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U.S. GOVERNMENT
INFORMATION
GPO

106th Congress
1st Session

SENATE

TREATY DOC.
106–5

CONVENTION (No. 182) FOR ELIMINATION OF THE WORST FORMS OF CHILD LABOR

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

CONVENTION (No. 182) CONCERNING THE PROHIBITION AND IMMEDIATE ACTION FOR THE ELIMINATION OF THE WORST FORMS OF CHILD LABOR, ADOPTED BY THE INTERNATIONAL LABOR CONFERENCE AT ITS 87TH SESSION IN GENEVA ON JUNE 17, 1999



AUGUST 5, 1999.—Convention was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

U.S. GOVERNMENT PRINTING OFFICE

69–118★ **(STAR PRINT)** WASHINGTON : 1999

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *August 5, 1999.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification of the Convention (No. 182) Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, adopted by the International Labor Conference at its 87th Session in Geneva on June 17, 1999, I transmit herewith a certified copy of that Convention. I transmit also for the Senate's information a certified copy of a recommendation (No. 190) on the same subject, adopted by the International Labor Conference on the same date, which amplifies some of the Convention's provisions. No action is called for on the recommendation.

The report of the Department of State, with a letter from the Secretary of Labor, concerning the Convention is enclosed.

As explained more fully in the enclosed letter from the Secretary of Labor, current United States law and practice satisfy the requirements of Convention No. 182. Ratification of this Convention, therefore, should not require the United States to alter in any way its law or practice in this field.

In the interest of clarifying the domestic application of the Convention, my Administration proposes that two understandings accompany U.S. ratification.

The proposed understandings are as follows:

> The United States understands that Article 3(d) of Convention 182 does not encompass situations in which children are employed by a parent or by a person standing in the place of a parent on a farm owned or operated by such parent or person.
>
> The United States understands that the term "basic education" in Article 7 of Convention 182 means primary education plus one year: eight or nine years of schooling based on curriculum and not age.

These understandings would have no effect on our international obligations under Convention No. 182.

Convention No. 182 represents a true breakthrough for the children of the world. Ratification of this instrument will enhance the ability of the United States to provide global leadership in the effort to eliminate the worst forms of child labor. I recommend that the Senate give its advice and consent to the ratification of ILO Convention No. 182.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *August 5, 1999.*

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, July 30, 1999.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with the recommendation that it be transmitted to the Senate for advice and consent to ratification, a certified copy of the Convention (No. 182) Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, adopted by the International Labor Conference at its 87th Session in Geneva on June 17, 1999. A certified copy of a recommendation (No. 190) amplifying some of the provisions of the convention is enclosed for the Senate's information.

In general, the Convention obligates ratifying countries to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labor as a matter of urgency. The Secretary of Labor, in her enclosed letter of July 8, 1999, provides additional details concerning the Convention. As she notes, ratification of Convention No. 182 will be an important step in terms of U.S. participation in the ILO. All interested departments and agencies concur in that view.

I am pleased to join with the Secretary of Labor in recommending that the Convention be transmitted to the Senate for advice and consent to ratification, a step which is consistent with our policy of support for and active participation in the work of the ILO.

Respectfully submitted,

FRANK E. LOY.

International Labour Conference
Conférence internationale du Travail

CONVENTION 182

CONVENTION CONCERNING THE PROHIBITION
AND IMMEDIATE ACTION FOR THE ELIMINATION
OF THE WORST FORMS OF CHILD LABOUR
ADOPTED BY THE CONFERENCE AT
ITS EIGHTY-SEVENTH SESSION,
GENEVA, 17 JUNE 1999

CONVENTION 182

CONVENTION CONCERNANT L'INTERDICTION
DES PIRES FORMES DE TRAVAIL DES ENFANTS
ET L'ACTION IMMÉDIATE EN VUE DE LEUR ÉLIMINATION
ADOPTÉE PAR LA CONFÉRENCE
À SA QUATRE-VINGT-SEPTIÈME SESSION,
GENÈVE, 17 JUIN 1999

AUTHENTIC TEXT
TEXTE AUTHENTIQUE

Convention 182

CONVENTION CONCERNING THE PROHIBITION AND IMMEDIATE ACTION FOR THE ELIMINATION OF THE WORST FORMS OF CHILD LABOUR

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 87th Session on 1 June 1999, and

Considering the need to adopt new instruments for the prohibition and elimination of the worst forms of child labour, as the main priority for national and international action, including international cooperation and assistance, to complement the Convention and the Recommendation concerning Minimum Age for Admission to Employment, 1973, which remain fundamental instruments on child labour, and

Considering that the effective elimination of the worst forms of child labour requires immediate and comprehensive action, taking into account the importance of free basic education and the need to remove the children concerned from all such work and to provide for their rehabilitation and social integration while addressing the needs of their families, and

Recalling the resolution concerning the elimination of child labour adopted by the International Labour Conference at its 83rd Session in 1996, and

Recognizing that child labour is to a great extent caused by poverty and that the long-term solution lies in sustained economic growth leading to social progress, in particular poverty alleviation and universal education, and

Recalling the Convention on the Rights of the Child adopted by the United Nations General Assembly on 20 November 1989, and

Recalling the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference at its 86th Session in 1998, and

Recalling that some of the worst forms of child labour are covered by other international instruments, in particular the Forced Labour Convention, 1930, and the United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956, and

Having decided upon the adoption of certain proposals with regard to child labour, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention;

adopts this seventeenth day of June of the year one thousand nine hundred and ninety-nine the following Convention, which may be cited as the Worst Forms of Child Labour Convention, 1999.

Article 1

Each Member which ratifies this Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.

CONVENTION CONCERNANT L'INTERDICTION DES PIRES FORMES DE TRAVAIL DES ENFANTS ET L'ACTION IMMÉDIATE EN VUE DE LEUR ÉLIMINATION

La Conférence générale de l'Organisation internationale du Travail,

Convoquée à Genève par le Conseil d'administration du Bureau international du Travail, et s'y étant réunie le 1er juin 1999, en sa quatre-vingt-septième session;

Considérant la nécessité d'adopter de nouveaux instruments visant l'interdiction et l'élimination des pires formes de travail des enfants en tant que priorité majeure de l'action nationale et internationale, notamment de la coopération et de l'assistance internationales, pour compléter la convention et la recommandation concernant l'âge minimum d'admission à l'emploi, 1973, qui demeurent des instruments fondamentaux en ce qui concerne le travail des enfants;

Considérant que l'élimination effective des pires formes de travail des enfants exige une action d'ensemble immédiate, qui tienne compte de l'importance d'une éducation de base gratuite et de la nécessité de soustraire de toutes ces formes de travail les enfants concernés et d'assurer leur réadaptation et leur intégration sociale, tout en prenant en considération les besoins de leurs familles;

Rappelant la résolution concernant l'élimination du travail des enfants adoptée par la Conférence internationale du Travail à sa quatre-vingt-troisième session, en 1996;

Reconnaissant que le travail des enfants est pour une large part provoqué par la pauvreté et que la solution à long terme réside dans la croissance économique soutenue menant au progrès social, et en particulier à l'atténuation de la pauvreté et à l'éducation universelle;

Rappelant la Convention relative aux droits de l'enfant, adoptée le 20 novembre 1989 par l'Assemblée générale des Nations Unies;

Rappelant la Déclaration de l'OIT relative aux principes et droits fondamentaux au travail et son suivi, adoptée par la Conférence internationale du Travail à sa quatre-vingt-sixième session, en 1998;

Rappelant que certaines des pires formes de travail des enfants sont couvertes par d'autres instruments internationaux, en particulier la convention sur le travail forcé, 1930, et la Convention supplémentaire des Nations Unies relative à l'abolition de l'esclavage, de la traite des esclaves et des institutions et pratiques analogues à l'esclavage, 1956;

Après avoir décidé d'adopter diverses propositions relatives au travail des enfants, question qui constitue le quatrième point à l'ordre du jour de la session;

Après avoir décidé que ces propositions prendraient la forme d'une convention internationale,

adopte, ce dix-septième jour de juin mil neuf cent quatre-vingt-dix-neuf, la convention ci-après, qui sera dénommée Convention sur les pires formes de travail des enfants, 1999.

Article 1

Tout Membre qui ratifie la présente convention doit prendre des mesures immédiates et efficaces pour assurer l'interdiction et l'élimination des pires formes de travail des enfants et ce, de toute urgence.

Article 2

For the purposes of this Convention, the term "child" shall apply to all persons under the age of 18.

Article 3

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.

Article 4

1. The types of work referred to under Article 3(d) shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned, taking into consideration relevant international standards, in particular Paragraphs 3 and 4 of the Worst Forms of Child Labour Recommendation, 1999.

2. The competent authority, after consultation with the organizations of employers and workers concerned, shall identify where the types of work so determined exist.

3. The list of the types of work determined under paragraph 1 of this Article shall be periodically examined and revised as necessary, in consultation with the organizations of employers and workers concerned.

Article 5

Each Member shall, after consultation with employers' and workers' organizations, establish or designate appropriate mechanisms to monitor the implementation of the provisions giving effect to this Convention.

Article 6

1. Each Member shall design and implement programmes of action to eliminate as a priority the worst forms of child labour.

2. Such programmes of action shall be designed and implemented in consultation with relevant government institutions and employers' and workers' organizations, taking into consideration the views of other concerned groups as appropriate.

Article 7

1. Each Member shall take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to this Convention including the provision and application of penal sanctions or, as appropriate, other sanctions.

2. Each Member shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures to:

Article 2

Aux fins de la présente convention, le terme «enfant» s'applique à l'ensemble des personnes de moins de 18 ans.

Article 3

Aux fins de la présente convention, l'expression «les pires formes de travail des enfants» comprend:

a) toutes les formes d'esclavage ou pratiques analogues, telles que la vente et la traite des enfants, la servitude pour dettes et le servage ainsi que le travail forcé ou obligatoire, y compris le recrutement forcé ou obligatoire des enfants en vue de leur utilisation dans des conflits armés;

b) l'utilisation, le recrutement ou l'offre d'un enfant à des fins de prostitution, de production de matériel pornographique ou de spectacles pornographiques;

c) l'utilisation, le recrutement ou l'offre d'un enfant aux fins d'activités illicites, notamment pour la production et le trafic de stupéfiants, tels que les définissent les conventions internationales pertinentes;

d) les travaux qui, par leur nature ou les conditions dans lesquelles ils s'exercent, sont susceptibles de nuire à la santé, à la sécurité ou à la moralité de l'enfant.

Article 4

1. Les types de travail visés à l'article 3 *d)* doivent être déterminés par la législation nationale ou l'autorité compétente, après consultation des organisations d'employeurs et de travailleurs intéressées, en prenant en considération les normes internationales pertinentes, et en particulier les paragraphes 3 et 4 de la recommandation sur les pires formes de travail des enfants, 1999.

2. L'autorité compétente, après consultation des organisations d'employeurs et de travailleurs intéressées, doit localiser les types de travail ainsi déterminés.

3. La liste des types de travail déterminés conformément au paragraphe 1 du présent article doit être périodiquement examinée et, au besoin, révisée en consultation avec les organisations d'employeurs et de travailleurs intéressées.

Article 5

Tout Membre doit, après consultation des organisations d'employeurs et de travailleurs, établir ou désigner des mécanismes appropriés pour surveiller l'application des dispositions donnant effet à la présente convention.

Article 6

1. Tout Membre doit élaborer et mettre en œuvre des programmes d'action en vue d'éliminer en priorité les pires formes de travail des enfants.

2. Ces programmes d'action doivent être élaborés et mis en œuvre en consultation avec les institutions publiques compétentes et les organisations d'employeurs et de travailleurs, le cas échéant en prenant en considération les vues d'autres groupes intéressés.

Article 7

1. Tout Membre doit prendre toutes les mesures nécessaires pour assurer la mise en œuvre effective et le respect des dispositions donnant effet à la présente convention, y compris par l'établissement et l'application de sanctions pénales ou, le cas échéant, d'autres sanctions.

2. Tout Membre doit, en tenant compte de l'importance de l'éducation en vue de l'élimination du travail des enfants, prendre des mesures efficaces dans un délai déterminé pour:

(a) prevent the engagement of children in the worst forms of child labour;

(b) provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration;

(c) ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour;

(d) identify and reach out to children at special risk; and

(e) take account of the special situation of girls.

3. Each Member shall designate the competent authority responsible for the implementation of the provisions giving effect to this Convention.

Article 8

Members shall take appropriate steps to assist one another in giving effect to the provisions of this Convention through enhanced international cooperation and/or assistance including support for social and economic development, poverty eradication programmes and universal education.

Article 9

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 10

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.

2. It shall come into force 12 months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member 12 months after the date on which its ratification has been registered.

Article 11

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 12

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and acts of denunciation communicated by the Members of the Organization.

a) empêcher que des enfants ne soient engagés dans les pires formes de travail des enfants;

b) prévoir l'aide directe nécessaire et appropriée pour soustraire les enfants des pires formes de travail des enfants et assurer leur réadaptation et leur intégration sociale;

c) assurer l'accès à l'éducation de base gratuite et, lorsque cela est possible et approprié, à la formation professionnelle pour tous les enfants qui auront été soustraits des pires formes de travail des enfants;

d) identifier les enfants particulièrement exposés à des risques et entrer en contact direct avec eux;

e) tenir compte de la situation particulière des filles.

3. Tout Membre doit désigner l'autorité compétente chargée de la mise en œuvre des dispositions donnant effet à la présente convention.

Article 8

Les Membres doivent prendre des mesures appropriées afin de s'entraider pour donner effet aux dispositions de la présente convention par une coopération et/ou une assistance internationale renforcées, y compris par des mesures de soutien au développement économique et social, aux programmes d'éradication de la pauvreté et à l'éducation universelle.

Article 9

Les ratifications formelles de la présente convention seront communiquées au Directeur général du Bureau international du Travail et par lui enregistrées.

Article 10

1. La présente convention ne liera que les Membres de l'Organisation internationale du Travail dont la ratification aura été enregistrée par le Directeur général du Bureau international du Travail.

2. Elle entrera en vigueur douze mois après que les ratifications de deux Membres auront été enregistrées par le Directeur général.

3. Par la suite, cette convention entrera en vigueur pour chaque Membre douze mois après la date où sa ratification aura été enregistrée.

Article 11

1. Tout Membre ayant ratifié la présente convention peut la dénoncer à l'expiration d'une période de dix années après la date de la mise en vigueur initiale de la convention, par un acte communiqué au Directeur général du Bureau international du Travail et par lui enregistré. La dénonciation ne prendra effet qu'une année après avoir été enregistrée.

2. Tout Membre ayant ratifié la présente convention qui, dans le délai d'une année après l'expiration de la période de dix années mentionnée au paragraphe précédent, ne fera pas usage de la faculté de dénonciation prévue par le présent article sera lié pour une nouvelle période de dix années et, par la suite, pourra dénoncer la présente convention à l'expiration de chaque période de dix années dans les conditions prévues au présent article.

Article 12

1. Le Directeur général du Bureau international du Travail notifiera à tous les Membres de l'Organisation internationale du Travail l'enregistrement de toutes les ratifications et de tous actes de dénonciation qui lui seront communiqués par les Membres de l'Organisation.

2. When notifying the Members of the Organization of the registration of the second ratification, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention shall come into force.

Article 13

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations, for registration in accordance with article 102 of the Charter of the United Nations, full particulars of all ratifications and acts of denunciation registered by the Director-General in accordance with the provisions of the preceding Articles.

Article 14

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 15

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides —

(a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 11 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 16

The English and French versions of the text of this Convention are equally authoritative.

2. En notifiant aux Membres de l'Organisation l'enregistrement de la deuxième ratification qui lui aura été communiquée, le Directeur général appellera l'attention des Membres de l'Organisation sur la date à laquelle la présente convention entrera en vigueur.

Article 13

Le Directeur général du Bureau international du Travail communiquera au Secrétaire général des Nations Unies, aux fins d'enregistrement, conformément à l'article 102 de la Charte des Nations Unies, des renseignements complets au sujet de toutes ratifications et de tous actes de dénonciation qu'il aura enregistrés conformément aux articles précédents.

Article 14

Chaque fois qu'il le jugera nécessaire, le Conseil d'administration du Bureau international du Travail présentera à la Conférence générale un rapport sur l'application de la présente convention et examinera s'il y a lieu d'inscrire à l'ordre du jour de la Conférence la question de sa révision totale ou partielle.

Article 15

1. Au cas où la Conférence adopterait une nouvelle convention portant révision totale ou partielle de la présente convention, et à moins que la nouvelle convention ne dispose autrement:

a) la ratification par un Membre de la nouvelle convention portant révision entraînerait de plein droit, nonobstant l'article 11 ci-dessus, dénonciation immédiate de la présente convention, sous réserve que la nouvelle convention portant révision soit entrée en vigueur;

b) à partir de la date de l'entrée en vigueur de la nouvelle convention portant révision, la présente convention cesserait d'être ouverte à la ratification des Membres.

2. La présente convention demeurerait en tout cas en vigueur dans sa forme et teneur pour les Membres qui l'auraient ratifiée et qui ne ratifieraient pas la convention portant révision.

