

Chapter 1

Introduction: The Fight Against Child Labour in a Globalized World

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1.1 Child labour: the origin of the debate and the role of the ILO

Although deeply rooted in the history of humanity, child labour again became an issue for public debate quite recently, in the mid-1980s.¹ In that decade, thanks to extensive media coverage and increased circulation of information, the civil society of the so-called developed world became aware that the black and white pictures of children working during the Western Industrial Revolution might just as easily be taken in colour in other regions of the contemporary world.² Since then, few human rights issues have so constantly drawn the attention of public opinion as the one at hand, and the movement against child labour has continued to expand and gain support.

As often happens with problems that suddenly arouse the conscience of the general public, the initial reactions were rather instinctive and ill-coordinated. The effort involved (and still does) a range of participants, among them NGOs, trade unions, international corporations, international organizations and governments and private individuals. At the national and international levels, initiatives emerging from civil society generally paved the way for the intervention of governments and intergovernmental organizations. Private initiatives such as labelling schemes and corporates' codes of conduct mushroomed with little or only lukewarm support from the public sector. Only after some initial hesitation, spurred on by other international agencies and some of its constituents, the ILO developed a new approach to exploit its decades-long expertise and assumed a leadership role in the field.³

Indeed, the involvement of the ILO in the fight against child labour dates back to the early years of the Organization.⁴ As testified to by the Preamble to the Constitution, the enhancement of the conditions of working children (and women) was in fact

1 See A. Fyfe, *The Worldwide Movement Against Child Labour – Progress and Future Directions*, Geneva, ILO, 2007, at 5–22. Note: for brevity the publisher for the International Labour Organization is shown throughout as 'ILO', although correctly this should be 'International Labour Office', which is the secretariat of the Organization.

2 Cf. K. Basu and Z. Tzannatos, *The Global Child Labor Problem: What Do We Know and What Can We Do?*, CAE Working Paper #03-06, at 1–2.

3 See Schlemmer-Schulte (this volume).

4 See Trebilcock, Raimondi (this volume).

one of the primary reasons justifying the adoption of the founding treaty.⁵ In an initial phase, the activities of the Organization in the field almost entirely concerned standard-setting, and the approach mainly consisted of introducing a minimum age for admission to employment.⁶ The first conventions, which dealt with specific sectors such as industry, agriculture, the work of trimmers and stokers, fishing and underground work, were revised by a comprehensive text in 1973: Convention 138 on the minimum age for admission to employment. Convention 138 introduced not only a general age-limit for admission to employment, but also a number of flexibility clauses aimed at favouring ratification by less-developed countries.⁷ Nevertheless a substantial part of the membership of the Organization considered these measures unbalanced, reflecting the needs and the cultural tradition of the Western world.⁸ The process of ratification was stuck for some years and the activity of the Organization in the fight against child labour seemed to have arrived at an impasse. The approach began to change in the 1990s as the interest in problems of child labour resurfaced within public opinion. At the UN World Summit of 1995, in Copenhagen, world leaders committed themselves to 'safeguard the basic rights and interests of workers and, to this end, freely promote respect for relevant International Labour Organization conventions'.⁹ In the text of the Copenhagen Declaration on Social Development, the conventions on child labour were explicitly mentioned, alongside those on freedom of association, the right to organize and bargain collectively, and the principle of non-discrimination.¹⁰

Similarly, when the International Labour Conference adopted the much-discussed Declaration on Fundamental Principles and Rights at Work, in 1998, the effective abolition of child labour was included amongst the four fundamental principles of the Organization, together with the freedom of association and the right to collective bargaining; the elimination of forced or compulsory labour and the elimination of discrimination in respect of employment and occupation.¹¹ Merely by membership of the Organization, Member States were therefore bound to respect those principles, irrespective of their ratification of the relevant conventions.

The Declaration marked the emergence of a new approach centred upon the creation of priorities in the activity of the ILO. Such an approach was implemented in the field of child labour by the subsequent adoption of Convention 182 on the Worst Forms of Child Labour in 1999.¹² Convention 182 aimed to complement (not substitute for) Convention 138 on the minimum age by identifying the four worst forms of child labour to be targeted for immediate eradication.

