CJLP

Carnelian Journal of LAW & POLITICS
Vol. 2 No. 1, 2021

https://carnelianjournal.com/

Child Labour and a Search for Conceptual Clarity: Congruence or Contradiction in Children's Rights Treaty Law?

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Abstract

Child labour is among the indeterminate, but widely overlooked, concepts in children's rights law. In many ways, relevant child labour studies are field-oriented, focusing mainly on eradication in local contexts, with little clarification of the concept itself and its legal ramifications. As such, the social rendering of the term often depicts it in a legally confusing manner – to cover benign and exploitative works simultaneously. Although the prohibition of child labour features prominently in treaty law, the definition of the term itself is not contained in any instrument. An implicit assumption about work and its psychosocial ills has probably informed this gap as well as the uncritical approach to the subject in the literature. The identification of a legal meaning is, however, important, serving as a foundation for more coherent normative standards. Using the doctrinal method, the study examines the content of key international children's rights instruments dealing with child labour – how they engage with the concept and whether or not they contain any inherent contradictions. Specific child labour indicators are derived from the treaties, which shed light on the definitional ambiguities while providing a framework for legally sound responses.

Keywords: Child Labour definition, Child Labour Treaties, Child Exploitation, Hazardous Work, Child Protection

INTRODUCTION

Dominant child labour studies have historically focused on traditional exploitative forms, which fits a very narrow paradigm of children's exploitation. This paradigm often focuses on exploitation in traditional workplaces and ignores other practices that show aspects of the phenomenon. In this regard, although such instruments as the ILO Worst Forms of Child Labour Convention identify certain practices including slavery, child trafficking, debt bondage etc., as worst forms of child labour, a more restrictive approach has been taken by child labour researchers and policy makers. Furthermore, even though treaties dealing with child labour are multifarious, to date, no study has comparatively assessed the contents of those instruments and the manner in which they engage with the phenomenon. Some specific children's rights treaties are therefore examined in this paper, including the ILO Minimum Age Convention, ILO Convention on the Worst Forms of Child Labour, UN Convention on the Rights of the Child (CRC), Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography and the Optional Protocol on the Involvement of Children in Armed Conflicts. After studying the treaties, some child labour indicators are noted, as a first step in addressing the conceptual deficits surrounding the practice. Thus, the paper attempts to primarily respond to two key questions: (i) in what ways do relevant treaties construe and regulate child labour? (ii) to what extent are international human rights treaties consistent in their approach to child labour prohibition?

Given that the ILO Minimum Age Convention is the only instrument among the treaties studied that regulates child labour by mainly focusing on age with less emphasis on themes, the treaty is rather autonomously assessed, while the contents of other treaties are comparatively studied for convergence or conflicts. Reference is nevertheless made to the Minimum Age Convention in subsequent treaty analysis where relevant. As a framework for analysis, the definition of the child as any person below the age of 18 years contained in article 1 of the CRC is adopted in this study. Overall, the study notes that while treaties are largely consistent in their substantive provisions, the lack of a precise definition could undermine national responses to child labour. The need to adopt a comprehensive and more coherent definition is therefore highlighted.

Child Labour Under the ILO Minimum Age Convention

Although the ILO Minimum Age Convention (C138) calls for 'total' and 'effective' abolition of child labour,[1] the definition of the term 'child labour' is not found anywhere in the convention. The convention, in many ways, combines an abolitionist rhetoric with the need to progressively raise the minimum age for

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[1] The preamble to the convention calls for a 'total abolition of child labour', while article 1 requires member states to adopt a 'national policy designed to ensure the effective abolition of child labour'.

work and employment.[2] Article 1 specifically requires states parties to 'raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical development of young persons.' Although the convention further sets out the minimum age for certain categories of work, the obligation to progressively raise this age shows the convention as pursuing dual objectives simultaneously. The convention requires raising the minimum age to a level consistent with the 'fullest physical development of young persons' – an obligation which is highly vague and could effectively ban children's economic activities depending on how it is interpreted by national authorities.

Further, article 2(3) of the convention provides that the minimum age for employment shall not be less than the age of compulsory schooling and may not be less than 15 years. However, for less developed countries, 14 years may be adopted as the legal minimum age. It is worth noting that, these provisions generally relate to non-hazardous forms of work. Further exceptions are contained in article 7, which reads as follows:

1. National laws or regulations may permit the employment or work of persons 13 to 15 years of age on light work which is –
   a) not likely to be harmful to their health or development; and
   b) not such as to prejudice their school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received.
2. National laws or regulations may also permit the employment or work of persons who are at least 15 years of age but have not yet completed their compulsory schooling on work which meets the requirements set forth in sub-paragraphs (a) and (b) of paragraph 1 of this Article.
3. The competent authority shall determine the activities in which employment or work may be permitted under paragraphs 1 and 2 of this Article and shall prescribe the number of hours during which and the conditions in which such employment or work may be undertaken.
4. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, a Member which has availed itself of the provisions of paragraph 4 of Article 2 may, for as long as it continues to do so, substitute the ages 12 and 14 for the ages 13 and 15 in paragraph 1 and the age 14 for the age 15 in paragraph 2 of this Article.

Three broad categories of works may be generally identified from the convention. The first relates to work for which the minimum age may not be less than 14 years or the age of completion of compulsory schooling.[3] Works undertaken in this category, although less clearly defined, must not be likely to harm the health and

[2] David M Smolin, 'Strategic Choices in the International Campaign against Child Labor' (2000) 22 Human Rights Quarterly, 950.
[3] See, article 2(3) & (4) as well as article 7(1),(2) & (4) ILO C138.

development of the child involved, and must not prejudice school attendance.[4] It is to be noted that, while works undertaken in this category must not be harmful, they, strictly speaking, lie outside of those that may be regarded as light work.[5] The second category relates to light work, for which the minimum age is 12 years in less developed countries, and 13 years in more developed countries.[6] The introduction of a lower age, with regard to light work, clearly demonstrates that, the first category is not particularly concerned with light works.[7] Indeed, the applicable minimum age in the first category (i.e., article 2) is 14 years, and light work is not in any way mentioned in that article. As is the case with the first category, works under the light work category must not be likely to harm the health and development of the child and must not prejudice school attendance or vocational training.[8]

Article 3 of the convention contains the third category. It provides in 3(1) that, the minimum age for admission to any type of employment or work which may likely jeopardise the health of young persons shall not be less than 18 years – reaffirming the wider international views on childhood.[9] Article 3(3), however provides that, following consultation with relevant organisations of employers and workers, employment in such potentially 'hazardous' jobs may be possible from the age of 16 years, on the condition that the health, safety and morals of the young persons concerned are fully protected, and the child has received adequate instruction or training on the relevant work. Thus, age 16 and above may represent the relevant age for works which may be likely hazardous, if the conditions are met. It is also worth mentioning that, the definition of 'hazardous', is not only limited to ostensibly dangerous works, works undertaken below age 16 could still qualify as hazardous, especially if excessive or undertaken under poor conditions.[10] In such cases, hazardous works are clearly prohibited, without any exception. Exceptions are only granted to children 16 years and above.

