet the requirements of the proposed draft Convention.⁴⁰³

The first draft

The Blue Report ended with a proposed draft Convention.⁴⁰⁴ Its main provision was a minimum age of 14 years for employment at sea (Article 2) and an obligation for "every ship master" to keep a register of all persons under the age of 16 employed on board and indicating their dates of birth (Article 4). The scope of the Convention was work on "vessels". "Vessel" was defined as "all vessels", which was a somewhat loose definition that would be criticised in the plenary session and changed (Article 1). There were two exceptions from the minimum age limit for employment in the draft Convention and these were identical to the Convention No. 5: for family undertakings (Article 2) and for school-ships and training-ships (Article 3). Everything was copied from Minimum Age (Industry) Convention.

In accordance with ILO procedure, the proposed draft Convention was submitted to the Commission on Employment of Children at Sea for further preparation before it could be submitted to the plenary session of the Conference for final discussion and a vote.

6.3 The Commission on Employment of Children at Sea

The Commission on Employment of Children at Sea was composed of government representatives from Poland, Serbia, Croatia and Slovenia, Siam and Venezuela, shipowners' representatives from France, Great Britain and Greece and seamen's representatives from Spain, France, India and Portugal.

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The discussion in the Commission was dominated by two issues: (1) the need to protect the physical development of the child and (2) the need to afford the child sufficient time for instruction.⁴⁰⁶

⁴⁰² *Op. Cit.* p. 10.

⁴⁰³ *Op. Cit.*, pp. 13-19.

⁴⁰⁴ *Op. Cit.*, pp. 20-23.

⁴⁰⁵ *Op. Cit.*, p. 540.

⁴⁰⁶ *Ibid.*

6.3.1 Minimum age and the protection of the physical development of the child

The work of the Commission was presented in a report to the Conference.⁴⁰⁷ The report stated that children at sea were entitled to the same guarantees as their comrades on shore. Working at sea was as dangerous for the health of children as working in industry. This included apprenticeship at sea before the age of 14. It was argued that children under that age did not have the physical strength to steer or handle a ship. This meant that children under 14 were not yet capable of learning how to sail and navigate, which meant that the only reason for bringing underage children on board was “to use them as small servants”.⁴⁰⁸ The Commission did not provide references to or mention which medical or other scientific sources about the health and development of children their conclusions were based on.

The way in which the work on board a ship was hard was not much developed except that the work of trimmers and stokers was described as “particularly hard classes of labour”. No attention was paid to the risk of accidents or to other hardships of the work in itself except for children being separated from their families for long periods. The explanation might be that hard work and being separated from their parents was a standard scenario for a 14-year-old working-class boy.

Certain representatives on the Commission wished to specify a higher minimum age than 14 years for working at sea. The majority of the Commission, however, supported 14 years, and those advocating a higher minimum age recognised that, in many countries, 14 years was a considerable improvement.

The Greek shipowners’ representative, Kyriakides, asked for an exception from the 14-years’ minimum age for Greece. The justification was the special circumstances of the Greek islands. Being a country of islands, Greece had to maintain a good merchant navy. To this end, Greek children needed training as sailors from an early age”.⁴⁰⁹ Furthermore, there was a “tradition of family life on board” the ships of Greece: the whole family went to sea together and, in this way, the parents could supervise and protect their children. The other representatives on the Commission did not support Kyriakides’s request. Instead, they stressed the importance of conformity with the minimum age in industry and that no exception had been granted for Greece in that Convention. Furthermore, the majority of the Commission considered that life at sea was so hard that not even the presence of parents would guarantee children under 14 adequate protection.⁴¹⁰

⁴⁰⁷ Record 1920, pp. 537-546.

⁴⁰⁸ *Op. Cit.*, p. 114 and 540.

⁴⁰⁹ *Op. Cit.*, p. 512.

⁴¹⁰ *Ibid.*

As already pointed out, girls were never mentioned in connection with work at sea whereas boys were explicitly referred to all the time. Some girls might have worked and lived on ships, at least if Kyriakides was right about Greek families going to sea together, but, if they did, nobody noted or acknowledged it. Sea was a boys' and men's world. One explanation might be that going to sea meant leaving the home, which was regarded as the world of women and girls. In my view it probably also had a connection to the disciplining of boys.

6.3.2 Sufficient time for instruction

There was some debate by the Commission concerning education. The debate dealt with compulsory schooling as well as vocational training. The Commission related the minimum age of 14 years to children's ability to learn. The Commission wrote that: "at 12 years of age the intelligence of children is still undeveloped."⁴¹¹ Because of this, serious efforts were being made in all the member states both to raise the age for completing compulsory education and to make it possible for children to continue in so-called 'post-school education' up to the ages of 16, 17 and even 18 years.

The majority of the Commission were of the opinion that a child who went to sea at 12 years of age was deprived not only of the time necessary in order to benefit from elementary instruction, but also of so-called 'post-school education' in senior schools. Moreover, development and expansion of the senior-school systems was absolutely necessary as the minimum age limit was extended.

It was mentioned in the report that, before industrialisation at the time of sailing ships, the shipmasters had often 'completed the boys education' while on board. Obviously, this was no longer the case on board steamships. This fact was not further commented on and one can only speculate that it might have been because the engine of a steamship left no time for tasks that were not directly work-related.⁴¹²

6.3.3 Trimmers and stokers

The work of trimmers and stokers was discussed by the Commission. As mentioned above, these types of work were classified as 'particularly hard classes of labour'. The working conditions in the engine room, briefly illustrated at the beginning of this chapter, were especially dangerous and unhealthy and therefore particularly harmful for children and, as already mentioned diseases such as bronchitis and consumption (tuberculosis) were rife among sailors. The following quotation from the discussion about the

⁴¹¹ Record 1920, p. 541.

⁴¹² *Ibid.*

progress of those diseases makes it clear that the Commission was fully aware of the problems:

This [the frightful progress of bronchitis and consumption] is owing to the very special conditions under which sailors have to live. If they have to start work prematurely there is no doubt that sooner or later, they are bound to get those serious diseases. If you put young men who are not fully developed in the stoke-hold where they are submitted to tremendous heat with cold draughts at their backs, you can readily understand that they will contract chills which will develop into something much worse.⁴¹³

As regards working on night watch, the Commission changed focus from concern about protecting children's health and development to that of the safety of cargo and men on board, which could not be guaranteed by underage night watchmen:

below a certain age you cannot get from a boy that concentration of thought which is absolutely indispensable for the supervision of maritime stokers. Therefore it was rather dangerous, we considered, to leave to boys under 17 the care not only of goods but also of men.⁴¹⁴

Accordingly, the Commission added two articles to the draft Convention. One article fixed a higher minimum age, 18, for working as trimmers and stokers and the other established a minimum age of 17 years for working on night watch.⁴¹⁵ The Commission adopted the two articles unanimously and without discussion. These articles, however, would be debated at length later at the plenary session of the Conference.

Except for the two new articles just described, the draft Convention that the Commission submitted to the plenary session of the Conference for adoption was almost identical to the draft Convention originally proposed by the Office.

6.4 The Plenary session of the Genoa Conference

Two questions in particular concerning the minimum age at sea were discussed at the plenary session of the Conference. They were the minimum age limit of 14 years and the higher minimum age limit for trimmers, stokers and night watchmen.

⁴¹³ Record 1920, p. 115.

⁴¹⁴ *Op. Cit.*, p. 116.

⁴¹⁵ Articles 4 and 5 in the Draft Convention proposed by the Commission, *Op.Cit.*, p. 544.

Minimum age 14 years

Six of the speeches addressed the 14-years' minimum age for employment at sea. All supported the minimum age of 14 years in principle.

Karyakides was one of the speakers and he maintained his request for a lower minimum age of 12 years for Greece.⁴¹⁶ His justifications had shifted focus in relation to his earlier argument in the Commission. His main argument was now that Greek children finished school at 12 and there were no senior schools on the Greek islands. The Greek shipowners therefore felt responsible for children aged between 12 and 14 on the islands. According to Karyakides "a question of life or death" was to save the children from the disastrous alternatives: either "idleness, the mother of all mischief and evil", or being put to work by their parents for long hours on the hot and torrid fields of some small island in the Greek archipelago. In contrast, life at sea was healthy and strengthening both mentally and physically. Then he referred again to the practice of whole families going to sea, notwithstanding that, in the same speech, he said that boys at sea were often orphans. His conclusion was that it was an act of humanity to send boys to sea. He said: "When we take a boy of 12 years of age and train him on a steamer, I think we are performing a humanitarian work and I do not believe any of you will vote against it". The Conference did not approve of his request and not even the Greek government delegate seconded him.⁴¹⁷

J. Henson, from the British National Sailors' and Firemen's Union, technical adviser to the British seamen's delegation questioned whether the children of Greece had asked the shipowners to represent them at the Conference and to speak on their behalf, thus in one way questioning representation of children at the Conference.⁴¹⁸ He argued in support of 14 years as the minimum age at sea. Henson himself had experiences as a 'boy' at sea, and he referred to the British experience of child labour in terms of slavery, which Britain had left behind. He told the Conference that he and his colleagues had been "so hard worked as children that when we were finished after earning money for the ship owner, we have only been able to close our eyes, to sleep, and to turn out again."⁴¹⁹

Two of the speakers focused more on formal arguments in support of a minimum age of 14 years at sea. Professor Majorana, technical adviser to the Italian government delegation, argued that the question had been settled the year before by the adoption of Convention No. 5, and therefore the only question that was left for the Genoa Conference to decide was the method of

⁴¹⁶ Karyakides speech, *Op. Cit.*, pp. 120-21.

⁴¹⁷ *Op. Cit.*, p. 122.

⁴¹⁸ Henson's speech, *Op. Cit.*, p.122.

⁴¹⁹ *Ibid.*

how to put the principle of a minimum age of 14 years at sea into practice.⁴²⁰ The Argentinian government delegate, Professor Colmo, stressed the importance of adapting to modern times rather than adapting modern conditions to old legislation. He therefore favoured a minimum age of 14 at sea, even though this meant going against the current law in his own country.⁴²¹

The Indian government delegate, L.J. Kershaw, requested an exemption from the standard minimum age for boats in coastal traffic, in accordance with the Washington Convention, No. 5.⁴²² This request was rejected on procedural grounds, because the government of India had not given notice of its request beforehand. In my view, Kershaw's response to the rejection is remarkably sincere. Regretting the Indian mistake, he blamed the Indian government delegation (thus himself), by admitting: "the representatives of the Government of India no doubt owing to their own fault did not discuss this matter with the Commission".⁴²³ Perhaps unexpectedly in a diplomatic context such as the International Labour Conference, this frank declaration is not unique to this speaker or to this particular session. In the previous chapter there are examples of what I interpret as 'undiplomatic' candour and more examples will follow in this and subsequent chapters.

Trimmers, stokers and night watchmen

As described above, two articles concerning trimmers and stokers and night watchmen had been added to the draft Convention by the Commission on Employment of Children at Sea. According to the new articles, the minimum age for employment as a trimmer or stoker was 18 years and was 17 years for employment as a night watchman.⁴²⁴

The new articles caused a lot of debate at the Conference. First of all, there was debate whether the new articles could be admitted for discussion at all since they were not explicitly on the agenda.

Expectedly perhaps, the speakers who argued that the question was admissible were all in favour of a higher minimum age for trimmers and stokers and the speakers who argued that the question was inadmissible were against a higher minimum age. Eventually, it was decided that the question of the employment of trimmers and stokers should be placed on the agenda of the next Conference with a view to adopting a separate Convention.⁴²⁵ Nonetheless, the material question of the minimum age for trimmers and stokers was discussed at some length in Genoa.

⁴²⁰ Record 1920, p. 123

⁴²¹ *Ibid.*

⁴²² Kershaw's speech, Record 1920, p. 121.

⁴²³ *Ibid.*

⁴²⁴ Articles 4 and 5 in the Draft of the Commission Record 1920, p. 544.

⁴²⁵ *Op. Cit.*, Annex IX (3).

The British seaman Henson quoted above started the debate by bringing up the question: “When does childhood end?” According to Henson, there were two parallel standards in the employer’s mind. The first standard was that in respect of the shipowner’s own son, whom the employer might consider as still being a child at the age of 22. The second standard was in respect of the ‘boy’, whom he might define as an adult at 12, 10, 8 or even 6 years of age, according to Henson.⁴²⁶ He found the double standard unacceptable. As another example of the candid climate at the Conference, he said that he believed that in all countries, “Italy included”, a child becomes a man at 21. Accordingly, it was completely adequate to raise the minimum age for trimmers and stokers to 18.⁴²⁷

Henson got opposition from the British shipowners’ delegation, expressed by its technical adviser Sir Cuthbert Laws.⁴²⁸ The shipowners were against the higher minimum age for trimmers and stokers and, consequently, against the question being put on the agenda for the next year’s meeting of the Conference. Cuthbert Laws criticised the age-oriented view of children’s development:

What is the virtue of eighteen, or seventeen, or sixteen, or fifteen? There is no magic in these figures at all. The principal test is surely the state of physical development, physical and mental development if you like, at which the young man, or the old infant, if you prefer to call him, has arrived. We know that there are many youths of 17 who are much more developed than men of 24, and there are men of 24 who have less physical development than youths of 18 or 19.⁴²⁹

In his next sentence, however, the justifications changed. Cuthbert Laws argued that there were not many boys of 17 and 18 employed to work at the furnaces, under “normal conditions”. But under “conditions of shortage of labour” the situation was different:

Under conditions of shortage of labour, it may become very important to be able to resort to the younger men in order to prevent ships from being held up. During the war we were very glad indeed to employ numbers of youths of under eighteen at the furnaces, otherwise we could not have kept our ships going at all.⁴³⁰

As will be described in the next chapter, the ILO would eventually grant exceptions for trimmers and stokers along these lines in the forthcoming Minimum Age (Trimmers and Stokers) Convention.

⁴²⁶ *Op. Cit.* pp. 126 and 133.

⁴²⁷ *Op. Cit.*, p. 134.

⁴²⁸ *Op. Cit.*, pp. 134-135.

⁴²⁹ *Ibid.*

⁴³⁰ *Op. Cit.*, p. 134-135.

Arguing against a prohibition on working as a night watchman before the age of 17, the German shipowner's delegate, Dr. Paul Ehlers, used the same rhetoric as Karyakides and Cuthbert Laws. His argument started with the importance of educating young boys to become sailors, via the argument need to include working as a night watchman in that training and then on to the manpower requirements of the German employers who had adopted a 'three-watch system', which obviously included young boys.⁴³¹

The Dutch government delegate Professor Nolens, tried to summarise the age and development discussion with the following laconic observation: "There are people who are children up to the age of 50; some never grow up; and some, after they grow up, become infants again."⁴³²

Professor Giglio, technical adviser to the Italian seamen's delegation, said that there were many definitions of 'child'. On the one hand there was the definition of the Catholic Church, according to which a child is an infant to the age of seven.⁴³³ On the other hand, there was the definition in Italian family law which provided that a child was under the tutelage of his or her parents until the age of 21. Giglio felt confident, however, that the Conference would resolve the question if not the same afternoon, at least after one more day's discussion.⁴³⁴

The Norwegian government delegate, Lars Talian Hansen, brought up the question of racial differences between people in different nations. If children of "some countries" were not fit to go to sea at 14 or 15, their governments were free to protect them with age limits. "Other countries", who were "endowed with young men with the necessary strength", should not be prevented to send their young men to sea.⁴³⁵ He then referred to the fact that Norway has an extremely long coastline and that two-thirds of the coastal population were sailors. Under those circumstances, he argued, it would be ridiculous to prevent Norway from letting young boys go to sea at 15. Hansen used allegedly national differences between children in terms of "physical development" and "strength" to justify exceptions that in reality were about the variations in economic and geographic conditions in different countries, e.g. Norway.

Vocational training and employment within the family

Finally, I would like to draw attention to two further questions in connection with the plenary discussion on the Minimum Age Convention for Employment at Sea. Firstly, as I have described above, the Commission heavily emphasised the necessity of post-school education. When submitting the report to the Conference, the reporter even proposed that there should be

⁴³¹ *Op. Cit.*, p. 133.

⁴³² *Op. Cit.*, p.136.

⁴³³ The age of the first Holy Communion.

⁴³⁴ *Op. Cit.*, p.137.

⁴³⁵ *Op. Cit.*, p.135.

a provision on the subject in the form of a Convention or Recommendation. When put to a vote at the plenary session of the Conference, however, the proposal was rejected. The reason was that it was questionable whether member states could live up to such an obligation.⁴³⁶

Secondly, as I have also mentioned above, like the Minimum Age (Industry) Convention, the proposed draft Convention excluded working within the family from its application. The definition of ‘family’ was not questioned or discussed by the Conference in this connection; nor was the exclusion for family undertakings in general. My own interpretation of this is that the family and family integrity were so taken for granted that nobody even thought of discussing it.

When the plenary discussion on the minimum age at sea ended, the conclusions and decisions of the Conference were worked on by a special Drafting Committee. The resultant draft Convention was then submitted to the plenary session for final adoption.

6.5 The Minimum Age (Sea) Convention No. 7

The Minimum Age (Sea) Convention No. 7 was adopted in Genoa on 9 July 1920⁴³⁷, with 70 votes for adoption, none against and two abstentions.⁴³⁸ The Convention came into force one year later, on 27 September 1921, after the necessary two ratifications: Great Britain and Sweden were the first nations to ratify the Convention.⁴³⁹

In this section, the Convention will be described in some detail. The final version of the Convention is very close to the Office draft. Except for the exclusions concerning trimmers and stokers, there were no great differences between the initial and final draft. The definition of ‘vessel’ was made more precise in the final version, following some criticism in the Commission. As intended, the Convention strictly followed the form and content of Convention No. 5.

Article 1 thus defines the term ‘vessel’ as including “all boats, of any nature whatsoever, engaged in maritime navigation, whether publicly or privately owned; it excludes ships of war”. Article 2 establishes the minimum age for admission to work at sea as 14 years. The minimum age applies to all children except children employed on ships where only members of the same family are employed (Article 2) and children performing work on school-ships or training-ships (Article 3). Work on

⁴³⁶ *Op. Cit.*, p. 145.

⁴³⁷ Minimum Age (Sea) Convention No. 7, ILOLEX, www.ilo.org.

⁴³⁸ Record 1920, p. 439.

⁴³⁹ For a list of ratifications, see www.ilo.org/ilolex/english/convdisp1.htm (visited 30/01/07)

school- or training-ships, however, must be approved and supervised by a “public authority”.

The single enforcement mechanism of the Convention is the obligation for shipmasters to keep a register of all employees under the age of 16 and indicating their dates of birth (Article 4).

Unlike the Washington Conventions Nos. 5 and 6, there are no special provisions for India and Japan. There is, however, an identical provision concerning flexibility for the colonies. Member states should “engage to apply” the Convention to its colonies, protectorates and possessions, except “where owing to the local conditions its provisions are inapplicable” or “subject to such modifications as may be necessary” (Article 5 a and b).

The remaining articles, Articles 6-12, concern procedural formalities with provisions on: ratification (Article 6); entry into force (Articles 7-9); denunciation (Article 10); report by the Governing Body (Article 11); and official languages of the Convention (French and English, Article 12). These articles are also identical to the Washington Conventions.

6.6 Concluding remarks

Whereas the question of the employment of children at sea caused a great deal of discussion among the speakers at the Genoa Conference, in reality only a few aspects of it were examined. Central questions concerning children’s work that might have been expected to appear in the discussions, such as the maintenance of children who were put out of work by the minimum age regulation, and the separation of children from their families when they went to sea, were not discussed at the Conference.

Summarising the most interesting aspects of what was discussed in Genoa, it appears that a number of things seem to have been taken for granted. The first of these was the minimum age of 14 years. The principal explanation for the general acceptance of the minimum age of 14 years was that Minimum Age (Sea) Convention was modelled on the Minimum Age (Industry) Convention. It was the objective of the ILO to make working conditions at sea and in industry match as far as possible. Consequently, the minimum age should be the same both at sea and in industry.

Logically, this builds on the assumption – by no means evident – that working at sea equalled working in industry. Perhaps it was because of this that the different conditions of working at sea and working in industry were almost completely neglected at the Conference, at least as regards the hardships of working at sea. For example, the consequences for a child of being away from his family for long periods, the high risk of accidents on board ship or shipwrecks, the situation for children in ports and the difficulties of controlling hours of work and other working conditions were not discussed at all. It is questionable whether these issues were ignored or

even made invisible in order to fit the regulation of employment at sea into the model of the Minimum Age (Industry) Convention.

As in 1919, two contrasting views on child protection emerged in the debate. The standpoint of the majority seems to have been that children should be protected from too hard work at a too early an age. The minimum age should be 14 years in all member states, regardless of local conditions. The justifications were conformity with the Washington Conventions and adaptation to ‘modern conditions’ – children should be protected from the slavery that had taken place in, for example, Britain. The allusion to slavery was directly connected to the British campaign against child labour referred to in Chapter 2. This kind of justification for the Minimum Age Conventions directly points to the assumption that the experiences and standards of the industrialised Western societies could be made universal and ‘imposed’ on the non-industrialised nations.

An opposite view was presented by the Greek shipowners. It was that a minimum age of 14 years was too high and would only cause harm to children. Work at sea was healthy and strengthening for boys and offering boys employment as seamen was actually a humanitarian act. To start working at an early age was in the child’s best interest. Discipline, learning a trade and fresh air were the justifications for sending young boys to sea. One cannot help speculate that the economic interests of the shipowners were also at play.

The discussion about the age and development of children is also interesting, particularly the statements regarding the ‘end of childhood’. The point of view of one of the delegates that it was the stage of development, rather than the age of the child, is noteworthy. This was in contradiction to the focus on minimum age limits for employment (and school). The statement by the British seamen’s representative that there was a double standard about when childhood ends, namely, one perhaps as low as 8 or 10 years and another as high as 22, also stands out in the debate.

To summarise, the Minimum Age (Sea) Convention was in close conformity with the Minimum Age (Industry) Convention and Night Work of Young Persons (Industry) Convention adopted in Washington in 1919. There was, however, no debate about India, Japan and the other nations with a ‘tropical climate’. Instead, there was some debate about Greece, which was a maritime but poor nation. There were no special provisions in the Convention for India and Japan, or Greece.

Chapter 7. Minimum Age in Agriculture and for Trimmers & Stokers. Geneva 1921

The third session of the International Labour Conference was held in Geneva, Switzerland during October and November 1921. The President of the Conference, Lord Burnham, called it “the first International Labour Conference that has ever been regularly held, because the one at Washington was in the nature of inauguration, and the second, at Genoa, was limited to a special subject”.⁴⁴⁰ From 1921, the seat of the ILO was in Geneva. This was the result of the ILO Constitution⁴⁴¹ that provided that the seat of the League of Nations – Geneva – should also be the general meeting-place for the International Labour Conference.

By 1921, both the economic and political situations were quite dismal for the member states of the ILO. The refusal of the United States to ratify the Versailles Peace Treaty and join the League of Nations was clearly a setback for the ILO. The European countries thereby completely dominated the organisation. On the European continent the situation was anything but stable. Civil wars and armed intervention by foreign nations were happening in the Baltic states, Russia, the Caucasus, Germany and Hungary. In Italy, there was a struggle between democracy and class warfare against a background of total economic chaos. In all this, the working classes were the greatest losers. The Director of the ILO, Albert Thomas, saved the situation by saying that everyone wanted two things: stability in their daily lives and security against the threat of war.⁴⁴²

The hopes for economic progress in Europe at the end of the war had not been fulfilled. Instead, an economic depression was beginning to spread across the European economies. The depreciation of the stock market reflected the lack of settlement and stability in the post-war world. In spite of the falling prices in the world market, consumers’ prices remained unchanged. Added to this, there was mass unemployment. Millions of demobilised men tried to find employment in the war-devastated nations. Instead of promoting free trade, which would have been the most beneficial policy for the countries in the long run, more trade barriers were raised. A

⁴⁴⁰ Record 1921, p. 583.

⁴⁴¹ Article 391, ILO Constitution 1920.

⁴⁴² Alcock 1971, p. 49.

“dead weight”, as Lord Burnham expressed it in his opening speech to the Geneva Conference in 1921, was pressing on international trade.

In short, there was a general political and economic crisis. The employers and workers, however, had diverging views on its causes and remedies. Employers highlighted the eight-hour day as contributing to rising costs and diminished production, while workers highlighted bad distribution of raw materials, the transport crisis and monetary exchange questions as the causes of underproduction.⁴⁴³ A consequence of the threatening economic depression was that it ‘outweighed’ the threat of revolution that had promoted labour reforms. Under these circumstances, the support for labour reform grew weaker and the capitalists tried to profit from the situation in their actions to restrict the competence of the ILO.

Because of this situation, the application of the Conventions adopted in Washington in 1919 met serious obstacles in the member states. These ultimately manifested themselves in the unwillingness of the national parliaments to ratify the Conventions. Notwithstanding, the general support for the ILO remained relatively intact because, even though the labour movement was weakened by the economic crisis, the capitalists considered it too dangerous to take general action that could arouse the hostility of the workers. The capitalists and the governments agreed, however, that labour reform would harm production unless it was ‘prudent’. If Conventions were too numerous, and their content too onerous, governments would simply not be able to deal with them.⁴⁴⁴

In spite of all these problems, the ILO kept up the good work. At the Geneva Conference, a number of new Conventions and Recommendations were adopted. The Conference also passed a Constitutional reform of the Governing Body.

7.1 The Geneva Conference

Preparations

Before the third Conference started in 1921, however, the French government objected to the ILO dealing with agricultural labour. France demanded that, not only in 1921 but permanently, items concerning agricultural questions be removed from the agenda. The French government argued that, according to the Versailles Treaty, agricultural labour was never included within the competence of the ILO. According to France, it would be imprudent, considering the devastation of the war, to impose any burdens on agriculture. France referred the question to the Permanent Court of

⁴⁴³ Alcock 1971, pp. 49-51.

⁴⁴⁴ Chairman of the Governing Body Arthur Fontaine’s opening speech, Record 1921, p. 5.

International Justice for an advisory opinion. The Court ruled against France and declared in the advisory opinion that agricultural labour questions were within the competence of the ILO. According to the Court, agriculture was beyond all doubt the most ancient and the greatest industry in the world, employing more than half of the world's wageearners.⁴⁴⁵ According to Anthony Alcock, however, two-thirds of the workers in the world at that time were agricultural workers.⁴⁴⁶

The Governing Body ignored the French protests and therefore agriculture remained on the agenda of the third International Labour Conference. But this did not prevent a long discussion at the Conference on the status of agriculture. The Conference finally decided to delete the question of hours of work in agriculture from the agenda while the question of the protection of women and children in agriculture was retained. Regulation of the hours of work was a difficult question for all branches of industry and there were strong conflicting interests involved. As described in the previous chapter, the Genoa Conference in 1920 failed to adopt a Convention on the hours of work at sea.

There was a long discussion regarding the protection of women and children in agriculture and technical agricultural education before the Conference decided that those subjects should remain on the agenda. A variety of arguments appeared and, sometimes, the same arguments were used both in favour of and against retention. Not a single speaker, however, specifically mentioned the conditions of female and child agricultural workers. Instead, the speakers concentrated on the position of agricultural labour within the ILO in general.

The speakers who were in favour of the ILO dealing with agricultural questions argued that agriculture was an important area of production, that the advantages granted to industrial workers in the Washington Conventions should be extended to agricultural labour, that Conventions protecting women and children in agriculture should be a first attempt in alleviating the conditions of agricultural workers and that, with better working conditions agricultural production would increase.⁴⁴⁷ This group included governments', employers' and workers' delegates. The speakers who wished to delete the question of the protection of women and children in agriculture from the agenda argued that industrial and agricultural work differed in substantial respects. They said that agricultural work was seasonal and therefore required hard work during the season while there was work to do, that agricultural labour conditions varied a lot in different countries due to climatic, cultural, economic and social conditions and therefore were

⁴⁴⁵ Permanent Court of International Justice, Collection of Advisory Opinions, Series B., n. 2 (1922) (Leyden, Sijthoff, 1922).

⁴⁴⁶ Alcock 1971, p. 55.

⁴⁴⁷ Record 1921, pp. 97-111.

unsuitable for international regulation. Further arguments were that the so-called 'surplus agriculture population' of Europe would no longer be able to seek an outcome in, for example, Canada in the event of international regulation of agricultural labour and that uniform regulation of agricultural labour would decrease production and increase costs. These speakers, of course, all belonged to the employers' and the governments' group.⁴⁴⁸

When the question was put to a vote, it was decided that both the protection of women and children in agriculture and technical agricultural education should remain on the agenda of the Conference.⁴⁴⁹ As it would turn out, agricultural questions would remain an important area for the ILO. As an example, it can be mentioned that by 1939 the ILO had adopted no less than seven Conventions on agricultural labour.

An invitation to the Geneva Conference was sent to the member states' governments by a circular letter dated 27 August 1920 and signed by the Director General of the ILO Albert Thomas. The Genoa Conference had only recently closed. The letter included the agenda for the third annual meeting of the International Labour Conference. There were careful instructions on how the delegations should be composed in accordance with the Constitution of the ILO. It was pointed out that, because of the wide range of items on the agenda, the technical advisers were going to play an important role in the proceedings. It was therefore important to make sure they had the necessary competence in order to "enjoy the confidence of the different interests concerned". Thomas also reminded everyone of the obligation laid down in the ILO Constitution that when an item on the agenda directly affected women, at least one of the technical advisers should be a woman (Article 389). Finally, governments were asked to answer a questionnaire about the items on the agenda before 15 January 1921.⁴⁵⁰

As a result of questions raised by some of the member states' governments concerning the composition of the delegations in regard to the agricultural questions, a new circular letter dated 4 November 1920 was sent out from Thomas to the member states. The letter clarified that there were conflicting interests involved. There was the interest of continuity of policy on the one hand and the interest of competence and legitimacy in respect of the agricultural and maritime questions on the other. According to Thomas, the problem could be solved within the framework of the ILO Constitution.⁴⁵¹ Continuity could be guaranteed by member states and industrial organisations sending the same delegates to the annual meetings of the Conference each year. Legitimacy and competence in respect of the

⁴⁴⁸ *Op. Cit.*, pp. 98-111, *Passim*.

⁴⁴⁹ *Op. Cit.*, pp. 111 and 115.

⁴⁵⁰ *Op. Cit.*, p. 921, II-III.

⁴⁵¹ Article 38, ILO Constitution 1920.

particular sectors concerned at the Conference could be guaranteed by the opportunity to appoint two technical advisers for each item on the agenda. Accordingly, ten technical advisers could be appointed for each of the employers' and workers' groups in order to cover all the areas of competence concerned at the Conference.⁴⁵² How to deal with competence concerning children was not mentioned. It was probably thought that the female technical advisers, who had to be present when questions affecting women were discussed, also possessed the necessary 'child competence'.

Agenda

There were five items on the agenda of the Geneva Conference:

1. Reform of Constitution of Governing Body of the International Labour Office.
2. Agricultural questions:
 - (a) The adaptation of the Washington decisions to agricultural labour:
 - i. Regulation of the hours of work;
 - ii. Unemployment prevention;
 - iii. Protection of women and children.
 - (b) Technical agricultural education.
 - (c) Living-in conditions of agricultural workers.
 - (d) Rights of association and combination.
 - (e) Protection against accidents, sickness, invalidity and old age.
3.
 - (a) Disinfection of wool infected with anthrax spores
 - (b) Prohibition of the use of white lead in painting
4. The weekly rest day in industrial and commercial employment.
5.
 - (a) The prohibition of the employment of any person under the age of 18 years as trimmer or stoker, and
 - (b) The compulsory medical examination of all children employed on board ship.⁴⁵³

In respect of item 2, agricultural questions, it had already been decided at the Washington Conference in 1919 to place the adaptation of the Washington Conventions to agriculture on the forthcoming agenda.⁴⁵⁴ Item 5 comprised the maritime questions referred to the Conference by a decision of the Genoa Conference in 1920.⁴⁵⁵

Participation

There were 39 delegations present at the Conference in Geneva in 1921: these were 12 more than in Genoa the year before. By continent, there were one African, four Asian, one Australian, 24 European, one North American

⁴⁵² Record 1921, IV-V.

⁴⁵³ *Op. Cit.*, III.

⁴⁵⁴ Record 1919, p. 272.

⁴⁵⁵ Record 1920, Annexe IX (3).

and eight South American delegations⁴⁵⁶. There was thus a preponderance of European delegations. Furthermore, many of the non-European, far-distant countries had sent only one or two government delegates – usually diplomats stationed in Geneva – and no delegates representing workers or employers.

As for female participation there was, not unexpectedly, almost a complete majority of men. A few more women participated in the 1921 Conference compared to the sea Conference in Genoa in 1920. One of them was the Norwegian government delegate Betzy Kjelsberg. She was the only female participant at delegate level. Among the technical advisers there were 18 women (out of several hundreds). In some of the so-called technical commissions to the Conference (that discussed the proposed Conventions and Recommendations and then reported to the Conference) female representation was higher than in others (where no women were present). One such example was the Second Agricultural Commission that dealt with the minimum age for admission to agricultural work, night working by women and children and maternity benefits. The work of that Commission in fact led to the Convention on the minimum age for admission to agricultural work and three Recommendations concerning night working by women and children under 18.

Women also served on some of the other commissions that were not specifically concerned with women and children, such as the Commission on Anthrax and the Commission on Weekly Rest. Furthermore, Betzy Kjelsberg was appointed government delegate on the Commission of Selection: a standing commission that was responsible for the proceedings at the Conference and determined the size of and allocation to the technical commissions (such as those mentioned above).⁴⁵⁷

To conclude, there was an overwhelming preponderance of European countries present, and an almost absolute majority of men at the Conference. As a consequence of the ILO Constitution, however, some women were appointed to the technical commissions that dealt with the protection of women and children.

Below I will focus in more detail on the items relevant to the study, namely, the protection of women and children in agriculture, technical agricultural education, the minimum age for trimmers and stokers and medical examination of children employed on board ship.

⁴⁵⁶ China, India, Japan and Siam. South Africa. Australia. Albania, Austria, Belgium, Bulgaria, Czechoslovakia Denmark, Estonia, Finland, France, Germany, Great Britain, Greece, Italy, Latvia, Luxemburg, Norway, the Netherlands, Poland, Portugal, Roumania, Serbia, Croatia and Slovenia, Spain, Sweden and Switzerland. Canada. Bolivia, Brazil, Chile, Colombia, Cuba, Guatemala, Uruguay and Venezuela.

⁴⁵⁷ List of Delegations, X Record 1921, and Riegelman & Winslow 1991, p. 33.

General achievements of the Genoa Conference

Although several Conventions and Recommendations were adopted by the 1921 International Labour Conference in Geneva, the outcome for agricultural workers was limited. Most of the agricultural items on the agenda resulted in Recommendations rather than formally binding Conventions and their provisions were considerably weaker than in the corresponding Conventions for industry. This was not surprising, however, as it was much more controversial to regulate working in agriculture than working in industry. There were many reasons, one of which was that agriculture, in the main, was run on a family basis, and it was controversial to interfere in the realm of the family. In both the Washington and the Genoa Conventions on the minimum age for admission to work there were ample exemptions for family undertakings. Another reason was the problems of supervising agricultural work that was carried out over large areas within a country.

The Conventions on the minimum age for admission to work as trimmers and stokers and the medical examination of young persons at sea (which had been referred to the Conference by the Genoa session) were adopted.

In all, seven Conventions and eight Recommendations were adopted at the Conference. The Conventions were: The Minimum Age (Agriculture) Convention No. 10; the Right of Association (Agriculture) Convention No. 11; The Workmen's Compensation (Agriculture) Convention No. 12; The White Lead Painting Convention No. 13; The Weekly Rest (Industry) Convention No. 14; The Minimum age (Trimmers and Stokers) Convention No. 15; and The Medical Examination of Young Persons (Sea) Convention No. 16. The Recommendations concerned unemployment, maternity protection, night work of women, night work of children and young persons, vocational education, living-in conditions and social insurance, all in agriculture, and weekly rest in commerce (Recommendations Nos. 11-18).⁴⁵⁸

7.2 The Blue Report on women and children in agricultural work

Industrialised Europe after the First World War was still largely an agrarian society, but with the expansion of industry, came an exodus to the towns of agricultural workers looking for better lives. One of the reasons for adopting Conventions and Recommendations in respect of agricultural work, granting the same protection and benefits to agricultural workers as to workers in industry, was to prevent agricultural workers from leaving agriculture and moving into the factory towns. The International Labour Office believed

⁴⁵⁸ Record 1921, Appendix XVI.

that, if working conditions became equal to those granted in industry through the Washington Conventions of 1919, the problematic migration of the rural population to towns would diminish. As will be revealed, however, the Conference turned out to be quite unwilling to accord the same conditions to agricultural workers as had been granted in Washington to industrial workers. Implementation of protective legislation in agriculture was far more difficult and complicated than in industry. The workers were spread out over vast areas on farms and they often worked seasonally living on the farm as part of the farmer's household. This made it difficult to control agricultural work, both because of the extent of the workplace and the reluctance to control the farming family.⁴⁵⁹

The workers' group strongly advocated the extension of the Washington Conventions of 1919 to agricultural workers. They claimed that "the workers in this most important of all industries must be given a status and legal protection at least equal to that of workers in other industries and in commerce".⁴⁶⁰ The majority of the employers and governments opposed international legislation, arguing that legislation would be inoperative due to climatic and other variations between nations and that it would hamper production. They had stated that regulation of agricultural working conditions could only proceed along national lines. Workers, employers and governments all agreed, however, that the children of the great agricultural population should have the same opportunities for education and culture as the children of the urban population.⁴⁶¹

In the questionnaire sent out to the member states' governments to elicit their opinions of the governments, the Office made clear that even though the importance of preventing unemployment and the special protection of women and children in agriculture "may at first appear attractive; these may not perhaps constitute the most effective means of improving the situation of agricultural workers".⁴⁶² The Office declared that it was of great importance to investigate also the living-in conditions of agricultural workers, technical agricultural education, freedom of co-operation and the social conditions of agricultural workers.⁴⁶³ A major difficulty here was, according to the Office, the definition of 'agricultural worker'. One important distinction was between wage-earners who were provided with board and lodging by the farmer, either in the farmhouse or in separate houses, and wage-earners who provided their own accommodation.⁴⁶⁴

⁴⁵⁹ Questionnaire 1921, pp. 5-12.

⁴⁶⁰ First Report of the Second Agricultural Commission, Record 1921, p. 684.

⁴⁶¹ *Ibid.*

⁴⁶² Questionnaire 1921, p. 11.

⁴⁶³ *Ibid.*

⁴⁶⁴ Questionnaire 1921, p. 12.

In respect of the employment of children in agriculture, the questions in the questionnaire concerned the following:

Should the Minimum Age (Industry) Convention be extended to agriculture? Should child labour in agriculture be forbidden “during the period when schools are open”?

Should exceptions be allowed?

Should work be allowed before or after school?

What minimum age should be specified?

Should a prohibition include employment by the child’s own parents? Should there be a higher minimum age for certain categories of agricultural work?

What measures of control could be appropriate?⁴⁶⁵

In reply to the first question, on whether the Minimum Age (Industry) Convention be extended, 12 member states said “No”: Austria; Canada; Denmark; Finland; France; Great Britain; India; the Netherlands; Norway; South Africa; Spain; and Sweden. Italy, Poland and Romania replied “Yes”. In the reply from France it was argued that: “Agricultural work is not comparable with industrial labour; the former is rather a healthy sport graduated according to the strength of the child”.⁴⁶⁶ This view was probably common to many governments.

A few governments, however, namely, Romania, Italy and Poland, were in favour of an extension of the minimum age to agriculture. The motive was to have uniformity with the already adopted Minimum Age Conventions and that the same reasons for a minimum age hold good for agriculture as well as for industry and the sea. There were further interesting points of view in the reply from Romania:

Employment should be prohibited during the period of compulsory education [...] before 14 years. This is advisable, not only for reasons of humanity, but also in the interest of the intellectual development of the rural population.⁴⁶⁷

Suggesting ‘humanity’ and the intellectual situation of the rural population indicates that they regarded the rural areas as backward and that providing schooling for rural children would help develop the country. Many of the governments that were against the regulation of minimum age for agricultural work declared that very few children under 14 years of age were employed in regular agricultural work. It seems that it was common practice, however, for children to help their parents out with particular chores or during a particular season.⁴⁶⁸

⁴⁶⁵ Report 1921, p. 48.

⁴⁶⁶ *Op. Cit.*, p. 50.

⁴⁶⁷ *Op. Cit.*, p. 53.

⁴⁶⁸ *Op. Cit.*, pp. 49-56.

As regards the relationship between school hours and terms and agricultural work, most of the replies indicated that children should be in school but that it was acceptable to work before and after school and during school holidays. Many replies referred to compulsory school as being sufficient and most of the replies were not altogether against some work being performed during school time. Spain's reply reveals an opinion of rural people as intellectually inferior to people in the towns. It also expresses the view of agricultural work as being of a healthy nature. The Spanish government therefore wrote the following about school and work:

Children employed in work in the fields will, in spite of all, remain in a position of inferiority with regard to industrial workers from the point of view of education, and this notwithstanding our national legislation and the international Washington decisions. Nevertheless, this state of inferiority is, up to a certain point, and at any rate in the present conditions, inherent in their class. On the other hand, it is obvious that the agricultural worker has the advantage over the town worker from the point of view of health by reason of the conditions in which he works.⁴⁶⁹

Like the Spanish reply, several of the replies stressed the difference between agricultural and industrial work because of the healthy nature of agricultural work. The Swedish government, for example, wrote that:

While the employment of young persons for the weeding of root-crops, driving cattle to pasture, etc. during a short time in good weather can scarcely be regarded as involving any hygienic or social injuries, that cannot be said to be the case if the children are used in threshing by machinery in chaff-cutting, in the driving of Norwegian harrows, in using mowing and reaping machines, in felling timber, and in other work which is dangerous for young people.⁴⁷⁰

In this way, the Swedish government made a clear distinction between 'good' and 'harmful' agricultural work.

In respect of the question whether a prohibition on children under a minimum age should apply to children employed by their parents, a majority of the governments replied in the negative. The reply from the Indian government stands out as it was completely opposed to an exclusion of employment by parents.⁴⁷¹

As regards the question whether there should be a higher age limit for certain types of work, a majority of the governments replied that the problem was "non-existent".⁴⁷² One government, Finland, replied that there ought to

⁴⁶⁹ *Op. Cit.*, p. 60.

⁴⁷⁰ *Op. Cit.*, p. 61.

⁴⁷¹ *Op. Cit.*, p. 62.

⁴⁷² *Op. Cit.*, pp. 61-63.

be a minimum age of 16 years for ploughing, ditching and threshing.⁴⁷³ All replies indicated that children should be allowed to work during school holidays.

Finally, regarding inspection, most replies indicated that there should be inspection by a labour inspectorate. Some also indicated enforcement by educational authorities, and some indicated that no inspection was necessary.⁴⁷⁴

In a ‘general survey’ of the replies, the conclusion was that, unlike industrial work and work at sea, agricultural work was regarded, in principle, as healthy. The Office remarked on this by pointing out that the governments did not discuss the fact that its nature and duration could make agricultural work damaging for children’s health and development, despite the ‘open-air conditions’.⁴⁷⁵

In respect of the relationship to education, the Office interpreted the replies to mean that agricultural work should not be allowed to stand in the way of elementary education. A majority indicated that the best method for protecting children in agriculture was compulsory school laws.

The replies made the Office come to the conclusion that the best way of regulation of child labour in agriculture was to ‘march hand-in-hand with educational laws’.⁴⁷⁶ The draft Convention should be based on:

...a prohibition of agricultural work during school hours, *i.e.* on the enforcement of elementary education laws, and should take into account that there are many light tasks in agriculture which can with advantage to the children themselves be performed out of school hours, it would not appear desirable or expedient to prohibit such work.⁴⁷⁷

The Office thus emphasised the connection between and dependency on school laws as well as the distinction between agricultural and industrial work in terms of different kinds of ‘light work’ that were considered to be in the best interests of children. This was further confirmed by a suggestion that school holidays should be adapted to take place in the harvest season or at times when children’s work was ‘most needed’, but with a safeguard in the form of a fixed minimum period below which school instruction could not be reduced.⁴⁷⁸

As for children employed by their parents – exceptions for family undertakings – the Office concluded that these children should be included. In interpreting the replies of the governments, some of which were negative

⁴⁷³ *Op. Cit.*, p. 63.

⁴⁷⁴ *Op. Cit.*, pp.67-69.

⁴⁷⁵ *Op. Cit.*, p. 70.

⁴⁷⁶ *Op. Cit.*, p. 71.

⁴⁷⁷ *Op. Cit.*, p. 72.

⁴⁷⁸ *Ibid.*

and some positive towards an exclusion, the Office suggested that there should be none for agriculture. The reason was that, in industry and at sea, it was not possible to supervise children working with their families. Since the new Convention was based on educational laws, there was no need for such an exclusion, because the suggested formula was that all children were allowed to work in the fields except during school hours.

Finally, as regards dangerous work, the Office came to the conclusion that no such provision should be suggested. This conclusion was only reached because of a procedural formality: as the question had not been on the agenda, the Conference could not consider itself competent to deal with it.

The Office's proposed draft Convention prohibiting agricultural work during school hours thus built on the principle of enforcement of compulsory school laws. Exemptions from compulsory school attendance should not be allowed to reduce the period of school instruction to less than eight months a year. The minimum age of 14 years was discussed by the Office, which declared that 14 years as the upper limit of compulsory school age was not established "to secure arbitrary agreement with the Washington Convention", but because it was the general age limit for compulsory school in 'the more advanced countries'.⁴⁷⁹ One may perhaps draw the conclusion that this line of argument only highlights the fact that specifying a minimum age of 14 years in the Convention was only pretending to be in conformity with the previous Conventions, in accordance with the objectives of the ILO.

7.3 The Commissions

7.3.1 The Agricultural Commissions

Three technical commissions on agricultural questions, called simply the First, the Second and the Third Agricultural Commissions, were set up at the Conference. They were provided with the different agricultural questions on the agenda for consideration. The Second Commission was concerned with the protection of women and children and with living-in conditions, and the Third Commission with technical agricultural education, rights of association and rights of combination.

In accordance with the Constitution of the ILO, there was a higher number of women on the Second Agricultural Commission than on the other Commissions of the Conference: 9 women and 32 men. Furthermore, Margaret Bondfield was appointed as reporter to the Second Agricultural

⁴⁷⁹ Report 1921, p. 76.

Commission. In comparison with the First and Third Commissions, where no woman was present, this was progress for women.⁴⁸⁰

As described above, the proposed Draft Convention prepared by the Office allowed all children, notwithstanding the specified minimum age of 14 years, to work in agriculture at all times outside school hours. Children were even allowed to work during school hours on harvesting, provided that the availability of education was not reduced to less than eight months a year.⁴⁸¹

The worker's group in the Commission argued for two amendments of the draft Convention. The first was the addition of a provision that school children should not be employed in the morning before school and the second that children should only be admitted to 'light agricultural work'. According to the Report of the Second Commission, the workers' group consistently pressed for the standards of the Washington Conventions to be extended to agricultural workers. The argument was to stop the exodus from the country to towns.⁴⁸² The motive may have been one of self-interest defence of a classical trade union character. If agricultural workers moved to towns, they were going to compete with industrial workers for jobs. This was a time of mass unemployment.

In any case, the majority of the Commission rejected both amendments. Both questions were addressed again later, however, during the plenary session of the Conference and the claims of the workers would obtain some acceptance.