5 See Trebilcock, Raimondi (this volume).

6 See Borzaga (this volume).

7 *Ibid.*

8 *Ibid.*

9 See *Report of the World Summit on Social Development*, 19 April 1995, A/CONF.166/9, available at <<http://daccessdds.un.org/doc/UNDOC/GEN/N95/116/51/PDF/N9511651.pdf?OpenElement>>.

10 *Ibid.*

11 See Swepston (this volume).

12 See Rishikesh (this volume).

In principle, the criticism of prioritization is as easy as effective. Creating priorities inevitably means ranking the rest as non-priorities. In this sense, it has been pointed out that the logic of the Declaration on Fundamental Principles and Rights at Work runs the risk of undermining the legal value of the obligations deriving from the ILO Conventions that do not fall under the scope of the four ‘fundamental’ principles.¹³ However, concerning child labour in particular, it is to be underlined that the adoption of Convention 182 achieved a number of unprecedented results. Amongst them are the shaping of a consensus on a common core of child labour at the global level and the revitalization of the activities of the Organization in the field. Convention 182 was adopted unanimously and was very rapidly ratified by almost the entire membership of the ILO. The ratification process of Convention 182 generated a renewed interest in Convention 138, which received a substantial number of ratifications in its turn. At the time of writing, 165 and 150 States are party to Conventions 182 and 138 respectively. Most importantly, the whole process revived the interest of donor countries and the channelling of a substantial amount of funds to the fight against child labour.

On the operative side, apart from these developments in standard-setting, the year 1992 brought about the creation of IPEC, the International Programme for the Elimination of Child Labour. This probably was the most significant turning point in the involvement of the ILO in the fight against child labour. With its more than 450 staff and its annual budget of some 60 million US dollars, IPEC is not only the largest single programme within the ILO, but also the most important actor in the field of technical cooperation against child labour.¹⁴ The Programme is mandated to assist Member States in fulfilling their obligations under the relevant treaties with a view to achieving the progressive elimination of child labour and the eradication of the worst forms as a priority.¹⁵ Its activities range from advocacy and awareness-raising, to technical cooperation with governments and assistance to children in regional, sub-regional and national projects.¹⁶ The focus is on favouring the adoption of national policies that remove children from hazardous work and provide alternatives for them. At present, IPEC operates in 88 countries and runs more than 250 projects.¹⁷

For a number of reasons, which will be explained below, it is argued that the ILO should continue to be the institution that coordinates the efforts of the international community against child labour in the years to come. Firstly, though, it is worth sketching the main features of the phenomenon of child labour and of the relevant legal issues.

13 See P. Alston, ‘“Core Labour Standards” and the Transformation of the International Labour Rights Regime’, *European Journal of International Law*, Vol. 15, 2004, 457 ff.

14 *IPEC Action against Child Labour 2004–2005: Progress and Future Priorities*, Geneva, ILO, 2006; Fyfe, *The Worldwide Movement*, *supra* note 1, at v.

15 *IPEC at a Glance – Fact Sheet*, available at <www.ilo.org/childlabour>.

16 *Ibid.*

17 *Ibid.*

1.2 Child labour: a multidimensional issue

Articles and scholarly works on child labour routinely describe the problem as complex and difficult to solve. It seems fair to assume that that is not only due to the comprehensible difficulty of each and every scholar to admit that they have been entrusted with a menial task. One can easily share at least the characterization of child labour as ‘multidimensional’.¹⁸ Here, it is submitted that this is so under three, partially overlapping, perspectives: 1) subjective multidimensionality; 2) causal multidimensionality; and 3) multidimensionality on the grounds of solutions.

1.2.1 Subjective multidimensionality

Child labour reveals its multidimensional nature from a subjective point of view as several actors, different in nature and often having different agendas, may cause the problem or contribute to the quest for a solution. It follows that understanding the scope of child labour at the global level requires a careful analysis of the role of those actors. One usually thinks of developed countries, less-developed countries, trade unions, NGOs, transnational corporations, governmental authorities, intergovernmental organizations, and so on. Somewhat paradoxically, children are seldom mentioned. The main stakeholders are usually dealt with as the object of the problem rather than a subject capable of having their say and cooperating in the quest for a solution. This is legally sanctioned by municipal legal orders, which, at least up to a certain age, regard children as largely incapable of deciding for themselves.¹⁹