Article 16

Les versions française et anglaise du texte de la présente convention font également foi.

The foregoing is the authentic text of the Convention unanimously adopted by the General Conference of the International Labour Organization during its Eighty-seventh Session which was held at Geneva and declared closed on 17 June 1999.

IN FAITH WHEREOF we have appended our signatures this eighteenth day of June 1999.

Le texte qui précède est le texte authentique de la convention adoptée à l'unanimité par la Conférence générale de l'Organisation internationale du Travail dans sa quatre-vingt-septième session qui s'est tenue à Genève et qui a été déclarée close le 17 juin 1999.

EN FOI DE QUOI ont apposé leurs signatures, ce dix-huitième jour de juin 1999:

The President of the Conference,
Le Président de la Conférence,
ALHAJI MUHAMMAD MUMUNI

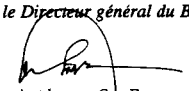
The Director-General of the International Labour Office,
Le Directeur général du Bureau international du Travail,
JUAN SOMAVIA

The text of the Convention as here presented is a true copy of the text authenticated by the signatures of the President of the International Labour Conference and of the Director-General of the International Labour Office.

Le texte de la convention présenté ici est une copie exacte du texte authentiqué par les signatures du Président de la Conférence internationale du Travail et du Directeur général du Bureau international du Travail.

Certified true and complete copy,
Copie certifiée conforme et complète,

For the Director-General of the International Labour Office:
Pour le Directeur général du Bureau international du Travail:



Anthony G. Freeman
Director
International Labor Office
Washington Branch

International Labour Conference
Conférence internationale du Travail

RECOMMENDATION 190

RECOMMENDATION CONCERNING THE PROHIBITION
AND IMMEDIATE ACTION FOR THE ELIMINATION
OF THE WORST FORMS OF CHILD LABOUR
ADOPTED BY THE CONFERENCE AT
ITS EIGHTY-SEVENTH SESSION,
GENEVA, 17 JUNE 1999

RECOMMANDATION 190

RECOMMANDATION CONCERNANT L'INTERDICTION
DES PIRES FORMES DE TRAVAIL DES ENFANTS
ET L'ACTION IMMÉDIATE EN VUE DE LEUR ÉLIMINATION
ADOPTÉE PAR LA CONFÉRENCE
À SA QUATRE-VINGT-SEPTIÈME SESSION,
GENÈVE, 17 JUIN 1999

AUTHENTIC TEXT
TEXTE AUTHENTIQUE

Recommendation 190

RECOMMENDATION CONCERNING THE PROHIBITION AND IMMEDIATE ACTION FOR THE ELIMINATION OF THE WORST FORMS OF CHILD LABOUR

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 87th Session on 1 June 1999, and

Having adopted the Worst Forms of Child Labour Convention, 1999, and

Having decided upon the adoption of certain proposals with regard to child labour, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Worst Forms of Child Labour Convention, 1999;

adopts this seventeenth day of June of the year one thousand nine hundred and ninety-nine the following Recommendation, which may be cited as the Worst Forms of Child Labour Recommendation, 1999.

1. The provisions of this Recommendation supplement those of the Worst Forms of Child Labour Convention, 1999 (hereafter referred to as "the Convention"), and should be applied in conjunction with them.

I. PROGRAMMES OF ACTION

2. The programmes of action referred to in Article 6 of the Convention should be designed and implemented as a matter of urgency, in consultation with relevant government institutions and employers' and workers' organizations, taking into consideration the views of the children directly affected by the worst forms of child labour, their families and, as appropriate, other concerned groups committed to the aims of the Convention and this Recommendation. Such programmes should aim at, inter alia:

(a) identifying and denouncing the worst forms of child labour;

(b) preventing the engagement of children in or removing them from the worst forms of child labour, protecting them from reprisals and providing for their rehabilitation and social integration through measures which address their educational, physical and psychological needs;

(c) giving special attention to:

(i) younger children;

(ii) the girl child;

(iii) the problem of hidden work situations, in which girls are at special risk;

(iv) other groups of children with special vulnerabilities or needs;

(d) identifying, reaching out to and working with communities where children are at special risk;

(e) informing, sensitizing and mobilizing public opinion and concerned groups, including children and their families.

II. HAZARDOUS WORK

3. In determining the types of work referred to under Article 3(d) of the Convention, and in identifying where they exist, consideration should be given, inter alia, to:

Recommandation 190

RECOMMANDATION CONCERNANT L'INTERDICTION DES PIRES FORMES DE TRAVAIL DES ENFANTS ET L'ACTION IMMÉDIATE EN VUE DE LEUR ÉLIMINATION

La Conférence générale de l'Organisation internationale du Travail,

Convoquée à Genève par le Conseil d'administration du Bureau international du Travail, et s'y étant réunie le 1er juin 1999, en sa quatre-vingt-septième session;

Après avoir adopté la convention sur les pires formes de travail des enfants, 1999;

Après avoir décidé d'adopter diverses propositions relatives au travail des enfants, question qui constitue le quatrième point à l'ordre du jour de la session;

Après avoir décidé que ces propositions prendraient la forme d'une recommandation complétant la convention sur les pires formes de travail des enfants, 1999,

adopte, ce dix-septième jour de juin mil neuf cent quatre-vingt-dix-neuf, la recommandation ci-après, qui sera dénommée Recommandation sur les pires formes de travail des enfants, 1999.

1. Les dispositions de la présente recommandation complètent celles de la convention sur les pires formes de travail des enfants, 1999 (ci-après dénommée «la convention»), et devraient s'appliquer conjointement avec elles.

I. Programmes d'action

2. Les programmes d'action visés à l'article 6 de la convention devraient être élaborés et mis en œuvre de toute urgence, en consultation avec les institutions publiques compétentes et les organisations d'employeurs et de travailleurs, en prenant en considération les vues des enfants directement affectés par les pires formes de travail des enfants ainsi que les vues de leurs familles et, le cas échéant, celles d'autres groupes intéressés acquis aux objectifs de la convention et de la présente recommandation. Ces programmes devraient viser, entre autres, à:

a) identifier et dénoncer les pires formes de travail des enfants;

b) empêcher que des enfants ne soient engagés dans les pires formes de travail des enfants ou les y soustraire, les protéger de représailles, assurer leur réadaptation et leur intégration sociale par des mesures tenant compte de leurs besoins en matière d'éducation et de leurs besoins physiques et psychologiques;

c) accorder une attention particulière:

i) aux plus jeunes enfants;

ii) aux enfants de sexe féminin;

iii) au problème des travaux exécutés dans des situations qui échappent aux regards extérieurs, où les filles sont particulièrement exposées à des risques;

iv) à d'autres groupes d'enfants spécialement vulnérables ou ayant des besoins particuliers;

d) identifier les communautés dans lesquelles les enfants sont particulièrement exposés à des risques, entrer en contact et travailler avec elles;

e) informer, sensibiliser et mobiliser l'opinion publique et les groupes intéressés, y compris les enfants et leurs familles.

II. Travaux dangereux

3. En déterminant les types de travail visés à l'article 3 *d)* de la convention et leur localisation, il faudrait, entre autres, prendre en considération:

(a) work which exposes children to physical, psychological or sexual abuse;

(b) work underground, under water, at dangerous heights or in confined spaces;

(c) work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads;

(d) work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health;

(e) work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.

4. 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.

III. Implementation

5. (1) Detailed information and statistical data on the nature and extent of child labour should be compiled and kept up to date to serve as a basis for determining priorities for national action for the abolition of child labour, in particular for the prohibition and elimination of its worst forms as a matter of urgency.

(2) As far as possible, such information and statistical data should include data disaggregated by sex, age group, occupation, branch of economic activity, status in employment, school attendance and geographical location. The importance of an effective system of birth registration, including the issuing of birth certificates, should be taken into account.

(3) Relevant data concerning violations of national provisions for the prohibition and elimination of the worst forms of child labour should be compiled and kept up to date.

6. The compilation and processing of the information and data referred to in Paragraph 5 above should be carried out with due regard for the right to privacy.

7. The information compiled under Paragraph 5 above should be communicated to the International Labour Office on a regular basis.

8. Members should establish or designate appropriate national mechanisms to monitor the implementation of national provisions for the prohibition and elimination of the worst forms of child labour, after consultation with employers' and workers' organizations.

9. Members should ensure that the competent authorities which have responsibilities for implementing national provisions for the prohibition and elimination of the worst forms of child labour cooperate with each other and coordinate their activities.

10. National laws or regulations or the competent authority should determine the persons to be held responsible in the event of non-compliance with national provisions for the prohibition and elimination of the worst forms of child labour.

11. Members should, in so far as it is compatible with national law, cooperate with international efforts aimed at the prohibition and elimination of the worst forms of child labour as a matter of urgency by:

(a) gathering and exchanging information concerning criminal offences, including those involving international networks;

a) les travaux qui exposent les enfants à des sévices physiques, psychologiques ou sexuels;

b) les travaux qui s'effectuent sous terre, sous l'eau, à des hauteurs dangereuses ou dans des espaces confinés;

c) les travaux qui s'effectuent avec des machines, du matériel ou des outils dangereux, ou qui impliquent de manipuler ou porter de lourdes charges;

d) les travaux qui s'effectuent dans un milieu malsain pouvant, par exemple, exposer des enfants à des substances, des agents ou des procédés dangereux, ou à des conditions de température, de bruit ou de vibrations préjudiciables à leur santé;

e) les travaux qui s'effectuent dans des conditions particulièrement difficiles, par exemple pendant de longues heures, ou la nuit, ou pour lesquels l'enfant est retenu de manière injustifiée dans les locaux de l'employeur.

4. En ce qui concerne les types de travail visés à l'article 3 *d)* de la convention ainsi qu'au paragraphe 3 ci-dessus, la législation nationale ou l'autorité compétente peut, après consultation des organisations d'employeurs et de travailleurs intéressées, autoriser l'emploi ou le travail à partir de l'âge de 16 ans, pour autant que la santé, la sécurité et la moralité de ces enfants soient totalement protégées et qu'ils aient reçu un enseignement particulier ou une formation professionnelle adaptés à la branche d'activité dans laquelle ils seront occupés.

III. Mise en œuvre

5. (1) Des informations détaillées et des données statistiques sur la nature et l'étendue du travail des enfants devraient être compilées et tenues à jour en vue d'établir les priorités de l'action nationale visant à abolir le travail des enfants et, en particulier, à interdire et éliminer ses pires formes et ce, de toute urgence.

(2) Dans la mesure du possible, ces informations et données statistiques devraient comprendre des données ventilées par sexe, groupe d'âge, profession, branche d'activité économique, situation dans la profession, fréquentation scolaire et localisation géographique. L'importance d'un système efficace d'enregistrement des naissances comportant la délivrance d'actes de naissance devrait être prise en considération.

(3) Des données pertinentes devraient être compilées et tenues à jour en ce qui concerne les violations des dispositions nationales visant l'interdiction et l'élimination des pires formes de travail des enfants.

6. La compilation et le traitement des informations et données mentionnées au paragraphe 5 ci-dessus devraient être effectués en tenant dûment compte du droit à la protection de la vie privée.

7. Les informations compilées conformément au paragraphe 5 ci-dessus devraient être régulièrement communiquées au Bureau international du Travail.

8. Les Membres devraient établir ou désigner des mécanismes nationaux appropriés pour surveiller l'application des dispositions nationales visant l'interdiction et l'élimination des pires formes de travail des enfants, après consultation des organisations d'employeurs et de travailleurs.

9. Les Membres devraient veiller à ce que les autorités compétentes chargées de mettre en œuvre les dispositions nationales visant l'interdiction et l'élimination des pires formes de travail des enfants coopèrent entre elles et coordonnent leurs activités.

10. La législation nationale ou l'autorité compétente devrait déterminer les personnes qui seront tenues responsables en cas de non-respect des dispositions nationales concernant l'interdiction et l'élimination des pires formes de travail des enfants.

11. Les Membres devraient, pour autant que cela soit compatible avec le droit national, coopérer aux efforts internationaux visant à interdire et éliminer les pires formes de travail des enfants et ce, de toute urgence, en:

a) rassemblant et échangeant des informations concernant les infractions pénales, y compris celles impliquant des réseaux internationaux;

(b) detecting and prosecuting those involved in the sale and trafficking of children, or in the use, procuring or offering of children for illicit activities, for prostitution, for the production of pornography or for pornographic performances;

(c) registering perpetrators of such offences.

12. Members should provide that the following worst forms of child labour are criminal offences:

(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; and

(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, or for activities which involve the unlawful carrying or use of firearms or other weapons.

13. Members should ensure that penalties including, where appropriate, criminal penalties are applied for violations of the national provisions for the prohibition and elimination of any type of work referred to in Article 3(d) of the Convention.

14. Members should also provide as a matter of urgency for other criminal, civil or administrative remedies, where appropriate, to ensure the effective enforcement of national provisions for the prohibition and elimination of the worst forms of child labour, such as special supervision of enterprises which have used the worst forms of child labour, and, in cases of persistent violation, consideration of temporary or permanent revoking of permits to operate.

15. Other measures aimed at the prohibition and elimination of the worst forms of child labour might include the following:

(a) informing, sensitizing and mobilizing the general public, including national and local political leaders, parliamentarians and the judiciary;

(b) involving and training employers' and workers' organizations and civic organizations;

(c) providing appropriate training for the government officials concerned, especially inspectors and law enforcement officials, and for other relevant professionals;

(d) providing for the prosecution in their own country of the Member's nationals who commit offences under its national provisions for the prohibition and immediate elimination of the worst forms of child labour even when these offences are committed in another country;

(e) simplifying legal and administrative procedures and ensuring that they are appropriate and prompt;

(f) encouraging the development of policies by undertakings to promote the aims of the Convention;

(g) monitoring and giving publicity to best practices on the elimination of child labour;

(h) giving publicity to legal or other provisions on child labour in the different languages or dialects;

(i) establishing special complaints procedures and making provisions to protect from discrimination and reprisals those who legitimately expose violations of the provisions of the Convention, as well as establishing helplines or points of contact and ombudspersons;

(j) adopting appropriate measures to improve the educational infrastructure and the training of teachers to meet the needs of boys and girls;

(k) as far as possible, taking into account in national programmes of action:

b) recherchant et poursuivant les personnes impliquées dans la vente et la traite des enfants ou dans l'utilisation, le recrutement ou l'offre d'enfants aux fins d'activités illicites, de prostitution ou de production de matériel pornographique ou de spectacles pornographiques;

c) tenant un registre des auteurs de telles infractions.

12. Les Membres devraient prévoir que les pires formes de travail des enfants indiquées ci-après sont des infractions pénales:

a) toutes les formes d'esclavage ou pratiques analogues, telles que la vente et la traite des enfants, la servitude pour dettes et le servage ainsi que le travail forcé ou obligatoire, y compris le recrutement forcé ou obligatoire des enfants en vue de leur utilisation dans les conflits armés;

b) l'utilisation, le recrutement ou l'offre d'un enfant à des fins de prostitution, de production de matériel pornographique ou de spectacles pornographiques;

c) l'utilisation, le recrutement ou l'offre d'un enfant aux fins d'activités illicites, notamment pour la production et le trafic de stupéfiants, tels que les définissent les conventions internationales pertinentes, ou pour des activités qui impliquent le port ou l'utilisation illégaux d'armes à feu ou d'autres armes.

13. Les Membres devraient veiller à ce que des sanctions, y compris s'il y a lieu des sanctions pénales, soient appliquées en cas de violation des dispositions nationales visant l'interdiction et l'élimination des types de travail mentionnés à l'article 3 *d)* de la convention.

14. Le cas échéant, les Membres devraient également prévoir de toute urgence d'autres moyens administratifs, civils ou pénaux en vue d'assurer l'application effective des dispositions nationales visant l'interdiction et l'élimination des pires formes de travail des enfants, par exemple la surveillance particulière des entreprises qui ont eu recours aux pires formes de travail des enfants et, en cas de violation persistante, le retrait temporaire ou définitif de leur permis d'exploitation.

15. D'autres mesures visant l'interdiction et l'élimination des pires formes de travail des enfants pourraient notamment consister à:

a) informer, sensibiliser et mobiliser le grand public, y compris les dirigeants politiques nationaux et locaux, les parlementaires et les autorités judiciaires;

b) associer et former les organisations d'employeurs et de travailleurs et les organisations civiques;

c) dispenser la formation appropriée aux agents des administrations intéressés, en particulier aux inspecteurs et aux représentants de la loi, ainsi qu'à d'autres professionnels concernés;

d) permettre à tout Membre de poursuivre sur son territoire ses ressortissants qui commettent des infractions aux dispositions de sa législation nationale visant l'interdiction et l'élimination immédiate des pires formes de travail des enfants, même lorsque ces infractions sont commises en dehors de son territoire;

e) simplifier les procédures judiciaires et administratives et veiller à ce qu'elles soient appropriées et rapides;

f) encourager les entreprises à mettre au point des politiques visant à promouvoir les objectifs de la convention;

g) recenser et faire connaître les meilleures pratiques relatives à l'élimination du travail des enfants;

h) faire connaître les dispositions juridiques ou autres relatives au travail des enfants dans les langues ou dialectes divers;

i) prévoir des procédures spéciales de plainte et des dispositions visant à protéger contre toutes discriminations et représailles ceux qui font légitimement état de violations des dispositions de la convention et mettre en place des lignes téléphoniques ou centres d'assistance et des médiateurs;

j) adopter des mesures appropriées en vue d'améliorer les infrastructures éducatives et la formation nécessaire aux enseignants pour répondre aux besoins des garçons et des filles;

k) dans la mesure du possible, tenir compte dans les programmes d'action nationaux de la nécessité:

(i) the need for job creation and vocational training for the parents and adults in the families of children working in the conditions covered by the Convention; and

(ii) the need for sensitizing parents to the problem of children working in such conditions.

