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The International Labour Organization's Role in Nationalizing the International Movement to Abolish Child Labor

Junlin Ho*

I. INTRODUCTION

Despite public support for ending the worst forms of child labor and increased awareness regarding the issue, child labor remains a global problem.¹ Organizations such as the International Labour Organization (“ILO”) have been attempting to address this problem by monitoring progress in various countries, collecting and publishing data on child labor, and providing technical assistance to help governments curtail child labor, particularly its worst forms.² These additional strategies have only yielded slow progress. Observers have indicated that the main problem is the ILO’s inability or unwillingness to impose enforcement measures on its members.³ Some have argued for creating a connection between world trade policies and labor standards—a trade-labor linkage—to resolve international labor violations, including the problem of child

* SB 2001, Massachusetts Institute of Technology; JD Candidate 2007, The University of Chicago. I would like to thank CJIL for editing assistance and in particular Gus Hotis for his invaluable comments. Special thanks to Derrick Ang for his support and encouragement. I would also like to thank Jenia Iontcheva Turner, whose article *Nationalizing International Criminal Law*, 41 Stan J Intl L 1 (2005), provided inspiration for the title and ideas in this Development.

¹ See US Department of State, *Trafficking in Persons Report*, 50–230 (2005), available online at <<http://www.state.gov/g/tip/rls/tiprpt/2005>> (visited Apr 22, 2006); ILO, *The End of Child Labour: Within Reach* (2006), available online at <http://www.ilo.org/public/english/standards/ipecc/about/globalreport/2006/download/2006_globalreport_en.pdf> (visited May 15, 2006); Ousseini Issa, *Gold Miners Exploit Children*, Inter Press Service (Aug 26, 2005), available online at <<http://www.globalpolicy.org/soecon/inequal/labor/2005/0826amadou.htm>> (visited Apr 22, 2006).

² ILO, *International Programme on the Elimination of Child Labour (IPEC)* (2003), available online at <<http://www.ilo.org/public/english/standards/ipecc/intro/>> (visited Apr 22, 2006).

³ Michael J. Trebilcock and Robert Howse, *Trade Policy & Labor Standards*, 14 Minn J Global Trade 261, 274 (2005); Daniel S. Ehrenberg, *The Labor Link: Applying the International Trading System to Enforce Violations of Forced and Child Labor*, 20 Yale J Intl L 361, 389 (1995).

labor.⁴ Advocates of trade-labor linkage have argued for either a stronger enforcement mechanism within the ILO such as trade sanctions or the addition of a labor clause to the World Trade Organization (“WTO”).⁵ Both arguments have failed, however, due to lack of support for such measures within the membership of the ILO and WTO.⁶

International law advocates often envision a powerful set of global laws supported by a system of enforcement that provides “teeth” to these laws. Much like the defenders of trade-labor linkage who argue for more concrete enforcement mechanisms, many international law proponents advocate the need for a strong international court system.⁷ Some thought the creation of the International Criminal Court (“ICC”) represented the dawning of such a system, but the ICC has received only qualified support globally and in some cases, absolutely no support.⁸ Given the limited backing it has received, it is unlikely the ICC will become a strong independent international court. As the practical realities set in, one legal scholar has argued that the ICC should instead move toward becoming a hybrid court, or an international body that relies on “national authorities to enforce international criminal law.”⁹ A hybrid court can be more functional since “[a] less hierarchical international criminal justice system that relies significantly on national governments is likely to be better informed by diverse perspectives, more acceptable to local populations, and more effective in accomplishing its ultimate goals.”¹⁰

This hybrid court theory is equally salient when applied to the abolition of child labor. The WTO has explicitly rejected any sort of trade-labor linkage and there are doubts about the ILO’s ability to implement such a regime given its desire to prevent states from withdrawing their membership in the ILO.¹¹

⁴ Brian A. Langille, *Eight Ways to Think about International Labour Standards*, 31 J World Trade 27, 34–53 (1997).