For its part, international law does not change the picture significantly. International legal obligations of a customary or conventional nature are generally framed as obligations resting on States. The latter ones are legally bound to adopt legislative or operational measures with a view to eradicating child labour, but the content of those obligations is scarcely connected to the need to learn the concerns of children from their voice, let alone to empowering children to decide for themselves in some respects. A notable exception to this is Convention 182 as complemented by Recommendation 190. In fact, article 6 of the Convention obliges States Parties to ‘design and implement programmes of action to eliminate as a priority the worst forms of child labour’ and to do so ‘in consultation with relevant government institutions and employers’ and workers’ organizations, taking into consideration the views of other concerned groups as appropriate’. Article 2 of Recommendation 190 further specifies the meaning of ‘other concerned groups’, recommending that ‘the programmes of action referred to in article 6 of the Convention should be designed and implemented ... taking into consideration the views of the children directly affected by the worst forms of child labour ...’. The approach is in line with the general principle laid down by article 12 of the Convention on the Rights of the Child, according to which ‘States Parties shall assure to the child who is capable of

18 Cf. B.H. Weston and M.B. Teerink, ‘Rethinking Child Labour: A Multidimensional Human Rights Problem’, in B.H. Weston (ed.), *Child Labor and Human Rights: Making Children Matter*, London, Lynne Rienner, 2005, 3 ff.

19 Cf. Keita (this volume).

forming his or her own views the right to express those views freely in all matters affecting the child ...'. It appears, however, that these requirements have not been adequately implemented so far.

1.2.2 Causal multidimensionality

Child labour reveals its multidimensional nature also with respect to the causes lying at the basis of the problem and the factors impeding its solution; amongst them, poverty is universally recognized as a major cause for child labour. Recognition of its role as a determinant of the problem is so widespread that affirming that child labour is inextricably connected to the economic situation of a given region has become a truism. Indeed, poverty is often employed as a catch-all concept that includes reference to several factors such as, for instance, parents' illiteracy, insufficient adult wages, lack of schooling, natural disasters and endemic armed conflicts.²⁰ Somewhat inevitably, reference to 'poverty' often involves the assumption that child labour is not a deliberate choice of the children and the families, but the outcome of necessity.²¹

However, empirical studies demonstrate that child labour is not exclusively determined by market forces and economic factors: the overall picture is rather more complicated.²² Child labour reveals its intricacies also in cultural terms. In every society, self-respect and social recognition are strictly related to the position of the individual in terms of occupation and social function. In traditional societies, some forms of child labour, far from being considered a scourge, often play a fundamental role in education, socialization and rites of passage.²³ In this perspective, it goes without saying that the role of children in a society cannot be conceived of as an independent factor, as it usually reflects the structure of a social organization that has developed over the centuries. It is therefore fundamental that the cultural and moral implications of the fight against child labour be carefully assessed and discussed.²⁴ Without such a debate, the fight against child labour runs the risk of bringing about the uncritical imposition of dominant values alien to the societies on which they are imposed.

Amongst the causes of child labour, and of virtually every issue connected to the condition of workers and social rights in general, the word 'globalization' crops up *ad nauseam*. It has been pronounced so often by scholars, politicians, and journalists that its meaning, provided that it ever had a precise one, seems to have

20 SIMPOC/IPEC, *Investigating the Worst Forms of Child Labour: A Synthesis Report of Selected Rapid Assessments and National Reports*, Geneva, ILO, 2005, at 7–10, 13, 17–18, 22.

21 K. Basu, *Child Labor and the Law: Notes on Possible Pathologies*, Harvard Institute of Economic Research, Discussion Paper No. 2052, at 3, available at <<http://post.economics.harvard.edu/hier/2004papers/2004list.html>>.

22 IPEC, *Les déterminants du travail et de la scolarisation des enfants: les enseignements des enquêtes biographiques du Burkina Faso et du Mali*, Geneva, ILO, 2007.

23 Cf. Keita (this volume).

24 V.A. Zelizer, *Pricing the Priceless Child: The Changing Social Value of Children*, Princeton NJ, Princeton University Press, 1994.

dissolved.²⁵ It has been rightly observed that the word is now commonly used as a generic description of present times.²⁶ It is not the purpose of this chapter to come up with a conceptualization of globalization,²⁷ but one has to recognize that some of the features of the phenomenon are directly relevant to child labour. Perhaps, a safe assumption to start with is that, whether good or bad, globalization is widely perceived as inevitable and has dramatically improved the ability of capital and finance to cross borders. By contrast, such is not the case for the large majority of workers. Whereas the world is a village for capital and a globalized multilingual elite, the opposite is true for a localized multitude of people.²⁸ For them, crossing the borders to improve their working conditions is often not an option. It is clear that there are winners and losers in a globalized world and that working children, probably the most fragile part of a society, tend to be amongst the latter category.