Ultimately, the Commission unanimously adopted the draft Convention on the minimum age for employment in agriculture as proposed by the Labour Office.⁴⁸³

Night Work

The Office also had two Draft Recommendations prepared regarding the protection of children. The first concerned night working by children and young persons in agriculture.⁴⁸⁴ The Recommendation provided that member states "should take steps to regulate the employment of children and young persons under the age of 18 years in agricultural undertakings during the night in such a way as to ensure them a period of rest compatible with their physical necessities and consisting of not less than nine consecutive hours".⁴⁸⁵ After a motion from the British government group, the

⁴⁸⁰ List of the Members of the Delegations, First, second and Third Agricultural Commissions, Record 1921.

⁴⁸¹ Proposed Draft Convention concerning the employment of children in agriculture during compulsory school hours, prepared by the International Labour Office, Record 1921, p. 682.

⁴⁸² First Report of the Second Agricultural Commission, *Op. Cit.*, p. 684.

⁴⁸³ *Ibid.*

⁴⁸⁴ Draft Recommendation concerning the employment of children and young persons in agriculture during the night, prepared by the International Labour Office, *Op. Cit.*, p. 682-3.

⁴⁸⁵ *Ibid.*

Recommendation was divided into two sections: one stipulating a minimum rest period of ten hours for ‘children’ and the other section stipulating a minimum rest period of nine consecutive hours for ‘young persons under the age of 18’. The Commission adopted the first section unanimously and the second after a vote following the workers’ group’s suggestion that there should be ten hours minimum night rest for ‘young persons’ also.⁴⁸⁶ During the later plenary session, however, the Conference referred the question of night working by young persons back to the Commission for a definition of ‘children’. The Commission then decided to define ‘children’ as persons of ‘less than 14 years of age’.⁴⁸⁷ There was no discussion about it – at least not referred to in the report. The standard minimum age – 14 years – and thus the definition of ‘child’ had been set in Washington in 1919.

Technical agricultural education

The second Draft Recommendation concerned the development of technical agricultural education.⁴⁸⁸ There were two sections to the Recommendation: one to the effect that member states should “endeavour to develop vocational education for agricultural workers employed within its territory”, and one to the effect that member states should send reports to the International Labour Office at regular intervals with information on legislation, money spent and measures taken to develop vocational agricultural education. The Third Agricultural Commission adopted the Recommendation unanimously and without any discussion.⁴⁸⁹

Technical agricultural education was considered important both for the future work expectations of children in the agrarian population and as a way of filling the gap between the age when compulsory school ended and the minimum age.

7.3.2 The sea revisited by the Commission on Maritime Questions

As agreed in Genoa, the Office had prepared two draft Conventions: one fixing the minimum age for admission to work as trimmers and stokers and the other concerning the compulsory medical examination of children and young persons employed at sea. Both drafts were referred to a Commission on Maritime Questions for further discussion before submitting them to the plenary Conference. The Commission reporter summarised the work of the Commission as follows: “in spite of the numerous sittings held by our

⁴⁸⁶ *Ibid.*

⁴⁸⁷ Third Report of the Second Agricultural Commission, Record 1921, p. 691.

⁴⁸⁸ Draft Recommendation Concerning the Development of Technical Agricultural Education, prepared by the International Labour Office, *Op. Cit.*, pp. 697-8.

⁴⁸⁹ Report of the Third Agricultural Commission, *Op. Cit.*, p. 698-9.

Commission there was no serious discussion as regards the substance of these questions; there was no serious difference in opinion as to principle.”⁴⁹⁰ Nonetheless, a number of significant and interesting arguments appeared in the discussions as recorded in the report.⁴⁹¹

The Draft Convention concerning the minimum age for trimmers and stokers built on the two articles of the Convention on the minimum age at sea that had been proposed and rejected for procedural reasons at the Genoa Conference in 1920.⁴⁹² The Draft Convention concerning the minimum age for trimmers and stokers had four articles. The first article defined ‘vessel’ and the definition coincided with the definition in Convention No. 7, minimum age at sea: “all ships and boats, of any nature whatsoever, engaged in maritime navigation, whether publicly or privately owned; it excludes ships of war”. The second article prohibited the employment of persons under the age of 18 as trimmers and stokers and the third article excluded working in family undertakings and on school-ships or training-ships from the application of the Convention. The fourth article placed an obligation on every shipmaster to keep a register of all persons under the age of 18.⁴⁹³

The principal discussion in the Maritime Commission concerned the application of the Convention to India and Japan and various additional exceptions to the minimum age limit. Both India and Japan had requested a lower minimum age, with the justification that the “earlier and more precocious physical development” of children in their countries should be considered.⁴⁹⁴ To meet the Indian and Japanese demands, an exception was added for coasting vessels of “certain Asian countries”, with a lower minimum age of 16 years, subject to regulations made after consultation with the most representative organisations of employers and workers in those countries.⁴⁹⁵ The concept of ‘earlier and more precocious physical development’ implies that the basis for an exception for India and Japan was alleged racial differences between European and Asian children. The reporter of the Commission established, however, that the differences in physical development were not a consequence of racial differences, but of some ‘special conditions’. He argued:

There has been no intention here of making distinctions between races nor of according difference of treatment for these countries in the order in which they compete with European nations, but it has been recognized that special conditions exist in India and Japan. In these countries, a young person of sixteen years of age is often a full-grown man and can work under conditions similar to those under which a European of 18 years of age can be employed.

⁴⁹⁰ *Op. Cit.*, p. 252.

⁴⁹¹ Report of the Commission on Maritime Questions, *Op. Cit.*, pp. 760-767.

⁴⁹² *Op. Cit.*, p. 593.

⁴⁹³ *Op. Cit.*, pp. 759-60.

⁴⁹⁴ Report of the Commission on Maritime Questions, *Op. Cit.*, p. 762.

⁴⁹⁵ *Op. Cit.*, p. 765.

It has been considered that in the interest of vocational education in these countries, young men should be permitted to begin to acquire the experience necessary for their future career at an earlier age. Nevertheless this exception has been made, subject to due certification of physical development as well as agreements between employers' and workers' organisations.⁴⁹⁶

What were the justifications for the distinction if it were not race? These are the same kinds of justification that were brought forward in connection with the previous Conventions. Probably, 'special conditions' is an alternative term for 'culture' in contemporary literature, with the same connotations but only a little more ambiguous.

Not everyone, however, believed in differences in child development between nations. When the report of the Commission was submitted to the plenary session of the Conference, the Indian workers' delegate, Joshi, criticised the speech of the reporter. I will return to that below.

Returning to the report of the Commission on Maritime Questions, further exceptions were discussed and adopted. They were exceptions for school-ships and training ships, and for boats with small engines.

Ultimately, the Draft Convention was adopted unanimously by the Commission. The only amendment in relation to the Draft Convention proposed by the Office was the addition, in Article 3, of exceptions for (a) school-ships and training-ships, (b) for employment of young persons on ships 'mainly propelled by other means than steam', and (c) for children over 16 years in coastal traffic in India and Japan. A new Article 4 was inserted, inspired by the British proposal. This provided that, when a trimmer or stoker "is required in a port and where young persons of less than 18 years of age only are available", persons over 16 years could be employed, provided that two persons did the work of one adult worker.⁴⁹⁷ This last addition was not commented on or discussed in the report of the Commission.

Medical examination of children and young persons

The Draft Convention prepared by the International Labour Office concerning compulsory medical examination of children and young persons employed at sea had three articles. The first article defined 'vessel' in conformity with the previous Conventions. The second laid down that the employment of 'any child or young person' under 18 years on a vessel should be conditional on a medical examination confirming the fitness of the person to perform such work. The third article established that the medical examination should be repeated at least once a year.⁴⁹⁸

⁴⁹⁶ *Op. Cit.*, pp. 762-3.

⁴⁹⁷ See *supra*, Chapter 6.4.

⁴⁹⁸ Report of the Commission on Maritime Questions, Record 1921, p. 760.

The Commission found that “This examination is necessary to his [*sic*] career and is valuable to his employer.”⁴⁹⁹ The British government opposed this, arguing that it was ‘inadvisable’ to force such a measure internationally on the governments.⁵⁰⁰ The age limit of 18 years was questioned and there were proposals for compulsory medical examination being extended to all seamen or to all seamen under 20 years but, in the end, the Commission specified only persons under the age of 18 years, as originally proposed.

The Commission adopted the proposed Draft Convention on medical examination of children and young persons, with the only addition being an article that provided that in ‘urgent cases’ medical examination could be postponed, although only until the first stop at a port.⁵⁰¹ It was not defined, however, what an ‘urgent case’ might be.

7.4 The plenary session of the Geneva Conference

7.4.1 Agriculture

The Draft Convention on the minimum age for employment in agriculture⁵⁰² was discussed article by article at the plenary session of the Conference and thereafter unanimously adopted by 73 votes to nil.⁵⁰³ Three of the four articles were passed without discussion. There seems to have been total agreement that the question of the minimum age for agricultural work depended entirely on the enforcement of compulsory school laws. No speaker opposed the idea underpinning the Draft Convention that the only realistic way of enforcing a Convention was by way of compulsory school laws.

That included the Director General of the ILO, Albert Thomas, who frankly admitted that he believed that there were no means of controlling the work of children in country districts except by compulsory school attendance.⁵⁰⁴ In this connection, Thomas upheld the Swiss model as a positive example of a country with an extremely flexible school system that allowed for great variations regarding holidays, thus adapting to the seasonal work in different cantons such as the harvest season, the grape-picking season and hay-making time. Thomas put this in contrast to the centralised

⁴⁹⁹ *Op. Cit.*, p. 764.

⁵⁰⁰ *Ibid.*

⁵⁰¹ Record 1921, pp. 766-67.

⁵⁰² *Op. Cit.*, p. 688.

⁵⁰³ *Op. Cit.*, pp. 280-286.

⁵⁰⁴ *Op. Cit.*, p. 282.

and inflexible French system with uniform holidays in August and September.⁵⁰⁵

The debate at the Conference concerned Article 2: the exception “for purposes of technical instruction or vocational training to employ children in agriculture on exceptional work or in connection with the harvest, provided that such work is without prejudice to attendance during compulsory school hours”.

Two amendments to the Article proposed by the workers’ delegate from Serbia, Croatia and Slovenia, Velim Boukcheg, caused some discussion. The first amendment was to leave out “in agriculture on exceptional work or in connection with the harvest” and to insert “in light agricultural work or in light work connected with the harvest”.⁵⁰⁶ The motive for this amendment was that the proposal laid before the Conference was ‘considerably below’ the standard of the Washington Conventions. By limiting the exceptional work during harvest to ‘light work’, the employment of children in work that could harm their physical development should be prevented.

The second amendment was to insert a sentence to the effect that children should not be allowed to be employed before school hours during the period of compulsory school attendance.⁵⁰⁷ The motivation for this was also physical grounds, namely, to prevent children from arriving at school in the morning “already tired and sleepy” and “in no fit state to undergo instruction”.⁵⁰⁸

The first amendment was adopted by 39 votes to 33, surprisingly without any debate. The second amendment was debated before it was eventually put to a vote and rejected by 46 votes to 26.⁵⁰⁹ The argument against the prohibition of work before school in the morning was that it was regarded as necessary to ‘use’ children on the farm for the sake of the survival of the farm and of the family.⁵¹⁰ This choice of word indicates that some of the delegates in some cases regarded children as objects or a kind of commodity for the benefit of other people, in this case parents (*cf.* the Labour Clauses: work is not a commodity).

Nevertheless, even though this kind of justification *a priori* had interests other than the protection of children in mind, at a general level the argument in support of the ‘need’ to ‘use’ children in farming included questions about the maintenance of the child and of the child’s socialisation into a future job. There is evidence of this in several speeches. The speakers stressed the fact

⁵⁰⁵ *Op. Cit.*, p. 282-3.

⁵⁰⁶ *Op. Cit.*, p. 280-1.

⁵⁰⁷ *Op. Cit.*, p. 281.

⁵⁰⁸ *Ibid.*

⁵⁰⁹ Adoption of the first amendment, Record 1921, p. 283. Rejection of the second amendment, Record 1921, p. 285.

⁵¹⁰ *Op. Cit.*, pp. 283-4.

that traditionally, children were brought up working on the farm side by side with their parents. These children's work was essential for the maintenance and production of the farm and for the children's own education as farmers when adults. Children ought therefore, for their own benefit, to be trained to perform all kinds of work on the farm from an early age.⁵¹¹

The final outcome was that the Draft Convention on minimum age in agriculture was adopted unanimously, together with the amendment described above.⁵¹²

The Recommendations on night working by children in agriculture and technical agricultural education

As regards night working by children in agriculture, there was also some debate. The British government delegate declared that no inspection of night working by women and children should be established in Britain but that the British government was not going to vote against the Recommendation as submitted to the Conference. The reason was that the number of persons affected was alleged to be so extremely small that inspections could not be justified.⁵¹³

As mentioned above, there was a debate on the definition of 'children' and the draft Recommendation was referred back to the Agricultural Commission for further consideration and reporting.⁵¹⁴ It might have been expected that the Agricultural Commission would develop a definition of 'child' here. However, the Commission only inserted 'and young persons' after 'children' in the Recommendation and the words 'under 14 years' after the word 'children' in the first paragraph.⁵¹⁵

The Recommendation on technical agricultural education was then adopted unanimously by the plenary session of the Conference.⁵¹⁶

7.4.2 The sea revisited by the Conference

The Draft Convention on the minimum age for employment as trimmers and stokers was adopted unanimously by the plenary session of the International Labour Conference. There was only little debate which concerned the alleged 'early maturity' of Indian and Japanese boys.

The Indian workers' delegate N.M. Joshi, expressed his criticism of a lower minimum age in India and Japan with reference to 'early maturity'. He

⁵¹¹ *Ibid.*

⁵¹² Record 1921, p. 285.

⁵¹³ *Op. Cit.*, p. 290.

⁵¹⁴ *Op.Cit.*, p. 291.

⁵¹⁵ Third Report of the Second Agricultural Commission, *Op. Cit.*, p. 691.

⁵¹⁶ *Op. Cit.*, pp. 135-6.

claimed that the statements about 'early maturity' were inaccurate and asked the reporter to the Maritime Commission to explain the meaning of the 'earlier and more precocious development' which was said to take place in the case of children in India and Japan. He asked:

Is it meant that in India lads become full-grown men at the age of sixteen, while they become full-grown men at the age of eighteen in Europe? Is it meant that in India a lad of sixteen, when engaged as a trimmer or stoker in a steamer, will not suffer in health, while a lad in Europe, so engaged, will suffer in health? I should like to get a clear explanation of these facts, because I believe, as stated, they are inaccurate. I do not believe that the growth of youths in India stops at the age of sixteen. I believe if they are engaged in the engine-room of a ship at the age of sixteen their growth will be checked to some extent.⁵¹⁷

Joshi also criticised the argument that Indian and Japanese boys needed training and that it therefore should be permissible to employ them at 16 years. He said:

Sir, I have heard this argument several times, and I am really disgusted to hear it again. Is it a training for a young lad who cannot read and write to go on a ship and be engaged as a trimmer or stoker? The same argument I have heard several times used in the case of lads of nine when they are to be employed in factories. They employ the lads in India at the age of nine or ten as a sort of training or education. The Government will not give the people a literary education or send them to school: there is no compulsory education, so they want to give this employment as a sort of education and training for young lads.⁵¹⁸

I have chosen to reproduce these two quotations mainly for two reasons. Firstly, Joshi's statements are examples of the very outspoken – or undiplomatic – criticism of governments that was sometimes pronounced at the International Labour Conference, which implies that there was an open atmosphere. Secondly, Joshi points to the fact that there were no scientific grounds for the allegations that Indian children grew up more quickly and that work would be less harmful, and even useful, for them.

The Indian government delegate, A.C. Chatterjee, met Joshi's criticism. He provided no argument of any substance, however, as to the maturation of Indian or Asian children. His argumentation built on a presumption that the 'early maturity' of Asian children was common knowledge. He argued that:

I do not think that anybody in this assembly will deny that in Asiatic countries children do grow much more rapidly than children in the Northern and Western hemispheres. Does Mr. Joshi deny that the working life of an

⁵¹⁷ *Op. Cit.*, p. 253.

⁵¹⁸ *Ibid.*

Indian is very much shorter than the working life of a Western or a Northern inhabitant?⁵¹⁹

As further evidence, Chatterjee referred to the ILO Constitution as established by the Versailles Peace Treaty, which had established that countries with special climatic conditions should always be entitled to special considerations when drafting Conventions and Recommendations.⁵²⁰ Then his argument moved from Indian ‘lads’ and their maturation to the conditions of India as a nation. Chatterjee hoped that Joshi, being “a practical man”, would realise the difficulties of the Indian government to carry through “measures [...] not suitable to India”.⁵²¹ To conclude, there was no reference to medical, psychological or educational experts or to scientific literature to support the assumptions of different ages of maturation: nor was any other evidence to this effect presented.

The British workers’ adviser, J.T. Chambers also spoke in defence of the Draft Convention, hoping that some of the delegates were “practical men [...] not in favour of coming here to talk abstract ideas; some of us come here to get something done”. As I understand it, this was a criticism of Joshi’s questioning the phrase ‘early maturity’ and asking for explanations. Chambers’ opinion was that the Convention on trimmers and stokers could be an opportunity for “real progress” if the Conference delegates kept themselves “along practical lines”.⁵²²

The Draft Convention on the medical examination of children and young persons employed at sea was unanimously adopted by the Conference without discussion.⁵²³

7.5 The Conventions and Recommendations

Below will follow a brief account of the Conventions and Recommendations in their final versions, with only a few comments concerning the content. Conclusions will follow in Section 7.6.

7.5.1 The Minimum Age (Agriculture) Convention No 10

The Minimum Age (Agriculture) Convention No 10 was adopted at the third session of the International Labour Conference in Geneva on 16 November

⁵¹⁹ Record 1921, p. 255.

⁵²⁰ *Ibid.*

⁵²¹ Record 1921, p. 256.

⁵²² *Op. Cit.*, p. 258.

⁵²³ *Op. Cit.*, pp. 260-61.

1921.⁵²⁴ It came into force on 31 August 1923 after Sweden and Estonia had ratified it. The next states to ratify were Japan, Poland, Ireland, Italy and Bulgaria. To date, the Convention has been ratified by 55 states.⁵²⁵

The Convention contains eleven articles. As described above, the construction of Convention No. 10 differs from the previously adopted Minimum Age Conventions and it provides less protection for working children in all respects. Article 1 specifies the minimum age for admission to employment or work in agricultural undertakings as 14 years “save outside the hours fixed for school attendance” provided that the work is not “such as to prejudice the attendance at school”. In this way, all agricultural work that does not take place during school hours is permitted for children of all ages, and the function of the 14 years age limit becomes unclear. This implies that it was not the work in itself that was problematic, but its consequences, in this case the negative consequences for education.

Article 2 allows the periods and hours of school attendance to be arranged so as to permit the employment of children on light agricultural work and in particular on light work connected with the harvest, provided that such employment will not reduce the total annual period of school attendance to less than eight months. In this way not only is all work outside school hours permitted but work during school hours and school periods (term-time) can also be allowed if it is ‘light’ and connected with the harvest.

Article 3 provides an exclusion for technical schools from the application of the Convention provided that the work is supervised by a public authority.

Articles 5-7 deal with formalities regarding the entry into force of the Convention.

Article 8 deals with the application of the Convention in the ‘colonies, possessions and protectorates’. Article 9 deals with denunciation of the Convention and Article 10 specifies the official languages of the Convention as French and English.

Unlike the previous Minimum Age Conventions that outlined their scope by definitions of ‘vessel’ and ‘industry’, there is no definition of ‘agricultural undertaking’. Another difference is that there are no enforcement provisions at all in the Convention.

Articles 5-10 are similar to the previous Conventions.

7.5.2 The Minimum Age (Trimmers and Stokers) Convention No. 15

The Minimum Age (Trimmers and Stokers) Convention No. 15, was adopted at the third session of the International Labour Conference in Geneva on 11

⁵²⁴ Minimum Age (Agriculture) Convention No. 10, ILOLEX, www.ilo.org.

⁵²⁵ For a list of ratifications, see www.ilo.org/ilolex/english/convdisp1.htm (visited 30/01/07)

November 1921.⁵²⁶ It came into force on 20 November 1922 after ratification by Estonia, India, Pakistan and Burma. The next states to ratify were Romania, Poland, Spain, Italy, Latvia, Denmark, Sweden and Finland. The Convention contains 14 Articles. The Convention has been ratified by 69 states.⁵²⁷ Convention No. 15 has been shelved, which means that it is no longer available for ratification.

The Convention contains 14 Articles. It has the same structure as Convention No. 5. In Article 1, the term ‘vessel’ is defined. It is exactly the same definition as in Convention No. 7, minimum age for employment at sea. According to Article 2, the minimum age for working as a trimmer or stoker is 18 years. Article 3 contains exceptions (a) for school-ships or training-ships provided that such work is approved and supervised by a public authority, (b) for employment on ships other than steamships, and (c) for young persons over 16 provided they are physically fit, on vessels in the coastal trade of India and Japan, and subject to regulations made after consultation with the most representative organisations of employers and workers in those countries. In Article 4, there is an exception from the 18 years minimum age when a trimmer or stoker “is required in a port where only young persons of less than 18 years of age are available”, so that persons under 18 may be employed. The minimum age in these cases is 16 years and the employer must engage two persons to do the work normally performed by one adult worker. To facilitate enforcement, Article 5 requires every shipmaster to keep a register of all persons under 18 years employed on board his vessel and seamen’s Articles of Agreement must contain a brief summary of the provisions of the Convention. The remaining articles (Articles 7-14) deal with formalities and are identical to the previous Conventions.

7.5.3 The Medical Examination of Young Persons (Sea) Convention No. 16

The Medical Examination of Young Persons (Sea) Convention No. 16 was adopted at the third session of the International Labour Conference in Geneva on 11 November 1921.⁵²⁸ It came into force on 20 November 1922, after ratification by Estonia and India. To date, Convention No. 16 has been ratified by 81 countries.⁵²⁹

⁵²⁶ Minimum Age (Trimmers and Stokers) Convention No. 15, ILOLEX, www.ilo.org.

⁵²⁷ For a list of ratifications, see www.ilo.org/ilolex/english/convdisp1.htm (visited 30/01/07).

⁵²⁸ Medical Examination of Young Persons (Sea) Convention No. 16, ILOLEX, www.ilo.org.

⁵²⁹ For a list of ratifications, see www.ilo.org/ilolex/english/convdisp1.htm (visited 30/01/07)

Article 1 defines ‘vessel’ in conformity with the other maritime ILO Conventions: It includes all ships and boats engaged in maritime navigation, whether publicly or privately owned, but it excludes ships of war.

Article 2 provides that all persons under the age of 18 must have a medical certificate attesting fitness for such work, signed by a doctor approved by the competent authority. Like Convention No. 7, minimum age at sea, vessels where only members of the same family are employed are excluded from the application of the Convention.

Article 3 provides that a new medical certificate must be produced every year. Article 4 provides that a person under the age of 18 years can embark without presenting the medical certificate ‘in urgent cases’, and that a medical examination must be conducted at the next port in which the vessel calls.

7.5.4 The Recommendations

7.5.4.1 The Night Work of Children and Young Persons (Agriculture) Recommendation

The Night Work of Children and Young Persons (Agriculture) Recommendation, No. 14, was adopted at the third Session of the International Labour Conference on 15 November 1921.⁵³⁰ The member states were recommended to take steps to regulate the employment of children under the age of 14 years in agricultural undertakings during the night. The children should be allowed a period of rest “compatible with their physical necessities” and consisting of not less than ten consecutive hours. Furthermore it was recommended that the member states take steps to regulate the employment of children between 14 and 18 years in agricultural undertakings during the night. The period of rest for these children should also be “compatible with their physical necessities” but consisting of not less than nine consecutive hours, that is, one hour less than the minimum night rest for children under 14 years.

7.5.4.2 The Vocational Education (Agriculture) Recommendation

The Vocational Education (Agriculture) Recommendation, No. 15, was adopted at the third Session of the International Labour Conference on 12 November 1921.⁵³¹ It recommended that the member states “endeavour to develop” vocational agricultural education. Such education should be equally available to agricultural wage-earners as to “other persons engaged in agriculture”.

⁵³⁰ Night Work of Children and Young Persons (Agriculture) Recommendation No.14, ILOLEX, www.ilo.org.

⁵³¹ Vocational Education (Agriculture) Recommendation, No. 15, ILOLEX, www.ilo.org.

Furthermore, it was recommended that the member states send reports to the Office regularly with “as full information as possible” concerning legislation and compliance, expenditure and other measures to expand agricultural education.

7.6 Preliminary conclusion. Industrialism, colonialism and minimum age

During the ILO’s first three years, five Minimum Age Conventions were adopted concerning employment in industry including night work, at sea, in agriculture and for trimmers and stokers on steamships. One Convention was adopted concerning medical examination for young persons at sea. Two Recommendations were adopted concerning night work and vocational training in agriculture. In other words, the legislative activity of the ILO was very high. National parliaments were not as active in ratifying the Conventions and, by 1930, only a few member states – between 10 and 21 per Convention – had ratified the Minimum Age Conventions. This must have been a disappointment for the ILO, considering its objective to make the minimum age for admission to work universal and considering the great flexibility allowed in the Conventions for fulfilling this objective.

Continuity and Conformity

During the first period of the minimum age campaign, formally there was great uniformity between the Conventions and Recommendations adopted. The model was the same with a minimum age of 14 years, a number of exceptions from the minimum age and an obligation to keep a register as the single enforcement mechanism. Nonetheless, the Minimum Age (Agriculture) Convention stands out in allowing, in principle, all work performed by children of all ages outside school hours and, sometimes also, during school hours, although it provided that the minimum age should be 14 years. The minimum age, it seems, was only fixed in order to make the Convention appear to conform with the other Conventions, although this was contested by the Office in the Blue Report. In contrast, the Minimum Age (Sea) Convention was almost completely similar to the Minimum Age (Industry) Convention although there were obvious differences in the working conditions at sea and in industry, which were more or less neglected in the debate. Perhaps both the (thus meaningless) specification of a minimum age in agriculture and the neglected differences between industrial work and employment at sea were part of a strategy to ‘construct’ uniformity in the Conventions.

Minimum age in the Colonies and other non-industrialised regions

The exceptions for India and Japan were the most debated subject during two of the first three years. The justifications for the far-reaching exceptions that were granted to India and Japan were the differences in their economy, stage of industrialisation, schooling facilities, administrative facilities and ‘tradition’ or ‘culture’, such as the Indian caste system, and, not least, the ‘early maturity’ of children in ‘tropical climates’. Enforcement was part of the problem, and I will return to the case of India in the paragraphs below when discussing enforcement.

A request from Greece for a similar exception was, however, rejected. One can only speculate that the unwillingness to grant exceptions for Greece was the fear of competitive advantages for the Greek mercantile fleet.

The debate about the conditions in India reveals typical components of colonialism and racism. Indian people were referred to as ‘backward’, even by the Indian government itself, as an excuse for the lack of compulsory school legislation and child protection. The Indian population had to be ‘educated’ if the minimum ages for employment and schooling were to be implemented. Perhaps arguments of this kind were more difficult to accept in respect of a European country.

Enforcement

The question of enforcement and supervision of the Conventions was largely neglected during the first three years. It was not much discussed in the Office’s reports, nor was it discussed at the Conference. The enforcement mechanisms of the Minimum Age Conventions were of two types: (1) an obligation on employers to keep a register of employed persons under a certain age⁵³² and (2) (a) reports decided by the Governing Body for presentation to the Conference as and when necessary or every ten years on the working of the Convention or (b) in respect of the colonies and protectorates, notification by the member states to the Office of the action taken in these areas.⁵³³ Consequently, the enforcement provisions were lax.

The obligation to keep a register of young workers was, of course, partly to facilitate the supervision of the Conventions by the national labour inspectorate but there were no provisions directly to that effect in the Conventions. In the discussions concerning India, it was particularly mentioned that the scope of the Conventions should be limited “to certain well-organised occupations, such as railways, mines and docks, where supervision by Government inspectors is very easy”.⁵³⁴ It was also pointed

⁵³² Conventions Nos. 5, 7 and 15. Conventions Nos. 6 and 10 had no such enforcement mechanism.

⁵³³ All of the minimum age conventions adopted had provisions to this effect.

⁵³⁴ Record 1919, p. 96.

out that, in the ‘Western’ industries of India, there were ‘Western’ labour inspections by ‘Western’ inspectors.

This indicates a pragmatic and/or liberal attitude within the ILO not to interfere in spheres where there was no institutional control, such as working in a family undertaking or in a business that traditionally was not under state supervision.

Minimum Age. Categories of work and differentiated age limits

The minimum age of 14 years was in principle never questioned. It seems to have been a consequence of the minimum age and educational legislation in the industrialised member states, as reported in the replies to the questionnaires of the International Labour Office. The minimum age was, however, made highly flexible by the introduction of a number of particular and general exceptions. There were particular exceptions for India and Japan, in the form of a lower minimum age of 12 years and a limited scope of application. In the colonies, protectorates, etc., the minimum age could be modified or not applied at all, depending on ‘local conditions’. In this way there was a differentiation of the minimum age limit according to regions and local conditions. I will return to that below.

Apart from the separate regulation of the minimum age for employment in different economic sectors such as industry, sea and agriculture, and in different regions, the minimum age differed according to the harmfulness or harmlessness of the work for children. Night work and working as trimmers and stokers were all regarded as harmful for children – “hard classes of labour” – and there was a higher minimum age of 18 years. In India and Japan the minimum ages for such harmful work were lower, namely, 14 and 16 years. “Light work” was introduced in the Minimum Age (Agriculture) Convention.

The general exceptions from the minimum age limit concerned employment by a parent or family member, work as vocational training, work that required workers around the clock because of “the nature of the production processes” (night work) or work that ‘needed’ workers when only persons under the minimum age were ‘available’ (trimmers and stokers).

School and minimum age

When the Conference debated the Minimum Age Conventions, it was implied that the minimum age was decided in relation to children’s development. In reality, however, the minimum age was mostly discussed in terms of at what age children left school. In the Blue Reports, it appears that 14 years was the minimum age for employment according to national law – or proposed legislation – in the industrialised member states. In the Reports, the minimum age is only discussed in terms of the school-leaving age and national compulsory school legislation. Generally, there was a great

fear among the debaters that the Minimum Age Conventions would cause a gap between the school-leaving age and the age of employment. ‘Idle children’ were seen more as a threat against society than as a threat to themselves. It is noteworthy how the debate focused on the 14 years school-leaving age, as it can be seriously doubted whether the school-leaving age really was as high as 14 years even in industrialised Europe at the beginning of the 1920s.⁵³⁵

Family employment and minimum age

In the evaluation of the effects of work on children’s development, work within the family circle was considered harmless because, as one of the delegates said, ‘the family sentiment’ would protect the child from being exploited. In this way, protective measures on the part of the state were regarded as unnecessary. It was not mentioned that the enforcement of minimum age provisions in family businesses involved major difficulties – both because of the idea of the family integrity and because of administrative difficulties.

Something that was completely missing in the Conference documentation was the fact that working children often made substantial contributions to the family economy. In a reply from the government of Argentina it was, however, noted that in Argentina, there was an exemption from the minimum age regulations in case the child’s income contributed to the support of the family. This was not commented on either by the Office or in the Conference debate. In my view, this supports the fact that the ILO knew that the economic contributions of working children might be crucial to the family economy.

Childhood negotiated

The protection of children was a fundamental objective for the ILO and, in principle, the member states and the delegates of the ILO shared the view that children should be protected from exploitation. Nevertheless, in practice, child protection often had to give way to other interests. Many of the justifications that appeared in the discussions about the Minimum Age Conventions concerned various long-term interests rather than the immediate protection and best interests of children. In the debate, the Conventions were often justified by the argument that minimum age legislation was necessary for “the future of nations”. It was argued that, when children were exploited as child labour, the future workforce could not be safeguarded. Governments, workers and many employers supported this justification but for different reasons.

Governments feared that an uneducated population would lead to competitive disadvantages because of the lack of healthy and skilled

⁵³⁵ *World Survey of Education, II Primary Education*, UNESCO 1958.

workers. Children should therefore go to school. In this way, school (and the minimum age legislation) was not primarily for the best interests of the child but for the best interest of the (future of the) nation. There were also short-term objectives involved here but still not primarily for the benefit of children. Many of the delegates discussed the ‘dangers’ of ‘idle children’, namely, children who neither worked nor went to school as a consequence of the ‘gap’ described above. These children were considered more as a threat to society than as a threat to their own well-being.

Similarly, trade unions promoting the interests of their members, namely, adult male workers and ‘breadwinners’, wished to minimise competition from cheap and docile child labourers, keeping the number of surplus workers down in times of unemployment and thereby keeping salaries at the highest possible level.

The employers had the same interests as governments, namely, a competitive work force, which is why many of them also wanted to see children at school rather than at work. However, they also ‘needed’ to employ children under the minimum age in certain cases when it was convenient and they therefore demanded exceptions from the minimum age limits for certain industries and certain cases. These demands were accepted by the ILO.

In this way, it seems that, although there was a consensus about the need to protect children, the interest in minimum age legislation that employers, trade unions and governments had was also for their own benefit and not only, or even primarily, for the benefit of child protection. On the contrary, the justifications were often completely disconnected from the question of child protection. The speech of the British shipowners’ delegate Cuthbert Laws is a typical example of this sort of rhetoric shift. He argued that there should be exceptions from the minimum age for trimmers and stokers. He started the argumentation, however, by questioning the age-fixing in the minimum age campaign from a perspective of ‘the best interests of the child’ by acknowledging the individual variations in children’s maturity and thereby attending to the needs of the individual child. This approach was, however, according to Cuthbert Laws, relevant only under ‘normal circumstances’. When the ‘normal circumstances’ came into conflict with ‘the shortage of labour’, it could, he claimed, ‘become very important to be able to resort to the younger’. This certainly had nothing to do with the development and maturity of the individual child.

Examples of justification for the lack or priority given to child protection can be found in the Night Work of Young Persons (Industry) Convention and the Minimum Age (Trimmers and Stokers) Convention. The Night Work of Young Persons (Industry) Convention allows the employment of persons under the minimum age on industrial work during the night if it by “the nature of the processes, is required to be carried out continuously day and night”. The Minimum Age (Trimmers and Stokers) Convention allows the

employment of persons under the minimum age “when a trimmer or stoker is required in a port where young persons of less than 18 years are only available”. In this way, child protection gave way to the requirements of the employers and, probably, governments that were anxious to support industry in their countries.

Another example is the far-reaching exemptions given to India and Japan in the Minimum Age (Industry) Convention, the Night Work of Young Persons (Industry) Convention and the Minimum Age (Trimmers and Stokers) Convention. In this case, child protection was in opposition to the lack of economic and administrative resources of these nations, and was found to be less important. An example of the negotiability of child protection taken to another level is the exception for India and Japan in the Minimum Age (Trimmers and Stokers) Convention. Persons between 16 and 18 years could be employed in those countries under certain conditions. This should be regulated in national regulations “made after consultations with the most representative organisations of employers and workers in those countries”. What competence did these organisations have about children or to represent them? The only explanation is that they were given the right to negotiate how much child protection could be ‘afforded’.

In a way, the exemption for employment of a child by the family in the Minimum Age (Industry) Convention, the Night Work of Young Persons (Industry) Convention, the Minimum Age (Sea) Convention and the Minimum Age (Agriculture) Convention is also an example of the same kind of lack of priority given to child protection. The presumption that children are part of a family unit and that a family protects its children from exploitation makes both the child and the child’s subordinate position less significant. In this way, the interests of superior family members could easily outweigh the protection of the child.

Chapter 8. Minimum Age for Non-Industrial Employment

After the intensive first three years of the minimum age campaign, it was not until 1932, over ten years later, that a new Minimum Age Convention was adopted by the ILO. It was the Minimum Age (Non-Industrial Employment) Convention No. 33 with its accompanying Minimum Age (Non-Industrial Employment) Recommendation No. 41. In principle, the Minimum Age (Non-Industrial Employment) Convention applied to occupations that were not covered by the earlier Conventions (covering industry, the sea and agriculture).

Non-industrial employment was a new field for the ILO and, except for a few occupations such as shops and offices, public entertainment, street-trading such as selling newspapers and shining shoes and employment in bars and restaurants, it was not clear which occupations might be included. Working conditions in the non-industrial sector were different from those in industry. Not least, employment in non-industrial occupations more difficult to control.

This was, however, no reason to leave these occupations unregulated.⁵³⁶ It was the ILO's intention to extend the range of the Minimum Age Conventions by according the same protection to all children. The Governing Body of the ILO regarded the lack of a Convention for this sector as a serious gap in the international legislation that ought to be filled urgently, not least because many of the non-industrial occupations were regarded as highly dangerous for children and young persons.⁵³⁷ In this way the 'circle of international safeguards' concerning children would be completed.⁵³⁸

According to the Office, there were two possible directions to take when regulating the minimum age in non-industrial employment. One direction was conformity, namely, to 'copy and paste' the previous Conventions. This was clearly in line with the ILO policy between 1919 and 1921 to grant equal protection to children regardless of occupation.

⁵³⁶ Grey Report 1931, pp. 5-8.

⁵³⁷ *Op. Cit.*, p. 6.

⁵³⁸ Blue Report 1932, pp.5-6.

Another possible direction was to find new solutions based on the best national legislation. National legislation, however, was heterogeneous both in form and scope. The lowest minimum age in national law for non-industrial occupations was 6 years for working in public entertainments in South Australia, and the highest was 21 years for working in café-concerts and ‘acrobatic and like entertainment when employer not parent’, and where intoxicants were sold, all in Brazil, and for girls serving intoxicants in bars in Norway.⁵³⁹

As discussed in Chapter 7, the lull in the minimum age campaign was partly a consequence of the very high level of activity surrounding the minimum age during the early years of the ILO. Activity was equally high in the ILO’s other fields of action. Accordingly, Conventions had been adopted concerning working conditions, employment, unemployment, minimum wage, industrial hygiene, factory inspection, industrial accidents and social insurance. In all, the ILO adopted 28 labour Conventions in the period 1919-1929. As a result, however, the member states did not ratify the adopted Conventions as quickly as hoped.

The Chairman of the Governing Body, Arthur Fontaine, admitted in a review of the first ten years of the ILO that the number of Conventions adopted annually during the early years was too great and that the national Parliaments had difficulty in keeping pace.⁵⁴⁰ Twenty of the member states had ratified between 12 and 26 Conventions each. All of them were European except India, which had ratified 12 Conventions, and Cuba which had ratified 17. Fontaine also pointed out that 14 countries in Latin America, 2 countries in Africa and Persia, Siam, Albania and Lithuania, had not ratified any of the adopted Conventions. China and New Zealand had ratified one Convention each.⁵⁴¹ In respect of the member states, Fontaine wrote, quite significantly:

With regard to the majority of the remaining countries, much as we should welcome their adherence to the principles of international labour legislation, we must admit that, in the present state of their industrial development, the question is not yet one of great importance to them.⁵⁴²

His statement underlines that the ILO Conventions were adopted – at least at the first stage – exclusively with the industrialised nations in mind. This is further confirmed in the response of the Director General of the ILO, Albert Thomas, in the annual Director’s Report to the Conference in 1931,⁵⁴³ to a

⁵³⁹ Grey Report 1931, pp. 24-39, *Passim*.

⁵⁴⁰ ILO 1919-1929, p. 12.

⁵⁴¹ *Ibid.*

⁵⁴² *Ibid.*

⁵⁴³ Director’s Report 1931.

criticism from British employers. Their criticism was that it was a disadvantage for a country like Great Britain “to continue to set up and maintain standards of living and public expenditure regardless of those of its competitors without paying the price of unemployment...”.⁵⁴⁴ Thomas, wrote:

For the last ten years the International Labour Office has never forgotten that among other objects the Permanent Organisation was intended to protect and help the more socially advanced countries against the unfair competition of backwards countries.⁵⁴⁵

Returning to the criticism from British employers, it was much the result of concerns caused by the Great Depression that started in 1929. The Depression deeply affected the work of the ILO and the quotations above are in a way an illustration of that. The economic depression deepened the conflict between workers and employers as well as between member states at different levels of industrialisation. The Depression had devastating consequences for all groups in society and particularly for the working class because of mass unemployment and a deterioration in living and working conditions. As usual, children were the most vulnerable group. In the Director’s Report this was noticed in the context of the relationship between the economic and social aspects of international labour legislation. The report established that there were “cases in which the economic aspect must be sacrificed, and others in which the social must give way.”⁵⁴⁶ In this connection, the Director General referred to Margaret Bondfield – who had previously pointed out that the protection of women and children was at the bottom line of humanitarian measures that could never be sacrificed for economy no matter how difficult – when he stated:

In the case of the weaker workers, of women and children, the necessity for what Miss Bondfield referred to as ‘the sanitary cordon’ has never been called in question within the Organisation. The stringency of economic laws has never been advanced as an obstacle to imperative humanitarian measures. For them no sacrifice has seemed too great.⁵⁴⁷

Thus, in the ‘trade-off’ between economy and humanity, the protection of women and children should never be compromised. By contrast, in questions that did not involve children, the first ten years of the ILO were described as a fight for the ideas of social justice “by means of compromises between the defence of human personality and the desire for industrial development”. It was also admitted that “progress has been easier and more rapid during times

⁵⁴⁴ *Op. Cit.*, p. 3.

⁵⁴⁵ *Op. Cit.*, p. 4.

⁵⁴⁶ *Op. Cit.*, p. 8.

⁵⁴⁷ *Ibid.*

of prosperity and slower in periods of depression.” This was confirmed by the figures for ratification.⁵⁴⁸ Looking back at the preliminary conclusions of the foregoing chapters of the dissertation, however, the protection of children was by no means excluded from the “compromises between the defence of human personality and the desire for industrial development”.

In his Report, Director General Thomas proposed a programme of “direct action by the International Labour Organisation against unemployment” to meet the effects of the Depression.⁵⁴⁹ The components were primarily “the placing in employment” and migration, to make supply and demand meet by placing the workers where there were jobs, including in other countries, unemployment insurance and public works (public authorities ‘created’ work by starting to build roads, nationalising industries, etc.).⁵⁵⁰

Whereas radical measures to diminish the workforce, such as raising the minimum age for employment, were not directly discussed at this stage, the Depression doubtlessly influenced the Minimum Age (Non-Industrial Employment) Convention. During the Conference, some of the speakers would mention the connection between minimum age regulation and measures to combat the Depression. Moreover, it was mentioned in the Director’s Report that the Depression might have had small beneficial effects for children in the form of ‘some progress’ in compulsory school attendance and in general or vocational supplementary education.⁵⁵¹

8.1 The first discussion in 1931

For reasons described in Chapters 4 and 5, and mainly the threat of social upheaval, the first Minimum Age Conventions were adopted after a single-discussion procedure: discussing and adopting the Conventions at one session of the Conference. During the 1920s, a number of constitutional reforms were discussed and the procedure for adopting Conventions and Recommendation was amended. By that reform a double-discussion procedure was introduced to prevent the adoption of badly or too quickly drafted texts.⁵⁵² There were, therefore, two reports from the Office to the Conference concerning the Minimum Age (Non-Industrial Employment) Convention. The first report was preliminary and usually called ‘the Grey Report’ because of the grey colour of its cover. The Grey Report contained an inventory of the problem in the form of a survey of national legislation,

⁵⁴⁸ *Ibid.*

⁵⁴⁹ *Op. Cit.*, p. 32.

⁵⁵⁰ *Op. Cit.*, pp. 33 and 36-43.

⁵⁵¹ *Op. Cit.*, p. 9.

⁵⁵² Article 39, Standing Orders, ILO Constitution. See *supra*, Section 4.3.2 and Valticos 1969, pp. 201-237.

which was analysed with a view to drafting a Convention or a Recommendation. The second report to the following year's Conference was called 'the Blue Report' (as previously). The Blue Report contained the replies of the governments to a questionnaire. The questionnaire, in turn, had been based on the results in the Grey Report and the following decisions of the Conference at the first discussion, and the Office's conclusions in the form of the proposed text of a Draft Convention.

8.1.1 The Grey Report

The title of the Grey Report to the Conference was *The Age of Admission of Children to Employment in Non-Industrial Occupations*.⁵⁵³ It contained three parts: Part I, Practice regarding admission; Part II, Summary of Legislation; and Part III, Conclusions.

Part I dealt with the special aspects of regulating the minimum age in non-industrial occupations and reviewed the legal solutions adopted by the member states. The regulation of a number of special occupations was examined – employment in commerce, shops and offices, in public entertainment, in street-trading, in bars, etc., and in “miscellaneous occupations”.⁵⁵⁴

Part II was a survey of national legislation in the member states. It contained tables of the minimum ages in various non-industrial occupations as well as the general minimum age in the member states.

In Part III Conclusions, the Office expressed its views on how to progress with the Convention. It proposed that the Conference adopt a questionnaire for the governments of the member states based on the conclusions of the Grey Report.

As mentioned in the introduction to this Chapter, the Office considered two possible solutions for regulating the minimum age in non-industrial occupations. One was to base a Convention exclusively on the best national legislation. Another solution was to consider also the Minimum Age Conventions already adopted. Ever since the beginning of the ILO minimum age campaign, the policy – at least in theory – had been to grant the same protection to workers in all kinds of occupation. The Governing Body confirmed this view by emphasising that the minimum age in non-industrial occupations should not be seen “as an isolated problem, but simply continuing the work already undertaken by the Organisation during the past ten years”.⁵⁵⁵

Many non-industrial occupations, however, were considered less suitable for regulation in conformity with, for example, employment in industry. In

⁵⁵³ Grey Report 1931.

⁵⁵⁴ *Op. Cit.*, Table of Content and pp. 6-7.

⁵⁵⁵ *Op. Cit.*, p. 91.

respect of street-trading, as well as a number of other non-industrial occupations, normal enforcement mechanisms such as a labour inspectorate did not work. This pointed towards a solution based on best national practice. Hereby, the Office saw Britain as a forerunner in industrialism as well as in introducing protective legislation for child workers, and stated:

Great Britain led the way and still remains in the front rank but many have followed her example. Child labour was, in fact, one of the first evils which arose from industrialisation, and one which required the most energetic remedies.⁵⁵⁶

Good examples and references could be found in the American States' regulations also: according to the Office, the state laws were 'some of the most complete forms of legislation existing'.⁵⁵⁷

Nonetheless, at the end of the day, the Office came to favour a solution of a Convention based on the previous Minimum Age Conventions, but with particular consideration of certain types of work as street trading, public entertainment and 'light work'. The choice was motivated in terms of the importance of continuity in the minimum age campaign:

...it would imply a desire to continue the work begun in 1919 for the protection of children from the dangers of premature employment on work beyond their strength, and a wish to ensure that the regulations already adopted, with any which may be adopted in the future, should form a single whole which should take into account certain principles common to all child labour legislation irrespective of the nature of the employment, since it will always be necessary to protect children from undue strain, and avoid compromising their future by premature work.⁵⁵⁸

Therefore, it was argued, the objective should be to create 'a single whole' with equal protection of all children.

In this connection, the member states were reminded of the ILO's objective laid down in the preamble to the ILO Constitution: "the abolition of child labour and the imposition of such limits on the labour of young persons as shall permit the continuation of their education and assure their proper physical development."⁵⁵⁹

It is noteworthy in the quotation that the justification for minimum age regulation seems to focus almost exclusively on safeguarding the future of the child. It follows directly from the wording 'development' and 'continuation'. It focuses on the child's healthy development, and continued

⁵⁵⁶ *Op. Cit.*, p. 5.

⁵⁵⁷ *Op. Cit.*, p. 6.

⁵⁵⁸ *Op. Cit.*, p. 91.

⁵⁵⁹ *Op. Cit.*, p.5. Versailles Peace Treaty discussed above in Chapter 4.3.

education, while not paying attention to the present situation of the child. As I will show in the following Chapters this kind of justification appears quite frequently in the Conference material.