16. Enhanced international cooperation and/or assistance among Members for the prohibition and effective elimination of the worst forms of child labour should complement national efforts and may, as appropriate, be developed and implemented in consultation with employers' and workers' organizations. Such international cooperation and/or assistance should include:

(a) mobilizing resources for national or international programmes;

(b) mutual legal assistance;

(c) technical assistance including the exchange of information;

(d) support for social and economic development, poverty eradication programmes and universal education.

i) de promouvoir l'emploi et la formation professionnelle des parents et des adultes appartenant à la famille des enfants qui travaillent dans les conditions couvertes par la convention;

ii) de sensibiliser les parents au problème des enfants travaillant dans ces conditions.

16. Une coopération et/ou une assistance internationales renforcées entre les Membres en vue de l'interdiction et de l'élimination effective des pires formes de travail des enfants devraient compléter les efforts déployés à l'échelle nationale et pourraient, le cas échéant, être développées et mises en œuvre en consultation avec les organisations d'employeurs et de travailleurs. Une telle coopération et/ou assistance internationales devraient inclure:

a) la mobilisation de ressources pour des programmes nationaux ou internationaux;

b) l'assistance mutuelle en matière juridique;

c) l'assistance technique, y compris l'échange d'informations;

d) des mesures de soutien au développement économique et social, aux programmes d'éradication de la pauvreté et à l'éducation universelle.

The foregoing is the authentic text of the Recommendation unanimously adopted by the General Conference of the International Labour Organization during its Eighty-seventh Session which was held at Geneva and declared closed on 17 June 1999.

IN FAITH WHEREOF we have appended our signatures this eighteenth day of June 1999.

Le texte qui précède est le texte authentique de la recommandation adoptée à l'unanimité par la Conférence générale de l'Organisation internationale du Travail dans sa quatre-vingt-septième session qui s'est tenue à Genève et qui a été déclarée close le 17 juin 1999.

EN FOI DE QUOI ont apposé leurs signatures, ce dix-huitième jour de juin 1999:

The President of the Conference,
Le Président de la Conférence,
ALHAJI MUHAMMAD MUMUNI

The Director-General of the International Labour Office,
Le Directeur général du Bureau international du Travail,
JUAN SOMAVIA

The text of the Recommendation as here presented is a true copy of the text authenticated by the signatures of the President of the International Labour Conference and of the Director-General of the International Labour Office.

Le texte de la recommandation présenté ici est une copie exacte du texte authentiqué par les signatures du Président de la Conférence internationale du Travail et du Directeur général du Bureau international du Travail.

Certified true and complete copy,
Copie certifiée conforme et complète,

For the Director-General of the International Labour Office:
Pour le Directeur général du Bureau international du Travail:

Anthony G. Freeman
Director
International Labor Office
Washington Branch

SECRETARY OF LABOR
WASHINGTON

JUL 28 1999

The Honorable Madeleine Albright
Secretary of State
U.S. Department of State
Washington, D.C. 20520

Dear Secretary Albright:

I have the honor and great pleasure to ask that, as soon as possible, you submit to the President, for transmittal to the Senate with a request for advice and consent to United States ratification, Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, adopted by the International Labor Conference at its 87th Session on June 17, 1999. Also enclosed for your reference is a certified copy of the non-binding Recommendation (No. 190) on the same subject, adopted by the International Labor Conference on the same date, which amplifies some of the Convention's provisions. No action is called for on the Recommendation.

As we heard President Clinton say when he addressed the Conference in Geneva the day before, the new Convention is "a true breakthrough for the children of the world." I appreciate your strong support for the Convention, as well as the invaluable role of the State Department in the negotiations that led up to its adoption. As you know, the President has set an ambitious timetable for action on the Convention, and we all have been working hard to make good on the President's promise to send the Convention to the Senate expeditiously. I know that you, and the other members of the President's Committee on the International Labor Organization, believe that rapid U.S. ratification of Convention 182 will be a profoundly positive development for the United States in the ILO and well beyond.

Convention 182 applies to all persons under the age of 18 and requires ratifying States to take immediate and effective measures to secure the prohibition and elimination of the worst forms of labor as a matter of urgency. For the purposes of the Convention, the worst forms of child labor are defined as: all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage, serfdom and forced or compulsory labor; forced or compulsory recruitment of children for use in armed conflict; use of a child for prostitution, production of pornography or pornographic performances; use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs; and work which is likely to harm the health, safety or morals of children.

As Chairman of the President's Committee on the ILO, I have been presented with the report of our Tripartite Advisory Panel on International Labor Standards (TAPILS) with the Panel's unanimous conclusion that ratification of Convention 182 would not require any change in existing United States law and practice. Having reviewed TAPILS' legal findings, the President's Committee has unanimously agreed to recommend that the Convention is appropriate for United

States ratification. This view is likewise shared by all the other interested departments and agencies of the federal government that are not represented on the President's Committee, notably the Departments of Justice, Defense, and Education.

TAPILS was heavily involved in all the stages leading up to the ILO's adoption of Convention 182, with the aim of identifying, discussing, and addressing possible legal obstacles. In particular, members of TAPILS actively participated in the recently concluded negotiations in Geneva and helped shape the final language of the Convention to ensure that it was consistent with U.S. law and practice. Since the Convention was adopted, TAPILS undertook a detailed review of U.S. law and practice to thoroughly document its conclusions that there are no differences between the Convention and federal law and practice and that ratification will not cause conflicts between federal and state law. Throughout this process, TAPILS consulted with lawyers from the Departments of Defense, Justice, and Education.

As required by its mandate, TAPILS conducted the review of Convention 182 pursuant to three ground rules agreed to by the President's Committee in 1985 and incorporated in a United States Senate declaration adopted when the Senate gave its advice and consent to United States ratification of ILO Convention No.144 concerning Tripartite Consultations on International Labor Standards in 1988. The three ground rules provide that: (1) each ILO convention will be examined on its merits on a tripartite basis; (2) if there are any differences between the convention and federal law and practice, these differences will be dealt with in the normal legislative process; and (3) there is no intention to change state law and practice by federal action through ratification of ILO conventions, and the examination will include possible conflicts between federal and state law that would be caused by such ratification.

During its consideration of Convention 182, TAPILS determined that it would be appropriate for the United States to adopt two understandings to accompany its ratification of the Convention. The understandings would involve children working on their families' farms and the term "basic education" as used in the Convention. The understandings would clarify or explain the meaning of the Convention as it relates to domestic law and practice, but they would not affect the terms or the obligations of the United States.

I am enclosing the TAPILS report along with a detailed statement of how U.S. law and practice comport with the Convention. The law and practice statement was also prepared under TAPILS' guidance. Thank you for your support of this important initiative.

Sincerely,

Alexis M. Herman

Enclosures

REPORT OF THE TRIPARTITE ADVISORY PANEL ON INTERNATIONAL LABOR STANDARDS TO THE PRESIDENT'S COMMITTEE ON THE INTERNATIONAL LABOR ORGANIZATION REGARDING CONVENTION NO. 182 ON THE WORST FORMS OF CHILD LABOR

Summary

The Tripartite Advisory Panel on International Labor Standards (TAPILS) has examined in detail Convention No.182 on the Worst Forms of Child Labor, which was adopted by the International Labor Organization (ILO) on June 17, 1999.

The members of TAPILS unanimously conclude, in accordance with the applicable ground rules, that there are no impediments in existing law or practice to ratification of the Convention by the United States: The Convention has been examined on its merits on a tripartite basis, there are no conflicts between the Convention and federal law and practice, and ratification of the Convention will not cause conflicts between federal and state law.

TAPILS concludes that it would be appropriate for the United States to adopt two understandings to Convention 182 to accompany its ratification of the Convention. The understandings would involve children working on their families' farms and the term "basic education" as used in the Convention. The understandings would clarify or explain the meaning of the Convention as it relates to U.S. law and practice, but they would not affect the Convention's terms or the obligations of the United States.

Convention 182 is a non-self-executing treaty. Thus, if ratified, Convention 182 would not be enforceable as a matter of United States law in United States courts. Furthermore, no new legislation or regulation is required to bring the United States into compliance with Convention 182. Existing United States law and practice already conform to the Convention.

After describing the function of TAPILS, including the ground rules that apply to ratification of ILO conventions by the United States, this report summarizes Convention 182 and describes how TAPILS reviewed the Convention for possible ratification. It then discusses the principal issues dealt with in the Convention and how those issues were satisfactorily resolved. Finally, the report sets out the two proposed understandings referred to above.

A detailed description of how existing United States law and practice meets the international obligations of the United States with respect to the Convention is included in the accompanying Statement of Law and Practice.

Function of TAPILS and Applicable Ground Rules

TAPILS was established in 1980 as a subcommittee of the President's Committee on the International Labor Organization, a federal advisory committee created by Executive Order No.

12216.[1] TAPILS is chaired by the Solicitor of Labor. Its membership consists of legal advisors representing the Departments of Labor, State, and Commerce; the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), and the United States Council for International Business.

Under its mandate, TAPILS examines ILO conventions to determine and report to the President's Committee whether there are conflicts between the requirements of a particular convention and existing United States law and practice. TAPILS examines ILO conventions in accordance with three ground rules agreed to by the President's Committee in 1985 and incorporated in a United States Senate declaration adopted when the Senate gave its advice and consent to United States ratification of ILO Convention 144 in 1988.[2] The three ground rules provide that:

(1) each ILO convention will be examined on its merits on a tripartite basis;

(2) if there are any differences between the convention and federal law and practice, these differences will be dealt with in the normal legislative process;

(3) there is no intention to change state law and practice by federal action through ratification of ILO conventions, and the examination will include possible conflicts between federal and state law that would be caused by such ratification.

TAPILS conducts its work through an in-depth examination of the negotiating history leading up to the adoption of a convention by the International Labor Conference, as well as the conclusions (if any) reached by the ILO Committee of Experts on the Application of Conventions and Recommendations, an independent supervisory group appointed by the ILO Governing Body. TAPILS then compares the provisions and interpretations of the convention with existing United States law and practice.

Summary of Convention 182

Convention 182, the "Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor," was adopted unanimously by the International Labor Conference at its 87th Session in Geneva, Switzerland, on June 17, 1999. (The official

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[1] The President's Committee on the International Labor Organization is chaired by the Secretary of Labor. Its members are the Secretaries of Labor, State, and Commerce; the Assistant to the President for National Security Affairs; and the Presidents of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and the United States Council for International Business.

[2] ILO Convention 144 requires ratifying countries (such as the United States) to establish and maintain a mechanism to ensure effective tripartite consultations between governments, workers, and employers on matters relating to the ILO.

short title of the Convention, as reflected in the non-binding Preamble, is the "Worst Forms of Child Labor Convention, 1999.") A non-binding Recommendation, which supplements the Convention, was also adopted.[3] Most of the critical substantive language of the Convention was negotiated at the June 1999 Conference. Consequently, the primary document in the Convention's negotiating history is the final Report of the Committee on Child Labor.[4]

Article 1 of the Convention imposes a basic obligation on all countries that ratify the Convention. They must "take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labor, as a matter of urgency." Article 2 of the Convention defines a "child" (for purposes of the Convention) as any person under the age of 18.

Article 3 of the Convention defines the "worst forms of child labor." They are:

(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 labor, 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 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.

Article 4 of the Convention provides that the types of hazardous work referred to in Article 3(d) are to be determined by individual ratifying countries (through "national laws or regulations or by the competent authority"). Governments must consult employer and worker organizations and take into account relevant international standards, in particular Paragraphs 3 and 4 of the

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[3] In contrast to the convention itself, the recommendation that accompanies an ILO convention is non-binding and is not subject to ratification. Rather, it is communicated to ILO member countries "for their consideration." Constitution of the International Labor Organization, Art. 19, ¶6. Accordingly, TAPILS has not analyzed the Recommendation accompanying Convention 182, except insofar as it is referred to in the Convention or otherwise is relevant to the meaning of the Convention.

[4] International Labor Conference, 87th Session, Report of the Committee on Child Labor (June 1999) (cited as Committee Report).

Recommendation supplementing the Convention.[5]

Articles 5-8 of the Convention deal with the implementation of the Convention:

- Article 5 requires ratifying countries, after consulting employer and worker organizations, to "establish or designate appropriate mechanisms to monitor the implementation" of the Convention.

- Under Article 6, ratifying countries, in consultation with employer and worker organizations, must "design and implement programs of action to eliminate as a priority the worst forms of child labor."

- Article 7 requires ratifying countries to "take all necessary measures to ensure the effective implementation and enforcement" of the Convention. Certain types of measures are specified, including measures--such as ensuring "access to free basic education"--designed to help children who have been removed from the worst forms of child labor.

- Under Article 8, ratifying countries must assist each other in implementing the Convention "through enhanced international cooperation and/or assistance including support for social and economic development, poverty eradication programs and universal education."

The remaining Articles of the Convention (Articles 9-16) set out established protocol and procedures related to ratifying, denouncing, and revising the Convention.

Legal Review of Convention 182

The government, business, and labor legal advisors who comprise TAPILS were heavily involved in all the stages leading up to the ILO's adoption of Convention 182 in June 1999, with the aim of identifying, discussing, and addressing possible legal obstacles to U.S. ratification of the Convention. Lawyers from the Department of Justice, the Department of Defense, and the Department of Education also played important roles in this work.

In 1998, TAPILS was convened several times to ensure that the official comments of the United States on a draft version of the Convention, submitted to the ILO in December 1998, reflected a tripartite view. Ultimately, the comments were endorsed by the AFL-CIO and the U.S. Council

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[5] Paragraph 3 of the Recommendation lists specific, illustrative types of work "to which consideration should be given" in determining (under Article 4), the types of hazardous work referred to under Article 3(d). Paragraph 4 of the Recommendation states that (following consultation) ratifying countries may permit children 16 or older to be employed in types of work referred to under Article 3(d), provided "that the health, safety and morals of the children concerned are fully protected, and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity."

for International Business.

TAPILS continued to meet in the months leading up to the June 1999 International Labor Conference, at which the final version of the Convention was negotiated and adopted. TAPILS legal advisors were part of the U.S. government, employer, and worker delegations to the Conference. They consulted frequently with each other during the course of the Conference. A Department of Defense attorney also assisted the U.S. government delegation, along with attorneys from the Department of Labor and the Department of State.

The extensive preliminary work by TAPILS members and attorneys from other federal agencies--coupled with the success of the United States delegation in helping to shape the final draft of the Convention--made it possible for TAPILS to conclude, at the time of adoption, that the Convention was consistent with U.S. law and practice.

Since the Convention was adopted, TAPILS has prepared a detailed law and practice report, documenting the basis for this conclusion. Lawyers from the Department of Justice, the Department of Defense, and the Department of Education were consulted in this process.

Principal Issues Related to the Worst Forms of Child Labor Convention

No changes in existing United States law and practice are necessary to comply with Convention 182.

As the ILO Conference opened, and deliberations began on a new convention on the worst forms of child labor, three principal issues were presented. A fourth issue arose during the course of the Conference. These issues were:

(1) whether, and how, the new convention would treat the involvement of children in military activities;

(2) how the convention would define hazardous work as a worst form of child labor and describe the nature and scope of the process for determining which types of work fell into this category;

(3) whether work that systematically deprived children of access to basic education (as that might be defined) would be included as a worst form of child labor;[6] and

(4) the nature and scope of the requirement that ratifying countries assist one

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[6] See International Labor Conference, 87th Session, Report of the Committee on Child Labor ¶¶10-11 (June 1999) (statement of ILO Secretary General's representative); International Labor Office, Report IV (2A): Child Labor 59-67, 75-77 (1999) (cited as Report IV(2A)).

another in giving effect to the Convention

Each of these issues was extensively examined by TAPILS before and/or during the ILO Conference. Ultimately, all were resolved by Convention 182 in ways that created no obstacles to U.S. ratification of the Convention. These four issues are briefly addressed below, with further detail provided in the Statement of Law and Practice.

1. Military Service

Military service by children (persons under 18) was a major issue in the development of Convention 182, before and during the 1999 ILO Conference.[7] As the Reporter of the Committee on Child Labor told the plenary session of the Conference, "[t]here was a range of views [on] how best to deal with the issue of child soldiers, and [the Convention] text is the result of a compromise."[8] As adopted, Convention 182 deals with military service exclusively in Article 3(a), which includes "forced or compulsory recruitment of children for use in armed conflict" among the worst forms of child labor.