It is commonplace to count amongst the effects of globalization, and of the widespread use of new technologies, our changing perception of space and time. In a globalized world distances are eroded and that may generate paradoxical results. If, on the one hand, globalization and, in particular, the increased mobility of capital seem to aggravate the problem of child labour or at least to complicate the quest for a solution to it, on the other hand the very existence of a worldwide movement against child labour is in itself a product of globalization.

1.2.3 Multidimensional solutions

In such a framework it seems inevitable to conclude that, as far as the dimension of solutions is concerned, the fight against child labour must be conducted also at the international level. Whereas the adoption of concrete measures to eradicate the phenomenon often falls under the domain of state jurisdiction, the coordinating function of international actors and of international law is essential.

In any case, it should also be noted that the quest for a solution to a problem that has different determinants requires recourse to different tools. Simply put, a multidimensional issue requires multidimensional answers.

As mentioned above, child labour is to a large extent determined by economic factors. Solutions to the problem are therefore inevitably connected to the enhancement of the economic development of a given region and to the elimination of poverty. Legally speaking, that leads to the threadbare and fundamental issues connected to economic development and the nature of the obligations deriving from socio-economic rights. One might even wonder what the role of legal measures could be when the priority is simply to initiate a favourable economic cycle. In this regard neoclassical economists may take the view that the legal regulation of child

²⁵ Z. Bauman, *Globalization: The Human Consequences*, New York, Columbia University Press, 2000, at 1–3.

²⁶ J. Osterhammel and N.P. Petersson, *Geschichte der Globalisierung. Dimensionen, Prozesse, Epochen*, Munich, C.H. Beck, 2003, at 7.

²⁷ On the definition of globalization, see D. Zolo, *Globalization: An Overview*, Essex, ECPR Press, 2007, at 1–5.

²⁸ Bauman, *Globalization*, *supra* note 25, at 1–3.

labour is merely an obstacle to the efficient functioning of the market. Indeed, the proposition that in a situation of despair and severe economic crisis, everyone might be better off, including children, without any form of legal regulation seems to have some merits. One should take into account that the elimination of child labour does not necessarily imply the enhancement of child welfare.²⁹

Should one conclude that legal regulation, with its inevitable rigidities and rhetorical features, is useless and may even be counterproductive, and that the adoption of the appropriate economic policies is in itself sufficient?

In fact, from a theoretical point of view, child labour has mainly attracted the attention of economists, social scientists, and historians whereas jurists, with a few notable exceptions, have stood on the sidelines. One might perhaps think that the latter ones are persuaded that the matter is to be confined to the political arena or left to wishful thinkers. It is quite clear that a prohibition on child labour will never be sufficient in itself to eliminate a problem rooted in economic and cultural factors and that the aim of legal measures cannot be to transform a child worker into a starving child. A blanket prohibition, when not combined with measures aimed at addressing the very roots of the problem and assisting children who leave child labour, is frequently useless. In many circumstances, concrete steps such as the supply of free meals to school pupils or incidental factors such as the adoption of new technologies and the reduction of fertility rates might be more significant than the adoption of a new legal instrument. Empirical experiences, in particular, demonstrate that the raising of the age of compulsory schooling within the context of a system that provides free education of good quality is one of the most effective strategies to reduce the incidence of child labour.³⁰

Yet carefully drafted legal provisions, when part of a wider plan of action, are an essential component of that wide array of measures that might contribute to the elimination of child labour. Legal regulation can perform different functions in the fight against child labour. Some legal measures solemnly declare priorities and objectives, others sanction unacceptable behaviours, and yet others channel resources into some typologies of endeavours. Moreover, law might play an essential ancillary role to the adoption of economic policies when the economy is trapped in self-perpetuating

29 See Basu, *Child Labor and the Law*, *supra* note 20, at 7. One might think of the children working in bonded labour. When interviewed by the ILO, they revealed that they considered themselves better off in such exploitative working situations than when they lived with their families and they lacked food. See SIMPOC/IPEC, *Investigating the Worst Forms of Child Labour*, *supra* note 20, 2005, at 14.