As indicated earlier, the legal definition of a child, at least as far as the CRC is concerned, is that anyone below the age of 18 is a child.[11] This notion of childhood

[4] See, article 2(3) & (4) as well as article 7(1),(2) & (4) ILO C138.
[5] In accordance with article 7 of the convention, children can undertake light works as from age 12, in which case, children in the first category can also 'take-on' light works.
[6] See, article 7(1) & (4).
[7] Breen Creighton, is of the view that article 7 of the convention is clearly based on the premise that employment or work under the age of 15 or 14 for less developed countries, is not to be permitted under any circumstances. In other words, light work is not to be regarded as 'work', in the proper sense. See generally, Breen Creighton, 'Combating Child Labour: The Role of International Labour Standards' (1996) 18 Comp. Lab. LJ 362 378.
[8] See, article 7(1).
[9] At first, this article seems to suggest that work which endangers the health, safety or morals of children may be acceptable once the workers concerned have attained the age of 18. Creighton, however, notes that the real intention of the article is to protect younger children from potentially hazardous jobs, and not an endorsement of harmful jobs in any case. See, Creighton (n 7) 380.
[10] See generally, ILO, *The end of child labour: Within reach, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, (2006) 6.
[11] Article 1 UN Convention on the Rights of the Child.

is largely founded on the principle of protection, which is a key aspect of international children's rights law. However, this protectionist view, as embodied in the Minimum Age Convention, has been criticised for implicitly assuming that children increasingly benefit from their withdrawal from work.[12] This assumption requires further empirical justification, given growing body of evidence available to question it.[13]

It is noteworthy that the Minimum Age Convention makes no provision for protective working conditions for children, perhaps in accordance with its abolitionist agenda. In this regard, the ILO seems to be operating on the assumption that by eliminating the employment of children, the idea of hours or conditions of employment would become a non-issue.[14] Overall, although the convention seems to protect children by regulating their work on the basis of age, complete prohibition of work appears to be the aspirational goal. In this regard, Holly Cullen has argued that, the approach of the convention 'is based on a policy that employment of children is almost fundamentally unacceptable'.[15] She questioned whether the notion of abolition (which derives from anti-slavery movements of the 18th and 19th centuries in the west) was ever necessary for child labour.[16] Other scholars have, however, argued that while the objective of the convention may be understood as targeting all forms of work or labour, the many exceptions in the convention reflects that the treaty distinguishes between tolerable child work and exploitative child labour.[17] In any case, the lack of a clear definition limits conceptual understanding and regulatory efforts on the phenomenon.

THE WORST FORMS OF CHILD LABOUR CONVENTION AND THE PRIORITISATION APPROACH OF THE ILO

Few years before the Worst Forms of Child Labour Convention (C182) was adopted, the ILO noted in a report that, children generally experience the highest form of vulnerability when they work in hazardous occupations and industries.[18] Like adults, they are susceptible to all the dangers that may be associated with work. However, work hazards that affect adults might affect children more negatively, and some may permanently alter their physical or psychological development.[19] Hazardous work takes many different forms including, violence

[12] Michael FC Bourdillon, Ben White and William E Myers, 'Re-Assessing Minimum-Age Standards for Children's Work' (2009) 29 International Journal of Sociology and Social Policy 108.
[13] Ibid.
[14] See generally Holly Cullen, *The Role of International Law in the Elimination of Child Labor* (Martinus Nijhoff 2007 2007) 4.
[15] Ibid 2-4.
[16] Ibid.
[17] See e.g., Franziska Humbert, *The Challenge of Child Labour in International Law*, (Cambridge University Press 2009) 12), 89
[18] ILO, *Child Labour: Targeting the intolerable* (ILO Geneva, 1996) 9.
[19] Ibid.

and sexual abuse, slavery and forced labour, prostitution and trafficking of children.[20]

However, given that not all countries were institutionally and financially equipped to confront the different manifestations of child labour at once, choices had to be made as to where to concentrate the limited human and material resources.[21] The most logical and humane strategy was, therefore, to focus scarce resources on the more hazardous forms of child labour, including child prostitution, debt bondage, slavery etc.[22] As a result, the ILO Worst Forms of Child Labour Convention was adopted on the basis of prioritisation.

Article 3 of the Convention states:

> For the purposes of this Convention, the term the worst forms of child labour comprises:
>
> (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
>
> (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
>
> (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
>
> (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

Before proceeding to analyse the content of this article, it is worth mentioning that, in contrast to the Minimum Age Convention, C182 only addresses one of the three categories identified under C138 – potentially hazardous works, which can only be undertaken from age 18 years or 16, if certain safeguards are met.[23] However, unlike C138, whereby children from age 16 and above can undertake potentially dangerous works under protective conditions, provisions of the Worst Forms of Child Labour Convention contains no such exception. Article 2 explicitly provides that, 'the term child shall apply to all persons under the age of 18.' Nevertheless, Recommendation 190 which accompanies Convention 182, lowers the age with regard to article 3(d) to 16 years, consistent with the Minimum Age Convention. It provides in article 4 that:

[20] Article 3 C182. See also, Ibid pp 14 – 17.
[21] Ibid 20.
[22] Ibid.
[23] Article 3(d) C182.

> For the types of work referred to under Article 3(d) of the Convention and Paragraph 3 above, national laws or regulations or the competent authority could, after consultation with the workers' and employers' organizations concerned, authorize employment or work as from the age of 16 on condition that the health, safety and morals of the children concerned are fully protected, and that the children have received adequate specific instruction or vocational training in the relevant branch of activity.

