

PERSPECTIVES

Child labour: How the challenge is being met *

Policies aimed at promoting adult employment, raising incomes and improving living standards must be the basis for long-term action to abolish child labour. ... But immediate and direct action can also be taken to eradicate the most objectionable forms of child labour and, pending its total abolition, to protect children from unsafe or exploitative working conditions.¹

Child labour has presented an explicit challenge to society at least since the industrial revolution. With the progressive adoption of universal primary and secondary education, child labour came into direct conflict with children's access to education, and in many countries the labour of children was withdrawn from production. With the dramatic economic gains of the 20th century child labour became far less prevalent, though the absolute numbers are high. Now the financial and legal means are at hand to address the problem directly, even in the low-income and least developed countries.

The past few years have brought unprecedented public awareness of the problem of child labour and broad consensus on the need to do something about it (see ILO, 1996a). In practice, however, the issues involved remain extremely complex. At the inter-governmental level, the problem of child labour has been caught up in a politically charged debate on human rights, labour standards, ethics and international trade. This partly accounts for the relatively slow progress being made towards concerted international action to tackle the problem, even in its most extreme forms. Besides, the socio-economics and sheer scale of child labour worldwide are still such that there simply is no easy, short-term solution to the problem (on these aspects, see Grootaert and Kanbur, 1995; Bonnet, 1993). As a result it is being addressed through a wide range of initiatives taken by individual states, inter-governmental and non-governmental organizations, trade unions, corporations and a variety of interest groups. These initiatives can be

* This "perspective" was prepared by Mark Lansky, English-language editor of the *International Labour Review*.

¹ As stated by the Director-General of the ILO when introducing his report on child labour to the International Labour Conference in 1983 (Blanchard, 1983, p. vi).

classified under three broad headings, namely, law, direct intervention, and market-based schemes.

Since the late 1980s the international legal framework for action against child labour has been strengthened by a number of important developments. Further strengthening is expected to come from an ILO initiative to prepare new international labour standards on the subject.² Scheduled for adoption in 1999, the proposed instruments – possibly a Convention accompanied by a Recommendation – would target the worst forms of child labour. The first part of this “perspective” attempts to clarify the international legal context in which the new instruments are being envisaged. Then, following a brief look at how national law and practice stand in relation to existing international standards, and a consideration of the extent and nature of child labour in the world today, the ILO’s latest initiative and the possible content of the new Convention are presented.

Second, direct interventions have been an important means of countering specific cases of child labour and reducing its worst abuses. While such initiatives have a long history and many organizations have been involved, they have gathered new momentum since the Organization launched its International Programme on the Elimination of Child Labour (IPEC) in 1992. A brief explanation of IPEC is given together with an overview of its activities.

Third, there has lately been an expansion of market-based initiatives to combat child labour, mainly through product labelling schemes and corporate codes of conduct. These initiatives can apply effective leverage against the employment of children in certain economic sectors and, in some cases, raise the wages of adult workers so that child labour becomes less critical to family income. They also tap additional resources to support the development of alternatives for some working children. These complementary initiatives are considered briefly in the final part of this “perspective”.

Each of the three main types of action is taken up in turn.

International legal framework

ILO standards up to 1973

The protection of children from work and at work has been a basic aim of the International Labour Organization since its inception (ILO, 1981, paras. 11 et seq.). Acting on the call for such protection in the Preamble to its Constitution, the ILO adopted the Minimum Age (Industry) Convention, 1919 (No. 5), at the very first session of the

² For an authoritative explanation of the ILO’s standard-setting work in historical perspective, see Valticos, 1996.

International Labour Conference in 1919. Since then the Organization has adopted a further ten Conventions and five Recommendations setting standards on the minimum age of admission to employment or work in industry, agriculture, shipping and other non-industrial occupations. In addition, minimum age standards are also specified in several other Conventions concerned with safety, health and/or general conditions in particular industries.

The earliest standards (1919-32) generally fixed the basic minimum age at 14 years, and subsequent revisions (1936-37) raised it to 15. While most of the basic Conventions exclude work in family enterprises and permit other specific exceptions, those targeting particularly hazardous occupations or sectors set higher standards, e.g. 16 for underground work (Convention No. 123 of 1965) and up to 18 for arduous work in high-risk environments (e.g. Convention No. 15 of 1921) and work involving exposure to radiation (Convention No. 115 of 1960) or dangerous chemicals (e.g. Convention No. 136 of 1971).

At its 181st Session in 1970, however, the Governing Body of the ILO reached the conclusion that the “basic Conventions on minimum age for admission to employment can no longer be an effective instrument of concerted international action to promote the well-being of children” (ILO, 1970, Appendix II, para. 8). In spite of the ILO’s earlier efforts, it was evident that “child labour ... remains a widespread and persistent phenomenon” (ILO, 1971, p. 21). All existing instruments on minimum age were indeed of restricted applicability, concerned only with limited economic sectors or specific occupations. Accordingly, the ILO undertook a major revision and consolidation of standards. This led to the adoption of the Minimum Age Convention, 1973 (No. 138).

The Minimum Age Convention, 1973 (No. 138)

Compared with the earlier standards, Convention No. 138 took a very different approach, combining broader coverage with greater adaptability to national situations. Though limited exceptions are permitted,³ it applies to all sectors of economic activity and, like the earlier Conventions, covers children whether or not they are employed for wages.

³ These are not defined, but during preparatory work on the Convention reference was made to employment in family undertakings, domestic service in private households and some types of work carried out without the employer’s supervision, such as home work. These exclusions were foreseen mainly because of the practical difficulties of enforcing laws in these categories in question, not because of the absence of possible exploitation or abuse in these situations. As regards home work, for example, Article 4, paragraph (2)(g) of the recent Home Work Convention, 1996 (No. 177), provides for the promotion of equality of treatment as between home workers and other wage-earners in relation to minimum age for admission to employment; and the accompanying Recommendation (No. 184) states that “National laws and regulations concerning minimum age for admission to employment or work should apply to home work.”

States ratifying Convention No. 138 undertake “to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons”. In particular, the Convention establishes the principle that the minimum age “shall not be less than the age of completion of compulsory schooling”. Subject to a basic standard of 15 years, States parties are required to specify – in a declaration appended to their instrument of ratification – their own, national minimum age for admission to employment; and States “whose economy and educational facilities are insufficiently developed may ... initially specify a minimum age of 14 years”. In either case, the Convention offers added flexibility by allowing lower minimum ages for “light work”, namely 13 for States specifying a basic standard of 15 years and 12 for those specifying a basic standard of 14. Light work is defined as work which is neither harmful to children’s health or development, nor prejudicial to their attendance at school, their participation in vocational training or their capacity to benefit from the instruction received.