8.1.1.1 National legislation

In the survey of national legislation – Part II of the Grey Report – the minimum age legislation concerning non-industrial occupations in 36 member states was reviewed. As always there was a preponderance of European states: 24 European; 8 South American; Canada; South Africa; and Australia.⁵⁶⁰ Appended to the report was an outline of the United States' laws and a specimen of British bylaws.

The survey showed that the legislation was heterogeneous both in form and content and, in some member states, there was no regulation at all. Most of the member states had, however, some form of regulation from which a common minimum standard could be discerned.⁵⁶¹

The most common way of regulating the employment of children in non-industrial occupations was by state-wide laws. In contrast, bylaws were used almost exclusively in the Great Britain. In the case of bylaws, all regulation and supervision was left to the local authorities, which were principally the school authorities.⁵⁶²

In the case of state-wide laws, different methods were used in the member states. On a general level, however, the regulation was often constructed as a prohibition of the employment of children below a minimum age, with permission for limited employment of children above a certain age, and a prohibition of employment of children aged 14 to 16 or 14 to 18 in special occupations considered to be dangerous such as street-trading. It was a common practice to require that certain conditions in regard to physical fitness and the attainment of a definite standard of education were fulfilled. In a few countries, it had to be proved that the poverty of the parents made the employment of the child inevitable.⁵⁶³

There were generally exceptions from the minimum age provisions in the state-wide laws. The exceptions concerned, for example, working in technical schools, 'light work', for children from 11 or 12 years if compulsory school was completed, casual employment and family undertakings. The age limit in those cases was 12 years, on condition that educational and medical tests were passed, and 9 years for children who were able to read.⁵⁶⁴

Thus, there were often three different age limits: one absolute under which age no child could be employed; a second limit when 'light work' was

⁵⁶⁰ *Op. Cit.*, pp. 43-91 and pp. 105 ff.

⁵⁶¹ *Op. Cit.*, p. 7.

⁵⁶² *Ibid.*

⁵⁶³ *Ibid.*

⁵⁶⁴ *Op. Cit.*, Table I, pp. 16-17.

permitted during restricted hours; and a third and higher age limit for special occupations such as street-trading. It was usual that the employment was conditional on a certificate concerning education and medical fitness.⁵⁶⁵

In the Grey Report, the national legislation was discussed in terms of 'general employment' and 'special employments'. The 'general employment' concerned countries that had a general minimum age limit for employment. The 'special employments' were divided into sub-sections for commerce, shops and offices, public entertainments, street-trading, bars, etc. and 'miscellaneous occupations'. Below I will comment on two of the 'special employments' that I find particularly relevant for the purposes of the dissertation. They are street-trading and public entertainment. Both in street-trading and public entertainment, child protection competes very openly with the lack of institutional capacity to enforce regulations and with 'the interests of art'. Furthermore, 'dangerous work' and its effect on children is addressed, particularly the 'moral danger' which, by pointing out what is 'bad' for children, illustrates the concept of the 'good' childhood.

Street trading. 'A school of evil'

In industrialised nations, street-trading had been the object of attention by public authorities since the beginning of the 19th century at least and it was generally considered as a 'school of evil for the young of both sexes', although especially evil for girls. Street-trading was said to be of considerable risk to the 'morals' of children.⁵⁶⁶ The way in which street-life affected the 'morals' of children was not described, but the fact that it was considered especially dangerous for girls indicates that it was particularly sexual morals that were believed to be threatened in the streets.

Street-trading was regulated by law in most of the member states. In states with a general minimum age limit for employment, a higher age limit was specified for street-trading. In states with no general regulation of non-industrial employment there were special regulations. In a majority of member states, the minimum age for street-trading was two years above the general minimum age. The average minimum age in the national laws for street-trading was 14 years for boys and 16 years or prohibited altogether for girls. It turned out in the report that the great problem of regulating street-trading in the member states was difficulties with enforcement. A common solution was a combination of licences and special badges that children working in the streets had to wear.⁵⁶⁷

If a child was found street-trading illegally, who was to be held responsible? This question was also discussed briefly in the Grey Report. It

⁵⁶⁵ *Op. Cit.*, p. 11.

⁵⁶⁶ *Op. Cit.*, pp.28 and 98.

⁵⁶⁷ *Op. Cit.*, pp. 28-32 and p. 98.

was concluded that a distinction had to be made between the case where a child was employed by somebody – a parent or someone else – and the case where a child worked on his or her own account and for his or her own profit. In the first case, the employer should be prosecuted. In the second case, measures should be directed towards the parent or the child. Reference was made here to the British system, where the child street-trader was seen as more a case for ‘welfare’ measures than for strictly punitive measures.⁵⁶⁸

Public entertainment

It was the improved living conditions for the working class at the beginning of the 20th century that paved the way for the breakthrough of the mass entertainment industry. There was an explosive development of the mass media: newspapers; films; and radio. When the average worker had a little more money and spare time, he or she could afford to spend an evening out at the cinema or at some other public entertainment. By 1931, in spite of – or as a consequence of – the Depression, the entertainment industry employed a vast number of people and many of them were children.⁵⁶⁹

The survey in the Grey Report showed that two kinds of occupation were mainly subject to regulation in national legislation. They were ‘acrobatic or other dangerous exhibitions’, and work on the stage or in film studios.⁵⁷⁰ The Office wrote that it was a strange contradiction of fact that national law and practice combined severity with indulgence concerning these occupations. The conflict between the dangers of working in public entertainment and ‘public taste’ was described as follows:

Its dangers arise from the prejudicial effect the work may have on the nervous system and imagination of children, the long hours, the unsatisfactory accommodation often found in theatres, and the moral risks involved. On the other hand, public taste, and the performance of plays in which children take a leading part in the cast, might make it difficult to prohibit such work, or even to impose strict conditions. The cinematographic industry affords a striking example of this. The risks inseparable from employment in film studios are well known. Nevertheless it frequently happens that the production of a successful film necessitates the employment of young children under the glare of projectors.⁵⁷¹

Many children worked in the film industry: the most well-known child actor is perhaps Shirley Temple. Child actors were, however, often exploited economically and in other ways. The majority of the children employed in the film industry performed less ‘glamorous’ work. Because the film

⁵⁶⁸ *Op. Cit.*, p. 31.

⁵⁶⁹ About the development of a mass culture with newspapers, films and radio, see Hobsbawm 1994, pp. 194-97.

⁵⁷⁰ Grey Report 1931, p. 99.

⁵⁷¹ *Op. Cit.*, p. 96.

industry was so new, the survey did not make a conclusion whether it was covered or not by the existing regulations in the member states. If employment in the film industry was regulated at all, there were many exceptions, provided that the employment of a child was ‘in the interests of art’.⁵⁷² Some member states had adopted a regulation which prohibited employment of children below 9 years of age, or, in some cases only, below 3 years of age.⁵⁷³

The Office wrote that, without the participation of children, the proper performances of many classical and popular operas and pieces would be impossible.⁵⁷⁴ Reference was made to a statement by the Director of the Opéra-Comique in Paris, in connection to a debate in *l’Assemblée Générale*, warning about the ‘disastrous effects’ of raising the minimum age for employment in France. His statement was quoted in the report:

...since the foundations of the repertoire of the Opéra Comique rest on pieces like Carmen, Manon, Mignon, etc., whose success is world-wide, and in the performance of which the inclusion of children ten to 12 years old is essential for the choruses written by the authors. It is difficult to see how such children could be replaced, as at about fifteen years boys’ voices break and they become unemployable in operatic pieces.⁵⁷⁵

Thus, even though the Office was sensitive to the harmful character of work in public entertainment, it was also sensitive to the alleged needs of theatre directors and of the audiences. In the same way, the Office pointed at the need for vocational training of ‘young children destined for the stage’ in the Grey Report.⁵⁷⁶

Work in ‘dangerous performances’ was viewed as a kind of subsection of public entertainment. It included “acrobatic and contortionist feats, equestrian performances in circuses, wild animal shows and other performances dangerous to health, life or limb”. According to the survey, ‘dangerous performances’ were regulated in all member states. A usual minimum age was 16 years, even though the minimum age in France and Brazil was much lower, namely, 12 years.⁵⁷⁷

As a principle, the Office was not in favour of granting exceptions, even ‘in the interests of art and science’, from the minimum age provisions for employment in public entertainment. It was suspected, however, that governments might be unwilling to accept this standpoint. It would therefore

⁵⁷² *Op. Cit.*, p. 96.

⁵⁷³ *Op. Cit.*, p. 23-4.

⁵⁷⁴ *Op. Cit.*, p. 21.

⁵⁷⁵ *Ibid.*

⁵⁷⁶ *Op. Cit.*, pp. 21-22.

⁵⁷⁷ *Op. Cit.*, p. 22-23.

be necessary to discuss ways of ensuring whether ‘the interests of art’ were really at stake or not and to ensure that the “obvious interests of children and their health were not sacrificed to those of an undertaking of which the artistic nature may be less obvious.”⁵⁷⁸ There was no discussion of criteria or assessment of ‘artistic value’ in the material, and one can only wonder what ‘artistic values’ were intended to justify the employment of underage children

I would also have expected to find in the Conference material some discussion concerning a number of questions such as family employment in public entertainment, artistic work as a lifestyle of the family, the learning of the trade and the necessity of early vocational training to become a ballet dancer or a circus artist, all of which could easily have been put forward in defence of various exceptions. Apart from the mentioning of training within the opera, these issues were overlooked.

The Office’s conclusions

Based on the survey of national legislation, the Office concluded that there would be sufficient support for a Draft Convention among the member states to continue the drafting process. It was therefore suggested that a questionnaire be sent to the governments of the member states in order to collect their opinions.⁵⁷⁹

As for the scope of the Convention, the Office suggested that, regardless of what form might be preferred, some occupations should clearly be included. These were employment in commercial undertakings, in offices, in sanatoria and other nursing occupations, itinerant occupations and employment in public entertainment.⁵⁸⁰ A general minimum age of 14 years was suggested. The reasons were conformity with previous Conventions, the fact that the physical requirements of the children and the dangers of the non-industrial occupations were equal to those in industry, and the importance of attending school until the age of 14 years.⁵⁸¹ It was emphasised that education was of particular importance to the working classes:

Finally, the Conventions already adopted, and the majority of national laws, require, or tend to require, school attendance up to 14 years, a requirement of the utmost value for the protection of the working classes and society, and which an international regulation for the protection of workers should not even appear to weaken.⁵⁸²

⁵⁷⁸ *Op. Cit.*, p. 96.

⁵⁷⁹ *Op. Cit.*, pp. 102-3.

⁵⁸⁰ *Op. Cit.*, pp. 92-93.

⁵⁸¹ *Op. Cit.*, p. 94.

⁵⁸² *Ibid.*

As for the exceptions from the minimum age of 14 years, the Office suggested that 'light work' should be allowed. Particular note was taken of the fact that many of the occupations which 'seem easy for children' in reality exposed them to dangerous physical and moral risks. An example given was the delivery of messages or parcels to people's homes.⁵⁸³

In respect of family employment, the Office wrote that exceptions might be called for in conformity with the Minimum Age Conventions for industry and the sea but a cautious attitude was recommended. There was 'considerable danger of abuse' also in family employment, and it was stressed that children employed by their parents or persons '*in loco parentis*' should be granted the same protection as children employed by strangers.⁵⁸⁴ My own comment here is that the particular mention of persons '*in loco parentis*' implies that the family was defined more widely than the nuclear family.

An exception for work in public entertainment, in line with what has been accounted for above, was recommended.

Finally, exceptions for 'Asiatic countries' were considered. The Office referred to difficulties in terms of the social conditions and customs in 'Asiatic countries':

...whose social conditions are such as to impede the immediate fixing of the same minimum age as for Western States. In certain Eastern countries, established custom and public approval often sanction the employment of very young children in non-industrial occupations, sometimes as young as eight years; and it is not to be expected that an advance of, say, six years, in the age could be made without profound public opposition and prejudicing the adoption of a reasonable measure of reform.⁵⁸⁵

It was therefore recommended that a lower age limit should be fixed for these countries in order to enable them to take a first step and in the hope that "public opinion and the development of school attendance laws" would make possible the second step within the near future.⁵⁸⁶

This shows once again that the minimum age relied heavily on school laws. Accordingly, school attendance was discussed under a separate heading in the Office's conclusions in the report. It was emphasised that, in the event of exceptions to the minimum age for non-industrial employment, school attendance had to be safeguarded and children protected from overwork. This could not be guaranteed only by prohibiting work during school hours. The child must attend school:

⁵⁸³ Grey Report 1931 p. 95.

⁵⁸⁴ *Ibid.*

⁵⁸⁵ Grey Report 1931, p. 96.

⁵⁸⁶ *Op. Cit.*, p. 97.

in such a condition as will enable him [*sic*] to profit from the arrangements made for his education'. Unrestricted employment in addition to school makes this difficult and may seriously compromise physical and mental development.⁵⁸⁷

Therefore, it was recommended that the hours of employment should be regulated in the Convention, in order that children could have sufficient rest to “assure the progress of their education”.⁵⁸⁸

8.1.2 The Plenary Session of the Conference in 1931

The Committee on the age of admission of children to employment in non-industrial occupations

In accordance with the ILO's Standing Orders the Conference had to consider whether the question of a minimum age for employment in non-industrial occupations was suitable for international regulation during the first discussion. If the answer was ‘Yes’, it also had to consider if it should be in the form of a Convention or a Recommendation. The Grey Report was the basis for the discussion and as usual, the question was submitted to a particular Committee appointed by the Conference for a first discussion and report.

The Committee on the age of admission of children to employment in non-industrial occupations⁵⁸⁹ had 56 representatives: 28 in the government group; 14 in the workers' group; and 14 in the employers' group.⁵⁹⁰ In spite of the provision in the ILO Constitution that women should be represented when “questions especially affecting women” were considered by the Conference – and the protection of children was doubtlessly considered to be such a question – there were only five female representatives out of the 56 members of the Committee. The women representatives were: Norwegian government delegate Betzy Kjelsberg; Agnes Möhrke, adviser to the German workers' delegate to the Conference and representative of the Women Clerks' and Shop Assistants' Association; British government adviser Hilda Martindale, Deputy Chief Inspector of Factories; Swiss government adviser and Reporter of the Committee Dora Schmidt; and Yugoslavian government adviser Milena Atanatzkovitch. Furthermore, five of the substitutes to the Committee were women.⁵⁹¹ The geographic distribution of the representatives was: 2 delegates from South Africa, 8 from China, India and

⁵⁸⁷ *Ibid.*

⁵⁸⁸ Grey Report 1931, pp. 97-98.

⁵⁸⁹ Report of the Committee on the age of admission of children to non-industrial occupations, Record 1931, pp. 648-665.

⁵⁹⁰ Record 1931, p. LVI-LVIII.

⁵⁹¹ List of Members of Delegations, Record 1931, Part I, p. XXIX ff.

Japan; 2 from Canada; 42 from Europe; and 2 from South America.⁵⁹² There was thus the usual overwhelming majority of European men.

The questions dealt with in the Committee were:

- (1) the form of regulations to be adopted;
- (2) scope;
- (3) minimum age of admission;
- (4) safeguarding school attendance;
- (5) light work;
- (6) exceptions and special regulations;
- (7) measures of application; and
- (8) various provisions.⁵⁹³

The various provisions were:

- (a) a proposal to insert a question of limiting the hours of work for young persons under 18 years in non-industrial employment;
- (b) a proposal to ask governments for their views concerning modifications for “countries in which climatic conditions or other special circumstances” make the conditions substantially different;
- (c) a proposal to ask governments whether “notorious drunkards” or persons convicted of crime should be forbidden to employ children in non-industrial occupations; and
- (d) a proposal to limit the employment of children in churches as choirboys and acolytes.⁵⁹⁴

There was total agreement in the Committee that the minimum age for employment in non-industrial occupations should be considered by the Conference but that the question was complex. Opinions of the Committee were divided when considering scope and the form.⁵⁹⁵ It was therefore considered too early to decide whether the regulation should take the form of a Convention or a Recommendation.⁵⁹⁶ Nonetheless, the Committee recommended the Conference to go further with the Questionnaire in accordance with the Office’s proposals.

The Committee discussed general exceptions for domestic work, family employment and technical schools. In respect of domestic work, the Committee wished to consult the governments on whether domestic work could be excluded completely from the Convention because of difficulties in introducing provisions “which would require for their effective performance

⁵⁹² Record 1931, Part I, p. LVI-LVIII.

⁵⁹³ *Op.Cit.*, p. 649.

⁵⁹⁴ *Op.Cit.*, pp. 659-60.

⁵⁹⁵ *Ibid.*

⁵⁹⁶ Record 1931, pp. 434-435.

an official visit of inspection in private houses.⁵⁹⁷ Instead, the protection of girls in domestic work – the Committee discussed girls here – would have to rely on schoolteachers and school authorities.⁵⁹⁸ On the other hand, it was pointed out that children in domestic service needed just as much protection as other children and that it would be unfair to exclude these children from protection.⁵⁹⁹

As regards family employment, the discussions in the Committee concerned whether, in conformity with some of the earlier Conventions, exceptions should be made.⁶⁰⁰ Unpaid domestic work in the child's own household was in any event not intended to fall under the Convention. The workers' group of the Committee was against the exclusion of family undertakings on the ground that:

children are frequently exploited to a greater extent by their own parents than by other employers, and that everything should be done to obviate such exploitation.⁶⁰¹

There was no evidence provided in the report either on the beneficial or the exploitative effects of family employment.

The Committee recommended that the governments should be consulted concerning the methods of application. In that connection, they should consider:

- (a) an obligation for employers to keep lists of children employed;
- (b) licences and badges to be worn by children working outdoors;
- (c) special licences for work in public entertainments; and
- (d) penalties.⁶⁰²

In comparison with the previous Conventions that imposed an obligation on employers to keep a register of young workers, these proposals were quite far-reaching.

The Plenary Session of the Conference

At the plenary session of the Conference it was decided to place the item on minimum age in non-industrial occupations on the agenda of the 1932 Conference and to go ahead with the proposed questionnaire to member states' governments.

⁵⁹⁷ *Op. Cit.*, p. 656.

⁵⁹⁸ *Ibid.*

⁵⁹⁹ *Ibid.*

⁶⁰⁰ *Ibid.*

⁶⁰¹ *Ibid.*

⁶⁰² Record 1931, p. 665.

The decision was, however, preceded by three hours of discussion in which a number of topics were addressed.⁶⁰³ Many speakers advocated a higher minimum age than 14 years for admission to non-industrial work; some speakers advocated a lower minimum age. The Indian government proposed a minimum age as low as 10 years but rescinded the proposal because of lack of support from the other delegates. There were also proposals to limit the working day for children under 18 in non-industrial occupations. That proposal was strongly criticised by several other delegates on the grounds that working conditions had not been placed on the agenda of the Conference. Many speakers stressed the need for conformity in the international legislation by referring to the Versailles Peace Treaty.⁶⁰⁴ Below I will give a brief account of the debate, referring to the statements that are most relevant for the questions of the dissertation. They concern minimum age and unemployment, minimum age and school, exceptions for family employment and a special regime for India.

The subject of unemployment was raised by many of the speakers at the Conference. There were suggestions from the workers' group to raise the school-leaving age as a way of helping to solve the unemployment problem.⁶⁰⁵ Betzy Kjelsberg highlighted the question of maintenance and the links between child labour and child maintenance. She asked the Conference: "To what extent is the non-industrial work of children due to the unemployment and, above all, to the insufficient earnings of their parents?"⁶⁰⁶ Her statement proves that the 'classical' problem of adult unemployment as a contributory factor for child labour was noted as early as 1931.

The conditions of India were much debated at the Conference. The Indian workers' delegate, Ramaswamy Moodaliar, was very frank in his perception of the actions of the British Empire concerning the welfare and protection of children in India. He said that, while the British had constructed railroads, postal services and hospitals, schools were ignored. Moodaliar stated that 92 per cent of the Indian population was still illiterate. The consequence of the lack of education, he said, was that parents sent their children to work to avoid "idleness and mischief".⁶⁰⁷ He also indicated the link between the lack of education and the high rate of infant mortality in India: one-third of the infants. Moodaliar emphasised the need to "throw a moral obligation" on the British government in India to deal with compulsory schooling.⁶⁰⁸ The Indian government adviser, Tin Tüt, said that the Indian government regarded a

⁶⁰³ The sitting started at 10.00 and finished at 12.55, *Op. Cit.*, p. 433 and p. 457.

⁶⁰⁴ *Op. Cit.*, p. 444, 447 and 450.

⁶⁰⁵ *Op. Cit.*, p. 446.

⁶⁰⁶ *Op. Cit.*, p. 453.

⁶⁰⁷ *Op. Cit.*, p. 436.

⁶⁰⁸ *Ibid.*

Convention ‘with deep sympathy’ but hoped that it would accommodate for the conditions in India.⁶⁰⁹

The link between education and the minimum age was addressed by most of the speakers and not only in connection to India. All speakers warned against a gap between the legal minimum age and the school-leaving age and the special moral dangers for “idle” children.⁶¹⁰

The British workers’ adviser, Herbert Henry Elvin, addressed the exceptions from the minimum age limit. In respect of the proposals to exempt family undertakings he argued that particularly in the “Eastern countries” the family was very widely defined and consisted, not only of the mother and father, but also of grandparents, great grandparents “and all their offspring including uncles and aunts, nieces and nephews” of the employer – all people who could be *in loco parentis*.⁶¹¹ As the workers’ group in the Committee had done previously, Elvin argued that “even parents” could exploit their children and even more than if they were employed by a stranger. Children should therefore be guaranteed the same protection “from the exploiting tendencies of their parents, just as they have to be safeguarded from the exploitation of other employers.”⁶¹²

8.2 The Second Discussion 1932

8.2.1 The Blue Report

In 1932, the preparations for the second discussion started with the report “The Age of Admission of Children to Employment in Non-industrial Occupations”, the Blue Report, that was sent out to the member states’ governments. The Blue Report consisted of three chapters.⁶¹³ Chapter I reproduced a selection of the governments’ replies to the questionnaire that had been prepared after the Conference in 1931. Over 30 member states had sent in replies. Most of the replies came from European countries but India, South Africa, Canada and some of the South American member states had also sent in their replies.⁶¹⁴ Chapter II of the Blue Report was a general survey of the minimum age in non-industrial occupations in the light of the replies from the member states’ governments. In Chapter III there were the

⁶⁰⁹ Record 1931, p. 442.

⁶¹⁰ *Op. Cit.*, p. 445.

⁶¹¹ *Op. Cit.*, p. 447-48.

⁶¹² *Ibid.*

⁶¹³ Blue Report 1932, Table of Contents.

⁶¹⁴ *Op. Cit.*, p. 6.

conclusions of the Office in the form of the texts for a proposed draft Convention and draft Recommendation.⁶¹⁵

As mentioned at the beginning of this chapter, it was the objective of the Governing Body and the Office that the international regulation of minimum age in industry, sea and agriculture should be extended to non-industrial employments, thereby ‘closing the circle’ of international safeguards for children.⁶¹⁶ The replies to the questionnaire clearly showed that the member states’ governments were of the same opinion.⁶¹⁷ Nonetheless, a number of circumstances were raised in support of opposition to a Convention. Many non-industrial occupations were considered to be less dangerous for children than working in industry. The threat of competitive disadvantage was not as strong in respect of non-industrial occupations and therefore the incentive for international co-operation was considerably weaker. It was also mentioned that ratifications had been slow.⁶¹⁸

Notwithstanding, the Office believed that there was the will to improve the conditions for children in non-industrial occupations, mainly out of humanitarian concerns, because of the great risks of child abuse.⁶¹⁹

In the proposed text for a Draft Convention, the Office chose the principle of covering all occupations not previously covered rather than the principle of enumerating specific categories of employment. The Office gave the reason for its choice in this way:

in view of the difference in conditions in different countries and of the miscellaneous nature of the employments to be subjected to the Draft Convention, it would hardly be a practical proposition to endeavour to frame in the draft itself an international list of the categories of specific employments concerned which would be applicable universally or be free from omissions. The great majority of the Governments were accordingly in favour of defining the scope of the Draft Convention by a general formula to the effect that it included employments not already dealt with in the previous Conventions.”⁶²⁰

The proposed general minimum age was 14 years. Practically all the governments had accepted the minimum age of 14 years in their replies.⁶²¹ The minimum age was however not ‘an absolute bar’ to employment. The exceptions for light work outside school hours and for theatrical and similar employment made the minimum age flexible. The Office noted that in this

⁶¹⁵ *Op. Cit.*, Table of Contents.

⁶¹⁶ Grey Report 1931. pp. 5-6.

⁶¹⁷ Blue Report 1932, p. 6.

⁶¹⁸ *Op. Cit.*, pp. 6-7.

⁶¹⁹ *Ibid.*

⁶²⁰ Blue Report 1932, p. 241-2.

⁶²¹ *Op. Cit.*, p. 243.

way the real effect of the minimum age of 14 years was to prohibit in principle any employment during school hours.⁶²²

The definitions of ‘work’ and ‘employment’ were discussed in the Office’s survey. Some of the member states’ governments wished to include only ‘professional work’, ‘paid work’ or work done more or less regularly and actively. The Office concluded that work was understood differently by the member states but, although no other ILO Convention defined ‘employment’ or ‘work’, the absence of a definition had not caused any special difficulties. Instead, the Office warned against the consequences of a formal definition:

Moreover, any such definition for international purposes would not only be difficult to frame and might lead at the Conference to long theoretical discussions out of all proportion to any real practical needs, but might also be dangerous in its ultimate effects.⁶²³

As regards the exception for family employment, the Office concluded that there were differences in the views of the member states’ governments. Some governments were in favour of equal treatment for family undertakings while some member states were in favour of establishing a special regulation for family employment. Those against an exclusion for family employment argued in terms of equality, both for children as well as between family undertakings and other companies, in order to prevent inequality in competition.⁶²⁴ Those in favour of an exclusion for family employment argued that there would be difficulties with enforcement.⁶²⁵ Some of the replies commented on the definition of ‘family’. Suggested definitions were, for example, “only parents and their children”, as well as wider definitions for cases where the whole (extended) family lived in the same household.⁶²⁶ The Office’s solution was to leave it to each individual country to define ‘family’ because of the very different conditions in different countries.

When considering family employment, the Office concluded that, because of the divided opinions in the replies, it would be too difficult to obtain a two-thirds majority at the Conference for a Convention that included family employment. As a compromise, it was suggested that it should be left to the competent authorities of each member state to decide whether family employment should be covered by the provisions of the Convention or not. In this way dangerous occupations that could be injurious to the health or

⁶²² *Op. Cit.*, p. 244.

⁶²³ *Op. Cit.*, p. 177

⁶²⁴ *Op. Cit.*, p. 208.

⁶²⁵ *Ibid.*

⁶²⁶ *Ibid.*

morals of children could be refused exemption from the application of the Convention even if the employer was a parent.⁶²⁷

As for employment in public entertainment the Office concluded that a considerable majority of the replies were in favour of allowing exceptions that went further than the exceptions for 'light work' allowing work also during school hours under certain circumstances. Most replies indicated, however, that the exceptions should be limited to individual cases only and provided that they were in the 'strict interest of art and science' and in combination with measures for safeguarding the health, physical development, morals and the continuation of the education of the child.⁶²⁸

In respect of 'dangerous work', the replies showed that there was a majority in favour of a higher minimum age for non-industrial occupations that were of a dangerous character or likely to be injurious to the health or morals of children. The Office considered that it would, however, be too difficult to find an international definition of 'dangerous work', which was why it was suggested that the definition of 'dangerous work', as well as the specification of the minimum age, should be left to national authorities.⁶²⁹

Since street-trading was considered so dangerous for the morals of children, and because there seemed to be support in the governments' replies for a higher minimum age, it was suggested to leave the decisions to the national authorities. The reason was that the minimum age for employment in street-trading varied enormously in the member states and it would be too difficult for the Conference to agree on a definition.⁶³⁰

The replies concerning enforcement indicated that there was agreement on the general principle that each member state should take the necessary measures to ensure the enforcement of the Convention. However, the only enforcement method in use so far had been the obligation for employers to keep registers of their young workers including their dates of birth. This method was generally favoured in the replies. Public supervision by means of a system with licences and badges was discussed. The replies showed that, even though the governments were in favour of enforcement measures, there was no support for detailed provisions in the Convention. The Office therefore recommended that it be left to national authorities to decide on the methods of enforcement. As for introducing penalties for non-compliance with the provisions of the Convention, all replies, except for that of Great Britain, were in favour.⁶³¹

⁶²⁷ Blue Report 1932, p. 209.

⁶²⁸ *Op. Cit.*, pp. 214-16.

⁶²⁹ *Op. Cit.*, p. 222.

⁶³⁰ *Op. Cit.*, p. 225.

⁶³¹ *Op. Cit.*, p. 234.

The 'Case of India'

The Indian government's reply to the questionnaire was so different from those of the other member states that the Office chose to deal with it separately.⁶³²

The Indian government requested special modifications for India on the two central issues of the Convention: the scope and the minimum age of 14 years.⁶³³ India could neither accept inclusion of all occupations not previously covered nor the minimum age of 14 years. India could only accept a minimum age of 10 years for certain specified non-industrial occupations. In justification, the government of India referred to India's conditions as "special and very different" from those of Western countries in terms of climate, habits and customs, economic opportunity and "industrial tradition". More precisely, the problems of education and implementation of the Convention were raised. The government drew attention to the link between the lack of education of parents and the employment of children.

The Indian government referred to a Royal Commission that had recently examined the labour conditions in India. For factories not using power and plantations, the Royal Commission had recommended a lowering of the minimum age to 10 years instead of the 12 years minimum age specified for employment in industry in India in the Minimum Age (Industry) Convention. According to the Royal Commission, "no regulation, even of the simplest kind... has ever been operative... this makes it not only advisable but necessary to apply that principle of gradualness which we have already shown to industrial standards".⁶³⁴ The Indian government commented on this referring to the importance of gradual implementation and education:

Unfortunately, as we have shown, there is in many cases, though not in all, an easy avenue of escape from such regulation, particularly in a country where compulsory education is still the exception rather than the rule. Realising, therefore, the necessity of educating both employers and parents to a higher standard of consideration for child welfare, and for the passing only of such legislation as is capable of enforcement, we recommend that the starting age for children in such places shall in the first instance be 10 years.⁶³⁵

The Office's conclusion, or rather non-conclusion, concerning India was to work out a Draft Convention without consideration of India, and to leave the question of a separate regime for India to the Conference to decide. Furthermore, the Indian delegates would have to provide further information on the Indian standpoint.⁶³⁶

⁶³² *Op. Cit.*, pp. 234-37.

⁶³³ *Op. Cit.*, pp. 14-15.

⁶³⁴ *Op. Cit.*, p. 14.

⁶³⁵ *Op. Cit.*, pp. 14-15.

⁶³⁶ *Op. Cit.*, pp. 170-1, 234-6.

As will be described below, the Draft Convention was adopted by the Conference without substantial changes. This implies that the deliberations of the Office in the Blue Report were well balanced with regard to the views and priorities of the member states.

8.2.2 The Plenary Session of the Conference in 1932

Preparations and agenda

There were four items on the agenda for the Conference in 1932:

- I. Abolition of fee-charging employment agencies (first discussion)
- II. Invalidity, old-age and widows' and orphans' insurance (first discussion)
- III. Age of admission of children to employment in non-industrial occupations (second discussion)
- IV. Partial revision of the Convention concerning the protection against accidents of workers employed in loading or unloading ships.⁶³⁷

In his circular letter to the member states' governments, the Director General pointed out that items I and II on the agenda affected women and that therefore the provisions of the ILO's Constitution concerning the inclusion of women in national delegations "may be borne in mind" by the governments.⁶³⁸ Nonetheless, only an exceedingly small number of the delegates and advisers at the Conference were women.⁶³⁹

Not only were women in the minority at the Conference. The situation was the same for 'natives and coloured people'. The Director General, instructed to do so by the Governing Body, also noticed the under-representation of this group of people. He quoted a resolution that had been adopted by the Conference in 1927, drawing the attention to member states

...in which the white people are the ruling class but in which the natives and the coloured people are either the majority of the population of that country or form a substantial portion of the population [to] the desirability of the representatives of the native and coloured workers attending the International Labour Conference as a part of the delegation from those countries.⁶⁴⁰

It has not been possible for me to confirm whether his call for a more representative composition of delegations was complied with. Whereas the women representatives at the Conferences are easy to detect in the lists of

⁶³⁷ Record 1932, Introduction, p. XVI.

⁶³⁸ *Op. Cit.*, pp. XVII.

⁶³⁹ *Op. Cit.*, List of Delegates.

⁶⁴⁰ *Op. Cit.*, Introduction, p. XIX.

delegations: it is more difficult to detect the representatives that are ‘native or coloured workers’.

The Committee on the age of admission of children to non-industrial occupations

The Committee on the age of admission of children to non-industrial occupations had 56 representatives; 28 government representatives and 14 each representing workers and employers respectively. The number of women was the same as the previous year: five representatives and five substitutes.⁶⁴¹ Betzy Kjelberg criticised the inadequacy of the representation of women and highlighted that, in spite of the fact that questions of vital interest to women were on the agenda, many member states had never appointed women to their delegations and that member states which had previously had women on their delegations now had excluded them referring to financial problems.⁶⁴² The regional representation was the same as the previous year, which resulted in a massive preponderance of men representing European countries.⁶⁴³

When presenting the report of the Committee, the Chairman and reporter, the French government delegate Justin Godart, proposed that the Conference adopt the draft Convention proposed by the Office with the following words:

In adopting the proposed Draft Convention the Conference will be completing the work which it has already accomplished in the sphere of the protection of children. Not merely will it be helping the weak, but it will be promoting the welfare of every nation, which rests with the younger generation.⁶⁴⁴

The statement from the Chairman and Reporter of the Committee clearly demonstrates that it was intended that the new Convention would be in conformity with the previous Conventions.

India was again at the centre of the debate. As described above, the Office’s proposal contained no modification for India. In Committee, the Indian government’s delegate and High Commissioner for India in London, Sir B.N. Mitra, presented an amendment for a special regime with considerably lower standards for India. The special regime was supported by the Indian employers’ delegate, Shanmukham Chetty, but it was met with opposition by the workers’ group.⁶⁴⁵ Eventually, the Committee adopted the special regime

⁶⁴¹ *Op. Cit.*, pp. LX-LXI.

⁶⁴² Rieglanman & Winslow 1990, p. 40.

⁶⁴³ Record 1932, pp. LX-LXI.

⁶⁴⁴ *Op. Cit.*, p. 368.

⁶⁴⁵ *Op. Cit.*, p. 750.

for India, but only after direct intervention from the Director General, Thomas. Thomas highlighted the particular importance of a special regime for India as a question of principle because it concerned the ongoing debate within the ILO about the universality of the Conventions and Recommendations on the one hand and the necessity for special provisions for certain countries on the other. Thomas expressed his sympathy with the workers' group that opposed special provisions for certain countries, and he said that he had seen for himself during his visits to the member states 'what exploitation of children of 10 years of age could mean'.⁶⁴⁶ Nonetheless, he urged the workers' group to accept a special regime for India in order to make ratification possible. He referred to the 'step-by-step' argument:

If a single chance existed that the Government of India would apply the Convention and would create the system of supervision which it laid down, a first step would already have been taken.⁶⁴⁷

In this way, the special regime for India was adopted by 40 votes to 29 in the Committee.⁶⁴⁸

The Plenary Session of the Conference

The Convention was discussed during two plenary sittings of the Conference which took seven hours in all. On a general level, the speakers were positive about a Convention regulating the employment of children in non-industrial occupations. The government representatives in particular stressed the importance of protecting children, although many of them indicated problems in relation to ratification and argued that the Convention should not be as detailed as proposed. Many of the speakers stressed the importance of consistency with the previous Conventions and that all kinds of work not previously regulated ought to be covered.⁶⁴⁹

The first speaker was the British adviser to the workers' group, Herbert Henry Elvin, who had a typically future-oriented and nation-oriented view of the Convention.⁶⁵⁰ Stressing the importance of education, he discussed the protection of children in terms of avoiding "wastefulness". Education had three purposes. The first was to prepare children for their entrance into the industrial life of the nation. The second purpose was to prepare the men and women of tomorrow, as he described children, to "enter on their duties as citizens". Here, a rights-oriented perspective was added when he stated that "children are robbed of their rights if anything is done to interfere in any

⁶⁴⁶ *Ibid.*

⁶⁴⁷ Record 1932, p. 751.

⁶⁴⁸ *Op. Cit.*, p. 762.

⁶⁴⁹ *Op. Cit.*, pp. 368-381, *Passim*.

⁶⁵⁰ Elvin's speech, *Op. Cit.*, pp. 369-70.

way with the development of their rights and duties as full citizens”⁶⁵¹ The third purpose of education was to ‘develop character’, a ‘sound mind and a sound body’. He said that instruction, leisure and the impression on the mind of the young person of “the need of service to one’s fellows” were “the necessary ingredients for the development of the personality”⁶⁵² He finished his speech by asking the members of the Conference to decide how much they were prepared to give “in order to save millions of children from what appears to be a living death”⁶⁵³.

There was no conflict in principle about the intentions to protect children in non-industrial occupations and the Belgian employer’s adviser reminded the Conference of this. He said that it was ‘inconceivable that anyone could approach this question otherwise than in a desire to protect children, and thereby to protect humanity’⁶⁵⁴.

In the same way, the government delegate of the Netherlands, Dr. A.M. Joekes, agreed that “the protection of children should be the keystone in our social edifice.”⁶⁵⁵ The Swedish government adviser, Kerstin Hesselgren, said that it was practical and justifiable to have the same minimum age for employment in non-industrial occupations as in industry but the Swedish Parliament had recently passed a law establishing 13 years as the minimum age for non-industrial employment.⁶⁵⁶ The adviser to the Spanish government, Isabel Palencia, raised the particular dangers for girls in non-industrial occupations because such work was often carried out in conditions “open to abuse”⁶⁵⁷.

India – reconciling imperfect conditions with humanity and gradual progress

India caused the longest debate at the Conference. The special regime for India that had been approved by the Committee was now questioned by the workers’ group. Elvin, the British adviser to the workers’ group, first suggested the deletion of the whole article, arguing that the particular conditions of India were already noted by an article providing that, in countries without compulsory schooling, the time spent on light work should not exceed 4 ½ hours a day.⁶⁵⁸ Elvin called the question of India a “British Empire question”. Notwithstanding, he felt great sympathy with “the underdogs of industrial and social life in India”, and claimed that the

⁶⁵¹ *Op. Cit.*, p. 369.

⁶⁵² *Ibid.*

⁶⁵³ *Ibid.*

⁶⁵⁴ *Op. Cit.*, p. 371.

⁶⁵⁵ *Op. Cit.*, p. 372.

⁶⁵⁶ *Op. Cit.*, p. 372.

⁶⁵⁷ *Op. Cit.*, p. 374.

⁶⁵⁸ Elvin’s speech, *Op. Cit.*, pp. 402-405. Article 3 (d) in the text adopted by the Committee on the age of admission of children to employment in non-industrial occupations, *Op. Cit.*, p. 758. Article 3 (4) (b) in the Convention as finally adopted, *Op. Cit.*, p. 860.

working conditions in India were of interest to the whole workers' group. After a long debate, his proposal to delete the special regime was rejected.⁶⁵⁹

There was agreement that some kind of special regulation for India was needed in order to secure ratification and consequently there was a willingness in the workers' group to compromise to find the best way out of the difficult conditions in India and make it easier for the representatives of the government of India and the employers to accept the Convention. The workers' group, however, thought that special regulation for India ought to rely primarily on the future progress of educational facilities rather than on the lowering of the minimum age limits. Elvin justified this view with a number of arguments. The first was that 10 years was not in conformity with the special provisions for India concerning the minimum age for employment in industry, which was 12 years. Secondly, it would mean that a completely different Convention would apply to India as a single nation.⁶⁶⁰ A third argument was that the special regime would allow children aged between 10 and 14 to work in street-trading, bars, restaurants and public entertainment although these were occupations that were considered 'dangerous'. The final justification was that there was no corresponding regime for Japan. Japan had ratified all the Minimum Age Conventions so far and the special regime for India might discourage Japan to continue this progressive policy.⁶⁶¹

The Indian workers' delegate, Chaman Lall, argued along the same lines and warned the Conference of the 'boomerang effect' that would hit the other member states if the special regime were accepted. In that event other member states would make similar demands and the final effect would be lowered standards everywhere.⁶⁶²

To summarise the arguments of the workers' group, all focused on practical and formal questions as to the application of the Convention. Even though the arguments in justification concerned the protection of children in India, they were based on consideration of continuity and uniformity.

The "imperfect conditions of India" were addressed by the Indian employers' delegate Chetty.⁶⁶³ He defined it as the lack of a system for compulsory school attendance and the lack of poor laws and social insurance systems. By adopting the special regime for India, the first steps towards protection of children could be taken he argued. He was supported by the French government delegate Justin Godart.⁶⁶⁴ Chetty asked: "would it be better that the members of a family should absolutely starve rather than that even the children should take a hand in maintaining the family [...] This is

⁶⁵⁹ *Op. Cit.*, p. 414.

⁶⁶⁰ *Ibid.*

⁶⁶¹ Record 1932, p. 404.

⁶⁶² *Op. Cit.*, p. 410.

⁶⁶³ *Op. Cit.*, p. 406.

⁶⁶⁴ *Op. Cit.*, p. 414.

one of the cases where the universality of this Organisation has to be reconciled with the particular needs of particular countries".⁶⁶⁵ To summarise the arguments of the Indian employers, it was that universality had to give way to the (imperfect) conditions of India, defined as the lack of school laws, poor laws and social insurance systems.

The Indian government delegate, Sir Mitra, put forward the 'gesture argument' in favour of the special regime. It was important that the Conference should make a 'gesture' to let India know that the Conference was not wholly ignorant of India's requirements.⁶⁶⁶

After the rejection of the amendment to delete the special regime for India, the Spanish government adviser, Isabel Palencia, proposed an amendment to reconcile the position of the government of India and that of the workers' group. A reasonable balance between 'humanity' and 'the imperfect conditions of certain member states' could be achieved by some changes in the wording of the special regime for India. To make the special regime less provocative for the workers group, she proposed that it should not be explicitly mentioned in the text of the Draft Convention that the minimum age of 14 years did not apply to India, nor that it did not apply to dangerous work. In respect of the minimum age of 10 years, she proposed a stricter wording by changing "children under the age of 10 shall not be employed" to "the employment of children under 10 shall be prohibited".⁶⁶⁷ She argued:

We fully understand the difficulties of making international regulations and applying them in a country whose problems are so complex, but we must bear in mind that here we are protecting something which is more than international – something which is universal – and that is the health, the welfare, the very life of our children. Let us help India to do her work as easily as possible by national legislation. Let us help her also to adopt as humanitarian a point of view as possible.⁶⁶⁸

Palencia's amendments were adopted by the Conference, and thereby the special regime for India.⁶⁶⁹ Thereafter the entire Convention was unanimously adopted. The Recommendation was also adopted unanimously, without any preliminary discussion.⁶⁷⁰

⁶⁶⁵ *Op. Cit.*, pp. 406-407.

⁶⁶⁶ *Op. Cit.*, p. 413.

⁶⁶⁷ *Ibid.*

⁶⁶⁸ Record 1932, p. 415.

⁶⁶⁹ *Op. Cit.*, p. 417.

⁶⁷⁰ *Op. Cit.*, p. 419.

8.3 The Convention and Recommendation

8.3.1 The Minimum Age (Non-Industrial Occupations) Convention No. 33

The Minimum Age (Non-Industrial Occupations) Convention No. 33 was adopted on 30 April 1932. It came into force on 6 June 1935 after ratification by Uruguay and Belgium.⁶⁷¹ Spain, Cuba, France and the Netherlands ratified the Convention during the 1930s. Several of the decolonised African nations ratified the Convention in the early sixties. In spite of the special regime that was so much discussed at the Conference, India abstained from ratifying the Convention. In all, Convention No. 33 was only ratified by 25 countries.⁶⁷²

Minimum age and scope of the Convention

The Convention contains 16 articles in all. In Article 2 the minimum age for non-industrial employment is established, as 14 years, or more in cases where children are required to still attend primary school at a higher age than 14. In Article 1 the scope of the Convention is defined. It applies to any employment not dealt with in the previous Conventions on minimum age for admission to employment or work, namely, Conventions No. 5 (Industry), No. 7 (Sea) and No. 10 (Agriculture). Sea fishing is excluded from application of the Convention, and so is work done in technical schools, provided it is of an educational character, is not of a commercial character and is restricted, approved and supervised by public authorities. The definition of the line of division between Convention No. 33 and the previous Conventions is left to competent authorities in each country, after consultations with the principal organisations of employers and workers concerned (Article 1 (1) Para. 5).

So far Convention No. 33 is parallel to Convention No. 5, except for the minimum age being over 14 years where the child is still in primary education, and except that in Convention No. 5 family employment is excluded altogether from its application, whereas in Convention No. 33 family employment can be excluded only if the competent authority in the member state so decides. Domestic work in the family is, however, exempted expressly from Convention No. 33.

Light work

In Article 3 employment in 'light work' is allowed for children over 12 years of age outside school hours, provided: (a) it is not harmful to the child's health or normal development; (b) it does not prejudice the child's

⁶⁷¹ Minimum Age (Non-Industrial Occupations) Convention No. 33, ILOLEX, www.ilo.org.

⁶⁷² List of ratifications, see www.ilo.org/ilolex/english/convdisp1.htm (visited 30/01/07).

attendance at school or the capacity to benefit from the school instruction; (c) the work does not exceed two hours per day and the total number of hours spent at school does not exceed seven hours per day (Article 3 (1)). Light work is however prohibited on Sundays, on holidays and during the night between 8 p.m. and 8 a.m. (Article 3 (2)). The definition of 'light work' and the safeguards for working children were left to national law or regulation, after consultations with the principal organisations of employers and workers concerned. In countries where no provision exists relating to compulsory school attendance, the time spent on light work is not allowed to exceed four and a half hours per day (Article 3 (4) (b)).

Public entertainment

According to Article 4, children's appearances in public entertainments or in films can be allowed if so provided by national law or regulation, by special permits granted in the individual case and provided it is 'in the interests of art, science or education'. There was no lowest minimum age specified, nor was reference made to the work being performed 'outside school hours'. However, the ability to allow employment in public entertainment was not altogether unrestricted. The Convention prohibits the granting of permits for 'dangerous work' and exemplifies this by work in circuses, variety shows and cabarets (Article 4.2 (a)). Furthermore, there should be 'strict safeguards for the health, physical development and morals of children, for ensuring kind treatment of them, adequate rest, and the continuation of their education' (Article 4.2 (b)). There was no prohibition of night work, but permits could not be granted for work after midnight (Article 4.2 (c)).

The exception for one particular form of employment, public entertainment, was new to Convention No. 33. However, it had similarities with the provisions in Convention No. 6 that allowed exceptions for night work of children under 18 years in industrial undertakings that by reason of 'the nature of the processes' were 'required' to be carried out continuously day and night, and in Convention No. 15, that allowed persons under the minimum age of 18 years (but over 16) to be employed "if only persons under 18 years were available". In all three cases the exceptions from the minimum age were justified exclusively on the grounds of alleged needs or requirements of the employers.

Dangerous work

Several other new items are introduced in Convention No. 33. There is the special provision for 'dangerous work' in Article 5. A higher minimum age should be fixed in national law for employment which is dangerous to the life, health or morals of the persons employed in it by its nature or by the circumstances in which it is to be carried out. Similarly, Article 6 provides that a higher minimum age should be fixed for itinerant trading in the streets, but only in the event of it being 'required' because of the conditions.