Article 4 of the Recommendation, which utilises very similar language as article 3(3) of the Minimum Age Convention, lowers the age for hazardous work to 16 years. Also, since article 3(d) of C182 is relatively vague in terms of its content, Recommendation 190 offers some guidance on what the provision entails. Although the Worst Forms of Child Labour Convention touch on differing thematic issues, the instrument serves as a tool for mobilisation and prioritisation of practices already prohibited in international law.[24] From a labour perspective, however, the convention seems unusual, in that much of its content addresses criminal, as opposed to, purely labour matters.[25] For instance, drug trade, prostitution, and pornography can be more easily associated with criminal law than with labour regulations.[26] Nonetheless, these relative overlaps may be inevitable, especially considering that the prohibited practices also contain labour/economic elements. Thus, the vulnerability of children demands that their conditions be addressed in a more comprehensive manner, which may imply that criminal law and labour issues must converge in a single treaty. Moreover, the majority of practices prohibited under article 3(a) of C182 already constitute serious human rights abuses, whether committed against adults or children.[27] The prohibition of slavery and slave trade, in particular, featured prominently in more than 75 multilateral and bilateral treaties from the early 19th century onwards.[28] Thus, the Worst Forms of Child Labour Convention does not articulate any new idea in the real sense, it rather brings to centre stage some century old prohibitions with particular reference to children.

With regard to the forced or compulsory recruitment of children for use in armed conflict, article 3(a) generally makes no reference to the nature of the conflict (whether internal or international). In this regard, the convention addresses the issue of child soldiers as a purely child labour issue.[29] Accordingly, the nature of a conflict is irrelevant as far as the Worst Forms of Child Labour Convention is concerned.[30] In particular, the phrase 'for use in armed conflict' in article 3(a) is much broader than the concept of 'direct participation' in hostilities,[31] which may

[24] Smolin, (n 2) 947, 948.
[25] Ibid
[26] Ibid
[27] Cullen (n 14) 13.
[28] See Anne T Gallagher, 'Human Rights and Human Trafficking: Quagmire or Firm Ground-A Response to James Hathaway' (2008) 49 Va. J. Int'l L. 799, 800.
[29] Holly Cullen, 'Does the ILO Have a Distinctive Role in the International Legal Protection of Child Soldiers' (2011) 5 Hum. Rts. & Int'l Legal Discourse, 73.
[30] Ibid
[31] Ibid

be found in other relevant treaties.[32] In other words, ILO C182 would apply to both direct and indirect hostilities.

Further, article 3(b) and (c) considers 'the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;' as well as 'the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties,' as constituting an unconditional worst form of child labour. In many ways, measures addressing slavery may also cover such issues as, trafficking in person.[33] Indeed, at the national level, the UK is an example of a country that has characterised trafficking as a form of modern slavery.[34] Further, the *travaux préparatoires* of the Universal Declaration of Human Rights (UDHR) reflects that, the notion of 'slavery' under article 4 of the instrument was intended to include the trafficking in children and women.[35] However, regardless of the link between slavery and trafficking, what is more important is that, they both constitute criminal activities under international law. It is also noteworthy that, the consent of a child to acts of prostitution or production of pornography, may not lessen the criminal nature of the act, with regard to the perpetrator. International regimes in this aspect generally aim to protect, rather than prosecute children.

In many ways, C182 sheds light on, and potentially broadens the meaning of child labour beyond the traditional notions often ascribed to it. While the instrument is largely consistent with C138, the same challenges that apply to C138 also apply to article 3(d) of C182, as the latter provision in conjunction with Recommendation 190 replicates article 3 of C138. Unlike article 3(a) – (c) which target specific practices, article 3(d) is more generic, mainly prohibiting 'work'. Nevertheless, while C138 and C182 do not contain conflicting provisions strictly speaking, especially considering the exceptions made to article 3(d) of C182, one fundamental distinction that may be drawn between the two treaties, however, is that while C138 is largely non-sector specific, C182 mainly targets specific sectors and practices. The Worst Forms of Child Labour Convention appears to be rather unequivocal in its approach compared to the Minimum Age Convention. Moreover, the age binaries between developed and developing countries found in C138 does not apply to C182. Some of its provisions including prohibition of slavery already form part of customary internationally law and applies universally without exceptions. Furthermore, the lack of definition in C182 may not seriously undermine its key provisions; some of the definitions already set out in other treaties may provide guidance.[36] The content of C182 is further comparatively assessed in subsequent sections.

[32] For instance, the Optional Protocol on the involvement of children in armed conflict.
[33] Cullen (n 29) 17.
[34] See e.g., the UK Modern Slavery Act 2018.
[35] Cullen (n 29) 17.
[36] See e.g., 1926 Slavery Convention, which defines slavery; 1930 Forced Labour Convention, which defines forced or compulsory labour; 1956 Supplementary Convention, which defines debt bondage and serfdom; Palermo Protocol of 2000 which defines trafficking etc.

THE PROTECTION FROM CHILD LABOUR UNDER THE CRC

The UN Convention on the Rights of the Child is by far the most important legal document in the field of children's rights. The instrument affirms the double nature of children's rights in terms of its special and general aspects shared with adults.[37] Article 32 of the instrument specifically engage with the issue of child labour. The article states:

> 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.

Generally, while article 32(1) mainly targets economically exploitative or harmful work, it also prohibits works that may not necessarily be exploitative or harmful in the real sense but may potentially interfere with children's education. Thus, light work, for example, which is generally considered as non-exploitative would be regarded as child labour if it may likely interfere with children's education. Indeed, article 7(1) of ILO C138, affirms this by prohibiting light work where it conflicts with 'school' – the distinction between 'school' and 'education' being open to debate. This is the only prohibition under article 32(1) CRC that is not directly connected to economic exploitation, hazard or harm. It should be stated however, that, the idea of economic exploitation itself is not entirely clear. Various interpretations have been given, including enforcing labour at the expense of the health and well-being of individuals and societal development.[38] The exact forms

[37] Karl Hanson, Olga Nieuwenhuys, Reconceptualizing Children's Rights in International Development: Living Rights, Social Justice, Translations (Cambridge University Press, 2013) 253. Gerison Lansdown, Laura Lundy, Jeffrey Goldhagen, The U.N. Convention on the Rights of the Child: Relevance and Application to Pediatric Clinical Bioethics, (2015) 58(3) Perspectives in Biology and Medicine, 253.

