

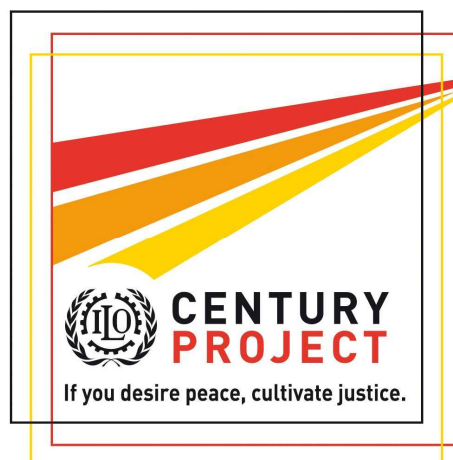
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The ILO and child labour

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International
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Labour Studies

The ILO and Child Labour¹

Right from the start in 1919, the protection of children has been one of major objectives for the ILO. The protection of children was mentioned already in the ILO constitution, which was part of the Versailles Peace Treaty after World War I.² The peace treaties rested upon two pillars, a system of collective security governed by the League of Nations, and the creation of social justice, that should be developed and governed by the ILO. The protection of the children exploited in factories and suffering from the war was a paramount component in the building of social peace. Consequently, minimum age was singled out as an object for the immediate attention of the new organisation; it was one of five items on the agenda of the very first meeting of the International Labour Conference in Washington in 1919.³

The ILO has confirmed and reconfirmed the importance of child protection and the abolition of child labour throughout the years. Between 1919 and 1973, the ILO adopted no less than eleven conventions and ten recommendations concerning minimum age for admission to work. More recently the importance of child protection has been confirmed by the IPEC-programme (starting 1992), by the *Declaration on Fundamental Principles and Rights at Work and its follow-up* 1998,⁴ and by the adoption of the Worst Forms of Child Labour Convention (No. 182) in 1999. The ILO efforts for child protection were also reconfirmed by the adoption of the Convention on the Rights of the Child – particularly Article 32 (2) that indirectly refers to the ILO conventions.

As late as in 2006, the centrality of the engagement for children for the ILO was reconfirmed by ILO Secretary-General Juan Somavia, when presenting the Global Report *The End of Child Labour: Within Reach*⁵ stating that the struggle to end child labour is “at the heart of who we are as an Organization and I think it is in the heart of everyone in this room and the countries and the organizations you represent.”⁶ Unquestionably, there has been a great continuity in the ILO engagement for the protection of children from the start in 1919 right to the present day.

The ILO was founded twenty-five years before the United Nations, long before ‘human rights’ or ‘children’s rights’ were established as concepts in international law. Nonetheless, the minimum age conventions adopted in 1919-1921 were the

¹ This chapter relies in part on my doctoral thesis *The Negotiable Child. The ILO Child Labour Campaign 1919-1973*.

² Part XIII. Labour, ILO Constitution 1920.

³ ILO Constitution 1920, Annex, First meeting of annual Labour Conference 1919, Agenda, (4) a–c. Minimum age of employment, during the night and in unhealthy processes.

⁴ That makes the elimination of child labour one of four fundamental rights that must be respected by the ILO member states regardless whether they have ratified the conventions or not.

⁵ Global Report 2006.

⁶ Record 2006, 15/1.

very first international and legally binding instruments concerning children's rights, and among the earliest concerning human rights in general.⁷ Not until 80 years later, in 1998, the ILO itself acknowledged that a number of the ILO Conventions are fundamental human rights instruments in the *Declaration on Fundamental Principles and Rights at Work and its follow-up*.⁸ 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.⁹

Regarding the ILO and human rights in general, Lee Swepston has already pointed at the profound links between the standards set by the ILO and by the UN and that this is a neglected subject.¹⁰ In the same way, the links between the ILO child labour standards and international children's rights is a neglected question. Although child labour has been the object for much public and scholarly debate during the last decades, the role of the ILO for the international protection of children has been focus of little public and scholarly attention. One could say that the influence of the ILO and the minimum age conventions has been quite anonymous, for some reason. The fact is that in standard works on children's rights there is seldom reference to the ILO conventions other than just mentioning their existence.¹¹ In connection with the Convention on the Rights of the Child the ILO conventions are mentioned as 'predecessors' to the Convention, end of story.¹²

Not only has the ILO had had fundamental influence on the development of children's rights. In a wider meaning the ILO has also contributed to the production and reproduction of the very ideas of childhood. There is a historical link between the ILO conventions and the dominating (Western) ideas of childhood. These ideas underpinned the European and North American factory acts that were passed during the 19th century to regulate the industrial child labour, and they were reproduced by the ILO Conventions. The ILO contributed, for good and bad, to the international diffusion of these ideas and concepts of childhood.

Before and during industrialisation, children were considered as an economic asset by their parents.¹³ Children could, and did, contribute substantially to the family economy.¹⁴ During the industrial revolution, the children of the poor were

⁷ Before 1919 there were international declarations and treaties on the abolition of slave trade and slavery and humanitarian law. See further Nowak 2003, pp.16-21.

⁸ ILO Declaration 1998.

⁹ *Ibid.* See further Bartolomei de la Cruz, von Potobsky & Swepston 1996, pp. 128-29.

¹⁰ Swepston 1994, p. 17.

¹¹ *E.g.* Veerman 1992 and van Bueren 1998.

¹² Van Bueren 1998, pp. 265-269.

¹³ Zelizer 1994, p.56 ff.

¹⁴ See Cunningham & Viazzo 2001, de Coninck-Smith, Sandin & Schrupf 1997), Nardinelli 1990, Pollock 1983.

exploited in numbers and ways never before imagined. For a combination of reasons – such as increased welfare for all, better educational facilities, technological change, philanthropy, the organisation of work, the organisation of workers in trade unions and the dominance of the ‘male bread winner norm’ – around the turn of the century 1900 and the first decades of the 20th century child labour declined dramatically in the Western world. Today, the economic dependence of children on their parents is heavy in the industrialised world. Cynically speaking, children instead cost their parents a lot of money. Someone has for example calculated that the cost for parents to raise one Swedish child from 0-18 years is 106 000 Euro (or 157 000 USD).

On the other hand, in different regions in the so-called developing world, many children work and make substantial contributions to the family economy or even to afford school fees, school uniforms, school books and school lunches. Many children in the developing regions also go to school, although large numbers spend very little or no time at all in school.

The latest ILO-figures show a small but encouraging progress in the decline of child labour. About 317 million children are economically active in the ages 5–17. Of these children, 218 million are included in the category defined as ‘child labourers’ – children occupied in some form of activity that is prohibited in the ILO conventions. Out of that group, 126 million children are occupied in hazardous work. Focusing on the youngest group, children aged 5–14, there are 191 million children engaged in economic activities, 166 million ‘child labourers’ as just defined above, and 74 million children in hazardous work.¹⁵ Many of them work in ‘the worst forms of child labour’ as defined in the Convention No. 182. The largest number of working children live in Asia (153 million). The largest proportion of working children in the population exists in Sub-Saharan Africa.¹⁶ Notwithstanding a decline of 11 per cent of child labour in general and of hazardous work by 26 per cent – it is still a fact that a very large group of children still work and live under appalling conditions and have no or sporadic access to primary education.¹⁷

Actually, also the children of the industrialised nations work, but mainly outside school hours. Recent studies show that more of the children’s income than expected contributes in the family economy.¹⁸ In Sweden, this question was paid a great deal of media attention some years ago when municipal authorities decided to reduce social allowances to families with incomes from children’s work on holidays and spare time. The decision was criticised for confirming indirectly that child labour out of economic necessity still exists also in a democratic and fully developed welfare state as Sweden.

¹⁵ Global Report 2006.

¹⁶ Global Report 2002.

¹⁷ Global Report 2002, pp. 6-7.

¹⁸ Boyden, Ling & Myers 1998, p. 23, James, and Jenks & Prout 1990, p. 113 with further references.

This contribution to the ILO History Volume will map out the history and development of the ILO's responses to child labour from 1919 until the present day, with particular focus on the minimum age conventions. In this, the importance of the ILO's concern for the protection of children as a major objective for the organisation will be described. Also the interplay between the question of child protection and other questions of main concern for the ILO over the years are important to consider in this connection. Even more importantly, the influential role of the ILO in the development international child protection and children's rights, ultimately the United Nations Convention on the Rights of the Child, will be highlighted. A key to understanding the form and contents of the ILO's strategies to abolish child labour is the deep roots of the organisation in the Industrial Revolution in 19th century Europe. Another key to understanding – also with roots in the Industrial Revolution – lies in the dominating ideas of childhood. A brief retrospect has therefore been included in the chapter. Finally, there will be an overview of more recent developments in the ILO child labour strategies. Since the adoption of the Convention on the Rights of the Child in 1989 there has been a clear strategic shift within the ILO. The chapter will be concluded with trends and possible directions of action within the ILO against the exploitation of children in the 21st century.

The Early Factory Legislation

The central position of child protection by minimum age conventions within the ILO can be traced down to the fact that the very earliest labour legislation concerned the regulation of child labour. It was easier to get consensus about the protection of children than for the protection of adult workers. Children have worked as long as history can tell, and before the industrial revolution, most children worked in agriculture and in the trades. With the industrial revolution, both the organisation and content of child labour partly changed. The mass employment of children in the factory towns made the grim exploitation visible to the public. Children working in mills and mines under dreadful conditions did not fit into the 19th century romantic ideas and notions of childhood – which in turn partly was a reaction against the exploitation of children in the mills. With the ideological, political, economic and social changes in Western societies that were brought about by the French and American Revolutions and later by the Industrial Revolution, childhood was emphasised in a way never seen before in history.