⁵ See Kimberly Ann Elliott and Richard B. Freeman, *Can Labor Standards Improve under Globalization?* (Inst Intl Econ 2003); Steve Charnovitz, *The Influence of International Labour Standards on the World Trading Regime: A Historical Overview*, 126 Intl Labour Rev 565 (1987).

⁶ See Trebilcock and Howse, 14 Minn J Global Trade at 262 (cited in note 3); Jonathan P. Hiatt and Deborah Greenfield, *The Importance of Core Labor Rights in World Development*, 26 Mich J Intl L 39, 46 (2004).

⁷ See M. Cherif Bassiouni, *From Versailles to Rwanda in Seventy-Five Years: The Need to Establish a Permanent International Criminal Court*, 10 Harv Hum Rts J 11, 49–62 (1997); Bryan F. MacPherson, *Building an International Criminal Court for the 21st Century*, 13 Conn J Intl L 1, 3 (1998).

⁸ See Jack Goldsmith, *The Self-Defeating International Criminal Court*, 70 U Chi L Rev 89 (2003).

⁹ Jenia Iontcheva Turner, *Nationalizing International Criminal Law*, 41 Stan J Ind L 1, 3 (2005).

¹⁰ *Id.* at 1.

¹¹ WTO, *Understanding the WTO: Cross-Cutting and New Issues—Labour Standards: Highly Controversial*, available online at <http://www.wto.org/english/thewto_e/whatis_e/tif_e/bey5_e.htm> (visited Apr 22, 2006); Trebilcock and Howse, 14 Minn J Global Trade at 284 (cited in note 3).

Despite these enforcement issues, the ILO's tripartite structure, comprised of governments, employers, and worker groups, still allows it to effectively monitor child labor conditions and report on child labor violations.¹² Given the difficulty of reaching a multilateral international consensus, this Development argues that—much like the theory of a decentralized, hybrid international court—concerned parties should pursue a trade-labor linkage to end child labor at a national level. Although countries have already begun to implement trade-labor linkage through unilateral trade preferences and bilateral trade agreements, the use of ILO international labor standards and reports in the trade-labor linkage evaluation process represents the critical component. This Development argues that the ILO is uniquely positioned to help in nationalizing the international movement to abolish child labor. The ILO's tripartite structure gives it access to current child labor conditions in all of its member states, which, in turn, allows for more comprehensive reporting. Its history, structure, and transparency legitimize the ILO, making its standards and reporting a critical part of creating and enforcing trade-labor linkage at the national level.

This Development introduces the concept of a decentralized trade-labor link based on ILO standards and reporting as an effective means for ending child labor. Part II of the Development defines the concept of child labor and provides current statistics on the number of children involved in it, including the worst forms of child labor. Part III discusses the history and structure of the ILO, the organization's commitment to abolishing child labor, and how these factors make the ILO uniquely positioned to monitor child labor violations. Part IV lays out the principle of trade-labor linkage, the inability of the international community in creating and implementing trade-labor linkage, and how individual parties in the United States have begun to implement such a link on a national level based on ILO standards and reporting. In conclusion, the Development argues that given the practical realities of the ILO and WTO, a decentralized national system of trade-labor linkage using ILO standards and reports to determine labor compliance is a more effective means of abolishing child labor than the theory of an international trade-labor linkage.

II. DEFINING THE PROBLEM OF CHILD LABOR

Child labor is a continuing global problem. The ILO has classified four types of child labor as the "worst forms" of child labor: (1) all forms of slavery or practices similar to slavery such as the sale and trafficking of children and forced or compulsory labor including recruitment of children for armed conflict; (2) use of children in prostitution or pornography; (3) use of children for illicit

¹² Trebilcock and Howse, 14 *Minn J Global Trade* at 262 (cited in note 3).

activities such as the production and trafficking of drugs; and (4) work hazardous to the health, safety, or morals of children.¹³