[38] Geraldine Van Bueren, *The International Law on the Rights of the Child*, (Martinus Nijhoff, 1998)

of labour that may constitute economic exploitation is, however, difficult to prove as health risks may not immediately manifest themselves until later in life.[39]

Furthermore, article 32(1) protects children from works that may be 'harmful' to their 'health or physical, mental, spiritual, moral or social development'. A similar provision may be found in the Minimum Age Convention as well as in the Worst Forms Convention, with a slight variation in wording. The Minimum Age Convention for instance addresses work which is 'likely to jeopardise the health, safety or morals of young persons.'[40] The Worst Forms Convention on the other hand contains almost exactly the same provision as C138. It protects children from any work that is 'likely to harm the health, safety or morals of children.'[41] Thus, while C138 uses the word 'jeopardise', C182 employs the word 'harm'. Also, while C138 aims to protect 'young persons', C182 simply utilises the word 'children'.[42] More generally, the scope of article 32(1) of the CRC is much broader than that of the ILO conventions. The CRC specifically aims to protect the education, health, physical, mental, spiritual, moral and social development of children. Also, article 32(1) of the CRC utilises the word 'child', without making any reference to such phrase as 'young persons', as may be found in C138. Since under the CRC, a child refers to any individual below the age of 18, the convention would apply to persons targeted by both ILO conventions, and the distinction between 'child' and 'young persons' becomes redundant. Nevertheless, the threshold for 'harm' or 'jeopardy' or indicators for identifying these are not contained in any of the treaties.

Article 32(2) of the convention further requires states to take certain steps, including, setting a minimum age for admission to employment, regulation of the hours and conditions of employment, as well as providing appropriate sanctions to ensure compliance with the convention. Article 32(2) may be considered as procedural guidelines for implementing the content of article 32(1). Steps taken to implement ILO C138 at the domestic level could, in many ways, help fulfil the obligation to set a minimum age. The UN Committee on the Rights of the Child has highlighted the complementarity between the CRC and ILO C182, in relation to states' obligations to regulate hazardous child labour. In General Comment No. 7, the Committee noted that 'States parties have particular responsibilities in relation to extreme forms of hazardous child labour identified in the Worst Forms of Child Labour Convention'.[43] In General Comment No. 21, the Committee further encouraged states to 'implement the provisions of article 32 (2) of the Convention, and the International Labour Organization Minimum Age Convention, 1973 (No. 138), and Worst Forms of Child Labour Convention, 1999 (No. 182), to protect children in street situations from economic exploitation and

[39] Hillary V Kistenbroker, 'Implementing Article 32 of the Convention on the Rights of the Child as a Domestic Statute: Protecting Children from Abusive Labor Practices' (2011) 44 Case W Res J Int'l L 925.
[40] Article 3(1) & (3) C138.
[41] Article 3(d) C182.
[42] Ibid
[43] UN Committee on the Rights of the Child, General Comment No. 7: Implementing child rights in early childhood, Fortieth Session Geneva, 12-30 September 2005, CRC/C/GC/7/Rev.1 20 September 2006, Para 36(e).

the worst forms of child labour'.[44] Thus, while these treaties possess different origins, they unanimously prohibit child labour.

With regard to article 32(2) (b), on the regulation of hours and conditions of employment, however, there is little guidance either in the CRC or elsewhere, which may help states to formulate their own laws. The content of article 32 rather tends to contain abstract obligations, but misses detail. For the most part, the article presents *what* should be done but does very little to demonstrate *how* it should be done. While this can be argued to be typical of human rights treaty provisions in general, additional specifications in this regard could be helpful in advancing the goals embodied in the convention. A UNICEF study has attempted to formulate a threshold for determining the number of hours that children may work. According to the study, 'children can do "light work" -- non-hazardous work for no more than 14 hours a week, and that does not interfere with schooling. Children under the minimum working age who are engaged in more than light work are in child labour'.[45] Additionally, to ensure that activities, such as household chores are not completely unregulated, the study indicates that, household chores in excess of four hours per day amount to child labour.[46] Indeed, the study itself acknowledges the limitations in this regulation.[47] Carrying heavy materials for less than four hours a day could be as detrimental as working longer than four hours. Also, the factors considered before arriving at the specified number of hours can be questioned. In other words, why should we limit children's work to 14 hours a week, in terms of light work? Why not 12 or 16 hours? The same also applies to household chores. Additionally, the approach of UNICEF does not reflect certain regional peculiarities, in terms of economic or cultural factors that may cause some children to work longer hours – in the same way as the ILO Minimum Age Convention makes concession to children from developing countries, by lowering the age at which they can work.

As previously indicated, the idea of child labour extends beyond the usual notions of economic exploitation. Child labour could also manifest itself through the use of children in other harmful practices. Thus, the CRC equally prohibits the categories of works regarded as unconditional worst forms under ILO C182. In this regard, article 33 of the CRC urge states parties 'to prevent the use of children in the illicit production and trafficking of [narcotic drugs and psychotropic substances].' Although article 32 is widely regarded as the core child labour provision in the CRC, nonetheless, by taking article 3(c) of ILO C182 into account, it is evident that the use of children in the production or transfer of illicit drugs and psychotropic substances is a worst form of child labour. The ratification and

[44] UN Committee on the Rights of the Child, General Comment No. 21 (2017) on children in street situations, CRC/C/GC/21, 21 June 2017, para 59
[45] UNICEF, What the Economic Crisis means for Child Labour (UNICEF East Asia, Bangkok 2008) 4.
[46] UNICEF, Child Labour, Education and the Principle of Non-Discrimination (UNICEF New York 2005), 6.
[47] Ibid

implementation of C182, as well as other relevant treaties,[48] at the national level, may help fulfil the requirements of article 33, which imposes an obligation on states to take all appropriate measures to protect children from being used to produce and traffic narcotic drugs and psychotropic substances.

Further, article 34 of the CRC provides that:

> States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:
>
> (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
>
> (b) The exploitative use of children in prostitution or other unlawful sexual practices;
>
> (c) The exploitative use of children in pornographic performances and materials.

