Chapter 3
Child Labor and the Sexual and Criminal Exploitation of Children

A. Introduction

Child labor may be linked to criminal activities. This is particularly the case with child pornography, prostitution and the use of children in the drug trade. The use of child labor in these activities involves the type of abuse that understandably led to the inclusion of sexual and criminal exploitation of children as one of the worst forms of child labor. Outside of C 182, most of the measures on this type of abusive child labor protect children indirectly. Either they do not mention children specifically, or they address related issues, such as trafficking of children. The new Optional Protocol to the Convention on the Rights of the Child (CRC), however, directly addresses the abuse of children in the context of pornography, prostitution and trafficking.

A children’s rights perspective on the question of commercial sexual exploitation of children, including child labor, demands a change from the approach of the early international instruments. These instruments treat trafficking and prostitution, in particular, as criminal law matters, and emphasize issues such as extradition. While effective criminal process is necessary in order to investigate and prosecute those who exploit children, the protection of the children themselves has often been ignored. Some countries have tended to treat the child victims as criminals themselves, particularly where they are over the age of consent. The approach demanded by the more recent international measures is oriented more towards protection of children, and it is predicated on states refraining from prosecuting children for criminal offenses. Furthermore, there are, in some parts of the world, taboos surrounding even the discussion of sexual exploitation of children, which make it difficult to progress these issues.

Trafficking has a particularly close relationship with other forms of abusive child labor. Children may be trafficked into situations of slavery-like prac-

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2 Id.
3 Id., 14.
tices. The same factors that may lead to a high incidence of debt bondage could also lead to families allowing their children to be trafficked.\(^4\)

In examining sexual and criminal exploitation and trafficking of children, we see both the rationale for connecting child labor with the broader human rights agenda and the controversial nature of such a link. The inclusion of sexual and criminal exploitation in C 182 has been criticized on the grounds that these are not child labor issues, but rather issues of international criminal law.\(^5\) Smolin argues that the International Labor Organization (ILO) should not have included this category of worst form of child labor in C 182, as it takes the ILO out of its field of expertise, labor regulation, into criminal law matters. He fails to recognize, however, that sexual and criminal exploitation of children is a multi-faceted problem that requires efforts in many directions in order to resolve it. These include both criminal law policies directed towards detecting and punishing those who abuse children and labor rights measures that give protection to children caught up in the abuse. An examination of the international law relating to sexual and criminal exploitation of children reveals that the instruments attacking this issue from a criminal law perspective often contain few obligations in relation to the protection and rehabilitation of child victims. The distinctive contribution of C 182, with its strong obligations in relation to rehabilitation of child workers in the worst forms of child labor, is to complement the criminal law instruments. Beyond the international standard setting, it is also important to note the role of ILO/IPEC (International Program for the Elimination of Child Labor) in protecting and rehabilitating children who have been involved in sexual or criminal exploitation.\(^6\) Another justification for the inclusion of these issues in C 182 is the link, through the problem of trafficking in children, to slavery-like practices that are also included being worst forms of child labor.

ECPAT,\(^7\) a non-governmental organization (NGO) specializing in issues of commercial sexual exploitation of children, emphasizes a distinction between

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\(^4\) UNICEF, Child Trafficking in West Africa, Policy Responses 13–15 (2002). Poverty and lack of awareness among families of what happens to children when they are given to traffickers are the main factors.


\(^6\) ECPAT Report, supra note 1, at 21. UNICEF is also involved in such projects. It is probably largely due to the activities of IPEC that sexual and criminal exploitation of children was included in C 182; International Labor Organization, Child Labor: Targeting the Intolerable (1996).

\(^7\) ECPAT stands for “End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes.” This campaign was involved in the first World Congress against the Commercial Sexual Exploitation of Children in Stockholm in 1996. It has since become the main organization monitoring the implementing the Stockholm