The United States strongly supported this compromise provision, as an "important and positive addition to the Convention," which "addressed effectively an essential concern: the abduction, coercion, and forced or involuntary recruitment of children for use as participants in armed conflict."[9]

The military-service provision in Article 3(a) is fully consistent with U.S. law. The United States does not permit the forced or compulsory recruitment of any person under 18 for any type of military service. Seventeen year olds may voluntarily enlist in the U.S. Armed Forces, with the

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[7] See, e.g., Committee Report ¶¶168-169 (describing withdrawn amendments and summarizing statements of delegates) & ¶¶387, 396, 401, 407, 409, 414 (summarizing statements of delegates); Report IV (2A) 59-60 (1999).

[8] International Labor Conference, 87th Session, Provisional Record 26: Report of the Committee on Child Labor: Submission, Discussion and Adoption at 26/1 (Statement of Reporter Marie Niven, United Kingdom government delegate) (cited as Provisional Record 26).

[9] See Committee Report ¶151 (remarks of U.S. government delegate). In a January 1999 letter to the ILO, reflecting a tripartite view, the United States had suggested that "[i]f the Convention were to address the issue of military service," it should focus on the "worst situations," which "involve young children who are forcibly recruited and involved in combat." Letter of Andrew James Samet, Deputy Under Secretary for International Affairs, U.S. Department of Labor, to Assefa Bequele, International Labor Office (Jan. 4, 1999).

permission of their parents.[10] This practice conforms to the Convention.

In the course of the Convention's adoption, the United States confirmed two key elements of the meaning of this part of the Convention: (1) that Article 3(a) does not apply to 16 and 17 year olds who lawfully volunteer for service in a nation's armed forces; and (2) that Article 3(d) covering hazardous work does not impose any additional obligation in regard to the engagement of children in lawful military activities.[11]

2. Hazardous Work

A second important issue addressed in adopting Convention 182 was the definition of hazardous work in Article 3(d) and the process in Article 4 for determining which types of work are hazardous.[12]

(a) Article 3(d)

In its December 1998 tripartite comments to the ILO, the United States raised the concern that the language used in the preliminary version of Article 3(d)--"work likely to jeopardize the health, safety or morals of children"--could raise obstacles to broad ratification. The United States suggested that the proper focus of Article 3(d) was work that "necessarily exploits children and exposes them to harm."[13] The United States repeated those observations at the June 1999 Conference.[14]

As adopted, Article 3(d) used the formulation "work likely to harm [in lieu of "jeopardize"] the health, safety or morals of children." The new convention's language helps convey that work under Article 3(d) is hazardous work that poses a real danger to children.

Notably, Article 3(d) does not encompass situations in which children work for their parents on

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[10] See 10 U.S.C. §505(a).

[11] Committee Report ¶¶151-153, 160 (statements of U.S. government delegate and response of ILO Deputy Legal Adviser). See also id. at ¶¶136 & 138 (statements of ILO Deputy Legal Adviser on relationship between Article 3(a) and ILO Convention 29 on forced labor), ¶¶154, 157, 162 (statements of various delegates, reflecting understandings).

[12] See, e.g., Committee Report ¶¶390, 400 (statements of delegates); Report IV (2A) 62-65, 75-77.

[13] Tripartite Comments of the United States on International Labor Conference, 87th Session, Report IV(1): Child Labor at 4 (December 7, 1998) (cited as U.S. Comments).

[14] See Committee Report ¶41 (statement of U.S. government delegate).

bona fide family farms or holdings.[15] Under the federal Fair Labor Standards Act (FLSA), the provision addressing hazardous work by children does not apply where a child is "employed by his parent or by a person standing in the place of his parent on a farm owned or operated by such parent or person." 29 U.S.C. §213(c)(2). Thus, the Convention and the FLSA are consistent. To confirm that the ratification of Convention 182 is consistent with United States law and practice with respect to work by children on their parents' or guardians' farms, TAPILS believes that an understanding on this point (discussed below) would be appropriate.

(b) Article 4

With respect to Article 4, which authorizes ratifying countries to determine the types of hazardous work referred to by Article 3(d), the tripartite U.S. comments had described as "imperative" that countries have "appropriate flexibility."[16] As adopted, Article 4 preserves this flexibility. An amendment that would have specified which types of work were hazardous, removing any discretion for ratifying countries in this respect, was not adopted.[17]

Under Article 4, the determination of the types of work referred to in Article 3(d) is left to the discretion of the ratifying countries, subject to two procedural requirements. First, governments must consult in good faith with the organizations of employers and workers concerned, although they are not obligated by the result of the consultation. Second, governments must "tak[e] into consideration relevant international standards, in particular Paragraphs 3 and 4" of the Recommendation that accompanies Convention 182, although they are not required to ratify or comply with these standards.[18]

Paragraph 4 of the Recommendation, referred to by Article 3(d), contemplates that ratifying countries may authorize employment by children 16 or older in types of work determined to be hazardous, provided the children are fully protected and have received appropriate instruction or vocational training.

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[15] See Committee Report ¶¶172-173 (statements by Employer and Worker Vice-Chairpersons). The Employer and Worker Vice-Chairpersons together represented a two-thirds majority of the delegates in the Committee. Two government delegates confirmed an identical understanding. See id. at ¶400 (statement of Pakistan government delegate) & ¶403 (statement of U.S. government delegate). No government delegate, either in the Committee's proceedings on in the plenary proceedings of the Conference, in any way disputed or qualified the view expressed by the Employer and Worker Vice-Chairpersons on the family farm issue.

[16] U.S. Comments at p. 5.

[17] See Committee Report ¶176 (withdrawal of Worker Members amendment).

[18] See Committee Report ¶¶135, 143 (statements of the ILO Deputy Legal Adviser in response to questions from delegates).

3. Access to Basic Education

A third issue dealt with by the ILO Conference was whether to include work which systematically deprives children of access to basic education as one of the worst forms of child labor.[19] In its tripartite comments to the ILO, the United States supported this notion, provided that basic education was appropriately defined and compulsory-education requirements were taken into account.[20]

As the Reporter of the Child Labor Committee explained, "the Committee decided not to include the denial of access to education in the definition," but instead "decided to strengthen the Convention by emphasizing the importance of access to free basic education and vocational training for all children."[21] An amendment by the Workers to include the denial of access to education in the definition was withdrawn.[22] Instead, Article 7 of the Convention was amended to include a new subsection, Article 7(2)(c), which requires ratifying countries to "ensure access to free basic education and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labor."[23]

The United States supported this provision.[24] It was clear that "basic education," as referred to in the Convention means primary education, plus one year: in other words, eight or nine years of schooling, based on curriculum and not age.[25] To confirm that, in Convention 182, the term

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[19] See, e.g., Committee Report ¶¶39, 40, 387, 388, 391, 403 (statements of delegates); Report IV (2A) 66-67.

[20] U.S. Comments at 4-5.

[21] Provisional Record 26 at 26/1 (Statement of Reporter Marie Niven, United Kingdom government delegate).

[22] See Committee Report ¶170.

[23] See Committee Report ¶¶130, 220.

[24] See Committee Report ¶403 (statement of U.S. government delegate, endorsing statement of Netherlands government delegate). See also id. at ¶398 (statement of Netherlands government delegate).

[25] See Committee Report ¶218 ("It was clear to the Employers that 'Basic education' means primary education, plus one year: in other words, eight or nine years of schooling, such education being curriculum-based and not age-based") & ¶388 (summarizing statement of Worker Vice-Chairperson that "universal provision of at least eight years of basic education" was key to success of Convention). See also Provisional Record 26 at 26/4 (statement of Worker Vice-Chairperson that under Convention, children freed from worst forms of child labor are to

(continued...)

"basic education" has this specific meaning, TAPILS believes that an understanding on this point, described below, would be appropriate.

In the United States, each state makes available free education to all children through the twelfth grade, significantly beyond the level of schooling ("basic education" as understood) contemplated by the Convention. Moreover, state compulsory education laws generally apply to children until the age of 16 (or older, depending on the state), an additional means of ensuring access to free basic education. Thus, Article 7(2)(c) raises no obstacles to ratification.

4. Mutual Assistance

Going into the June 1999 Conference, the United States supported the draft version of what became Article 8 of Convention 182, which initially read: "Members shall take steps, as appropriate, to assist one another in giving effect to the provisions of this Convention through international cooperation or assistance."[26] In the course of the Conference, Article 8 was amended to read:

> Members shall take appropriate steps to assist one another in giving effect to the provisions of this Convention through enhanced international cooperation and/or assistance including support for social and economic development, poverty eradication programs and universal education.

This formulation reflected a unanimous compromise, reached after an amendment that would have referred to "enhanced international cooperation and [not "and/or"] assistance" was rejected.[27]

The United States supported this compromise, on the understanding that Article 8 did not require any ratifiying country to provide any specific form or amount of cooperation or assistance; that no legal obligation was created as to the nature of such cooperation or assistance, and that the matter

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[25](...continued)
"be offered the requisite eight years of basic education or its equivalent, depending on the age at which they are freed"); 26/9 (statement of United States employers' advisor: "It was the clear understanding of the Employers that basic education means primary education plus one year, in other words eight or nine years of schooling, and that such schooling is curriculum-based, not age-based"); 26/16 (statement of United Kingdom workers' advisor).

[26] See International Labor Office, Report IV(2B): Child Labor 11 (1999) (preliminary text of Article 8) (emphasis added); U.S. Comments at 6.

[27] See Committee Report ¶¶234-250.

was left entirely to the discretion of ratifying countries.[28] This understanding is confirmed by the Convention record.[29]

As described in the Statement of Law and Practice, the United States is already engaged in activities that satisfy Article 8, and no changes in U.S. law and practice would be required to remain in compliance with the Convention.

Proposed Understandings to Convention 182

During its consideration of Convention 182, TAPILS determined that it would be appropriate for the United States to adopt two understandings to accompany its ratification of the Convention.

An understanding to an international treaty, such as an ILO convention, clarifies or explains the meaning of the treaty as it relates to domestic law or procedure or addresses a matter incidental to the domestic operation of the treaty. Unlike a reservation to a treaty or convention (which the ILO does not accept), an understanding has no substantive effect on a treaty's terms. That is, an understanding does not modify or limit a country's international obligations.

1. Family Farms and Holdings under Article 3(d) of the Convention

It is the understanding of TAPILS, based on the clear negotiating history of Convention 182,[30] that Article 3(d) on hazardous work does not encompass situations in which children work for their parents or guardians on bona fide family farms or holdings. In the United States, such work is excluded from the comparable provision of the federal Fair Labor Standards Act. See 29 U.S.C. §213(c)(2).[31] Thus, the Convention and the FLSA are consistent.

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[28] See Committee Report ¶243 (statement of United States government delegate).

[29] See Committee Report ¶242 (statement of the ILO Deputy Legal Adviser). See also id. at ¶397 (statement of Netherlands government delegate, on behalf of government delegates of Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, San Marino, Spain, Sweden, Switzerland, Turkey, United Kingdom, and United States).

[30] See Committee Report ¶¶172-173 (statements by Employer and Worker Vice-Chairpersons). See also id. at ¶403 (statement of U.S. government delegate).

[31] The relevant FLSA provision reads: "The provisions of section 212 of this title [prohibiting the employment of "oppressive child labor"] shall apply to an employee below the age of sixteen employed in agriculture in an occupation that the Secretary of Labor finds and declares to be particularly hazardous for the employment of children below the age of sixteen, except where such employee is employed by his parent or by a person standing in the place of his parent

(continued...)

To confirm that the ratification of Convention 182 is consistent with United States law and practice with respect to work by children on their parents' or guardians' farms, TAPILS recommends that the United States adopt the following understanding with ratification of Convention 182:

> *The United States understands that Article 3(d) of Convention 182 does not encompass situations in which children are employed by a parent or by a person standing in the place of a parent on a farm owned or operated by such parent or person.*

2. Basic Education under Article 7 of the Convention

TAPILS understands, based on the clear negotiating history of Convention 182,[32] that the reference in Article 7 of the Convention to "basic education" means primary education, plus one year: eight or nine years of schooling, based on curriculum and not age.

In some other international instruments, the term "basic education" may have a less precise meaning.[33] To confirm that, in Convention 182, the term has a specific meaning, which was universally understood and intended by the drafters of the Convention, TAPILS recommends that the United States adopt the following understanding with ratification of Convention 182:

> *The United States understands that the term "basic education" in Article 7 of Convention 182 means primary education plus one year: eight or nine years of schooling, based on curriculum and not age.*

Conclusion

Each of the four principal issues that arose in connection with Convention 182 were resolved satisfactorily in the course of finally adopting the Convention. In accordance with the ground rules governing its review of ILO conventions, and for the reasons explained in the Statement of

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[31](...continued)
on a farm owned or operated by such parent or person." 29 U.S.C. §213(c)(2) (emphasis added).

[32] See Committee Report ¶¶218, 388 (statements of Employer and Worker Vice-Chairpersons); Provisional Record 26 at 26/4 (statement of Worker Vice-Chairperson), 26/9 (statement of United States employers' advisor), and 26/16 (statement of United Kingdom workers' advisor).

[33] See International Labor Office, Report IV (2A): Child Labor at 66-67 (1999) (discussing meaning of "basic education" and World Declaration on Education for All concept of "basic learning needs" of children and adults).

Law and Practice, TAPILS unanimously concludes that ratification of Convention 182 does not require any change in existing United States law and practice.

Statement of United States Law and Practice
with respect to
International Labor Organization Convention No. 182
on the
Worst Forms of Child Labor

Introduction

Convention 182, the "Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor," was adopted unanimously by the International Labor Conference at its 87th Session in Geneva, Switzerland, on June 17, 1999. (The official short title of the Convention, as reflected in the non-binding Preamble, is the "Worst Forms of Child Labor Convention, 1999.") A non-binding Recommendation, which supplements the Convention, was also adopted.[1] Most of the critical substantive language of the Convention was negotiated at the June 1999 Conference. Consequently, the primary document in the Convention's negotiating record is the final Report of the Committee on Child Labor.

This is the statement of United States law and practice with respect to Convention 182. As described below, after a thorough legal review, it has been determined that ratification of Convention 182 would not in any way require a change in current United States law and practice.

The Tripartite Advisory Panel on International Labor Standards (TAPILS), a sub-group of the President's Committee on the International Labor Organization (ILO) consisting of legal advisors from the Departments of Labor, State, and Commerce, the American Federation of Labor and Congress of Industrial Organizations, and the United States Council for International Business, has examined Convention 182 in detail. TAPILS has unanimously concluded that there are no impediments in existing law or practice to ratification of the Convention by the United States.

The TAPILS review of Convention 182 was conducted in accordance with three ground rules agreed to by the President's Committee in October 1985 and incorporated in a Senate declaration adopted at the time the Senate gave its advice and consent to United States ratification of ILO Convention 144 (Concerning Tripartite Consultation to Promote the Implementation of International Labor Standards) in 1988. The three ground rules provide that:

(1) each ILO convention will be examined on its merits on a tripartite basis;

(2) if there are any differences between the convention and federal law and practice, these differences will be dealt with in the normal legislative process;

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[1] In contrast to the convention itself, the recommendation that accompanies an ILO convention is non-binding and is not subject to ratification. Rather, it is communicated to ILO member countries "for their consideration." Constitution of the International Labor Organization, Art. 19, ¶6. Accordingly, this report does not analyze Recommendation 190 accompanying Convention 182, except insofar as it is referred to in the Convention or otherwise is relevant to the meaning of the Convention.

(3) there is no intention to change state law and practice by federal action through ratification of ILO conventions, and the examination will include possible conflicts between federal and state law that would be caused by such ratification.

The implementation of these ground rules assures that the legal consequences of ratification of an ILO convention -- in particular, whether it would result in or mandate changes in domestic law -- are identified through an orderly, in-depth examination of a convention's legal requirements prior to ratification.

Summary of the Substantive Provisions of the Convention

Article 1 of the Convention imposes a basic obligation on all countries that ratify the Convention. Ratifying countries must "take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labor as a matter of urgency." Article 2 of the Convention defines a "child" as any person under the age of 18.

Article 3 of the Convention defines the "worst forms of child labor." They are:

(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 labor, 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 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.

Article 4 of the Convention provides that the types of hazardous work referred to in Article 3(d) are to be determined by individual governments. Governments must consult employer and worker organizations and take into account relevant international standards, in particular Paragraphs 3 and 4 of the Recommendation supplementing the Convention. Paragraph 3 of the Recommendation lists specific, illustrative types of work "to which consideration should be given" in determining the types of hazardous work referred to under Article 3(d). Paragraph 4 of the Recommendation states that (after consultation) ratifying countries may permit children 16 or older to be employed in types of work referred to under Article 3(d), provided "that the health, safety and morals of the children concerned are fully protected, and that the young persons have

received adequate specific instruction or vocational training in the relevant branch of activity."

Articles 5-8 of the Convention deal with the implementation of the Convention:

- Article 5 requires ratifying countries, after consulting employer and worker organizations, to "establish or designate appropriate mechanisms to monitor the implementation" of the Convention.