Enforcement

The enforcement mechanisms were substantially strengthened by the introduction of new enforcement mechanisms. According to Article 7 national laws shall (a) provide an adequate system of public inspection and supervision, (b) provide suitable means for facilitating the identification and supervision of persons under a specified age engaged in street-trading and other itinerant work, and (c) provide penalties for breaches of the laws or regulations that give effect to the Convention. Compared to the requirement in Conventions Nos. 5, 7 and 15 that employers keep a register, or to no enforcement provisions at all in Convention No. 10, Convention No. 33 marks a significant change.

Another new item was Article 8, that provides detailed requirements concerning the information to be included in the annual reports in accordance with Article 22 of the ILO Constitution. It should include (a) a list of employments defined as 'light work', (b) a list of employments defined as 'dangerous work' and street work, and (c) full information about any exceptions to the provisions of the Convention.

India

Article 9 contains the special regime for India. By the provisions of the Article, all material provisions except the scope of the Convention (Article 1) are replaced by the special regime. The minimum age is 10 years for non-industrial employment. Exceptions could be made for employment in public entertainment and films, provided it is in the 'interests of art, science or education' and that a special permit is granted by the national authorities. A higher minimum age is specified for 'dangerous work', namely, 14 years. For street-trading there should be a minimum age higher than 10 years, determined by national authorities. Also, the determination of enforcement measures was left to national authorities, but penalties should be provided for breaches of the provisions of the Convention. The special regime for India should cease to apply "should legislation be enacted in India making attendance at school compulsory until the age of 14".

Articles 10-14 and 16 contain formalities. There is no article concerning the application of the Convention in the colonies in Convention No. 33.

8.3.2 The Minimum Age (Non-Industrial Employment) Recommendation No. 41

The accompanying Minimum Age (Non-Industrial Employment) Recommendation No. 41 was adopted on 30 April 1932, at the same time as

Convention No. 33.⁶⁷³ This is the first time in the ILO minimum age campaign that a Convention was accompanied by a Recommendation to ‘guide’ the member states in the application of the Convention. According to the preamble, the purpose of Recommendation No. 41 is to recommend practical methods of application as a guide to the member states, “varying with the climate, customs, national tradition and other conditions peculiar to individual countries” and which have been found to give satisfactory results.

The Recommendation contains five sections with eight subsections: (I) regulations on light work; (II) employment in public entertainments; (III) dangerous work; (IV) prohibition of employment by certain persons; and (V) enforcement. In section (I) light work, it is provided that light work should be restricted as long as children are required to attend school, for the benefit of their education and their physical, intellectual and moral development (1). Examples of light work considered as acceptable for school children given in the Recommendation are running errands, distribution of newspapers, ‘odd jobs’ in connection with sport or playing games and picking and selling flowers or fruits. Before admitting children between 12 and 14 years to light work, the competent authority should require the consent of the parents or guardians, a medical certificate of the physical fitness of the child for the employment and, where necessary, previous consultation with the school authorities (3). The hours of light work should be adapted both to the school timetable and to the age of the child and the child should be ensured sufficient rest before and after school (4).

Work in public entertainment, section (II), should ‘in principle’ be prohibited to children under 12 years. Exceptions should be very few, and only “in so far as the interests of art, science or education may require”, and a permit should be granted only after obtaining the parents’ consent and confirmation that the child is physically fit for the employment. In the case of employment in the film industry, the child should be supervised by an eye specialist (5).

Regarding dangerous employment, section (III), the Recommendation provides that the competent authorities should consult the principal organisations of employers and workers concerned before determining what employments are dangerous. Different ages should be fixed for particular employments in relation to their special dangers and in some cases a higher age limit can be prescribed for girls (6).

Section (V) provides that ‘certain persons’ are prohibited to employ children, in order to safeguard ‘the moral interests of children’. The employers in question are defined as “persons who have been condemned for certain offences or who are notorious drunkards”. However, a ‘certain’ person can still employ his own children (7).

⁶⁷³ Minimum Age (Non-Industrial Employment) Recommendation No. 41, ILOLEX, www.ilo.org.

In section (V) on enforcement, it is recommended that a public system of “employment and identity books” for children is instituted in the member states, indicating age, employment, authorised number of hours of work and dates of employment. For children employed in street-trading, it was recommended that children should wear special badges (8).

8.4 Preliminary conclusion. Closing the circle of the Minimum Age Conventions

During the first three years of the minimum age campaign, a great number of Conventions were adopted. Activity then went down and more than ten years elapsed before a new Minimum Age Convention was adopted. When the question of a Convention regulating the minimum age for employment in non-industrial occupations was raised in 1931, both the Governing Body and the Office referred to the objective of the ILO, as agreed in the Versailles Peace Treaty, to abolish child labour and to impose “such limitations on the labour of young persons as shall permit the continuation of their education and assure their proper physical development”.⁶⁷⁴ This meant that the ILO should continue the work that had been started more than ten years previously, namely, to ‘close the circle’ of the Minimum Age Conventions.

In the following paragraphs I will discuss the Minimum Age (Non-Industrial Employment) Convention in relation to the previously adopted Minimum Age Conventions in terms of institutional questions such as continuity and change, colonialism and enforcement questions. I will then discuss the Convention in terms of questions related to child protection such as the minimum age, school and family employment. Finally, I will discuss how the protection of children was balanced against other interests.

Continuity, Conformity and Change

As I have argued above, the objective in adopting the Minimum Age (Non-Industrial Employment) Convention was that the Minimum Age Conventions should be in conformity and that the Convention should close the circle of the Minimum Age Conventions and cover in principle employment in all economic sectors. Non-industrial occupations, however, were heterogeneous and the survey of national legislation indicated great differences in the member states’ legislation. It was, therefore, not evident that the model of the Minimum Age Conventions adopted so far would fit this complex field of employment. On the other hand, by means of extremely flexible wording, the Minimum Age (Agriculture) Convention had also been made to follow, at least formally, the minimum age model.

⁶⁷⁴ Article 427, Second para. and Sixth Principle (The Labour Clauses), ILO Constitution 1920, see *supra* Chapter 4.3.1-2.

The ILO thus chose to follow the path it had once entered and include the non-industrial occupations in the minimum age formula with a minimum age of 14 years. This was possible because of the generous flexibility of the Convention's provisions. On the other hand, the Convention also provided stricter limitations for certain occupations that were considered to be more dangerous than industrial work.

As I have described in this Chapter, the Minimum Age (Non-Industrial Employment) Convention, like the previous Minimum Age Conventions, was firmly based on national legislation and on the replies of the governments to the questionnaire. In this way, even though there was much debate at the Conference, the Convention passed the different stages of the adoption process without great difficulty and it was eventually adopted unanimously.

The enforcement provision is the only significant break from the previous model: new and stricter measures, which will be discussed separately below, were introduced.

Colonialism

India caused most debate when adopting the Minimum Age (Non-Industrial Employment) Convention. The principal issue was to find a balance between achieving at least some progress in child protection and adopting a Convention that the Indian government could be expected to ratify. As described earlier in this Chapter, the special regime for India was accepted by the Conference, with a minimum age of 10 years – two years below the minimum age granted for India for employment in industry. A higher minimum age of 14 years was prescribed for work that the Indian authorities had declared “to involve dangers to life health or morals”.

In the debate about the special regime for India, there were two viewpoints. On the one hand, there was the viewpoint of the workers' group, which was against the special regime. The workers' group argued that Indian children ought to have the same protection as other children. On the other hand, there was the viewpoint of the Indian government and the employers' group. They argued for “that principle of gradualness”, as it was expressed, namely, a step-by-step method that was said to make some difference even though India did not live up to the universal standard. It is obvious that the Office and the Governing Body regarded universality as a crucial principle and that flexibility in the treaty provisions was the strategy to achieve universal ratification. Not least, the particular intervention by Director General Thomas to encourage the acceptance of the special regime for India supports that conclusion.⁶⁷⁵

The justification for the special regime was the “imperfect conditions of India” and the “backwardness of the Indian population”. This was the

⁶⁷⁵ See *supra* Section 8.2.2.

argument of the employers and of the Indian government. According to the debate, the “imperfect conditions of India” consisted of a tropical climate, habits and customs, economic opportunity and industrial tradition. In particular, it was argued that India lacked a system of compulsory school attendance, poor laws and social insurance systems. The lack of education of the parents was another explanation of the situation of India’s children that was put forward. The bottom line was the rather defensive argument that because there were no schools and no poor relief in India, it was better for poor children to work than to starve and that the Indian population had its customs and traditions, as the Indian employers’ delegate said. Nothing was said about the political will to change these imperfect conditions.

On the other hand, the workers’ group highlighted this lack of political will. It held the British Empire politically responsible for the difficult conditions for children in India and that 92 per cent of the population was illiterate. It was questioned how the British could have provided postal services and hospitals but had failed to care for the protection and welfare of children by ignoring the provision of schools.

Enforcement

The strengthening and extension of enforcement methods in the Minimum Age (Non-Industrial Employment) Convention marks a significant change in the minimum age campaign. It is rather surprising that there was not more debate on the question and that the member states replied that they were in support of introducing penalties for non-compliance with the provisions of the Convention. I would argue that this could be explained, at least partly, by the Depression and partly by the large amount of influence that was accorded to national authorities in carrying out the enforcement measures.

At the same time, the Conference material also clearly indicates that member states, the Office and the Conference all relied heavily on compulsory school laws to enforce the provisions of the Convention but this was never included in the Convention as one of the enforcement methods.

Minimum age

As in the case of the previous Minimum Age Conventions, the Minimum Age (Non-Industrial Employment) Convention was constructed around a general minimum age limit of 14 years in combination with alternative age limits. As previously, the age limits were based on the estimated harmlessness or harmfulness of the work in relation to ‘normal’ work and on the estimated consequences of the work for the health, morals, development and education of the child. In the Minimum Age (Non-Industrial Employment) Convention the differentiation of the age level was more detailed than previously. There was the 12 years minimum age for ‘light work’ and ‘higher age or ages’ were established for ‘dangerous work’. Apart from the general criteria of harmfulness and harmlessness defined in Articles

3, 4 and 5, and the criteria that 'light work' should not 'prejudice [children's] attendance at school or their capacity to benefit from the instruction' it was not further defined what 'light work' or 'dangerous work' was. Instead it was left to the competent national authorities to decide the forms of employment that were included in the categories, because it was considered that it would be too difficult to find international definitions of 'light work' and 'dangerous work'. The forms of work included in 'light work' were to be decided after consultations with the workers' and employers' organisations concerned. In the same way, the preliminary conditions to be complied with were to be prescribed (Article 3 (3)). In this way, the ILO avoided the problematic question of finding definitions that were internationally acceptable by leaving it to the member states to decide.

A higher minimum age was also prescribed for street-trading, etc. and employment in public entertainment but the minimum age was not specified. Several reasons for the stricter regulation of street-trading, including gender aspects, appear in the Conference material. The street was called 'a school of evil' and generally, there seems to have been a consensus that working in the streets could harm, above all, the 'morals' of children. Girls were believed to be at particular risk and a higher minimum age for girls was considered during the adoption process but dropped. The term 'school of evil' implies that there was a belief that children would come into contact with criminality in the streets. As regards girls, I have argued that the fact that girls were considered particularly vulnerable in the streets implies that it was their sexual 'morals' that were thought to be at risk.

Another consideration was the weather and its consequences for the health of the street-workers. One of the delegates spoke of the negative effects on children's health of staying outdoors. This was, however, met by the 'classical' argument of the beneficial effects of fresh air.

Employment in public entertainment was in principle classified as a highly dangerous occupation. There was, however, no minimum age specified for these occupations. As I have already discussed above, the regulation of this category of work was more indulgent than even the regulation of 'light work' as 'light work' was restricted in a number of ways in the Convention. It was in principle left to the national authorities to regulate employment in public entertainment by granting individual permits. There were no restrictions such as a lowest minimum age, allowing employment only on hours outside school, or a prohibition of work at night (although it was prohibited after midnight) or on Sundays and holidays. I will return to employment in public entertainment at the end of this section.

The lower minimum age limits of 10 and 14 years for India have already been discussed above. In connection to that discussion, it can be added that the debate about the special regime for India was entirely focused on the institutional side of the question – the 'imperfect conditions of India'. In this way, the regime was justified by the inability of the Indian government to

provide adequate schooling and maintenance for the children concerned. In contrast to the debate on the minimum age in industry in 1919, the question of the development and competence of Indian children – the ‘early maturity’ discourse – was never raised in connection to the Minimum Age (Non-Industrial Employment) Convention. I have found no indication why in the Conference material.

...and school

The Minimum Age (Non-Industrial Employment) Convention relied heavily on the idea of the importance of education and compulsory school laws. This is evident both in the text of the Convention and in the Conference material. Reference was constantly made to the importance of education for children both in a rather nationalistic sense, expressed as ‘children are the future of the nation’, as well as in the sense of its importance for the enforcement of the Convention. Generally, the possibility of regulating the minimum age for employment was related to the national minimum age *and* to compulsory school legislation. Particularly in the discussion about India, compulsory schooling was referred to as a necessary and also a sufficient prerequisite for minimum age regulation. One example is Article 9(2), providing that in the event of India enacting school laws making school attendance compulsory up to the age of 14 years, the special regime should be suppressed.

Other provisions in the Convention that refer to school and education are: education in technical schools, which were excluded from the application of the Convention (Article 1 (2) (b)); the minimum age in a member state where children over 14 years were still required to attend school (Article 2); and ‘light work’, which was only allowed outside school hours and if it did not prejudice school attendance and the benefit of education, did not exceed seven hours per day including school hours, or, in countries with no provisions relating to compulsory school attendance, did not exceed 4 ½ hours per day (Article 3 (1) (a)-(c) and (4) (b)).

Furthermore, reference was made to school in connection to employment in public entertainment, which could only be allowed if it was in the interests of ‘art, science or education’ (Article 4.1), and provided it did not interfere with the continuation of the child’s education (Article 4.2 (b)). In respect of India, reference was made to education and compulsory school in connection to employment in public entertainment, which could only be allowed in the interests of ‘art, science or education’ (Article 9.1 (1)) and in connection to the applicability of the special regime for India as mentioned above.

Compulsory school laws were in reality seen as a kind of *panacea* for the effective enforcement of minimum age legislation.

Minimum age and family

Employment in ‘establishments in which only members of the employer’s family’ were employed, except ‘employment which is harmful, prejudicial or dangerous’ for the child and domestic work in the family performed by members of that family could be excluded from the Minimum Age (Non-Industrial Convention), after a decision by ‘the competent authority in each country’ (Article 1.3). In this way, the family exception was made narrower in relation to the previous Conventions. (Some of the first Conventions had no exception for family employment, namely, the Minimum Age (Agriculture) Convention No. 10, and the Minimum Age (Trimmers and Stokers) Convention No. 15. On the other hand, the entire Convention No. 10 was more or less an exception for family employment, and Convention No. 15 regulated ‘hard classes of labour’.)

As I have described in this Chapter, there were two standpoints concerning family employment. One standpoint was equality, namely, that all children should have the same protection and that parents were no guarantee for the protection of children as it was argued that even parents could have ‘exploitative tendencies’. In this Chapter I have demonstrated that the Office was aware of this fact, recommending a cautious attitude because of a ‘considerable danger of abuse’ also in family employment. Equality was an important justification here; it was stressed that children employed by their parents or persons ‘*in loco parentis*’ should be granted the same protection as children employed by strangers. This statement highlights that the Office was aware of another ‘classical’ problem in relation to the exceptions for employment by family members: it was unclear who should be included in ‘family’.

The other standpoint was that it was too complicated to enforce the provisions of the Convention in a family undertaking. This was the direct justification for the general exclusion of domestic work from the application of the Convention. Eventually, the ILO chose to reconcile the two standpoints by the same kind of compromise as for ‘light work’ and ‘dangerous work’, by leaving it to each member state to decide for itself.

Childhood negotiated

As in the previous Conventions, there are several examples in the Minimum Age (Non-Industrial Employment) Convention of how the best interests of the child weighed lighter than other interests. One evident example is ‘the interests of art and science’ that outweighed the basic requirements of child protection such as school attendance and another is the institutional shortcomings and ‘culture and tradition’ of the member states that outweighed the compulsory inclusion in the Convention of family employment or equal protection for children in India. In respect of India, it was the concern for universal ratification that justified the exemption of

practically all provisions of the Convention for India replacing them with a minimum age of 10 years. Evidently the importance of ratification was paramount. Notwithstanding these far-reaching exemptions India never ratified the Convention.

As regards employment in public entertainment, the Office wrote that there was a conflict between “public taste” and the “dangers of work”. The solution adopted was to leave it to the member states to judge whether the film or theatrical piece in question was of sufficient ‘artistic value’ to permit child employment. In this way “public” taste could outweigh child protection.

These solutions were adopted in spite of the declarations in the Director’s Report of 1931 that the “stringency of economic laws has never been advanced as an obstacle to imperative humanitarian measures. For [the imperative humanitarian measures] no sacrifice has seemed too great”, and that there should be ‘a sanitary cordon’ to the effect that the protection of women and children should never give way to economic aspects.

Part III
Raising the Minimum Age 1936-1965

Chapter 9. The Great Depression and the Revision of the Minimum Age Conventions

In Part II of the dissertation I have described the first period of the minimum age campaign 1919-1932. The first three years were extremely active, and Minimum Age Conventions were adopted for employment in industry, at sea, and in agriculture. In 1932, 'the circle of Minimum Age Conventions' was closed with the adoption of a Convention regulating the minimum age for employment in non-industrial occupations. The Conventions established 14 years as the minimum age for entering the labour market. Furthermore, Conventions were adopted specifying a minimum age of 18 years for 'dangerous work': trimmers and stokers, and night work.

In Part III of the dissertation I will deal with the revision and extension of the Minimum Age Conventions. It covers the time period beginning in 1936 with the revision of the Minimum Age (Sea) Convention, followed by the revision of the Minimum Age (Industry) Convention and the Minimum Age (Non-Industrial Employment) Convention, and ending with the adoption of the Minimum Age (Underground Work) Convention in 1965. The period includes such essentially different phenomena as the Great Depression, or the Great Slump as it was often called, and the unbelievably strong economic upsurge that is often called 'the Golden Age' or the 'Record Years'. The period also includes dramatic events such as the rise and fall of Nazism and fascism, the Second World War, decolonisation and the Cold War. To make the period easier to review, I have dealt with the period in two separate chapters: Chapter 9, Revision of the Minimum Age Conventions, dealing with minimum age at the time of the Great Depression, and Chapter 10, Extending the Scope of the Minimum Age Campaign, dealing with the minimum age during the period of 'the Golden Age', the Cold War and decolonisation.

9.1 The Great Depression

The 1930s was a highly turbulent decade. It started with the great depression and ended with the outbreak of the Second World War. Inflation and unemployment characterised the world economy. The major concern for the ILO was the Great Depression followed by mass unemployment and

deteriorating working and living conditions. These hard times did not however prevent the ILO from adopting Conventions and Recommendations, although all Conventions adopted in the 1930s had a connection to unemployment: the limitation of hours of work (in 1935 the Forty-Hour Week Convention was adopted⁶⁷⁶); higher minimum ages for employment; and social insurance such as pension rights, holidays with pay and invalidity and sickness insurance.

The major internal events of the ILO during the 1930s were that in 1934 the United States and the Soviet Union joined the organisation and that in the same year Nazi Germany left the organisation and also the League of Nations.⁶⁷⁷ Fascist Italy followed the German example a few years later, leaving the ILO in 1938.⁶⁷⁸

The Great Depression broke out on the famous ‘Black Monday’, 29 October 1929, when the inflated American stock exchange market collapsed and released a wild rush to sell. Prices fell all over the world, and “half Europe was bankrupt and the other half threatened with bankruptcy”.⁶⁷⁹ Purchasing power decreased and there was an unprecedented drop in prices. The normal flow of commerce was almost completely interrupted within the first three years of the 1930s. The disastrous economic situation made states sceptical about internationalism and every nation tried to survive within its own borders. Countries tried to protect their national agriculture and commerce from international competition and put up tariffs and import restrictions. By doing so the improvements in working conditions that the ILO had achieved so far were seriously threatened. The economic situation also affected the colonies with unemployment and a halt in reform programmes for social improvement.⁶⁸⁰

Notwithstanding the dramatic ‘Black Monday’, the Great Depression did not arrive overnight. Several factors had converged to cause it. One of the major factors was that rationalisation and mechanisation had radically decreased the demand for labour. In the Director’s Report to the International Labour Conference in 1931 an enquiry that had been carried out in the United States was quoted. The increase in productivity in the United States between 1914 and 1930 was 26 per cent in slaughterhouses and preserving factories, 40 per cent in paper factories, 46 per cent in steel works and rolling mills, 82 per cent in petroleum refining works and 103 per cent in blast furnaces. The increase was extremely high in automobile factories (178 per cent) and in tyre factories (292 per cent). The extreme productivity increases in the automobile and tyre industries resulted from the

⁶⁷⁶ Forty-Hour Week Convention No. 47, adopted at the 19th Session of the International Labour Conference on 22/06/35, ILOLEX, www.ilo.org.

⁶⁷⁷ Record 1936, pp. 444-50.

⁶⁷⁸ Alcock 1971, p. 157.

⁶⁷⁹ *Op. Cit.*, 99-117.

⁶⁸⁰ *Op. Cit.*, p. 99.

introduction of the assembly line. The assembly line had already been introduced in the American slaughterhouses in the 1860s, but became famous at Ford Motor Company at the beginning of the 20th century.⁶⁸¹

However, according to another study referred to in the Directors' Report, mechanisation and rationalisation did not have to automatically lead to unemployment. Higher output per worker could lead to cheaper production and lower consumer prices, with a consequent increase in demand, higher production and increased demand for manpower. This was going to be one of the cornerstones of Western capitalist economics later during the Golden Age. Nevertheless, the Director's Report 1931 was rather pessimistic, concluding that with a pace of mechanisation as rapid as by the end of the 1920s,

then it must of necessity produce a sort of endemic unemployment, which will grow in extent as a greater number of workers are replaced by machinery and dismissed with no chance of finding another place in the active ranks of the employed for some time.⁶⁸²

The old truth from 1919, that bad times caused 'social unrest' was reconfirmed. The Director's Report 1931 warned about the dangers of 'certain political attitudes' of young people that might ensue from the despair caused by constant unemployment. It was the *Hitler Jugend* in Germany and similar phenomena in other countries that were intended:

Need attention also be called to the fact, which is so often referred to in Germany and which is so serious from the psychological standpoint, namely, that considerable numbers of young persons who have been trained as manual workers or salaried employees have been ready for work for four or five years but have never yet drawn wages in any factory or undertaking? It has been said that certain political attitudes, born of despair, which are at present a secret or open source of trouble to many States, are the result of unemployment. It would not be surprising if this is the case.⁶⁸³

With the mass unemployment followed poverty and disease. According to a third study referred to in the Director's Report, morbidity among unemployed families was as high as 70 per cent.⁶⁸⁴ As always, children were the first to suffer from the bad times. To begin with, children were affected by the poverty on a general level. Furthermore, there was unemployment among children as well as adult workers, with consequent loss of earnings. When there was a surplus of workers, employment of men was prioritised in national unemployment policies. In the United States as well as in Europe

⁶⁸¹ Director's Report 1931, p. 31.

⁶⁸² *Ibid.*

⁶⁸³ *Op. Cit.*, p. 11.

⁶⁸⁴ *Ibid.*

there were different government measures to prevent women from working if they had a husband who could support them. The trade unions stood behind such policies, emphasising that the place of women was in the home.⁶⁸⁵

Internally, the ILO discussed ‘creating’ employment by starting national and international so-called public works. A Convention on public works was adopted in 1936, but it was never ratified and never came into force.⁶⁸⁶ Other methods were unemployment insurance and general reduction of hours of work. A Convention on unemployment insurance was adopted in 1934, but it was full of exceptions for domestic workers, young workers, employees in public services, agricultural workers and fishermen.⁶⁸⁷ A Draft Convention on the reduction of hours of work in industry and a revision of the Convention on Hours of Work in Commerce and Offices were prepared. In 1935, the Forty-Hour Week Convention No. 47 and the Unemployment of Young Workers Recommendation No. 45 were adopted.⁶⁸⁸ In the first paragraph of Recommendation No. 45, it was recommended that ‘the minimum age for leaving school and being admitted to employment should be fixed at not less than fifteen years, as soon as circumstances permit’. The Recommendation also warned of the consequences of ‘idle children’ stating in the Preamble that

Considering that this unemployment continues and affects a large number of young persons, whose involuntary idleness may undermine their characters, diminish their occupational skill, and menace the future development of the nations...

In this way, it is completely clear that the partial revision of the Minimum Age Conventions was a part of the measures to combat unemployment and depression.

The Conventions were revised in 1936 and 1937. As the revisions were only partial, they were dealt with by the single discussion procedure (Article 6 (a), ILO Constitution), discussing the question at one single session of the Conference.

⁶⁸⁵ Kessler-Harris 2003.

⁶⁸⁶ Record 1936, pp. 444-50.

⁶⁸⁷ Unemployment Provision Convention No. 44, ILOLEX, ilo.org.

⁶⁸⁸ Unemployment of Young Workers Recommendation No. 45, Forty-Hour Week Convention No. 47, ILOLEX, www.ilo.org

9.2 Partial revision of the Minimum Age (Sea) Convention in 1936

In 1935, the 19th session of the Conference decided in a resolution that a revision of the Minimum Age (Industry) Convention (No. 5), the Minimum Age (Sea) Convention (No. 7), the Minimum Age (Agriculture) Convention (No. 10) and the Minimum Age (Non-Industrial Employment) Convention (No. 33) should be considered “urgently”.⁶⁸⁹

The first Convention to be revised was the Minimum Age (Sea) Convention. It was placed on the agenda for the maritime session of the Conference in 1936. The revision of the Minimum Age (Industry) Convention and the Minimum Age (Non-industrial Employment) Convention was placed on the agenda of the 1937 session of the Conference. The revision of the Minimum Age (Agriculture) Convention was deferred to a later session.⁶⁹⁰ It was, however, never revised and in the preliminary conclusions of this chapter I will discuss possible explanations.

The Conference was requested to consider (a) the raising of the minimum age to 15 years and (b) the replacing of the standard articles (concerning ratification, coming into force and denunciation of the Convention) with new articles in conformity with the general standard articles common to all Conventions after 1931. The replacing of the standard articles did not entail any material changes – it was only a formal question of conformity and clarity.⁶⁹¹

In the Blue Report, the substance of the replies of the governments of the member states in regard to the partial revision of the Minimum Age (Sea) Convention was reproduced. The Office concluded that there would be enough support for raising the minimum age, as ‘a considerable majority’ of the replies were in favour of it.⁶⁹² All of the replies were positive to the revision of the standard articles.⁶⁹³

The Conference accepted the minimum age of 15 years (Article 2) and the replacing of the standard articles (Articles 6-12). After proposals from the British government, an exception concerning ‘beneficial work’, reading as follows was included in Article 2:

Provided that national laws or regulations may provide for the issue in respect of children of not less than 14 years of age of certificates permitting them to be employed in cases in which an educational or other appropriate authority designated by such laws or regulations is satisfied, after having due regard to the health and physical condition of the child and to the prospective

⁶⁸⁹ Blue Report 1936.

⁶⁹⁰ *Op. Cit.*, p. 6.

⁶⁹¹ *Op. Cit.*, pp. 6-7.

⁶⁹² *Op. Cit.*, p. 17.

⁶⁹³ *Op. Cit.*, p. 19.

as well as to the immediate benefit to the child of the employment proposed, that such employment will be beneficial to the child.

This was a new category of work and different from 'light work'. Light work was conditional on 'harmlessness' rather than on any beneficial effects. The Conference also adopted an article providing that the Convention should not come into force until the Conventions revising the Minimum Age (Industry) Convention and the Minimum Age (Non-Industrial Employment) Convention had been adopted (Article 5). The Minimum Age (Sea) Convention (Revised), No. 58, was adopted by the Conference on 24 October 1936. It came into force on 11 April 1939.⁶⁹⁴

9.3. Partial revision of the Minimum Age (Industry) Convention and the Minimum Age (Non-Industrial Employment) Convention in 1937

9.3.1 The Blue Reports

As described above, the partial revision of the Minimum Age (Industry) Convention and the Minimum Age (Non-Industrial Employment) Convention was placed on the agenda for the 1937 session of the Conference.

As usual, the Office sent a questionnaire to the governments asking for their observations and positions on the matter. The substance of the governments' replies and the Office's conclusions were published in two separate Blue Reports.⁶⁹⁵

9.3.1.1 Industry

Concerning the minimum age in industrial occupations, the governments of the member states were consulted on (a) raising the minimum age from 14 to 15 years and any related revision of the exceptions from the minimum age provisions and (b) revision of the standard articles.⁶⁹⁶

The Office concluded that there was sufficient support among the member states for the proposal to raise the minimum age, even though only half of the replies were 'definitely in favour' of it.⁶⁹⁷ The Office recommended that the same exception for children aged 14 to 15 years that had been included in Minimum Age (Sea) Convention (Revised) should be

⁶⁹⁴ Record 1936, p. 394. Minimum Age (Sea) Convention (Revised) No. 58, ILOLEX, www.ilo.org. List of ratifications, see www.ilo.org/ilolex/english/convdisp1.htm (visited 30/01/07).

⁶⁹⁵ Blue Report Industry 1937 and Blue Report Non-Industrial Employment 1937.

⁶⁹⁶ Blue Report Industry 1937, pp. 5 and 9.

⁶⁹⁷ *Op. Cit.*, p. 20.

inserted in the Minimum Age (Industry) Convention (Revised).⁶⁹⁸ The Office also proposed the insertion of an article providing a higher minimum age for ‘any employment that by its nature or the circumstances in which it is to be carried on, is dangerous to the life, health or morals of the persons employed in it’.⁶⁹⁹

The Office recommended that the exception for employment in family undertakings should be retained in the revised Convention. In contrast, it was proposed that the special exceptions for India and Japan be updated in order to adapt the Convention to the changed circumstances since 1919 based on the existing legislation and to include a new article for China.⁷⁰⁰ The Office cautioned that the special provisions relating to ‘the Asiatic countries’ should not be regarded as permanent:

some provision should be made to ensure that such a standard is not regarded as necessarily permanent, but simply as the highest standard which can in practice be enforced in certain countries to-day.⁷⁰¹

Therefore it was proposed that the position of these countries should be reconsidered at regular intervals.⁷⁰²

9.3.1.2 Non-industrial employment

In respect of the Minimum Age (Non-Industrial Employment) Convention, the member states’ governments were also consulted regarding (a) raising the minimum age from 14 to 15 years and any related revision of the exceptions provided in the Convention and (b) substitution of the standard articles.⁷⁰³ Although the replies of the governments for and against raising the minimum age to 15 years were equally divided, the Office considered that there would be support for the higher minimum age at the Conference. The Office also suggested a consequential raising of the minimum age for ‘light work’ to 13 years and that the enforcement provisions should be strengthened by raising to 18 years, instead of 16 years, the age up to which employers were obliged to keep registers of all persons employed. In contrast to the Minimum Age (Industry) Convention, it was suggested that the special regime for India should be removed.⁷⁰⁴

⁶⁹⁸ *Op. Cit.*, p. 21.

⁶⁹⁹ *Op. Cit.*, p. 22.

⁷⁰⁰ *Op. Cit.*, p. 24.

⁷⁰¹ *Op. Cit.*, p. 25.

⁷⁰² *Op. Cit.*, p. 26.

⁷⁰³ Blue Report Non-Industrial Employment 1937, p. 5 and p. 9.

⁷⁰⁴ *Op. Cit.*, p. 22-27.

9.3.2 The Conference

9.3.2.1 The Committee on Minimum Age

The Committee on Minimum Age agreed to raising of minimum age for employment in industry and in non-industrial occupations to 15 years.⁷⁰⁵ Furthermore the Committee proposed, as it had got the consent of the delegates from the countries concerned, that the standards of the special regimes for India, Japan and China should be higher.

There was considerable discussion in the Committee about the exemption of employment in family undertakings. Most members considered it unsatisfactory to retain the exemption of employment in family undertakings, and ultimately the Committee proposed that there be no exceptions from the minimum age, either for family undertakings or for ‘beneficial work’.

9.3.2.2 The Conference

Submitting the report of the Committee to the Conference, the reporter Grace Abbott, government delegate from the United States, concluded that if the Conference would adopt the two Conventions, ‘it would mean real progress in the promotion of the welfare of children, and after all, that is the test’.⁷⁰⁶

However, there were objectives other than ‘real progress’ for the welfare of children – unemployment. Abbott directly added that

There are certain incidental benefits which may be expected from raising the age of employment of children, such as the removal of low-paid competitors with adult labour and the taking-up of the slack in times of unemployment.⁷⁰⁷

...

But those, I repeat, are only incidental benefits; the real benefits for which the Committee asks your consideration relate to the welfare of the child, which is, after all, the real test.⁷⁰⁸

Unemployment was brought up also in several speeches. The Chilean government delegate, Cañas-Flores, did not try to hide that he considered a raised minimum age to be a means to combat unemployment, predicting that

⁷⁰⁵ Record 1937, Appendix IX, p. 750 ff.

⁷⁰⁶ Grace Abbott, government delegate of the United States and Reporter of the Committee on minimum age, Record 1937, p. 321.

⁷⁰⁷ *Ibid.*

⁷⁰⁸ *Ibid.*

the places they [the children] will leave vacant in industry will be filled by better trained and educated workers, and this will tend to diminish unemployment.⁷⁰⁹

In contrast, the Belgian employers' delegate, Gustave Gérard, warned against permanent measures such as a raised minimum age, because he regarded unemployment as 'merely a temporary phenomenon', implying that when the Depression was over there might instead be a shortage of manpower.⁷¹⁰

The connection to the school-leaving age was considered as the main difficulty for raising the minimum age to 15 years. The Swedish government delegate Kerstin Hesselgren said there was a problem in Sweden in raising the minimum age to 15 years because of the conditions in the 'wide-spread, sparsely populated industrial districts'. She was afraid of 'the gap' that would occur between the school-leaving age and the age of admission to work in these places: it would be 'dangerous' to leave children without occupation. The school-leaving age in Sweden had recently been raised to 15 years in the cities, but it was still 14 years in most of the country. Furthermore she pointed out that, whereas there was a growing opinion in favour of a higher school-leaving age, the farmers were strongly opposed. The same conditions probably prevailed in a number of the industrialised nations. Among others, the Spanish government adviser, Isabel Palencia agreed that it would be difficult to adjust the school-leaving age to a minimum age of 15 years. However, she was the only speaker at the Conference who tried to put the child at the centre of the debate and asked why it was so difficult to spend money on one or two years' more education of children when so much money was spent on 'other things'. Palencia also pointed at the problems of indemnity and insurances in the event that a worker started to develop, for instance, tuberculosis as a child worker but did not fully develop the disease until much later in adult age.⁷¹¹

In contrast to Palencia's attempts to put the child at the centre of the debate, several delegates emphasised that the objectives of the minimum age campaign were the education of children for 'cultural development' and 'the future' of nations and 'the race'.⁷¹² Nicholas Phocas, government delegate of Greece, and Chairman of the Committee on Minimum Age, discussed child protection for the protection of 'the race'. He said:

Among all the social questions with which Governments are concerned, that of improving social conditions for young persons is, I think, one of the most

⁷⁰⁹ Record 1937, p. 344.

⁷¹⁰ *Op. Cit.* p. 334.

⁷¹¹ *Op. Cit.* p. 336.

⁷¹² *Op. Cit.* p. 339.

important, and the raising of the minimum age for admission to employment is not merely a social measure, but bears on the problem of protecting the race.⁷¹³

It is unclear how, but he probably intended that early employment would ‘degenerate’ the people of a nation by ruining the health, development and education of the young generations. These ideas should be seen against the background of ‘the population question’. Policies were introduced in the industrialised nations during the 1930s to meet the decline in birth rates not only by socialising costs and responsibilities involved in raising children but also by regulations introduced in the form of compulsory sterilisation. There was a strong belief in the connection between race and genetic integrity among leading scientists of the time.⁷¹⁴

Child welfare and industrial interests could easily be reconciled in the United States, according to the American employers’ adviser, Arthur Paul. He said that American industrialists would be satisfied with a minimum age of 15 years, because in the United States the largest industrial States had ‘fairly advanced laws on child labour’ and a Bill was coming before the Congress, and expected to be passed, to provide for a uniform minimum age of 16 years. As for child welfare, Paul said that the Conference should listen to the child experts.⁷¹⁵

There was some discussion about ‘beneficial work’. Hesselgren claimed that many non-industrial occupations were ‘freer and less arduous than other work’. Hesselgren pointed at the beneficial effects of working outdoors in the ‘fresh air’, an argument that had also been used concerning work at sea and in agriculture. Hesselgren mentioned the ‘errand boys’, and said that they had ‘much more freedom and opportunity of being in the fresh air than boys who are employed in factories who are often deprived of freedom of movement and of fresh air for the whole working day’.⁷¹⁶

Employment in family undertakings was discussed in connection to the Minimum Age (Industry) Convention, and a compromise amendment was adopted that made exceptions possible but only under strict conditions:

Provided that, except in the case of employment which, by its nature or the circumstances in which it is to be carried on, is dangerous to the life, health or morals of the persons employed in it, national laws or regulations may permit such children to be employed in undertakings in which only members of the employer’s family are employed.⁷¹⁷

⁷¹³ *Op. Cit.*, p. 323.

⁷¹⁴ See for example Myrdal 1934.

⁷¹⁵ Record 1937, p. 343.

⁷¹⁶ *Ibid.*

⁷¹⁷ Record 1937, p. 346.

The situation of female workers was also brought up in the debate, or rather the effects of it. The Belgian workers' adviser, Henri Pauwels, said that the first advocates of international labour reform, Owens and Le Grand, had already pointed out that employment of young women in factories was 'undesirable' for the two different reasons that it lowered the salaries for the men and because it was 'dangerous to the morals of young women concerned'.⁷¹⁸

The Belgian employers delegate, Gustave Gérard, claimed that in smaller countries the employment of children was 'indispensable', as for example in the Belgian textile industry. Young women had to enter the textile factories at an early age 'in order to gain the necessary manual dexterity and then have before them a few years of earning capacity before leaving the industry again to get married.' This indicates that unemployment had not reached the Belgian textile industry, and/or that the textile workers were highly skilled and difficult to replace.⁷¹⁹

The 'Asiatic countries' were addressed as always, in terms of 'climatic differences' or 'cultural' or 'industrial' differences. The Indian employers' adviser, Gaganvihari Mehta, argued that India had not only disadvantages in the form of differences in climate, habits and customs, but also because of its 'state of incipient industrialism'. He insisted that India did not want its industrialisation 'to be stifled or hampered by regulations which have been devised for entirely different conditions and by countries some of which are our competitors' and some of which had not even ratified the Minimum Age Conventions.⁷²⁰ Obviously there were suspicions that competition was a 'hidden' consideration, because Mehta argued that "We are not resorting to any dumping anywhere in the world", stressing instead the importance of child protection. He also pointed at the reconciling force of questions concerning child protection, stating that it "affects the welfare and the future of the children – which, after all, is the wellbeing and future of the country itself". In his conclusion he turned the focus back to the situation in India, revealing a common belief at the time that the East should learn from the West :

Social progress has no meaning or significance unless the East in its efforts to industrialise can learn from the errors and mistakes of the West and can achieve economic progress along with industrial harmony and social justice.⁷²¹

⁷¹⁸ *Op. Cit.* p. 327.

⁷¹⁹ *Op. Cit.* p. 334.

⁷²⁰ *Op. Cit.*, p. 338.

⁷²¹ *Ibid.*

Exactly the same thought was expressed in a special report *Problems of Industry in the East* published by the ILO one year later, in 1938, written by the Director General Harold Butler.⁷²²

9.3.3 The Minimum Age (Industry) Convention (Revised)

The Minimum Age (Industry) Convention (Revised) No. 59 was adopted on 22 June 1937 by the 23rd Session of the Conference. It came into force on 21 February 1941 and it has been ratified by 36 countries.⁷²³ By the Convention the minimum age was raised to 15 years (Article 2), with a possibility of exceptions in accordance with the compromise, described above, whereby except in the case of ‘dangerous employment’, national laws or regulations may allow employment of children ‘in undertakings in which only members of the employer’s family are employed’ (Article 2.2).

The Conference also accepted the revision of the provision requiring employers to keep registers of young workers, from 16 to 18 years (Article 4), raising the minimum age for dangerous work (Article 5) and the special exceptions for India, Japan and China (Articles 6-9) as amended by the Committee on Minimum Age.⁷²⁴

9.3.4 The Minimum Age (Non-Industrial Employment) Convention (Revised)

The Minimum Age (Non-Industrial Employment) Convention (Revised) No. 60 was adopted on 22 June 1937 by the 23rd Session of the Conference. It came into force on 29 December 1950. However, it has only been ratified by 11 countries.⁷²⁵ By the Convention the minimum age was raised to 15 years (Article 2) and the minimum age for light work was raised to 13 years (Article 3). Enforcement was strengthened by a new provision that employers be required to keep a register of persons employed under the age of 18 years (Article 7 (b)).

In respect of India, the Office had proposed to remove the special regime. However it had been re-inserted by the Committee on Minimum Age. The Indian government delegate Frank Noyce, in turn, submitted an amendment to remove the regime. He argued that the employment of children in the totally unregulated ‘industry not using power’ was a far bigger problem than children employed in non-industrial occupations, for which reason the

⁷²² Butler 1939.

⁷²³ Minimum Age (Industry) Convention (Revised) No. 59, ILOLEX, www.ilo.org. List of ratifications, see www.ilo.org/ilolex/english/convdsp1.htm (visited 30/01/07)

⁷²⁴ *Op. Cit.*, p. 356.

⁷²⁵ Minimum Age (Non-Industrial Employment) Convention (Revised) No. 60, ILOLEX, www.ilo.org. List of Ratifications see www.ilo.org/ilolex/english/convdsp1.htm (visited 30/01/07). The Convention has been shelved.

special regime made no sense. The limited resources available for inspection would be better used to extend factory inspection.⁷²⁶ Furthermore it was claimed that, except for employment in agriculture and domestic service, very few Indian children were employed in non-industrial occupations.⁷²⁷

The Indian workers on the other hand advocated the need for a special regime for India. Among other arguments it was put forward that the newly elected Indian government had promised that their first efforts would be to promote primary education and ensure the improvement of the conditions of the workers in India.⁷²⁸ On a vote, the amendment was not accepted and the article with the special regime for India was retained (Article 9).⁷²⁹

The Minimum Age (Family Undertakings) Recommendation No 52.

When the Committee on Minimum Age decided to withdraw the exemption for employment in family undertakings from the minimum age provisions for industry, the government delegates of France, Belgium, Greece, Yugoslavia, the United States and Spain submitted an amendment to re-introduce it in the Convention. The drafters of the amendment argued that, whereas having been told ‘that their only concern should be the child and its health and education, and the future of the race’, an exception for family undertakings was absolutely necessary if ratification of the Convention were to be obtained.⁷³⁰ The Conference adopted the amendment by a large majority of the votes.⁷³¹ However, as a compromise, the Conference adopted the Minimum Age (Family Undertakings) Recommendation No. 52, also by a large majority of the votes.⁷³² Recommendation No. 52 established that it was the objective to abolish the exemptions for family undertakings in the Minimum Age Conventions in the near future, and member states were requested to include domestic undertakings in their industrial legislation.⁷³³

⁷²⁶ Record 1937, p. 759.

⁷²⁷ *Op. Cit.*, p. 353.

⁷²⁸ *Op. Cit.*, p. 354.

⁷²⁹ *Op. Cit.*, p. 356.

⁷³⁰ *Op. Cit.*, p. 347.

⁷³¹ *Op. Cit.*, p. 349.

⁷³² *Op. Cit.*, p. 350.

⁷³³ Minimum Age (Family Undertakings) Recommendation, No. 52, adopted 22 June 1937, ILOLEX, www.ilo.org.

Chapter 10. The Golden Age? Extending the Scope of the Minimum Age Campaign

In the well-known and often cited exposé of the 20th Century, *The Age of Extremes, the Short Twentieth Century 1914-1991*, British historian Eric Hobsbawm has described the developments of the century, dividing it into three periods. Beginning with ‘the Age of Catastrophe’, from the First World War to the end of the Second World War, continuing with ‘the Golden Age’ from the end of Second World War to the beginning of the 1970s, he ends his exposé with ‘the Landslide’, dealing with the crisis decades directly after the Golden Age, including the fall of the Soviet Empire and a number of other societal institutions.⁷³⁴ I find the concept of ‘the Golden Age’ useful for describing developments after the Second World War, and Hobsbawm’s analysis highlights questions that are highly relevant for understanding the developments within the ILO, although he has commented that the Golden Age might imply a certain amount of irony, with which I agree.⁷³⁵ The economic and social benefits of the Golden Age were concentrated on the Western industrialised world. In many other parts of the world, liberation movements were struggling against their colonisers, or starting to build independent states with very scarce resources. And although there were improvements also in the ‘Third World’, the Sub-Saharan African nations made no progress, and in South Africa apartheid reigned.

Returning to the privileged Western hemisphere, the fundamental and unique changes in the world economy of the Golden Age can only be understood in terms of the explosive growth-rate of the post-war Western economies, a second technological revolution, globalisation with free trade and free movement of capital and stable currencies, and the Keynesian combination of economic growth in a capitalist economy based on mass consumption and full employment for a well-paid and well-protected labour force that most of the Western capitalist democracies relied on. One of the great lessons of the Great Depression was that mass unemployment had to be avoided at all costs, for political reasons. The mass unemployment of the Depression had been a perfect breeding ground for Nazism, fascism and communism.⁷³⁶ In contrast, people with work, increasing salaries and

⁷³⁴ Hobsbawm 1995.

⁷³⁵ Said 2000, p. 476.

⁷³⁶ Hobsbawm, pp. 262-67, 275, 282.

protection from the welfare state had no interest in revolution and upheaval. The Keynesian economic policies were instrumental in achieving this in the Western capitalist democracies that were based on consensus between the political Right and Left, and the – tacit or explicit – agreement between employers’ and workers’ organisations to ‘keep labour demands within limits’. In reality, the negotiations between industry and workers, the ‘social partners’, were formally or informally presided over by the governments in many of the Western states and, thus, the system was based on the same tripartite and stabilising structure as the ILO.⁷³⁷

The end of the Golden Age was a result of a combination of factors such as the wage explosion, the ‘overheated’ economies, the oil crisis, the decline in the overwhelming political and economic American dominance, increasing inflation, and the collapse of the Bretton-Woods international financial system in 1971.⁷³⁸

10.1 The Declaration of Philadelphia. A wider scope for the ILO

As described above, social justice – the protection, welfare and higher living standards of the workers and fair working conditions – was one of the essential factors behind the Golden Age. This was exactly in line with the objectives and strategies of the ILO as expressed by the ILO Constitution in 1919 by “universal and lasting peace can only be established if it is based upon social justice” (Preamble, ILO Constitution). Social justice was, however, a dynamic concept. Albert Thomas, first Director General of the ILO, considered as early as the first years of the ILO that social justice meant “much more than the removal of social injustice”. According to him it meant “a possible policy through which the individual might attain his [*sic*] political, economic and moral rights”.⁷³⁹

Social justice for workers was a ‘double objective’ of the ILO. One side of the coin was ensuring “universal and lasting peace” by creating societal stability by “social justice” (ILO Constitution, preamble). The other side of the coin was to ensure that competition between countries would not be at the expense of the workers – “labour is not a commodity” (Original ILO Constitution, the Labour Clauses). In this way, one can say that there was a conflict between the economic and social aspects of international labour legislation. There was a continuous discussion about the relationship between economic and social policy within the ILO, resulting in a systematic

⁷³⁷ *Op.Cit.*, p. 282.

⁷³⁸ *Op.Cit.*, p. 286.

⁷³⁹ Phelan 1949, p. 242.

strategy that economic policy should always be guided by social considerations.