In May 2006, the ILO released a report on the current status of child labor around the world. The first three types of worst form child labor are considered “unconditional worst forms” of child labor, and according to the report, the ILO estimates that 8 million children are involved in these forms of labor.¹⁴ In 2004, approximately 191 million children under the age of 15 were working; of these, over 74 million were involved in hazardous child labor—the fourth type of worst form child labor.¹⁵ The ILO further estimates that in 2000, 1.2 million children were victims of trafficking, ultimately exploited for commercial sex or put into slavery-like work conditions.¹⁶

Countries have come to recognize the growing issue of child labor and the role their governments can play in resolving the problem. The number of countries that have ratified international conventions addressing child labor concerns serves as an indicator of the increasing global commitment. The 1989 United Nations Convention on the Rights of the Child has been ratified by all but two countries—the United States and Somalia.¹⁷ The ILO Worst Forms of Child Labour Convention (No 182) and the Minimum Age Convention (No 138) have both been ratified by over 75 percent of the ILO member states.¹⁸ But just as there is support for ending child labor, there also have been incidences of countries actively practicing some of the worst forms of child labor.¹⁹ The problem is not a lack of public support for ending child labor; rather, lack of enforcement upon discovery of violations has slowed the reform process.²⁰

¹³ ILO, *Worst Forms of Child Labour Convention*, 1999, Convention 182, art 3, available online at <<http://www.ilocarib.org.tt/childlabour/c182.htm>> (visited Apr 22, 2006).

¹⁴ ILO, *The End of Child Labour* at 43 (cited in note 1).

¹⁵ *Id.* at 6.

¹⁶ UNICEF, *End Child Exploitation: Child Labour Today* (2005), available online at <http://www.unicef.org.uk/publications/pdf/ECECHILD2_A4.pdf> (visited Apr 22, 2006).

¹⁷ Human Rights Education Associates, *The Rights of Children & Youth*, available online at <<http://www.hrea.org/learn/guides/children.html>> (visited Apr 22, 2006).

¹⁸ ILO, *ILOLEX Database of International Labour Standards*, available online at <<http://www.ilo.org/ilolex/english/newratframeE.htm>> (visited Apr 22, 2006).

¹⁹ ILO, *Forced Labour Persists in Myanmar: ILO Applies Extraordinary Constitutional Procedures*, Doc No ILO/00/9 (Mar 29, 2000), available online at <<http://www.ilo.org/public/english/bureau/inf/pr/2000/9.htm>> (visited Apr 22, 2006).

²⁰ Myanmar is a good example of the ILO's inability to impose enforcement measures upon child labor violators despite the “egregious and well documented” violations. Elliott and Freeman, *Can Labor Standards Improve under Globalization?* (cited in note 5).

III. THE ILO AS MONITOR OF CHILD LABOR VIOLATIONS

In order to understand why the ILO is uniquely situated to monitor and report on child labor violations, we must look at the history and framework of the ILO. The organization dates back to 1919 when it was created by the Treaty of Versailles. From the start, its mission has focused on the promotion of social justice through international labor rights.

Since its creation, the ILO has always had a tripartite structure including governments, employers, and workers' groups. The main body of the ILO is the Conference, which is comprised of all the member states. Each member state in the Conference is represented by two government representatives, one employer representative, and one worker representative. The ILO is managed by its Governing Body, which makes decisions on ILO policy. Both the Conference and the Governing Body consist of equal numbers of government representatives and employer and worker representatives. Membership in the ILO is purely voluntary and the organization balances its role as monitor and reporter of labor conditions and violations in member states with the desire to ensure that countries do not withdraw from the ILO.

The ILO's tripartite structure allows it to effectively monitor and report child labor conditions in various countries. Employer and worker groups can raise complaints regarding any governmental violations of previously ratified international labor conventions. The organization's constitution lists out an extensive process for reporting labor violations, monitoring labor conditions, and issuing recommendations on ways to resolve violations and improve working environments.²¹

The ILO is structured with significant monitoring and reporting powers, but Article 33 of the ILO's Constitution also gives the organization certain enforcement powers.²² Historically though, the ILO has only invoked its Article 33 provision once.²³ Instead, the organization has relied on less confrontational methods such as public shaming through documentation in ILO reports and technical expertise and financial assistance to promote compliance with its international labor standards.²⁴

²¹ See ILO Const (1994), arts 24–32, available online at <<http://www.ilo.org/public/english/about/iloconst.htm>> (visited Apr 22, 2006).