Although the notion of sexual exploitation is prohibited in a number of instruments, the CRC is the first international treaty to place a comprehensive duty on states in this regard.[49] It is also worth noting that, the provision of article 34 above is largely consistent with article 3(b) of the Worst Forms of Child Labour Convention. The scope of article 34 is however much broader than that of C182. Article 3(b) of C182 simply prohibits 'the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances.' The content of C182 in this regard is less exhaustive in nature, in that, it only relates to the use of children for 'prostitution' and 'pornography', whereas, article 34 of the CRC expands the scope to include 'any unlawful sexual activity' or 'unlawful sexual practices.' However, the notion of 'unlawful' in the context is somewhat problematic. It tends to suggest that children may lawfully engage in the practice. In this regard, Van Bueren has argued that the qualification is included because the age of sexual emancipation may be attained much earlier in some countries.[50] Apart from this, while article 3(b) of the Worst Forms Convention employs the phrase 'the use' of children, article 34(b) & (c) of the CRC, utilises the phrase the 'exploitative use of children'. The use of this phrase in the context of sexual exploitation is rather implausible. It tends to suggest that, there are instances where the sexual exploitation of children may be permissible. Since

[48] E.g., The UN Single Convention on Narcotic Drugs of 1961, the UN Convention on Psychotropic Substances of 1971, and the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.
[49] Humbert (n 17) 75
[50] Van Bueren (n 38) 276.

this practice is unconditionally prohibited in international law, there should be no qualification in its prohibition in the CRC.[51]

Furthermore, article 35 require states to take all appropriate measures to 'prevent the abduction of, the sale of or traffic in children for any purpose or in any form.' This provision also finds support in article 3(a) of the Worst Forms Convention, which prohibits 'all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict.' The Minimum Age Convention, on its part, is not concerned with these issues, since its approach is to regulate the age of admission to legally permissible work.

Overall, while the CRC does not contain an explicit definition of child labour, its substantive articles address different aspects of the phenomenon. Further, even though article 32 is the primary child labour provision in the treaty, articles 33, 34, and 35 also deal with the worst forms of child labour, as stipulated in ILO C182. Thus, while there is language variation in both instruments when dealing with similar subjects, these differences arguably do not pose serious threats as to undermine the coherence of international law.

CHILD LABOUR PROHIBITION UNDER THE OPTIONAL PROTOCOL ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OP I) was adopted in 2000, following sustained international pressure to develop a specific instrument that protects children from sexual exploitation.[52] A children's rights perspective in this context particularly demands a change from the much broader approach of earlier treaties.[53] These instruments largely conceive child prostitution and other related offences as purely criminal law matters, and placed much emphasis on extradition.[54] However, the protocol places emphasis on child protection, without undermining the criminal elements

[51] It has been noted that, during the drafting phase of the CRC, the chairman of the drafting committee attempted to introduce the idea of 'social exploitation' into the treaty. This was however rejected, for being too vague. Instead, the call to tackle the more 'exploitative' and 'unlawful' forms of sexual activities began to emerge. Thus, the main reasons why the words 'exploitative' and 'unlawful should be included, were articulated by some delegates. They argued that not all sexual practices were unlawful with regard to those below the age of 18 years. The French as well as the Dutch delegates particularly argued that the purpose of the article was not to regulate the sexual life of children, but rather to protect them from exploitation. See generally, Sharon Detrick ed., *The United Nations Convention on the Rights of the Child: A Guide to the Travaux Preparatoires* (The Hague, Martinus Nijhoff Publishers, 1992), p. 430

[52] Lindsay Buckingham, 'Child Sex Tourism', in Neil Boister and Robert J. Currie, *Routledge Handbook of Transnational Criminal Law*, (Routledge, 2015) 219, 220.

[53] Cullen (n 14) 43.

[54] Ibid.

of the prohibited conduct, with regard to perpetrators. The Protocol also provides strategic guidance on how states can effectively fulfil their obligations under the CRC.[55] Accordingly, article 2 defines the key issues addressed in the Protocol, including sale of children, child prostitution, and child pornography. It provides that:

> (a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;
>
> (b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;
>
> (c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

It is worth noting that the word 'consideration' mentioned in article 2(a) & (b) is a terminology drawn from the law of contract.[56] It generally means something of value, even if actual money is not involved.[57] ECPAT[58] has attempted to draw a distinction between general sexual abuse on the one hand, and commercial sexual exploitation on the other. It noted that commercial sexual exploitation is often profit motivated and will not include other forms of sexual abuses.[59] In particular, this is what qualifies it as a form of economic exploitation, and therefore its link to child labour.

Moreover, the definitions contained in article 2(a) & (b) helpfully clarify the content of other treaties where similar practices are prohibited but left undefined. Indeed, the Optional Protocol is the first international instrument to define such terms as, 'sale of children', 'child prostitution' and 'child pornography'.[60] The Protocol is particularly relevant, as it elaborates on the content of article 34 of the CRC, which prohibits the exploitative use of children in prostitution and pornography, as well as article 35 which equally prohibits the sale of children, among other things. The Worst Forms of Child Labour Convention, as previously noted, also prohibits the practices enumerated in article 2 of the Optional Protocol,

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[55] Marta Santos Pais, 'The Protection of Children from Sexual Exploitation Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography' (2010) 18 *The International Journal of Children's Rights,* 559.
[56] Vitit Muntarbhorn, *A Commentary on the United Nations Convention on the Rights of the Child – Article 34, Sexual Exploitation and Sexual Abuse of Children* (Martinus Nijhoff, 2007) 3.
[57] Ibid.
[58] ECPAT is an acronym for 'End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes.' The organisation was actively involved in organising first World Congress on the sexual exploitation of children, held in Stockholm in 1996.
[59] ECPAT, Report on the Implementation of the Agenda for Action against Commercial Sexual Exploitation of Children (2001–2002), 18, 19.
[60] Humbert (n 17) 78.

however without offering any clarification as to their meanings.[61] Apart from this, the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, which was dedicated to the prohibition of sexual exploitation, for instance failed to define the relevant terms. Thus, the adoption of the Optional Protocol fills an important gap in the legal understanding of the terms. It should be pointed out that, the prohibition under the Optional Protocol is more expansive, and not limited to the 'exploitative use' of children, as may be found in the CRC.