The earliest legal expressions of this concern for children and childhood were the child labour laws passed during the 19th century in the leading industrial nations. This legislation was the fundament for the ILO minimum age conventions. Britain was the leading nation, followed by France and Germany.¹⁹ As the leading

¹⁹ Cunningham 1991, pp. 50-96, 174-189 and Nardinelli 1990, pp. 105-115.

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 however not until 1930, after thirty years of political debate, that a federal Child Labour Law was adopted.²⁰

The factory legislation was directed at industrial work. It provided standard minimum ages that were adjusted to school-leaving age – at least theoretically – and to the conditions of production of the different economic sectors. The factory laws allowed various and generous exceptions. This ‘industrial’ model has remained quite unchallenged from the first minimum age Convention No. 5, adopted 1919, to the last – to date – minimum age Convention No. 138 adopted in 1973, and in Convention No. 182, adopted in 1999, and that confirms Convention No. 138.

The European factory 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 liberals with a faiblesse for paternalism. The British Factory Acts were first and served as models for the other countries. Only industrial work was regulated and the regulation consisted of minimum ages and maximum hours of work. Much of children’s work was not covered and the many exemptions were based on the demands of the employers. The standards were linked to school hours and school leaving ages. Their enforcement relied on police or labour inspection and in practice on school teachers and authorities.

Worker’s Rights, Women’s rights, Children’s rights and the ILO

The labour movement and the women’s movement had in common that they advocated the protection of children should be at the centre of the ILO’s attention. By contrast, they had different reasons and motives for their engagement in the cause of child protection.

During the 19th century, the labour movement grew and became a strong force in society. Strikes and revolutions around Europe had strengthened their position. The war contributed to strengthen its position further. Nations had depended on the workers to fight for their nations as soldiers and as industrial workers. When peace was settled, it was felt that governments had a debt towards the working class. Governments and employers feared the consequences of ‘social unrest’. The

²⁰ About the American debate, see Zelizer 1994.

Russian revolution was a living example of what could happen if the demands of the workers for decent working conditions and decent wages were not satisfied.

The labour movement supported the demands for international regulation of child labour. For example the *Bern Manifesto*, adopted by the International Trade Union Conference at Berne in 1919 demanded regulation of the work of children in the form of minimum age, limited hours of work, and compulsory education for all. Together with the demands for child protection there were demands for protection of women, the prohibition of night work, regulation of hours of work (with more limited working hours than for male workers), and maternity leave. Only after these demands followed the more classical trade union claims, such as regulation of hours of work, labour protection, freedom of association, and decent wages.²¹ The motive for the high prioritization of women and children was not only protection, but also fear of competition. The main concern for the trade unions after the war was to secure the employment for the demobilized soldiers. Hundreds of thousands of men returned home to unemployment. Women and children had successfully replaced the male workforce during the war – so successful that production increased. The nations at war had depended on their work, whereas after the war, they were unwanted competitors on a restricted employment market.

Women and women's organisations were dominant actors in the campaign to restrict the work of children in factories and mills during the Industrial Revolution.²² 'Women's questions' were deeply intertwined with 'children's questions'. As Berry Mayall has pointed out, children's welfare in the last hundred years and more is in fact so tightly woven into women's welfare and social condition that children's welfare has been included in the concept 'women and children'.²³ The underpinning of the concept was both the idea that women and children were more vulnerable than men and the fact that women's organisations had a tradition of promoting the welfare of children. Middle class women organised for charitable work directed towards poor women and children, and later they took action 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 women's organisations undoubtedly had some influence, for example, articles published by the Women's Industrial Council revealing that school children worked long hours before and after school led to renewed government's enquiries about the conditions of working children in Britain by the end of the 19th century.²⁴

The women's associations were not invited to participate in the negotiations at the Peace Conference in Paris 1919. Concerning the ILO, they were received at one

²¹ "Manifesto of the International Trade Union Conference at Berne, February 10, 1919, on International Labour Legislation", OILO II, Doc. 39.

²² Cunningham 1991.

²³ Mayall 2000, p. 243.

²⁴ Cunningham 1991, pp.13 and 176-179.

occasion by the Labour Commission to present their demands. Their proposals included a number of 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, much of their proposals were directed towards prevention and social welfare. The concrete proposals however had no real influence. Concerning the protection and rights of women, a suggestion for female representation in the ILO led to two amendments in the ILO Constitution. Nothing more was achieved.²⁵

Notwithstanding the turning down of the proposals of the women's organisations in Versailles, the protection of children was taken seriously by the founding fathers of the ILO. It has already been mentioned that the regulation of child labour was one of the main objectives for the ILO, backed up by a strong demand from the labour movement. In addition, also employers had come to consider child labour as "evil", partly because it did not promote production in the long run. There was consensus that better working conditions, including a decrease in child labour, was necessary for the sustainable development of industry – and for the stability of the nation state. In this way, the converging interests of the labour movement, the women's movement, employers and governments coincided in a perfect way concerning the protection of children. Accordingly, the regulation of child labour was proposed as an agenda item in all the various proposals to the Conference from the British, French, and American governmental delegations.²⁶ As mentioned the leading industrial nations had passed a number of child labour laws and according to figures in the American proposal, twenty-three countries in Europe had already enacted minimum age legislation by 1918, and thirteen of them had made 13 or 14 years the minimum age for employment.²⁷ The Labour Commission proposed the employment of children – minimum age, employment during the night and in unhealthy processes – as the third item on the agenda of the first session of the International Labour Conference in Washington 1919. The other items on the agenda concerned the eight hours' day and 48 hours week, unemployment and women's employment – before and after childbirth, during the night, and in unhealthy industries – and the 1906 Berne Convention on the prohibition of white phosphorous in the match industry.²⁸ This illustrates exactly how important the question of child protection was considered to be for the ILO

²⁵ Riegelman & Winslow 1991, pp. 20-24.

²⁶ 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.

²⁷ "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. I, OILO II, Document 29.

²⁸ "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.

even before the organisation had started to function, and that the direction of the future work of the ILO was laid down already in the original constitution in 1919.

The Minimum Age Conventions 1919-1973

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. Moreover, one convention concerning medical examination for young persons at sea was adopted. Two recommendations were adopted concerning night work and vocational training in agriculture. In other words, the legislative activity of the ILO was very high. In contrast, the 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 was of course a source of 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.

Area-specific conventions 1919-32

Two of the minimum age conventions were adopted already at the first session of the International Labour Conference in Washington in 1919, the Convention No.5, minimum age in industry, and Convention No. 6, night work of young persons in industry.²⁹ In 1920 and 1921, the ILO adopted four more conventions concerning working children, Convention No. 7, minimum age at sea, Convention No. 10, minimum age in agriculture, and Convention No. 15, minimum age for trimmers and stokers.³⁰ The minimum age was the same in all the conventions, 14 years, except for work during the night and for work as a trimmer or stoker, for which the minimum ages were 18 years. In agriculture the prescribed minimum age of 14 years was a mere formality as all agricultural work outside school hours and some work during school hours was permitted.³¹

Next minimum age convention to be adopted was the Minimum Age (Non-industrial Employment) Convention, No. 33, which was adopted in 1932. The intention was that all work should now be covered by conform minimum age provisions. The background was apprehensions of the negative effects of not covering all sectors of employment by (similar) minimum age limits. If one sector was less strictly regulated than another, or not regulated at all, there was a risk that children would move from a regulated sector to a less regulated one and the Office

²⁹ Agenda of the first meeting of the International Labour Conference: 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."

³⁰ The ILO Conventions and Recommendations are easily available on the ILO database ILOLEX, www.ilo.org/ilolex/english/index/htm (visited 30/01/2008).

³¹ Convention No. 10, Article 1.

had the intention to fill those gaps.³² The Office wrote in the Blue Report that by the adoption of the new convention the ILO would ‘close the circle of minimum age conventions’.³³ Like the previous conventions, the minimum age was 14 years (article 2) with exceptions for more harmful and more harmless occupations in relation to ‘normal’ work and the estimated consequences of the work for the health, moral, development and education of the child. With Convention No. 33, the differentiation of the age levels became more detailed than previously. The criteria for light work was that it should not prejudice the child’s attendance at school or the child’s capacity to benefit from the instruction (article 3 (1)). It was however left to the national authorities after consultations with the workers’ and the employers’ organisations to further decide the forms of employment that should be included in light work and dangerous work (article 3 (3)). In this way, the tripartism was extended by trickling down to the decisions that were left to the national authorities to make. Street trading was much discussed. In the streets children could encounter all kinds of danger, from being wet and cold and being hit by a motorcar to catching cold to being victims of crime. There was a consensus on the particularly harmful character of street work for the health, safety and ‘morals’ of children. The street was called ‘a school of evil’, and it was regarded as particularly harmful for girls. It was probably the sexual ‘moral’ of girls that was believed to be at great risk and there were proposals for a higher minimum age for girls, but in the end they were dropped. The health of the street workers was also discussed. Some debaters upheld the negative health effects of staying outdoors in all kinds of weather whereas others upheld the positive effects of ‘fresh air’.³⁴ It resulted in a provision that a higher minimum age should be fixed for ‘itinerant trading’ but the decisions were left to national authorities (article 6). There were special provisions for work in ‘public entertainment’. No minimum age fixed for this kind of work, which seems a little strange as it was in principle considered as a highly dangerous kind of occupation. Instead, national authorities should decide from case to case by granting individual permits. In this way the work in public entertainment ended up being less strictly regulated than ‘light work’. There were conditions for granting the permits, however: that the employment was ‘in the interest of art, science and education’, and did not interfere with the continuation of the child’s education (Article 4).

Exceptions...