²² "In the event of any Member failing to carry out within the time specified the recommendations . . . the Governing Body may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith." Id at art 33.

²³ ILO, *Forced Labour Persists in Myanmar* (cited in note 19).

²⁴ Trebilcock and Howse, 14 *Minn J Global Trade* at 274 (cited in note 3); see also Ehrenberg, 20 *Yale J Int'l L* at 388–89 (cited in note 3).

Abolition of child labor is now considered part of a core set of labor principles. International labor standards have traditionally been created by the ILO through a system of conventions that required ratification by each member state in order to be binding upon that government. But in 1998, the ILO changed this entire process by declaring four “fundamental” labor rights binding upon its members regardless of convention ratification. The four principles include: (1) freedom of association and free collective bargaining; (2) the elimination of forced or compulsory labor; (3) the abolition of child labor; and (4) the elimination of employment discrimination. In so declaring, the ILO reaffirmed its commitment to ending child labor and set forth an obligation upon its members “to promote and to realize” these principles.²⁵ The Declaration was unanimously ratified by the ILO’s member states.²⁶ As a further indication of international support, over 150 of the ILO’s 178 member states have ratified the convention on the Worst Forms of Child Labour since its adoption in 1999.²⁷ This number is well above the ILO’s average of twenty ratifications per convention adopted in the last twenty-five years.²⁸

The ILO remains focused on child labor issues and encourages compliance from its member states through a system involving the mild stick of public shaming and the mild carrot of financial assistance. Part of this process involves issuing numerous reports documenting local labor conditions including both improvements and continued violations in member states. Its tripartite structure gives the ILO several benefits—the workers’ groups give it access to information on current labor conditions, while the employers’ groups and governments lend it legitimacy with both private and public actors. Due to its existing global monitoring framework and its ability to communicate with both private and public actors that are in violation of labor standards, the ILO is uniquely positioned to monitor and report on child labor violations.

²⁵ *ILO Declaration on Fundamental Principles and Rights at Work*, 86th Sess (June 1998), available online at <http://www.ilo.org/dyn/declaris/DECLARATIONWEB.static_jump?var_language=EN&var_pagename=DECLARATIONTEXT> (visited Apr 22, 2006); see Brian A. Langille, *Core Labour Rights—The True Story (Reply to Alston)*, 16 *Eur J Intl L* 409, 414–15 (2005); Sandra Polaski, *Protecting Labor Rights through Trade Agreements: An Analytical Guide*, 10 *UC Davis J Intl L & Poly* 13, 17 (2003).

²⁶ Hiatt and Greenfield, 26 *Mich J Intl L* at 43 (cited in note 6).

²⁷ ILO, *ILOLEX Database of International Labour Standards* (cited in note 18).

²⁸ See Langille, 16 *Eur J Intl L* at 425 (cited in note 25).

IV. TRADE-LABOR LINKAGE

A. HISTORY

Advocates of creating international trade-labor linkage have been around for many years.²⁹ Nevertheless, not much has occurred at the international level thus far because international trade-labor linkage remains a contentious theory.³⁰

Supporters of a trade-labor linkage have raised both competition-based and human rights-based arguments. The competition argument is based on unfair competition and a race to the bottom theory. Countries with lower labor standards have lower production costs, which give them a competitive advantage. Thus, countries will race to lower their standards in order to produce lower cost products, allowing them to remain competitive³¹ and attract foreign investment. The human rights argument is that violations of core labor rights, as enumerated by the ILO in its 1998 Declaration, constitute human rights violations. By imposing a trade-labor linkage, nations are protecting the oppressed, including children forced into labor, in countries that violate these core labor standards.³² When applied to child labor, the human rights-based argument appears to have greater relevance, particularly with regard to the worst forms of child labor.