The Convention also sets an 18-year standard for “hazardous” work. This higher standard applies equally to all countries, thereby stressing the principle that a country’s level of development is no excuse for allowing children to be exposed to “employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons” (see ILO, 1996b, p. 26). Exceptions are permissible for workers aged 16-18 provided that they are adequately protected and trained.

Developments outside the ILO

Apart from the ILO, relatively few international organizations were active in the field of child labour prior to the 1980s. Following the Geneva Declaration on the Rights of the Child adopted in 1924,⁴ the 1959 United Nations Declaration on the Rights of the Child set out the general principles that: “The child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development” (United Nations, 1983, p. 130, Principle 9). A similar provision was included in the 1966 International Covenant on Economic, Social and Cultural Rights, with the added stipulation that: “Children and young persons should be protected from economic and social exploitation” (United Nations, 1983, p. 5, Art. 10(3)).

⁴ Recalled in the Preamble to the 1989 United Nations Convention on the Rights of the Child, the Geneva Declaration adopted by the Assembly of the League of Nations states *inter alia* that “the child must be put in a position to earn a livelihood and must be protected against every form of exploitation” (League of Nations, 1924, p. 43).

It was only from the mid-1980s that the ILO's efforts to combat child labour began to elicit broader international support, with a proliferation of publications on the subject, more systematic media coverage of abuses and violations, and growing involvement by concerned individuals, groups and non-governmental organizations. In 1986 UNICEF gave impetus to the cause through its programme on children in especially difficult circumstances, while the existing legal framework was considerably strengthened by the adoption in 1989 of the United Nations Convention on the Rights of the Child, which provides for extensive protection to be guaranteed to all children under 18 (United Nations, 1993, pp. 173-195). The United Nations Commission on Human Rights also devoted increasing attention to child labour, culminating in the adoption in 1993 of a Programme of Action for the Elimination of the Exploitation of Child Labour (United Nations Commission on Human Rights, 1993a, pp. 231-240). This called upon all States to ratify the 1989 Convention on the Rights of the Child and stressed the importance of fully implementing its Article 32, which reads as follows:

1. States Parties 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.
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:
 - (a) Provide for a minimum age or minimum ages for admission to employment;
 - (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 (United Nations Commission on Human Rights, 1993a, p. 236, para. 16).

The Programme of Action also calls upon States to ratify the ILO's Minimum Age Convention, 1973 (No. 138), and invites the ILO to extend greater assistance to the developing countries "to facilitate their increased participation in standard-setting activities and in the implementation of ratified Conventions" (United Nations Commission on Human Rights, 1993a, p. 236, para. 17).

How international law defines child labour

There is no single, clear-cut definition of child labour under international law. The only unqualified prohibition is that applying to child prostitution and to slavery-like practices prohibited under instruments that cover adults as well (e.g. debt bondage). The ILO's Forced Labour Convention, 1930 (No. 29) – the most widely ratified, with 144 ratifications as at June 1997 – is indeed crucial in protecting children against some of the

worst forms of exploitation. The ILO's Committee of Experts on the Application of Conventions and Recommendations observed in 1995 that the nature of child labour often brings it within the meaning of forced and compulsory labour (ILO, 1996b, p. 27). In particular, this applies to children in bondage and their exploitation in prostitution and pornography.

Similarly, the United Nations Working Group on Contemporary Forms of Slavery has come to classify the sale and sexual exploitation of children as contemporary forms of slavery (ILO, 1996b, p. 27). In 1996, the United Nations Committee on the Rights of the Child set up to monitor the implementation of the 1989 Convention adopted a recommendation stressing that "the child affected by situations of sale, prostitution and pornography should be considered mainly as a victim" (United Nations, 1996, pp. 4-5). The relevant United Nations instruments on this subject include the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (United Nations, 1983, pp. 71-74) and the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (United Nations, 1983, pp. 62-65). This last Convention specifically covers debt bondage, serfdom and "any practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour" (United Nations, 1983, p. 63).

Aside from these practices, another general prohibition under international law is that applying to work by children under 12. Convention No. 138 provides for only two, very limited, exceptions to this rule. The first is "work done by children and young persons in schools for general, vocational or technical education or in other training institutions" (Art. 6). The second is participation in artistic performances (Art. 8). This last exception, however, is made subject to the approval of the competent national authorities on a case-by-case basis.

More generally, outside slavery-like situations, the international legal position on child labour reflects the balance that Convention No. 138 strikes between the need to accommodate "light work up to a few hours per day ... within the context of the household and as part of informal education and training [which] belongs to the normal process of growing up" (ILO-IPEC, 1995, p. 5), on the one hand, and protection against abuses and hazardous work, on the other. Thus the international legality of what children do between the ages of 12 and 18 is determined only by reference to broadly defined types of work or employment that are prohibited at certain (variable) ages, depending both on the nature of the work and/or the circumstances in which it is performed, and on individual countries' stages of economic development and/or national specification. The standards set forth by Convention No. 138 are summed up in table 1.

Table 1. Minimum ages in accordance with Convention No. 138

General minimum age (Article 2)	Light work (Article 7)	Hazardous work (Article 3)
In normal circumstances: 15 years or more (not less than compulsory school age)	13 years	18 years (16 years conditionally)
Where economy and educational facilities are insufficiently developed: 14 years	12 years	18 years (16 years conditionally)

Source: ILO, 1996b, p. 24, table 1.