To sum up the first period, 1919–1932, the minimum age was 14 years for all economic sectors, at least on the face of the conventions. There were, however, a number of important exceptions to the minimum age. The grade of flexibility varied depending on sector. Night work and work that was considered as dangerous was more strictly regulated. For agriculture the minimum age was only formal as in practice all work outside school hours was permitted and also some work that interfered with school. The minimum age of 14 years was never

³² Grey Report 1931, p. 6.

³³ Blue Report 1932, p. 6.

³⁴ Grey Report 1931, pp. 28 and p. 98, Record 1931 p. 445, Record 1932, p. 375.

questioned by the International Labour Conference, neither in Washington in 1919, in Genoa in 1920 or in Geneva in 1921. A minimum age of 14 years followed the minimum age and educational legislation in the industrialised member states, as reported to the International Labour Office in the replies to the Office's questionnaires.³⁵ Although it seems to have been implied that the minimum age was related to the development of children, the minimum age of 14 years was simply the consequence of the existing factory legislation and, in particular, the educational systems in the industrialised member states. Much of the discussion concerned what age children left school in the member states. There was a great fear of the consequences of a gap between the school leaving age and the minimum age for employment. 'Idle children' was seen a threat not only to childhood but also to society. The focus on 14 years is however a bit surprising, as it is doubtful whether the school leaving age in reality was as high as that even in the industrialised member states.

...for family undertakings

The first category of exceptions was for work in family undertakings. Employment within the family sphere was excluded from all the conventions except for the convention concerning trimmers and stokers, because that was considered as a particularly dangerous category of work.³⁶ Controlling family employment was subject to administrative difficulties both in regard to the private character of the work-places, and in regard to family integrity. It was also believed that employment by parents was considered harmless because, as one of the delegates at the Conference expressed it, the 'family sentiment' would automatically protect the child from being exploited.³⁷ In the first minimum age conventions 1919-1921 there were ample exceptions for family employment. In the Minimum Age (Non-Industrial Employment) Convention 1932 the exception for family employment was narrowed down by making such an exclusion object to a particular decision by the national authorities. In this way, the ILO managed to reconcile two opposite standpoints in the question. In a report, the Office acknowledged this by recommending a cautious attitude towards parents because there was 'considerable danger of abuse' also when parents were employers.³⁸ The fact that children's work contributed substantially to the family economy and the problems that would arise when withdrawing the children from the labour market, were not discussed by the Office or at the Conference.

...for the Colonies

The second category of exceptions was regional, and it concerned India and Japan. All the conventions except Convention No. 10 (agriculture) had separate

³⁵ See Blue Report II 1919, pp. 46–52, Blue Report 1921, pp. 48–77, Grey Report 1931, 97–98.

³⁶ Exclusion for employment in the child's own family: Convention No. 5, Article 2, Convention No. 6, Article 2.1, Convention No. 7, Article 2, Convention No. 10, the whole convention can be regarded as an exception for work in a family undertaking, Convention No. 33, Article 1.2a and domestic work Article 1.3b.

³⁷ Record 1919, p. 97.

³⁸ Grey Report 1931 p. 95.

provisions for China and Japan. These allowed lower minimum ages, 12 years, and substantially narrower scope of application of the conventions.³⁹ In the case of the Minimum Age (Non-Industrial Employment) Convention, the minimum age for light work was as low as ten years. The major part of the debates at the International Labour Conference concerned the exceptions from the minimum age provisions for India. From start, the special provisions also included Japan. Japan was however rapidly becoming industrialised and soon fell out of the category of nations that were object to special regimes. There were two lines of argumentation concerning India. On the one hand, there were the workers that demanded that Indian children ought to have the same protection as other children. On the other hand there were the employers and the governments that argued for “a principle of gradualness”, implying that it was not possible to meet the requirements directly but step-by-step. The Indian government conferred the lack of compulsory school legislation and child protection in India to the ‘imperfect conditions of India’ and the ‘backwardness’ of the Indian people. The ‘imperfect conditions’ was defined as tropical climate, habits and customs, economic opportunity, industrial tradition, the lack of compulsory schooling, poor laws, social insurances and the lacking education of parents. The ‘tradition’ and ‘culture’, more precisely meant phenomena as the Indian cast system and the ‘early maturity’ of children in tropical climates.⁴⁰

To a modern observer the workers’ group was unexpectedly straightforward in its critique of the Indian situation. The British Empire was held directly responsible for the difficult situation for children in India. At the time, 92 per cent of the Indian population was illiterate and the workers’ group questioned how the British could have provided postal services and hospitals but failed to care for the protection of the welfare of children by not providing adequate schooling. This is an early example of the kind of open debate climate that probably has contributed to the success of the ILO throughout the years and that still is a fundamental principle governing the discussion in the plenary conference.⁴¹

The third category of exceptions was also regional, but general. It concerned the application of the conventions in “colonies, protectorates and possessions which are not fully self-governing”. In these areas, the convention should apply, as a rule, but “owing to the local conditions”, the provisions of a convention could be “inapplicable”, or subject to “necessary modifications”.⁴² There was no definition, indication or procedure concerning how the conditions should be evaluated in these regions, whether a provision was “inapplicable” or had to be modified before

³⁹ Separate provisions for India and Japan: Convention No. 5, Articles 5 and 6, Convention No. 6, Articles 5 and 6, Convention No. 15, Article 2c, India only: Convention No. 33, Article 9.1.

⁴⁰ See Record 1932, p. 402–404, 406–414, 474–477.

⁴¹ Fourth Report of the Working Party of the Governing Body of the ILO on the Programme and Structure of the ILO (1967).

⁴² Convention No. 5, Article 8, Convention No. 6, Article 9, Convention No. 7, Article 5.

it could be applied. Thus, there was complete freedom of action for the member states' own discretion in this field.

The fourth category of exceptions concerned technical and vocational training, which was excluded in all the conventions except the convention concerning night work.⁴³

...and the demands of employers and 'the public'

The fifth category of exceptions, finally, concerned the demands of employers or demands because of "public interest". The demands of employers concerned exceptions from the prohibition to employ night workers less than 18 years. It was defined as "work which, by reason of the nature of the processes [be] required to be carried on continuously day and night".⁴⁴ It also concerned "cases of emergencies which could not have been controlled or foreseen".⁴⁵ In the Convention No. 33 (non-industrial employment), exceptions from the minimum age could be allowed for children working in public entertainment on theatres and in the cinema, if it was "in the interests of art, science or education" – all of them 'public interests'.⁴⁶

Categorisation of work

Work was divided into categories in the conventions. There was a distinction between "light work", "dangerous work" and "work". There were exceptions from the provisions for "light work" in agriculture, and in this case, there was no age limit at all.⁴⁷ There were exceptions for "light work" also in Convention No. 33 (non-industrial work), in which case the minimum age was 12 years.⁴⁸ Concerning "dangerous work", the Convention No. 15 (trimmers and stokers) as a whole regulated "dangerous work", and it provided a higher minimum age of 18 years. An example of the exceptions based on the employer's demands is the provision that in case "a trimmer or a stoker is required in a port where young persons of less than eighteen years of age only are available", persons over 16 could be employed, provided two persons were hired to perform the work of one person.⁴⁹

Minimum age and school

In the conventions there was a link between minimum age and school. Particular reference was made to school in several of the conventions. A child's employment should not interfere with school.⁵⁰ In fact, much of the debate at the International

⁴³ Convention No. 5, Article 3, Convention No. 7, Article 3, Convention No. 10, Articles 2 and 3, Convention No. 15, Article 3a, Convention No. 33, Article 1.2b.

⁴⁴ Convention No. 6, Article 2.2.

⁴⁵ Convention No. 6, Article 4.

⁴⁶ Convention No. 33, Article 4.1. This was on condition of a permit granted by the competent national authority.

⁴⁷ Convention No. 10, Article 2.

⁴⁸ Agriculture: Convention No. 10, Article 2, non-industrial work: Convention No. 33, Article 3.

⁴⁹ Convention No. 15, Minimum Age for Trimmers and Stokers, Article 2-4.

⁵⁰ See for example Convention No. 10, Articles 1 and 2, Convention No. 33, Article 3.

Labour Conference concerned worries about ‘the gap’ between the school-leaving age and the minimum age for employment. The minimum age of 14 years was adjusted to the school-leaving age (alleged or real) in Europe. In fact, compulsory school laws were seen as a kind of *panacea* for the effective enforcement of the minimum age legislation. There was a historical fear of the consequences of ‘idle children’.⁵¹ One way of bridging ‘the gap’ was the provision of vocational training and technical schools, and most of the conventions allowed for lower minimum ages for children to work in such a context of learning a trade.⁵²

Enforcement

The enforcement mechanisms of the first minimum age conventions did not have a potential to become very efficient. Enforcement principally relied on the obligation for employers to keep registers with birthdays of young workers in combination with labour inspection.⁵³ The national labour inspection services were however not very developed in all member states. Concerning India, it was emphasised that the scope of the conventions should be limited to “certain well-organised occupations, such as railways, mines and docks, where supervision by Government inspector is very easy”.⁵⁴ In that connection it was pointed out that in the ‘Western’ industries of India, there were Western labour inspections by Western inspectors.⁵⁵ This is an indication on a pragmatic attitude on the part of the ILO not to interfere in activities and occupations that took place outside the British owned industries in India. In a larger perspective, this policy followed the general British attitude towards legislation in the Colonies.⁵⁶

With the Convention No. 33 from 1932, the enforcement provisions were strengthened. The member states were obliged to provide for adequate labour inspection services, adequate means for facilitating identification and supervision of young employees and, last but not least, to provide for penalties for breaches of the convention provisions (Article 7). This was passed without great debate at the Conference. Possible explanations to the lack of debate are the Depression that made all measures to control employment easier and the large amount of influence that was accorded to national authorities in the carrying out of the provisions of the convention.