Further, OP I calls on states to take legislative steps to criminalise offences described in the instrument, whether committed domestically or transnationally, by individuals or by organised groups.[62] States parties are particularly required to make these 'offences punishable by appropriate penalties that take into account their grave nature.'[63] It is noteworthy that the language 'grave nature' in this context reflects the highly exploitative nature of the practice. Nowhere in any of the child specific treaties is the expression used.[64] Instead, the phrase is commonly used in international criminal law to describe such heinous crimes as genocide, war crimes, and crimes against humanity.[65] Also, the inclusion of 'transnational' as well as 'organised' crimes into the Optional Protocol is novel. Broadly speaking, while a state may exercise jurisdiction over any such offence that is committed on 'its territory or on board a ship or aircraft registered in that State,'[66] in accordance with the territoriality principle, a unique feature of the Protocol is that it empowers states to exercise extraterritorial jurisdiction.[67] Thus, an offence of this sort need not be committed in the territory of the prosecuting state. States parties may exercise jurisdiction once it can be established that, the alleged offender is a national of that particular state, or a national of another state, but has his habitual residence in the territory of the relevant state, based on the nationality principle.[68] This is particularly relevant in cases of sex tourism, where the perpetrator often commits the offence abroad and is back to his home country. In such cases, the nationality principle can be invoked to prosecute the alleged offender. Additionally, states may exercise jurisdiction if the victim is one of its nationals (i.e., the passive personality principle).[69]

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[61] See generally, article 3 C182.
[62] Article 3(1) OP I.
[63] Article 3(3) OP I.
[64] Especially the CRC, ILO C138 and C182.
[65] In the context of the wider international crimes, the preamble to the Rome Statute for instance provides that, 'such grave crimes threaten the peace, security and well-being of the world.' Thus, the notion of gravity is often employed to indicate the most serious crimes of concern to the international community.
[66] Article 4(1) Optional Protocol. See also, Cedric Ryngaert, *Jurisdiction in International Law* (Oxford University Press, 2015) pp 50-142.
[67] Lindsay Buckingham, above n 52, 222
[68] Article 4(2)(a) Optional Protocol.
[69] Article 4(2)(b). Similar provisions may also be found in the Lanzarote Convention of the Council of Europe adopted in 2007.

Apart from its children's rights perspective, another unique feature of the Optional Protocol is that it doubles as a Suppression Convention.[70] Given the extended powers granted to states to prosecute transnational crimes, the Protocol is an important addition to the wider transnational criminal law (TCL). Thus, even though the CRC and ILO C182 both prohibit some of the practices contained in the Optional Protocol, they however fail to address the procedural aspects of prosecution, especially when perpetrators flee to other states. Accordingly, article 5 of the Protocol addresses the issue of extradition. It provides that all the crimes described in the Protocol are extraditable, and the absence of a formal extradition treaty between relevant states, should not be a ground to deny prosecution. In such cases, the article provides that the Optional Protocol may serve as a legal basis for any such extradition.[71] It is however worth noting that the Optional Protocol may serve as a legal basis only if the relevant states are parties to the instrument.[72] Thus, alleged offenders may still evade prosecution if they flee to states that are not parties to the Optional Protocol and do not have an extradition agreement with the state calling for prosecution.

To conclude this section, it is noted that even though OP I is traditionally not regarded as a child labour instrument, the subject matter of the Worst Forms of Child Labour convention challenges this assumption, as they both address some mutual themes. Since OP I does not directly address child labour in the traditional sense, the term is not defined. However, it sheds light on some practices regarded as the worst forms of child labour as captured in ILO C182. Overall, there is no evidence of conflict between OP I and other treaties addressing similar issues.

THE PROHIBITION OF CHILD LABOUR UNDER THE OPTIONAL PROTOCOL ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT

The normative agenda to regulate the conscription as well as the voluntary recruitment of children into armed organisations has been ongoing for several years, especially at the international level. Notably, the Geneva Conventions of 1949, and their Additional Protocols of 1977 contain extensive provisions to protect children from both international as well as internal armed conflicts.[73] Thus, the adoption of the Optional Protocol on the Involvement of Children in Armed Conflict (OP II) did not completely emerge from a legal vacuum.[74] Beyond the

[70] On Suppression Conventions, see generally Neil Boister, 'Human Rights Protections in the Suppression Conventions', (2002) 2 *Hum. Rgts. L.R.* 199, 200; Neil Boister, 'Transnational Criminal Law?' (2003) 14(5) *EJIL* 955.

[71] Article 5(2) Optional Protocol.

[72] This is consistent with the principle of *Pacta Sunt Servanda* laid down in article 26 of the Vienna Convention on the Law of Treaties. See also, Christian Dominice, 'The International Responsibility of States for Breach of Multilateral Obligations' (1999) 10 *European Journal of International Law*, 354.

[73] Radhika Coomaraswamy, 'The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict – Towards Universal Ratification', (2010) 18 *International Journal of Children's Rights* 537

[74] Ibid.

broader International Humanitarian Law, the current protocol is a more direct response to the growing exploitation of children during armed conflicts. It expands the scope of article 38 of the CRC, which prohibits the use of children in armed conflicts in a controversial manner. Article 38 of the CRC stipulates that: 'States Parties shall take all feasible measures to ensure that persons who have not attained the age of *fifteen years* do not take a direct part in hostilities' (emphasis added). States are also urged to refrain from 'recruiting any person who has not attained the age of fifteen years into their armed forces.'