National law and practice

The majority of ILO member States (133 out of 174 at the end of February 1997) have ratified at least one of the Organization's 11 minimum age Conventions (Hansenne, 1997). Convention No. 138 has so far been ratified by 53 States. While this is a better score than any achieved by earlier revisions of basic minimum age standards, it is still cause for concern. There is indeed a wide gap between those 53 ratifications and the 187 received by the United Nations 1989 Convention on the Rights of the Child – a gap which vividly reflects the difficulty of translating international consensus on the underlying ethical and moral principles into effective action when economic and socio-cultural issues are at stake. That difficulty, along with the importance of affirming the moral objective, were frankly set out in the declaration that the Government of India made upon acceding to the United Nations Convention on the Rights of the Child:

While fully subscribing to the objectives and purposes of the Convention, realizing that certain of the rights of the child, namely those pertaining to the economic, social and cultural rights can only be progressively implemented in the developing countries, subject to the extent of available resources and within the framework of international cooperation; recognizing that the child has to be protected from exploitation of all forms including economic exploitation; noting that for several reasons children of different ages do work in India; having prescribed minimum ages for employment in hazardous occupations and in certain other areas; having made regulatory provisions regarding hours and conditions of employment; and being aware that it is not practical immediately to prescribe minimum ages for admission to each and every area of employment in India – the Government of India undertakes to take measures to progressively implement the provisions of Article 32, particularly paragraph 2(a), in accordance with its national legislation and relevant international instruments to which it is a State Party (United Nations Committee on the Rights of the Child, 1997, p. 21).⁵

⁵ It is worth noting that of all the developing countries that have ratified this Convention, India is the only one to have entered a declaration, reservation or objection – in this case a

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According to a recent ILO survey of the law and practice of 155 countries, 122 have legislation prohibiting work for children below the age of 14 or older at least in some sectors and, where they are legally permitted to work, specifying the conditions in which they may do so. Many have also set higher minimum ages for hazardous work, and most prohibit practices like forced or bonded child labour and the sexual exploitation of children (ILO, 1996b, pp. 47-79; see also United Nations Commission on Human Rights, 1993b). But relatively few have prescribed a general minimum age for admission to any employment or work as required by Convention No. 138. Typically, the national basic minimum age applies only to specific sectors or occupations. Agriculture, work in family undertakings and domestic service are commonly excluded. Other typical exclusions from coverage are small enterprises (often those employing fewer than 10 workers), apprenticeships, self-employment, homework and temporary or casual work (ILO, 1996b, pp. 33-34; see also pp. 39-46, table 4, for a complete tabulation of statutory minimum ages in the countries surveyed).

Approximately half the countries surveyed permit children below the generally prescribed minimum age to perform at least some types of light work. The minimum age set for light work is generally 12 in the Americas and Africa, and 13-14 in Europe. But to many governments, the determination and/or regulation of "light work" constitutes a major obstacle to the ratification of Convention No. 138.

A crucial aspect of the regulatory framework at the national level is the interdependence of minimum age laws and compulsory education laws. Compulsory education has historically proved one of the most effective instruments for eliminating child labour, hence the explicit link established in Convention No. 138 between the minimum age for admission to employment and the age of completion of compulsory schooling. (For a comparative tabulation of the corresponding statutory ages at national level, see ILO, 1996b, pp. 39-46, table 4.) Any serious attempt to tackle the problem of child labour must indeed include a genuine commitment to providing free and compulsory schooling to all children up to the age at which they become eligible to enter employment or work.⁶ For example, in a move expressly

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declaration – concerning minimum age under Article 32. Yet there can be little doubt that India's realistic declaration is indicative of the situation faced by many other developing countries as well. For example, this was clearly reflected in the statement of the Minister of Labour of China to the ILO's Informal Tripartite Meeting at the Ministerial Level on Child Labour in June 1996: "Child labour is a phenomenon that was not desired by any country; ... Taking account of differences between countries in terms of the environment, socio-economic conditions, ideology, traditions, means and models of economic development, the international community must display full comprehension with regard to developing countries in the area of the elimination of child labour and refrain from imposing a time scale on them or levelling accusations on this subject" (ILO, 1996a, p. 10).

⁶ Some of the problems confronting developing countries in this field were examined in an earlier "perspective": "Educational reform: Issues and trends", in *International Labour Review* (Geneva), Vol. 134 (1995), No. 6, pp. 753-770.

intended to reduce child labour, the Government of India has just announced the submission to Parliament in July 1997 of a bill providing for free and compulsory education for all children between the ages of six and 14. If this legislation is passed it will constitute a major advance because it would amend the country's constitution to make education a fundamental right of children.

Many other developing countries are also introducing further legislative or regulatory provisions on child labour and some have recently increased the penalties for violations (ILO, 1996b, pp. 88-89), but the main obstacle to effective legal protection remains the weakness of enforcement mechanisms. Since working children are typically found in agriculture, domestic service and the informal sector, most of them work where labour law enforcement is virtually absent (ILO, 1996b, p. 87). Besides, given the nature and scale of the problem it would be unrealistic to believe it can be solved merely by bolstering national labour inspection and law enforcement services. Strong legislation and effective enforcement are important but need to be supplemented by efforts on other fronts as well. Some of these will be examined below, but first it may be appropriate to look at a few of the facts on child labour.

Child labour in the world today

Any attempt to estimate the global prevalence of child labour immediately comes up against two obstacles. The first is the definition of child labour itself, which makes it difficult to determine even the scope of the exercise in terms of ages and activities covered.⁷ And the second is simply the lack of reliable – let alone comparable – national statistics on the problem. Rough extrapolations can be made from the difference between the number of school-age children actually attending school and the total number of children in that age group (see table 2), but they are of limited value for estimating child labour. Few countries keep specific statistics on child labour – not least because children are legally not supposed to be at work. There is indeed a strong disincentive to keeping statistics that would expose a gap between official policy and actual practice and risk attracting unwanted international attention.

Until recently, governments have been reluctant even to acknowledge the problem, especially its most extreme forms. In Brazil, for example, it was only in 1993 that the existence of debt-bondage and forced labour was

⁷ For example, in the preparatory documentation for the Informal Tripartite Meeting at the Ministerial Level (12 June 1996) and more generally, the ILO uses the term "child labour" to refer to all economic activities (production of goods or services for market, barter or own consumption) carried out by persons under 15. By contrast, the research conducted by the United States Department of Labor adopts a double standard derived from Convention No. 138, covering children under 15 in developed countries and those under 14 in developing countries (see, for example, United States Department of Labor, 1994).