Continuity

During this first period there was a great continuity in the conventions and recommendations adopted, at least formally. However, the Convention No. 10 (agriculture) stands out by allowing all work performed outside school hours. It seems as though there was an intention to make the convention both fit into the

⁵¹ See for example ILO 1919.

⁵² See for example Convention No.10, Article 3.

⁵³ Convention No. 5, Article 4 (register) Convention No. 6, no enforcement provision, Convention No. 7, Article 4 (register) Convention No. 10, no enforcement provision, Convention No. 15, Article 5 (register).

⁵⁴ Record 1919, p. 96.

⁵⁵ Record 1919, p. 94.

⁵⁶ Zweigert & Kötz 1998, p.224 ff.

model by fixing a minimum age, and to make it acceptable for the member states. At the time, it seemed neither realistic nor desirable to abolish child labour in agriculture. In 1919, the majority of the European population still lived in the rural areas. Agricultural work was regarded as healthy for children, and it fitted rather well into the ideas of childhood professed by for example Rousseau. As the French government declared in its answer to the Office's questionnaire concerning minimum age in agriculture: "Agricultural work is not comparable with industrial labour; the former is rather a healthy sport graduated according to the strength of the child."⁵⁷

The Partial Revision of the conventions 1936-65

The 1930's started with the Depression and ended with the outbreak of the Second World War. Inflation and mass unemployment characterised the world economy. Both politically and economically, it was a highly turbulent decade and children were the first to suffer from the bad times. Children were affected by poverty on a general level and by unemployment – of their parents and by their own. In a situation of a surplus of workers, the adult male workers were prioritised before women and children. Trade unions supported government policies in the member states to prevent women from working if they had a husband that could support them.⁵⁸

The political situation also affected the internal relations of the ILO. In 1934, the United States and the Soviet Union joined the ILO and the same year Nazi-Germany left both the ILO and the League of Nations. In 1938, Fascist Italy also left the ILO.

Notwithstanding the difficult times, the standard-setting activity of the ILO went on. Naturally, the ILO's major concern was the unemployment and the deteriorating working and living conditions. A number of new conventions and recommendations were adopted, all with connection to unemployment: The Unemployment Provision Convention in 1934, the Forty-Hour Week Convention, Maintenance of Migrants' Pension Rights and Reduction of Hours of Work (Glass-Bottle Works) in 1935, Holidays with Pay Convention and Sickness Insurance (Sea) Convention in 1936.⁵⁹ In the Unemployment of Young Workers Recommendation, adopted in 1935, it was recommended that the minimum age for leaving school and being admitted to employment should be fixed at 15 years, not less, as soon as the circumstances permitted. The recommendation warned for 'idle children', stating that 'involuntary idleness' might undermine the child's character, diminish the child's occupational skill and thereby menace the future of the nation (Preamble).

⁵⁷ Blue Report 1921, p. 48.

⁵⁸ Kessler-Harris 2003.

⁵⁹ Conventions Nos. 44, 47, 48, 49, 52, and 56.

In 1936 the Minimum Age (Sea) Convention was revised, and in 1937 the Minimum Age (Industry) Convention and the Minimum Age (Non-industrial Employment) were revised. The minimum age was raised to 15 years. The revision of the Minimum Age (Agriculture) was deferred to a later occasion and as it turned out the revision never took place. Concerning minimum age at sea, there was great consensus in the government's replies to the Office and at the Conference that the minimum age should be raised to 15 years. Concerning both industry and non-industrial employment, the Office found that there was 'sufficient support' for raising the minimum age, although only half of the replies were 'definitely in favour' of it.⁶⁰

Narrowing down exceptions

Apart from the raising of the minimum age, the revised conventions followed the form and contents of the previous conventions, only slightly stricter and with narrower exceptions. Family undertakings could be excluded from the minimum age regulation, but only if national laws or regulations so provided, and never in the case of 'dangerous work'. The enforcement mechanisms were made slightly stricter by provisions requiring employers to keep registers of all employees under the age of 18 (previously 16 years).⁶¹ The minimum age for employment in non-industrial 'light work' was raised from 12 to 13 years.⁶² Concerning industry, the special regimes for India and Japan were retained but amended and a special regime for China was added.⁶³ Concerning non-industrial employment the special regime for India was retained.⁶⁴

Beneficial work, a new category of work

The classification of work in categories of 'light work' and 'dangerous work' was extended by a new and different category: the 'beneficial work' in the revised Minimum Age (Sea) Convention (Article 2.2). Whether the employment was beneficial or not was left to the national educational or other appropriate authorities to decide. The assessment should have "due regard to health and physical condition of the child and to the prospective as well as to the immediate benefit of the child of the employment proposed".

Family undertakings

Concerning the possible exceptions for family undertakings there was disaccord at the International Labour Conference. The Committee on Minimum Age proposed to the Conference that the exemptions for family undertakings from the minimum age should be withdrawn in the revised Minimum Age (Industry) Convention. Several of the member states were opposed to the proposal, which led to the

⁶⁰ Blue Report Industry 1937, p. 20 and Blue Report Non-Industrial Employment 1937, pp. 5 and 7.

⁶¹ E.g. Convention No. 59, Article 4, Convention No. 5, Article 4.

⁶² Convention No. 60, Article 3.

⁶³ Convention No. 59, Articles 6,7 and 8.

⁶⁴ Convention No. 60, Article 9.

retention of the exemption, let be in a narrowed down form.⁶⁵ As a compromise the conference adopted the Minimum Age (Family Undertakings) Recommendation, that established that member states “should make every effort” to apply the convention also to family undertakings and to suppress the exemption completely in “the not distant future”.⁶⁶

When revising the minimum age conventions the focus on the colonies was somewhat downplayed in the debates. Nonetheless, the special regime for India was subject to disaccord at the International Labour Conference. In 1936 and 1937 the Asian countries were still addressed mainly in terms of climatic, cultural or industrial differences. Regarding India, its ‘state of incipient industrialism’ was added to the discourse: It was argued that India’s developing industrialism should not be ‘stifled and hampered’ by regulations developed for entirely different conditions by countries that were competitors to India.⁶⁷ Obviously, there was a fear of competition being a hidden consideration in the special-regimes debate. Another aspect of the special-regimes debate is that it reveals the dominating ideas concerning the development or industrialisation of ‘the East’: It was a common belief that the East should learn from the West. An Indian employer’s delegate at the conference once expressed it in the following way: “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.” The Asian countries should go directly to more developed stages of industrialism and omit the ‘teething problems’. The same thoughts were expressed one year later by Director-General Harold Butler in his special report *Problems of Industry in the East*⁶⁸. Compared with such ideas the special regimes were 100 per cent pragmatic. In this connection it is noteworthy that the African countries were not object to special-regimes. Possible explanations are that the African continent was colonised relatively late, that it was not industrialised at all, or because the African colonies were dealt with under the general flexibility clauses for colonies and non-metropolitan territories. It may also be speculated that it was an effect of Africans being regarded as a different kind of human beings or as ‘indigenous’. South-Africa was the only African country individually represented at the International Labour Conference before the end of World War II.

Ultimately, in the retained special regimes, the standards were raised, however in line with the legal and economic development in the countries concerned.

⁶⁵ Record 1937, pp. 347-349.

⁶⁶ Minimum Age (Family Undertakings) Recommendation No. 52 1937.

⁶⁷ Speech by India’s employer’s adviser, Record 1937, p. 338.

⁶⁸ Butler 1939.

Counter-acting the effects of Depression

Clearly, the revision of the minimum age conventions that took place in 1936 and 1937 was part of the ILO's reaction to the Depression.⁶⁹ Some quotations from the plenary debate in 1937 can illustrate this logic. One example is the reporter of the Committee on Minimum Age, stating that a revision of the minimum age conventions would mean real progress to the promotion and welfare of children, at the same time emphasising "certain incidental benefits" that could be expected from raising the minimum age for employment of children. These incidental benefits were "such as the removal of low-paid competitors with adult labour and the taking-up of the slack in times of unemployment."⁷⁰ Another example is a statement by a government representative who openly declared that a raised minimum age was a means to combat unemployment, and predicted that the vacancies left by the under aged child labourers in industry would be filled by "better trained and educated workers".⁷¹

Extending the Scope of the ILO

The period from the post-war years to the oil crisis in the beginning of the 1970's was a period of remarkable economic upsurge and social change – a social revolution with a unique increase in the standard of living and welfare of the people in the industrialised world. British historian Eric Hobsbawm has called this period a 'Golden Age', because never before in history has human (Western) society seen such an economic boom and fundamental social change in such a short period.⁷² In line with the general development in the post-war Western world, the importance of the state for granting the welfare of its citizens was emphasised by the ILO. The ILO was among the important players in starting and carrying through the social revolution that took place in the industrialised world during the decades after the war.⁷³

The Declaration of Philadelphia

The importance of the international institutions assumed new dimensions after World War II. The ILO became one of the United Nations specialised agencies to promote and accomplish the human rights objectives of the new organisation for world peace (UN Charter, articles 55 and 56). The lesson learned from the war was that the Depression had made Hitler's takeover possible. It was unemployment and poverty that had paved the way for the totalitarian movements in Europe. The ILO recipe of social justice was extended with a new ingredient: economic growth for the benefit of everyone. More precisely it was the Keynesian model of capitalism mitigated by state intervention. Keynes model underpinned

⁶⁹ Convention No. 58, Minimum Age at Sea (revised) adopted 1936, Convention No. 59, Minimum Age in Industry (Revised) and Convention No. 60, Minimum Age in Non-Industrial Employment (Revised), both adopted in 1937. The following conventions concerned new sectors: Convention No. 112, Minimum Age, Fishermen, adopted in 1959 and Convention No. 123, Minimum Age, Underground Work adopted in 1965.