- Under Article 6, ratifying countries, in consultation with employer and worker organizations, must "design and implement programs of action to eliminate as a priority the worst forms of child labor."

- Article 7 requires ratifying countries to "take all necessary measures to ensure the effective implementation and enforcement" of the Convention. Certain types of measures are specified, including measures -- such as ensuring "access to free basic education" -- designed to help children who have been removed from the worst forms of child labor.

- Under Article 8, ratifying countries must assist each other in implementing the Convention "through enhanced international cooperation and/or assistance including support for social and economic development, poverty eradication programs and universal education."

The remaining Articles of the Convention (Articles 9-16) set out established ILO protocol and procedures related to ratifying, denouncing, and revising the Convention.

Nature of the Convention

Convention 182 is a non-self-executing treaty. As a non-self-executing treaty, Convention 182 would not, if ratified, become directly effective as United States law. Instead, by ratifying the Convention, the United States would undertake the obligation to give domestic legal effect to its terms. As noted above, and as the following analysis makes clear, existing United States law and practice should bring the United States into compliance with the Convention. No additional implementing legislation or regulation is required.

Analysis of U.S. Law and Practice

The following analysis examines the preamble and the articles of the Convention in order.

PREAMBLE

The Preamble does not establish any substantive or procedural obligations. It provides only the international context under which the Convention was adopted. The Preamble acknowledges the need for a new international instrument focused on the prohibition and elimination of the worst forms of child labor to complement the ILO Convention and the Recommendation concerning

minimum age for admission to employment, 1973 (Convention 138). The Preamble explains that the effective elimination of the worst forms of child labor requires immediate and comprehensive action.

The Preamble refers to a number of international instruments addressing children; however, such references neither have any legal effect on the substantive provisions of the Convention, nor do they promote the implementation or ratification of the other instruments. A country ratifying Convention 182 does not thereby ratify, or agree to ratify, these instruments.

ARTICLE 1

Each Member which ratifies this Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labor as a matter of urgency.

Article 1 of the Convention requires countries ratifying the Convention to take "immediate and effective measures to secure the prohibition and elimination of the worst forms of child labor as a matter of urgency." The United States, through existing laws of the federal and state governments, has already taken "immediate and effective measures to secure the prohibition and elimination of the worst forms of child labor," as required by Article 1 of the Convention. As detailed below, each of the "worst forms of child labor," as defined by Article 3 of the Convention, is addressed by U.S. law.

As further discussed below, a number of aspects of this Convention are not subject to action by the federal government. This has made federal States reluctant to ratify ILO conventions which could not be implemented solely and entirely by their national governments. However, under Article 19(7)(b) of the ILO Constitution, a federal State, such as the United States, having ratified a convention, is responsible for implementation of obligations within the powers of its national government, for notifying the governments of its member states of matters falling within their jurisdiction, and for reporting to the ILO on the degree of over-all compliance. In any event, based on the following analysis, current law and practice of the states should present no difficulties.

ARTICLE 2

For the purposes of this Convention, the term "child" shall apply to all persons under the age of 18.

Article 2 of the Convention defines child, "for the purpose of the Convention," as any person under the age of 18.

ARTICLE 3

Article 3 of the Convention defines the worst forms of child labor. Each paragraph of Article 3 is examined separately below.

Article 3(a)

(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 labor, including forced or compulsory recruitment of children for use in armed conflict;

U.S. law, including the Constitution, emphatically prohibits the practices described in Article 3(a).[2] Under the Thirteenth Amendment to the United States Constitution, slavery or involuntary servitude is forbidden "within the United States or any place subject to their jurisdiction." The Thirteenth Amendment has been construed so broadly as to prohibit all practices that involve any form of subjection having the incidents of slavery, either directly or indirectly. See United States v. Shackney, 333 F.2d 475 (2d Cir. 1964). The Supreme Court of the United States has held that the purpose of the Thirteenth Amendment was not just to end slavery but to maintain a system of completely voluntary labor. See Pollack v. Williams, 322 U.S. 4, 17 (1944). The Thirteenth Amendment is the denunciation of a condition and reaches every race and every individual regardless of age. See Hodges v. U.S., 203 U.S. 1 (1906), (overruled on other grounds in part by Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968)).

The language of the Thirteenth Amendment forbidding slavery or involuntary servitude "within the United States or any place subject to their jurisdiction," prohibits these practices by the federal government, state governments, and territories subject to the jurisdiction of the United States. Further, Article VI of the Constitution of the United States establishes the Constitution and other federal law as the supreme law of the land. Consequently, the prohibitions of the Thirteenth Amendment override any inconsistent state action, judicial, legislative, or executive.

The Thirteenth Amendment's prohibition of involuntary servitude has been determined by the Supreme Court to ban the practice of peonage, which is broadly defined as compulsory service in the payment of a debt whether the debt is real or alleged. See Bailey v. Alabama, 219 U.S. 219, 242 (1911); 42 U.S.C. § 1994. The provisions of 18 U.S.C. §§ 1581-1588 provide criminal

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[2] The negotiating history of the Convention indicates that the provision's reference to "sale and trafficking of children" is not meant to cover issues outside of the worst forms of child labor, such as adoptions. See International Labor Office, Report IV(2A): Child Labor at 60 (1999). The provision's cataloging of practices similar to slavery sets forth the forms of child labor that the amendment was intended to cover. See International Labor Conference, 86th Session, Report of the Committee on Child Labor ¶130 (June 1998) (cited as Committee Report (1998)).

penalties in connection with peonage and related practices.

The provisions of 18 U.S.C. §241, the federal civil rights conspiracy statute, allow the prosecution of two or more persons for conspiring, or agreeing, to exaction of labor in violation of the Thirteenth Amendment. The provisions of 18 U.S.C. §§1581 *et seq.* create the substantive criminal violations of peonage, involuntary servitude, enticement into slavery and related violations. Further federal protections against involuntary servitude are found in 42 U.S.C. §§1983 and 1985, and the federal kidnaping statutes, 18 U.S.C. §§1201 and 1583. The provisions of §1983 create a private right of action against persons who, under color of state law, deprive other individuals of their rights under the Constitution or other laws of the United States. The provisions of §1985 create a private right of action against persons who conspire to deprive others of their civil rights. The kidnaping statutes punish individuals who unlawfully confine and transport others, including minors, for monetary benefit.

Additionally, the United States has ratified ILO Convention 105, Concerning the Abolition of Forced Labor. Convention 105, among other things, requires ratifying members to take effective measures to secure the immediate and complete abolition of forced or compulsory labor. The Statement of U.S. Law and Practice prepared in connection with Convention 105 concluded that United States law and practice were in full compliance with Convention 105. The Convention was ratified on September 25, 1991.

Article 3(a) includes "forced or compulsory recruitment of children for use in armed conflict" among the worst forms of child labor. The United States strongly supported this compromise provision, as an "important and positive addition to the Convention," which "addressed effectively an essential concern: the abduction, coercion, and forced or involuntary recruitment of children for use as participants in armed conflict."[3]

The provision in Article 3(a) concerning the use of children as participants in armed conflict is fully consistent with U.S. law. The United States does not permit the forced or compulsory recruitment (i.e., conscription) of any person under 18 for any type of military service. Seventeen year olds may volunteer to serve in the U.S. Armed Forces (i.e., enlist), with parental consent. See 10 U.S.C. §505(a). Voluntary military service by persons under 18 is not prohibited by the Convention, and U.S. practice raises no obstacles to ratification.

In the course of the Convention's adoption, the United States confirmed two understandings on

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[3] See International Labor Conference, 87th Session, Report of the Committee on Child Labor ¶151 (June 1999) (statement of U.S. government delegate) (cited as Committee Report (1999)). In a January 1999 letter to the ILO, reflecting a tripartite view, the United States had suggested that "[i]f the Convention were to address the issue of military service," it should focus on the "worst situations," which "involve young children who are forcibly recruited and involved in combat." Letter of Andrew James Samet, Deputy Under Secretary for International Affairs, U.S. Department of Labor, to Assefa Bequele, International Labor Office (Jan. 4, 1999).

the meaning of the Convention: (1) that Article 3(a) does not apply to 16 and 17 year olds who lawfully volunteer for service in a nation's armed forces; and (2) that Article 3(d) covering hazardous work does not impose any additional obligation in regard to the engagement of children in lawful military activities.[4]

Thus, this provision of Article 3(a) does not create new legal obligations for the United States to implement. It does not impose any restrictions on, or require any change in, the recruitment, community outreach, or educational programs of the U.S. Armed Forces.

Article 3(b)

(b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

In the United States, both the federal and state governments have enacted criminal laws to protect children and youth from sexual exploitation by adults through prostitution or pornography.[5] Laws prohibiting child sexual abuse and statutory rape laws are also used to prosecute adults who sexually exploit children. Additionally, all fifty states and the federal government have enacted laws requiring the mandatory reporting of child sexual abuse and exploitation to state child protective agencies or law enforcement agencies.

Federal law establishes consistency between U.S. law and practice and Convention 182. Under federal law, the Mann Act, 18 U.S.C. § 2421, prohibits transporting a person across foreign or state borders for the purpose of prostitution. In addition to this general prohibition, federal law specifically prohibits transportation in interstate commerce of any individual under age 18 with the intent that the "individual engage in prostitution or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so." 18 U.S.C. §2423(a).

Federal laws further prohibit enticing, persuading, inducing, etc. any person to travel across a state boundary for prostitution or for any sexual activity for which any person may be charged with a crime, 18 U.S.C.§ 2422; travel with intent to engage in any sexual act with one under age 18, 18 U.S.C. § 2423(b); and use of any facility of interstate or foreign commerce to transmit the name, telephone number, Social Security number, or electronic mail address of an individual,

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[4] Committee Report (1999) ¶¶151-153, 160 (statements of U.S. government delegate and response of ILO Deputy Legal Adviser). See also id. at ¶¶136 & 138 (statements of ILO Deputy Legal Adviser on relationship between Article 3(a) and ILO Convention 29 on forced labor), ¶¶154, 157, 162 (statements of various government delegates, reflecting understandings).

[5] The negotiating history of the Convention indicates that the emphasis of this provision is on those who exploit children and not the children themselves. Committee Report (1998) ¶131.

knowing that the individual has not attained the age of 16 years, with the intent to entice, encourage, offer, or solicit any person to engage in sexual activity for which any person can be charged with a criminal offense, 18 U.S.C. § 2425.

Additionally, 18 U.S.C. § 2424 provides that whoever keeps, harbors, maintains, etc. an individual in any place for the purpose of prostitution, knowing or in reckless disregard that such individual is an alien, must file with the Commissioner of the Immigration and Naturalization Service a statement setting forth, among other things, the alien's age.

With respect to child pornography, federal law prohibits the production, distribution, receipt, and possession of child pornography. 18 U.S.C. §§2251 - 2252(A). Conspiracy and attempts to violate the federal child pornography laws are also chargeable federal offenses. Specifically, 18 U.S.C. §2251 establishes as criminal offenses the use, enticement, employment, coercion or inducement of any minor to engage in "any sexually explicit conduct for the purpose of producing any visual depiction" of that conduct. That provision further prohibits the transportation of any minor in interstate or foreign commerce with the intent that the minor engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct. Parents, legal guardians and custodians, etc. are punishable under this provision if they permit a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of that conduct that the parent knows or has reason to know will be transported or has been transported in interstate or foreign commerce. The provision also subjects to criminal penalty those who produce and reproduce the offending material, as well as those who advertise seeking/offering to receive such materials or seeking/offering participation in the visual depictions of minors engaged in sexually explicit conduct. Minor is defined as anyone under age 18. 18 U.S.C. §2256.

Federal law also prohibits (1) the transfer, sale, purchase and receipt of minors for use in the production of visual depictions of minors engaged in sexually explicit conduct, 18 U.S.C. § 2251A; (2) knowingly transporting, shipping, receiving, distributing, or possessing any visual depiction involving a minor in sexually explicit conduct, 18 U.S.C. § 2252 and 2252A; (3) the use of a minor to produce child pornography for importation into the United States, and the receipt, distribution, sale or possession of child pornography intending that the visual depiction will be imported into the United States, 18 U.S.C. § 2260.

In addition to federal statutes specifically addressing child prostitution and child pornography, federal law, 18 U.S.C. §2258, requires certain professionals working on federal land or in federally operated contracted facilities to report any suspected child abuse, as defined in 42 U.S.C. §13031. Sexual exploitation is included in the offenses required to be reported. Sexual exploitation is defined to include child pornography and/or child prostitution.

Federal law is supplemented by state law. All 50 states prohibit prostitution activities involving minors. State child prostitution statutes address patronizing a child prostitute, inducing or employing a child to work as a prostitute, or actively aiding the promotion of child prostitution. Some state statutes prohibit child prostitution in very general terms, while other states specify the

various acts and participants. Further, each state has enacted laws addressing child pornography. The elements and wording of these statutes vary from state to state; however, they all prohibit the visual depiction by any means of a child engaging in sexually explicit conduct. While the exact wording of the statutes may differ, the state statutes address the following five areas: (1) *production*: employment or use of a minor to engage in or assist in any sexually explicit conduct for the purpose of producing a depiction of that conduct; (2) *trafficking*: distributing, transmitting or selling child pornography; (3) *advertisement*: seeking or offering material depicting minors engaged in sexually explicit conduct; (4) *possession*: knowingly possessing child pornography; and (5) *procurement*: inducing or persuading a minor to be the subject of child pornography.

Article 3(c)

(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in relevant international treaties;

As the negotiating history of the Convention demonstrates, the term "illicit activities" refers to activities that are not only illegal, but also are commonly regarded as morally suspect.[6] Involving children in the production and trafficking of drugs is the abuse that Article 3(c) is primarily intended to address.[7] Federal law criminalizes the use of children in any production of drugs or trafficking in drugs or drug paraphernalia, and adds increased penalties if children are solicited for these activities near schools, public housing, or in certain public gathering places. Federal law establishes consistency between U.S. law and practice and Convention 182 in this area.

In addition to the forms of sexual exploitation of children otherwise covered by the Convention, the only other possible example of "illicit activities" specifically discussed in the negotiation of the Convention or Recommendation was the unlawful use of weapons. Paragraph 12 of the non-binding Recommendation suggests that countries should make certain worst forms of child labor criminal offenses, including "the use, procuring or offering of a child . . . for activities which

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[6] See International Labor Office, Report IV (2A): Child Labor at 61-62 (1999) (cited as Report IV (2A)). The report notes that the word "illicit" "has a more moral connotation" than the word "illegal." Id. at 61. The report cites the involvement of children in a theatrical production that violated copyright laws as an example of an arguably illegal activity that would not be illicit (and thus would not be addressed by the Convention). Id.

[7] The "relevant international treaties" referred to in Article 3(c) are: the Single Convention on Narcotic Drugs, 1961; the Convention on Psychotropic Substances, 1971; the Protocol amending the Single Convention on Narcotic Drugs, 1972; and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988. See Report IV (2A) at 61 n. 9.

involve the unlawful carrying or use of firearms or other weapons."[8] Insofar as these activities are covered by Article 3(c), compliance poses no obstacle for the United States, since the illegality of the carrying or use of firearms or weapons is the basis for the offense. Necessarily, if carrying or use is illegal under federal or state law, the use, procuring or offering of a child for such activities is illegal as well. In fact, the activity is illegal irrespective of age.

With respect to the use, procuring, or offering of children in drug production or trafficking, under 21 U.S.C. §§861, 952 and 953, it is criminally unlawful to "knowingly and intentionally" . . . "employ, hire, use, persuade, induce, entice or coerce a person under 18 years of age" to violate prohibitions against, among other things, importing or exporting controlled substances;[9] further, the same standards apply involving persons under 18 years old in connection with manufacturing, distributing, or dispensing controlled substances, or with the intent to manufacture, distribute or dispense controlled substances, pursuant to 29 U.S.C. §841(a)(1), and with selling, mailing, transporting, importing or exporting drug paraphernalia, pursuant to 29 U.S.C. 863(a). Under the Drug Free School Zones Act, 21 U.S.C. §860(a) and (c), it is a criminal offense subject to punishment in excess of penalties for violations of §841, supra, for any individual under the age of 21 to "employ, hire, use, persuade, induce, entice or coerce" a person under 18 years of age to distribute or manufacture drugs within 1000 feet of schools, colleges, playgrounds, or housing facilities owned by a public housing authority, or within 100 feet of youth centers, public swimming pools, or video arcades.

In addition to federal criminal statutes, the United States Sentencing Guidelines ensure that those who victimize children or exploit children to facilitate drug trafficking or other illicit or criminal acts are held accountable for their conduct through the imposition of increased criminal penalties. The federal sentencing guidelines are enforceable laws issued by the United States Sentencing Commission that direct federal judges to impose strict and specific sentences on those who commit federal crimes. The guidelines take into account both the offender's criminal record and the seriousness of the offender's crime, including specific factors that make the crime significantly more egregious. In particular, the sentencing guidelines require judges to increase offenders' sentences by approximately 25 percent when those offenders have victimized a child (or someone who is otherwise vulnerable). For example, if a child is held in a condition of involuntary servitude, the offender will receive a sentence of imprisonment that is at least one year longer than had the offense involved an adult victim.