President Franklin D. Roosevelt shared the idea that social considerations were vital. During the war, he declared to the ILO that “economic policy can no longer be an end in itself. It is merely a means for achieving social justice”.⁷⁴⁰

In May 1944, the Declaration of Philadelphia was adopted by the International Labour Conference.⁷⁴¹ The Declaration was an amendment to the ILO Constitution, reconfirming and extending the objectives and methods of the ILO. The Declaration reconfirmed that “labour is not a commodity”, the necessity of freedom of expression and association for sustained progress, that “poverty anywhere constitutes a danger to prosperity everywhere” and the continued ‘war against want’ within each nation and internationally. The method was concerted international action including “representatives of workers and employers enjoying equal status with those of governments” (Section I).

It was reaffirmed that “lasting peace can be established only if it is based on social justice”, and that “all human beings, irrespective of race, creed or sex, have equal rights to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity”. It should be the central aim of national and international policy to accomplish the social conditions described in the Declaration, and that “all national and international policies and measures, in particular those of an economic and financial character, should be judged in this light” (Section II). The Declaration defined a number of central policies, such as full employment and the raising of standards of living, working conditions, the effective recognition of the right to collective bargaining, the extension of social security measures to secure a basic income for all, comprehensive medical care, child welfare and maternity protection and equality of educational and vocational opportunity (Section III).

It was also stated that the “fuller and broader utilisation of the world’s productive resources” necessary for the achievement of the objectives of the Declaration included, among other things, “measures to expand production and consumption, to avoid severe economic fluctuations” (Section IV). This is a description of the recipe of the Keynesian model of ‘mitigated capitalism’ that was, as described above, relied on by most Western governments during the Golden Age.

To conclude, by the Declaration of Philadelphia, the mandate of the ILO was extended beyond the original goal of improving working conditions. The

⁷⁴⁰ Valticos & von Potobsky 1995, p. 26.

⁷⁴¹ Declaration of Philadelphia, adopted at the 26th Session of the International Labour Conference on 10 May 1944 in Philadelphia, ILOLEX, www.ilo.org.

Declaration was nothing less than a complete social programme for the modern welfare state. Human rights concepts such as freedom, dignity, economic security and equal opportunity were enshrined in the Declaration together with capitalist concepts such as increased production and consumption. As regards the situation of children, whereas only three items in the Declaration directly concerned child protection – the provision of ‘child welfare and maternity protection’ (Section III (h)), the provision of ‘adequate nutrition, housing and facilities for recreation and culture (Section III (i)) and assuring ‘equality of educational and vocational opportunity’ (Section III (j)) – indirectly most of the commitments of the Declaration were essential for the protection and welfare of children. Furthermore, the child-related provisions of the Declaration were not exclusively of a protective nature, as they provide rights to equal educational opportunity and to food and housing.

As early as before the Second World War, the ILO started adopting Conventions and Recommendations on social insurance, maternity leave and maternity benefits. The Declaration of Philadelphia widened the range of these activities substantially. In the immediate post-war years, the ILO started to bring effectiveness to the objectives of the Declaration. Several Conventions and Recommendations on social insurance were adopted: three Conventions and eight Recommendations. These instruments encompassed social security and pensions for seafarers, social policy in ‘non-metropolitan territories’ (territories dependent on colonial powers), income security and medical care.⁷⁴² Although not directed explicitly towards children, all were instrumental in the situation for children, guaranteeing workers and their families a basic income in the event of death, old age, occupational injury, insufficient income, during maternity leave, etc.

Technical co-operation

The end of Second World War was the start of decolonisation. The colonies were transformed into independent states, often against the intentions of the colonial powers, and after wars of liberation and insurrection. I will return to decolonisation below in Section 10.2. For the moment it is only mentioned as part of the background to the technical co-operation programmes of the ILO. The idea of extending the activities of the ILO to technical co-operation sprung out of the necessity to answer to the needs of the newly independent

⁷⁴² Social Security for Seafarers Convention No. 70 and Seafarers Pensions Convention No.71 in 1946, Social Policy (Non-Metropolitan Territories) Convention No. 82 in 1947, Income Security Recommendation No. 67, Social Security (Armed Forces) Recommendation No. 68, Medical Care Recommendation No. 69, Social Policy in Dependent Territories Recommendation No. 70 and Employment (Transition from War to Peace) Recommendation No. 71, all adopted in 1944, Social Policy in Dependent Territories (Supplementary Provision) Recommendation No. 74 1945, Seafarer’s Social Security Recommendation No. 76, Seafarers’ Medical Care (Dependents) Recommendation No. 76 adopted in 1946, ILOLEX, www.ilo.org.

states for both organisational and financial support for economic and social development.

Former Director General of the ILO David A. Morse⁷⁴³ has stated that the changes in the policy-making organs of the ILO that followed the shift in the membership of the ILO after decolonisation led to a profound transformation of the substance of the work of the ILO and that the most important of those changes was the introduction of the technical co-operation programmes on a large scale.⁷⁴⁴ The concept was fully in line with the broadened mandate assigned to the ILO by the Declaration of Philadelphia in 1944.

The technical co-operation programmes go further than the standard-setting activities of the ILO, complementing it with programmes for regional and local policy-making and direct action in a particular area. Today, the technical co-operation programmes focus on three major areas: (1) poverty alleviation and employment promotion; (2) democracy and human rights; and (3) workers' protection. The International Programme on the Elimination of Child Labour, IPEC, started in 1992, is one of the ILO technical co-operation programmes.⁷⁴⁵ IPEC is financed outside the ordinary budget of the ILO, by contributions by individual member states, and focuses on children's work in targeted member states.⁷⁴⁶

10.2 The Cold War, post-colonialism and the ILO

10.2.1 New membership majorities

By the 1960s the membership of the ILO had increased exponentially. Directly after the Second World War, in 1946, there had been a first wave of new, or renewed, memberships. Among these were the defeated Germany, Austria, the USSR and Japan. From that time – and for many years afterwards – the number of members increased by about two per year. A second wave of new members occurred in 1960 when 16 states, comprising 15 African states and Cyprus, joined the ILO. The number of members more than doubled from 1946 to 1970. Decolonisation was the reason for the majority of new members and it led to an altered membership majority. With the new members, the culturally homogenous pattern of the ILO from before the Second World War, with a majority of members with liberal parliamentary systems, market economies and trade union pluralism, was drastically changed. The decolonised and new members questioned the programmes of the ILO and asked for adjustments to suit their special needs

⁷⁴³ David A. Morse, 1907-1990. American lawyer, Director General of the ILO 1948-1970.

⁷⁴⁴ Morse 1969, pp. 48-49 and 52-53. Further on technical co-operation, see Report 1999.

⁷⁴⁵ See *supra*, Chapter 1.2.

⁷⁴⁶ For further information on IPEC, www.ilo.org/public/english/standards/ipec/ (visited 30/01/07)

and aspirations. In this way, new issues were put on the agenda: the balance between standard-setting and operational activities; adaptation of the standard-setting function to national conditions in developing countries by flexibility clauses in the Convention; and structural reforms of the ILO such as changes in the distribution of seats in the Governing Body to better reflect the new membership majorities. All of this, however, was not new. The flexibility clause, as I have described in the previous chapters, was already established in the original ILO Constitution and had been used frequently throughout the minimum age campaign.

A consequence of the many new memberships was that the position of the Western industrialised nations was formally weakened in comparison with before the Second World War. But in reality the industrialised West kept its strong influence over the ILO. One explanation of this is the strong position taken by the workers' and employers' organisations – organisations that were firmly based on Western liberal concepts.⁷⁴⁷

10.2.2 Developing nations and industrialised nations and the ILO

In Section 2.2.4, I have already discussed the position of the industrialised, the colonised and the developing countries. When discussing the changes in the membership majority and the groupings of the ILO that appeared after the Second World War, it is necessary to discuss further the practice of labelling countries as 'developing nations' and 'industrialised nations'. The non-industrialised nations were defined as 'colonies and protectorates', 'oriental countries', 'certain countries', or simply 'the East' during the first stages of the minimum age campaign. In many instances in the Conference material, the terminology of 'oriental countries', etc. referred to a few nations such as India and Japan, that were explicitly mentioned and had special regimes in a number of the Minimum Age Conventions. A majority of the countries in question were colonies of Great Britain, France, Belgium, Portugal or the Netherlands until they were liberated after the Second World War or later: Algeria was liberated from France in 1962; and Angola and Mozambique were liberated from Portugal in 1975.

With decolonisation, a large number of newly independent states appeared in the international arena. Whereas the discussions of 'oriental countries', etc. presupposed that the conditions in these states were very much alike, it was in reality a heterogeneous group geographically, politically, economically and culturally.⁷⁴⁸ What they all had in common was that they were former colonies, with weak national institutions, a young population and were either non-industrialised or in the early stages of industrialisation. In this way, and from an ILO perspective, the decolonised

⁷⁴⁷ Ghebali 1989, *Passim* pp. 25-27, 43, 46, 67, 83-84.

⁷⁴⁸ David A. Morse 1969, Ghebali, *Op. Cit.* pp. 117-121.

states can be said to have a lot in common. From the beginning, the decolonised states were usually defined as ‘underdeveloped countries’. The terminology then changed to ‘developing countries’, because it was regarded as less pejorative. Within the ILO the decolonised nations formed the informal ‘Group 77’ which was originally set up for the first UNCTAD meeting in 1964.⁷⁴⁹

The term ‘industrialised nation’ is usually defined as a highly industrialised and economically developed nation. Today, nations with a high gross national income per capita and high productivity are included in this category. According to the International Monetary Fund, the member states of the European Union, the EFTA countries, the United States, Canada, Australia, New Zealand and Japan are included among the industrialised nations.⁷⁵⁰ The use of these terms is not without problems but for the purposes of our investigation it is not necessary to go further into that discussion.

10.2.3 Informal groupings

In the ILO, as in other international organisations after the Second World War, member states started to join in informal groupings to strengthen their negotiating capacity. During the Cold War, there were three different such informal groupings based on socio-economic and political or regional common denominators. The largest grouping was the above mentioned ‘Group 77’. The second largest was the industrialised nations with a market economy; the third largest was the Communist bloc: the USSR and the Communist states of Eastern Europe. The three groupings summoned internal gatherings to agree on strategies, etc. before the meetings of the Governing Body and of the International Labour Conference. The Communist states formed a monolithic bloc, whereas the other two groups were much looser and represented a multitude of – and sometimes conflicting – interests.⁷⁵¹

The Cold War and the ‘politicisation’ of the ILO

The Cold War of course set its mark on the ILO and contributed to a polarisation, or what has been called the politicisation. After the USSR and the Eastern European countries had been readmitted to the ILO in 1954, an ‘East-West’ conflict broke out in the ILO. Within both the workers’ and the employers’ groups it was commonly felt that the communist systems were not compatible with membership of the ILO. That conflict, ultimately, was

⁷⁴⁹ United Nations Conference on Trade and Development.

⁷⁵⁰ There are also the ‘NIC-countries’, newly industrialising countries, and ‘dynamic Asian economies’ that are not included in the definition of ‘developing countries’.

⁷⁵¹ Gheballi 1989, pp. 41-3 with further references.

instrumental in the withdrawal of the United States from the ILO between 1977 and 1980.⁷⁵²

Another conflict, which threatened the very existence of the organisation, concerned the racist policy of apartheid in South Africa. In 1961, the newly independent African states that had just joined the ILO demanded that a resolution should be adopted stating that South Africa's membership was not consistent with the ILO Constitution and that South Africa should be advised to withdraw its membership until apartheid was abolished.⁷⁵³ The resolution was adopted but South Africa at first refused to withdraw its membership. The crisis was ultimately resolved in 1964 when South Africa agreed to withdraw from the ILO.⁷⁵⁴

Other conflicts that are usually referred to in terms of politicisation, and which caused a great deal of turbulence in the ILO during the late sixties and the seventies, concerned the Portuguese colonies Angola and Mozambique and the conflict in the Middle East which ultimately contributed towards the United States' withdrawal between 1977 and 1980.⁷⁵⁵

10.3 The protection of children and young workers.

10.3.1 The Grey Report on the Protection of Children and Young Workers 1945

After the Second World War, concern for the protection and welfare of children increased. Children had suffered enormously during the war, and children were a major concern in the war recovery programmes. Children were a top priority also for the ILO and the question of the protection of children and young workers was on the agenda as early as the first post-war meeting of the Conference in Paris in 1945. In the Grey Report to the Conference, *Protection of Children and Young Workers*, for the first time the Office directly connected the minimum age campaign to the importance of the question of maintenance, stressing the need to guarantee a basic income for families.⁷⁵⁶ The connection was acknowledged already in the introduction to the report:

⁷⁵² Morse 1969, pp. 40-50 and Ghebali 1989, pp. 104-107 and 113-116.

⁷⁵³ International Labour Conference, 45th Session 1961, Record of Proceedings, p. 891. Minimum Age (Coal Mines) Recommendation No. 96, ILOLEX, www.ilo.org.

⁷⁵⁴ International Labour Conference, 48th Session 1964, Record of Proceedings, pp. 402-403.

⁷⁵⁵ The United States neither accepted that the ILO, in a resolution adopted in 1974, had condemned Israel on grounds of racial discrimination and violation of trade union freedoms in the Occupied Territories nor that the PLO was admitted as an observer at the International Labour Conference in 1975. Ghebali, *Op. Cit.* p. 114 with further references.

⁷⁵⁶ Grey Report 1945.

The important point to be realised in every case is that material aid to the family, which helps it to accept responsibility for the maintenance of the children, is a fundamental factor in any social programme for child welfare.⁷⁵⁷

This wider understanding of children and work was clearly the result both of an awareness of – and a sense of guilt for – the conditions of children during the war, combined with a post-war optimism that it was possible to construct a better world. This was confirmed in the Resolution Concerning the Protection of Children and Young Workers that was adopted at the Conference in 1945 (and to which I will soon return below):

Whereas the reconstruction period, during which all democratic nations will seek to restore and improve their instruments of social progress, affords a unique opportunity of reviewing the work already accomplished under the auspices of the International Labour Organisation for the benefit of childhood and youth and for drawing up for the future a comprehensive policy by formulating the general principles to be followed in order to achieve these ends within the framework of the fundamental objectives of the International Labour Organisation.⁷⁵⁸

Many countries had started building up extensive welfare systems already before the outbreak of the war. The protection and maintenance of children was a central issue in that work. A large number of member states had already adopted laws granting children's allowances: Australia, Belgium, Brazil, Bulgaria, Canada, Finland, France, Germany, Great Britain, Ireland, Italy, Netherlands, New Zealand, Portugal, Spain, Switzerland, Uruguay and the USSR.⁷⁵⁹ As usual, factors that had nothing to do with child protection were also at play. Granting a minimum economic security for families was a means of solving the problem of decreasing populations.⁷⁶⁰

The Grey Report 1945 dealt with such issues as 'General Social Protection of Children and Young Persons', 'Educational Opportunities', 'Admission to Employment', 'Protection of Young Workers' and 'Administration of Protective Policies'. In the second part of the Report, the Office proposed that Conventions should be drafted concerning medical examination of young workers and night working by children and young persons in non-industrial occupations.

The question of 'maintenance of children and young persons' was dealt with as a subsection of 'General Social Protection'. The further division of the section into the subsections 'Aid to Families' and the 'Assistance to

⁷⁵⁷ *Op. Cit.*, p. 8.

⁷⁵⁸ Draft Resolution Concerning the Protection of Children and Young Workers, adopted by the International Labour Conference, 27th Session, Record of Proceedings, Paris 1945, Annex (Resolution 1945)

⁷⁵⁹ Grey Report 1945, p. 7

⁷⁶⁰ *Op. Cit.*, p. 7

Children without Family Support’ shows, not surprisingly, how the question of maintenance of children entirely relied on the family concept, or more precisely the incapacity of families, particularly large families.⁷⁶¹

The Office wrote that the purpose of the Minimum Age Conventions was to grant the child enough time to ‘prepare itself fully for its future life’. Children ought to go to school up to the age of 16 years, preferably up to 18 years. The first problem observed was the maintenance of the child. Insufficient family revenues forced children to work, depriving them of healthy bodily development and education.⁷⁶² The Office however admitted that the minimum age for employment could not yet “be fixed at a sufficiently high level to enable all the juvenile population to receive ‘a substantial measure of education’ – up to the ages mentioned – unless the general standard of living has reached a high level.”⁷⁶³

As indicated above, the general opinion of the Office was that it was ‘in the best interests of the child’ that the responsibility of maintaining the children should normally rest on the family. In the case of families ‘materially or morally’ incapable of caring properly for their children, the solutions suggested were social security, children’s or family allowances, free or below-cost meals at school and state-subsidised housing.⁷⁶⁴ Regarding children’s allowances, the Office referred to Article 28 of the Income Security Recommendation, which provided that “society should normally cooperate with parents through general measures of assistance designed to secure the well-being of dependent children”. Children’s allowances should be payable irrespective of the parents’ income, according to a prescribed scale, represent a substantial contribution to the cost of maintaining a child, allowing for the higher cost of maintaining older children, and should as a minimum be granted to all children who were not provided for through social insurance.⁷⁶⁵

10.3.2 The Resolution on the Protection of Children and Young Workers 1945

The Resolution on the Protection of Children and Young Workers referred to the paragraphs concerning protection of children and young persons in the Declaration of Philadelphia – the provision for child welfare and maternity protection, the provision of adequate nutrition, housing and facilities for recreation and culture, and the assurance of educational and vocational

⁷⁶¹ *Op. Cit.*, pp. 4-12.

⁷⁶² *Op. Cit.*, p. 4.

⁷⁶³ *Op. Cit.*, p. 5.

⁷⁶⁴ *Op. Cit.*, p. 4.

⁷⁶⁵ International Labour Conference, 26th Session, Report IV (1): *Social Security: Principles, and Problems Arising Out of the War*, Part I: Principles, Fourth Item on the Agenda, Montreal, 1944, Quoted in Grey Report 1945, pp. 6-7.

opportunity.⁷⁶⁶ The responsibility of public authorities for children's protection and welfare was emphasised in the Resolution. It was established that the governments...

should accept responsibility for assuring the health, welfare and education of all children and young persons and the protection of all youthful workers, regardless of race, creed, colour or family circumstances (I. General Principle, 1.)... and that...

children, the citizens and workers of the future, are brought up into the world and grow up under conditions which afford opportunities for proper physical, mental and moral development and for training for a useful employment or career (Preamble)

The first section of the Resolution dealt with the 'General Social Protection of Children and Young Persons'. It contained a number of paragraphs concerning maintenance – decent living wages, social security, children's allowances and provision of food and housing, and health and social protection measures in accordance with the Office's suggestions in the Grey Report. One section dealt with 'Educational Opportunities', including vocational guidance and economic assistance, followed by a section dealing with 'Admission to Employment'. In respect of minimum age it was established that:

The Conference reaffirms its duty to promote the abolition of child labour, and, convinced that it is in the best interests of children in order to assure an adequate preparation for their future to fix the minimum age for admission to employment as high as possible for all categories of employment:

- (a) invites all Member States to ratify as soon as possible either the four Conventions fixing at 14 years the minimum age [...or] the revised Conventions in which the minimum age for industrial employment, employment at sea, and employment in agriculture is raised to 15 years; and
- (b) urges them to take as their objective the gradual raising to 16 years of the minimum age of admission to employment as circumstances permit. (IV. A. Regulation of Minimum Age)

The question of maintenance was directly linked to the minimum age provisions, by providing that the gradual raising of the minimum age should be accompanied at each stage by "simultaneous measures for assuring the maintenance of children" as provided in the Resolution, and "organising compulsory school attendance until at least the same age" (IV.A 17 (2)). It was also provided that the minimum age should be fixed simultaneously for the various categories of occupation, avoiding the effect that if stricter rules were applied for one kind of occupation this might "induce younger children to enter employments which are inadequately regulated and in which they

⁷⁶⁶ Resolution 1945.

will therefore receive less protection". It was pointed out that this was especially relevant for industrial and non-industrial work carried out in urban areas (IV.A 17 (3)). It was specially provided that domestic work performed outside of the child's own family needed to be regulated in the same way as other work, in order to avoid children working "on a basis of quasi-adoption" (IV.A 17 (4)).

Additionally, there was one section dealing with the 'Protection of Young Workers' providing regulation of working conditions and one section dealing with 'Administration and Protective Policies' acknowledging the importance of a co-ordinated framework of law and administration for "the application of the broad social policies necessary for the full protection of children and young people". This is further proof of the new, much broader perspective towards minimum age within the ILO. There was an awareness of the strong connections between not only minimum age and school, but also social policies, and the need for co-ordination between administrative entities and organisations concerned with children. Finally there was a section dealing with 'Collaboration on an International Basis' emphasising the importance of "the fullest cooperation between the all the international bodies concerned". (Sections I-VII).

The standards of the Resolution Concerning the Protection of Young Workers was going to be of significance when the ILO drafted the Minimum Age Convention No. 138 and Recommendation No. 146. In Chapter 11, I will return to this with some further comments.

10.4 Medical examination of young persons

As described above, the protection of children was a highly prioritised question at the end of the war, and consequently the proposals in 1945 to adopt Conventions on the medical examination of young persons on entering employment were timely. Workers, employers and governments all agreed on the necessity for urgently counteracting the effects of war and occupation on the health of children and young persons. One very direct motive behind the proposals was the epidemic of tuberculosis in the liberated countries. Another motive was prevention of occupational accidents and diseases. A third purpose was to find suitable occupations for the young persons found to be unfit for a certain employment because of health reasons by offering them vocational guidance.⁷⁶⁷ In this way, the Conventions on medical examination on entering employment were focused on the protection of the health and well-being of the children and young persons concerned without side-interests.

⁷⁶⁷ Blue Report (1) 1946, pp. 4-5.

Another circumstance that facilitated the adoption of the Conventions on the medical examination of young persons was the fact that the majority of member states already had introduced laws requiring the medical examination of young workers as a condition for employment, either generally or concerning ‘dangerous occupations’.

10.4.1 The Medical Examination of Young Persons (Industry) Convention No. 77 and the Medical Examination of Young Persons (Non-Industrial Occupations) Convention No. 78

The Conference decided to deal with the medical examination of young persons in two separate Conventions: one for industry and one for non-industrial occupations. The sea was covered already by the Medical Examination of Young Persons (Sea) Convention adopted in 1921.⁷⁶⁸ Medical examination on entering employment in agriculture was “postponed for further study”.⁷⁶⁹ No such Convention or Recommendation has been adopted to date.

Both the Medical Examination of Young Persons (Industry) Convention No. 77 and the Medical Examination of Young Persons (Non-Industrial Occupations) Convention No. 78 were adopted on 9 October 1946, at the 29th Session of the Conference in Montreal. Both Conventions came into force on 29 December 1950. To date, Convention No. 77 has been ratified by 43 countries, and Convention No. 78 by 39 countries.⁷⁷⁰ A large number of the articles in the two Conventions are identical or almost identical except for the words ‘industry’ and ‘non-industrial occupations’. I will therefore deal with the two Conventions together.

In Article 1 the scope of the Conventions is determined. Convention No. 77 (Industry) applies to industrial undertakings, defined as in the Minimum Age (Industry) Convention but updated by the inclusion and exclusion of certain kinds of work. In Convention No. 78 (Non-Industrial Occupations), the non-industrial occupations are defined as “all occupations other than those recognised by the competent authority as industrial, agricultural and maritime occupations”. Convention No. 78 (Non-Industrial Occupations) allows exclusion of work in family undertakings on condition that it is so provided in national law and that the work is “recognised as not being dangerous to the health of children or young persons” (Article 1.4).

⁷⁶⁸ See Chapter 7.

⁷⁶⁹ Blue Report (2) 1946, p. 111.

⁷⁷⁰ Medical Examination of Young Persons (Industry) Convention No. 77, Medical Examination of Young Persons (Non-Industrial Occupations) Convention No. 78, ILOLEX, www.ilo.org, List of ratifications, see www.ilo.org/ilolex/english/convdisp1.htm (visited 30/01/07).

It is provided in both Conventions that children under the age of 18 should not be admitted to employment unless found fit for the work in question after medical examination by a qualified physician (Article 2). The medical examination has to be repeated at intervals of not more than one year (Article 3). For employment in occupations involving 'high health risks', medical examination and re-examination for fitness for employment are required up to the age of 21 years (Article 4). The medical examination must be free of charge for the child and his or her parents (Article 5).

In the event of the medical examination showing that a young person is not physically fit for the employment in question, it is the responsibility of the competent authorities to provide physical and vocational guidance (Article 6). Employers are required to file and make available for inspection the medical fitness certificates for the young workers (Article 7). Convention No. 78 (Non-Industrial Occupations) contains further enforcement measures to make control of itinerant trading easier (Article 7.2).

Both Conventions have a particular section on 'Provisions for Certain Countries', allowing countries with territories including "large areas where, by reason of the sparseness of the population or the stage of development of the area" making enforcement "impracticable", to exclude the areas from the application of the Conventions (Article 8). However, there is an obligation to report to the ILO such exclusions (Article 8.2-3). Convention No. 78 (Non-Industrial Occupations) also contains a special provision for India, with lower age limits for medical examination, 16 years generally, and 19 years for work that involves "high health risks", thus two years below the general age limits (Article 10). In addition, the scope of the Convention is narrowed in India (Article 10.1).

Finally, there is a general exception for countries lacking laws or regulations on medical examination at the time of the adoption of the Convention, allowing them to specify a lower minimum age than 18 years for medical examination, although not lower than 16 years (Article 9).

The Medical Examination of Young Persons Recommendation No. 79

The two Conventions on the medical examination of young persons were supplemented by the Medical Examination of Young Persons Recommendation No. 79.⁷⁷¹ The Recommendation covers both industrial and non-industrial employment. It contains mainly provisions relating to administration and enforcement: provisions that were estimated to be useful for indicating the best methods and practices, but too detailed to be included in the text of the Convention.

⁷⁷¹ Medical Examination of Young Persons Recommendation No. 79, adopted by the International Labour Conference on 9 October 1946 at its 29th Session in Montreal. ILOLEX, www.ilo.org.

10.5 Night Work of Young Persons 1946-48

10.5.1 The Night Work of Young Persons (Non-Industrial Occupations) Convention No. 79.

The proposals to regulate night working by young persons in non-industrial occupations also was timely at the end of the war. There was great support for the adoption of a Convention among governments as well as among workers and employers.⁷⁷²

The Night Work of Young Persons (Non-Industrial Occupations) Convention No. 79 was adopted on 9 October 1946 at the 29th Session of the Conference in Montreal. It came into force on 29 December 1950. To date, the Convention has been ratified by 20 states.⁷⁷³

The Convention covers non-industrial occupations, defined as “all occupations other than those recognised by the competent authority as industrial, agricultural and maritime occupations”. Its scope is similar to Convention No. 78. Domestic work in private households and work in family undertakings “which is not deemed to be harmful, prejudicial, or dangerous to children or young persons”, may be excluded from the application of the Convention by law or regulation in the member states (Article 1.4). Article 2 provides that children under 14 years of age or children over 14 who are still subject to full-time compulsory school attendance cannot be employed or work at night during a period of at least 14 consecutive hours. The period can be shorter, “where local conditions so require”, but not shorter than 12 hours (Article 2.2). Children aged 14 to 18 may not be employed or work at night during a period of at least 12 consecutive hours (Article 3). In Article 4, a number of exceptions are provided. In countries “where the climate renders work by day particularly trying, the night period may be shorter, if a compensatory rest during the day is accorded” (Article 4.1). There are also exceptions “when in case of serious emergency the national interest demands it” (Article 4.2) and for vocational training for young persons over 16 years (Article 4.3).

There are special provisions for performance in ‘public entertainment’ and in ‘cinematographic films’, provided it is permitted in national law and after the granting of an individual licence (Article 5). Licences cannot be granted for work that “may be dangerous to the life, health, or morals of the child or young person” (Article 5.3). There is also provision that certain conditions shall apply to the granting of licences. The period of employment shall not continue after midnight and “strict safeguards shall be prescribed to

⁷⁷² Blue Report (1) 1946, p. 35-36.

⁷⁷³ Night Work of Young Persons (Non-Industrial Occupations) Convention No. 79, ILOLEX, www.ilo.org, List of ratifications, see www.ilo.org/ilolex/english/convdisp1.htm (visited 30/01/07).

protect the health and morals, and to ensure the kind treatment of the child or young person and to avoid interference with his [*sic*] education". Furthermore, the child shall be granted a rest period of at least 14 consecutive hours (Article 5.4). The condition in the Minimum Age (Non-Industrial Employment) Convention No. 33 and the Minimum Age (Non-Industrial Employment) Convention (Revised) No. 60 (Article 4) that the employment should be "in the interests of art, science or education" is deleted from Convention No. 79.

The enforcement measures are very similar to the Minimum Age (Non-Industrial Employment) Convention (Revised) (Article 7), but only slightly strengthened by a provision that the hours of work must be shown in the employers' registers of young persons employed (Article 6). In the Grey Report, as well as in the Resolution 1945, the importance of co-operation between the police, the educational authorities, and public, 'or even private', social workers and the labour inspectorates was stressed.⁷⁷⁴ This was reflected to some extent in the provision that member states should provide, by law or regulations, an adequate system of public inspection and supervision (Article 6.1 (a)), and the provision that member states should provide means of identification and supervision of children working in the streets (Article 6.1 (c)). As mentioned above, these provisions already existed in the Minimum Age (Non-Industrial Employment) Convention (Revised).

The Night Work of Young Persons (Non-Industrial Occupations) Recommendation No. 80

The Night Work of Young Persons (Non-Industrial Occupations) Recommendation No. 80 contained suggestions for working out in detail the provisions of the Convention, and for methods of application.⁷⁷⁵ The purpose was to ensure uniform application of the Convention, in spite of the great diversity of employments covered and the "different traditions and circumstances peculiar to each country" (Preamble of the Recommendation).

10.5.2 The Night Work of Young Persons (Industry) Convention (Revised) No. 90

In 1948, the Night Work of Young Persons (Industry) Convention, No. 6, was revised by the Night Work of Young Persons (Industry) Convention (Revised) No. 90. The Convention was adopted on 10 July 1948 at the 31st

⁷⁷⁴ Grey Report 1945, p. 154, and Resolution 1945.

⁷⁷⁵ Night Work of Young Persons (Non-Industrial Occupations) Recommendation No. 80 was adopted by the 9 October 1946 in Montreal at the 29th Session of the International Labour Conference, ILOLEX, www.ilo.org.

Session of the Conference in San Francisco. It came into force on 12 June 1951. To date, it has been ratified by 50 countries.⁷⁷⁶

The minimum age for night work was not raised by the new Convention: it remained at 18 years, with a number of exceptions (Article 3). The scope of the Convention is the same as in Convention No. 6, but modernised to cover new areas such as airports (Article 1). The exception for work in family undertakings is narrowed in Convention No. 90. Instead of exempting family employment directly in the Convention, it can be excluded by national law or regulation, on condition that the work is “not harmful, prejudicial or dangerous to young persons” (Article 1.3). ‘Night’ is defined as a period of at least 12 consecutive hours (Article 2), which is one hour more than in Convention No. 6.

There are a number of exceptions from the prohibition of night work in Convention No. 90. Many of the exceptions provided in Convention No. 6 are retained, such as the ability for governments to suspend the prohibition of night working by young persons aged 16 to 18 years “in case of serious emergency the public interest demands it” which remains unchanged in Convention No. 90 (Article 5). Also the exception for “emergencies that could not have been controlled or foreseen, and which interfere with the normal working of the industrial undertaking”, has remained unchanged in Convention No. 90 (Article 4.2). Also the exception for industries with “processes required to be carried on continuously day and night” (Convention No. 6, Article 2.2) is retained, but now in a stricter form such as an exception for apprenticeship or vocational training for persons aged between 16 and 18 “in occupations which are required to be carried on continuously”. The exception is allowed on condition that it has been approved by the competent national authorities and after consultation with the employers’ and workers’ organisations concerned (Article 3.2).

The provision that the night period may be shorter in “countries where the climate renders work by day particularly trying” is retained in Convention No. 90, but the wording has been changed to sound less pejorative than the wording in Convention No. 6, namely, “in those tropical countries in which work is suspended during the middle of the day” (Convention No. 6, Article 3.4).

The special regime for India is retained in Convention No. 90 (Article 8) and a special regime for the new state of Pakistan is added (Article 9). In contrast, the special regime for Japan is removed. In the special regimes the scope of the Convention is slightly widened in comparison with previous regimes, including mines, railways and ports, and the minimum age for night

⁷⁷⁶ Night Work of Young Persons (Industry) Convention (Revised) No. 90, ILOLEX, www.ilo.org, List of ratifications, see www.ilo.org/ilolex/english/convdisp1.htm (visited 30/01/07).

work is raised from 14 years for boys (Convention No. 6, Article 6) to 17 years (Article 8.6) with a number of exceptions (Article 8.7).

A general exception is introduced for countries that did not have laws providing the same standards as the Convention at the time of its adoption, allowing them to specify a lower minimum age than 18 years for night work, but not lower than 16 years (Article 7).

The enforcement measures include several new provisions in comparison with the previous Minimum Age Conventions and Night Work of Young Persons Conventions. They involve giving information to persons concerned about the content of the provisions of the Convention (Article 5 (a)) and the designation of “persons responsible for compliance” (Article 5 (b)). The ‘old’ measures of enforcement are penalties and provision of an adequate system of inspection (Article 5 (c-d)).

10.6 Underground work. 1953-1965

10.6.1 The Minimum Age (Underground Work) Convention No. 123.

Recommendation No. 96 Minimum Age in Coal Mines

In 1953 the Minimum Age (Coal Mines) Recommendation No. 96 was adopted.⁷⁷⁷ The Recommendation provided that persons under 16 years of age should not be employed underground in coal mines. Persons aged between 16 and 18 should not be employed underground in coal mines, except for purposes of vocational training and under adequate supervision, or under the conditions decided by the competent authority, after consultation with the employers’ and workers’ organisations concerned. The Recommendation was withdrawn by the Conference in 2004.

The Convention

The Recommendation can be seen as a forerunner to the Minimum Age (Underground Work) Convention No. 123, which was adopted 12 years later on 22 June 1965, at the 49th Session of the Conference. It came into force on 10 November 1967. To date, it has been ratified by 41 countries.⁷⁷⁸ The Convention covers limited and dangerous categories of work, belonging to the same category as the Minimum Age (Trimmers and Stokers) Convention from 1921, covering limited and dangerous categories of employment.⁷⁷⁹

Underground working by women had already been prohibited in 1935 by the Underground Work (Women) Convention No. 45. It is noteworthy that it

⁷⁷⁷ Recommendation No. 96 Minimum Age in Coal Mines, ILOLEX.

⁷⁷⁸ Minimum Age (Underground Work) Convention No. 123, ILOLEX, www.ilo.org, List of ratifications, see www.ilo.org/ilolex/english/convdisp1.htm (visited 30/01/07).

⁷⁷⁹ Grey Report (1) 1972, p. 5.

took the ILO so long to adopt a corresponding instrument concerning children, as usually the protection of women and children was considered by the Conference at the same occasion. One explanation might be that the Minimum Age (Industry) Convention (Revised) from 1937 was applicable also to mines. However, the minimum age for working in mines was the same as the general minimum age, 15 years, unless a higher minimum age was prescribed in national law, because it was considered as ‘dangerous to the life, health or morals of persons’. However, work in mines was not mentioned in the associated Minimum Age (Non-Industrial Employment) Recommendation No. 41 among the examples referred to there of work that ‘might be included’ among ‘dangerous employments’. Employments mentioned there as examples of ‘dangerous work’ included employment in acrobatic performances, in hospitals if involving danger of contagion or infection, and serving or selling alcoholic liquor or serving customers (Recommendation No. 41, III.6).

Convention No. 123 combines an absolute minimum age of 16 years (Article 2) with a provision that a higher minimum age can be specified by a declaration at any time after ratification (Article 3). The minimum age must be specified by the ratifying state, but it must never be lower than 16 years (Article 2.3). One special feature is that the national minimum age limit shall be determined after consultation with the employers’ and workers’ organisations (Article 5). Another special feature is that the Convention is totally void of flexibility clauses. It does not admit any exceptions whatsoever from the minimum age limit. This is unique in the minimum age campaign.

In contrast, the enforcement measures are all known from previous Minimum Age Conventions. The ratifying states must provide (1) “all necessary measures” for the effective enforcement of the provisions of the Convention, including penalties, (2) appropriate inspection services, (3) designation of “persons responsible for the compliance with the provisions of the Convention”, and (4) an obligation for employers to keep records of all employed persons less than two years older than the minimum age, with dates of birth and dates of the first time the person worked underground (Article 4).

10.6.1.1 The Minimum Age (Underground Work) Recommendation

The Minimum Age (Underground Work) Recommendation, No. 124, was adopted together with the Minimum Age (Underground Work) Convention in 1965. The Recommendation requests member states to take urgent measures to raise the minimum age for underground work to 16 years, in the event of the minimum age being lower than 16 years (Section 2). Furthermore, member states are requested to raise progressively the minimum age for underground work to 18 years (Section 3). When progressively raising the minimum age to 18 years, the following should

especially be taken into account: “the dangers inherent in employment underground in mines” on the one hand, and “the development of educational facilities”, the school-leaving age, the minimum age for admission to other industrial occupations and “other relevant factors”, on the other hand (Section 3.2).

There was a provision concerning particularly dangerous ‘dangerous work’, requiring member states to make special provision for these occupations (Section 5.1). It was left to the national authorities to decide the jobs and conditions in question, and a ‘sufficiently high’ minimum age, not less than 18 years (Section 5.2).

The ‘gap’ between the school-leaving age and the age for admission to work was addressed explicitly in the Recommendation, and the need for integrated measures was stressed. Member states were required to take measures “to meet the problems of persons who wish to work in mines but are too young for employment or work underground” because of a higher minimum age than the school-leaving age for admission to such work. The measures should “be related to or integrated with measures to educate, train and utilise all youth in the country” (Section 6.1). A number of such integrated measures were suggested: employment and training in surface work, further education and vocational guidance and raising the school-leaving age (Section 6.2).

The Recommendation ends with a provision that, before determining general policies and regulations for implementation of the Recommendation, the national competent authorities should consult the most representative organisations of employers and workers concerned (Section 7).

10.6.2 The Medical Examination of Young Persons (Underground Work) Convention No. 124

The Minimum Age (Underground Work) Convention No. 124 was adopted together with the Medical Examination of Young Persons (Underground Work) Convention on 22 June 1965. The Convention came into force on 13 December 1967.

The Convention is modelled on the earlier Conventions on the medical examination of young persons. It provides that all persons under 21 must undergo a ‘thorough medical examination’ prior to employment underground in mines (Article 2). The examination must be carried out under the responsibility and supervision of a qualified physician (Article 3.1), and it must include an X-ray of the lungs from the initial medical examination (Article 3.2). The medical examination must be free of charge for the young worker and his or her parents (Article 3.3).

The enforcement measures are nearly identical to Convention No. 123 (Article 4), with one addition. The certificate of fitness for employment (but

not containing medical data, which is subject to patient-doctor confidentiality) is included in the documentation that employers must keep on record and make available to inspectors (Article 4.4 (c)).

10.7 Minimum age for fishermen 1959

The Minimum Age (Fishermen) Convention No. 112

The Minimum Age (Sea) Convention No.7 did not cover inland navigation and fishing (Convention No. 7, Article 1). However, ‘the transport of passengers or goods by road or rail or inland waterway’ was already covered under the Minimum Age (Industry) Convention No. 5 (Article 1 (d)). At the time, it was discussed whether sea-fishing could be included in the Minimum Age (Non-Industrial Employment) Convention No. 33 adopted in 1932. When it was eventually decided that sea-fishing should be explicitly excluded from the scope of that Convention, the Office recommended that the minimum age for fishermen should be regulated separately. The justification was that, whereas it was ‘no doubt desirable’ to include children employed in sea-fishing in the Convention, thereby furnishing as wide protection as possible for all children, it was a ‘developed tradition’ to deal with maritime problems at a separate maritime session of the Conference. Accordingly, the question of children employed in sea-fishing was reserved for a later session of the Conference “which would give special consideration to the problem of working conditions in the sea fishing industry”.⁷⁸⁰

There were a number of maritime sessions of the Conference between 1932 and 1959, and one can only speculate why it took so long to put the question of the minimum age for sea-fishing on the agenda. One reason might be the strong connections to agriculture. In 1932, when the Office discussed the drafting of the Minimum Age (Non-Industrial Occupations) Convention, it was pointed out that member states were free to define inland fishing as belonging to agricultural work, or as belonging to industry if they preferred.⁷⁸¹

The Minimum Age (Fishermen) Convention, No. 112, was adopted on 19 June 1959 at the 43rd Session of the Conference. It came into force on 7 November 1961 and it has been ratified by 29 countries.⁷⁸²

The minimum age for employment or work on fishing vessels is 15 years (Article 2). ‘Fishing vessel’ is defined as ships and boats engaged in maritime fishing in salt waters (Article 1). Children under the age of 15

⁷⁸⁰ Blue Report 1932, pp. 173-175.

⁷⁸¹ *Op. Cit.*, p. 174.

⁷⁸² Minimum Age (Fishermen) Convention, No. 112, ILOLEX, www.ilo.org, List of ratifications, see www.ilo.org/ilolex/english/convdisp1.htm (visited 30/01/07).

years may “occasionally take part in the activities on board fishing vessels” during school holidays, on condition it is not harmful for the health and development of the child, does not prejudice school attendance and does not include commercial profit (Article 2.2). Furthermore there is a provision to that in the Minimum Age (Sea) Convention (Revised) No. 58, that ‘beneficial’ work can be allowed for children over 14 years of age in individual cases (Article 2.3). Persons under 18 years of age are not admitted to employment as trimmers and stokers on ‘coal-burning fishing vessels’. Apparently it was felt that the provisions of the Minimum Age (Trimmers and Stokers) Convention No. 15 needed to be repeated. Work on school-ships and training ships was excluded from the application of the Convention (Article 4).

The Medical Examination (Fishermen) Convention No. 113

At the same time as the Minimum Age (Fishermen) Convention, the Medical Examination (Fishermen) Convention No. 113 was adopted.⁷⁸³ The Convention was not confined to children or young workers: it covered all fishermen. However, in respect of persons under the age of 21, medical re-examinations should be made at shorter intervals of not more than one year (Article 4.1).

10.8 Preliminary conclusion. Minimum age between the Depression and the Golden Age

An important conclusion in Part II of the dissertation was that the Minimum Age Conventions adopted during the first period of the minimum age campaign were very uniform in their design, regardless of the heterogeneous categories of work covered. The minimum age limits were also uniform, at least superficially. According to the rhetoric, it was fundamental that all children should have the right to the same protection. The strategy was possible thanks to a number of flexibility devices: excluding categories of work such as employment in family undertakings and allowing radically lower standards and narrower scope for ‘certain countries’, particularly India and Japan. A second important conclusion was that in practice, minimum age regulation relied heavily on educational laws and, in fact, compulsory school attendance was seen as the *panacea* for the effective enforcement of minimum age legislation. A third important conclusion was that the most difficult question for the Conference during the first period was how to draft

⁷⁸³ Medical Examination (Fishermen) Convention No. 113, on 19 June 1959 at the 43rd Session of the Conference, ILOLEX, www.ilo.org, List of ratifications, see www.ilo.org/ilolex/english/convdisp1.htm (visited 30/01/07).

Conventions combining progress in child protection with universal ratification. India was at the core of this debate; a debate that clearly revealed the colonial ideology of the time.

Continuity and Unemployment

In this Chapter, I have described the second part of the ILO minimum age campaign, the revision and the extension of the Minimum Age Conventions. The minimum age was raised to 15 years during the years of the Great Depression by partial revision of the Minimum Age (Sea) Convention (Revised), the Minimum Age (Industry) Convention (Revised) and the Minimum Age (Non-Industrial Employment) Convention (Revised). The Convention with the lowest standards, the Minimum Age (Agriculture) Convention, was never revised, although the Office had such intentions.

During the 1930s the major concern was the Great Depression, particularly in the Western industrialised nations, although it also deeply affected the colonies. There is no doubt that the raised minimum age was a part of this concern. As I have described in Chapter 9, during these years the ILO was occupied exclusively with measures to meet the effects of the Depression, adopting Conventions and Recommendations on Public Works, unemployment insurance and reduction of hours of work. These kinds of measure were adopted in all the Western industrialised nations including even regulation to prevent the employment of married women. In the light of this, it is easy to understand that there were so few objections to the raised minimum age. Several delegates at the Conference referred directly to the Depression in their speeches, either openly discussing the minimum age as a remedy to the Depression, or by referring to it as a side-effect, in terms of “certain incidental benefits” such as the “removal of low-paid competitors with adult labour and the taking-up of the slack in times of unemployment”.⁷⁸⁴ In the United States ‘fairly advanced laws on child labour’ had already been adopted in the largest industrial states, and a Bill was being passed in Congress providing a uniform minimum age of 16 years, in line with the NRA, the National Recovery Act from 1933.

The colonies and the decolonised nations

The focus on the colonies was somewhat played down in the discussions in the second period of the minimum age campaign. The special regimes were, however, retained in most cases, although supposedly with raised standards and slightly broader scope, in line with the development of the law in the countries concerned. Examples of this are the Minimum Age (Industry) Convention (Revised) (Article 7) and the Minimum Age (Non-Industrial Employment) Convention (Revised) (Article 9). Special regimes were

⁷⁸⁴ Speech of the reporter of the Committee on Minimum Age Grace Abbott. Record 1937, p. 321.

introduced for China and Pakistan during this period. One question that arises is why there was no discussion or even mention of the situation on the African continent in the minimum age campaign. There are no direct answers to this question in the Conference material. There was interest in the situation of African children and ILO representatives were present at a Conference concerning the African child in 1931, as Canadian historian Dominick Marshall has described.⁷⁸⁵ The whole African continent was colonised, and maybe it was considered sufficient to refer to a general possibility of modifying or not applying the Conventions in colonies and dependent territories in accordance with the ILO Constitution (and similarly provided for in a number of Minimum Age Conventions during the first period of the minimum age campaign). However, India was also under British colonial reign. This question remains to be answered.

Strengthening enforcement – the importance of institutional control and co-operation

In Conventions Nos. 33 and 60 (Non-Industrial Occupations), the enforcement measures were extended and strengthened by the introduction of a requirement that ratifying countries should give a minimum guarantee of enforcement by providing an adequate system of inspection, identification, supervision and penalties (Articles 7). Similar requirements were included in the Night Work of Young Persons (Non-Industrial Occupations) Convention No. 79 (Article 6) and the Night Work of Young Persons (Industry) Convention (Revised) No. 90. (Article 6). Furthermore, in Convention No. 90 an obligation was included for ratifying states to define the persons responsible for compliance with the laws and regulations giving effect to the Convention (Article 6 (b)). In Convention No. 79 the provision of penalties is specified further. The penalties should be “applicable to employers and other responsible adults” for breaches of the laws or regulations giving effect to the Convention. In cases where no employer-employee relationship existed, it was specified in the Grey Report 1945 that “the penalty should be directed against an adult person (presumably the parent or guardian of the child) who can be held responsible for the young person’s employment”.⁷⁸⁶

The welfare state steps in

From the outset the minimum age campaign relied on the institutional control that could only be guaranteed in a developed nation state. The effectiveness of the minimum age provisions depended on national labour inspection services and, above all, educational laws and authorities. In the same way as the ILO generally, the minimum age campaign also relied on the existence of functioning trade unions. After the Second World War, the

⁷⁸⁵ Marshall 2004.

⁷⁸⁶ Grey Report 1945, p. 152.

importance of the institutions of the nation state – or more precisely the welfare state – assumed new dimensions. As I have described in Chapter 10, the Declaration of Philadelphia, adopted in May 1944, established the equal rights of all human beings, “irrespective of race, creed or sex” to pursue both their material and spiritual well-being and development “in conditions of freedom and dignity, of economic security and equal opportunity” (II). The means to achieve this objective was among other international action to promote expansion of production of consumption and, at the same time, to avoid severe economic fluctuations. This was the Keynesian model of capitalism mitigated by state intervention. Lesson learned: the Depression had made Hitler’s takeover possible. Unemployment and poverty formed the breeding ground for totalitarian movements such as Nazism, fascism and communism. The recipe was economic growth for the benefit everyone.