Table 2. Numbers of children and school enrolment rates

	1995 population between 5 and 18 (millions)	Primary school enrolment ratio 1990-95 (net)		Secondary school enrolment ratio	
		M	F	M	F
Developing countries	1 267	86	81	51	41
Sub-Saharan Africa	190	58	50	26	21
Middle East and North Africa	102	92	82	62	49
South Asia	371	–	–	51	32
East Asia and Pacific	432	97	95	57	49
Latin America and Caribbean	134	86	86	45	49
Least developed countries	193	56	45	21	12
Central and eastern Europe/CIS	105	–	–	80	82
Industrialized countries	138	97	97	97	99
World	1 473	88	84	57	49

Source: Extracted from UNICEF, 1997, pp. 98-99, table 10.

formally admitted by the Ministry of Labour (United States Department of Labor, 1994, p. 41). And in Pakistan – a party to the ILO's Forced Labour Convention, 1930 (No. 29), since 1957, and to the Abolition of Forced Labour Convention, 1957 (No. 105), since 1960 – it was only in 1992 that the legislature passed the Act that formally abolished the country's endemic system of bonded labour.⁸ And even then, a position paper published by the Ministry of Labour in 1995 argued that "the alleged widespread incidence of child and bonded labour is projected by the international media in a way that shows a conspiracy of some western countries as well as Indian agencies to malign Pakistan", although "Pakistan is no more an exception" – not that it ever was, for that matter (Government of Pakistan, 1995, p. 17). Admittedly the issue had by then been drawn into the debate on international trade, and some of the figures put forward by outside sources on the number of child workers and bonded labourers in Pakistan had become implausible.

Today, however, national sensitivities over the precise magnitude of the problem are becoming less of a problem in the face of growing acceptance by governments the world over that child labour does exist on a large scale, that it is a problem and – most importantly – that something must and can be done about it.

Though child labour exists in the industrialized countries and is emerging in many of the transition economies as well, it is mostly prevalent in the developing regions, not only for economic reasons, but simply because that is where 87 per cent of the world's children under 18 live (UNICEF, 1997, p. 24). Following experimental surveys in a number of countries, the

⁸ For an overview of the Bonded Labour System (Abolition) Act, 1992, see *Social and Labour Bulletin* (Geneva), 1992, No. 4, Dec., pp. 442-444.

ILO's Bureau of Statistics now estimates that "in the developing countries alone, there are at least 120 million children between the ages of five and 14 who are fully at work, and more than twice as many (or about 250 million) if those for whom work is a secondary activity are included" (ILO, 1996b, p. 7).⁹ Asia has the largest absolute number of child workers – with an estimated 61 per cent of the world total, as against 7 per cent for Latin America. But Africa has the highest incidence, now estimated at around 40 per cent of all children between five and 14.

There now seems to be a broad international consensus on the ILO's estimate that child labour is the lot of up to 250 million children under 14 worldwide. UNICEF agrees on a world total of some 250 million, but with 190 million in the 10-14 age group, of whom "three quarters ... work six days a week or more and one half work nine hours a day or more" (UNICEF, 1997, p. 25 and figure 3). Non-governmental organizations (e.g. Save the Children) and the International Confederation of Free Trade Unions – which reckons that "some of the worst exploitation happens to children as young as four or five" – tend to quote total figures around 200 million (see ILO-IPEC, 1996; ICFTU, 1997). However, the 14-18 age group remains a statistical black hole although children in this group should be protected from "hazardous" work both under Convention No. 138 and under the United Nations Convention on the Rights of the Child.

The vast majority of child workers are unpaid family workers employed in small production units of the urban informal sector and the rural traditional sector (ILO, 1996c, p. 5). Though the share of urban child labour is increasing steadily with the rapid urbanization of developing countries, the participation rates of children in economic activity remain globally much higher in rural areas. Surveys of Ghana, India, Indonesia and Senegal found that more than three quarters of all child labour occurs in rural areas where, on average, nine out of ten working children are engaged in agricultural or related activities (ILO, 1996d).

Towards a new ILO Convention

While the widely ratified United Nations Convention on the Rights of the Child generally defines children as persons under the age of 18 (unless

⁹ The statistical difficulty of evaluating the global extent of child labour is illustrated by the wide gap between the above estimates and those produced by the ILO only months earlier on the basis of (very limited) information it had received from about 100 countries. This had initially led the ILO to estimate that "over 73 million" children in the 10-14 age group were economically active in the world in 1995, with regional incidences of 13 per cent of the age group in Asia, 26.3 per cent in Africa, and 9.8 per cent in Latin America (see press release ILO/CLK/1 of 10 June 1996). That these figures only told part of the story was evident *inter alia* from the available data on school enrolment rates (see table 2). Of course, this does not mean that all children who are out of school are at work. But for Africa, for example, the estimated proportion of 26 per cent of working children in the 10-14 age group was difficult to square with a primary school enrolment rate that left nearly 50 per cent out of school (see UNICEF, 1997, p. 52, fig. 7).

the age of majority is attained earlier), its Article 32, paragraph 2, (on specific measures to be taken concerning child labour) requires States Parties to have regard to “the relevant provisions of other international instruments”, which clearly include the ILO’s Conventions and Recommendations. It may seem paradoxical, therefore, that in the 24 years since its adoption Convention No. 138 has attracted less than a third of the number of ratifications obtained by the 1989 United Nations instrument. In particular, no Asian country has ratified it except Nepal, although Asia accounts for some 60 per cent of child labour worldwide. Further ratifications are in the pipeline, but the ILO considers it unlikely that the foreseeable future will bring anything like the number of ratifications received by the other basic Conventions of the ILO (ILO, 1997a, p. 2).

Against a background of broad international consensus on the underlying moral principles, the legal issue thus centres on the determination of the types of work or employment which, by their nature or the circumstances in which they are performed, are deemed unsuitable for children below certain ages. Somewhere between the moral principles and their interpretation and application, the consensus breaks down. Indeed, the determination of varying degrees of “unsuitability”, their generic classification and prohibition by age group lie at the very heart of the current debate on child labour standards. “There is a whole range of grey areas between things we would all agree are very exploitative and things we would all agree are beneficial to a child’s development. This is a major problem when considering banning child labour, because in each culture there is a different concept of what that labour constitutes in terms of damage to the child’s development” (Roberts, 1996, p. 35). Many countries consider that the determination and/or regulation of “light work” constitutes a major obstacle to their ratification of Convention No. 138 (ILO, 1996b, p. 35). And similar difficulties arise in the designation of work to be considered “hazardous” (ILO, 1996b, p. 47).

At the Amsterdam Conference on Child Labour in February 1997, the Director-General of the ILO summed up the situation in the following terms:

Convention No. 138 is one of the basic ILO instruments ... and remains one of the essential pillars of a coherent policy to combat child labour at the national level. But experience has shown that this Convention raises problems for some States which find it too complex to apply in detail and which therefore hesitate in ratifying it. It thus seems necessary to draw up a new instrument which is expressly directed against the extreme forms of child labour. This new Convention would supplement and not replace Convention No. 138.