Similarly, when adult offenders use or attempt to use a child to commit an offense -- including drug trafficking, or other illicit activities including but not limited to gambling and the interstate transportation of stolen goods -- or to avoid being apprehended for any federal offense, the

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[8] Recommendation 190, ¶12 (emphasis added). See Committee Report (1999) ¶336.

[9] Narcotic substances are included within the term "controlled substances." See 21 U.S.C. §841(b)(1).

sentencing guidelines dictate that the offenders' sentences be increased by approximately 25 percent. Therefore, those who use minors for the commission of criminal offenses, receive additional penalties even in the absence of explicit statutes prohibiting the use of minors in the designated illicit activity.

The above federal law is supplemented by state law. In all 50 states, laws enable the state to intercede and protect a child from a parent, guardian or custodian whose abuse is directly related to the commission of an illicit activity. This type of protective legislation may in itself be sufficient to satisfy the Convention's obligation to prohibit and eliminate the conduct regulated in Article 3(c).

Moreover, in addition to general protective provisions in state child abuse laws, the conduct aimed at in this paragraph appears in each state to be subject to sanctions under one or more of the following types of civil[10] or criminal laws: Drug statutes that specifically prohibit using, inducing or coercing a minor to violate state drug laws; prohibitions against contributing to the delinquency or endangering the welfare of a minor; prohibitions against aiding, causing, encouraging or contributing to a minor's violation of state law; prohibiting the compensation of a minor to engage in a criminal offense or enterprise; orders by a juvenile or family court holding persons liable for the conduct of a minor; refusals to allow for the issuing of a business or employment licenses or permits to those whose operations might involve exposure of minors to illicit activities; the providing of judicial redress in private civil suits against those who expose minors to illicit activities; and general criminal laws covering aiding, abetting, facilitation and solicitation of criminal offenses. In sum, each state generally sanctions the prohibited conduct in one or more of the above-described ways, although each specific case would turn on its own facts.

Article 3(d)

(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.

Article 3(d) refers to work "likely to harm the health, safety or morals of children." As defined in Article 3(d), such hazardous work is work that poses a real danger to children.[11] No new

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[10] Since Article 7 of the Convention states that prohibitions on conduct described in Article 3 may be implemented through either criminal or non-criminal sanctions, civil statutes would be sufficient to meet the obligations of the Convention.

[11] As adopted, Article 3(d) is consistent with the tripartite view that had been expressed by the United States on the proper focus of the Convention. In its December 1998 comments to the ILO, the United States raised the concern that the preliminary version of Article

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legislation or regulation would be required for the United States to comply with the Convention's requirements with respect to hazardous work. As provided in Article 4(1) of the Convention (examined below), the specific types of work covered by Article 3(d) are to be determined by ratifying countries individually, after consultation with employer and worker organizations, taking relevant international labor standards into consideration. Further, as indicated in the analysis of Article 3(a) obligations, the Convention does not impose an obligation on countries to include lawful military training activities among the types of work under Article 3(d).[12] The United States has already taken steps to determine the types of hazardous work that come within Article 3(d) and to prohibit and eliminate them. Therefore, no additional action is necessary to meet the requirements of Article 3(d). As discussed below, under Article 4(3), there is a requirement to examine and revise periodically, as necessary, the types of hazardous work that come within Article 3(d).

Two federal laws enforced by the Secretary of Labor establish consistency between U.S. law and practice and Convention 182 in this area: the Fair Labor Standards Act (FLSA), 29 U.S.C. §§201 *et seq.*, and the Occupational Safety and Health Act (OSH Act), 29 U.S.C. §§ 651 *et seq.* Both the FLSA and the OSH Act serve to protect the "health" and "safety" of children, in the words of Article 3(d). With respect to the "morals" of children, U.S. law more than adequately addresses this element of Article 3(d). As described above, U.S. law prohibits work "likely to harm the . . . morals of children" by prohibiting prostitution and pornography involving children. See supra at 7-9. In addition, state laws regulating youth employment in places where alcohol is sold and in other "adult" businesses (such as selling pornography) satisfy the purposes of this aspect of Article 3(d). See note 14, infra.

The FLSA, which specifically addresses child labor, establishes a minimum standard for employment subject to the Act. It provides that employers must comply with any "higher standard" in federal law, state law, or municipal ordinance related to child labor. 29 U.S.C. §218(a). Under the OSH Act, a state may (with the approval of the Secretary of Labor) assume responsibility for developing and enforcing occupational safety and health standards, but the law ensures that the state's standards will be at least as effective as those set by the Occupational

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[11](...continued)
3(d) -- which referred to work that was "likely to jeopardize the health, safety or morals of children" -- could raise obstacles to broad ratification. The United States suggested that the proper focus of Article 3(d) was work that "necessarily exploits children and exposes them to harm." Tripartite Comments of the United States on International Labor Conference, 87th Session, Report IV(1): Child Labor at 4 (December 7, 1998). The United States repeated those observations at the June 1999 Conference. See Committee Report (1999) ¶41 (statement of U.S. government delegate).

[12] Article 3(d) imposes no obligations on a ratifying country with regard to the engagement of children in lawful military activities. See supra at 6-7 (discussion of Article 3(a) and military service).

Safety and Health Administration (OSHA). 29 U.S.C. §667. The scope of both the FLSA and the OSH Act is very broadly defined in terms of interstate commerce.[13] State child labor laws and state child abuse and neglect laws supplement federal laws in providing relevant protections to children in the United States.[14]

Occupational Safety and Health Act:

The Occupational Safety and Health Act is one means by which the United States prohibits and eliminates hazardous work by children. Workers in the United States, whatever their ages, are protected from hazardous working conditions by the OSH Act.[15] Under the Act's "General Duty

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[13] The FLSA provides that "[n]o employer shall employ any oppressive child labor in commerce or in the production of goods for commerce or in any enterprise engaged in commerce or in the production of goods for commerce." 29 U.S.C. §212(c). The OSH Act imposes duties on every "employer," defined as a "person engaged in a business affecting commerce who has employees." 29 U.S.C. §§652(5), 654(a).

[14] All 50 states have child labor laws, many with extensive overlap in coverage with federal law. In some instances, state child labor laws are more protective than the FLSA. (If both state and federal law apply to the same employment situation, the more stringent standard of the two must be observed.) Thirty-five states set 18 as the minimum age for specified occupations determined to be hazardous. Twelve other states set a lower minimum age (typically 16) for specified hazardous occupations. In addition, 49 states bar persons under 18 from certain occupations (e.g., commercial driving and selling alcohol). All 50 states restrict the hours children of certain ages may work; 28 states place restrictions on hours that 16- and 17-year olds may work.

State child abuse and neglect laws also serve to protect children from work "likely to harm their health, safety or morals." All states have child abuse and neglect laws. (Louisiana's law, notably, includes the "exploitation or overwork of a child" in its definition of abuse.) Depending on the circumstances, these state laws would apply if, for example, a parent permitted a child to engage in "work which expose[d] [the child] to physical, psychological or sexual abuse" (a type of hazardous work listed in Paragraph 3 of the Recommendation accompanying Convention 182). Again, depending on the circumstances, many states would provide a remedy if a parent knowingly and unreasonably permitted a child to be employed in work that put the child at serious risk of harm through a workplace accident.

[15] The OSH Act does not apply to working conditions regulated by other federal agencies with statutory authority to enforce occupational safety and health standards in particular industries such as mining (which is governed by the Federal Mine Safety and Health Act, 30 U.S.C. §§801 *et seq.*, a comprehensive statute also enforced by the Secretary of Labor). See 29 U.S.C. §653(b)(1). But, as a practical matter, children are not employed completely outside the

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Clause," every employer subject to the Act is required to "furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees." 29 U.S.C. §654(a). "[A]n employer's duty extends to all employees, regardless of their individual susceptibilities (i.e., age or pregnancy)." Reich v. Arcadian Corp., 110 F.3d 1192, 1198 (5th Cir. 1997). Employers also must comply with safety and health standards issued by the Secretary of Labor, through the Occupational Safety and Health Administration, under the OSH Act, 29 U.S.C. § 654(a)(2). OSHA has issued standards addressing a wide range of hazards, including standards that apply to all employers, as well as standards that apply to particular industries. See 29 C.F.R. Part 1910 (general industry), Part 1915 (shipyard employment), Part 1917 (marine terminals), Part 1918 (longshoring), Part 1926 (construction), and Part 1928 (agriculture).[16]

Employers who violate the General Duty Clause or OSHA standards are subject to citations and civil monetary penalties, and must abate the violation. 29 U.S.C. §§658, 659, 666. The OSH Act also authorizes the Secretary of Labor to seek federal-court injunctions to restrain imminent dangers in the workplace. 29 U.S.C. §662.

The age and experience of affected workers can be factors in determining whether an employer has exercised reasonable diligence in complying with the OSH Act. For example, the Occupational Safety and Health Review Commission (OSHRC) has noted that because "high-school-aged employees may not appreciate the danger of workplace hazards such as power lines and may be prone to disregard safety rules . . . more explicit and frequent safety instructions are necessary for employees of such age and experience than for older and more experienced employees." Little Beaver Creek Ranches, Inc., OSHRC No. 77-2096 (1982). Similarly, a federal court, in agreeing that an employer's violation of machine-guarding violations was willful, described the employer's lack of training for employees to be "particularly troubling" where the "workforce consisted primarily of young and inexperienced employees." Valdak Corp. v. Occupational Safety & Health Review Comm'n, 73 F.2d 1466 (8th Cir. 1996).

Protecting children at work is one important aspect of OSHA's mission. Under a 1990 memorandum of understanding, OSHA works in cooperation and coordination with the Department of Labor's Wage and Hour Division (part of the Employment Standards Administration), which enforces the child-labor provisions of the Fair Labor Standards Act. Recently, OSHA has taken steps to improve protections for working children. These measures

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[15](...continued)
scope of the OSH Act. For example, under hazardous occupation orders issued by the Secretary of Labor under the Fair Labor Standards Act, no person under 18 may be employed in mining. See 29 C.F.R.§570.53 (coal mining), §570.60 (non-coal mining).

[16] With respect to agriculture, the Environmental Protection Agency, pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. §§136 *et seq.*, also has issued a Worker Protection Standard addressing exposure to pesticides. 30 C.F.R. Part 170.

include amending OSHA's penalty policy to take into account the vulnerability of young workers and requiring on-site inspections when complaints are received that young workers are exposed to serious safety and health hazards. OSHA also has included larger agricultural establishments in its Data Initiative, which will assist in determining where injuries and illnesses among young agricultural workers may be occurring.

Fair Labor Standards Act:

Independent of the OSH Act, which it pre-dates, the Fair Labor Standards Act establishes specific protections for children, including provisions shielding them from hazardous work as defined by Convention 182. See 29 U.S.C. §212 (child labor provisions); 29 U.S.C. §203(l) (definition of "oppressive child labor"). The hazardous-work provisions of the FLSA, described below, are in addition to the provision that completely bars children under the age of 16 from working in mining or manufacturing. See 29 U.S.C. §203(l).

The FLSA authorizes the Secretary of Labor to seek injunctions in federal court against violations of the statute's child labor provisions. 29 U.S.C. §217. The statute also provides for civil monetary penalties for child labor violations. 29 U.S.C. §216(e). Willful violations of the child labor provisions of the FLSA are subject to criminal penalties as well. 29 U.S.C. §216(a).

Non-Agricultural Occupations: Under the FLSA, 18 is the minimum age for employment in non-agricultural occupations that the Secretary of Labor finds and declares to be "particularly hazardous . . . or detrimental to [the] health or well-being" of young persons. 29 U.S.C. §203(l). To date, the Secretary has issued 17 "hazardous orders" addressing non-agricultural occupations. They deal with: manufacturing or storing explosives; motor-vehicle driving; coal mining; logging, sawmilling, and other milling; operating power-driven woodworking machines; exposure to radioactive substances and ionizing radiations; operating power-driven hoisting apparatus; operating power-driven metal forming, punching and shearing machines; mining, other than coal mining; operating power-driven meat-processing machines and slaughtering, meat packing or processing, and rendering; operating bakery machines; operating paper-products machines; manufacturing brick, tile, and kindred products; operating circular saws, band saws, and guillotine shears; wrecking, demolition, and shipbreaking; roofing; and excavation. 29 C.F.R. §§570.50-570.68. Some hazardous orders entirely prohibit children under 18 from working in the specified occupations. Others permit work by 16- and 17-year-old apprentices and student-learners under specified conditions.

Agricultural Occupations: In agriculture, 16 is the minimum age under the FLSA for employment in occupations (outside of family farms) that the Secretary of Labor finds and declares to be "particularly hazardous for the employment of children." 29 U.S.C. §213(c)(2). To date, the Secretary has issued a wide range of hazardous occupation orders addressing agricultural occupations: operating certain tractors; operating or assisting to operate certain machines (e.g., grain combines, hay mowers, feed grinders, power post-hole diggers); operating or assisting to operate trencher or earthmoving equipment, fork lifts, potato combines, and certain saws;

working on farms in yards occupied by certain animals (*e.g.*, bulls and sows with suckling pigs); working with certain sizes of timber; working from a ladder or scaffold at a height over 20 feet; driving vehicles when transporting passengers or riding on a tractor; working inside certain areas (*e.g.*, grain storages, silos, manure pits); handling or applying toxic agricultural chemicals; handling or using blasting agents; and transporting, transferring, or applying anhydrous ammonia. 29 C.F.R. §570.71. Some hazardous orders entirely prohibit children under 16 from working in the specified occupations. Others permit work by 14- and 15-year-old student-learners under specified conditions and by 14- and 15-year-olds who hold certificates from specified training programs. Sixteen and seventeen year olds are permitted to work in occupations that the Secretary of Labor has determined to be hazardous for children under 16.

The FLSA's different minimum ages for potentially hazardous work in non-agricultural occupations and agricultural occupations, as described, are consistent with Article 3(d) and Article 4(1) of the Convention. Under Article 4(1), examined below, a country has the flexibility (in its good-faith discretion and subject to certain procedural requirements) to establish standards that treat children of different ages differently and that treat different classes of occupations differently. As described below, the United States has already met the requirements of Article 4(1), both as a general matter and specifically with respect to work in agricultural occupations.

Family Farms: Under the FLSA, the provision addressing hazardous work by children does not apply where a child is "employed by his parent or by a person standing in the place of his parent on a farm owned or operated by such parent or person." 29 U.S.C. §213(c)(2).[17] OSHA, moreover, would not treat a child on a family farm as a covered employee. However, Article 3(d) of the Convention does not encompass bona fide situations in which children work for their parents on bona fide family farms or holdings. The negotiating history of Convention 182 establishes this point.[18] Thus, the Convention and the FLSA are consistent.

To confirm that the ratification of Convention 182 is consistent with United States law and

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[17] The FLSA's "family farm" exemption is the only exemption from the statutory provision authorizing the Secretary to issue hazardous occupation orders addressing work by children in agriculture. 29 U.S.C. §213(c)(2). Other provisions in the FLSA (see 29 U.S.C. §213(c)(1)) that, in limited circumstances, allow work by children younger than the general minimum age (14) for non-hazardous agricultural work do not authorize those children to perform hazardous work.

[18] See Committee Report ¶¶172-173 (statements by Employer and Worker Vice-Chairpersons). The Employer and Worker Vice-Chairpersons together represented a two-thirds majority of the delegates in the Committee. Two government delegates confirmed an identical understanding. See id. at ¶400 (statement of Pakistan government delegate) & ¶403 (statement of U.S. government delegate). No government delegate, either in the Committee's proceedings on in the plenary proceedings of the Conference, in any way disputed or qualified the view expressed by the Employer and Worker Vice-Chairpersons on the family farm issue.

practice with respect to work by children on their parents' or guardians' farms, TAPILS believes that it would be appropriate for the United States to adopt the following understanding to accompany its ratification of the Convention: "The United States understands that Article 3(d) of Convention 182 does not encompass situations in which children are employed by a parent or by a person standing in the place of a parent on a farm owned or operated by such parent or person."

Article 4

No new legislation or regulation would be required for the United States to implement Article 4. Article 4 sets out how countries are to identify one of the worst forms of child labor: hazardous work as defined by Article 3(d). In this respect, hazardous work is treated differently from the other worst forms of child labor identified in Article 3, for which no comparable mechanism is created and no similar discretionary authority for ratifying countries is endorsed. Under Article 4, the United States has an affirmative duty to consult particularly with employer and worker organizations before it determines the types of work referred to in Article 3(d), identifies where that work exists, or examines and revises that list. Articles 5 and 6 contain similar requirements.