Thus, on a general level the role of the state in the well-being and the welfare of its citizens was enhanced after the Second World War. Children were without doubt a particular and top priority after the war and, in the Resolution Concerning the Protection of Children and Young Workers, a complete social-policy programme aimed towards children and ‘young persons’ was suggested. In the Resolution, the link between the maintenance of children and the minimum age was acknowledged for the first time in the minimum age campaign, and an extensive scheme of social security and family allowances was proposed. This was in line with the development in the greatest Western industrial nations, which had already introduced family and children’s allowances, although the purpose was not only the welfare of children, but also, or above all, the welfare of the future of the nation in times of decreasing populations. The tendency of the increasing importance of the welfare state is reflected in the number of Conventions and Recommendations concerning social security, pensions, and income security that were adopted directly after the war, as referred to in Chapter 10. However, whereas these Conventions and Recommendations concerned also children since they were dependent for their maintenance on their parents’ income, there was no Convention or Recommendation adopted to make effective the suggestions in the Resolution Concerning the Protection of Children and Young Workers. Nor was the question of maintenance reflected in the minimum age campaign.

Minimum Age and ‘beneficial work’

The classification of work into categories was developed during the second period of the minimum age campaign. The categories ‘dangerous work’ and ‘light work’ had already been introduced in the Minimum Age (Non-Industrial Employment) Convention. These categories continued to exist, and were completed with a new category of work: ‘beneficial work’, in the Minimum Age (Sea) Convention (Revised) from 1936 (Article 2.2), and in the Minimum Age (Fishermen) Convention from 1965 (Article 2.3).

‘Beneficial work’ was defined as work that with “due regard to the health and physical condition of the child and to the prospective as well as to the immediate benefit to the child of the employment proposed” was estimated to be ‘beneficial’ by the educational ‘or other appropriate authority’. It was proposed by the Office to introduce a similar clause in the Minimum Age (Industry) Convention (Revised); the proposal was however rejected on the grounds that the number of exceptions would be very high.

Family

The first Minimum Age Conventions adopted between 1919 and 1921 contained exemptions for employment in undertakings (or vessels) in which only members of the same family were employed (Conventions Nos. 5, 6 and 7, Articles 2). The Minimum Age (Agriculture) Convention and the Minimum Age (Trimmers and Stokers) Convention did not exempt family employment. In the case of the Minimum Age ((Trimmers and Stokers) Convention this is explained by the fact that the Convention regulates ‘hard classes of work’. In the case of the Minimum Age (Agriculture) Convention, it could easily be argued that the whole Convention *per se* is an exemption for family employment – agricultural work was mostly organised with the family as a basis. With the Minimum Age (Non-Industrial Employment) Convention in 1932 the family exemption was made stricter and allowed only on two conditions: (1) that there was a decision by the national competent authority in the member state to exempt the family undertakings from the application of the Convention, and (2) that it was only family employment that was not considered to be harmful or prejudicial for the child’s life, health or morals.

During the period covered by this part of the dissertation, Chapters 9 and 10, the exemptions for family employment were retained, in principle. However, family employment was never automatically excluded from the application of the Conventions. The exemptions were allowed only on the same conditions as formulated in the Minimum Age (Non-Industrial Employment) Convention 1932 although made stricter by the replacement of decision by national competent authorities by ‘national law or regulation’. There was, however, one exception: the Minimum Age (Sea) Revised Convention, which excluded work on vessels in which only members of the same family were employed (Article 2). The objective was, however, according to the Minimum Age (Family Undertakings) Recommendation, to suppress this exception completely “in the not distant future”, and the member states were recommended to “make every effort to apply their legislation relating to the minimum age of admission to all industrial undertakings, including family undertakings”.

During the period it was noticed that work in a family environment was not a guarantee for the protection of the child.

During the period dealt with in Chapter 10, the family was in focus not only in the question of exemptions, but also in connection to the question of maintenance, which I have discussed above. It should be added here that the entire focus of the question of maintenance was the family. The question was divided into ‘aid to families’, concerning granting families means of subsistence in the event of the death of ‘the breadwinner’, maternity benefits, etc.⁷⁸⁷ These questions were the subject of far-reaching regulation in the Income Security Recommendation No. 44 adopted in 1944, that also established that “Society as a whole should accept responsibility for the maintenance of dependent children in so far as parental responsibility for maintaining them cannot be enforced” (Income Security Recommendation, Para. 28). To conclude, whereas the links between minimum age and the question of maintenance were now acknowledged by the ILO, the measures were generally directed towards the family unit, not towards the individual child, and accordingly, the ‘emergence’ of the question of maintenance left no trace in the Minimum Age Conventions.

Unemployment, welfare and the negotiation of the limits of childhood

The interaction and relationship between the minimum age and unemployment is an interesting example of how the limits of childhood were negotiated in the minimum age campaign. While it cannot be questioned that the child protection rhetoric had sincere intentions, particularly in times of the Depression and war, child protection in the form of higher and more strictly enforced minimum ages clearly coincided with the interests of, above all others, adult (male) workers. Many of the governments and employers agreed on raising the minimum age but there were also voices raised against it in the debate by people less interested in child protection than in the profitable development of industry. One example of this is the Belgian employers’ delegate who, when objecting to raising the minimum age to counter unemployment, stated that the Depression was only a ‘temporary phenomenon’, and ‘warning’ against ‘permanent measures’ – that might work against the employers in times of economic upsurge and a high demand for labour.⁷⁸⁸

Turning to another aspect of the negotiation of the limits of childhood, there is a significant contrast between the Conventions prohibiting night working by children on the one hand, and the Conventions concerning the medical examination of children prior to employment on the other. In the night work Conventions, there are more exceptions related to the demands of industry than in any of the other Conventions in the minimum age campaign. In the Night Work of Young Persons (Industry) Convention (Revised) there is the exception from the prohibition of night work in “occupations that are

⁷⁸⁷ Grey Report 1945.

⁷⁸⁸ Record 1937, p. 334.

required to be carried out continuously”, though supposedly safeguarded by the conditions “for purposes of apprenticeship or vocational training”, authorisation by the competent authority and after consultation with the employers' and workers' organisations concerned (Article 3.2). The relative character of the child-protection is further highlighted by the latter condition – the required consultation between the organisations of workers' and employers' concerned. Such a provision makes great sense when it concerns the conditions of the adult workers, in which case their interests ideally are represented by the workers' organisations. However, in the case of children, the workers' organisations do not represent them. Trade unions have never organised or represented children in the first place and, secondly, as I have discussed above, the workers' organisations could have – and they did have – interests opposite to the interests of children; for example in times of unemployment.

The system of imposing an obligation on national authorities to consult with workers' and employers' organisations before deciding on a certain matter delegated to it by a Convention had often been referred to in the ILO, including in the minimum age campaign. One of the more cynical examples is the Minimum Age Convention (Underground Work), which provides that the minimum age itself should be specified after consultations with the employers' and workers' organisations (Article 5).

In the Conventions concerning medical examination, on the other hand, the limits of childhood are less ‘negotiated’. However there are lower standards for ‘certain countries’ in the event of the provisions of the Conventions being ‘impracticable’ (Conventions Nos. 77 and 78, Articles 8).

Childhood – in the Interest of the Future of the Nation

The Draft Resolution concerning the Protection of Children and Young Workers established the importance of proper maintenance of children for the ‘complete abolition of child labour’. The purpose, as expressed in the Resolution, was to “foster the talents and aptitudes of the child and his [sic] full development as a citizen and worker”. Thus, child protection was described in terms of becoming a citizen and worker. This indicates that the focus for child protection was that the child should arrive at adulthood as a fully developed, healthy and educated person in order to function for society rather than creating a society functioning for children. The statement highlights the emphasis on the idea that childhood is a preparation for adult life, namely, to become a citizen and worker who can contribute to society.

Part IV
A General Minimum Age Convention 1973

Chapter 11. The Minimum Age Convention No. 138

In the foregoing parts of this dissertation, I have described how the ILO minimum age campaign started at the very inception of the ILO after the First World War, and how it has developed over the years. In Part II, ‘the circle of minimum age conventions was closed’ – covering, at least theoretically, most categories of work – after the adoption of the Minimum Age (Non-Industrial Employment) Convention. The general minimum age was 14 years. In Part III, I have described the revision of the Minimum Age Conventions during the Great Depression, raising the minimum age to 15 years, the development of the minimum age campaign in the immediate post-war years after the Second World War, and finally the adoption of the Minimum Age (Underground Work) Convention in 1965. At the beginning of the 1970s, the Golden Age had reached an end, and the Decades of Crisis began. At that point, the ILO decided to revise the whole minimum age campaign, abandoning the sector approach to minimum age regulation by adopting a universal Minimum Age Convention, covering all work and employment and substituting for the previous Conventions.

11.1 Introduction

In this Chapter I will describe the adoption process of the Minimum Age Convention (Convention No. 138) and the Minimum Age Recommendation No. 146. As in previous chapters, I will focus on questions of continuity and change, minimum age, school, family employment, the differentiation between industrialised and developing states, enforcement, and how the conflicting interests of the campaign were negotiated. Convention No. 138 is the last Convention of the ILO minimum age campaign to date.

The scope of Convention No. 138 is general or universal. The Convention marks the end of the sector approach: it has the ambition to encompass all work performed by children. According to the preamble of the Convention,

the time has come to establish a general instrument on the subject [child labour], which would gradually replace the existing [Conventions] applicable

to limited economic sectors, with a view to achieving the total abolition of child labour.⁷⁸⁹

However, it has been argued that this was not the true goal. The goal to abolish child labour was central for the ILO as early as 1919 and, as described in the previous chapters, it was for instance pronounced in the original Constitution of the ILO from 1919:

The abolition of child labour and the imposition of such limitations on the labour of young persons as shall permit the continuation of their education and assure their proper physical development.”⁷⁹⁰

By the beginning of the 1970s, both the international scene in general and the ILO had undergone major changes in comparison with the first years of the minimum age campaign between 1919 and 1921. Additionally, as the Office pointed out, the very concept of child labour had changed character, at least in some ways: from being understood as a phenomenon typical of the industrialising stages of Europe and North America, it was now understood as a phenomenon typical of the developing countries.⁷⁹¹ The question is whether these changes affected the direction of the minimum age campaign. Was the traditional ILO concept – a minimum age of 14-15 years, based on the idea of compulsory school for all children up to the minimum age, with ample exceptions directed mainly at the developing countries, and relying on national institutions strong enough to implement and enforce the regulations – ever challenged?

Before dealing with these and other questions, the most important ‘external’ developments will be described very briefly.

11.1.1 The state of the world in 1972 – the ILO Perspective

In Chapter 9, I referred to Hobsbawm and his division of ‘the short 20th century’ into periods. The period beginning after the Second World War and ending by the early 1970s is called ‘the Golden Age’, because of the remarkable economic upsurge and the unique increase in the standard of living and welfare of the inhabitants of the industrialised world. The Golden Age was a constant boom that lasted until 1970 when it turned into a crisis that was going to last for more than two decades.⁷⁹² In this way, the timing of the adoption of the Minimum Age Convention No. 138 was quite similar to the timing of the adoption of the Minimum Age Conventions after the First

⁷⁸⁹ Minimum Age Convention No. 138, adopted on the 58th Session of the International Labour Conference on 26 June 1973, Preamble. ILOLEX, www.ilo.org. List of ratifications, see www.ilo.org/ilolex/english/convdisp1.htm (visited 30/01/07).

⁷⁹⁰ Article 427, the Labour Clauses, ILO Constitution 1920.

⁷⁹¹ See *Infra*.

⁷⁹² Hobsbawm 1995.

World War when, with the threat of social upheaval and revolution, demobilisation and unemployment, the revision of the Minimum Age Conventions occurred during a period of depression and unemployment. At the beginning of the 1970s, there was again great concern about unemployment, economic crisis, the effects of the technological revolution and the shift in the global division of labour.⁷⁹³

All of this was reflected in the Report of the Director General submitted to the Conference in 1972. It gives a clear picture of the general context of the ILO at the time of the adoption of Convention No. 138. Wilfred Jenks, Director General of the ILO from 1970 to 1973,⁷⁹⁴ took up what he saw as leading themes for the present and future work of the ILO and, with the benefit of hindsight, his report appears very significant for the beginning of the 1970s context. The overall theme was (1) the growing gap between the rich and the poor - globally, regionally and locally - and (2) the importance and meaning of justice, social progress and human rights in a rapidly changing world. This was also the central theme in the debate on Convention No. 138. Jenks recalled the assignment to promote the 'war against want' and social justice that had been declared in the Declaration of Philadelphia. He also referred to the ILO World Employment Programme, launched in 1969 as a contribution by the ILO to the UN Second Development Decade.⁷⁹⁵ The programme was intended to encourage governments to draw up plans of action with the purpose of "productive employment of the popular masses".⁷⁹⁶

More particularly, Jenks called the attention of the ILO to the following issues:

⁷⁹³ *Ibid.*

⁷⁹⁴ Wilfred Jenks, 1909-1973, Director General of the ILO from 1970 to his death in 1973. Born in the UK, studied history and law at Cambridge and the Geneva School of International studies. Worked in the ILO from 1931 to his death in 1973. Jenks was, together with Edward Phelan, the author of the Declaration of Philadelphia. Jenks was appointed to the ILO delegation to the San Francisco Conference that established the United Nations in 1945. Jenks was much engaged in labour standards and human rights, and he was one of the international advisers involved in the drafting of the Statements of Essential Human Rights of the American Law Institute, one of the texts that served as a basis for the Universal Declaration on Human Rights.

⁷⁹⁵ The UN Second Development Decade from 1970-1980. The objectives were to promote sustained economic growth, particularly in the developing countries, to ensure higher standards of living, and to narrow the gap between the rich and the poor countries of the world. The developing (poor) countries had the main responsibility for this process, but the developed (rich) countries were also responsible: they should contribute financially and with more favourable economic and commercial policies.

⁷⁹⁶ Ghebali 1989, p. 91-93 with further references. Ghebali quotes the speech of Director General Morse in 1969 when the programme was launched: the effects of the programme in the long run should be "a significance and an impact on employment and production in the developing countries comparable to the revolution which took place in the 1930s in policies and thinking on unemployment in the industrialised countries".

- (a) The dangers of augmenting imbalances in productive capacity and purchasing power, since the productive capacity of one half of the world surpassed by far the increase in the purchasing power of the other half.
- (b) The impossibility of raising economic standards without far-reaching social measures – including democratisation of the whole way of life.
- (c) The economic importance of a more equitable distribution of wealth.
- (d) The economic significance of employment and social policies.
- (e) The role in economic democracy of co-operatives and participation.
- (f) The value of tripartite collaboration in securing the objectives of a policy of rapid industrialisation.
- (g) The central place of the dignity of man as the social and ideological basis of all social progress.⁷⁹⁷

Questions such as the working environment, global eco-systems, industrial relations, multi-national corporations and the impact of technology were also raised. Discussing the impact of technology, Jenks wrote that the lack of job satisfaction on the assembly lines created a threat to society. He described the extreme division of labour resulting from technological change in terms of dehumanisation and social unrest:

boredom at work spells the erosion of community morale and social discipline and the dehumanisation of work and life resulting from the unchecked advance of technology.⁷⁹⁸

The problem was right at the core of the ILO's assignment. In respect of multinational corporations, Jenks discussed "the disturbance which foreign-based firms can bring to the domestic scene in many countries". He wrote that multinational corporations were an international problem "directly affecting the welfare of hundreds of millions of workers."⁷⁹⁹ He stressed the importance of international standards for good corporate behaviour. Whereas the question of working on the assembly line might not be discussed much today, other items in the Director's Report 1972 seem surprisingly familiar now. Multinational corporations are just as much at the core of the debate today but instead we now talk of them in terms of 'globalisation'.

⁷⁹⁷ Record 1972, p. 672 ff.

⁷⁹⁸ *Op.Cit.*, p. 672 ff. This discourse was not new within the ILO. Compare for example *Recreation and Education, Reports presented to the International Conference on Workers' Spare Time, Brussels 15-17 June 1935*, Studies and Reports, International Labour Office, Geneva 1936.

⁷⁹⁹ *Ibid.*

Jenks's ideas received broad support from the Conference, particularly on the following three points: (1) technological innovation was accentuating and not reducing inequalities among and within nations; (2) instead of building one world, "two increasingly alien worlds" were being built; and (3) many nations were building two such increasingly alien worlds within their own borders.⁸⁰⁰

I think it is easy to agree with Jenks when he wrote that this was the largest problem of contemporary social policy. The gap between rich and poor is one of the most difficult problems to solve because it is both so complex and so controversial. However, as I will demonstrate below, Convention No. 138 did not reflect many of the thoughts in the Director General's report. In contrast, some of its ideas were expressed in Recommendation No. 146. Recommendation No. 146 was much criticised for those ideas and was adopted only because it was not legally binding on the member states.

11.2 The first discussion 1972. A dynamic document?

In November 1970 the Governing Body of the ILO decided to place the question of a new Convention on the minimum age for admission to employment as an item on the agenda for the 57th Session of the International Labour Conference in June 1972. To this end, the Office prepared a Grey Report, an initial preliminary report to be submitted to the governments of the member states.⁸⁰¹ The Report contained background information and an examination of minimum age legislation and practice in the member states. In order to obtain the broadest possible acceptance, it was emphasised that the new Convention would have to be flexible so that formal or "minor divergences" between its precise terms and national law or practice were bridged.⁸⁰² The Report also contained a questionnaire for the governments of the member states. Replies from 69 member states were reproduced and commented on by the Office in a second Grey Report.⁸⁰³ The second Report concluded with a proposed Draft Convention and Recommendation to be submitted to the 1972 session of the International Labour Conference.

Participation

From the lists of members of delegations, it appears that 125 delegations were present at the Conference in 1972 and 124 were present at the

⁸⁰⁰ *Ibid.*

⁸⁰¹ Grey Report 1972 (1).

⁸⁰² *Op.Cit.*, p. 2.

⁸⁰³ Grey Report 1972 (2).

Conference in 1973. Around 20 per cent of the delegations came from the industrialised West: North America; Australia; and Europe, and 80 per cent came from Africa, South America and Asia. As discussed above, this was a dramatic change in the membership majority. Nothing had changed, however – since 1919 – concerning the participation of women. In the 1972 and 1973 sessions of the Conference, out of more than 2500 delegates and technical advisers present at each session, only around 20 were women, and only five of those were delegates with a right to vote.⁸⁰⁴

Apart from the tripartite member state delegations, a large number of organisations – governmental, non-governmental and UN-specialised agencies – were present at both Conferences, either as representatives or as observers.

Whereas one of the most important items on the agenda, namely, the Minimum Age Convention and Recommendation, concerned children exclusively, organisations representing the interests of children were almost conspicuously absent. The only organisations concerned with children and present at the Conferences were UNICEF (only in 1972), an organisation called the International Union for Child Welfare (Union internationale de protection de l'enfance) and UNESCO, which was concerned with education. UNICEF and UNESCO had one representative each at the Conference.⁸⁰⁵

Many other international organisations, governmental as well as non-governmental, had delegations or observers at the Conferences. For example, the International Monetary Fund, GATT, the EEC, the Arab League and the Organisation of African States had representatives present. Some of the non-governmental international organisations present were the International Association for Social Progress, various trade union confederations, organisations of employers' federations and employers in developing countries.⁸⁰⁶ Some of the non-governmental international organisations that had observers there were women's associations, such as the International Alliance of Women Equal Rights-Equal Responsibilities, the International Council of Women, the International Council of Jewish Women, the International Federation of Business and Professional Women, the International Federation of University Women, the International Federation of Women Lawyers, and the Women's International League for Peace and Freedom. There were also a number of religious organisations present, such as the World Young Women's Christian Association, the World Alliance of Young Men's Christian Associations, Caritas, and the World Jewish Congress. Other organisations represented were, for example, the

⁸⁰⁴ Record 1972, list of Members of Delegations. pp. XIX ff.

⁸⁰⁵ *Op. Cit.*, pp. LXIX ff.

⁸⁰⁶ *Op. Cit.*, pp. LXIII ff.

International Council on Social Welfare and the International Planned Parenthood Federation.

11.2.1 The Grey Reports

Two Grey Reports were prepared by the Office to submit to the member states' governments and to the Conference. The first Grey Report consisted of four Chapters and a questionnaire for the member states' governments.⁸⁰⁷ Chapter I gave an account of the international standards on the minimum age for employment so far. Chapter II was a survey of national legislation on the minimum age for admission to work and Chapter III was a survey of children at work at that time. In Chapter IV, conclusions were made under the informative heading 'Possible international action'.

The second Grey Report was a survey and analysis of the replies of the governments to the questionnaire and proposed conclusions in the form of an outline of a Draft Convention and Recommendation to be submitted to the 1972 Conference.⁸⁰⁸

11.2.1.1 The first Grey Report

The first Grey Report started by recalling the Resolution Concerning the Protection of Children and Young Workers adopted by the ILO as early as 1945.⁸⁰⁹ As I have described in Section 10.3.2 the Resolution outlined a comprehensive policy for child welfare and singled out three factors with regard to minimum age as particularly significant: (1) that a minimum age of 16 years for admission to employment was the objective of the ILO; (2) that the gap between school-leaving age and the minimum age had to be eliminated; and (3) that the minimum age should be the same for most kinds of employment, to prevent children from "drifting into work in branches of activity which [are] inadequately regulated."⁸¹⁰ The Office wrote in the Report that these three factors were going to be the starting point for the new Convention and Recommendation. Accordingly, the Convention should:

- a. be general and set minimum standards that could be effectively applied in the great majority of countries, "including those where the problem of child labour is still severe",
- b. also be relevant to countries that already had a high minimum age standard, and

⁸⁰⁷ Grey Report (1) 1972.

⁸⁰⁸ Grey Report (2) 1972.

⁸⁰⁹ Resolution 1945.

⁸¹⁰ Grey Report (1) 1972, pp. 6-7.

- c. provide as much flexibility as “consistent with adequate protection in order to ensure that the Convention has the widest possible impact”.⁸¹¹

In short, the Convention should be of a general scope and flexible enough to permit the broadest possible ratification. It should be universally effective without weakening its protective force. As will be demonstrated in the following sections, there was a dividing-line between the advocates of universality and the advocates of flexibility.

Important national trends

As already mentioned, the Office presented a survey of national minimum age regulation in the member states (Chapter II of the Report). There are no references to sources in the Report and it may be concluded that the Office used the material and competence ‘of the house’.⁸¹²

The survey showed that some form of minimum age legislation had been practically universally adopted in the member states by 1970 and, whereas national standards were diverging, there were some trends. There were two general approaches in the national laws. The minimum age was regulated either by a general minimum age for ‘all’ kinds of employment, but made flexible by exceptions or made stricter by stricter standards, or was regulated by differentiation of minimum age limits depending on the economic sector. By 1970, the general approach was more common than the differentiation approach.

In spite of this, ratifications of the Minimum Age Conventions were limited. The maximum number of member states that had ratified a Minimum Age Convention was fewer than half of the total membership (60 and 59 ratifications respectively for Conventions Nos. 5 and 15). The least ratified Convention was Convention No. 60 (Non-Industrial Employment - revised) with only 10 member states having ratified. In spite of the distressing figures, the Office maintained that the Conventions had “unquestionably exerted a powerful influence towards the suppression of many of the worst abuses connected with child labour” and that

the number of ratifications of the instruments in question is by no means the sole measure of their influence. Their provisions have clearly served as models for those of the legislation of many countries, and, in a more general

⁸¹¹ *Op. Cit.*, p. 31.

⁸¹² As described above in Section 4.3.2.4, the collection of national labour law and statistics was among the assignments of the Office: “The functions of the International Labour Office shall include the collection and distribution of information on all subjects relating to the international adjustment of conditions of industrial life and labour, and particularly the examination of subjects which it is proposed to bring before the Conference with a view to the conclusion of international Conventions, and the conduct of such special investigations as may be ordered by the Conference or by the Governing Body.” Article 10, ILO Constitution.

way, the adoption of international standards has been a major force in bringing about wider recognition of the need to regulate the employment of children and in providing the impulse for legislative action to this end.⁸¹³

Thus, the Office's rhetoric was that the Conventions had far-reaching effects even if not universally ratified. Exactly how the Office had come to such a conclusion was not explained in the Report. In a way, of course, the conclusions of the Office were underpinned by the survey of national legislation that showed that some form of minimum age legislation was almost universally adopted. Nevertheless, it seems obvious that the Office wished to create a positive picture when starting work on the adoption of a general Minimum Age Convention.

*Industry – best in class*⁸¹⁴

Not surprisingly, industry was the most regulated sector in the member states. Very roughly, a majority of the industrialised world – Europe, the United States, Canada, Australia, New Zealand and Japan – had a minimum age of over 14 years, which in many cases was 15 or 16 years. A number of African states also had a minimum age above 14 years. Several African states, however, had lower minimum ages. A large number of the Asian and Latin American states had minimum ages lower than 14 and, in some cases, these were 12 or 13 years. This was also the case in the Middle East. A general characteristic all over the world was that generous exceptions were given for family employment of children, for home-working, for 'light work' and for work in technical schools. In some countries, the poverty of the family was a ground for exceptions to the minimum age.

Most of the states had a stricter requirement for admission to 'dangerous work'. The Office defined the activities that were considered dangerous in the member states' legislation as "dangerous, unhealthy or excessively arduous work or hazardous working conditions although in a few cases they also cover work involving risks to morals (for example the production of indecent publications)."⁸¹⁵

*Non-industrial employment*⁸¹⁶

According to the survey, non-industrial occupations were generally left unregulated in national law. If non-industrial work was regulated, the regulation was less comprehensive than for industrial work. In many member states, non-industrial work was regulated indirectly by school legislation. This explains the very low rate of ratification of Conventions No. 33 and 60 (non-industrial employment).

⁸¹³ Grey Report (1) 1972., p. 8.

⁸¹⁴ *Op. Cit.*, pp. 9-14.

⁸¹⁵ *Op. Cit.*, pp. 13-14.

⁸¹⁶ *Op. Cit.*, pp. 14-17.

*Agriculture – worst in class*⁸¹⁷

If industry was ‘best in class’, agriculture was doubtlessly the opposite, ‘worst in class’, in respect of minimum age provisions. Only 18 member states had a legal minimum age for admission to agricultural work that was higher than 14 years and, in many member states, there was no limitation on the employment of children in agriculture at all.⁸¹⁸ The states that had no legal minimum age for admission to employment in agriculture included a number of Western industrialised nations: Austria; Belgium; Canada; Finland; France; Luxemburg; New Zealand; Sweden; Switzerland; and the United States. On the other hand, these nations all had compulsory school laws, which could be expected to keep children out of agricultural work at least during school hours.⁸¹⁹ This was similar to the concept of the Minimum Age (Agriculture) Convention, as described above in Chapter 7.

Furthermore it was established that, in countries that had adopted a general legal minimum age, which thereby in principle included agricultural work, the exclusions and exceptions from that minimum age were in practice particularly relevant to agricultural family undertakings. The very common exceptions for light work also always included agricultural work, explicitly or implicitly.⁸²⁰ Consequently the Office pointed out the important and close connection between agriculture and family.

The connection between work and school

The first Grey Report also included an overview of compulsory education in the member states.⁸²¹ The Office wrote that the importance of compulsory education for the effectiveness of minimum age regulation was so great that, even though it was not strictly within the scope of the ILO, it required special attention. In this way, it was considered that a legal minimum age could have little meaning in practice if there was a gap between the school-leaving age and the legal minimum age for employment.⁸²² It was noted that in the developing countries the connection between the school-leaving age and the minimum age for admission to work was nominal or non-existent. The survey showed distressing figures. In Latin America, schooling rarely lasted for more than six years. With a legal minimum age of 14 years, there would be a gap of at least two years between the school-leaving age and the legal minimum age for admission to work. Furthermore, only 50 per cent of Latin American children aged 5 to 14 years were enrolled in school. Drop-

⁸¹⁷ *Op. Cit.*, pp. 17-18.

⁸¹⁸ Bulgaria, Burundi, Byelorussia, Congo (Brazzaville), Congo (Kinshasa), Cuba, Czechoslovakia, Gabon, Federal Republic of Germany, Ghana, Iraq, Japan, Luxembourg, Netherlands, Somalia, Ukraine, USSR and Yugoslavia had a minimum age over 14 years..

⁸¹⁹ *Op. Cit.*, p. 17.

⁸²⁰ *Op. Cit.*, p. 18.

⁸²¹ *Op. Cit.*, pp. 19-20.

⁸²² *Op. Cit.*, p. 19.

out rates were high and attendance was erratic. The Office estimated that, in Africa and in Asia, the proportion of children never in school was as large as one-third. In Africa, many countries had adopted a legal minimum age of 14 years for admission to work, while the adoption of a compulsory education system was a 'long-term project'. Drop-out rates were high and attendance erratic. The same pattern was true for many Asian countries. Only half of the children aged 5 to 14 years were enrolled in school but the drop-out rate was 50-80 per cent.

The Office concluded that the general picture in the developing world was that children aged 11 to 14 years, children in rural areas and girls were over-represented among children not in school.

Child labour – an evil of the past? The survey of working children

The situation of working children in the world was investigated in the second survey in the Report, under the heading 'Children at Work'. The section presented statistical facts about working children. The Office mainly relied on its own research, some of which was collected in the ILO Yearbook of Labour Statistics 1970. Two external sources were specified: one government report from India from 1969 and one government report from Thailand from 1967.⁸²³

The survey of children at work is of particular interest to the questions of this dissertation as it shows that many relevant facts about the situation of working children, and which might have given rise to new, alternative approaches in the new Convention and Recommendation, were known to the ILO.

It was first of all established that, while child labour 'in the classic sense' was 'an evil of the past', other forms of child labour had persisted and were widespread in 1970. Child labour 'in the classic sense' was defined as mass exploitation of children in mines and factories during industrialisation. Subsequently, the nature and dimensions of child labour had changed. The survey of working children showed, however, that much of children's work somehow appeared to have remained the same. It is probable that the only substantial difference between 1919 and 1970 (and 2006) is that in most of the industrialised West, the absolute majority of children under 15 years in 1970 went to school and did not work full-time. The idea of 'child labour as an evil of the past' can only be understood in the light of the monumental exploitation of very young children in manufacturing industry in the industrialising West during the 19th and early 20th centuries. It was, of course, correct that at least in the Western world, that kind of exploitation was clearly history by 1970. But, in the other occupations described in the survey, children's work was more constant.

⁸²³ *Op. Cit.*, pp. 21,22, 24 and 25.

Three explanations for the decline of industrial child labour – ‘the evil of the past’ – were presented. They were: (1) the influence of international labour standards; (2) the restraints of national minimum age laws; and (3) the pressure of economic and social transformation, including the introduction of machinery that was more sophisticated, rationalised production methods, the increased importance of high productivity, the presence of trade unions and stronger labour inspection services. How the Office arrived at these conclusions was, however, not described in the report.⁸²⁴

According to the survey of children at work, there were 40 million economically active children aged 14 or younger which was around 5 per cent of the boys and around 3 per cent of the girls in the world.⁸²⁵ The Office cautioned that, in all likelihood, these figures were probably both statistically biased and a low estimate.⁸²⁶ For example, unpaid family work in agriculture and domestic servant work – work that the Office knew occupied large numbers of children – were left uncouncted in the survey. Another example was that some member states had not included children under the age of 10 in their figures, which left many working children uncouncted. The Office also commented on the difficulty of agreeing on a uniform definition of child labour and the consequences that followed for the statistics:

It should also be remembered that child labour is a very broad term and that the employment of children does not have the same characteristics everywhere. Such considerations as the formal status of the working child (that is, whether he is a full-fledged employed person as opposed to something like an informal trainee or an unofficial helper to an adult worker or an unpaid family worker or an “adopted child”), the nature, intensity and regularity of the work, the hours of work and other conditions of employment and the effect of work upon schooling are at least as important as numbers in judging the seriousness of the problem in a given situation and determining how to tackle it.⁸²⁷

It was also argued that:

Subject to distinctions of this sort, it does seem clear that in all the regions where child labour is relatively widespread the kinds of work in which children most commonly engage are much the same. Child labour is least apparent in large-scale, reasonably modern industry; more so in small, marginal factories; very common in small-scale and cottage industries, handicraft workshops, industrial home work, small retail shops, hotels,

⁸²⁴ *Op. Cit.*, p. 21.

⁸²⁵ *Ibid.*

⁸²⁶ In comparison to the figure today, 250 million child workers, one can speculate on the reliability of the statistics of the ILO in 1970. *A Future Without Child Labour and The End of Child Labour.*

⁸²⁷ Grey Report (1) 1972, p. 23.

restaurants services, street trades and domestic service; and more prevalent by far in agriculture.⁸²⁸

The survey delineated the structure of child labour in different sectors of the economy in the member states. The quotations above clearly show that the ILO knew that most child labour was performed under conditions that were difficult to control by laws and labour inspection. The quotations also show that there was an awareness of the problems of defining child labour that had consequences for which work would be included or not in the Convention.

Industry

Employment of children in large modern industries was said to be unusual in all member states at the time of the survey. The Office interpreted that as a result of changed management attitudes, technological change, the presence of trade unions, minimum age laws and better labour inspection services.⁸²⁹

In reality, however, child labour in industry was not eradicated. Large numbers of children were actually occupied in small-scale industries. The Office believed that the cause was that employers kept wages and other costs down to a minimum by using child labour. These employers were most frequent in Asia, Latin America and the Middle East but they were also found to exist in parts of southern Europe and in depressed areas of more industrialised regions. The examples showed that, in all these regions, the employment of children centred particularly on textiles, clothing manufacture, food processing and canning.⁸³⁰

The failings of national labour inspection services caused a big problem in connection with the employment of children in factories and workshops. For example, the low number of reported cases of working children in Indian factories was a consequence of the inefficiencies and failings of the labour inspection services rather than of the low frequency of child workers in the factories. The labour inspectorate was judged to be under-staffed, lacking adequate means of transport, unable to verify ages and, if able to carry out inspection, often hindered by the working children's own efforts to avoid detection.⁸³¹ The Office's conclusion was that child labour in industry still existed on a large scale. It was in fact described as flourishing, except in the largest companies. These circumstances raise questions about the rhetoric of 'child labour as an evil of the past' upheld by the Office in 1972 when the results of the survey clearly showed large-scale use of child labour in industry.

⁸²⁸ *Ibid.*

⁸²⁹ Grey Report (1) 1972, p. 23.

⁸³⁰ *Ibid.*

⁸³¹ Grey Report (1) 1972, p. 24.

Out of Sight. Home -working and work in family undertakings

Home-working and family undertakings were then discussed in the Report. Here, it was noted that the failings of labour inspection services were even more acute. Much handicraft and industrial home-working was within family undertakings with children learning their parent's trades. In Iran, for instance, the labour inspectorate in fact classified all production in handicraft workshops as family undertakings and thereby excluded it from the labour legislation. The Office noticed, however, that the practice of using apprentices and learners was often just a cover-up for regular work. Furthermore, the system of children working as 'helpers' for people claiming to be parents or relatives was described. This was a common practice in, for example, the weaving industry in India. The descriptions and analyses in the report imply that the Office considered work performed within the family as different, and less harmful, than working for other employers.⁸³²

The exploitation of girls was raised in connection with the carpet-weaving industry. It was noted that the carpet-weaving industry was a large-scale and well-known employer of child labour. For example, in Iran, carpets were traditionally made by women with the assistance of their daughters in small work shops or as home-working and the large bulk of carpet production came from this kind of workshop. Girls started to work when 'extremely young'. That probably meant less than 12 years old as, in Iran, the minimum age for admission to work was 12 years. A typical description is the following:

The work is handed out to women by middlemen who have none of the responsibilities of employers and is performed at home by the women with the daughters or girls from other families. The girls are often practically infants and the employment and conditions of work are subject to no controls.⁸³³

The girls in domestic service were also described in the report. The survey showed that domestic service occupied a substantial number of children younger than 14 years. The special dangers of working in other people's private homes – out of sight and uncontrolled – were addressed, including the fact that girls especially were exposed to abuses such as exploitation, neglect and overwork.

The conclusion regarding home-working, working in small workshops, all kinds of work in family undertakings and working as domestic servants was that all these activities were dangerous, abusive and very difficult to control. This was a consequence of the workplaces being out of sight for labour inspection and so the occupations were excluded from minimum age regulation because employment relations were so unclear and because

⁸³² *Op. Cit.*, p. 25.

⁸³³ *Ibid.*

in any event, inspection and enforcement would be an enormous task. It has frequently been argued that because of this lack of control children are driven into these and other types of work involving sub-standard conditions when effective minimum-age regulation prevents them from working in a more modern sector.⁸³⁴

Here again there is evidence of how aware the Office was of the difficulties of enforcing the minimum age legislation in employment other than in industry. Attention should also be paid to the fact that the Office evaluated non-industrial occupations as less modern when comparing them with industrial work.

Agricultural work

The survey showed that agriculture was the sector employing the majority of child workers in every region of the world. Compared with the survey of national legislation that showed that minimum age regulation of agricultural work was practically non-existent, it does not require a detective to conclude that a large majority of child workers were employed in a sector that was generally unregulated. It should be noted that the Office's own investigations acknowledged that minimum age legislation had little or no effect on child labour in the sector employing most children. This is in sharp contrast with the rhetoric stating that the Minimum Age Conventions had been effective against child labour. Furthermore, the following quotation shows that the Office had no hope of changing the situation for children in traditional agricultural work in the near future. It also shows that the Office regarded the provision of adequate schooling and maintenance solutions as indispensable if employment of children in agriculture was to stop:

In the traditional, mainly subsistence sector of agriculture in the developing countries, the direct regulation of the employment of children is generally not practicable. Until adequate educational facilities become available and until it becomes possible for most families to dispense with the work of their children, there is little chance that child labour by unpaid family workers will be reduced to any significant extent [while w]age-earning employment in commercially oriented agricultural undertakings is a different matter.⁸³⁵

As a strategy to prevent at least some of the child labour in agriculture, the Office made the distinction at the end of the quotation above between traditional agricultural work, on the one hand, and wage-earning employment on plantations or other agricultural undertakings producing mainly for commercial purposes – large-scale agricultural undertakings – on the other. The intention with traditional agricultural work was for work to be carried out within the family on small farms in occupations such as tending

⁸³⁴ Grey Report (1) 1972, p.26.

⁸³⁵ *Op. Cit.*, p. 28.

animals, fieldwork or minor farming jobs. Later, this distinction was going to be included in the final version of Convention No. 138.⁸³⁶ While admitting that traditional agricultural work was impossible to regulate and control, it was argued that it should at least be possible to regulate and control the work in large-scale agricultural undertakings. As a further argument for this distinction it was established that most countries should have at least some minimum age legislation for work on large-scale farms, plantations, etc.⁸³⁷

The survey showed that traditional farming was performed full-time by children all over the world, except in Northern Europe where it was limited to outside school hours. In Southern Europe, children were often employed as farmhands or in tending animals for very low wages or for food and lodging. In the United States many children were employed as migratory farm workers with their families. The migrating children often worked full-time and they never stayed long enough in one place to come under local compulsory school laws. Children's migratory farm work was completely unregulated until 1966 when 'hazardous' work was prohibited by a federal Act. The number of farm-working children in the United States decreased after the federal Act of 1966. This was not, however, a consequence of legislation only, but also because of a poor cotton crop in 1967 and the increasing mechanisation of agriculture.⁸³⁸ This is one more example of facts being presented in the minimum age campaign to show that it was not the minimum age regulation but other circumstances completely unconnected with child protection, such as poor crops and mechanisation, that lay behind the decrease in the employment of children.

The Office concluded the section on children in agricultural work by disposing of the myth that farm work is a healthy activity for children by presenting some figures on industrial safety in agriculture in the United States:

As a final comment concerning children in agricultural employment, it is worth emphasising that, contrary to traditional ideas on the healthful nature of farm work, modern agriculture exposes workers to at least as much physical risk as most other sectors. This is not only a matter of heat, sun, dust and insects or the strains caused by stooping and lifting; the increasing mechanisation of agriculture has made it an especially hazardous occupation. The dangers created by the use of power-driven machinery, such as harvesters, threshers, reapers, tractors, are obviously all the greater for children and young persons.⁸³⁹

According to this quotation, not only was agricultural work far from 'healthy', it could even be more dangerous than, for example, industrial

⁸³⁶ *Ibid.*

⁸³⁷ *Ibid.*

⁸³⁸ Grey Report (1) 1972, p. 30.

⁸³⁹ *Ibid.*

work. This had been observed in the United States, where the federal authorities had classified agriculture as the third most hazardous form of work after construction and mining. The American statistics showed that whereas only 5 per cent of the total American workforce was occupied in agriculture, 25 per cent of the 14200 deaths in work accidents in 1963 occurred in agriculture and that, of the 47 children aged between 5 and 14 who died in occupational accidents in New York State between 1949 and 1967, 42 were agricultural workers.⁸⁴⁰

The conclusion is that, in respect of agriculture too, the members of the ILO knew a lot about the difficulties and inefficiency of minimum age legislation when Convention No. 138 was adopted.

Artistic performances

Artistic performances were only mentioned in the survey as regards a specific issue. It was that child models appearing in television commercials could be called from school only to sit and wait in the studio all day, which was not in line with the safeguards that were intended when the system of individual permits was conceived in the Minimum Age Convention (Non-industrial Employment) No. 33 from 1932.⁸⁴¹

There are interesting findings in the survey on working children. First of all, the survey shows that the Office had gathered quite a lot of information about working children in the world around 1970, which showed that: (1) lots of children in the developing world lived in appalling situations, working full-time from an early age and not attending school; (2) most vulnerable were children aged 11 to 14, children in rural areas and girls; (3) most of the working children were occupied in informal sectors with the majority in agriculture and many in street-trading and in domestic service; (4) the minimum age in agriculture was unregulated practically everywhere; and (5) the Office and the ILO delegations were familiar with these facts. The findings in the survey were never questioned or challenged in the discussions during the procedure to adopt Convention No. 138.

A first draft. A standard minimum age of 14 years

The first Grey Report was concluded with a proposed outline of a Convention and Recommendation that should 'effectively suppress' child labour. The Office wrote that the way to proceed was to introduce a comprehensive Convention that established clearer, more systematic and more up-to-date international standards on the minimum age for admission to work. To support these objectives, the member states, the United Nations and its special agencies were called on to take "vigorous practical action

⁸⁴⁰ *Ibid.*

⁸⁴¹ Grey Report (1) 1972, p. 27-8.

against the basic causes of the problem”.⁸⁴² In order to make the Convention as effective as possible, it should set a universal standard minimum age that could be effectively applied in the great majority of member states including those where child labour was still ‘a severe problem’ – in other words, it should be a Convention that would get broad acceptance. At the same time, the provisions of the Convention should also be relevant for highly industrialised and modern societies. The Convention should therefore also be as flexible as possible – without compromising the adequate protection of children and the effectiveness of the Convention.⁸⁴³

It was proposed that the Convention should cover all economic sectors and that the minimum age should be 14 years. Furthermore, an article was proposed that member states should “declare and pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment to a level consistent with the fullest physical and mental development of all young persons”.⁸⁴⁴ The article was intended to be “a statement of the aims of the Convention” ... “accepted as a matter of national policy”. A great majority of the governments had no objections to that kind of commitment. The governments of Australia and Austria, however, criticised the wording “a level consistent with the fullest physical and mental development of all young persons”. They argued that it was impossible to establish what was “the fullest physical and mental development of all children” for two reasons: (1) that there were too many subjective elements involved; and (2) that there is so much individual variation in the development of young persons.⁸⁴⁵ This criticism did not prevent the Office from adopting the article.

A too wide scope? Universality and flexibility

As discussed in the previous chapters of the dissertation, universality was an essential objective for the ILO right from the start. The ideology of the Office to deal with child labour as a single problem that should, as far as possible, “be attacked as a whole rather than in its separate aspects if regulation is to be fully effective”, was, therefore, not new as a principle.⁸⁴⁶ The Office was fully aware, however, that the general scope of the proposed Convention made its universal acceptance very difficult to obtain and there was a long discussion in the Report on flexibility as the solution for combining the general scope with universality. It was argued that the impediment to ratification and implementation of the previous Minimum

⁸⁴² *Op. Cit.*, p. 31.

⁸⁴³ *Ibid.*

⁸⁴⁴ Grey Report (2) 1972, p. 16.

⁸⁴⁵ *Op. Cit.*, p.17

⁸⁴⁶ Grey Report (1) 1972, p. 32.

Age Conventions was their excessive rigidity and, because of that, rigidity should be avoided.⁸⁴⁷

The fact that a large number of countries had already adopted minimum age laws covering major economic sectors pointed in favour of universal acceptance.⁸⁴⁸ To further facilitate ratification and implementation, it was suggested that the member states should be allowed to exclude “limited categories of employment in respect of which special and substantial problems of application arise”.⁸⁴⁹ Not surprisingly the ‘limited categories’ included employment in family undertakings, domestic service in private households, home-working or other work that was “outside the control and supervision of the employer”.

The problems for developing countries in applying the minimum age standards to all economic sector were greater than excluding limited categories of work. The difficulties for developing nations to live up to a minimum standard acceptable to the ILO caused the most debate in the whole procedure of adopting Convention No. 138. To facilitate its application in developing nations, it was proposed that “countries with insufficiently developed economies and administrative facilities” should be given the opportunity to limit the application of the Convention initially to specified branches of economic activity. The Office argued that it was better to allow such exclusions than to “make it impossible for” the countries in question to ratify the Convention.⁸⁵⁰

In order to avoid emptying the Convention of all substance, it was suggested that a number of sectors should not be able to be excluded: mining; manufacturing; construction; electricity; gas; water and sanitary services; transport; storage; and communication.

Dangerous work

A higher minimum age of 16 years or more was proposed for ‘dangerous work’, or ‘hazardous work’ as it was called by now. ‘Hazardous work’ was defined as “employment or work in any occupation which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons”.⁸⁵¹ It was proposed that it should be left to national authorities to decide exactly what occupations should be classified as hazardous.⁸⁵²

⁸⁴⁷ *Op. Cit.*, p. 33.

⁸⁴⁸ *Op. Cit.*, p. 32.

⁸⁴⁹ *Op. Cit.*, p. 38.

⁸⁵⁰ *Op. Cit.*, p. 33.

⁸⁵¹ *Op. Cit.*, pp. 32 and 38.

⁸⁵² *Ibid.*

Light work

As regards light work, the Office wrote in the first Grey Report that the previous Minimum Age Conventions had been much too rigid when it came to 'light work'. In the two Conventions concerning the minimum age in industry there was no exception at all for 'light work' and in the Conventions concerning non-industrial occupations exceptions for 'light work' were allowed but subject to a set of elaborate and precise conditions, and this was regarded as one of the major obstacles to ratification of the Conventions.⁸⁵³ It was therefore suggested that light work should be regulated in a simpler and more flexible form in the new Convention. 'Light work' should be allowed for children over 12 years, provided it was "not harmful for their health or development and not prejudicial to their education or training". It should be left to national authorities of the member states to decide which activities should be defined as light work.

For participation in 'artistic representations', it was suggested that permits should still be granted in individual cases, but in a more simplified form than in earlier Conventions. The activities permitted, as well as the hours of work and other working conditions, should be specified by national law.⁸⁵⁴

Enforcement

Regarding the enforcement measures, three basic measures were suggested. They were: "taking all the necessary enforcement measures, including the provision of appropriate penalties"; the designation of persons responsible for compliance with the Convention; and the keeping of registers of young persons employed.⁸⁵⁵

'Necessary measures' including penalties and the practice of keeping of records had been specified in a number of previous Conventions. The designation of responsible persons was, however, recent: it had been introduced in 1965 in the Convention on Minimum Age (Underground Work).