Along the same lines, one might recall the so-called 'export processing zones'; that is, specific districts in developing countries in which the protective legislation for workers might be temporarily suspended or reduced so as to attract foreign investment. The empirical evidence demonstrates that workers are generally willing to move to those areas in order to find jobs and working conditions that are not available anywhere else in the country. On this latter point, see K. Basu, *Global Labor Standards and Local Freedoms*, WIDER Annual Lecture 7, UNU-WIDER, 2003, at 6–8.

30 See IPEC, 'Education as an Intervention Strategy to Eliminate and Prevent Child Labour', available at <www.ilo.org/public/english/region/asro/bangkok/apec/download/edu_strat.pdf>.

situations of extensive use of child labour.³¹ In this context, international law may function as a coordinating tool ensuring that the objectives and the strategies of the fight against child labour are shared at the global level. It is common knowledge that in a globalized world decisions are often taken at the global level and that the room for manoeuvre of national authorities is increasingly reduced. That clearly poses the problem of the democratic legitimacy of international actors and the mechanisms of international law might not seem flawless in this respect. As has been repeatedly noted, the renewed interest in the elimination of child labour might be read in the context of the pursuit of a protectionist agenda by Western countries to the detriment of developing ones: The whole issue of child labour would constantly run the risk of falling prey to the interests of powerful lobbies.³²

It is, however, submitted that in sensitive issues such as child labour, which concerns the most vulnerable sector of society and, at the same time, a sector that is crucial for its future development, the task of governing globalization must not be abandoned. Difficult as it may be, we are persuaded that the challenge of defining new mechanisms and a more democratic international order should be taken up. Through an incremental process, it seems feasible to identify a common ground even at the global level. The widespread rejection of the worst forms of child labour by the constituents of the ILO, that is, governments, workers and employers of the world, testifies to this.

1.3 Child labour: the quest for a definition

International law does not provide a clear definition of child labour. That comes as no surprise in view of the heterogeneity of the international community and the different political agendas of its members, which are often difficult to reconcile. For those same political, economic and cultural reasons that have long impeded the adoption of effective measures against child labour, the agreement on a comprehensive definition has not been an option even in recent times.

As is often the case with highly controversial issues, identifying common ground can only be possible through an incremental approach. In a very down-to-earth perspective, international law often crystallizes international consensus on a specific aspect of the matter when the time is ripe to do so, step by step through the adoption of instruments that are limited in scope.³³ In line with the decentralized nature of the international community, different forums and organizations are involved in the

31 The concept of multiple equilibria has been applied to child labour to demonstrate not only that market forces will not always reduce the incidence of the phenomenon but that they sometimes even may aggravate its scope. A vicious cycle might be interrupted by the adoption of adequately drafted legal sanctions, altering the ratio of adults' wages and childrens' wages. See K. Basu and P.H. Van, 'The Economics of Child Labour', *American Economic Review*, 1998, 412 ff.

32 Cf. Basu, *Global Labor Standards*, *supra* note 29, at 2.

33 As has happened, for instance, in the case of international terrorism. See A. Gioia, *The UN Conventions on the Prevention and Suppression of International Terrorism*, in G. Nesi (ed.), *International Cooperation in Counterterrorism*, Aldershot, Ashgate, 2006, 1 ff.

effort. Eventually customary law may emerge, but the assessment must be made very carefully, as the ratification of conventional instruments cannot be easily considered evidence of States' *opinio juris*.³⁴

Along these lines, the international definition of child labour has emerged through the stratification of different legal instruments having different scope and object. Together with the ILO, different organizations at the global and the regional level took part in standard-setting: the UN, the OCDE, the European Union, the MERCOSUR and the Council of Europe are amongst them.³⁵ For a long time the approach of the ILO centred on the question of what forms of economic activity are to be precluded to children below a certain age. Later, four categories of worst forms of child labour to be eradicated immediately were singled out. But the issue of child labour is touched upon in different perspectives in other international legal instruments. Under specific conditions, some of the worst forms of child labour, for instance, can be qualified as international crimes *inter alia* under the Statute of the International Criminal Court.³⁶ Other worst forms of child labour, such as slavery and practices similar to slavery, are the objects of widely ratified specific conventions and of long-standing peremptory customary norms.³⁷ The sale of children, child prostitution and child pornography as well as the involvement of children in armed conflict are the object of two recently adopted and widely ratified additional protocols to the UN Convention on the Rights of the Child.³⁸ Moreover, several international instruments sanction a number of obligations of States Parties (and the corresponding rights of the children), which are more or less strictly related to child labour.³⁹ Article 32 of the Convention on the rights of the child is directly relevant as it obliges States Parties to 'recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development'. Other international rights of the individual are indirectly but clearly relevant to child labour. One might think of social rights such as the right to education, the right to health, the right to an adequate standard of living, and the right to private and family life. Those are rights pertaining to each individual that assume a special meaning with regard to the situation of children and to child labour. They can be seen as preconditions for addressing the roots of the phenomenon and giving the fight against it a genuine anti-rhetorical dimension.⁴⁰