⁷⁰ Record 1937, p. 321.

⁷¹ Record 1937, p. 344.

⁷² Hobsbawm 1995.

⁷³ Hobsbawm 1995, p. 282.

the *Declaration of Philadelphia* that was adopted in 1944. By the Declaration, the scope of the ILO was reconfirmed and extended. The equal rights of all human beings were proclaimed, irrespective of race, creed, or sex, to pursue their material and spiritual well-being and development in conditions of freedom and dignity, economic security and equal opportunity.⁷⁴ Among the means to achieve this was the expansion of production and consumption and at the same time avoiding great economic fluctuations.⁷⁵

The Resolution Concerning the Protection of Children and Young Workers

The ILO had moved to Montreal during the war years and continued to function on a smaller scale. No conventions were adopted, but plans and programmes for post-war reconstruction were prepared. A top priority was the situation of children and young persons after the war. Children were the first to suffer from the war, and among other harmful effects as being separated from the family, malnutrition and disease was the increased employment of children.⁷⁶ To meet the situation, the ILO adopted the *Resolution Concerning the Protection of Children and Young Workers* in 1945.⁷⁷ The wide-ranging text of the resolution drew attention to a number of interrelated problems concerning the education, employment, protection and the general welfare of children and young persons. It identified three main points of action for the ILO: (1) the long-term objective of a minimum age of sixteen years, (2) any gap between the school-leaving age and the minimum age for employment should be bridged, and (3) the minimum age should be the same in all economic sectors.⁷⁸

In the Grey Report to the Conference 1945, *Protection of Children and Young Workers*, the need to guarantee a basic income for families was heavily underlined.⁷⁹ Already in the introduction of the report the connection was made by stating that material aid to the family was a fundamental factor in any social programme for child welfare.⁸⁰ For the first time the connection between the abolition of child labour and children's need of maintenance was formally recognized and a complete scheme of social security and family allowances was proposed.⁸¹ This was in line with the development in the European industrial nations, which had already introduced family and children's allowances, as part of national policies to deal with the decreasing populations.

⁷⁴ *Declaration of Philadelphia*, II.

⁷⁵ *Declaration of Philadelphia*, IV.

⁷⁶ Directors Report, International Labour Conference, 27th Session 1944, pp. 57-60.

⁷⁷ Resolution concerning the Protection of Children and Young Workers adopted by the 27th Session of the International Labour Conference in Paris 1945.

⁷⁸ *Ibid.*

⁷⁹ Grey Report 1945.

⁸⁰ *Op. Cit.*, p. 8.

⁸¹ *Op. Cit.*, II General Social Protection of Children and Young Persons, A. Maintenance.

A wider understanding of child labour

This wider understanding of children and work was the result of an awareness of – and a sense of guilt for – the conditions of children during the war, in combination with a post-war optimism for constructing a better world. Already before the World War II, the ILO had started adopting conventions and recommendations on social insurance, maternity leave and maternity benefits. The *Declaration of Philadelphia* widened the scope of the ILO's activities in general. The *Resolution Concerning the Protection of Children and Young Workers* aimed at widening the scope of the ILO's activities concerning child protection in particular. During the post-war years the ILO made a number of efforts to make effective the objectives of the Declaration and the Resolution. Three conventions and eight recommendations on social insurance were adopted between 1944 and 1947.⁸² Although not directly addressing children, the conventions and recommendations aimed at the improvement of the situation for the children, by guaranteeing workers and their families a basic income in case of death, old age, occupational injury or maternity leave. The forthcoming minimum age conventions extended the scope of the minimum age campaign by regulating new categories of work as fishing and mining, but reflected nothing of the resolution's acknowledgement of the fundamental links between child labour and child maintenance.

Extending the scope of the minimum age conventions

Directly after the war four new conventions concerning the medical examination and the night work of young workers were adopted. In 1946 the Medical Examination of Young Persons (Industry) Convention, the Medical Examination of Young Persons (Non-Industrial Occupations) and the Night Work of Young Persons (Non-Industrial Occupations) Convention were adopted.⁸³ In 1948, the Night Work of Young Persons (Industry) was revised.⁸⁴

The conventions on medical examination of young workers came timely after the war. There was consensus among workers, employers and governments that it was necessary to counteract the effects of the war and occupation on the health of children. A particular concern was the epidemic of tuberculosis in the liberated countries. The young persons that were unfit for a number of employments because of tuberculosis or other health reasons needed protection from work detrimental to their health, and vocational guidance to find other suitable

⁸² 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.

⁸³ Conventions Nos. 77-79.

⁸⁴ Convention No. 90.

occupations. There were no side-interests involved, only a wish to improve the health of children. By the time the convention was adopted many of the member states had passed laws on medical examination of young workers already.⁸⁵

Eleven years later, in 1959, the Minimum Age (Fishermen) Convention was adopted, with a minimum age of 15 years.⁸⁶ The Minimum Age (Underground Work) Convention in 1965 was the last of the area-specific conventions to be adopted with a minimum age of 16 years.⁸⁷ This convention stood out by the higher minimum age and not allowing any exceptions to the minimum age whatsoever. Underground work was considered as more dangerous than other categories of work.

A universal minimum age 1973

By the beginning of the 1970's the international scene – and the ILO – had undergone major changes. The constant economic boom that lasted almost three decades reached an end. A new age of crisis began with the oil-crises and the collapse of the Bretton-Woods system of international finance. With the crises followed a great concern for unemployment. The employment situation was aggravated by the effects on employment of the technical revolution and the global division of labour. Concerning child labour, the very concept had changed character. From being regarded as a typical phenomenon of the industrialising stages of the West, child labour was now perceived as a typical phenomenon of the decolonised, developing world. Internally, the membership majority of the ILO had shifted. The dominance of the Western industrialised nations was challenged by the decolonised nations. In practice however the Western nations kept up their influence, largely because of their well-organised and influential workers' and employers' organisations. Furthermore, the divide between East and West resulting from the Cold War marked the organisation.

At that point, as one of several measures to counteract unemployment, the ILO decided to revise the minimum age conventions. This should be done by replacing them with a single and universal convention, covering all work and employment and all sectors of the economy.⁸⁸ The timing was thus similar to the adoption of the first minimum age conventions after World War I and their revision in the beginning of the 1930's – as part of the strategies to defeat or mitigate unemployment and 'social unrest' in times of economic and political crisis.

The two surveys

As part of the preparatory work for the convention, the International Labour Office prepared two surveys in 1972. One was dealing with the national minimum age

⁸⁵ Blue Report (1) 1946, pp. 4-5.

⁸⁶ Conventions Nos. 112-113.

⁸⁷ Convention No. 123, Article 2.

⁸⁸ The most important measure was the *World Employment Programme*.

legislation of the member states, *National Legislation*,⁸⁹ and the other was dealing with situation of working children around the world, *Children at Work*.⁹⁰ The *National Legislation* included an overview of compulsory education in the member states.⁹¹ As the surveys were rich in information, the conclusion can be drawn that the ILO was well-informed of the child labour problem at that time.

Some form of minimum age legislation had been adopted by practically all member states by 1970. By contrast, the number of ratifications of the minimum age conventions was limited. At best, less than half of the member states had ratified. The least ratified convention (Minimum Age (Non-Industrial Occupations) Convention (Revised)) had only received ten ratifications. It was nonetheless maintained that the conventions had exerted a powerful influence to suppress child labour. In a way it was true, because the survey of national legislation showed that some form of minimum age legislation was more or less universally adopted.⁹²

Industry was the most frequently regulated sector in the member states. The minimum ages varied between 12 and 16 years. Generally, exceptions were made for family employment, home-working, 'light work' and work in technical schools. Also an exception on the ground of family poverty existed in some member state.⁹³ Non-industrial employment was generally left unregulated in national law. Where regulation existed, it was less comprehensive than in industry. Most frequently the non-industrial work was indirectly regulated by educational laws.⁹⁴

This was true also for the least regulated sector, agriculture, and only a very small number of member states had a legal minimum age higher than 14 years. The highly family oriented organisation of the agricultural sector made it the object of particularly wide exceptions, which the Office took special note of. A result of the survey was that agriculture still was the sector employing the majority of children in every region of the world in 1970 (and still is). Compared with the survey of national legislation, showing that agricultural work was left more or less unregulated in practically all member states, a conclusion is that the ILO was well aware of the fact that the large majority of the working children were employed in a sector with non-existent minimum age legislation. Even though compulsory schooling and maintenance solutions were upheld as indispensable here – questions largely outside the scope of the ILO – the Office did not have high hopes that minimum age legislation would solve the situation for children in agricultural work in the near future.⁹⁵ And the old myth of farm work as a healthy activity was

⁸⁹ Grey Report (1) 1972, pp. 8-20.

⁹⁰ Grey Report (1) 1972, pp. 21-30.

⁹¹ Grey Report (1) 1972, pp. 19-20.

⁹² Grey Report (1) 1972, p. 8.

⁹³ Grey Report (1) 1972, pp. 9-14.

⁹⁴ Grey Report (1) 1972, pp. 14-17.

⁹⁵ Grey Report (1) 1972, p. 28.

disposed of, by quoting figures from the United States on industrial safety, showing that agricultural work could even be more dangerous than industrial work.⁹⁶ As a means to preventing at least some of the child labour in agriculture a proposal was made that ‘traditional agricultural work’ on small and family-run farms should be separated from wage-earning employment on plantations or other large scale agricultural enterprises, thereby making at least the large-scale enterprises object to the minimum age regulations.