The counterargument against trade-labor linkage relies on the theory of protectionism. Defenders of this view, such as the WTO, argue that creating a trade-labor link would allow more developed countries to “protect” their interests by preventing less developed countries from maximizing their comparative wage advantage. This, in turn, would slow economic growth in the less developed countries—growth that could ultimately lead to improved living conditions, including better labor standards.³³ But the theory does not address the worst forms of child labor—work involving the use of children in forced labor, prostitution, illicit activities, or hazardous tasks. It is difficult to argue that countries seeking to protect children from such activities are engaging in protectionist behavior. Scholars have observed that the protectionism argument

²⁹ For a general discussion, see Charnovitz, 126 *Intl Labour Rev* 565 (cited in note 5).

³⁰ See Kofi Addo, *The Correlation between Labour Standards and International Trade: Which Way Forward?*, 36(2) *J World Trade* 285 (2002); Keith E. Maskus, *Should Core Labour Standards be Imposed through International Trade Policy?*, World Bank, Policy Research Working Paper No 1817, available online at <http://wdsbeta.worldbank.org/external/default/WDSContentServer/IW3P/IB/2000/02/24/000009265_3971110141359/Rendered/PDF/multi_page.pdf> (visited Apr 22, 2006).

³¹ Trebilcock and Howse, 14 *Minn J Global Trade* at 266–70 (cited in note 3).

³² *Id.* at 271–72.

³³ See Hiatt and Greenfield, 26 *Mich J Intl L* at 46–47 (cited in note 6).

is being raised less often now as policy makers focus more on the human rights aspect that could be achieved through trade-labor linkage.³⁴

B. INTERNATIONAL TRADE-LABOR LINKAGE

Trade-labor linkage has been discussed frequently in the international arena but to no avail. In its 1996 Singapore Ministerial Declaration, the WTO stated: "We renew our commitment to the observance of internationally recognized core labour standards. The [ILO] is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them."³⁵ In so doing, the WTO moved the labor discussion into the realm of the ILO and has since refused to consider any sort of trade-labor linkage.³⁶

To the ILO's credit, when the WTO shifted the focus of labor issues to the ILO, the organization responded by undertaking additional conventions and initiatives; however, the organization's effectiveness has been hampered by its own set of organizational issues. The ILO's tripartite structure makes it uniquely able to monitor and report on labor conditions in its member states, but it has rarely utilized its Article 33 enforcement powers against any members found to be violating child labor standards. Observers have speculated that this is due to concerns that levying complaints against certain countries could be viewed as hostile acts leading to retaliatory complaints being filed or the voluntary withdrawal of the country from ILO membership.³⁷ Some commentators have attributed the ILO's success to the very fact that membership is voluntary; they believe the organization would lose membership or that members would use their votes to prevent additional initiatives from occurring if the ILO moved to a sanctions-based system.³⁸ Due to structural constraints, vesting additional enforcement powers in the ILO beyond its current Article 33 powers seems unlikely to create successful trade-labor linkage.

C. NATIONAL TRADE-LABOR LINKAGE BASED ON ILO STANDARDS

Given the failure to create an international multilateral agreement on trade-labor linkage and the likely continued opposition to the creation of such an agreement, this Development asserts that the international community should look elsewhere for trade-labor linkage. The proposal is for parties to focus

³⁴ Trebilcock and Howse, 14 *Minn J Global Trade* at 300 (cited in note 3).

³⁵ WTO, *Singapore Ministerial Declaration* § 4, WTO Doc No WT/MIN(96)/DEC (1996).

³⁶ See Hiatt and Greenfield, 26 *Mich J Intl L* at 46-47 (cited in note 6).

³⁷ See Ehrenberg, 20 *Yale J Intl L* at 389 (cited in note 3).

³⁸ See Langille, 31 *J World Trade* at 49-50 (cited in note 4).

instead on the creation of decentralized, national trade-labor linkage that incorporates international core labor standards promulgated by the ILO—specifically, the standard to abolish child labor. The legitimacy of the mechanism lies in the method of monitoring compliance, which could be based on the ILO's monitoring and reporting systems. Non-compliance with agreements could be determined, not by individual parties, but by the ILO, or such determinations could at least be based on reports issued by the ILO.