34 See R.R. Baxter, 'Treaties and Custom', *Recueil des cours de l'Académie de droit international de la Haye*, 1970, 57–74.

35 See Fodella (this volume); Hartwig (this volume); Sanguinetti-Raymond (this volume).

36 Rome Statute of the International Criminal Court, art. 8(2)(b), xxii, xxvi; art. 8(2)(d), vi, vii. The Statute is available at <www.icc-cpi.int/legaltools>.

37 See Sanna (this volume).

38 See Table of Legal Instruments this volume.

39 See Fodella (this volume).

40 Amongst the international treaties sanctioning those rights at the global and regional level one might quote the International Covenant on Social and Cultural Rights, the European Social Charter, and the African Charter on Human and Peoples' Rights.

Against this backdrop, it seems safe to assume that the core of child labour revolves around some form of exploitation of children or activities that are likely to impinge negatively on the child's education or development.

A more specific definition emerges adopting the point of view of ILO Conventions 138, on the minimum age for admission to employment, and 182, on the worst forms of child labour. The ILO instruments are certainly the more specific ones, are widely ratified nowadays, and represent the legal and policy framework for the most active international actor operating in the field. In this perspective, it should be pointed out that a dichotomy arises, as the legal framework does not exclude the fact that children legally carry out some forms of economic activity. A fundamental distinction can therefore be drawn between 'child work' and 'child labour'. The first concept identifies those economic activities carried out by children that are compatible with the provisions of the relevant treaties – in a nutshell, those activities that are not detrimental to the children's health, personal development, education, growth and so on. 'Child labour', in contrast, identifies any kind of employment or work carried out by children without complying with the requirements of Conventions 138 and 182.

Other chapters in this book will examine the content of those instruments. For the time being, suffice it to say that Convention 138 prohibits economic activity performed by children below the age of 13 (12 in developing countries) and sets the minimum age for admission to employment at 15 (14 in developing countries) or in any case the age corresponding to the end of compulsory schooling. A number of flexibility clauses are provided concerning the economic sector, the type of work and the level of economic development of the country concerned. Light work is permitted for those reaching 13 and 14 (12 and 13 in developing countries). As has been mentioned, Convention 182 prohibits four worst forms of child labour and calls for urgent elimination of them. They are defined as follows:

- All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

Within such worst forms, a distinction is usually drawn, in the practice of the ILO, between two sub-categories. The first three worst forms are termed 'unconditional' worst forms of child labour, whereas the last one is defined as 'conditional'.⁴¹ Such

41 See, for instance, ILO, *A Future Without Child Labour – Global Report under the Follow-Up to the ILO Declaration on Fundamental Principles and Rights at Work*, Geneva, ILO, 2002, 9.

a distinction is essentially descriptive and does not reflect any difference in the legal regime regulating the four worst forms. It refers to the fact that, while the unconditional forms are always unacceptable as they are *per se* incompatible with the health and the development of children, hazardous work – the conditional form – identifies a category that is strictly dependent on the situation and the environment in which the work to be prohibited is carried out.⁴² In other words, the category of hazardous work admits the possibility that the causes of the hazard could be removed. In such a case, a worst form of child labour might turn into a legitimate form of work, provided that the minimum age requirements are complied with.⁴³

It might be argued that in this, as in many other sectors, the international legal framework is affected by an overproduction of standards. As mentioned, other instruments at the international level already addressed some of the problems lying at the basis of the worst forms of child labour. From different perspectives, they might qualify as violations of human rights or even as international crimes of the individual. It is however submitted that in the present case the inclusion in the ILO legal framework of legal concepts that were, at least in part, already regulated elsewhere, has some positive side effects.