The overview of compulsory education showed that a majority of children in Latin America, Africa and Asia never attended school or only attended school erratically. Dropout rates were high and the school-leaving age was lower than 15 years. Among the children aged 11–14 years not in school, girls and children in rural areas were overrepresented.⁹⁷

After dividing children’s work into either ‘child labour in the classical sense’, or ‘other forms of child labour’, the Office concluded that the ‘classical child labour’ still existed on a large scale. The ‘child labour in the classical sense’ was defined as child labour in industry, which was typical to the industrialising stages of Europe. Even though it was not very common in the largest industries, it was all the more frequent in the small-scale ones. The problems and failings of the national labour inspection services was commented on and India’s labour inspectorate was pointed out to be under-staffed, lacking adequate means of transport, unable to verify ages and often hindered by the working children’s own efforts to avoid detection.⁹⁸

Regarding home working, domestic service work and work in family undertakings it was observed that the failings of the labour inspection services were even more acute. It was underlined that this kind of work was dangerous, abusive and very difficult to control, not least because the children were out of sight of both labour inspectors and of the public.⁹⁹ The particularly vulnerable situation of girls in these ‘invisible trades’ was also taken note of.¹⁰⁰

The Debate

The adoption process of the new minimum age convention was characterised by the North-South divide on the one hand and by the East-West divide on the other. Both divides had their immediate roots in World War II, the Cold War and decolonisation.

Concerning the North-South divide, the developing nations stood out in the debate, and some of the arguments were exactly the same as in 1919. In 1972 there were

⁹⁶ Grey Report (1) 1972, p. 30.

⁹⁷ Grey Report (1) 1972, p. 20.

⁹⁸ Grey Report (1) 1972, p. 24.

⁹⁹ Grey Report (1) 1972, p. 18.

¹⁰⁰ Grey Report (1) 1972, pp. 25-26.

voices arguing for lower minimum age in countries with a tropical climate, referring to the ‘early maturity’ of the children in these countries. The developing countries were still discussed as ‘backward’ with ‘uneducated populations’, and industrialisation was seen as the solution.¹⁰¹ But there were also strong intentions to equal treatment of all children, regardless of nationality, and to make the minimum age conventions effective in the developing world. The whole idea of the new convention was that it should have the potential to become effective in the developing nations. This was new in 1972.

The minimum age for admission to work was set at 14 years in the first drafts of a convention. This met strong opposition at the International Labour Conference. There were two camps in the debate. On the one hand were the employers arguing for ‘realism’ which meant a minimum age of 14 years and step-by-step improvement of children’s conditions. These arguments were based on pragmatic views on child protection. On the other hand, there were the workers and the communist states, arguing for ‘real progress’ and equality which implied a minimum age of 15 years. All children should have ‘the right to a happy childhood’, education and training, regardless of country or region.¹⁰² These arguments have strong links to the prevailing ideas of childhood with roots in the 19th century. To reconcile the two camps the option for developing countries to initially specify a lower minimum age of 14 years was introduced.¹⁰³ Against the background of the results of the two surveys, showing that great numbers of children in the developing member states worked and did not attend school and that there were great problems enforcing the conventions, it is remarkable that the debate boiled down to discussions of a minimum age of 14 or 15 years. On the other hand, the focus on a 14 or 15 years minimum age was just a continuation of a debate that had started in already 1919.

The importance of bridging any gap between the school-leaving age and minimum age was another theme that had been discussed ever since 1919. Also in 1972, there was a great consensus that ‘idle children’ were a threat to society in the form of delinquency, begging and illegal employment.¹⁰⁴

Family employment was not subject to much discussion *per se*. Employment in family undertakings was not going to be subject to any exemptions in the new convention. In the surveys, the Office had however noticed the problems of the invisibility of children in home working and apprenticeship – which often took place in a family context and that was often a cover-up for regular and exploitative work. The vulnerable situation of girls was also particularly mentioned in this connection. In the end, a compromise was adopted, which made it possible to exclude some family employment, either in the form of an exclusion of domestic

¹⁰¹ Record 1972, pp. 537-38.

¹⁰² Record 1972, pp. 537-38.

¹⁰³ Record 1973, pp. 681-82.

¹⁰⁴ Record 1972, p. 538.

work or because it took place in agriculture, which remained in practice unregulated in the convention. It was, however, not allowed to exempt dangerous work in any sector.

The Convention

In 1973 the Minimum Age Convention, No. 138, and the accompanying Recommendation No. 146, were adopted.¹⁰⁵ Convention No. 138 is the last minimum age convention to date. The Convention No. 138 revises the previous minimum age conventions; however, it does not automatically close all the previous conventions to further ratification (Article 10.1-3).

As a result of the contradictory ambitions to make a convention that could be universally ratified and that was going to make ‘real progress’, the Convention No. 138 is the most complex minimum age convention with its many flexibility devices. In spite of the universal approach and the many flexibility clauses, ratification of Convention No. 138 was slow up to 1989. Two-thirds of the ratifications came after the adoption of the Convention on the Rights of the Child and today the Convention No. 138 has been ratified by 150 out of the 181 member states.¹⁰⁶ The surge in ratifications was actually due to the ratification campaign for the core human rights conventions after the Social Summit in 1995, their designation as human rights instruments, and later the inclusion of this subject in the 1998 Declaration. This was assisted by a concentrated effort by the Office to help governments understand and cope with the flexibility and complexity in C138.

The convention lays down that the member states shall pursue national policies 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” (Article 1). The member states shall specify a minimum age for any work or occupation. All work is thereby included in the convention, regardless of whether it is regarded as ‘employment’ or not and the convention covers all economic sectors (Article 2.1). The minimum age specified must not be less than the compulsory school-leaving age and in any case not under 15 years (Article 2.3). Hereby the connection to school is not only confirmed, it is made a cornerstone of the convention.

Flexibility

In Convention No. 138 the special regimes for particular countries are abandoned. However, there are a number of other possibilities to establish lower standards. First, there is a special clause for developing nations. A member state “whose economy and educational facilities are insufficiently developed may, after consultation with the organisations of employers and workers concerned, where

¹⁰⁵ Minimum Age Convention, Convention No. 138, and Minimum Age Recommendation, No. 146, both adopted at the 58th session of the International Labour Conference on 26 June 1973.

¹⁰⁶ ILOLEX, Conventions, List of Ratifications, www.ilo.org, visited 20/02/08.

such exist, initially specify a minimum age of 14 years” (Article 2.4). It is however combined with an obligation to make a statement in the Article 22 reports whether the reasons for the lower minimum age subsists (Article 2.5 (a)).¹⁰⁷

Secondly, there is a general possibility for all member states to make exceptions for limited categories of work that give rise to “special and substantial problems of application” (Article 4.1). In the *travaux préparatoires* domestic work and work in family undertakings were particularly mentioned as examples of such categories of work.¹⁰⁸ As already mentioned, agriculture was also regarded as a branch with considerable problems of application.¹⁰⁹ One category of work is regulated separately: as a concession to “the demands of the public”, national authorities can, after consultation of the workers’ and employers’ organisations, allow work in “artistic performances” under the convention, by special permits granted in the individual case (Article 8).

Thirdly, there is a possibility of initially limiting the scope of the convention. This possibility is, again, reserved for the developing nations. It requires consultations with the workers’ and employers’ organisations, “where such exist” (Article 5.1). The limitation can not include the most dangerous branches: 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, however excluding family and small scale holdings (Article 5.3).

Fourthly, national laws or regulations may permit employment or work by children aged 13–15 years on condition it is not likely to be harmful for the child’s health or development, and not such as to prejudice the child’s attention at school or the child’s capacity to profit from the education, (Article 7.1 (a-b)). The further details are left to the national competent authorities to decide (Article 7.3).

Agriculture

Concerning agricultural work, there is an attempt to a shift in Convention No. 138. In practice, Convention No. 10 (agriculture) provided no minimum age limit for agricultural work. In contrast, Convention No. 138 covers *any* employment or work and thus includes agricultural work, formally. Agriculture is a typical kind of economic activity to be excluded, because of circumstances such as tradition and enforcement problems. Nonetheless, work on plantations can not be excluded so in this way the convention goes a lot further than Convention No. 10.

There is a higher minimum age for dangerous work, defined as “work which by the nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons”. The minimum age is 18 years (Article

¹⁰⁷ The Committee of Experts rarely, if ever, asks whether this minimum age has been reconsidered.

¹⁰⁸ Grey Report (1) 1972, p. 16.

¹⁰⁹ Grey Report (1) 1972, p. 17.

3.1). It is left to the national authorities to determine what kind of work that falls under the article (Article 3.2). Convention No. 138 thus confirms the distinctions made in the previous conventions between 'light work', 'dangerous work' and 'work'.

The enforcement provisions are strengthened in relation to the previous conventions. "All necessary measures, including penalties" must be taken by the national authorities to ensure that the provisions of the convention are followed in the member states. A new feature of the convention is that persons responsible for the compliance with the convention shall be defined in national law or regulations. In contrast, the old obligation for employers to keep registers with names and dates of birth of the young workers has remained (Article 9.1-3).

The Recommendation

Although the provisions of the Minimum Age Recommendation No. 146 goes far beyond the convention, it was adopted without much discussion at the International Labour Conference. The main reason is of course that recommendations are not legally binding for the member states, and therefore easier to accept. The provisions of the recommendation are an expression of the holistic view of children and children's work, acknowledging the importance of guaranteeing the child's maintenance and adequate education facilities, that goes back to the *Resolution Concerning the Protection of Young Workers from 1945*. First of all the Recommendation No. 146 prescribes the progressive raising of the minimum age to 16 years (II Minimum Age, 7). Furthermore it provides a wide-ranging programme for national policies with a "firm commitment" to full employment, poverty eradication, social security and family welfare measures, adequate schooling and vocational training (I. National Policy 1-4). Conditions of work are not covered at all in Convention No. 138, this is instead found in the recommendation (IV. Conditions of Work). There are detailed provisions how this should be accomplished, including fair remuneration, equal pay for equal work, the strict limitation of hours of work, minimum 12 hours period of rest, annual holiday with pay, social security schemes, and satisfactory standards of safety and health (13). The earlier conventions on most of these subjects remain in force. Exceptions not covered in ILO standards are the Recommendation provisions on equal treatment.