The Minimum Age Recommendation

The Office suggested that the Convention be complemented by a Recommendation. The purposes of the Recommendation were: (1) to supplement the specific provisions of the proposed Convention and (2) to go beyond them, by emphasising the importance of action in certain other areas, which included measures directed towards the social conditions underlying child labour and the exploitation of children.

⁸⁵³ Grey Report (1) 1972, p. 34.

⁸⁵⁴ *Ibid.*

⁸⁵⁵ *Ibid.*

Among the supplementary provisions of the proposed Draft Recommendation, there were two central provisions. One was that children under the minimum age should have a “suitable alternative to employment in the form of compulsory education or vocational orientation or training.”⁸⁵⁶ The other was that the objective of the minimum age campaign was that the legal minimum age should ultimately be raised to 16 years.

Children without parents or living apart from their parents were given particular attention in the Recommendation.⁸⁵⁷ For agriculture, the Draft Recommendation provided that, in cases where agricultural work had been excluded from the application of the Convention, easily controllable agricultural occupations, such as work on plantations should not be able to be excluded. As for ‘hazardous work’, the Recommendation provided that the minimum age should be raised from 16 years to 18 years.⁸⁵⁸

Apart from these provisions, the Recommendation offered guidelines on the practical application of the provisions of the Convention.⁸⁵⁹

The part of the Recommendation that went beyond the Minimum Age Convention – measures directed towards the underlying social conditions – contained a number of measures that must be regarded as quite far-reaching. After confirming the importance of giving high priority to the needs of children and young persons, a number of broad areas of social policy relevant to the conditions of working children were established under the heading I. National Policy:

a firm national commitment to full employment,

the progressive extension of other economic and social measures to alleviate family poverty and to ensure minimum family living standards and income without recourse to the economic activity of children,

the development and progressive extension of social security and family welfare measures aimed at ensuring child maintenance, including children’s allowances,

the development and progressive extension of adequate facilities for education and vocational orientation and training,

the development and progressive extension of appropriate facilities for the protection and welfare of children and young persons, including employed persons, and for the promotion of their development.⁸⁶⁰

⁸⁵⁶ *Op. Cit.*, p. 35 (Question 16).

⁸⁵⁷ *Op. Cit.*, p. 35 (Question 15).

⁸⁵⁸ *Op. Cit.*, pp. 31-36 and 37-44.

⁸⁵⁹ *Op. Cit.*, p. 35.

⁸⁶⁰ *Op. Cit.*, p. 40.

These provisions were directly based on the Resolution concerning the Protection of Children and Young Persons from 1945.⁸⁶¹ Like that Resolution the quotation points at “the interrelationship of various problems connected with the maintenance, health, education, employment, protection and general welfare of children and young persons”, as the Office wrote in the first Grey Report.⁸⁶² The concept of an ‘ultimate’ minimum age of 16 years had also been introduced in the Resolution in 1945.⁸⁶³

This clearly shows that the ILO was concerned with much more than adopting a legal minimum age. Not only the more self-evident matters such as poverty alleviation, children’s allowances, social security and adequate education and child welfare facilities are enumerated: the list of objectives includes – first of all – full employment. As will be discussed further below, full adult employment was advocated by the workers’ group as a means of abolishing child labour. Furthermore, it was pointed out that all ILO Conventions applied not only to adult workers but also to children and young workers and, as a consequence, measures should be taken to ensure that working conditions for persons under 18 years should reach and be maintained at a satisfactory standard.⁸⁶⁴

Considering the Government’s Replies. The Second Grey Report 1972

The replies of the governments to the questionnaire were reproduced and commented on in the second Grey Report 1972.⁸⁶⁵ Sixty-nine member states replied to the questionnaire. The content of the replies varied greatly.

Nonetheless, there was overwhelming consent for the adoption of a general Minimum Age Convention. India and Pakistan were the only two nations that were against a Convention with universal application.

In general, two completely opposed opinions emerge from the replies. One, underpinned by arguments based on the importance of ‘real progress’, is that there should be stricter minimum age standards. The other opinion, underpinned by a discourse on ‘realism’, is that the minimum age standards should be flexible and the minimum age not too high,. Furthermore, one homogenous grouping of countries does emerge. It is the Communist bloc, comprising the USSR and the Eastern European communist states, which pleaded consistently in their replies for ‘real progress’ with high minimum age standards. The Communist bloc could neither accept a minimum age as low as 14 years nor the flexibility clauses, arguing that the minimum age should under no condition be lowered in relation to the Minimum Age Conventions of the 1930s.

⁸⁶¹ Resolution 1945.

⁸⁶² Grey Report (1) 1972, p. 6.

⁸⁶³ Resolution 1945, IV. Admission to employment, A. Minimum Age, 16 (b).

⁸⁶⁴ Grey Report (1) 1972, p. 36.

⁸⁶⁵ Grey Report 1972 (2).

Contrary to what might have been expected, neither the replies from Western European nations, alone or together with other industrialised states, nor those from the African, Asian or Latin American developing nations were homogenous. For example, several of the member states from the African continent stressed in their replies the importance of strict minimum age standards in order to bring up healthy and educated generations in the name of the future of their nations. At the same time, countries such as Canada, Australia and New Zealand replied that, if there was to be any 'realism' in the Convention, the legal minimum age should not be higher than 14 years and that there should be maximum flexibility. Generally, both developing and industrialised nations – allegedly or sincerely concerned with the situation of the developing nations – advocated the 'realism'-approach.⁸⁶⁶

The Office concluded that, among the member states' governments, there was a high level of acceptance of a Minimum Age Convention of general scope. The texts of a Draft Convention and Recommendation were therefore submitted to the Conference for a first discussion in 1972.

11.2.2 The Conference 1972. A general minimum age of 14 years?

The 57th session was held at Geneva from 7 to 27 June 1972. Apart from the Minimum Age Convention and Recommendation, the items on the agenda were: the social repercussions of new methods of cargo-handling in docks; labour and social implications of automation and other technological developments; and reducing the number of seats on the Governing Body. Furthermore, a special report on the application of the Declaration concerning the policy of apartheid in South Africa was laid before the Conference.⁸⁶⁷ This gives a rough picture of the major issues in the world of work in 1972.

11.2.2.1 The Committee on Minimum Age 1972

Before being submitted to the plenary session of the Conference, the Draft Convention and Recommendation were discussed by the Committee on Minimum Age, which presented its discussions and conclusions in a report entitled Report of the Committee on Minimum Age.⁸⁶⁸ The Committee had the same tripartite composition as the Conference and the geographic distribution of the delegates was fairly representative of the membership structure. In this way, the democratic legitimacy of the Committee was strengthened compared to the earlier days of the ILO. On the other hand, there was continuing substantial non-representation of women on the

⁸⁶⁶ Grey Report 1972 (2), pp. 3-91, *Passim*.

⁸⁶⁷ Record 1972, p. XV.

⁸⁶⁸ Report of the Committee on Minimum Age. *Op. Cit.*, pp. 537-547.

Committee. All but one of the employers' representatives were men as was the workers' representation. Both of the women representatives were members of the Italian delegation.⁸⁶⁹ Female participation in the government group of the Committee is difficult to tell as only the name of the country, rather than the name or sex of persons, is given in the Record of Proceedings from 1972. As there were only three female delegates and twelve female technical advisers in all in the government delegations at the Conference, it can be concluded, however, that there were hardly any women at all on the Committee.⁸⁷⁰

The Chairman of the Committee was Ashour Garoum, who was a government delegate of the Libyan Arab Republic. The two Vice-Chairmen were delegates who came from the employers' group and the workers' group: Abebe Abate, the Ethiopian employers' delegate and P.P. Narayanan, technical adviser to the Malaysian workers' delegate. Reporter of the Committee was H.B. Elderling, technical adviser to the Netherlands' government delegation.⁸⁷¹

Only one substantial modification to the Draft Convention and Recommendation was proposed by the Committee. It was that the minimum age for hazardous work should be 18 years and not 16 years as proposed by the Office in the Grey Reports.

Notwithstanding, according to the Report of the Committee, there were discussions. Apart from the discussions about the question of the minimum age for dangerous work, there was much debate both about the general minimum age of 14 years and about the flexibility clauses.⁸⁷²

Two Camps

There were two distinct camps in the discussions by the Committee. On one side, there was the workers' group and the delegations from the Communist bloc. Their standpoints were based on an assumption that child workers were exploited by low wages and other abuses. Working children were deprived of education and thus condemned to remain as unskilled and low-waged workers, so perpetuating the poverty and backwardness of society. The protection of young persons should be ensured by raising the minimum age for employment and the school-leaving age, promoting vocational training for young persons, preventing wage discrimination and enabling young workers to join trade unions at the same age as the minimum age. The workers' group strongly emphasised the urgency of coming to terms with the frequent combination of adult unemployment and child labour. There were

⁸⁶⁹ *Op. Cit.*, List of Members of Delegations, Etc., p. XIX ff.

⁸⁷⁰ *Ibid.*

⁸⁷¹ Record 1972, p. 537.

⁸⁷² *Op. Cit.*, p. 537-544.

government members in this camp who suggested strict controls of hazardous work and that measures concerning health, safety and social security should be considered in the Convention – thus widening the scope of the Convention further.⁸⁷³

On the other side was the employers' group and a heterogeneous group of government members both from the industrialised nations – including 'the Common Market Countries'⁸⁷⁴ – and from the developing nations. This grouping emphasised the need for realism and flexibility in the Convention "to allow for the diversity of the needs and possibilities among member States", in order to obtain massive ratification.⁸⁷⁵ The employers' group emphasised the special conditions of developing nations including low income, short life expectancy, frequent early loss of the family breadwinner and severe deficiencies in the educational system. The close link between the minimum age for employment and compulsory education was emphasised. If there was a lack of education facilities, the standard minimum age should not be too high because that would leave children in a vacuum of no school and no work. This was considered to have very negative consequences for society, such as "delinquency, begging and illegal employment".⁸⁷⁶ It was argued that, under these circumstances, the educational system could only be established progressively.

The employers' group also raised culture as an argument. Children in developing countries could be expected to contribute to the family economy by tradition and such a contribution might also be indispensable for poor families. None of these arguments was new. In fact, they had all figured in debate already from the beginning of the minimum age campaign in 1919. Maybe surprisingly, even the good old 'early maturity' argument was put forward in the Committee debate both by a government and by an employer delegate. The government delegate argued that account had to be taken "first, of the differences in the age at which children reached maturity in different regions, and, secondly of the labour-intensive nature of most developing economies as opposed to the capital-intensive nature of most developed nations".⁸⁷⁷ The argument implies that the 'early maturity' of children legitimised the employment of children in the labour-intensive economies of developing nations. At the same time, it implies that the labour-intensive economies of developing nations legitimises the employment of children. As previously, no evidence whatsoever, either of the existence or of the manifestations of 'early maturity' was provided in the Committee's Report. The employers' delegate argued that 'early maturity' in

⁸⁷³ *Op. Cit.*, pp. 537-38.

⁸⁷⁴ At that time they were six: Belgium, France, the German Federal Republic, Italy, the Netherlands and Luxembourg.

⁸⁷⁵ Record 1972, pp. 537-38.

⁸⁷⁶ *Op. Cit.*, p. 538.

⁸⁷⁷ *Ibid.*

‘tropical areas’ was one of several obstacles to allowing effective enforcement of minimum age provisions. No explanation of what was meant was given and it is easier to understand the logic of the other obstacles that were put forward: the absence of birth registration systems and social problems arising from rural-urban migration.⁸⁷⁸

Finally, it is noteworthy that one of the employers’ delegates argued that not all employment was “necessarily undesirable in all cases and in all circumstances”.⁸⁷⁹ This argument had not been frequently used in the minimum age campaign. It was not further discussed in the Committee report.

The importance of education

A UNESCO representative appeared at a Committee meeting and made a statement that UNESCO supported efforts to modernise the Minimum Age Conventions, that there was a close relationship between minimum age and compulsory schooling and that compulsory education was the goal of the educational policy in all member states. At the same time, it was confirmed that many developing countries had difficulties in providing adequate educational facilities for their children. Several of the government delegates stressed the relationship between education and the minimum age and the importance of co-operation between UNESCO and the ILO.⁸⁸⁰

‘The fullest physical and mental development of all young persons’

Several governments found some of the phrases in the Draft Convention and Recommendation unclear. That of “the fullest physical and mental development of all young persons” was criticised for being too vague as were references to ‘children’, ‘young persons’, ‘employment’, and ‘work’. Nevertheless, the criticism did not lead to any changes in the texts except the removal of “all” children.⁸⁸¹ The report of the Committee does not give an account of the debate or of any alternative definitions.

A general minimum age of 14 or 15 years?

A majority of Committee members were for a general minimum age of 14 years. There was a large minority, however, that advocated a higher minimum age of 15 years: this minority consisted of the workers’ group supported by the workers’, employers’ and government delegates from the Communist bloc, and some of the other government delegates. Their principal argument was that 15 years had been accepted as the minimum age by the ILO as early as 1937 – more than 30 years previously – and that

⁸⁷⁸ *Ibid.*

⁸⁷⁹ *Ibid.*

⁸⁸⁰ Record 1972, p. 538.

⁸⁸¹ *Op. Cit.*, pp. 534 and 539.

lowering it to 14 years would be an unacceptable step backwards. It was argued that “the Convention should represent an advance over existing standards and should contribute to the improvement of the legal protection and the educational opportunities offered to children everywhere”.⁸⁸² The principal argument for retaining the 14-years minimum age was that it would be helpful in creating a truly general Convention that could be ratified both by industrialised and developing countries.⁸⁸³ Put to a vote, the 14-years minimum age was adopted by only slightly more than 50 per cent of the votes. If the votes were to be the same at the Conference, the 14-years minimum age would not be adopted since Conventions and Recommendations could only be adopted with a two-thirds majority (Article 19, ILO Constitution).

Hazardous Work. A Minimum Age of 16 or 18 Years?

An amendment to raise the minimum age for hazardous work to 18 years was suggested by the workers’ group and the delegates of the Communist bloc. The employers’ group, together with many government delegates from industrialised and developing nations, was strongly against that. Various amendments were suggested and eventually, when put to a final vote, the 18-years limit received a small majority.⁸⁸⁴ The discussion in the Committee is not recounted in the Committee’s report.

Flexibility questioned

The workers’ group together with the Communist bloc proposed the total deletion of the suggested Article 4, which allowed exceptions for “limited categories of work in regard to which special and substantial problems of application” arose. The same group also proposed the deletion of Article 7, which permitted ‘light work’ from 12 years of age. The argument was that the two exceptions would gravely weaken the Convention. In contrast, the employers’ group argued that the exceptions were important and necessary elements of flexibility to make the Convention effective in practice. These amendments were rejected when put to a vote and the two articles were adopted without modifications.⁸⁸⁵

11.2.2.2 The plenary session of the Conference in 1972

The Report of the Committee on Minimum Age was adopted together with the resolution to put the question of a Minimum Age Convention and Recommendation on the agenda for the following year’s session of the Conference in 1973. The Draft Convention and Recommendation were not

⁸⁸² *Op. Cit.*, p. 540.

⁸⁸³ *Ibid.*

⁸⁸⁴ *Ibid.*

⁸⁸⁵ Record 1972, p. 541.

amended. There was much discussion at the plenary session, however, and opinions were not easily reconciled. In the debate Abate, the employers' delegate from Ethiopia, talked on behalf of the employers.⁸⁸⁶ He defended the minimum age of 14 years and he regretted that the Committee had changed the minimum age for dangerous work to 18 years. The key words in his speech were 'flexibility', 'efficiency' and 'realism'. The arguments from the Committee's discussions were repeated: if standards were too strict, the developing countries were not going to be able to ratify the Convention. The objective was to draft a convention that could be effectively applied in the largest possible number of countries and especially in the countries where it was "intended to have effect". His statement shows that, in 1972, there was a view that the Minimum Age Conventions were intended for the developing countries. In fact, this was a conclusion that could easily follow from the survey of children at work, which showed that child labour mostly took place in the developing world.

In respect of hazardous work, Abate declared that an 18-years limit for hazardous work was too high, that by the amendment the Convention had lost the inherent "realism and flexibility" of the original draft and that the age limit "had been set emotionally and not realistically."⁸⁸⁷ Abate also had objections to the Draft Recommendation. He was particularly critical of the social policy measures (point 25 of the Draft Recommendation) which he wished to delete altogether. He believed it was "a [too] vast and complex programme of social, educational and economic legislation which, by its very nature, [went] far beyond the scope of the proposed instrument."⁸⁸⁸ A particularly unrealistic feature of the Recommendation, according to Abate, was the four weeks' holiday with pay.

The other Vice-Chairman of the Committee, P.P. Narayan of Malaysia, talked on behalf of the workers' group.⁸⁸⁹ Like the employers' group, the workers saw child labour as a problem of the developing nations and, like the employer's group, the workers advocated 'realism'. The workers' group's definition of realism, however, was different from that of the employers. It was that radical and profound changes in societal structures were required for the abolition of child labour in the developing world. Educational systems would have to be expanded, the compulsory school-leaving age would have to be raised and family allowances that permitted children to go to school and not to work would have to be introduced. The situation in many developing countries was a combination of epidemic unemployment in combination with widespread child labour in all economic sectors. Lack of birth certificates was another special difficulty for the

⁸⁸⁶ Abate's speech, *Op. Cit.*, pp. 638-39.

⁸⁸⁷ *Op. Cit.*, p. 638.

⁸⁸⁸ *Ibid.*

⁸⁸⁹ Narayan's speech, Record 1972, p.639-40.

developing countries. The opinion of the workers' group was that, under those circumstances, it was depressing that the new Convention should have the same minimum age as in 1919.

The Russian and Cuban governments' delegates sympathised with the opinion of the workers' group. The Cuban delegate argued that all children should have equal rights and "the same right to a happy childhood, education and training".⁸⁹⁰ Therefore, the same standards should apply to all children, to all branches of the economy and in all countries. To let children work at the expense of education would only lead to the perpetuation of ignorance, incompetence, underdevelopment and child exploitation.⁸⁹¹

The workers' delegate from Pakistan, Kurshid Ahmad, agreed but added that the abolition of child labour implied progressive societies and he considered it to be a responsibility also for the industrialised world.⁸⁹² He said:

Thus I would urgently stress that it is the responsibility and the obligation of the developed nations [...] to take action, not only in the matter of laying down standards on child labour but also as regards entering into a general commitment to abolish child mass unemployment and underemployment.⁸⁹³

Ahmad's concern was that, instead of co-operation, he saw a growing gap between the industrialised and the developing world.

The Italian workers' adviser, Silvia Boba, agreed with Ahmad.⁸⁹⁴ She said that the problem of development could not be solved by child labour. Child labour only accentuated adult unemployment. Furthermore, it "deprives the new generation of education and training, and this will perpetuate the conditions of poverty and underdevelopment of society as a whole".⁸⁹⁵

As already mentioned, the Report of the Committee on Minimum Age and the resolution to place the question on the following year's agenda were then adopted unanimously by the Conference.⁸⁹⁶

⁸⁹⁰ Spanish Government adviser Mr. Ortiz Rodriguez, *Op. Cit.*, p. 640.

⁸⁹¹ *Ibid.*

⁸⁹² Ahmad's speech, Record 1972, pp. 641-42.

⁸⁹³ *Op. Cit.*, p. 642.

⁸⁹⁴ Boba's speech, *Op. Cit.*, p. 642.

⁸⁹⁵ *Ibid.*

⁸⁹⁶ *Ibid.*

11.3 The second discussion 1973. Realism or real progress?

The conclusions of the Conference in 1972 were circulated to the member states' governments for comments before they were submitted to the Conference for final discussion and adoption.⁸⁹⁷ As will be shown below, the replies of the governments caused the Office to make one addendum to the provision on dangerous work and a few smaller changes to the Draft Recommendation. Below, only the discussions on 14 or 15 years as the minimum age and items or arguments in the replies of the governments and comments of the Office that had not previously been discussed will be briefly commented on before dealing with the plenary and final discussion at the Conference.⁸⁹⁸

11.3.1 The Blue Reports

A few new arguments and discussions appeared in the replies of the governments of the member states. One such new discussion, which is of great interest to this dissertation, was how to determine the level of maturity of a child. As previously discussed, Article 1 of the Draft Convention provided that member states should

undertake to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of all young persons⁸⁹⁹

As in the Committee previously, the phrase 'fullest physical and mental development of all young persons' was criticised for being vague because too many subjective criteria were involved. Whereas it might be possible to find universal medical criteria for physiological development, it would be very difficult to formulate criteria for psychological development. A policy based on that principle would be difficult because of the individual variations in physical and mental development of children and because of the difficulties in defining psychological maturity.⁹⁰⁰ The Office, however, defended physical and psychological development as criteria for the minimum age and argued that a child's full development typically occurred at 16 years. This was based on the assumption that it was not likely that any member state would intend raising the minimum age above 16 years which

⁸⁹⁷ Blue Report (1) 1973. I have used the French version as it was more easily available.

⁸⁹⁸ Blue Report (2) 1973. (the French version).

⁸⁹⁹ Blue Report (2) 1973, p. 41.

⁹⁰⁰ *Op. Cit.*, p. 6 with further reference to Grey Report 1972 (2), p. 16-17.

was the minimum age also recommended in the Draft Recommendation.⁹⁰¹ This is, however, only a circular argument that has no substance concerning development criteria. According to this logic, the full development of a child occurred at the minimum age that was the policy of the most industrially and socially developed member states. Instead of focusing on the child, the Office focused on the limit that a member state could be expected to accept, which might have had little or nothing to do with the actual physical and mental development of a child.

A number of member states argued that the minimum age ought to be 15 years instead of 14 (Article 2).⁹⁰² The main argument was still that the new Convention should be more ambitious than conventions that were more than 30 years old. Spain wrote that it was “abnormal” and the USSR and the Eastern bloc called it “retrograde” to keep the minimum age at 14 years.⁹⁰³ The justifications for a minimum age of 15 years concerned the school-leaving age, the educational situation, especially in the developing countries, and the protection of the development of the child.

A number of other member states argued that the minimum age should be 14 years as suggested in the Draft Convention, and gave the school situation in the developing nations as the only justification. No arguments concerning family, culture and tradition were raised.⁹⁰⁴

The article most commented on in the replies of the governments was Article 3 concerning dangerous work.⁹⁰⁵ As described above, the proposed minimum age for dangerous work was 16 years in the first draft, and was then raised to 18 years during the first discussion in 1972. A number of governments replied that they had objections to a higher minimum age than 16 years. Numerous arguments were put forward. They were that: children should be allowed to receive technical training for dangerous work; the 18-years limit was ‘unrealistic’; it should be left to national authorities to decide; there were ‘degrees of danger’; and the right to safe working conditions was a right for all workers and not only children. In addition, a number of governments had objections concerning the 18-years limit for developing nations. The justifications concerned ‘early maturity in the tropic zone’ and the necessity for child labour as an economic contribution to the household economy.

The Office met the objections by an addendum to Article 3. It was provided that a minimum age limit higher than 14 years but lower than 18 years might be specified for particular types of employment or work where the risks and exigencies justified a higher minimum age than 14 even though the work could not be classified as ‘dangerous work’ in the meaning of the

⁹⁰¹ Blue Report (2) 1973, p. 7.

⁹⁰² *Op. Cit.*, p. 8.

⁹⁰³ *Op. Cit.*, p. 9.

⁹⁰⁴ *Op. Cit.*, pp. 8-12.

⁹⁰⁵ *Op. Cit.*, pp. 12-17.

Convention.⁹⁰⁶ As the Office pointed out specifically, the proposed addendum should not exclude from that category any work that was classified as ‘dangerous work’: on the contrary, the addendum made it possible to place work that normally fell under the general minimum age of 14 years into a new category with a higher minimum age. The logic of this is a bit difficult to follow as the criticism was that the minimum age for dangerous work was too high and not that more work should be included in categories with a higher minimum age.⁹⁰⁷

A number of governments commented on the possibility of excluding “limited categories of employment or work for which substantial problems of application arise” in Article 4 of the Draft Convention.⁹⁰⁸ The member states of the Communist bloc wished to delete the Article altogether. All other governments were positive towards the principle of limited categories of employment being excluded: all of them mentioned either agricultural work or work in family undertakings in this context. Their focus on agriculture and family undertakings was partly a consequence of the fact that the Draft Recommendation mentioned family undertakings as the single example of a ‘certain category of employment’.⁹⁰⁹ In the replies of Norway and Sweden, it was pointed out that work within the family or in agriculture was difficult to control and therefore was excluded from national law. A fact that was not mentioned in the Blue Report was that, according to the Office’s own survey of 1972, the substantial majority of child labour was performed in agriculture and family undertakings.⁹¹⁰

The ability in Article 5 to limit the scope of the Convention for member states “whose economy and administrative facilities are insufficiently developed” was not much commented on in the governments’ replies. The Office wrote that, if agriculture was to be excluded under the Article, it should still apply at least to larger-scale agricultural enterprises such as plantations and similar workplaces.⁹¹¹

The countries of the Communist bloc also wished to delete the exception in Article 7 for ‘light work’.⁹¹² The Office remarked that an exception for light work was indispensable if all member states were to be able to ratify the Convention. The Office discussed the two conflicting objectives of ample ratification and satisfactory child protection. The Office considered that the previous Conventions had been too strict regarding ‘light work’, which thus prevented many member states from ratifying them. At the same time, the necessity for restrictions that really protected children was stressed.

⁹⁰⁶ *Op. Cit.*, pp.42-3.

⁹⁰⁷ *Op. Cit.*, p. 43.

⁹⁰⁸ *Op. Cit.*, pp. 17-19.

⁹⁰⁹ *Op. Cit.*, pp. 17-19.

⁹¹⁰ See above, Grey Report (1) 1972.

⁹¹¹ Blue Report (2) 1973, p. 20.

⁹¹² *Op. Cit.*, pp. 21-22.

The Office considered that the wording of Article 7 reconciled both objectives, by permitting light work for children over 12, but only on condition that the work was “not likely to be harmful to the health or development of the child and not interfering with attendance at school”. A further safeguard was that the national authorities should decide which activities should be permitted for children as ‘light work’.⁹¹³

As regards Article 8 of the Draft Convention on artistic performances, there were not many comments in the replies of the governments. The government of Austria found an important difference between paid employment on the one hand and education or unpaid work in a family context on the other. The Office’s only comment was that the purpose of the provision regarding artistic performances was to ensure that the working conditions and other circumstances specified in each individual permit or licence were respected.⁹¹⁴

There were only a few comments in the replies regarding the enforcement provisions. They mostly concerned the various difficulties resulting from the obligation for employers to keep a register of names and dates of birth of all children and young persons employed. The Office disregarded these concerns.⁹¹⁵

To sum up the Blue Report, there was some criticism and concern regarding a number of articles expressed by the governments of the member states but the Office disregarded most of it. A new paragraph was added to Article 5 on dangerous work, which extended the opportunities to specify a minimum age higher than 15 years for ‘semi-dangerous’ work. The Draft Recommendation was not commented on much by the member states and the Office only made minor changes to the text of the draft.

11.3.2 The Conference in 1973. A general minimum age of 15 years.

11.3.2.1 The Report of the Committee on Minimum Age 1973

The next step in the adoption process was that the Draft Convention and Recommendation were submitted to the Conference in 1973 for the second discussion. As usual and in accordance with the ILO’s Standing Orders the Blue Report was first submitted to the Committee on Minimum Age for discussion and a report, namely, the Report of the Committee on Minimum Age.⁹¹⁶ The Committee had the same composition as in 1972.⁹¹⁷ There was much debate in the Committee and the groupings and the arguments were

⁹¹³ *Op. Cit.*, p. 22.

⁹¹⁴ *Op. Cit.*, p. 23.

⁹¹⁵ *Op. Cit.*, p. 25.

⁹¹⁶ Report of the Committee on Minimum Age, Record 1973, p. 483-495.

⁹¹⁷ *Op. Cit.*, p. 483.

very similar to the first discussion. I will deal with the debate in the Committee below focusing on minimum age, dangerous work, and the exclusion of limited categories of work.

Minimum age

The representatives of the governments of the Communist bloc, together with Cuba and Spain, submitted an amendment to raise the minimum age to 15 years. The argument was the same as before: ‘real progress’ in the campaign against child labour to guarantee children’s physical and psychological development.⁹¹⁸

The employers’ group and a number of government delegates were against this. The argument was the same as before: 15 years was ‘unrealistic’ for developing countries and the gap between the school-leaving age and the minimum age would create social problems. Someone also argued that the objective of the Convention was not necessarily to raise the standard but to consolidate the international regulation in the previous Conventions.

The amendment to raise the minimum age to 15 years was adopted by a very small majority. Abebe Abate, the Vice-President of the Committee on Minimum Age in 1972 and 1973 and member of the employers’ group, found the adoption of the amendment deeply regrettable and said that it would threaten the whole adoption process. He said that, when the first conventions were adopted, the industrialised nations constituted the majority of members but this had now changed. Consequently, the new Convention had to be modified to suit the needs of the developing world where the majority of the child workers lived. A high minimum age would lead to social problems and juvenile delinquency and the ILO would be responsible for that.

Abate argued that, as juvenile delinquency was widespread in the industrialised world, where children went to school at least to the age of 15, what alternative would there be but juvenile delinquency in the developing nations where schooling opportunities were so limited. His pessimistic conclusion was that “unless these children are engaged in productive employment, what can they be but delinquents?”⁹¹⁹ The employers’ group then declared that they were going to submit an amendment to revert to the minimum age of 14 years, and if it was not adopted they were going to vote against the Convention as a whole at the plenary session of the Conference. As a compromise, some of the government representatives worked out an amendment to the Article 2, minimum age, to the effect that member states “whose economy and educational facilities are insufficiently developed may,

⁹¹⁸ *Op. Cit.*, p. 484.

⁹¹⁹ Record 1973, p. 679.

after consultation with the organisations of employers and workers concerned, where such exist, initially specify a minimum age of 14 years”.⁹²⁰

Hazardous work

The proposed minimum age for hazardous work had been raised to 18 years as previously described. In the Committee on Minimum Age, a new amendment to change it back to 16 years was submitted by the employers’ group and the Austrian government delegate.⁹²¹ The justifications were, as before, that 18 years was not realistic if the Convention was to be effective and that industrial safety was an issue for all workers regardless of age and not only in relation to children. The workers’ group agreed but argued that persons under 18 years of age still needed special protection. The amendment was rejected by the Committee.⁹²² Several further amendments were presented: to permit the employment of children over 17 years of age on hazardous work (EC countries); individual permits for apprenticeship in hazardous work for children over 16 (Spain); and to remove the ability to permit “semi-hazardous” work between 15 and 18 years of age (the Communist bloc, Cuba and the workers’ group).⁹²³ A tripartite working group consisting of the delegates who had proposed the various amendments was appointed to work out a compromise. It resulted in a proposal to authorise national authorities to decide – after consultations with the workers’ and employers’ organisations – whether to permit the employment of children to hazardous work from the age of 16 years on condition that the child’s “health, safety and morals are fully protected” and provided that the child underwent specific and adequate training. The amendment was adopted by a relatively large majority of the Committee.⁹²⁴

Vocational training and light work

The exception from the minimum age for vocational training and technical schools in Article 6 was amended in order to apply only to children over 14 years. The employers’ group did not agree and argued that training in industry could be valuable and that there were safeguards for the protection of the child in the Article. Nonetheless, the amendment was adopted.⁹²⁵

As regards Article 7, on ‘light work’, it was amended to 13 years as a consequence of the general minimum age being raised to 15 years.⁹²⁶

⁹²⁰ *Op. Cit.*, pp. 681-82. The amendment was drafted by the governments of Australia, Belgium, Cameroon, Dehomey, the Federal Republic of Germany, Ireland and the Netherlands.

⁹²¹ *Op. Cit.*, pp. 484-5.

⁹²² *Op. Cit.*, p. 485.

⁹²³ *Ibid.*

⁹²⁴ *Ibid.*

⁹²⁵ Record 1973, p. 486.

⁹²⁶ *Ibid.*

Exclusion of limited categories of work

The member states from the Communist bloc, together with Cuba and the workers' group, suggested that the ability to exclude "limited categories of employment or work in respect of which special and substantial problems of application arise", Article 4, should be deleted. Their argument was that the ability for developing nations to exclude categories of employment from the scope of the Convention in accordance with Article 5 would give sufficient flexibility as they considered that there was no need for exclusion of categories of work in the industrialised nations. The employers argued that the exception for limited categories of work was surrounded by sufficient safeguards to stop any abuse of the Article. The amendment to delete the Article was rejected by a small majority.⁹²⁷ An amendment submitted by the Australian government that the exclusion of dangerous work under Article 4 should not be allowed was adopted by a large majority.⁹²⁸

Limited scope on the grounds of insufficiently developed economy and administrative facilities

Article 5, that provided opportunities for member states "whose economy and administrative facilities are insufficiently developed" to initially limit the scope of the Convention, was slightly amended after a proposal from the workers' group to tighten up the definition of 'plantations' (plantations could not be excluded from the application of the Convention). To the wording "plantations and other agricultural undertakings" was added "mainly producing for commercial purposes, but excluding family or small-scale holdings producing for local consumption and not regularly employing hired workers".⁹²⁹

The Draft Recommendation was adopted with only insignificant changes.⁹³⁰ The employers were, however, concerned by point 13 that contained provisions concerning working conditions, fair remuneration, limitation of the hours of work, 12 hours nightly rest, weekly rest, four weeks holiday with pay, social and sickness insurance and industrial safety. The employers' group considered that the provisions went far beyond the assignment to adopt a universal Minimum Age Convention and accepted the Recommendation only because it was not legally binding.⁹³¹

Summing up the Report of the Committee on Minimum Age, the minimum age was raised from 14 to 15 years as a result of the discussions in the

⁹²⁸ *Ibid.*

⁹²⁹ Record 1973, pp. 485-6.

⁹³⁰ *Op. Cit.*, pp. 487-9.

⁹³¹ *Op. Cit.*, p. 489.

Committee on Minimum Age. Apart from that, the Committee only made minor modifications to the draft Convention and Recommendation. There were the same two camps as during the first discussion. On the one hand there was the workers' camp and the government delegates of the member states in the Communist bloc, Spain and to some extent Sweden which advocated 'real progress' by adopting minimum age limits for employment of 15 and 18 years. On the other hand there were the employers, together with a number of disparate government delegates, who advocated 14 and 16 years as minimum ages.

11.3.2.2 The plenary session 1973

When the Draft Convention and Recommendation reached the final stage in the adoption process, the Draft Convention and Recommendation had already been thoroughly debated on repeated occasions. Therefore, the discussion at the plenary session of the Conference was relatively brief and not more than six speakers in all took the floor, including the reporter of the Committee on Minimum Age. Therefore the account of the plenary session in 1973 will focus on the final speeches, that summarise the debate.

As a result of the threat by the employers' group to submit an amendment to the plenary session to revert to the minimum age of 14 years – an action that could jeopardise the adoption of the Convention – a compromise text had quickly been worked out by a number of government members and presented to the Conference.⁹³² In the text it was suggested that the general minimum age should be 15 years, with the ability for developing nations to initially specify a minimum age of 14 years, after consultation with the organisations of employers and workers concerned "where such exist". The member state that had specified the lower minimum age should include a statement specifying (a) whether the reason for the lower minimum age subsisted and (b) that the lower minimum age would be raised to 15 years at a specific date. The text was adopted unanimously by the Conference.⁹³³

Abate, the employers' delegate from Ethiopia and Vice-Chairman of the Committee on Minimum Age both in 1972 and 1973, was the first speaker on the floor.⁹³⁴ He focused exclusively on the difficulties of the developing nations living up to a minimum age of 15 years. The key words of his speech were 'consensus', 'constructive', 'practical' and 'realistic'. He claimed that it was unacceptable, unrealistic and impracticable to have a minimum age of 15 years in the developing nations – primarily because of the lack of schools and the fact that most of the developing nations were mainly agricultural

⁹³² The government delegates of Australia, Belgium, Cameroon, Dahomey, the Federal Republic of Germany, Ireland and the Netherlands wrote the compromise text. *Op. Cit.*, p. 681.

⁹³³ *Op. Cit.*, p. 682.

⁹³⁴ *Op. Cit.*, pp. 678-80.

societies. Abate argued that the Convention should protect the interests of young persons *as well as* serving the interests of “the nation responsible for their well-being and protection”.⁹³⁵ In this way he frankly admitted that the objectives of the Convention were as much in the interests of nations as for protection of children. He concluded:

We must be cognisant of the differences in social and economic conditions that exist in the world today and reflect these in the instruments that we adopt. The Conventions and Recommendations we adopt must not be expressions of our wishes but must show, and prove without any doubt, that today’s realities – as well as tomorrow’s possibilities – are reflected therein. In no way should we or can we impose tomorrow upon today.⁹³⁶

Abate and the employers’ group thus considered the protection of children as *relative* to “the interests of the nation” and that a high minimum age would only create more social problems – such as juvenile delinquency that was regarded as a problem for society rather than as a problem for children.

Two more speakers talked in favour of flexible minimum age standards and a lower minimum age of 14 years. These were the government adviser from Cameroon, Thomas Guessogo Nkono, and the government delegate of Thailand, Nikom Chandravithun. Nkono also appealed to the ‘sense of reality’ of the Conference delegates and asked what children aged 13 to 15 were supposed to do when compulsory education was lacking.⁹³⁷ Chandravithun’s speech was along the same lines. He said that ‘the real needs’ of the developing nations had to be taken into account and that the minimum age of 15 years of age was ‘unrealistic’. He referred to a meeting of labour inspectors of all Asia in Singapore in 1972. At the meeting it had been acknowledged that millions of children under 15 years were working. He asked the Conference what would happen to those children if they were put out of work because they needed the money to ‘help their parents’, which meant making substantial contributions to the family economy.⁹³⁸

One of the rare female representatives at the Conference, Mrs. Boba, technical adviser to the Italian workers’ delegation, spoke on behalf of the workers’ group.⁹³⁹ The core of her speech was a plea for a “dynamic instrument” that was the basis for “real progress” and “improving the society as a whole”. In this way, the workers’ group also expressed a view that the protection of children was relative to and a strategic component of the improvement of society as a whole. Child protection formed part of an agenda for societal change. More particularly, Boba was concerned with the flexibility clauses that were not restricted to the developing nations only:

⁹³⁵ *Op. Cit.*, p. 679.

⁹³⁶ *Ibid.*

⁹³⁷ Record 1973, p. 681.

⁹³⁸ *Ibid.*

⁹³⁹ Record 1973, p. 680.

Article 4, exclusion of limited categories of work where problems of application arose and Article 7, the lower minimum age for 'light work'. She criticised the criterion "problems of application" for excluding limited categories of work in Article 4 as being "almost ludicrous".⁹⁴⁰ Furthermore, Boba questioned the employers' concerns for the developing countries. In the view of the workers, she said,

the truth is that the employers always derive particular advantage from the work of young people, either from the standpoint of wages or from the standpoint – a very important standpoint – of having workers who are inexperienced in trade union matters and are therefore highly malleable.⁹⁴¹

Boba said that the workers asked themselves whether the employers were not really speaking in defence of the interest of employers of cheap and docile labour but rather in the interest of the developing nations. The solution to the problems of the developing nations was not through child labour and particularly when child labour coexisted with adult unemployment. Such practices, she said, created vicious circles condemning children to continue their entire lives as unskilled workers and nations to having an unskilled workforce.⁹⁴²

At the end of the session, the articles and paragraphs of the Draft Convention and Recommendation were adopted unanimously by the Conference.

11.4 The Minimum Age Convention and Recommendation

In this chapter I have given a detailed account of the drafting and adoption of Convention No. 138 and Recommendation No. 146. Accordingly, a very brief account of the main provisions of the Convention and the Recommendation is provided below. Conclusions will follow.

11.4.1 The Minimum Age Convention No. 138

The Minimum Age Convention No. 138 was adopted on 26 June 1973, and came into force on 19 June 1976 after ratification by Cuba and Libya in 1975. Ratification was slow up to 1999 and thereafter. Two-thirds of the ratifications came after the adoption of the Convention on the Rights of the

⁹⁴⁰ *Ibid.*

⁹⁴¹ *Ibid.*

⁹⁴² *Ibid.*

Child in 1999.⁹⁴³ The Convention contains 18 articles in all, and the French and English versions are equally authoritative (Article 18). Articles 1-9 contain the material provisions concerning the minimum age for employment. Articles 10-18 contain formal provisions concerning entry into force, denunciation and provisional regulations. These articles will not be further described here.

Minimum age and scope of the Convention

In Article 1 of the Convention, the member states undertake to “pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons”. As I have argued above, although the definition was criticised for being too vague and subjective, other criteria were never discussed. Instead the Office based the definition on a circuitous argument that it was 16 years, the same age as the minimum age for employment in the most developed nations. Moreover, the wide acceptance of the definition might be explained by the fact that there were no substantive formal obligations connected to the Article.

In Article 2 the scope of the Convention and the minimum age were established. The Convention should encompass “employment or work [...] in any occupation” (Article 2.1). The member states should declare a minimum age that should be “not less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years (Article 2.3). Thus, it was established first with reference to the school-leaving age, and secondly as an absolute minimum age. A member state could make a further declaration specifying a higher minimum age than the age initially specified (Article 2.2). The same Article contains an exception for member states “whose economy and educational facilities are insufficiently developed” to initially specify a minimum age of 14 years after consultations with the organisations of workers and employers “where such exist” (Article 2.4).

Article 3 deals with dangerous work and provides a minimum age of 18 years for “any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons”. The types of ‘hazardous work’ shall be determined in national law or regulations or by competent authorities after consultations with the organisations of employers and workers concerned, “where such exist”. During the second discussion a paragraph was added that employment from 16 years could be authorised, on condition that the

⁹⁴³ Minimum Age Convention No. 138, ILOLEX, www.ilo.org, List of ratifications, see www.ilo.org/ilolex/english/convdisp1.htm (visited 30/01/07).

“health, safety and morals” of the child were “fully protected” and that the child had received “adequate specific instruction or vocational training” (Article 3.3).

Article 4 deals with the ability to initially exclude limited categories of employment, after consultation with the organisations of employers and workers concerned. ‘Hazardous work’ as defined in Article 3 cannot be excluded. This Article is not limited to the member states with “insufficiently developed economies and administration”, but open to all member states to use. As discussed above, the Office particularly mentioned family employment and working in domestic service as typical examples of categories that could be excluded, pointing at the difficulties of enforcement in these sectors. However, the Office also noticed that work in family employment and domestic service entailed particular dangers of abuse of children.

Article 5 deals with the initial limiting of the scope of the Convention for member states with “insufficiently developed” economies and administrations in respect of mining and quarrying, manufacturing, construction, electricity, gas and water, sanitary services, transport, storage and communication and plantations and other agricultural undertakings mainly producing for commercial purposes, but excluding family and small-scale holdings producing for local consumption and not regularly employing hired workers (Article 5.3).

Work as part of training in technical and vocational schools is excluded from the application of the Convention in Article 6, as is work done by persons over 14 years for vocational training purposes and in accordance with provisions of the competent authorities and after consultation with the employers’ and workers’ organisations concerned.

Article 7 allows light work for children over 13 years, provided it is not likely to harm the child’s health or development and does not prejudice school attendance.

Article 8 deals with artistic performances, which may be allowed for children at any age if an individual permit is granted by the competent authorities, and after consultation with the employers’ and workers’ organisations concerned. In the permit the number of hours of work shall be limited and other employment conditions prescribed. Compared to the previous Conventions No. 33 and No. 60, minimum age in non-industrial occupations, the requirement that the performance had to be “in the interests of art, science or education” was omitted. Furthermore, in contrast to the previous Conventions, Convention No. 138 contains no general conditions or limitations regarding employment of children in artistic performances. No discussion of these omissions is recorded in the Conference material.

Article 9, finally, deals with enforcement. “All necessary measures, including the provision of appropriate penalties” should be taken by the competent authority to ensure the effective enforcement of the Convention.

Furthermore national law or regulation or the competent authority should “define the persons responsible” for compliance with the provisions of the Convention. Both provisions are copied from Convention No. 123, Minimum Age in Underground Work. National law or regulation should also prescribe registers or other documents to be kept available by employers and containing the names and ages of employees under 18 years of age.

11.4.2 The Minimum Age Recommendation No. 146

The Minimum Age Recommendation No. 146 was adopted together with Convention No. 138 on 26 June 1973.

Above in Section 11.2.1, I have described the main provisions of the Recommendation. Only smaller insignificant changes were made to the Recommendation as it was finally adopted by the Conference. It is consequently unnecessary to describe the Recommendation in further detail here, except for three comments.

The first comment concerns the social policy measures in the Recommendation. Above I have argued that the provisions of the Recommendation are primarily directed towards the industrialised nations. However, at the same time the Recommendation attempts to meet the problems of the divide between the rich and poor, both between and within nations, addressed by Director General Jenks. In the Recommendation the member states were requested to promote “the progressive extension” of social policy measures such as family allowances, social security, insurances and the “firm commitment to full employment”, full-time school and vocational training and facilities for the protection and welfare of young persons (I. National Policy 1-4).

The second comment concerns the ‘ultimate’ minimum age according to the ILO. The Recommendation provided that the member states should have as an objective “the progressive raising to 16 years of the minimum age for admission to employment or work”. This was in line with the statements of the Office that 16 years was “the level consistent with the fullest physical and mental development of young persons” (as defined in Article 1 of Convention No. 138) – although only based on the argument that 16 years was the minimum age for employment in the most developed countries.⁹⁴⁴

The third comment is that the Recommendation was hardly discussed during the adoption process, and that there were no substantial changes in relation to the first draft. As shown above, the Recommendation was accepted only because it was not formally binding on the member states. The lack of discussion further indicates that the delegates did not consider the Recommendation to be of much significance for the minimum age campaign.

⁹⁴⁴ Blue Report (2) 1973, p. 7.

11.5 Preliminary conclusions: Development, dynamism and minimum age

Conflict, continuity and change

The discussions about the new Minimum Age Convention, Convention No. 138 and Recommendation No. 146, were characterised by two divides: the North-South divide between the industrialised and the developing nations on the one hand, and the East-West divide on the other. Both divides had roots in the Second World War, the Cold War and decolonisation.

Unemployment was a – more or less – hidden agenda in the debate, just like in the 1930s, and it can be assumed that it contributed to raising the issue of a new and general Minimum Age Convention on the agenda of the ILO. Unemployment was perceived both as a consequence of ‘underdevelopment’ and growing populations and of technological change. Both the United Nations and the ILO were deeply engaged in the unemployment problem through such activities as the World Employment Programme and the 2nd Development Decade. As I have demonstrated in this chapter, the question of unemployment was brought up by the workers’ group on several occasions during the debate on Convention No. 138. It was the trade unions that warned about the connections between adult unemployment and the employment of unskilled and cheap child labour. The discourse can be ironically described as ‘the abolition of child labour in the best interest of the (male) adult worker’.⁹⁴⁵

This was the general background when the Office started its work on the new Minimum Age Convention and Recommendation during the early 1970s.

What did the ILO know? The surveys of children at work

An important result of the study of Convention No. 138 in this Chapter is that the ILO had gathered so much information about children at work through the surveys in first the Grey Report that clearly indicated that a new Convention would only target a minor proportion of child labour.⁹⁴⁶ The surveys were packed with information about working children, minimum age laws and schooling in the member states around the world, showing that child labour was still a widespread practice. Most of the child work took place in the developing regions, and agriculture was the sector that occupied most child workers. Only one-third of the children in developing regions went to school on a regular basis. At the same time the survey of national minimum age legislation showed that work in both agriculture and family workplaces was generally excluded from the application of minimum age

⁹⁴⁵ Grey Report (1) 1972, p. 21.