Firstly, from a conceptual point of view, qualifying international crimes or violations of human rights as forms of work implies the full recognition of the economic dimension of those phenomena. Labelling the conduct and the facts that lie at the basis of slavery, forced prostitution and forced recruitment in armed conflict as worst forms of child labour means a step forward in the understanding of the problem. Criticizing this approach on the grounds that it could have a legitimizing effect for those conducts seems moot.⁴⁴ It is clear in the whole text of Convention 182 that the worst forms of child labour are illegal and must be eradicated immediately. Recognition of a painful reality in a legal text does not imply legalization.

Secondly, from an operational point of view, classifying such behaviour in terms of employment relationships prompts the involvement of the ILO and of its programmes in the fight against the phenomenon and in the assistance to its victims. For all the criticism of the action of the ILO and of its possible missteps, on the whole that would seem a positive result.

1.4 Child labour: the extension of the problem

An essential precondition for the adoption of effective policies against multifaceted problems is a thorough investigation of their factual dimension. Having provided a legal definition of child labour, the incidence of the problem and of its main features should be analysed so as to better evaluate the strategies to be adopted. As Recommendation 190 makes clear: ‘Detailed information and statistical data on the nature and extent of child labour should be compiled and kept up to date to serve

42 See Beqiraj (this volume).

43 That explains the ample discretion left to national authorities in identifying typologies of work that fall under this last category. See Beqiraj (this volume).

44 See Kooijmans (this volume); Noguchi (this volume).

as a basis for determining priorities for national action for the abolition of child labour ...?.

To this end, the ILO established SIMPOC in 1998, the statistical unit of IPEC. The ILO Bureau of Statistics had first carried out experimental child labour surveys in 1992–93.⁴⁵ Obviously, estimating child labour at the global level may prove very difficult as different regions and contexts are involved and data of different institutions and sources must be taken into account and compared. Collecting data on domestic work performed by children and on the worst forms of child labour is even more difficult, given their hidden nature and/or their inevitable contiguity with the black market and the world of organized crime. Nevertheless, SIMPOC statistics, often compiled in cooperation with UNICEF, are generally recognized as a point of reference in the field. Subsequent information papers on global estimates on child labour were adopted in 2000 and 2004 and became the factual basis for the two global reports adopted by the International Labour Conference in 2002 and 2006. The method employed by SIMPOC for estimating child labour may obviously be debated and put into question.⁴⁶ However, the fact remains that that method has not changed significantly over the years and that the global estimates are fully comparable.⁴⁷ Therefore, irrespective of the uncertainties surrounding the figures, the global estimates are crucial in assessing emerging trends in the field.

SIMPOC estimates reveal a considerable decrease of child labour at the global level during the period 2000–04.⁴⁸ According to SIMPOC, in 2004 there were 190.7 million economically active children in the age group 5 to 14,⁴⁹ 165.8 million of which could be classified as child labourers and 74.4 million of those latter were engaged in forms of hazardous work. Four years earlier the number of economically active children was estimated to be 211 million, of which 186.3 million were child labourers, of whom 111.3 million engaged in hazardous work. The decrease for the three groups amounted to 9.6 per cent, 11 per cent and 33.2 per cent respectively. The analysis by economic sector and by regional trends reveals clear inequalities. Child labour is to be found for the most part – 69 per cent – in agriculture, whereas industry and services account for 9 per cent and 22 per cent respectively. Most importantly, the analysis of the global trends by region underlines that the 11 per cent decrease in the number of child labourers finds its main explanation in the decline in the rate in

45 ILO, *Child Labour Surveys: Results of Methodological Experiments in Four Countries 1992–1993*, ILO/IPEC Bureau of Statistics, 1996.

46 Cf. Basu and Tzannatos, *The Global Child Labor Problem*, *supra* note 2, at 13–15.

47 Cf. ILO, *The End of Child Labour: Within Reach – Global Report under the Follow-Up to the ILO Declaration on Fundamental Principles and Rights at Work*, Geneva, ILO, 2006, at 5.

48 The following data are taken from ILO, *The End of Child Labour*, *supra* note 47, at 5–9.

49 The concept of economic activity ‘is a statistical rather than legal notion’ and ‘encompasses most productive activities undertaken by children, whether for the market or not, paid or unpaid, for a few hours or full time, on a casual or regular basis, legal or illegal; it excludes chores undertaken in the child’s own household and schooling. To be counted as economically active, a child must have worked for at least one hour on any day during a seven-day reference period’. See ILO, *The End of Child Labour*, *supra* note 47, at 6.