The world community should manifest its commitment to act in solidarity by adopting an international labour Convention which forbids all intolerable forms of child labour. Such a Convention would fill the gaps in current international legal instruments on the subject and set clear priorities for national and international action (Hansenne, 1997, p. 2).

At its 265th Session, in March 1996, the Governing Body of the ILO had in fact already decided to place child labour on the agenda of the 1998

International Labour Conference with a view to the adoption of new international labour standards that would give priority to “immediate action to stop the intolerable exploitation of children in hazardous work and activities” (ILO, 1996e, p. 1). A questionnaire was then sent out to member States to seek their views on the contents of the proposed instruments (ILO, 1996e). Meanwhile, the June 1996 Session of the Conference adopted a resolution on the elimination of child labour. This stressed “the need to immediately proceed with the abolition of its most intolerable aspects, namely the employment of children in slave-like and bonded conditions and in dangerous and hazardous work, the exploitation of very young children, and the commercial sexual exploitation of children” (ILO, 1996f, p. 35).

Also during the 1996 Session of the Conference, child labour was the subject of an Informal Tripartite Meeting at the Ministerial Level. Many of the participants in the Meeting expressed support for new standards aimed at eradicating the most intolerable forms of child labour. Some also stressed that new standard-setting should not imply that existing child labour Conventions would be weakened, but rather that the worst forms of child labour would be brought into sharper focus, thereby setting priorities for action. Although the United Nations Convention on the Rights of the Child and other international instruments contain relevant provisions, the general feeling was that a new ILO instrument specifically aimed at preventing and stopping the worst forms of child labour could enhance national and international action and bring the weight of the ILO’s supervisory machinery to bear on compliance.

The new Convention would require States to adopt and strictly apply the necessary penal sanctions for its enforcement. “Furthermore, it would also have the important merit of encouraging member States to assist one another through international judicial and technical assistance to combat what is considered to be intolerable” (Hansenne, 1997, p. 2).

Setting priorities: What is intolerable?

As explained by the ILO’s Director-General:

The proposed new Convention would: focus on the most intolerable forms of child labour; apply to all children under the age of 18; [and] oblige ILO member States to suppress immediately all extreme forms of child labour, including all forms of slavery or practices similar to slavery; the sale and trafficking of children; forced or compulsory labour, including debt bondage and serfdom; the use of children for prostitution or in pornographic activities; and the engagement of children in any kind of dangerous work (Hansenne, 1997, p. 2).

The idea of setting priorities in global action against child labour has been gathering momentum since the early 1990s. This is clearly reflected in the terms of reference of the ILO’s International Programme on the Elimination of Child Labour launched in 1992 (see below). Another example

is the Programme of Action for the Elimination of the Exploitation of Child Labour adopted by the United Nations Commission on Human Rights in 1993. This contains a separate provision stating that: "High priority should be given to the elimination of the most odious or degrading forms of child exploitation, in particular child prostitution, pornography, the sale of children, the employment of children in dangerous occupations or for enforced begging and debt bondage" (United Nations Commission on Human Rights, 1993a, p. 233, para. 3). And under international law, the notion that some forms of child labour deserve special and urgent attention can be traced to even earlier instruments. At this stage, however, the difficulty lies in identifying specific child labour situations on which the broad international adherence to the basic moral principles can be translated into agreement on objective criteria that cut across national, socio-economic and cultural boundaries.

The new Convention could be adopted at the 1999 Session of the International Labour Conference. But the prerequisite agreement on what is intolerable has yet to be reached. In this respect the challenge is twofold. First, it will be necessary to hammer out a workable – i.e. sufficiently coherent and consensual – definition of "the intolerable", whether generically or, more likely, by enumerating the specific child labour situations it covers. And second, the wording of the new Convention will have to foreclose the loopholes that could result from the fact that what is not deemed intolerable may, by default, be construed as tolerable and thereby possibly weaken existing instruments that provide broader protection, particularly Convention No. 138.¹⁰

While there is so far no indication that the proposed new Convention would actually use the term "intolerable" in a generic sense, a number of governments and independent experts have voiced concerns over the conceptual difficulties posed by this term. In particular, this is reflected in the discussions that took place on the wording of the Resolution concerning the elimination of child labour adopted at the 1996 International Labour Conference. These show a marked preference among representatives of developing countries for the term "exploitative", both as a substitute for the term "intolerable"¹¹ and – in general references to "the elimination of child labour" – as an adjective qualifying child labour and thereby defining (and maybe narrowing) the overall scope of the proposed action. Though attempts to have the final text of the Resolution amended along these lines were frustrated, one of the

¹⁰ On the generic issues raised by the overlapping or consolidation of international labour standards, see ILO, 1997b, pp. 43-45.

¹¹ For example, Draft Amendment D.29, submitted by the Governments of Bangladesh, India, Indonesia, Malaysia, Pakistan and the Philippines, would have given priority to the elimination of the "most exploitative forms" of child labour, instead of "its most intolerable forms" (see ILO, 1996f, p. 25, para. 183 and *passim*).

sponsors of the amendments insisted on stating for the record that the term “exploitative child labour” was more appropriate (ILO, 1996f, p. 24, para. 173; see also p. 25, para. 184).¹²

In the event, the compromise in the Resolution was to retain the notion of “intolerable” or “most intolerable” forms of child labour and to define it by an exhaustive enumeration of situations. The agreed wording was: “namely, the employment of children in slave-like and bonded conditions and in dangerous and hazardous work, the exploitation of very young children, and the commercial sexual exploitation of children” (ILO, 1996f, pp. 35 and 36, tenth preambular paragraph and operative para. 1(c)). In the questionnaire on the possible content of the proposed new Convention, however, the expression used is “extreme forms of child labour”, followed by a non-exhaustive enumeration. Specifically, ILO member States are being asked the following questions:

Should the Convention provide that each ratifying Member should suppress immediately all extreme forms of child labour including:

- (a) all forms of slavery or practices similar to slavery, sale and trafficking of children, forced or compulsory labour including debt bondage and serfdom?
- (b) the use, engagement or offering of a child for prostitution, production of pornography or pornographic performances, production of or trafficking in drugs or other illegal activities?
- (c) the use or engagement of children in any type of work which, by its nature or the circumstances in which it is carried out, is likely to jeopardize their health, safety or morals? (ILO, 1996e, p. 4).