Beyond Convention 138. New Approaches to Child Labour

The Convention on the Rights of the Child 1989

With the adoption of the Convention on the Rights of the Child in 1989, the international community took a great step forward for promoting children's rights.¹¹⁰ The convention is revolutionary in at least three ways. First, it was the

¹¹⁰ 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

first human rights instrument to encompass both civil and political rights and economic, social and cultural rights in a single document. Secondly, the convention adds a rights-oriented perspective to the dominating protectionist perspectives. This is recognised already in the Preamble by establishing that all human beings, including children, have the same inherent dignity and inalienable rights. Thirdly, the convention is universally ratified – all of the nations in the world, except two, have ratified it.¹¹¹

The two international declarations on the rights of the child, the Geneva Declaration from 1924 and the United Nations Declaration on the Rights of the Child 1959 were not legally binding but were important forerunners to the Convention on the Rights of the Child. The declarations are always mentioned in the accounts of the origin of the convention. The ILO and the minimum age conventions have also played an important role as forerunners in child protection and to the convention. Child protection was at the heart of the organisation right from the start in 1919 and by never losing sight of the question of the exploitation of children at work during the years, the ILO has shown a unique commitment for the poor and vulnerable children of the world. The historical and legal connections between the ILO and the Convention on the Rights of the Child are however seldom taken much notice of in academic writings.¹¹²

By the adoption of the Convention on the Rights of the Child, the efforts to abolish child labour within the ILO were both confirmed and revitalised. Most of the articles of the convention are relevant for children at work. Articles 32–36 however specifically concern the economic and other forms of exploitation of children.

Article 32 is the principal article dealing with child labour and it obliges the State Parties to take “legislative, administrative, social and educational measures” to ensure its implementation. The right of the child to be protected from economic exploitation and performing any work that is likely to be hazardous or interfere with the child’s education, or harmful to the child’s health or physical, mental, spiritual, moral or social development is recognised in Article 32.1. Article 32.2 refers clearly, if indirectly to the ILO minimum age conventions:

the Child entered into force 2 September 1990. Only the United States and Somalia are not parties to the Convention, <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterIV/treaty/19.asp> (visited 20/01/07). See further Detrick 1992 and 1999, Alston 1994, van Bueren 1998 and Hodgkin & Newell 2002.

¹¹¹ As mentioned *infra* neither the United States nor Somalia have ratified the Convention, but both countries have signed the treaty.

¹¹² See *supra*, note 10.

To this end, and having regard to the *relevant provisions of other international instruments* [my italics] States Parties shall in particular:

- (a) Provide for a minimum age or minimum ages for admission to employment;
- (b) Provide for appropriate regulation of the hours and conditions of employment;
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

By article 32, the ILO minimum age conventions are clearly integrated in the Convention on the Rights of the Child, as the *travaux préparatoires* on the Convention make evident. Accordingly, the International Labour Office regularly sends information to the Committee on the Rights of the Child concerning the application of article 32 – the same way it cooperates with all the UN treaty bodies on relevant subjects. The Committee has referred continuously to the Convention No. 138 and to Recommendation No. 146, urging member states to comply with their provisions and complimenting states that ratify.¹¹³

Article 33 accords children the right to protection from the use and production of illicit drugs. Article 34 accords children protection from all forms of sexual exploitation and abuse, article 35 concerns the protection of the child from being sold or trafficked and article 36 concerns the protection of the child from all other forms of exploitation. Of all the other relevant articles only Article 3 will be mentioned here, because of its particular significance for ILO and child labour. Article 3 provides that in all actions concerning children taken by public authorities, the best interest of the child shall be a primary consideration. This puts an obligation on the member states of the ILO to always consider the best interests of the child in all law and policy decisions concerning working children. Indirectly, it calls upon the ILO to consider the child's best interests in adopting international instruments and policies to abolish child labour. By the adoption of the Convention on the Rights of the Child, child labour definitely became a question of human rights as well as a question of development.

The IPEC-Programme in 1992

Convention No. 138 and Recommendation No. 146 confirmed the necessity of a more comprehensive approach to child labour, including a more effective labour inspection, introduction of compulsory education and social insurance systems.¹¹⁴ In the 1980's it was further confirmed within the ILO that child labour should be understood and dealt with in the context of socio-economic politics, particularly

¹¹³ For a selection of examples, see Hodkin & Newell, Article 32.

¹¹⁴ Convention No. 138, Article 1, "Each member for which this Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labour", Recommendation No. 146, I. National Policy, V. Enforcement

employment programmes, women's equality and free and compulsory primary education for all.¹¹⁵

Until the 1990's the ILO was the main international actor concerning child labour. After the adoption of the Convention on the Rights of the Child there was an increase in national and international policies and programmes directed towards working children. From this time the UNICEF, the United Nations Commission on Human Rights as well as a number of non-governmental organisations have played an important role, and together with the ILO they now form a world-wide movement against child labour and for children's rights. The International Trade Union Confederation (ITUC – formerly ICFTU) and the International Organisation of Employers (IOE) are also important players. The action has formed the basis for a mobilisation of public interest for the situation of working children and the development of the institutional framework necessary for research, data-collection and awareness raising. An explosion of research and literature on children and work has followed over the past decades.

An important factor behind this development is the International Programme on the Elimination of Child Labour, IPEC that was created in 1992. It is the largest of the ILO technical cooperation programmes. It is financed outside the ordinary budget of the ILO, with contributions of individual member states and focusing targeted member states.¹¹⁶ The programme now operates in 88 countries. The overall objective of the programme is to progressively eliminate child labour by (1) strengthening the capacities of the countries concerned, and (2) promoting a world-wide movement against child labour. The present top priority for the IPEC-programme is the elimination of the worst forms of child labour, as defined in Convention No. 182. Important tools are traditional country programmes, regional capacity-building programmes and time-bound programmes. The IPEC cooperates with local partners as well as the most important actors in the field on the international scene.

Targeting the Intolerable: Worst Forms of Child Labour Convention 1999

Like the IPEC programme, the adoption of the Worst Forms of Child Labour Convention, No. 182 was a result of the increasing international interest and public debate about the situation of children at work. The discussion of the ideas and principles behind Convention No.182 had started within the ILO already in the 1970's and the 1980's and the ideas took the shape of a resolution in 1996, the Resolution Concerning the Elimination of Child Labour.¹¹⁷ Furthermore, NGO's

¹¹⁵ See for example *Report of the Director-General*, International Labour Conference, 69th Session, Geneva 1983.

¹¹⁶ For further information on IPEC, www.ilo.org/public/english/standards/ipec/ (visited 30/01/07)

¹¹⁷ Resolution concerning the International Year of the Child and the progressive elimination of child labour and transitional measures adopted at the 65th Session of the International Labour Conference in 1979, *Report of the Director-General*, International Labour Conference, 69th Session of the International

and researchers had since long pointed at the need for more child-centred approaches and that not all child work was against the best interest of the child.

In the report to the International Labour Conference 1998, *Child labour. Targeting the Intolerable*, the International Labour Office summarised the child labour situation with the words “much has been achieved, but there is still far to go” and continued:

Clearly, the problem of child labour is quite enormous and there is an urgent need for action. But where does one begin? Not all countries are institutionally or financially equipped to attack all forms of child labour at once. Choices must be made where to concentrate available human and material resources. The most logical and humane strategy must therefore be to focus scarce resources first on the most intolerable forms of child labour such as slavery, debt bondage, child prostitution and work in hazardous occupations and industries, and the very young especially girls. This approach has the additional advantage that policies designed to reach the children in most need are likely to benefit other working children and that focusing on the most socially repugnant examples can help maintain the necessary social commitment and consensus.¹¹⁸

However, the Office saw a favourable climate and previously unknown possibilities to “make a decisive assault on child labour”, by prohibiting the “extreme forms of child labour”, filling in the gaps in the existing conventions and other international instruments dealing with children and their rights, and set clear priorities for action.¹¹⁹

The Convention No. 182 confirmed the goals of Convention No. 138 – and the previous minimum age conventions – to eliminate child labour. The convention however provided focus by prioritising elimination of the worst forms of child labour. Obviously, there were difficulties in setting priorities according to risk. In the report, the Office had concluded that these questions were best resolved by agreement rather than by formula and that social credibility and legitimacy were key words. It was however emphasised that “knowledgeable people of different institutions and perspectives” seemed able to agree who were the most threatened child workers.¹²⁰

The Office saw a particular need to address the invisibility of children in dangerous work situations – “out of sight, out of mind”. The efforts therefore should begin with “making the invisible visible”. The working children and the dangers facing them should be “brought to light and public consciousness”.¹²¹ Accordingly, data on contemporary forms of hazardous child labour was presented in the report. The data included exposure to toxic substances, carrying heavy loads, and working in awkward positions. Data on the particular work hazards in agriculture, mines, ceramics and glass factory work, matches and fireworks

Labour Conference in 1983, and resolution concerning the elimination of child labour, adopted at the 83rd Session of the International Labour Conference in 1996.

¹¹⁸ Report 1998, p. 20.

¹¹⁹ Report 1998, p. 113.

¹²⁰ Report 1998, p. 21.