South America. Here the number of working children decreased from 17.4 million in 2000 to 5.7 million four years later, and the activity rate declined from 16.1 per cent to 5.1 per cent. Progress in other regions is by far less significant. In Asia and the Pacific, the activity rate went from 19.4 to 18.8 per cent; in sub-Saharan Africa the rate fell from 28.8 to 26.4 per cent.

These figures clearly demonstrate that there has been a decline in child labour in the period examined. It should however be noted that there are no available data for the so-called ‘unconditional worst forms of child labour’. Moreover, one might wonder what the actual impact of the strategies against child labour was in achieving such results or whether the economic trends are to be credited with the success. In this regard it is however worth mentioning that those countries of South America that have adopted national plans against child labour have achieved very significant results.⁵⁰ On the whole, the data do not seem to allow any assessment on whether the objective proposed by the 2006 Global Report on Child Labour – the total elimination of child labour by 2016 – is realistic.⁵¹ In any case, the achievement of this objective will only be possible by addressing effectively the problem in sub-Saharan Africa, currently the region with the highest incidence of child labour and with a huge population growth rate.⁵²

1.5 Why the ILO?

At the outset of this chapter, we maintained that, amongst the international actors operating in the fight against child labour, the ILO is the one best equipped to coordinate the efforts of the international community. Some of the following chapters will provide further elements to substantiate this statement. For the time being, suffice it to note four features of the Organization that testify to its uniqueness in the international arena and its potential in the fight against child labour. In such a field, the action of the ILO may profit by the existence of:

- a comprehensive standard-setting process
- a reliable supervisory system
- substantial expertise in technical cooperation; and
- a unique decision-making process inspired by the principle of tripartitism.

Of course, one might criticize each and every feature and identify a number of significant shortcomings. The action of the ILO against child labour is far from perfect. The legal framework reveals significant overlap, as the relevant conventions are not always coordinated with other international legal instruments. The supervisory system does not envisage an individual complaint procedure and, as is the rule with international monitoring systems, might leave the impression that it is to a large extent a paper tiger, lacking real powers of enforcement. The activities of technical cooperation are somehow patchy and clearly underdeveloped in some regions of

50 See Sanguinetti-Raymond (this volume).

51 ILO, *The End of Child Labour*, *supra* note 47, at xiii.

52 See Keita (this volume).

the world. Again, the representativeness of the constituents of the ILO might be questioned, in a world where governments are being progressively expropriated of their jurisdiction, and the organizations of the employers and workers are in deep waters when it comes to keeping contact with rapidly changing grassroots movements.

That being said, the fact remains that the action of the ILO against child labour reveals many strong points. Legal instruments are detailed and specific. They emphasize the economic dimension of the exploitation of children, thus favouring the adoption of counterstrategies. The supervisory system is polycentric and employs a variety of methods, combining political and authoritative technical bodies.⁵³ It is amongst the most effective ones at the international level. As it is comprehensible, in a field that is deeply connected to economic rights and development strategies, it mainly aims at favouring the adoption of result-oriented national policies rather than imposing sanctions bluntly in case of non-compliance. That is all the more important as the Organization combines the activities of supervision with a significant effort on the side of technical cooperation. Over the years IPEC has gained an amount of project experience in the field which is unparalleled by other international bodies. Although the amount of funding devoted to those projects is totally inadequate when compared to the magnitude of the problem, it is nonetheless considerable. Finally, for all the criticism of the way the ILO constituents deal with the 'real world' of children, it is to be underlined that the principle of tripartitism constitutes a unique attempt to introduce democratic elements in a world that needs to find new approaches to centralization. For all its shortcomings, it favours openness and the creation of linkages between public opinion, civil society and the Organization in a way that is unknown to other international organizations operating at the global level. That is essential in the fight against child labour.

53 See Trebilcock and Raimondi (this volume). See also E. Gravel, *Les mécanismes de contrôle de l'OIT: bilan de leur efficacité et perspectives d'avenir*, in J.-C. Javillier and B. Gernigon, *Les normes internationales du travail: un patrimoine pour l'avenir – Mélanges en l'honneur de Nicolas Valticos*, Geneva, ILO, 2004, 3 ff.