The inherent tension between article 38 and other provisions of the CRC as well as existing international law is notable, and partly warranted the adoption of an additional protocol. While article 32(2) (a) of the CRC contemplates lowering the age for admission to work below 18 years, it is clear that the context is different. In other words, the provision is not likely intended to be interpreted in the context of child soldiering, which is certainly a worst form of child labour. By calling on states to take measures to fix 'a minimum age or minimum ages for admission to employment', article 32(2) (a) generally refers to less dangerous works. Indeed, there should be no controversy as to this, as the ILO Minimum Age Convention 138, had earlier clarified instances where the idea of a minimum age might be relevant. The content of article 38 of the CRC is thus a clear departure from the wider notion of 'protection' canvassed in the treaty. Apart from this, the provision of article 38(2) only applies to *direct* involvement in hostilities. In other words, children below the age of 15 years may *indirectly* take part in hostilities.[75] This provision tends to undermine existing International Humanitarian Law which already applies to both direct and indirect involvement in hostilities;[76] and was rejected by several States during the drafting of the instrument. The opposing States preferred an absolute ban with regard to the participation of children below the age of 15 years.[77]

Again, ILO C182 defines the worst forms of child labour to include, 'all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, *including forced or compulsory recruitment of children for use in armed conflict'* (emphasis added).[78] This provision demonstrates that the forced recruitment of children by armed organisations is a practice similar to slavery, and thus prohibited in absolute terms. It is worth pointing out that, the Worst Forms of Child Labour Convention only applies to forced or compulsory recruitment of children and does not address

[75] Fiona Ang, 'Article 38 – Children in Armed Conflicts' in André Alen and others (eds), *A Commentary on the United Nations Convention on the Rights of the Child* (Martinus Nijhoff 2005) 37

[76] Existing International Humanitarian Law standards, especially the Additional Protocol II to the Geneva Convention had for instance protected children against *indirect* participation during internal conflict. See generally Radhika Coomaraswamy, above n 73, 538.

[77] Matthew Happold, 'Child Soldiers in International Law: The Legal Regulation of Children's Participation in Hostilities' (2000) 47 *Netherlands International Law Review* 27, 36. Nevertheless, *direct* was inserted into the final text of the instrument.

[78] Article 3(a) C182.

instances of voluntary enlistment into any armed group, which is a fundamental gap.

Thus, the Optional Protocol to the CRC sets out to address some of the inadequacies of earlier instruments, especially the CRC. Article 1 of the Protocol provides that, 'States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.' This provision attempts to rectify the age discrepancy found in article 38 of CRC by raising the relevant age to 18 years. Thus, the Optional Protocol has only rectified an aspect, that is, the raising of the age of direct participation in hostilities to 18 years.[79] The other aspect which concerns the indirect involvement of children (below 18 years) is left unaddressed. Despite the progress made, the failure of the Optional Protocol to address this issue constitutes a fundamental omission in the instrument.

Also, article 2 provides that, 'States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.' This provision bears some semblance with ILO C182, which prohibits the forced or compulsory recruitment of children for use in armed conflict.[80] In comparison to the CRC, it should be mentioned that, article 38 of the instrument adopts a rather elusive language. Although it obliges states parties to respect relevant international humanitarian laws, it does not specifically employ the word 'forced' or 'compulsory', neither does it explicitly mention the word 'voluntary' recruitment of children. The failure of ILO C182 to explicitly address the issue of voluntary recruitment of children, and the elusive wording of the CRC is however dealt with to some extent by article 3 of the Optional Protocol.

Although the article is a considerable improvement over earlier instruments, especially the CRC and the ILO Worst Forms Convention, nevertheless, it does not fully address the issue of children's voluntary recruitment into armed forces. More importantly, article 3(1) of the Optional Protocol makes reference to article 38 of the CRC in a rather confusing manner. It requires states parties to raise the minimum age for *voluntary recruitment* into their armed forces above the one set out in article 38(3) of the CRC, whereas, that provision in the CRC makes no express mention of 'voluntary recruitment'. Instead, article 38(3) of the CRC, *inter alia*, provides that, 'States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces…' This provision may for instance be argued to include compulsory national service. If this is the

[79] It is worth mentioning that while the notion of *direct* participation has traditionally related to the protection of civilians from being considered as legitimate targets during hostilities, i.e., civilians who do not *directly* participate in hostilities may not be targeted; the terms 'active' and 'direct' are usually viewed synonymously in international humanitarian law. See: Joshua Yuvaraj, 'When Does a Child 'Participate Actively in Hostilities' under the Rome Statute? Protecting Children from Use in Hostilities after Lubanga' (2016) 32(83) *Utrecht Journal of International and European Law*, 70.

[80] Article 3(a) C182.

case, then the idea of raising the age in connection with the CRC may be difficult to substantiate.

Also, although article 3(3) of the Optional Protocol contains some safeguards for recruiting children below 18 years into state armed forces, including the need for such recruitment to be voluntary as well as obtaining informed consent from parents or guardians, this provision may, in fact, be redundant if the involvement of children in armed conflict was genuinely considered to be an unconditional worst form of child labour. Considering the risk involved in military activities, fixing the relevant age at 18 years would have reflected a wider international consensus, in conformity with article 3 of ILO C182.

Article 4 of the Optional Protocol further stipulates that, 'armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.' The phrase 'under any circumstances' in this article implies that, non-state armed groups are prohibited from recruiting children below the age of 18 years, either voluntarily or forcibly. This is an important provision, considering that neither the CRC nor ILO C182 impose any particular obligation on non-state armed groups. Whereas, the vast majority of children that take part in armed conflicts are recruited by non-state entities.[81] However, this provision may be difficult to enforce, given that the traditional architecture of international human rights laws is designed to address states – only states can become parties to treaties and therefore be bound by treaty obligations, strictly speaking.[82] In any case, it appears that the activities of non-state actors are to be regulated by the relevant states.[83] However, given the reality that some non-state actors wield enormous powers,[84] effective regulation by state actors might prove difficult. In this regard, there might be opportunities in resorting to the International Criminal Court (ICC). The Rome Statute of the Court expressly prohibits the 'conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities.'[85] The expression 'conscripting or enlisting' utilised here implies that the active recruitment of children and passively allowing them to enlist are

[81] Radhika Coomaraswamy, above n 73, 540

[82] Exceptionally, armed groups in non-international armed conflicts are bound, *inter alia,* by article 3 of the 1949 Geneva Convention IV, and in some cases, the Second Additional Protocol to the Geneva Conventions. See generally, Daragh Murray, Human Rights Obligations of Non-State Armed Groups, (Hart Publishing, Oxford, 2016) 7. See also, Convention IV, relative to the Protection of Civilian Persons in Time of War (Adopted 12 August 1949); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), (Adopted 8 June 1977).

[83] Some studies have explored possible ways of expanding the traditional scope of human rights obligations beyond the current state-centred approach, to include non-state actors. See Andrew Clapham, *Human Rights Obligations of Non-State Actors*, (OUP, 2006) 25 - 30.