Public and private parties have already implemented successful national level measures that create trade-labor linkage. This section analyzes some of the public measures that have been implemented by the United States, which include unilateral trade preferences and bilateral trade agreements.³⁹

1. Unilateral Trade Preferences

The United States has implemented a generalized system of preferences (“GSP”), which provides trade benefits to countries that meet certain requirements including compliance with international labor standards. But the GSP, like the ILO, has faced enforcement issues.⁴⁰ In addition, once the carrot of trade benefits is withdrawn, the developing country loses all incentive to bring its workforce into compliance with international labor standards.

The US GSP system has been criticized for the arbitrariness of its implementation.⁴¹ This is not surprising given that many clauses in the statute allow the president significant discretion in providing trade benefits to countries that violate international labor standards. But the President's discretion is significantly curtailed with regard to child labor. The GSP has adopted the ILO's

³⁹ This Development focuses on the public measures implemented by the US government. Although public measures implemented by other governments fall outside the scope of this Development, they are equally relevant to the theory of creating a national trade-labor linkage. In fact, the European Community was the first government to adopt a unilateral trade preference system and has since incorporated the ILO's core labor standards into the preferences. See Europa, *Generalised System of Preferences—User's Guide to the European Union's Scheme of Generalised Tariff Preferences*, available online at <<http://europa.eu.int/comm/trade/issues/global/gsp/gspguide.htm>> (visited Apr 22, 2006). In addition, private measures are becoming increasingly important as companies implement corporate initiatives to reduce or eliminate child labor in the supply chain. Actions by non-US public actors and private groups, although not discussed in this Development, are likely to continue to play an important role in creating national trade-labor linkage.

⁴⁰ See Lisa G. Baltazar, *Government Sanctions and Private Initiatives: Striking a New Balance for U.S. Enforcement of Internationally-Recognized Workers' Rights*, 29 Colum Hum Rts L Rev 687, 691 (1998) (“[I]n spite of ILO findings that Malaysia has failed to implement ILO Conventions for over twenty years, Malaysia remains a member of the ILO. Similarly, the U.S. continued trade preferences to Malaysia for years in spite of ample evidence of such violations.”).

⁴¹ Id at 690.

definition of worst forms of child labor,⁴² and a country is ineligible for trade benefits under the GSP if it “has not implemented its commitments to eliminate the worst forms of child labor.”⁴³ The only time the President can override this clause in the national economic interest of the United States is when the worst form of child labor at issue is hazardous work.⁴⁴ If a developing country is engaged in any unconditional worst form of child labor, it is automatically excluded from participating in the US GSP.

In the case of Myanmar (formerly known as Burma), a country that has continuously engaged in the worst forms of child labor, the United States has taken further unilateral action. In 2003, it passed the Burmese Freedom and Democracy Act (“BFDA”) banning all imports from Myanmar.⁴⁵ The Act specifically cites the ILO Governing Body’s resolution in 2000 regarding Myanmar, the only time the ILO has ever invoked its Article 33 powers.⁴⁶

Myanmar is an example of trade-labor linkage that failed at the international level but has been successfully implemented unilaterally by the United States on a national level. The ILO has long documented Myanmar’s continuous violations of international labor standards.⁴⁷ After numerous reports rejected by the Myanmar government as false, and without any improvements in the working conditions (which included children involved in forced labor for the military), the ILO exercised its Article 33 powers in 2000 and recommended to the Conference that further action be taken to secure compliance.⁴⁸ Despite these recommendations, the ILO has not implemented any enforcement measures against Myanmar. In fact, instead of the ILO threatening Myanmar with the public shame of expulsion from the ILO, the Myanmar government is threatening to withdraw from ILO membership. At the ILO’s March 2006 Governing Body meeting, the ILO stated it would “review further action to be

⁴² 19 USC § 2467(6) (2000).

⁴³ 19 USC § 2462(b)(2)(H) (2000).