Article 4(1)

> *1. The types of work referred to under Article 3(d) shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned, taking into consideration relevant international standards, in particular Paragraphs 3 and 4 of the Worst Forms of Child Labor Recommendation, 1999.*

Under Article 4(1), the determination of the types of work referred to in Article 3(d) is left to the discretion of the ratifying countries, subject to two procedural requirements. First, governments must consult in good faith with the organizations of employers and workers concerned, although they are not obligated by the result of the consultation. Second, governments must "tak[e] into consideration relevant international standards, in particular Paragraphs 3 and 4" of the Recommendation that accompanies Convention 182, although they are not required to ratify or comply with these standards.[19]

The primary "relevant international standards" for purposes of the required determination are the two paragraphs of the Recommendation that are cited in Article 4(1). Paragraph 3 of the Recommendation lists specific, illustrative types of work "to which consideration should be given"

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[19] See Committee Report (1999) ¶¶135, 143 (statements of the ILO Deputy Legal Adviser in response to questions from delegates).

in determining the types of hazardous work referred to under Article 3(d).[20] Paragraph 4 of the Recommendation states that (after consultation) ratifying countries may permit children 16 or older to be employed in types of work referred to under Article 3(d), provided "that the health, safety and morals of the children concerned are fully protected, and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity." Article 4(1) provides countries with a significant degree of flexibility and discretion with respect to addressing hazardous work.[21] An amendment that would have specified which types of work were hazardous, removing any discretion for ratifying countries in this respect, was not adopted.[22] In effect, Article 4 is a "discretionary provision" because "there is no obligatory minimum list [of

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[20] Paragraph 3 of the Recommendation reads as follows:

In determining the types of work referred to in Article 3(d) of the Convention, and in identifying where they exist, consideration should be given, inter alia, to:

(a) work which exposes children to physical, psychological, or sexual abuse;

(b) work underground, under water, at dangerous heights or in confined spaces;

(c) work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads;

(d) work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health;

(e) work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.

[21] The approach ultimately taken by Article 4 was an important goal of the United States in the adoption of Convention 182. The tripartite U.S. comments to the ILO had described as "imperative" that countries have "appropriate flexibility." U.S. Comments at p. 5. Other countries expressed similar views. See, e.g., Report IV(2A) at 68 (comments of Canada), 70 (comments of Estonia). See also id. at 75 (United States comments).

[22] See Committee Report (1999) ¶176 (withdrawal of Worker Members' amendment).

the types of hazardous work] under the Convention."[23] However, ratifying countries are subject to a duty to implement ILO conventions in good faith.[24] Thus, for example, if a country made no determination of the types of hazardous work, or if its list were unreasonably inadequate, issues of compliance with the Convention would be raised.[25]

The hazardous occupation orders already issued by the Secretary of Labor under the Fair Labor Standards Act constitute an appropriate and extensive determination of the types of hazardous work, as contemplated by Article 4 of the Convention. The orders, and their enforcement, meet the requirement of Article 1 of the Convention that ratifying countries take "immediate and effective measures to secure the prohibition and elimination of the worst forms of child labor [including those described in Article 3(d)] as a matter of urgency."

The Fair Labor Standards Act, and the hazardous occupation orders issued by the Secretary of Labor pursuant to the FLSA, are "national laws or regulations" of the kind referred to in Article 4(1). The process by which they are issued, meanwhile, fully satisfies the consultation requirement of Article 4(1).

Hazardous occupation orders are issued through notice-and-comment rulemaking, subject to the requirements of the Administrative Procedure Act (APA), 5 U.S.C. §§551 *et seq.*, in which employer and worker organizations are entitled to, and do, participate. These comment opportunities may be supplemented, as needed and appropriate, with special consultations between the Department of Labor and interested employer and worker organizations. The Secretary of Labor is required by the APA to fully consider the comments of the interested organizations (and other members of the public), although the Secretary need not follow their advice.[26]

The determinations already made by the Secretary of Labor in issuing hazardous orders to

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[23] International Labor Office, Report IV (2A) at 77 (1999).

[24] See Committee Report (1999) ¶143 (statement of ILO Deputy Legal Advisor); Report IV (2A) at 77 (citing Article 26 of the Vienna Convention on the Law of Treaties).

[25] See Report IV (2A) at 77 (referring to operation of comparable provision in ILO Convention 138).

[26] The United States has previously ratified ILO conventions that include similar consultation requirements: for example, ILO Convention 150 (concerning labor administration) was ratified in 1995. In discussing the consultation requirement in Article 5 of that convention, the accompanying Statement of U.S. Law and Practice cited the participation of employer and worker organizations in APA rulemaking as evidence of conformity with the convention. U.S. ratification of Convention 150 is relevant to the other consultation requirements in Convention 182, described below.

implement the FLSA are within the appropriate, good-faith discretion of the United States. Significantly, they address many of the specific types of hazardous work mentioned in Paragraph 3 of the Recommendation and thus reflect consideration of "relevant international standards" (as Article 4(1) requires.)[27] Existing OSHA safety and health standards also address these types of work. The existence of such standards is relevant to a determination under Article 4, since they help define whether the "circumstances" of work that might otherwise be considered hazardous in fact render the work safe for the children involved.

Article 4(2)

2. *The competent authority, after consultation with the organizations of employers and workers concerned, shall identify where the types of work so determined exist.*

No new legislation or regulation would be required for the United States to implement Article 4(2). As part of its administration and enforcement of the Fair Labor Standards Act and the Occupational Safety and Health Act, the Department of Labor determines where hazardous work exists and takes steps to address it. A fuller discussion of these measures is provided in connection with Article 7 (see below). Employer and worker organizations, along with the general public, have regular access to the Department of Labor and other government agencies, which for their part regularly consult stakeholders in their programs. Stakeholders can and do provide the Department and other concerned agencies with information about the existence of hazardous work involving children, as well as receive relevant information from the government. These existing practices fully satisfy the consultation requirement in Article 4(2).

Article 4(3)

3. *The list of the types of work determined under paragraph 1 of this Article shall be periodically examined and revised as necessary, in consultation with the organizations of employers and workers concerned.*

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[27] Examples include: mining and excavation (work underground); roofing; working in agriculture from a ladder or scaffold at a height over 20 feet (work at dangerous heights); working inside certain areas such as grain storages, silos, and manure pits (work in confined spaces); operating power-driven machinery in logging, sawmilling, and other milling; in woodworking; in hoisting; in metal-forming, punching, and shearing; and in meat-processing; operating certain tractors (work with dangerous machinery); operating bakery machines and paper-products machines; operating certain agricultural machines such as grain combines, hay mowers, feed grinders, and power post-hole diggers (work with dangerous machinery); operating circular saws, band saws, and guillotine shears (work with dangerous tools); and manufacturing or storing explosives; wrecking, demolition and shipbreaking; exposure to radioactive substances; manufacturing brick, tile, and kindred products; working with anhydrous ammonia; handling or applying toxic agricultural chemicals (work in an unhealthy environment).

No new legislation or regulation would be required for the United States to implement Article 4(3). As explained in connection with Article 4(1), current law grants the Secretary of Labor the authority to determine whether existing hazardous occupation orders should be revised or supplemented. Existing procedures satisfy the consultation requirement of Article 4(3), for reasons already discussed. Pursuant to the APA, employer and worker organizations (along with other members of the public) are free to share their views with the Department of Labor. In the course of this process, the Secretary of Labor is free to consider "relevant international standards, in particular Paragraphs 3 and 4 of the Recommendation" (as Article 4(1) of the Convention requires).

Ongoing federal government research demonstrates the commitment of the United States to protecting children from hazardous work and is relevant to Article 4(3). In April 1999, the Department of Labor's Wage and Hour Administration entered into an interagency agreement with the National Institute for Occupational Safety and Health (NIOSH), part of the Department of Health and Human Services, to conduct research on "safety and health risks for children, with particular emphasis on issues relevant to child labor regulations."[28] The agreement contemplates that the research conducted and overseen by NIOSH will, among other things, address the adequacy of existing hazardous occupation orders and the potential need for new orders. A final report from NIOSH that would "inform changes to existing HOs [hazardous occupation orders] and the proposal of new HOs" is due by March 1, 2000.

With respect to state practice that would implement Article 4 -- even apart from the federal laws described above that themselves ensure effective action with respect to virtually all proscribed practices taking place within the United States -- each state government also has components charged with ensuring that the state labor laws previously described are effectively enforced.

ARTICLE 5

> *Each Member shall, after consultation with employers' and workers' organizations, establish or designate appropriate mechanisms to monitor the implementation of the provisions giving effect to this Convention.*

Article 5 requires ratifying countries, after consulting employer and worker organizations, to establish or designate mechanisms to monitor the implementation of the Convention. The administrative arrangements called for by Article 5 do not require new legislation.

The consultation requirement of Article 5 is fully consistent with existing practice. In the United States -- which has ratified ILO Convention 150 and is in compliance with its provisions concerning tripartite consultation in connection with labor administration (see supra, n. 26) -- employer and worker organizations (and other members of the public and their representatives)

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[28] Interagency Agreement between the Department of Labor, Wage and Hour Division and the National Institute for Occupational Safety and Health at 1 (April 1999).

have routine access to federal and state government agencies and the regular opportunity to participate in the administrative process.

Existing mechanisms, meanwhile, serve to monitor the implementation of the Convention:

- The Occupational Safety and Health Administration and the Wage and Hour Division of the Department of Labor monitor employers' compliance with health and safety standards through the Occupational Safety and Health Act and child labor standards through the Fair Labor Standards Act, respectively. These enforcement agencies conduct investigations and assess administrative penalties for violations of standards which have been promulgated pursuant to public notice and comment rulemaking. The Office of External Affairs within the office of the Administrator of the Wage and Hour Division monitors state child labor standards. OSHA has an Office of State Programs within its Directorate of Federal-State Operations, which coordinates health and safety issues with the states.

- The Worker Exploitation Task Force, an interagency task force with significant contribution from the Department of Justice and the Department of Labor, monitors and combats significant matters of worker exploitation, including those involving children. Task Force responsibilities extend to cases involving forced labor of adults and children and trafficking in children for purposes of prostitution, among other types of cases. The Federal Bureau of Investigation (FBI), the Immigration and Naturalization Service (INS) of the Department of Justice, and labor investigators from the Department of Labor investigate these cases.

- Several components of the Department of Justice (DOJ), as well as federal law enforcement from other Departments, monitor, provide enforcement assistance, investigate, and prosecute matters involving forced labor of children, child prostitution and pornography, as well as the use of children in drug traffic. Specifically, the Criminal Section of DOJ's Civil Rights Division monitors forced labor with the assistance of the Federal Bureau of Investigation. The Child Exploitation and Obscenity Section of the Criminal Division, with investigative assistance from the FBI, U.S. Customs Service and the U.S. Postal Inspection Service, monitors situations involving child prostitution and pornography. In addition, the Narcotics and Dangerous Drug Section, with investigative support from the FBI and the Drug Enforcement Administration, monitors drug trafficking. Victim service support for all these groups is provided by the Office of Victims of Crime and the Victim-Witness Coordinator's Office in the Executive Office of the United States Attorneys.

- The Department of Justice, Office of Justice Programs' Bureau of Justice Statistics and the Criminal Division's Office of Policy and Legislation would monitor the number of federal cases and outcomes of all three types of child exploitation mentioned above. In addition, the Office of Justice Programs' Office of Juvenile Justice and Delinquency Prevention would assist in monitoring state compliance through program and training

activities.

With respect to implementation by the states, each state has already established governmental components to oversee implementation of state laws to ensure the state's ability to act in protection of a minor, to permit prviate judicial redress against those who abuse children, and to investigate and prosecute criminal offenses arising from the worst forms of child labor.

ARTICLE 6

1. *Each Member shall design and implement programmes of action to eliminate as a priority the worst forms of child labor.*

2. *Such programmes of action shall be designed and implemented in consultation with relevant government institutions and employers' and workers' organizations, taking into consideration the views of other concerned groups as appropriate.*

No new legislation would be required to implement Article 6. Article 6 requires ratifying countries to "design and implement programs of action" to eliminate the worst forms of child labor in consultation with employer and worker organizations and "taking into consideration the views of other concerned groups as appropriate." Article 6 essentially calls for government agencies to enforce and administer their laws prohibiting the worst forms of child labor. The steps already taken by the United States in this respect are described in connection with Articles 4 and 7. As already explained in connection with Articles 4 and 5 of the Convention, the consultation requirement in Article 6 is fully consistent with the typical operation of federal and state government agencies in the United States, such as the U.S. Department of Labor.

ARTICLE 7

Article 7 requires ratifying countries to "take all necessary measures to ensure the effective implementation and enforcement" of the Convention. Each paragraph of Article 7 is examined separately below.

Article 7(1)

> *Each Member shall take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to this Convention including the provision and application of penal sanctions or, as appropriate, other sanctions.*

Current oversight and enforcement procedures implementing the U.S. laws and practices relative to the Convention also serve to effectively implement the provisions of the Convention.

Under current law, the Federal Bureau of Investigation is responsible for investigating suspected

violations of federal drug laws as well as child prostitution and child pornography laws. In investigating child prostitution and pornography cases, the FBI is assisted by the United States Customs Service and the United States Postal Inspection Service. Every port of entry to the United States is staffed by Customs Inspectors whose responsibilities include interdicting child pornographic contraband and related articles. Postal Inspectors are specially trained to investigate crimes involving the U.S. Mail, including all child pornography and sexual exploitation of children. In investigating suspected violations of federal drug laws, the FBI is assisted by the Drug Enforcement Administration.

Unites States Attorneys for each of the 94 federal judicial districts are responsible for prosecuting these cases. They are assisted by attorneys in the Child Exploitation and Obscenity Section and the Narcotics and Dangerous Drug Section in the Criminal Division and the Criminal Section of the Civil Rights Division of the United States Department of Justice.

The Department of Labor's Wage and Hour Division, a unit of the Employment Standards Administration, is responsible for the administration and enforcement of federal child labor standards. Wage and Hour employs a number of enforcement tools to ensure effective implementation of federal child labor laws. Wage and Hour compliance officers investigate child labor violations as part of their investigations for compliance with other FLSA provisions. In addition, Wage and Hour conducts investigations of suspected child labor violations in response to complaints or referrals. In its enforcement, Wage and Hour often uses the "hot goods" provision of the FLSA to remedy and deter violations. Under this provision, the Department can stop the shipment in interstate commerce of goods produced in violation of the law. In an administrative action before Departmental administrative law judges, Wage and Hour may seek injunctive relief or civil money penalties for the violation of the child labor provisions. Additionally, Wage and Hour can seek criminal prosecution where warranted.

The Department of Labor's Occupational Safety and Health Administration administers the Occupational Safety and Health Act to assure that all workers (including those under the age of 18) have a place of employment free from recognized hazards. OSHA carries out its function by setting minimum safety and health standards for all employers, and enforcing those standards through a comprehensive on-site inspection program. The enforcement program includes the investigation of all complaints that allege unsafe or unhealthy working conditions, and a program to conduct random worksite visits in all industrial sectors, including those sectors where workers under the age of 18 are employed.

The primary mechanism for the enforcement of various provisions of the OSH Act is the issuance of citations, and, if appropriate, monetary penalties. Under the Act, penalties of up to $70,000 per willful violation may be assessed. Although certain penalty reductions are permitted in the OSH Act, OSHA has issued guidance to its inspectors that eliminates these reductions where workers under the age of 18 have been injured as a result of a failure to comply with OSHA regulations. Citations may be issued to employers for failure to comply with OSHA standards, regulations, or the General Duty Clause of the OSH Act. Additionally, under certain conditions,

OSHA may seek criminal prosecution of willful violators. Jurisdiction over contested matters rests with the Occupational Safety and Health Review Commission. Contested issues are heard by one of the Commission's administrative law judges.

With respect to the compliance of states with Article 7(1), as has been previously discussed, each state already has an existing legal and administrative framework to ensure the protection of minors from practices proscribed in this Convention.

Article 7(2)

Each member shall, taking into account the importance of education in eliminating child labor, take effective and time-bound measures to: . . .

Paragraphs (a) through (e) of Article 7(2) list measures ratifying countries are to take in ensuring the effective implementation and enforcement of the Convention. As explained below, current U.S. law and practice are in compliance with the requirements of Article 7(2). Each paragraph of Article 7(2) is examined separately below.

Article 7(2)(a)

(a) prevent the engagement of children in the worst forms of child labor;

By enforcing the laws that prohibit the worst forms of child labor, U.S. government agencies satisfy Article 7(2)(a).

Article 7(2)(b)

(b) provide necessary and appropriate direct assistance for the removal of children from the worst forms of child labor and for their rehabilitation and social integration;

A wide range of government programs satisfy Article 7(2)(b). The routine operation of state child welfare agencies serves this aim. The federal government provides aid of many types to such agencies and comparable organizations that serve children.

The Family and Youth Services Bureau of the Department of Health and Human Services (HHS) administers grant programs supporting a variety of locally based youth services. These services include youth shelters which provide emergency shelter, food, clothing, outreach services, and crisis intervention for victimized youths; "transitional living programs" for homeless youth which assist these youth in developing skills and resources to live independently in society; and education and prevention grants to reduce sexual abuse of runaway, homeless, and street youth program. The Family and Youth Services transitional living program is funded by the Runaway and Homeless Youth Act, Subchapter III, Part B, 42 U.S.C. §5714-1, a subsection of the Juvenile

Justice Act. In addition, the Department of Housing and Urban Development has an extensive transitional living program. The program is designed to assist at-risk youth in developing independent living skills along with vocational training.