¹² This preference for the notion of “exploitation” is consistent with the language used in many earlier sources and international instruments on the subject. To quote the special Rapporteur of the United Nations Commission on Human Rights: “It is the exploitation of child labour rather than child labour *per se* which is objectionable” (United Nations Commission on Human Rights, 1993b, p. 12, para. 67). The historical consensus around this notion is based on a very broad interpretation of the term “exploitation” itself. This is clear from its earliest occurrences in international instruments (see League of Nations, 1924), to the most recent (see ILO, 1997c). Thus, implicitly at least, the exploitation of children and “exploitative child labour” have never been purely economic concepts. However, successive precedents also suggest a gradual drift towards increasingly open acknowledgement of the moral or ethical dimension of the problem of child labour, including among the developing countries. For example, India’s above-mentioned declaration under Article 32 of the 1989 Convention on the Rights of the Child clearly recognizes that exploitation can take on forms that go beyond the strictly economic sense of the term. A further step in this direction was taken at the Conference of Ministers of Labour of the Non-Aligned Countries, held in New Delhi in January 1995, which declared: “We are aware and hold that the practice of exploitative child labour wherever it is practised is a moral outrage and an affront to human dignity” (cited by R. Reich, in ILO, 1996a, p. 5). Lastly, it is interesting to compare this language and the notion of intolerable forms of child labour used in the 1996 Resolution of the International Labour Conference with the wording of the 1993 Programme of Action for the Elimination of Child Labour adopted by the United Nations Commission on Human Rights (United Nations Commission on Human Rights, 1993a, pp. 231-240). This speaks of eliminating “the most odious or degrading forms of child exploitation” and thus strikes a somewhat more nuanced balance between the moral, judgemental dimension (expressed here in the terms “odious or degrading”) and the arguably more objective – though certainly more restrictive – notion of exploitation.

Questions (a) and (b) refer to some of the worst forms of child labour that have, in international legal practice, already been identified with slavery or forced labour, thereby bringing them within the scope of widely ratified instruments and providing the supervisory bodies of the ILO and the United Nations with a stronger legal position from which to act. Question (c), however, suggests that, in addition to slavery-like situations, the “extreme forms of child labour” to be covered by a new Convention could extend into the immediately adjacent “grey area” and include what has so far generally been described as “hazardous” work subject to a minimum age of 18 under Convention No. 138. This is the area in which the main definitional problems will have to be overcome.

Where “hazardous” and “intolerable” overlap

As is the case under Convention No. 138, the proposed new Convention is likely to require that employers’ and workers’ organizations be consulted on the determination of what constitutes hazardous work. Recommendation No. 146 gives guidance on the criteria to be applied in determining hazardous work or employment for the purposes of Convention No. 138. It states the need to take full account of relevant international labour standards and to pay special attention to dangerous substances, agents or processes (including ionizing radiation), the lifting of heavy weights and underground work (ILO, 1996b, p. 25). Additional risk factors to be taken into account in determining types of work or employment covered by the proposed new Convention could include:

- exposure to physical, emotional or sexual abuse (in particular this may apply to some jobs in hotels, bars and night clubs, which may be hazardous not by their nature but because of the circumstances in which they are carried out);
- work done under water or at dangerous heights;
- work with dangerous machinery, equipment or tools;
- exposure to extreme temperatures, noise levels or vibrations;
- work involving particularly long hours (e.g. girls in domestic service), during the night or without the possibility of returning home each day (ILO, 1996e, p. 6).

Thus the proposed new Convention would both consolidate the legal position on slavery-like practices and child prostitution and serve to advance the practical commitment to ensuring that children enjoy protection at least against many forms of hazardous work as part of the transition towards the elimination of child labour as called for in Convention No. 138.

International Programme on the Elimination of Child Labour (IPEC)

One of the merits of a new ILO Convention would be to consolidate the legal underpinnings of the International Programme on the Elimination of Child Labour (IPEC). Aptly described as the ILO's "operational arm" in the fight against child labour, IPEC gives priority to the eradication of the most abusive and exploitative types of child labour. It is now active with varying degrees of intensity in some 50 countries in Africa, Asia and Latin America. It has received US\$87 million in total resources to date, with allocations of about US\$20 million for 1996-97.

Launched in 1992 with funding from Germany, it is now financed also by Australia, Belgium, Canada, Denmark, the European Commission, France, Germany, Italy, Luxembourg, the Netherlands, Norway, Spain, the United Kingdom and the United States. IPEC aims to strengthen national capacities to address the problem of child labour and to encourage a worldwide movement to combat it. Its strategy rests on the commitment of individual governments to address child labour in cooperation with employers' and workers' organizations, non-governmental organizations and other social actors such as universities and the media, in a broad social alliance. A government's will and commitment to do so are expressed in its signing of a memorandum of understanding with the ILO.

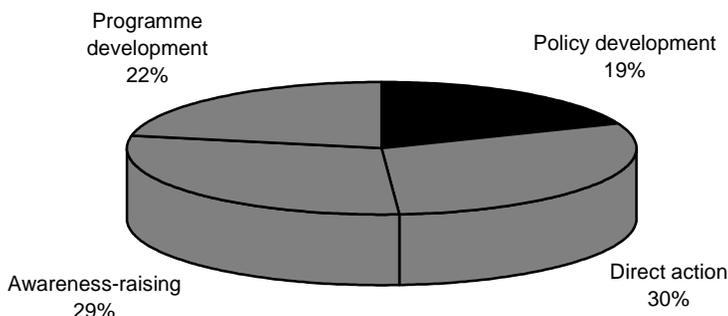
IPEC became fully operational in late 1992 when Brazil, India, Indonesia, Kenya, Thailand and Turkey signed up. In 1994 Bangladesh, Nepal, Pakistan, the Philippines and the United Republic of Tanzania followed suit. And the list of participating countries continued to grow with the addition of Argentina, Bolivia, Cambodia, Chile, Costa Rica, Dominican Republic, Ecuador, Egypt, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Peru, Sri Lanka and Venezuela in 1996-97.¹³

How the Programme works

IPEC pursues a phased, multi-sectoral strategy, beginning with a "situational analysis" of the nature and magnitude of child labour in a given country. Subsequent steps in its strategy include assistance in policy design, institution building, awareness raising, development and application of protective legislation and support to direct action (see chart 1). IPEC thus strives to support, rather than supplant, national efforts to combat child labour. It emphasizes preventive measures and tries to build sustainability into demonstration programmes, while assessing their potential for integration into the regular programmes of the partner organizations. These

¹³ In addition, preparatory activities are under way in Benin, Burkina Faso, China, Colombia, Madagascar, Mexico, Mongolia, Paraguay, Senegal, South Africa, Uruguay, Viet Nam, Zambia and Zimbabwe.