¹²¹ Report 1998, p. 21.

industry, deep-sea fishing, child domestic workers, slavery, forced child labour, prostitution and trafficking was also presented.¹²²

There was a massive support for a prohibition of the “forms of child labour that could not be tolerated under any circumstances”.¹²³ The Convention No. 182 and the accompanying Recommendation No. 190 were adopted unanimously.¹²⁴ The convention provides that the member states shall take “immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency” (article 1). The convention applies to all persons under 18 years (article 2). 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” (article 3). The types of work referred to in article 3 (d) shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned (article 4). Member states shall adopt programmes of action to eliminate the worst forms of child labour as a priority (article 6). The programmes shall be designed and implemented in consultation with the relevant government institutions, employer’s and worker’s organisations *and*, “taking into consideration the views of other concerned groups as appropriate” (article 6). Tripartism is here opened up by a possibility for other players than the social partners to influence the programmes and policies, and thereby for more child-centred solutions. Recommendation No. 190 explicitly provides that the views of the children directly affected by the worst forms of child labour, their families and “as appropriate, other concerned groups committed to the aims of the Convention” should be taken into consideration when shaping the programmes (I. Programmes of Action, 2). Member states shall take “all necessary measures to ensure the effective implementation and enforcement” of the convention provisions, including penal sanctions (article 7.1). Members shall also “take effective and time-bound measures to prevent children from engaging in the worst forms of child labour, provide assistance for the removal of children in the worst forms of child labour, rehabilitation and social integration, identify and reach out to children at special risk and take account of the special situation of girls (7.2 (a)–(e)). In this, member states shall take into account the importance of education (7.2). The recommendation points at the necessity to pay special attention to younger children, the girl child and to children in hidden work situation, and particularly the risks for girls in such work, and other groups of children with special vulnerabilities or needs (I. Programmes of Action 2 (c)). Member states should assist each other in giving effect to the convention

¹²² Report 1998. pp. 9-17.

¹²³ Report of the Committee, Record 1999.

¹²⁴ Record 1999.

provisions, by enhanced international cooperation and assistance (article 8). In the recommendation there are detailed provisions concerning the implementation of the convention, including making the worst forms of child labour criminal offences (III. Implementation, 12).

Together with Convention No. 138, Convention No. 182 draws a line between accepted and unacceptable child work. It is uncontroversial within the ILO that work which falls outside the limitations of the two conventions and that does not interfere with the child's health and development or with schooling can even have beneficial effects for the child.¹²⁵

The Convention No. 182 has been a ratification success. It is the most rapidly ratified convention in the history of the ILO. To date, nine out of ten member states have ratified the convention. It has also affected ratification of Convention No. 138. Until the adoption of Convention No. 182, the ratification progress was slow. To date, four out of five member states have ratified the Convention No. 138.

Beyond the Worst Forms of Child Labour Convention

The Global Task Force on Child Labour and Education For All,¹²⁶ launched at the Beijing Round Table in 2005, is a continuation of the collaborative approaches that started with the Convention on the Rights of the Child and the IPEC programme. It is an international partnership with the objective to contribute to education for all, which is one of the goals of the Millennium Declaration.¹²⁷ The members are ILO, UNESCO, UNICEF, UNDP, the World Bank, Education International and the Global March Against Child Labour together with a number of donor countries and countries that are making progress in achieving education for all. The policy framework for the task force is based on the Dakar Framework for Action¹²⁸, the UN Convention on the Rights of the Child, and the ILO Conventions No. 138 and No. 182. Another recent initiative along the same collaborative lines is the *Understanding Children's Work*, a joint interagency research program, including the ILO, UNICEF and the World Bank, which started

¹²⁵ Global Report 2006, p. 23 with further notes.

¹²⁶ The Global Task Force on Child Labour and Education For All was announced and endorsed at the EFA High-Level Group meeting in Beijing in November 2005.

¹²⁷ "To ensure that, by [2015], children everywhere, boys and girls alike, will be able to complete a full course of primary schooling and that girls and boys will have equal access to all levels of education." A/Res/55/2, adopted by the General Assembly of the United Nations on 8 September 2000.

¹²⁸ Adopted at the World Education Forum, Dakar, Senegal, 26-28 April 2000 (www.unesco.org/education/efa/ed_for_all/dakfram_eng.shtml), visited 30/01/08).

in 2000. It is based at the University of Rome and undertakes research on working children, based on data collected by the joint partners.¹²⁹

Mainstreaming

The collaborative approaches are in line with efforts within the ILO towards mainstreaming the question of child labour in all political and economic decision-making. It follows from a recognition that children's work must be understood and approached in a wider societal context. It also follows from the obligations of the Convention on the Rights of the Child. The IPEC has made it clear that the elimination of child labour must be an explicit objective of development and poverty reduction efforts. IPEC has made it clear that the elimination of child labour must be an explicit objective of development and poverty reduction efforts. Otherwise, the action against child labour is likely to be partial, fragmented and to remain on a small scale, incapable of reducing the number of children already on the labour market and unable of preventing children still outside from entering it.¹³⁰

The United Nations General Assembly Special Session on Children on 8–10 May 2002 has endorsed the mainstreaming approach to the elimination of child labour. By doing so, international society has in fact officially recognised that child labour elimination is fundamentally a question of political intent.

ILO and Child Labour. Past, Present and Future

In this chapter the history and development of the ILO's responses to child labour have been presented in their historical, economic, political and institutional context. A number of conclusions will sum up the presentation.

There are profound links between the ILO and later international children's rights instruments, most important the Convention on the Rights of the Child, and this deserves to be highlighted. The ILO was in fact the first international organisation to adopt standards for the protection of children and has played an influential role for the development of children's rights. The most obvious link is the indirect reference to the ILO conventions in article 32 of the Convention on the Rights of the Child, and the extensive exchange of information between the ILO and the United Nations Committee on the Rights of the Child that has followed. A further, and recent, confirmation is the collaborative approaches to child labour starting in the beginning of the 1990's and that are presently expanding in the form of the Global Task Force and other joint projects between the ILO and a number of United Nations Special Agencies concerned with children, and other international and local agencies.

¹²⁹ See www.ucw-project.org, visited 30/01/08.

¹³⁰ Tabatabai, IPEC 2003.

The concern for the protection of children by the elimination of child labour was a central objective for the ILO right from the start in 1919. And, regarded in a 90-year-perspective, the question has remained “at the heart of the organisation”, as Director-General Somavia expressed it in his speech in 2006 quoted above. The struggle against child labour has had a symbolic and unifying function as part of the overall objective to contribute to universal peace by creating social justice. The regulation of child labour was regarded as central and as urgent as the introduction of other fundamental labour rights. The number of minimum conventions adopted already during the first three years bears witness of that. The central position of child labour can be understood in the light of the Industrial Revolution, which made the exploitation of workers, particularly women and children, visible to the public. Accordingly, the first labour laws regulated the work of children. For the same reasons, when the ILO was founded, it was easy to get consensus for the minimum age conventions.

The minimum age conventions are clearly underpinned by the Western ideas of childhood that have their roots in the 19th century. By the special regimes for the colonies and later the flexibility clauses in Convention No. 138, one could also say that these regimes and flexibility clauses are underpinned by ‘another’ childhood for children in countries with hot climate and underdeveloped economy and administration. In recent years, there has been a shift to a more pragmatic approach to child labour, particularly by the adoption of the Convention No. 182.

The tripartite structure of the ILO has undoubtedly been one of its most important keys for success. By including the social partners at all levels, the ILO has been able to adopt sustainable solutions to social problems. The strength of the tripartite structure is however a weakness when it comes to child labour. The trade unions are surely excellent representatives of adult, male workers in industrialised countries. When it comes to women, children and workers in the developing countries, there may be biases. Whereas including the employer’s and worker’s organisations in the decision-making, other groups of people concerned but excluded in the process as the working children can have conflicting interests. For example, the question of minimum age has continuously interplayed with the question unemployment. After World War I, the demobilised soldiers returning home needed to find employment. The revision of the minimum age conventions in the 1930’s coincided with the Depression. After World War II, there was again demobilisation and unemployment and conventions were adopted or revised. The adoption of the Convention No. 138 coincided with the end of the Golden Age and the beginning of decades of crisis with severe unemployment.

Trends and Challenges

After the adoption of the Convention on the Rights of the Child in 1989 a strategic shift can be traced in the ILO’s work to eliminate child labour. The IPEC-programme, the Convention No. 182 and the Global Task Force are examples of

that. A first trend can be discerned, towards processes that are more inclusive. This implies enhanced possibilities for the children concerned and their organisations to influence policy decisions and programmes. This is also in line with the provisions of the Convention on the Rights of the Child that due regard should be given to the views of the child in all matters that affects him or her (article 12). A second trend, intertwined with the first, is the development towards more collaborative approaches, where the ILO participates in joint projects with a number of international and local agencies. A third trend is the trend towards mainstreaming child labour concerns in all development and educational decisions and policies. This is in line with the provision in the Convention on the Rights of the Child that the best interest of the child shall be a primary consideration in all decisions concerning children.

Notwithstanding the promising figures presented in *A Future Without Child Labour. Within Reach*, there are great challenges ahead in the struggle to stop the exploitation of children. Among the most urgent but difficult challenges are to reach the great number of 'invisible' children occupied in the informal sector, not least in agriculture, which is the sector that occupies the largest number of children. An equally urgent challenge is the situation of children in Sub-Saharan Africa. The effects of HIV/AIDS and war are seriously aggravating the problems. A third urgent challenge is the situation of children in the post-communist countries, particularly the trafficking of girls.

The ILO has been the main international player to protect working children during the 20th century. Until the end of the 1980's, the original concept was unchallenged, even though by then it had proved to be less efficient than had been hoped for. After 1989, there has been a new impetus and a strategic shift in the ILO's approaches towards child labour and the organisation has tried to find new paths that are complementary to the traditional standard-setting. Hopefully, the ILO will continue to play an important role for the protection of children and children's rights also in the 21st century.

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