⁴⁴ 19 USC § 2462(b)(2) (2000).

⁴⁵ Burmese Freedom and Democracy Act of 2003, Pub L No 108-61, 117 Stat 864 (2003), codified at 50 USC § 1701 (Supp 2003).

⁴⁶ See *id.* at § 2(10).

⁴⁷ See ILO, *Report of ILO Commission of Inquiry Reveals Widespread and Systemic Use of Forced Labour in Myanmar (Burma)*, Doc No ILO/98/32 (Aug 20, 1998), available online at <<http://www.ilo.org/public/english/bureau/inf/pr/1998/32.htm>> (visited Apr 22, 2006); ILO, *Forced Labour Persists in Myanmar* (cited in note 19).

⁴⁸ *Id.*; see Jeremy Sarkin and Marek Pietschmann, *Legitimate Humanitarian Intervention under International Law in the Context of the Current Human Rights and Humanitarian Crisis in Burma (Myanmar)*, 33 *Hong Kong L J* 371, 383 (2003).

taken” without indicating any sort of concrete measures it intended to pursue against Myanmar.⁴⁹

While the ILO has been unable to generate consensus on a proper international enforcement measure against Myanmar, its standards have been incorporated into the BFDA. Specifically, the US import ban will remain in place until certain conditions have been met, including a requirement that the government “no longer systematically violates workers rights, including the use of forced and child labor, and conscription of child-soldiers.”⁵⁰ This determination is to be made by the Secretary of State “after consultation with the ILO Secretary General.”⁵¹

Several points can be made regarding the trade-labor link created by the BFDA. First, although the United States has acted unilaterally, the BFDA has brought a certain level of enforcement to the ILO’s findings, which is more than the ILO has been able to do thus far. In addition, despite its unilateral nature, the Act has a higher degree of legitimacy because it relies on the findings of the ILO, a multilateral international organization.⁵² Finally, the United States’ action at the national level has freed the ILO to continue doing what it does best—monitoring and reporting on labor violations using a cooperative approach. The ILO can continue to try and maintain a dialogue with Myanmar without worrying about balancing its reporting and monitoring tasks against its role as an enforcer.

2. Bilateral Trade Agreements: The US–Cambodia Bilateral Textile Agreement

The US–Cambodia Bilateral Textile Agreement incorporated trade benefits that were triggered by compliance with Cambodian laws and international labor standards. Passed in 1999, renewed in 2001, and ultimately expired in 2004, the agreement adopted a carrot approach to trade-labor linkage.⁵³ Specifically, if Cambodia’s garment factories complied with Cambodia’s own labor laws and

⁴⁹ ILO, ILO Governing Body Concludes 295th Session—Considers Labour Situation in Myanmar and Belarus, As Well As Globalization and Migration Issues, Doc No ILO/06/10 (Mar 31, 2006), available online at <<http://www.ilo.org/public/english/bureau/inf/pr/2006/10.htm>> (visited Apr 22, 2006).

⁵⁰ Burmese Freedom and Democracy Act of 2003 § 3(a)(3)(A), 117 Stat at 864 (cited in note 45).

⁵¹ Id.

⁵² See Trebilcock and Howse, 14 *Minn J Global Trade* at 282–83 (“The absence of criticism suggests that there is tolerance of unilateral action by the international community where that action is preceded by a clear multilateral determination that the country concerned is an egregious violator of core labor rights and that cooperative approaches for addressing the situation have been exhausted.”) (cited in note 3).