Chart 1. ILO-IPEC programme distribution by means of action



Source: ILO-IPEC.

organizations are aided to adopt measures aimed at preventing child labour, withdrawing children from hazardous work and providing alternatives, and improving working conditions as a transitional measure towards the elimination of child labour.

IPEC priorities

Since it is obvious that the problem of child labour cannot be eliminated overnight, and that children cannot be removed from all types of work, ILO-IPEC's most pressing obligation is to support measures which aim to halt the intolerable. The priority target groups are children who are particularly vulnerable: children working under forced labour conditions and in bondage; children working in hazardous occupations; very young children (under the age of 12); and working girls.

A significant number of partner organizations have succeeded in withdrawing children from these types of work or, failing that, in improving their working conditions. However, the eradication of these forms of child labour presupposes measures to "rescue" children from work and rehabilitate them, which would require investment far beyond the resources available to IPEC. Children who work under the most exploitative and hazardous conditions are difficult to reach owing both to obstruction by those benefiting from their work and to the feelings of powerlessness of the children themselves (ILO-IPEC, 1995, p. 7). Compounded by the sheer numbers of children involved and the infrastructure needed to accommodate them, this poses a formidable challenge that few partner organizations are equipped to meet.

Some 46 per cent of IPEC programmes are therefore geared to prevention, which has proved to be more cost effective than remedial action. This means identifying the geographical areas, social groups and conditions

that favour child labour; identifying the industry-specific or occupational factors that determine demand for and supply of child labour; and, lastly, intervening at both the policy and the grass-roots levels. However, IPEC will also continue to work towards the immediate rescue of children in bondage or forced labour and those working in extremely hazardous conditions. This means continuing to assist partner organizations in offering viable alternatives to such work and in taking protective measures, provided that these are transitional and linked to the removal of children from work.

Acting on the conclusions of the February 1997 Child Labour Conference, IPEC has further sharpened its focus on priorities by launching a new programme for “Action against the most intolerable forms of child labour” (AMIC). With some US\$20 million budgeted over the period 1997-2001, AMIC specifically supports programmes aimed at the immediate eradication of bonded child labour; the commercial sexual exploitation of, and trafficking in children; child labour in domestic service; child labour in hazardous work in commercial agriculture; and child labour in dangerous industries, occupations and working conditions.

Nature and distribution of IPEC programmes ¹⁴

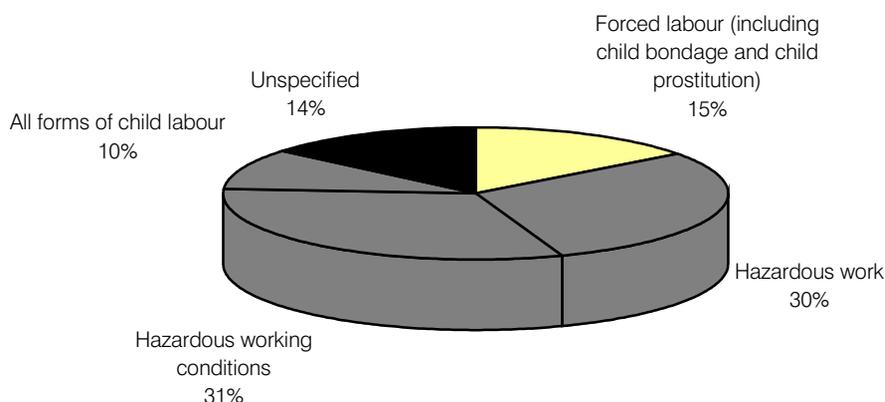
IPEC programmes fall into two categories: “action programmes”, dealing with specific issues, and “mini programmes” (US\$3,000 at the most) which typically help partner organizations to carry out preparatory activities (surveys, training or meetings) for possible future action programmes, awareness-raising activities, and evaluation and audits of IPEC activities. By the end of January 1997, IPEC had undertaken 555 action programmes and 280 mini programmes in 19 countries. The data in the following charts relate to 802 programmes implemented in the 11 first- and second-generation countries, i.e. excluding Latin America.

As shown in chart 2, some 77 per cent of IPEC programmes focus on forms of child labour in the “intolerable” category. Within this category, “hazardous work” is understood to cover exposure to chemicals; extreme temperatures; dangerous tools, machines and/or work place; heavy loads; and STD/AIDS. “Hazardous working conditions” covers physical hazards (physical violence); psycho-social hazards (intimidation, isolation, no contact with family or peers); night work; and excessively long working hours. Most of the programmes targeting the “intolerable” forms of child labour are geared either to prevention (41 per cent) or to withdrawal from work and provision of alternatives (40 per cent). The remainder are concerned with the improvement of working conditions as a transitional measure.

Programmes in support of basic education as a preventive measure constitute a major form of intervention by IPEC, with strong emphasis on

¹⁴ This section draws on information provided directly by ILO-IPEC.

Chart 2. ILO-IPEC programme distribution by targeted categories of child labour

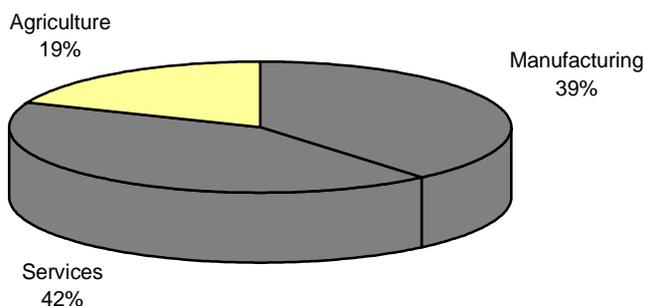


Source: ILO-IPEC.

non-formal education, apprenticeship and skill-development programmes for working children. Although the overall focus of IPEC activity has so far been on services and manufacturing, about one-fifth of the programmes involved children working in agriculture and related activities (see chart 3). However, among programmes specifically concerned with the “intolerable” forms of child labour, that proportion rises to roughly one-third, nearly half these programmes being rural based. Over 60 per cent of the programmes targeting the intolerable are in the informal sector.