The Adoption and Safe Families Act (ASFA), Public Law 105-89, helps support the role of the Nation's dependency courts in ensuring safety, stability and permanence for abused and neglected children by improving the efficiency and effectiveness of those courts and by building the capacity of the courts and the court professionals and volunteers who work to protect children. As noted in the Courts Act, passage of the ASFA of 1997 places increased requirements on the Nation's dependency courts to carry out accelerated proceedings, including termination of parental rights when necessary, to make certain dependent children are quickly and safely returned to their families or provided safe and stable permanent homes. This legislation represented a good start at helping states and localities address those increased requirements.

Under the Office of Juvenile Justice and Delinquency Prevention stewardship of the Model Court Project, nearly two dozen local courts have put in place a variety of reforms to strengthen their abilities to improve court decision-making in abuse and neglect cases and to work more closely with the child welfare agencies to move children out of foster care and into safe, stable, permanent homes.

HHS's Children's Bureau supports research on the causes, prevention and treatment of child abuse and neglect; demonstration programs to identify the best means of preventing maltreatment and treating troubled families; and the development and implementation of training programs. Grants are provided nationwide on a competitive basis to state and local agencies and organizations. Projects have focused on every aspect of the prevention, identification, investigation, and treatment of child abuse and neglect.

State child protection agencies ensure the safety of children and youth who require protective custody, making placement recommendations, and coordinating the assessment and interviews of children and adults with appropriate law enforcement and licensing agencies. Victim's assistance programs provide victimized youth with assistance for dealing with the court system, emotional support and referrals to additional resources. These services enable the youths both to address the immediate consequences of their victimization and to reenter society.

Article 7(2)(c)

(c) ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labor;

The United States is already in compliance with Article 7(2)(c), and no new legislation would be required to maintain compliance with this provision of the Convention.

As the Convention's negotiating history establishes, "basic education" (as referred to in the Convention) means primary education, plus one year: in other words, eight or nine years of schooling, based on curriculum and not age.[29] In some other international instruments, the term "basic education" may have a less precise meaning.[30] To confirm that, in Convention 182, the term has a specific meaning -- which was universally understood and intended by the drafters of the Convention -- it would be appropriate for the United States to adopt the following understanding with ratification of Convention 182: "The United States understands that the term 'basic education' in Article 7 of Convention 182 means primary education plus one year: eight or nine years of schooling, based on curriculum and not age."

In the United States, each state makes available free education through the twelfth grade, which often includes vocational training.[31] Access to this level of schooling more than satisfies the

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[29] See Committee Report (1999) ¶218 ("It was clear to the Employers that 'Basic education' means primary education, plus one year: in other words, eight or nine years of schooling, such education being curriculum-based and not age-based") & ¶388 (summarizing statement of Worker Vice-Chairperson that "universal provision of at least eight years of basic education" was key to success of Convention). See also Provisional Record 26 at 26/4 (statement of Worker Vice-Chairperson that under Convention, children freed from worst forms of child labor are to "be offered the requisite eight years of basic education or its equivalent, depending on the age at which they are freed"); 26/9 (statement of United States employers' advisor: "It was the clear understanding of the Employers that basic education means primary education plus one year, in other words eight or nine years of schooling, and that such schooling is curriculum-based, not age-based") & 26/16 (statement of United Kingdom workers' advisor). The United States supported this provision. See Committee Report (1999) ¶403 (statement of U.S. government delegate, endorsing statement of Netherlands government delegate). See also id. at ¶398 (statement of Netherlands government delegate).

[30] See Report IV (2A) at 66-67 (discussing meaning of "basic education" and World Declaration on Education for All concept of "basic learning needs" of children and adults).

[31] See U.S. Department of Education, National Center for Education Statistics, Digest of Education Statistics, 1998, Table 41, Enrollment in Public Elementary and Secondary Schools by Grade and State: Fall 1996. In the United States, individual states, not the federal government, establish systems of free public education. There is no general, federal guarantee of a free public education. See Rodriguez v. San Antonio Independent School District, 411 U.S. 1 (1973). However, once a state decides to offer public education to children in the state, the Fourteenth Amendment to the United States Constitution requires that it must provide equal public educational opportunities to all children. For purposes of satisfying the requirement of Article 7(2)(c) of the Convention, the states are competent authorities. See Report IV (2A) at 76 ("In response to the Government of the United States, it is understood that the term "competent authority" may include state governments--accommodating Members having state/federal legal

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requirement of Article 7(2)(c), which calls on ratifying countries to "ensure access to free basic education and, wherever possible and appropriate, vocational training." Moreover, state compulsory education laws (which generally apply to children until the age of 16 or older, depending upon the state) ensure that children are required to attend school, a powerful means of preventing abusive child labor.

Additionally, the United States Department of Education (DoEd) administers a number of programs of federal financial assistance to help State and local educational agencies carry out their educational responsibilities. Many of these programs are designed to serve the needs of at-risk children and are therefore potentially relevant to the implementation of article 7(2)(c). For example, under Title I of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. §§6301 *et seq.*, DoEd provides funds to State educational agencies that are in turn made available to local educational agencies to help disadvantaged children learn the core subjects to high standards. More than $8 billion was appropriated for this program in Fiscal Year 1999. Other relevant programs include, among others, vocational education programs under the Carl D. Perkins Vocational and Technical Education Act (which helps States develop the academic, vocational, and technical skills of students in high schools and community college) and programs that assist local school districts in building their capacity to operate high-quality instructional programs for recently arrived immigrants and for other limited English proficient students and to improve foreign language instruction.

The Department of Labor meanwhile administers a number of financial assistance programs that provide job training for older children. Examples include programs under the Job Training Partnership Act and the new Workforce Investment Act.

Job Training Partnership Act (JTPA) programs, until June 30, 2000, will provide training and employment services designed to: enhance basic educational, occupational, and citizenship skills; encourage school completion or enrollment in supplementary or alternative school programs; increase employment and earnings; and address problems that impair the ability of youth to successfully transition from school to work, apprenticeships, the military, or post secondary education. Programs under JTPA provide summer activities (Title II-B) and year-round services for in-school and out-of-school youth (Title II-C). Other summer activities and year-round services are also provided to Indian and Native American Youth (Title IV-A, Section 401), and Migrant and Seasonal Farmworker Youth (Title IV-A, Section 402). Job Corps (Title IV-B) programs are targeted toward the most severely disadvantaged youth facing multiple barriers to education and employment.

The enactment of the Workforce Investment Act (WIA), authorized in August 1998 provides for youth activities that include: comprehensive services with options for improving educational and

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[31](...continued)
systems. The competent authority is that authority, or those authorities, with legal competence for carrying out the prescribed obligations.").

skill competencies; effective connections to employers; participation of caring adults; supportive services; incentives for youth recognition and achievement; and opportunities for leadership, development, decision-making, citizenship, and community service.

WIA also authorizes new measures and funding to address the needs of youth, including Youth Opportunity Grants (Section 169) for urban, rural, migrant and seasonal farm worker and Indian and Native American youth. Funds up to $250 million in such grants will be awarded to Empowerment Zones/Enterprise Communities and other high poverty areas through a competitive solicitation, by year end 1999. Long term follow-up services are also to be provided to low-income youth who are deficient in basic skills, school dropouts, homeless, runaways or foster children, pregnant or parenting or offenders, and those who require additional assistance to complete education programs, or to secure employment.

Article 7(2)(d)

(d) identify and reach out to children at special risk;

Existing programs for children "identify and reach out to children at special risk" (because of economic disadvantages or other barriers to suitable employment), as contemplated by Article 7(2)(d). Many of those programs are discussed in connection with paragraph 7(2)(c) or paragraph 7(2)(e). Others include programs of the Department of Health and Human Services, such as the Promoting Safe and Stable Families program of the Children's Bureau, which encourages and enables states to develop, establish or expand, or operate a program of family preservation services and community-based family support services; and the Starting Early Starting Smart Program of the Substance Abuse and Mental Health Services Administration, which reaches children in high-risk community settings and offers mental health and substance abuse services to their families, as well as family support for effective parenting to help prepare young children to succeed in school and life.

Article 7(2)(e)

(e) take account of the special situation of girls.

Under existing United States law and practice, government agencies can and do "take account of the special situation of girls" with respect to the worst forms of child labor, as well as take effective measures to address girls' specific needs.

Because the United States is cognizant of, and sensitive to, the disproportionate effects of particular forms of abusive child labor on girls, it has implemented federal and state programs designed to protect young girls who are considered at high risk of exploitation, as well as programs designed to rehabilitate girls coming out of particular kinds of abusive labor situations. Recent review of national resources has identified 16 model programs that have gender-specific

components for serving at-risk adolescent female populations.[32]

In addition, in 1996, the Department of Health and Human Services launched a national public education campaign, "Girl Power!", to help encourage and empower 9- to 14-year-old girls to make the most of their lives. During its first phase, Girl Power! combined strong "no-use" messages about tobacco, alcohol, and illicit drugs with an emphasis on providing opportunities for girls to build skills and self-confidence in academics, arts, sports, and other endeavors. Additionally, HHS has funded Girl Neighborhood Power!, a five-year grant program designed to help communities develop innovative approaches to promote the positive development, health, and well-being of girls, as well as prevent teen pregnancy and the harmful use of substances.

ARTICLE 8

> *Members shall take appropriate steps to assist one another in giving effect to the provisions of this Convention through enhanced international cooperation and/or assistance including support for social and economic development, poverty eradication programs and universal education.*

Article 8 requires ratifying countries to "assist one another" in implementing the Convention, "through enhanced international cooperation and/or assistance including support for social and economic development, poverty eradication programs and universal education." The United States is already engaged in activities that satisfy Article 8, and no changes in law and practice would be required to remain in compliance with the Convention.

The formulation in Article 8 reflected a unanimous compromise at the ILO Conference, reached after the proposal of an amendment that would have referred to "enhanced international cooperation and [not "and/or"] assistance."[33] The United States supported this compromise, on the understanding that Article 8 did not require any ratifying country to provide any specific form or amount of cooperation or assistance, that no legal obligation was created as to the nature of such cooperation or assistance, and that the matter was left entirely to the discretion of ratifying countries.[34]

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[32] See U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Fact Sheet: "What about Girls?" at 1 (September 1998). For example, a unique collaborative effort between Connecticut and Illinois is underway to develop a specialized delinquency prevention program for Connecticut girls modeled on Girls Link Juvenile Female Offender Project in Cook County, Illinois.

[33] See Committee Report (1999) ¶¶234-250.

[34] See Committee Report (1999) ¶243 (statement of United States government (continued...)

This common understanding is confirmed by the Convention record.[35] The ILO's Deputy Legal Adviser explained to the delegates that neither of the proposed formulations of Article 8 that were debated would have created an "obligation . . in relation to a particular level or form of cooperation or assistance;" rather, "[t]here was only an obligation to take appropriate steps towards enhanced international partnership, and it was up to individual States [ratifying countries] to decide on those appropriate steps."[36]

The United States is currently a significant donor to the ILO's International Program for the Elimination of Child Labor (IPEC). The United States is also a contributor to other programs that support the elimination of child labor through direct action programs, as well as initiatives to improve accessibility to education and related programs. These efforts include support by the U.S. Agency for International Development and support for international organizations such as UNICEF, the World Bank, and other international development agencies.

Pursuant to bilateral and multilateral legal assistance treaties with foreign governments, the United States regularly cooperates with law enforcement agencies of other countries to counteract child exploitation and the worst forms of child labor described in Articles 3(a), 3(b), and 3(c) of Convention 182. The U.S. is a party to the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic substances which, among other things, requires the 136 signatory parties to cooperate in international efforts to outlaw and punish all forms of illicit drug production and trafficking. As a member of the Organization of American States counter-narcotics group, the Inter-American Drug Abuse Control Commission, the U.S. is involved with other member countries in developing a multilateral evaluation mechanism to evaluate counter-narcotics efforts for each member country. Additionally, the State Department's Office of International Narcotics and Law Enforcement funds training for law enforcement officials of foreign countries in the areas of domestic violence and sexual exploitation of women and children.

Understandings

As the discussion of the substantive provisions of Convention 182 demonstrates, United States law and practice are fully consistent with the requirements of the Convention, and thus create no obstacle to ratification. Nevertheless, to remove any possibility that certain ambiguities might

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delegate).

[35] See Committee Report (1999) ¶242 (statement of the ILO Deputy Legal Adviser). See also id. at ¶397 (statement of Netherlands government delegate, on behalf of Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, San Marino, Spain, Sweden, Switzerland, Turkey, United Kingdom, and United States).

[36] Committee Report (1999) ¶242 (statement of the ILO Deputy Legal Adviser).

arise after ratification, it would be advisable to adopt two understandings to the Convention: one with respect to Article 3(d) of the Convention and the exclusion of family farms, and the other with respect to Article 7 of the Convention and the meaning of the term "basic education."

An understanding to an international treaty, such as an ILO convention, clarifies or explains the meaning of the treaty as it relates to domestic law or procedure or addresses a matter incidental to the domestic operation of the treaty. Unlike a reservation to a treaty or convention (which the ILO does not accept), an understanding has no substantive effect on a treaty's terms. That is, an understanding does not modify or limit a country's international obligations.

1. Family Farms and Holdings under Article 3(d) of the Convention

The negotiating history of Convention 182 establishes that Article 3(d) on hazardous work does not encompass situations in which children work for their parents or guardians on bona fide family farms or holdings.[37] In the United States, such work is excluded from the comparable provision of the federal Fair Labor Standards Act. See 29 U.S.C. §213(c)(2). Thus, the Convention and the FLSA are consistent.

To confirm that the ratification of Convention 182 is consistent with United States law and practice with respect to work by children on their parents' or guardians' farms, TAPILS recommends that the United States adopt the following understanding with ratification of Convention 182:

> *The United States understands that Article 3(d) of Convention 182 does not encompass situations in which children are employed by a parent or by a person standing in the place of a parent on a farm owned or operated by such parent or person.*

2. Basic Education under Article 7 of the Convention

The negotiating history of Convention 182 clearly establishes that the reference in Article 7 of the Convention to "basic education" means primary education, plus one year: eight or nine years of

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[37] See Committee Report (1999) ¶¶172-173 (statements by Employer and Worker Vice-Chairpersons). The Employer and Worker Vice-Chairpersons together represented a two-thirds majority of the delegates in the Committee. Two government delegates confirmed an identical understanding. See id. at ¶400 (statement of Pakistan government delegate) & ¶403 (statement of U.S. government delegate). No government delegate, either in the Committee's proceedings on in the plenary proceedings of the Conference, in any way disputed or qualified the view expressed by the Employer and Worker Vice-Chairpersons on the family farm issue.

schooling, based on curriculum and not age.[38]

In some other international instruments, the term "basic education" may have a less precise meaning.[39] To confirm that, in Convention 182, the term has a specific meaning, which was universally understood and intended by the drafters of the Convention, TAPILS recommends that the United States adopt the following understanding with ratification of Convention 182:

> *The United States understands that the term "basic education" in Article 7 of Convention 182 means primary education plus one year: eight or nine years of schooling, based on curriculum and not age.*

Final Provisions

The remaining Articles of the Convention (Articles 9-16) set out standard protocol and procedures related to ratifying, denouncing, and revising the Convention.

ARTICLE 9

The formal ratification of the Convention shall be communicated to the Director-General of the ILO for Registration.

ARTICLE 10

The Convention will be binding on all members who have registered with the Director-General once two members have registered. Thereafter, the Convention will become binding on members twelve months after they register.

ARTICLE 11

Under section one of this Article, a member may denounce the entire Convention ten years after the Convention became binding on the member. Such denunciation takes effect one year after it is communicated to the Director-General.

Under section two, if a member does not denounce the Convention within one year after the

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[38] See Committee Report (1999) ¶¶218, 388 (statements of Employer and Worker Vice-Chairpersons); Provisional Record 26 at 26/4 (statement of Worker Vice-Chairperson), 26/9 (statement of United States employers' advisor), and 26/16 (statement of United Kingdom workers' advisor).

[39] See Report IV (2A) at 66-67 (discussing meaning of "basic education" and World Declaration on Education for All concept of "basic learning needs" of children and adults).

Convention has been binding upon the member for ten years, the Convention will continue to be binding upon the member for ten more years.

ARTICLE 12

The Director-General shall communicate to the members the registration of all ratifications and denunciations and the dates when those events will come into effect.

ARTICLE 13

The Director-General shall communicate all ratifications and denunciations of the Convention to the Secretary-General of the United Nations.

ARTICLE 14

The Governing Body of the ILO shall present a report on the Convention and whether it should be revised in whole or in part at such time when the Governing Body considers such report necessary.

ARTICLE 15

If a new Convention is adopted by the conference, revising this Convention in whole or in part, then ratification of the new Convention will mean automatic denunciation of this Convention unless the new convention provides otherwise. This Convention will remain in force for those members who have adopted it but have not accepted the revised Convention.

ARTICLE 16

The English and French versions of the Convention are equally authoritative.