⁹⁴⁶ *Op. Cit.*, “National Regulation”, pp. 8-20, and “Children at Work”, pp.21-30.

regulation. Internationally, agricultural work was left virtually unregulated in Convention No. 10, and in practice most agricultural work was also excluded from the scope of Convention No. 138.

Consequently, the ILO – the Office and the delegations – had relevant information about the situation of working children. Nonetheless, the Office declared in the first Grey Report that child labour ‘in the classical sense’, which meant the mass exploitation of child labour during the glory days of the Industrial Revolution, had become ‘an evil of the past’. It is not easy to find the logic in these statements. While the survey showed that agriculture was the largest workplace for children by far, it also clearly showed that a great population of child workers was employed in mid- and small-scale industry in factories, workshops and in industrial home-working. Against this background, the rhetoric of the Office was not well founded. In fact, it appears to be disconnected from the information about children and work contained in the surveys. One can only speculate on the reasons for this. It should perhaps be interpreted in the light of the Office’s explanations of the decline in industrial child labour in the first Grey Report, presented in the following order: (1) the influence of international labour standards; (2) the restraints of national minimum age laws; and (3) economic and social transformation.⁹⁴⁷

What was new in Convention No. 138 and Recommendation No. 146? General. 15 years. Flexibility clauses. Social policy in Recommendation

Colonialism and development

In the same way as during the previous periods of the minimum age campaign, the developing nations ‘stood out’ in the debate. And still in 1972 and 1973 the discourse was quite colonial, or ‘post-colonial’. For example, some of the speakers in the ILO still claimed, as a justification for lower minimum ages, that children ‘in tropical zones’ matured earlier than other children. The speeches addressing the difficulties in implementing Minimum Age Conventions in the developing nations were underpinned by the perspective that these countries were ‘backward’ and the populations ‘uneducated’ and that the solution for these nations was named ‘industrialisation’.

As I have discussed in this Chapter, the developing nations were regarded as the principal addressees of the Convention, while the Recommendation – which was hardly discussed at all – was more directed towards the industrialised nations: not least the provisions that went beyond being mere guidelines to the Convention, in particular Point 13, dealing with conditions of employment and social policy. The debate concerned the difficulties in

⁹⁴⁷ Grey Report (1) 1972, p. 21.

reconciling adequate child protection with the poor economic, administrative and educational resources of the developing nations.

There was one significant shift in 1973. As I have described in this Chapter, Convention No. 138 “was intended to have effect” in the developing nations.⁹⁴⁸ The earlier Minimum Age Conventions, particularly the very first Conventions, were in contrast intended principally to regulate child work in the industrialised nations. Child work in the colonies was regulated separately, as described in the foregoing chapters, either in the form of general articles covering colonies, etc., or the form of special regimes for India, Japan and China.⁹⁴⁹ The separate regimes were lax, with substantially lower minimum ages, narrower scope and opportunities for modification or non-application of the Convention, sometimes practically draining the Conventions of all substance. One can speculate about these separate regimes being adopted to cover the reluctance of the industrialised nations to take responsibility for protecting the children – or workers and people in general – in the colonies.

In any event, through Convention No. 138, the ILO’s perception of the child labour problem had been completely transformed from being regarded as a problem of industrialisation, to being regarded as a problem of developing nations.

Enforcement

As I have described in this Chapter, the Office was fully aware of the fact that enforcement was one of the Achilles’ heels of the Minimum Age Conventions. It was admitted in the reports that home-working, working in small workshops, working in family undertakings and domestic service were occupations where children were at great risk of abuse and danger. At the same time, this kind of work was difficult to control. It was acknowledged that “inspection and enforcement would be an enormous task”.⁹⁵⁰ The Office also openly admitted that it considered that the direct regulation of employment of children in agriculture was generally not practicable. The line of reasoning followed by the Office was that, until adequate educational facilities had become available and until it had been made possible for most families to dispense with the work of their children, there was “little chance that child labour by unpaid family workers” would be reduced “to any significant extent”.⁹⁵¹

The difficulties in enforcing the minimum age legislation did not only concern work in agriculture and in the informal sector: it also concerned industry. One example that has been discussed in this Chapter is the

⁹⁴⁸ Record 1972, pp. 638-39.

⁹⁴⁹ E.g. Convention No. 5, Articles 5,6 and 8.

⁹⁵⁰ Grey Report (1) 1972, p.26.

⁹⁵¹ *Op. Cit.*, p. 28.

discussion of the Indian labour inspection services contained in the first Grey Report. In spite of the Office's rhetoric about child labour as an 'evil of the past', it was admitted that child labour in industry still existed on a large scale and that the low number of reported cases of working children in Indian factories was a consequence of the failings of the labour inspection services, not of a decline in child labour. The Indian labour inspection services were criticised for being under-staffed, lacking adequate means of transport, unable to verify ages and furthermore, in those cases where inspections were carried out, inspection was often obstructed by the children's own efforts to avoid detection.⁹⁵² The discussion about the shortcomings of the Indian factory inspection services is illustrative of the fact that the Minimum Age Conventions build on the existence of a strong state, with strong institutions, including trade unions.

Minimum age

Above I have described how the discussion about Convention No. 138 mainly concerned the drafting of a Convention with high standards in terms of child protection which would at the same time be acceptable for the developing nations. According to the Office's rhetoric two contradictory objectives should be reconciled by creating a 'dynamic document', giving satisfactory child protection and, at the same time, encouraging universal acceptance of the Convention by flexibility clauses. There was much discussion of the general minimum age. In the first drafts the general minimum age was 14, and it was not until the second discussion that it was changed to 15 years. The discussion concentrated on the conditions in the developing countries: whether a high minimum age for employment would have the effect of speeding up the development of the educational system or whether it would discourage ratification. The employers' group argued for 'realism' and a step-by-step improvement of child protection in pace with general economic and social change in the nations concerned, particularly in the educational system. The workers' group and the Communist states argued in terms of equality: all children were entitled to a happy childhood, education and training, and if 'real progress' was to be achieved, standards must be higher than in 1919.

To reconcile the two camps, one arguing for the necessity of a minimum age of 14 years and the other for 15 years, the flexible device of 'initially' specifying a lower minimum age was introduced. The ability for nations with developing economies and administrations to initially exclude whole sectors from the scope of the Convention was another way of allowing flexibility enough to obtain universal acceptance of the Convention.

On closer examination the debate concerned minimum ages for 'light work', for 'normal work' and for 'hazardous work' of 12, 14, and 16 years

⁹⁵² *Op. Cit.*, p.24.

or 13, 15, and 18 years respectively. This construction was exactly the same as in the previous Conventions: the differentiation of child development in stages, with corresponding categories of work in terms of harmfulness and harmlessness as ‘hazardous’, ‘normal’ or ‘light’. One example of this combination of categories is Article 3 of Convention No. 138, which prohibits employment in ‘hazardous work’ of children under 18 years, defining ‘hazardous work’ as “any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons”. Another example is Article 7, permitting ‘light work’ for children over 13 years, defining ‘light work’ as work that is “not likely to be harmful to their health or development”, and not interfering with school.

In the foregoing Section I argued that the ILO rhetoric seems to have been disconnected from reality in the sense that the information on working children gathered in the first Grey Report, which revealed that the Minimum Age Conventions had not been very successful in abolishing child labour, that much of the child labour took place in agriculture where the Conventions could not be enforced, and that so many children did not go to school, did not influence the solutions in Convention No. 138. I find the same comment particularly relevant considering the remarkable fact that, notwithstanding these reports, the debate on Convention No. 138 was all about whether the minimum age should be 14 or 15 years. On the other hand, the whole discussion was more or less a continuation of the debate in the previous stages of the minimum age campaign.

School

In this Chapter I have showed that in respect of minimum age and school, the arguments in the discussion of Convention No. 138 were also old and well-known. As has been argued in this and previous chapters, the minimum age campaign was founded on the assumption that there should be compulsory education available for all children. The minimum age in Article 2 of the Convention is specified directly in relation to the school-leaving age, providing that “the minimum age [...] should not be less than the age of completion of compulsory schooling and, in any case, not less than 15 years”. In 1972 it was further confirmed that the ILO regarded compulsory education as fundamental for the Minimum Age Conventions, through the presence of a representative of UNESCO at one of the meetings of the Committee on Minimum Age.

The Conference material pertaining to Convention No. 138 confirms that there was a consensus in the ILO that the gap between the school-leaving age and the minimum age had to be bridged, because of the dangers of ‘idle children’, defined as “delinquency, begging, and illegal employment”.⁹⁵³

⁹⁵³ Record 1972, p. 538.

I have also showed in this Chapter that the ILO regarded school both in a ‘best interests of the child-perspective’ and in a ‘best interests of the nation-perspective’. As I have just argued, the idea that it was in the best interests of the child to go to school and to be educated underpinned the whole minimum age campaign. Besides this fundamental idea of education being in the best interests of the child, there were several statements in the debate concerning the importance of education ‘for the future of the nation’. One example of this is the argumentation of the workers’ group, namely, that education was critical for the development of the nation and that the lack of education would make countries stay in a state of permanent poverty and ‘backwardness’.⁹⁵⁴

Minimum age and family

Family employment was not a big issue *per se* in connection with Convention No. 138, and there was no general exclusion of work in family undertakings in Convention No. 138. However, it was possible to exclude both family employment and domestic work under Article 4, as “limited categories of work in respect of which special and substantial problems of application arise”. Furthermore “family and small-scale holdings producing for local consumption and not regularly employing hired workers” were excluded from the “plantations and other agricultural undertakings mainly producing for commercial purposes” in Article 5 that were not allowed to be excluded from the scope of the Convention on the grounds of “insufficiently developed” economy and administrative facilities. This example shows the interrelatedness of agricultural work and family employment.

However, as I have described in this Chapter, the Office was not unaware of the particular problems associated with employment of children by family members. In the first Grey Report, employment in family undertakings was discussed particularly in connection with the handicraft industry, where it was common practice that children learned their parents’ trade. The Office noted problems such as the ‘acute’ failings of labour inspection in this sector, the frequent use of learners and apprentices as a mere cover-up for regular work and the exploitation of very young girls in the carpet industry. All of these practices took place in small workshops or in people’s homes, out of sight of any control of working conditions and minimum age. Nonetheless, at the Conference, the employers’ group argued that family employment should be excluded on the grounds of ‘culture’ and ‘tradition’.

Childhood negotiated – two alien childhoods

At the beginning of this Chapter, I referred to the Report of the Director General. In the Report the Director General Wilfred Jenks pointed out the growing gap between the rich and the poor, globally, regionally and locally

⁹⁵⁴ Record 1972, pp. 537-38.

as the largest problem of contemporary social policy, and for the ILO. Jenks talked about “two alien worlds”, one rich world and one poor world, with borders both between and within nations. One could say that Jenks’s analysis was acknowledged in Convention No. 138, with the double standards of child protection – one high standard for the industrialised nations with functioning institutions such as administrations and school systems, and one low standard for member states with “insufficiently developed” economy and “administrative facilities” (Article 5). However, the Convention does not provide any solutions to diminish the divide between these two worlds.

Generally, it was not the situation of the child that was at the centre of the debate. In 1972-1973, as before, it was the problems of the developing nations in complying with the minimum age standards that was the principal question. Childhood was definitely more negotiable than political and economic structures in the developing nations, and the solution was adjustment of the child protection standards by flexibility clauses that allowed substantially lower standards of child protection. In this way, child protection was not first and foremost ‘in the best interests of the child’. Instead it was highly relative to the interests of nations and regarded as a strategic component of social change, both by the workers, employers and governments. The solution in many of the articles, not only in Convention No. 138 but also previously in the minimum age campaign, to consult the organisations of workers and employers before deciding about, for example, an initially lower minimum age in countries with less developed economic and administrative facilities (Article 2.4), determining what types of work is ‘hazardous’ (Article 3) or initially limiting the scope of the Convention in member states having insufficiently developed economies and administrative facilities, proves that child protection was negotiable in terms of workers’ and employers’ interests and not in the child’s best interests. If the child’s best interests really were at the centre, it would have been expected that some kind of child expertise should have been consulted rather than trade unions and employers’ organisations.

Part V
Conclusions

Chapter 12. The Negotiable Child. Final Discussion

Introduction

In the previous Parts I have given an account of the ILO minimum age campaign and how it developed over the years. Before summarising the results of the study, I will return for a moment to the purpose and the main questions of the dissertation. The purpose has been to examine and analyse the development and growth of the ILO minimum age campaign – the Minimum Age Conventions adopted between 1919 and 1973. It has also been my intention to place the adoption process in its chronological and historical context. It may be helpful to recall the three following points of departure for the dissertation: that childhood is a historical construction and that the legal material is part of that historical construction; that the minimum age campaign has suffered from a ‘hang-over from history’, namely, the history of Western industrialisation during the 19th and early 20th centuries; and, finally, that children had a subordinate and weak position in the minimum age campaign.

The study was organised around five central themes: (1) the overall theme of predominant conceptions of children and work; (2) the relationship between industrialised and colonised and developing nations; (3) the relationship between the child, the family and the state; (4) minimum age; and (5) the importance of school. The themes were closely interrelated and overlapping but were nonetheless necessary for conducting my analysis of the minimum age campaign.

The most important results of the study are as follows:

- (1) Considering the revolutionary changes during the 20th century the continuity in the minimum age campaign was remarkable. In 1919, the ‘child labour problem’ was an issue mainly for the Western industrialised world. By the end of the campaign, in 1973, the transformations in societies during the century had made ‘the child labour problem’ an issue mainly for the developing world and with different conditions and implications in many respects. The content

and ‘grammar’ of the minimum age campaign was however never really challenged.

(2) The study has verified that the minimum age campaign suffered from a ‘hang-over-from history’. The campaign built directly on the Western industrial experience during the 19th and early 20th centuries. The Western dominance in the ILO, the legal transplants, and the roots in the labour movement all contributed to the ‘hang-over’.

(3) The minimum age campaign was modelled on the ‘norm of the Western industrialised childhood’. The norms and realities of childhood in other parts of the world were neglected or considered to be provisional and inferior phases in relation to the Western ‘norm’. In this way, there were two separate childhoods in the minimum age campaign: ‘the normal’ childhood conceived for Western conditions and ‘the other’ childhood conceived for the ‘imperfect’ conditions of poor children in the colonised and developing nations.

(4) In the minimum age campaign the ‘best interests of the child’ were negotiable and were subordinated in the event of conflict to other interests.

These results are intertwined and overlapping. This follows from the complexity of the question of the international regulation of child work. As I have discussed in Part I of the dissertation, it embraces everything from issues such as the history of industrialisation, labour law, post-colonialism and globalisation to children’s rights and childhood studies, and all these perspectives have been helpful in answering the questions of the dissertation. Because of that complexity it was not simple to decide the best way of structuring the results of the study. Hopefully the headings below will be helpful in summing up and clarifying the most important results and demonstrate how they interplay in terms of: continuity and context; a permanent hang-over from history; two different worlds – two different childhoods; and the negotiable child.

12.1 Continuity and Context

The first important result of the study follows from the chronological and contextual study of the campaign: considering the revolutionary transformation of societies during the 20th century, the continuity in the minimum age campaign was remarkable. In 1919, the ‘child labour problem’ was an issue mainly relevant for the Western industrialised world. By the end of the campaign in 1973, the transformations in the world had made ‘the

child labour problem' become an issue mainly of relevance for the developing world – with different conditions and implications than those in the Western context. The content and 'grammar' of the minimum age campaign was, however, never really challenged.

The model that was first adopted in the Minimum Age (Industry) Convention in 1919 was never abandoned during the years of the campaign; although, the minimum age was raised from 14 to 15 years, the flexibility devices became more elaborate and the enforcement provisions became stricter and more numerous.

Nonetheless, the minimum age campaign and its discourse regarding children and work were influenced by contemporary economic and social factors in the Western industrialised world. The study has shown that the changes in the minimum age campaign intimately followed the main historical developments of the 20th century: the First World War and the Paris Peace Conference in 1919, the Great Depression and the mass unemployment during the 1930s, the Second World War, the economic crisis decades beginning in the early 1970s. My interpretation is that these historical factors have had an impact on the minimum age campaign, partly by starting activity and partly by influencing its discourse and its decisions.

The minimum age campaign was a product of European liberal industrial capitalism. It was a central part of the peace project after the First World War. The preamble to the ILO Constitution acknowledged that working conditions existed that involved such "injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperiled". The assignment of the ILO was to contribute to universal peace by neutralising the threatening social unrest with social justice. Social justice should be achieved by the improvement of the labour conditions of the industrial working class. One of the necessary improvements mentioned in the preamble to the Constitution was "the protection of children, young persons and women" who were obviously regarded as the most vulnerable groups of workers. The question of the employment of children was put on the agenda for the first meeting of the International Labour Conference as early as the Peace Conference, and "the abolition of child labour and the imposition of such limitations on the labour of young persons as shall permit the continuation of their education and assure their proper physical development" was included in the programme of action for the ILO, the so-called Labour Clauses. The minimum age campaign thus had a heritage of 19th century industrialism, *i.e.* 'a-hang-over from history'.

Industry – the model

The first Minimum Age Conventions were adopted as early as the first annual Conference of the ILO in 1919. It was established in the ILO Constitution that minimum age legislation was a central issue for the ILO.

During the first period of the minimum age campaign the general minimum age was 14 years for employment in industry, at sea and in non-industrial occupations. The minimum age was 14 years also for admission to employment in agriculture although this was more of a diversion because all agricultural work outside school hours was permitted as well as 'light work in connection to the harvest' even where this interfered with school attendance. Industrial child work was the first concern for the minimum age campaign and the first two Conventions that were adopted specified minimum ages for employment in industry, 14 years for day working and 18 years for night working. The Minimum Age (Industry) Convention was subsequently more or less copied for the other categories of work. This was not a coincidence, as the original assignment of the ILO was to neutralise the threat of revolution and war by putting an end to the exploitation of the industrial working class. Furthermore, as I have argued in Chapter 2, industrial child labour was an important cause of the focus on children and childhood during the late 18th and 19th centuries that contributed to 'modern' childhood. Consequently, the minimum age campaign can only be understood in the context of industrialism.

The next step in the analysis is the fact that it was the objective of the ILO to regulate the employment of children in different categories of work equally and therefore make the Minimum Age Conventions uniform. There were two justifications for equality: (1) to avoid children who were put out of work in one category of occupation being employed in another category of occupation with less strict or without minimum age regulation; and (2) to avoid competitive disadvantages for the sectors with a stricter regulation and thereby discourage ratification.

The standards were based on the minimum age legislation of the most industrialised nations. To reconcile this standard with the broadest possible ratification, the Minimum Age Conventions were made flexible by various exceptions, exemptions and special regimes for particular countries. During the first periods of the campaign, India was at the centre of attention in the flexibility debate. Most work performed in a family context was excluded from the application of the Conventions, because of difficulties in controlling such work and because it was believed that parents and relatives would not exploit their own children. Work in technical schools was often excluded from the application of the Conventions.

This form and content of the Conventions established during the first years of the minimum age campaign became a model for the following Minimum Age Conventions. The model was extended and completed during the minimum age campaign but it was never abandoned or even challenged. Thereby, one could say that 'the hang-over from history' became permanent.

Unemployment and minimum age

During the second period of the minimum age campaign the Minimum Age Conventions regulating industry, the sea and non-industrial employment were partially revised and the minimum age was raised from 14 to 15 years in 1936-1937. The revision of the Conventions coincided with the Great Depression and I have demonstrated that the Office and the Conference saw the raising of the minimum age as a means to combat unemployment, although there were delegates who did not admit this and discussed the revision of the Conventions as having ‘positive side-effects’ on unemployment.

The fact that the Minimum Age (Agriculture) Convention was never revised supports the conclusion that the raising of the minimum age was one of the methods of the ILO to alleviate the effects of the Depression. Children working on farms may not have been regarded as competing with adult workers. In contrast, they may have been regarded as a resource in times of great difficulties with the supply of food. It also highlights the strong emphasis on industrial work in the minimum age campaign.

Minimum age and the state

After the Second World War the question of child protection was back at the top of the international agenda. As early as 1945, the Resolution Concerning the Protection of Children and Young Workers was adopted. This Resolution marks the formal entrance of the welfare state in the minimum age campaign, by establishing the necessity to secure the proper maintenance of children for “the complete abolition of child labour”.⁹⁵⁵ For the first time in the minimum age campaign the question of maintenance of children was raised and it was established as a responsibility for the state to guarantee the support and maintenance of children by family or children’s allowances as well as social security and insurance against sickness, death or other wage-earning incapacity. It was also established that the state had a responsibility to provide families in need thereof with decent food and housing. The principles and provisions of the Resolution were not, however, legally binding on the member states, and they never were expressed in a Convention.

After the Second World War there was particular concern about the decline in children’s health. Two Conventions concerning the medical examination of young workers and one Convention concerning night working by children in non-industrial occupations were adopted in 1946. All children under the age of 18 years had to undergo a medical examination before being admitted to employment and repeatedly at certain intervals during employment. The minimum age for night work was also 18 years. By these Conventions, the control of children’s work was augmented.

⁹⁵⁵ Resolution 1945, II.2.

The end of the Golden Age: A universal Minimum Age Convention

The third period of the minimum age campaign involved the adoption of the Minimum Age Convention No. 138 in 1973. Convention No. 138 is universal, formally covering all work performed by children under the age of 15 years. By the time of the adoption of Convention No. 138 the general concern for the ILO was multi-national corporations and low-wage competition from Third World nations – thus, once again, unemployment. The early 1970s saw the beginning of the decades of global economic crisis, starting with the oil crisis and the breakdown of the international monetary system.

The objectives of Convention No. 138 were to reconcile relevant standards for industrialised nations with the necessary flexibility to permit ratification in the developing nations and at the same time to improve the minimum age standards in the developing nations. This was not an easy equation for the ILO to balance. It resulted in a compromise allowing exceptions and exemptions on additional grounds, particularly for member states ‘whose economy and educational facilities are insufficiently developed’.

Minimum age, school and ‘idle children’

The minimum age campaign was based on the idea that children under the minimum age should go to school. It therefore relied heavily on the existence of functioning school systems and of compulsory school laws. The minimum ages – except those concerning work that was classified as ‘dangerous’ or ‘light’ – were based on the assumption that all children under the minimum age should go to school. The minimum age limits also had conditions regarding the school-leaving age or the non-interference of work on school attendance and performance as in the case of ‘light work’. Agricultural work was permitted at any age provided it did not interfere with the education of children under the age of 14.

Consequently, one major concern during the whole campaign was the fear of ‘the gap’ between the school-leaving age and the minimum age for entering working life. Evidently, the ILO preferred working children to ‘idle children’ or children on the streets. The street was regarded as ‘a school of evil’ and a danger to ‘the morals’ of the child. Both children on the streets and ‘idle children’ were seen more as a threat to society and to ‘the future of the nation’ than as a threat to the children themselves or their personal future. These circumstances were the justification for the great concern about adapting the minimum ages to the school-leaving ages. Evidently the ILO delegates knew that this concerned Western children more than children in other parts of the world, as the lack of compulsory school legislation was a central issue of debate – and a justification for not ratifying the Conventions – throughout the whole minimum age campaign. As early as 1919 India was

at the centre of this debate and the Indian government claimed that it needed some respite in applying the general minimum age standard in order to pass the necessary educational legislation. Not until 2002, however, was the right to free and compulsory education granted in Indian law.⁹⁵⁶ When Convention No. 138 was adopted in 1972-1973 there was a tough debate on whether the minimum age should be 14 or 15 years. On that occasion the Office had collected data in a survey indicating that in Asia, Africa and Latin America large groups – in some cases half of the children – did not attend school. Also during the previous periods the debate was confined to quite narrow limits in terms of minimum age. I find this striking. What was the great importance of 14 or 15 years as the minimum age for entering working life when the ILO knew – especially in 1972 and 1973 when the survey on working children was presented – that large groups of children in the world did not attend school at all?

The ‘grammar’ of minimum age: Differentiation and categorisation

The ‘grammar’ of the minimum age campaign was ‘softened’ by flexibility in the form of the differentiation of minimum ages and the categorisation of work, children and states.⁹⁵⁷ The ‘grammar’ of flexibility by differentiation and categorisation was the method used to reconcile the objective of universal and high minimum age standards with the economic, political and cultural realities of the non-industrialised member states.

The differentiation was based on different minimum ages of 12, 14, 16, and 18 years during the first period of the campaign which were raised to 13, 15, 16, and 18 years in the second and third periods, and were ‘matched’ with different categories of work: ‘light work’; ‘standard’ work; and ‘dangerous’ (later called ‘hazardous’) work. In one case also ‘beneficial’ work existed in a Convention which is noteworthy (Minimum Age (Sea) Convention (Revised)).

The different minimum ages could also be matched with different categories of work that were dealt with separately, either in a separate Convention such as the Minimum Age (Trimmers and Stokers) Convention and the Minimum Age (Underground Work) Convention because the work was considered as ‘dangerous’ or ‘hard classes of labour’, or separately within a Convention as in the case of itinerant street-trading and work in public entertainment. The latter – itinerant street-work and work in public entertainment – were complicated to regulate because of the difficulties in

⁹⁵⁶ Constitution (93rd Amendment) Act (No. 93 of 2005), passed by Parliament 20 January 2006.

⁹⁵⁷ The concept of ‘grammar’ has been introduced by Mats Sjöberg in his study ‘Occupational safety legislation and child labour in Sweden 1975-2000’, in the forthcoming report from the conference ‘Children and Work in Everyday Life’, Institute for Futures Studies, Stockholm, October 2006.

controlling such activities and because they were considered to be ‘dangerous’ in some respects and ‘light’ in other aspects.

A particular category in the ‘grammar’ of flexibility was the family. This category was not matched with a lower minimum age: it was excluded altogether. In most of the early Conventions, employment in a family context was excluded expressly in the Convention. Later the exclusion was made conditional on a decision of national authorities or by law or regulation.

Another form of the ‘grammar of differentiation and categorisation’ was the modifications based on the ‘imperfect industrial conditions’ of a particular member state or region. It was acknowledged directly in the Paris Peace Treaty that “strict uniformity in the conditions of labour” was difficult to attain immediately because of “differences in climate, habits and customs, of economic opportunity and industrial tradition”.⁹⁵⁸ There were general provisions of flexibility for ‘colonies and protectorates’ allowing for ‘necessary modifications’ or non-application if the provisions were found ‘inapplicable’ and there were special regimes for particular countries. Such regimes were adopted in a number of Conventions concerning India, Japan and China. These flexibility provisions were the basis for the double childhood standard which will be summarised below.

A law-centered pragmatism

The rhetoric of the minimum age campaign revolved around the development of children and the degree of harmfulness of the work and the debate was conducted mainly in terms of ‘realism’ or ‘real progress’. In terms of ‘the best interests of the child’ there was, however, very little substance behind these discourses and justifications for a certain minimum age. On the contrary, much of the argumentation simply built on existing national educational and minimum age legislation, particularly in the most industrialised nations. In other words, the discourses on and justifications for the minimum ages in the Conventions were law-centered, pragmatic and based on a logic of the ‘smallest common denominator in industrialised nations’ designed to secure consensus and ensure a high number of ratifications. There are very few traces of child-related perspectives in the debate about minimum age. The Conventions on medical examination and on dangerous work (trimmers and stokers, night work and underground work) are, however, evidence of a discourse founded more on the ‘best interests of the child’.

To summarise: the most important historical changes from 1919 to 1973 with regard to ‘the child labour problem’ – the decline of industrial child labour in the Western world, decolonisation and the new membership majority of the decolonised states in the ILO – were not reflected in the

⁹⁵⁸ ILO Constitution 1920, Annex, Section II, Article 427.

campaign. Its content and ‘grammar’, modelled on 19th century solutions, remained remarkably unaffected by these developments.

12.2 A permanent hang-over from history

The second important result of the study is that the minimum age campaign suffered from a permanent ‘hang-over from history’. This follows from the chronological and contextual study of the minimum age campaign and its origins in the Western industrial experience during the 19th and early 20th centuries. More precisely, the hang-over from history consisted of Western dominance, the legal transplants and the influence of the labour movement.

Western dominance

In Chapter 4, I have described the origins of the ILO and the minimum age campaign. I argued that the Western influence over the ILO and the minimum age campaign was paramount from the very beginning in 1919 and throughout the campaign up to 1973. The victorious nations of the First World War dictated the conditions for the new Organisation. At the beginning the European dominance was total. This was of course a consequence of the European general dominance of the world. The United States became a member of the ILO in 1934 and after World War II there was a shift from the European dominance to an American dominance. The European influence was, however, most important for the minimum age campaign that was given its essential form and contents as early as 1919.

The Western dominance was total at the Office, the Conference and in the Committees during the first and second periods of the minimum age campaign. Most delegates were from Europe, and almost all of them were men. By 1973 the participation was more representative of the nations of the world. Western influence nonetheless remained strong. The tripartism of the ILO builds on the European trade union movement tradition and disregards any lack of capacity, organisation or influence of trade unions in other regions. In this way the strong Western influence in the ILO has been upheld because of the well-organised and influential Western trade unions.

Legal (historical) transplants⁹⁵⁹

In Chapter 4 the earliest factory legislation, the Factories Acts, in the greatest industrial nations of that time, Britain, France and Germany were described. I argued that the Factories Acts:

(1) were modelled on British law;

⁹⁵⁹ Watson 1974.

- (2) focused entirely on industrial work;
- (3) were constructed around minimum ages and regulation of hours of work;
- (4) were connected to and relied on educational laws;
- (5) had numerous exceptions based on the demands of employers;
- (6) originated from ‘unholy alliances’ between the army, school-teachers, the church and paternalistic liberals.

The Minimum Age Conventions were clearly formed by the 19th century Factories Acts. This can be concluded from the fact that their construction – with minimum ages for admission to employment, their focus on industrial work,⁹⁶⁰ the reference to and the reliance on educational legislation, and the numerous exceptions – was very similar to the Factories Acts. Furthermore, the predecessor of the ILO, the International Association for the Legal Protection of Workers, had started to prepare Conventions for the protection of working women and children that were later adopted by the ILO. The work of the Association was based on the publication of a periodical collection of labour legislation in the European countries.

In Chapters 5 to 11 I have described the adoption process of the Minimum Age Conventions. The discussions at the Conference were based on the Office’s Blue and Grey Reports, surveys of national legislation conducted by the Office, questionnaires based on the results of the surveys with a view to the adoption of a Convention or Recommendation, the reproduction and analysis of the responses from the member states’ governments and, in the event of a positive response, a proposed Draft Convention or Recommendation. The acceptance of a Convention by the member states depended, of course, on the compatibility of the Convention with existing national legislation. In this way, the Minimum Age Conventions were to a great extent ‘minimum common denominators’ of the member states’ national minimum age legislation.

In this way it can be argued that the Minimum Age Conventions are legal transplants, even if they are based on a *mélange* of European factories legislation.

The labour movement

In the above section I mentioned the early rights movements as one of several converging factors of importance for the ILO minimum age campaign. The labour movement had a very strong influence at the inception of the ILO and its influence has remained strong because of the tripartite structure of the ILO. The Minimum Age Conventions are an important part of the project to develop international labour law. This project, in turn, was

⁹⁶⁰ Although the ambition was to cover all work. Many sectors became regulated by Conventions and, eventually, all sectors were included in Convention No. 138 – notwithstanding, the original model for the Conventions was adapted to industry.

part of the international peace project after the First World War. The labour movement was given a central position within the ILO because of the fear of governments and employers of revolution. 'Social peace' should be established by improving the working conditions of the working class. To find solutions for improving working conditions without creating competitive disadvantages was a major task for the ILO. The efforts to balance that equation have permeated the work of the ILO – and consequently also the minimum age campaign.

All of these circumstances contribute to the 'hang-over from history' in the minimum age campaign: the Western dominance in the ILO; the 'legal-transplants character' of the Minimum Age Conventions; the 'grammar' of the minimum age campaign; and the strong influence of the labour movement. As I have argued above, the general concepts of the minimum age campaign were never challenged. In this way it can be said that the campaign suffered from a permanent 'hang-over from history'.

12.3 Different worlds and different childhoods

The third important result of the study of the minimum age campaign is that there were two separate childhood standards established: 'the normal' childhood modelled on Western childhood and 'the other' childhood adapted to the childhood of poor children in colonised and developing nations. This emerged when the minimum age campaign was studied in its context of industrialism and colonialism.

Different worlds

The debate in the minimum age campaign was marked by colonialism and racism that was particularly outspoken during the first period. This must be understood in the light of the colonial context of the campaign. When it started in 1919, Europe had colonised most parts of the world. Decolonisation started only after the end of the Second World War and the new states were marked by colonialism and the struggle for liberation for decades to come. I have on numerous occasions given examples of and discussed Western dominance in the minimum age campaign. The industrialised Western states had the privilege both of defining the problem and of working out the solutions – in accordance with their historical experience and present conditions. There were, however, constant demands from the governments and employers of the non-industrialised members (and from the employers of all member states and also from some governments of industrialised member states) for modifications and special regimes with lower standards on the grounds of their 'imperfect' industrial, economic and

cultural conditions in their countries. These demands were granted in most cases.

India stood out in the campaign and was constantly classified in terms of ‘backwardness’, ‘imperfect conditions’ and ‘uneducated population’. The government delegates representing India blamed widespread Indian child labour on uneducated Indian parents instead of blaming themselves for the failures to adopt compulsory school legislation. There are many examples in the ILO Conference material of the condescending attitudes towards the Indian population and of the fact that the minimum age regulation was not really intended to apply to the ‘local’ industry but only to undertakings under British control. Generally the discussion about India and the other so-called ‘Eastern countries’, ‘Oriental countries’ or ‘tropical areas’ are typical examples of what Edward Said has illustratively called ‘orientalism’.

A question that arises when studying how the ILO dealt with the non-industrialised nations is why Africa was never put on the agenda. I think that one way of understanding the neglect of Africa can be to think of it in the light of the tension between the ILO’s objective of improvement of the conditions for workers and the fear of competitive disadvantages. This would explain why India and Japan were at the centre of the debate while the African nations were not discussed at all. India and Japan were industrialising nations and thereby constituting a threat to the Western industrial nations in terms of competition. The African nations remained non-industrialised while their natural resources were being exploited by British, French and Belgian capitalists. Further explanations can be that the African nations were hardly regarded as states before decolonisation and the people of Africa were regarded almost like animals. One striking example of this racist logic was expressed in a reply to a questionnaire to the governments concerning their attitudes towards the regulation of night working by women (and therefore not commented on in the dissertation). The South African government answered that “white women are not employed in agriculture and ... therefore no reply to the Questionnaire is necessary”.⁹⁶¹ The protection of black women was evidently a non-issue.

This is a question that undoubtedly deserves further study.

Different childhoods

The result in practice of these discourses was that two different concepts of childhood emerged in the minimum age campaign right from its beginning in 1919. One was modelled on the Western conditions and standards for children, the ‘normal childhood’. The other was modified to fit the childhood available for poor children in the countries with ‘imperfect industrial conditions’, the colonies and in the developing nations: the ‘other childhood’. Using the ‘grammar’ of differentiation and categorisation the

⁹⁶¹ Blue Report 1921.

ILO attached lower minimum ages than the 'normal' minimum age to the 'other' children: the Indian, Japanese and Chinese children; the children living in 'Eastern countries', in 'Oriental countries' or in 'tropical areas'; children living in the colonies and protectorates; children living in nations with 'insufficiently developed economy, administration or educational system'; and children living in a country with a 'different' culture or tradition or with a caste system. All of these categories were elaborated and used in the minimum age campaign. As mentioned above the 'grammar' of flexibility and differentiation was the basis for the separation of 'the normal childhood' and 'the other' childhood in the minimum age campaign.

The flexibility clauses were justified by the claims of the importance of universality. It was the solution to reconcile universality with broad acceptance and ratification by acceptance of the difficulties of the non-industrialised nations. One cannot help but speculate, however, that flexibility clauses may have been more of an expression of an acceptance of the passivity of the colonisers rather than of an acceptance of the difficulties of the colonies in living up to the minimum age regulation

12.4 The negotiable child

The fourth and last important conclusion of the study of the minimum age campaign is that the 'best interests of the child', in the form of child protection, were negotiable and were subordinated in the event of conflict with interests of the member states, the employers or of the workers themselves. Child protection was also often subordinated to the interests of the family and to the interests of theatres and the film industry. This has resulted from the study of the minimum age campaign from a childhood studies perspective. By examining the campaign in the light of the themes presented in Chapter 2: 'minimum age'; 'industrialised and developing nations'; 'school'; 'the child, the family and the state'; I have tried to understand the construction of the predominant conceptions of children and work in the minimum age campaign. Below I will conclude with what the ILO thought about children and how childhood was always negotiable in the minimum age campaign.

The child, the family and the state

I have described above how the minimum age campaign relied on functioning school systems. The campaign also relied on the capacity of the authorities of the member states, in the form of labour inspection services or other institutional control, to implement, enforce and control the provisions of the Conventions. As a consequence, the child protection standard was higher in categories of work where it was visible, conducted at a particular place and not too far away from the controlling authority (read industry).

Work performed in a family context and in agriculture was in practice generally excluded from the application of the Conventions. The review of the ILO Conference material has shown that one important reason, perhaps the main reason, for the exclusions was the difficulties regarding enforcement. An underlying justification was probably a respect for the integrity of the family combined with a belief in the ambitions of a family to protect its children. Against this background I find it noteworthy that the protective role of the family was questioned in the campaign by voices warning of the ‘exploitative tendencies’ of parents and by the Minimum Age (Family Undertakings) Recommendation that was adopted in 1937.

As I have mentioned above, by the end of the Second World War the question of maintenance emerged in the minimum age campaign and the necessity of a guarantee for the proper maintenance of children for the abolition of child labour was acknowledged. The welfare state made its entrance in the campaign. This coincided with a general concern for children after the Second World War, and it marked the beginning of the era of the Golden Age. Whereas most Western countries adopted social policies and passed legislation on social insurance systems including childrens’ allowances during this period, no internationally binding provisions concerning the maintenance of children were adopted by the ILO.

Agriculture, family and the state

Two truths about agricultural work were acknowledged by the ILO by 1972: (1) the majority of child workers are occupied in agricultural work and (2) most of the agricultural work in the world is performed in a family context.

In spite of its position as the largest employer of children, the agricultural sector was – as I have argued – more or less excluded from the minimum age campaign. The justification was the enforcement difficulties: because of the family context of agricultural work and because of its location outside towns. However, connecting the reluctance to regulate agricultural work to the conclusion above that the minimum age campaign was an entirely Western project may reveal that there were further justifications. Agricultural child labour neither constituted a threat to workers nor employers or governments, simply because it was not part of the industrialisation project.

What the ILO thought about children

Above I have discussed minimum age, school, the different childhoods of industrialised and developing nations and the child, the family and the state. The discussion leads to the conclusion that the ideal childhood in the minimum age campaign was the Western industrialised childhood, namely, that children should spend their days in school, they should be protected from work, the child developed to an adult in stages, the ‘result’ being a healthy and educated citizen, which seems to have been more important

than the situation of the child *per se*. 'Idle children' and children on the streets were seen as a threat to society more than a threat to the children themselves.

I have argued that the ILO was aware of childhood experiences other than those of the Western industrialised nations, requiring solutions other than the Minimum Age Conventions. Nonetheless the ILO continued to adopt the same form of Minimum Age Conventions. The knowledge and experience that demonstrably existed was not integrated in the campaign. There can be many explanations for this. One may be a general tendency of international organisations to ignore or be incapable of integrating 'reality' in their documents for various reasons that are related to such circumstances as compromising economic and political prioritisations. This was certainly true also in the case of the minimum age campaign. But I think that a further explanation can be that the ILO was so 'stuck' in the Western notions of childhood. The realities of all the children who did not fit into that model could simply not be acknowledged or accepted by the ILO officials and delegates because of their acceptance without further reflection of the Western childhood.

The borders of childhood

In the foregoing sections I have argued how childhood was 'constructed' by the ILO. This 'childhood' was expressed in the objective for the minimum age campaign to protect children's health, mental, physical and moral development and education. Throughout the dissertation I have argued that this rhetoric often proved to be paper-thin when it challenged the interests of governments, the employers' and the workers' organisations. Child protection was found to weigh lighter in most cases, except as regards the various 'dangerous' categories of work and medical examination of young workers. The conclusion is that the minimum age campaign was circumscribed by three borders: states, employers and workers.

The perfect and the imperfect state

Governments were concerned not to accept provisions that were going to be difficult to live up to. This concern often outweighed the child-protection considerations. India and other states of the colonised world were much debated in terms of 'imperfect' states. The institutional shortcomings of 'the imperfect state' was upheld as justification for lower standards, particularly the lack of school facilities but also tradition and culture – sometimes explained in terms of 'backward and uneducated populations'. But the industrialised member states also could have difficulties in living up to high minimum age standards, referring to school-leaving ages lower than a certain minimum age for admission to work or lack of vocational education facilities to offer to children in 'the gap' between the school-leaving age and the minimum age for entering working life.

There was also a discourse of the perfect state in terms of the future. One example of this is the objective mentioned in the Resolution Concerning the Protection of Children and Young Workers 1945 to “foster the talents and aptitudes of the child and his [*sic*] full development as a citizen and a worker”. The achievement of the ‘perfect state’ was thus a justification for high minimum age standards.

In this way, both ‘the perfect state’ and the ‘imperfect state’ formed one of the borders for the minimum age campaign.

Tripartism: trade unions, employers and the child

The tripartite structure of the ILO is unique to international organisations and the concept has been a key for success. By tripartism the ILO has had a much broader base than other international organisations and has been able to obtain support among the groups in society concerned, the workers and the employers. When it comes to questions concerning children, tripartism, however, makes less sense. The workers’ organisations do not represent children, and in many cases adult workers have interests that are opposed to children’s interests. Children have been regarded as competing with adult workers in terms of cheap and docile labour, particularly in times of unemployment.

The social partners have influenced the minimum age campaign on two levels: (1) when Conventions were negotiated; (2) after ratification of a Convention, in cases when the detailed regulation was left to the national competent authorities – after consultation with the workers’ and the employers’ organisations. Why was there no provision that children’s authorities or children’s organisations should be consulted instead? I have not found any mention of this possibility in the ILO Conference material.

Most of the employers appearing in the minimum age debate were in favour of child protection and minimum age limits, in principle. Nonetheless they demanded exemptions and exceptions on the grounds of the ‘need’ to employ persons under the minimum age on, for example, night work in occupations that were ‘required to be carried out continuously’, or when a trimmer or a stoker over the minimum age was not ‘available’. Another example from the debate concerns unemployment. During the Depression there was more or less a consensus that the minimum age should be raised. One of the employers opposed a higher minimum age on the grounds of the expected shortages of labour when the Depression was over. He did not want to commit the employers to a regulation that was going to limit the supply of workers.

In this way the trade unions and employers formed the second and third borders of the minimum age campaign. I will now mention two further categories that also contributed to restricting the minimum age campaign: the family and ‘the interests of art, science and education’.

‘The interests of art, science and education’

Employment in so-called ‘public entertainment’ caused negotiation between child protection and ‘the interests of art, science and education’ in the minimum age campaign. In a cynical way, child protection was outweighed by the demands of ‘theatrical audiences’ and *Directeurs d’Opéra* to set up and visit plays and pieces such as *Manon* with child dancers and actors on the stage as originally intended by their authors. The main condition for allowing children of any age to perform on stage was that the performance should be of sufficient artistic quality. No criteria for ‘artistic quality’ was however mentioned in a Convention or in the Conference material.

Parents

Finally, parents should also be included regarding the borders of the minimum age campaign. I have mentioned above that the employment of children in a family context was often excluded from the Minimum Age Conventions. There were two grounds for the exclusion: enforcement difficulties and the assumption that a family context would protect children from exploitation. I have also showed that it was argued in the minimum age campaign that parents ‘needed’ to let their children work, particularly on farms, on domestic work in their home or in a so-called family undertaking. In this context the vulnerable position of girls became particularly evident.

12.5 Concluding remarks. A future without child labour?

It is my hope that results of this dissertation can have significance today by contributing to a deeper understanding of the complex question of the relevance of legal solutions to child labour. In recent research on children and work the importance of child-centred approaches to questions concerning children is emphasised. Instead of conducting general and non-committal discourses about ‘the best interests of the child’ decision-makers should ask themselves the question: If a certain measure is adopted, what will be the consequences for the individual child in view of his or her particular experiences, maturity, situation, etc? It is also a question of prioritising the child and of allocating the necessary resources. Fundamentally, it is a question of making the child visible as a legitimate agent. Not surprisingly the child was rather invisible in the minimum age campaign, when looking beneath the surface of the rhetoric. This is not unique to the ILO: children are made invisible every day, everywhere. The results of the dissertation may be helpful in revealing the mechanisms of this ‘repression’ of the child.

The objective of the ILO has always been the ‘total abolition of child labour’. But is child labour always bad for children? At the beginning of the dissertation I quoted Barrett Browning’s poem ‘The Cry of the Children’ that was inspired by a British parliamentary report published in 1842-1843 describing the cruel exploitation of children in mills and mines during the Industrial Revolution. Barrett Browning depicted children with pale and sunken faces hauling loads in the mines and turning the iron wheels in the factories during endless shifts. This was the reality for many poor children during the Industrial Revolution. Today, large numbers of children are still exploited under the most appalling conditions: in industry, in agriculture, in street-trading, in prostitution and trafficking, as soldiers, etc. There are also, however, less distressing aspects of children’s working.

The scenes of Barrett Browning’s poem can for example be contrasted with the picture on the cover of this book. The picture is called ‘Newsgirl, Park Row, July 1910’ and the ‘Newsgirl’ was photographed by the famous photographer of working children Lewis Hine.⁹⁶² He photographed the everyday life of working children, both when they were hard at work and when they had some time free. The girl on the picture seems completely absorbed by her newspaper. Obviously she could read. She also gives an impression of independence and of being comfortable in her professional role. She probably needed the money she earned for her own support, and if the ability to sell newspapers were denied to her she would perhaps have to find another and worse alternative source of income. Barrett Browning’s poem and the ‘Newsgirl’ are two images of working children. There are many others. The point is that between Barrett Browning’s poem and the ‘Newsgirl’ lies much of the complexity of the ‘child labour problem’.

The ILO is a unique organisation because of its origins, mandate, structure and contributions to international labour law and protection of workers. Mainly by the minimum age campaign, the ILO has also advocated the protection and welfare of children for more than 85 years and adopted many legally binding Conventions. That is an impressive contribution. Nevertheless, the exploitation of children continues on a large scale. In this dissertation I have argued that the Minimum Age Conventions suffer from a hang-over from history, that the ‘child labour problem’ has moved from being a problem in the industrialised West to being a problem mainly for the developing nations. The Minimum Age Conventions are not adjusted to the realities of working children today. The ILO has, however, tried to re-think the methods for abolishing child labour in the Worst Forms of Child Labour Convention and in the IPEC programme.

My own view is that it is vital that the decision-makers within the ILO – as well as national and local decision-makers (including concerned

⁹⁶² Lewis Hine’s pictures of working children are published in several books, see for example Hine 1994, Hine 1999 and Hine 1986.

consumers) – understand the importance of applying child-centred approaches to all measures, whether legal or policy measures, concerning working children. By adopting a child-centred perspective, more relevant and ‘child-friendly’ solutions to support, protect and respect the rights of working children can be found. Furthermore, decision-makers need to have enough political courage to prioritise child-centred solutions instead of letting children be subordinated to other interests of more powerful groups in society.

In 1900 Ellen Key published her famous essay *The Century of the Child*. Considering the results of this dissertation – like many other studies of children’s conditions – a more appropriate description of the past century may be ‘The century of the negotiable child’. Let us hope that there will be greater success in the 21st century in improving children’s conditions and children’s influence, particularly for the least privileged and most vulnerable children.

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