IPEC has fostered a broad social alliance against child labour. Although the NGO community remains dominant, the relative role of the employers’ and workers’ organizations in IPEC-supported programmes has been

Chart 3. ILO-IPEC programme distribution by economic sector



Source: ILO-IPEC.

enhanced over the years with a considerable reduction in the share of programmes implemented by the NGOs.

Statistical Information and Monitoring Programme on Child Labour (SIMPOC)

Launched in April 1997, SIMPOC is IPEC's response to the paucity of reliable data on child labour. This programme is designed to improve the accuracy of information on the scale, distribution and characteristics of child labour and on related socio-economic factors. One of its major objectives is to help governments, NGOs and industry to take action against child labour. It will extend to some 40 countries the data collection methodology pioneered by the ILO in 1992-93 (see ILO, 1996d). With an estimated budget of US\$10 million over five years, the project will provide technical and financial support in carrying out child labour surveys, setting up national data banks and disseminating information at the national and international levels. In addition, it will establish a data bank on institutions and organizations acting against child labour; child labour projects and programmes; national legislation and indicators; and industry-level action, including codes of conduct.

Market-based initiatives to combat child labour

Market-based initiatives, driven by – or playing on – the growing awareness and ethical concerns of the public, particularly in industrialized countries, are the third broad category of action to combat child labour. They include a variety of product labelling schemes and/or corporate codes of conduct designed to inform consumers that the goods they are buying are not made or processed by children (see, for example, Hilowitz, 1997; Sajhau, 1997; United States Department of Labor, 1996). But this message alone leaves many questions unanswered.

How reliable are the underlying monitoring and supervision of manufacturing conditions, particularly in regard to subcontractors? Some independent verification services are available to companies to monitor the application of codes of conduct, and there are vigilant NGOs that can signal non-conformity with the exigencies of particular labels. But given the voluntary nature of codes and labels there is of course no general, reliable and systematic means of controlling compliance.

What happens to children who lose their jobs as a result of their employer's compliance with a particular code of conduct? Many of the NGOs active in the fight against child labour have focused on this problem, though it is very difficult to trace what happens to the particular workers affected (some apparently go into worse-paid work for domestic markets). But some labelling schemes collect levies that are used to finance schooling or other activities, albeit on a very small scale. More importantly, some codes

require the payment of decent wages and/or higher prices for commodities produced so that the need of families to rely on child labour may be reduced.

Given the recent proliferation of codes of conduct and the wide variations in their technical requirements (see, for example, United States Department of Labor, 1996, pp. 114-115), are consumers truly in a position to make informed decisions on what they buy? Once they are made aware of abuses and exploitation, consumers wish to be reassured that their purchases make no contribution to encouraging that exploitation, but that kind of absolute assurance is difficult to provide. The pressure is great on the producer to ensure compliance by suppliers and subcontractors, in order to avoid the backlash that would result should NGOs or the media discover non-compliance. This is a key aspect of the leverage that labels and codes of conduct can apply to the problem of child labour.

Though consumers may get the impression that child labour can be eliminated through selective buying, market-based schemes generally target only a small share of child labour – that which produces certain goods for export. Obviously, only few exported goods are amenable to labelling (e.g. even if child labour is withdrawn from charcoal-making in metal-working on a car component, it makes little sense to label the exported car as child-labour-free). So the direct leverage that can be exerted is limited. But education of consumers is under way – and not just in the relatively affluent countries. Once a broader awareness of the problem and its complexity is achieved, one can expect spread effects to a broader range of products and attention to the use of child labour even in components of manufactured products otherwise produced under controlled conditions.¹⁵

It is clear that while labelling and other market-based schemes can contribute directly to reducing child labour, they typically do so on a very small scale. But their main significance may lie elsewhere. Some of these schemes focus on improving poor working conditions and on raising adult wages, thus contributing more specifically to the prevention of child labour. And the extensive coverage they have been given by the media (e.g. Rugmark, FIFA's stand on soccer balls, etc.) has no doubt played an

¹⁵ Each labelling initiative or code of conduct has its peculiarities. But it may be helpful to illustrate the process with a specific example, that of a small-scale Swiss-based initiative, STEP. The STEP-Foundation licenses importers and retailers of hand-knotted carpets in Switzerland, according to criteria covering proper working conditions and wages, the elimination of abusive child labour and the improvement of ecological conditions. These are spelled out in its code of conduct. The basis for the criteria are the national laws of countries of origin and the corresponding ILO Conventions. Some 22 per cent of the hand-knotted carpet business in Switzerland is done by STEP licensees, which pay a levy of 4 Swiss francs per square metre on each carpet sold. The income from the levy is used to finance information dissemination, monitoring and verification, and self-help and rehabilitation projects on education, women, health, etc., in the regions concerned. With the financial support of a number of charitable organizations, STEP promotes the social responsibility of enterprises in the longer term. It works through the market to achieve a "step-by-step", progressive improvement in living and working conditions and "to increase the market opportunities for responsible and transparent businesses".

important part in raising public awareness of the exploitation of child workers and in mobilizing broader political support for international action aimed at stopping it by means of a more comprehensive strategy, one that takes fuller account of the complexity and long-term nature of the problem. It is through the development of public awareness that these partial, market-based schemes may in turn strengthen the political constituency for constructive action by governments, including the ratification of international labour standards, the provision of universal education and adequate terms and conditions of employment for adults – thereby offering children a better future as adults.

Concluding remarks

There is room – and need – for a wide range of initiatives by different actors if progress is really to be made in reducing reliance on child labour. A constructive international and national legal framework is indispensable. That has evolved into a substantial legal code in the course of this century and is on the verge of being further strengthened as the International Labour Conference debates the adoption of additional instruments in 1999.

Specific interventions have always been a means of directly confronting instances of child labour. NGOs and governmental aid agencies have been active for a long time. But now a new stage has been reached where most of the economies concerned can afford to envision the elimination of child labour and the provision of alternatives, and the ILO is coordinating a wide range of activities such that a concerted effort can genuinely be made.

Market-based initiatives – social labelling and codes of conduct – take advantage of commercial interests and consumers' good conscience to encourage the production of goods and services without child labour and on better terms for adults. They can also raise additional resources that may be used to develop alternatives for child workers and raise public awareness.

Taken together, these three approaches give reason for hope that the elimination of reliance on child labour – a goal long declared in principle – is becoming a feasible objective.

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