A. Introduction

Treaties, whether on labor standards, trade or human rights, are binding legal obligations for states. States are then expected to transform these international laws into national regulations applying to other actors. However, there are a number of obstacles to the effective implementation of international standards in a way that they change the behavior of private actors. Obstacles include the territorial limitations on national regulations, which render difficult the regulation of multi-national corporations; lack of resources in many states to implement programs for discovering where harmful child labor exists and providing rehabilitation for child workers; lack of coordination between state and non-state actors working for the elimination of harmful child labor; and in extreme cases an environment such as armed conflict that may make application of law virtually impossible.

Some of these obstacles may be addressed by the use of measures other than binding regimes of international law. These include technical assistance programs at the international level. In the area of child labor, the most prominent of these is the International Labor Organization’s (ILO’s) International Program on the Elimination of Child Labor (IPEC). Since its establishment in 1992, it has implemented programs in a wide range of states to address particular problems of child labor. Its programs are focused on the needs of particular countries or industries. This has the advantage of being more detailed and precise than examination of compliance with international treaties can be. It also involves promotion of standards rather than condemnation or sanctions against states that do not comply with those standards. Technical assistance is specifically recognized in ILO C 182 (Article 8) and ILO R 190 (Articles 11 and 16). Technical assistance has attracted little criticism as a way of implementing child labor standards, but programs such as IPEC have been subject to little external analysis, so it is difficult to evaluate their effectiveness. In any event, effectiveness is likely to vary between programs, given their diversity of content and circumstances.

Regulation of child labor outside the context of international treaty implementation has developed as well, in the context of the growing field of corporate social responsibility. Partly due to the resistance of states, particularly developing states, to trade conditionality based on human rights or core labor
standards, campaigners have increasingly moved towards pressuring multi-
national corporations to use codes of conduct or social labels. Codes of con-
duct are sets of standards that a corporation agrees to follow in relations with
its subsidiaries and sub-contractors in developing countries. These codes usu-
ally include a provision banning the use of child labor. Social labels are less
frequently used. These enable ultimate consumers to express preferences for
purchasing goods made in accordance with particular standards, such as the
non-use of child labor or the diversion of part of the profits from the goods to
the rehabilitation of child workers. These are obligations voluntarily undertaken
by corporations, although usually as a response to pressure from trade unions
in developed countries or from other activists for labor rights. As a result, they
cannot be challenged under international trade law. However, they may still be
subject to criticisms on the level of appropriateness and effectiveness.
Furthermore, as these are essentially private obligations, there are difficulties
in ensuring their full observance in the countries of production. Finally, private
obligations may not reflect the content of the most recent international treaties.
Many corporate codes of conduct are still based on ILO C 138 rather than ILO
C 182.

The negative pressure of state resistance to trade conditionality is not the
only reason for the growth of private enforcement mechanisms. There is increas-
ing interest in sustainable forms of consumption, that promotes environmen-
tally and ethically positive choices by consumers. Fair trade,¹ in particular, has
grown remarkably over the past few years.² The U.K. company, Traidcraft plc,
has shown a profit since 1997, and in financial year 2005–2006, its turnover
rose by 6 percent and its post-tax profit by 34 percent.³ The U.K.’s largest co-
operative retailer now stocks only fair trade coffee and chocolate under its own
label, although it continues to stock other non-fair-trade brands.⁴ While social

¹ Fair trade differs from standard commerce in five ways, according to Traidcraft: it
focuses on trading with poor and marginalized producer groups, helping them develop
skills and sustainable livelihoods through the trading relationship; it pays fair prices that
cover the full cost of production and enable a living wage and other fair rewards to be
earned by producers; it provides credit when needed to allow orders to be fulfilled and
pays premiums to be used to provide further benefits to producer communities; it encour-
ages the fair treatment of all workers, ensuring good conditions in the workplace and
throughout the supply chain; it aims to build up long-term relationships, rather than
looking for short-term commercial advantage. See http://www.traidcraft.co.uk/tem-
plate2.asp?pageID=1650&fromID=1643.

² See John Vidal Fairtrade Sales Hit £100m a Year, GUARDIAN (LONDON), February
24, 2004, at 13, and Terry Macalister, How Consumer Power Sparked a Fairtrade
Revolution on Our High Streets, GUARDIAN UNLIMITED, Mar. 8, 2006, available at
http://business.guardian.co.uk/story/0,,1725789,00.html.

³ Traidcraft plc, Financial Statements for the year ended Mar. 31, 2006, at 5, avail-
able at http://www.traidcraftinteractive.co.uk/docs/68.pdf.

⁴ See http://www.co-opfairtrade.co.uk/. Marks and Spencer, another food retailer,