⁵³ Hiatt and Greenfield, 26 *Mich J Intl L* at 55 (cited in note 6).

international labor standards, then the country was entitled to a 14 percent annual increase in its textile quota.⁵⁴ The unique aspect of the agreement was that instead of the United States making this determination in isolation, which could be viewed as arbitrary, or basing the determination on private company disclosures or NGO monitoring, both of which could be viewed as biased, the two countries agreed to use the ILO to determine compliance. The ILO monitored nearly all of Cambodia's 230 textile factories for labor compliance.⁵⁵

Although Cambodia has a fairly stringent labor code, which it implemented in 1996, the country lacked the resources to monitor and enforce the law.⁵⁶ The Bilateral Textile Trade Agreement created incentives for private garment factories to voluntarily comply with national laws and international standards without any further action by the Cambodian government. In 1998, Cambodia's textile exports to the United States accounted for \$308 million in trade. By 2001, this number had increased to \$650 million due to the increase in Cambodia's allotted quota from labor compliance.⁵⁷

The Bilateral Trade Agreement has been credited with improving worker conditions in Cambodia's textile industry. In a survey of Cambodia's largest textile buyers in 2004, the buyers indicated that Cambodia had the best labor standards of all the Asian countries with which they did business.⁵⁸ Despite the end to the Bilateral Trade Agreement, the ILO continues to monitor factory compliance in Cambodia. Private companies that had pulled out of Cambodia due to labor violations have begun to return to certain factories with the requirement that these factories show their ILO monitoring reports to the companies.⁵⁹ The companies view the ILO favorably and its monitoring reports grant legitimacy and comfort to the companies' decisions to return to Cambodia.⁶⁰ The Bilateral Trade Agreement is an example of trade-labor linkage at the national level using ILO monitoring and reporting systems. The Agreement successfully implemented labor improvements in Cambodia instead of waiting for international trade-labor linkage, which has yet to happen. The ILO was able to provide legitimacy to an agreement between two public actors,

⁵⁴ Id at 56.

⁵⁵ Id.

⁵⁶ See Kevin Kolben, *Trade, Monitoring, and the ILO: Working to Improve Conditions in Cambodia's Garment Factories*, 7 Yale Hum Rts & Dev L J 79, 83 (2004) (citing numerous typical violations).

⁵⁷ Id at 82.

⁵⁸ ILO and Better Factories—Cambodia, *World Bank Survey of Textile and Garment Buyers Sourcing in Cambodia* (2004), available online at <<http://www.betterfactories.org/content/documents/WB%20survey.pdf>> (visited Apr 22, 2006).

⁵⁹ Kolben, 7 Yale Hum Rts & Dev L J at 105–06 (cited in note 56).

⁶⁰ Id.

and the benefits of its monitoring and reporting process have now trickled over into the private arena.

V. CONCLUSION

Many international policymakers and lawmakers argue for an international trade-labor link. But given the lack of consensus on the theory and the absence of a multilateral organization with the appropriate structure—much like the theory of a decentralized, hybrid international court—a trade-labor linkage would be better pursued at the national level. Developed countries such as the United States can create unilateral or bilateral trade arrangements through which trade benefits or sanctions are not determined by individual countries but by ILO findings. The United States has already incorporated ILO findings into several of its trade agreements. Since the ILO's tripartite structure makes it uniquely able to provide legitimacy and transparency to this process, this Development proposes that countries should continue to pursue trade-labor linkage at the national level and make trade benefits or sanctions explicitly linked to ILO assessments and reports.

The trade-labor link is particularly relevant in the context of child labor, especially in regard to its worst forms. It is difficult to argue that countries imposing such a linkage are doing so for protectionist motives and not for the sake of human rights, but even with regard to the worst forms of child labor, the creation of international trade-labor linkage has failed. Although a strong international system has not been feasible in this situation, the goal of improving child labor conditions globally can still be achieved through a nationalized process. By nationalizing the trade-labor linkage for child labor, countries can utilize the ILO's multilateral structure for determining labor violations while freeing up the ILO to focus on its extensive monitoring and reporting processes. In turn, the ILO can continue its cooperative negotiations to improve child laborer conditions around the world without being concerned that political capital is being lost in the enforcement process. Much like the proposed hybrid international court, where the court's impact would be felt more slowly but ultimately would be more lasting,⁶¹ the nationalized trade-labor linkage based on ILO standards would be more effective in providing enforcement against child labor violators than trying to create a strong international system.

⁶¹ Turner, 41 *Stan J Int'l L* at 3 (cited in note 9).



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