[84] Aside from their military capabilities, some non-state actors have well established institutions like courts, or arbitration tribunals, some are also reported to collect taxes. See Daragh Murray, *Human Rights Obligations of Non-State Armed Groups*, (Hart Publishing, Oxford, 2016) 2.

[85] Article 8(2)(e)(vii) of the Rome Statute.

equally prohibited.[86] The challenge here, however, is that the Rome Statute only relates to children below the age of 15. In this case, prosecution for the recruitment of children above that age but below age 18 may fall outside the scope of the ICC. Nonetheless, the court may still serve a deterrence role to discourage the recruitment of child soldiers, especially for those below age 15. Thus, while state actors may lack *de facto* powers to regulate the activities of such armed groups, the resources available at the international level (ICC) may be deployed to achieve justice.

This section has attempted to show that treaties governing the recruitment of children into armed forces are not altogether inconsistent in their approach. While OP II has attempted to rectify some gaps in the CRC, some deficits remain, especially regarding the voluntary recruitment of children. Further, although both OP II and ILO C182 prohibit the forced and compulsory recruitment of children into armed organisations, the latter convention is also silent about voluntary recruitment. Accordingly, voluntary recruitment of children into armed forces remains legally possible in international law, even though this is arguably a worst form of child labour.

CHILD LABOUR GOVERNANCE AND THE SEARCH FOR A LEGAL DEFINITION

Although child labour is widely discussed in the literature, the term has lacked a precise meaning in international law. A logical first step of defining core treaty terms, as found in many international law instruments is skipped, as far as child labour is concerned.[87] Despite this gap, the treaties considered in this paper reveal some important elements of the practice.

Under the Minimum Age Convention, states are called upon to set a minimum working age of at least 14 years or the age of completion of compulsory schooling in developing countries.[88] The Convention also indicates that national authorities may set a lower age limit of 13, or 12 years in the case of developing states where the activity involves light work which is not likely to harm the health and development of children nor likely to prejudice their attendance at school or approved vocational training.[89] The third category of regulation in the Minimum Age Convention is those which can be potentially harmful or hazardous, for which the relevant minimum age is 18 (or 16, if adequate health and safety measures are provided).[90] Thus, an activity may qualify as child labour if undertaken by children

[86] William Schabas, *An Introduction to the International Criminal Court* (Cambridge, 3rd ed, 2007) 50.

[87] For instance, article 1 of the Torture Convention contains a definition of 'torture'; article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the
United Nations Convention against Transnational Organized Crime defines 'trafficking'; article 1 of the Convention relating to the Status of Refugees contains a definition of 'refugee', article 1 of the Convention on the Rights of the Child similarly contains a definition of a 'child'

[88] See article 2(3) & (4) as well as article 7(1), (2) & (4).

[89] See article 7(1) & (4).

[90] See article 3(1)-(3).

below the specified ages in the three categories. Apart from the Minimum Age Convention, the ILO Convention on the Worst Forms of Child Labour spells out a list of practices which no child may participate in. These practices include slavery and slavery-like practices, child prostitution, child pornography etc.[91] Further, the UN Convention on the Rights of the Child, although not a labour-specific instrument, affirms the right of every child to be protected from economic exploitation and from performing work that may harmful or hazardous, including sexual exploitation and participation in armed conflict. The CRC also protects children from participating in work that may affect their education. On their part, the Optional Protocols accompanying the CRC, especially OP I, shed light on certain themes that may be characterised as worst forms of child labour. Nevertheless, while they define elements belonging to the child labour umbrella or worst forms of child labour e.g., child prostitution and child pornography, the Optional Protocols do not define the term child labour itself. Indeed, non-definition is not a serious challenge here, as the Optional Protocols are not primarily framed as child labour instruments, even though they indirectly deal with the phenomenon.

In accordance with the treaties engaged with in this paper, child labour may be characterised in the following manner: any work performed by children below a legally stipulated age, work which conflicts with children's education, or works which are prohibited on the basis of their hazardous nature (worst forms of child labour). Thus, the key strategies for regulating child labour at the international level include: age-based approach, conflict with education approach, and prioritisation approach. However, these indicators in themselves do not reflect a clear-cut or easily identifiable feature of the phenomenon. In other words, the mere fact that children are found working do not necessarily present a *prima facie* case of child labour – it has to be proven that a specific standard has been violated. In this regard, the burden would fall on national authorities to specify what constitutes child labour. Furthermore, some aspects of the treaties considered may reflect idealistic objectives in poorer countries, which may be difficult to implement. For instance, characterising child labour as work which deprive children of educational opportunities, operates with the assumption that education or schooling is readily accessible to all. This is however not always the case, and a strict enforcement could have unintended consequences, whereby children are denied both educational and economic opportunities. Further, there could be practical difficulties in implementing the age-based aspects of child labour provisions; which would require adequate labour inspection and funding. These reflect some of the complexities surrounding child labour. A coherent definition which takes the needs of developed and developing countries into account may be required to solve the current definition and implementation crisis around child labour.

CONCLUSION

[91] See generally article 3 ILO C 182.

This article has analysed the key children's rights treaties dealing with child labour. Central to the treaties is the agenda to prohibit child labour through one or more of the following approaches: age-based approach, prioritisation approach and conflict with education approach. This study has noted the non-restrictive character of child labour, construing it beyond the traditional notions often ascribed to it, to include such practices as slavery, trafficking, debt bondage, forced recruitment of children for use in armed conflict, child prostitution, child pornography etc. This view is consistent with the provisions of article 3 of the Worst Forms of Child Labour Convention, which identifies the highlighted practices as worst forms of child labour. A narrow characterisation which excludes the worst forms would be legally deficient and misrepresent the phenomenon.

The specific child labour indicators identified in this study may serve as a first step in developing strategies to combat the phenomenon. However, as already noted, the indicators are not in themselves unproblematic. For instance, some of them operate with assumptions which may prove difficult to implement in poorer countries. Despite attempts to identify relevant indicators, there is need for a more coherent definition which takes into account the realities of both developed and developing countries. A child labour definition which is unambiguous could generally improve child labour governance at national and global levels, and help states fulfil their international obligations in this regard. Regarding the prohibition approaches of relevant treaties, this study finds that while the treaties address differing issues and themes, they are mostly consistent in areas where they overlap, although there may be language variation. Some gaps however remain. For instance, the voluntary participation of children in armed conflict is not addressed in any of the treaties.