

ENMESHMENT AS A THEORY OF COMPLIANCE

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I. INTRODUCTION

Why is it that we live in a world where the most powerful nation on earth can be pressured into revoking protectionist steel tariffs, but the least powerful nations cannot be forced to comply with international treaties regarding the worst forms of child labor? This Article suggests that the answer is “enmeshment.” Enmeshment as a compliance strategy is an idea that builds upon the work of Harold Koh, Abram and Antonia Chayes, as well as others who have de-emphasized compliance by coercion.¹ Enmeshment occurs when a state finds that its interests mirror international law. For enmeshment to work as a means of compliance, the relevant law must be fairly precise, obligatory, and capable of interpretation—that is, it needs to be moderately to highly legalized.² Nations may become enmeshed in a legalized regime such that the regime rules will self-enforce. This Article suggests that enmeshment is a worka-

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1. See ABRAM CHAYES & ANTONIA HANDLER CHAYES, *THE NEW SOVEREIGNTY: COMPLIANCE WITH INTERNATIONAL REGULATORY AGREEMENTS* (1995) [hereinafter CHAYES & CHAYES, *THE NEW SOVEREIGNTY*] (proposing a managerial method of compliance); Harold H. Koh, *Transnational Legal Process*, 75 *NEB. L. REV.* 181 (1996) (explaining transnational legal process); Alexander Wendt, *Collective Identity Formation and the International State*, 88 *AM. POL. SCI. REV.* 384, 384-85 (1994). For more recent scholarship, see Ryan Goodman & Derek Jinks, *Toward an Institutional Theory of Sovereignty*, 55 *STAN. L. REV.* 1749 (2003) (emphasizing state participation in regimes as important in securing global compliance). For an overview of the compliance literature, see generally Benedict Kingsbury, *The Concept of Compliance as a Function of Competing Conceptions of International Law*, 19 *MICH. J. INT’L L.* 345 (1998) [hereinafter Kingsbury, *The Concept of Compliance*].

2. For a general theory of legalization, see Kenneth W. Abbott et al., *The Concept of Legalization*, 54 *INT’L ORG.* 401 (2000).

ble theory of compliance, more workable than coercion, and it will differentiate between regime types and how each best secures enmeshment. Regimes that address collaboration problems, such as the trade regime, should use communication, transparency, and even coercion to promote collaboration efficiencies.³ Regimes that address development problems, such as the child labor regime, should use information gathering and dissemination, positive economic incentives, and technical aid to increase compliance capabilities and shift normative alignment.⁴ Coercion, through sanctions, is unlikely to be helpful in a development regime, particularly for developing countries.

Part II explains enmeshment as a compliance tool. Enmeshment as a compliance mechanism is possible in regimes where regime rules are precise and obligatory and when these rules can be objectively interpreted. In these regimes, compliance with regime rules can be monitored and encouraged. Nations can be encouraged to obey regime rules and shift both rationalistic and normative interests accordingly. Enmeshment results when a nation finds that it is in its own interests to obey regime rules. By aligning state interests with regime goals, the regime rules become self-enforcing.

Part III distinguishes regime problems and suggests that different enmeshment tools are appropriate for different problems. Some regimes, such as the trade regime, address collaboration problems and secure enmeshment by promoting and encouraging collaboration efficiencies. These efforts may sometimes be aided by the threat of sanctions. Development problems, such as child labor, require tools that promote normative alignment and give states the ability to comply with regime rules. Although trade affects development problems, positively and negatively, the two regimes serve different goals.

Part IV discusses proposals to use the trade regime and trade sanctions in particular to enforce labor norms and compares these proposals to enmeshment as a theory of compliance in the field of child labor. Trade regime tools such as sanctions will not work to promote compliance in the child labor regime. Sanctions do not address the causes of child labor, which are largely resource-based. Indeed, sanctions may

3. See *infra* notes 32-48 and accompanying text.

4. See *infra* notes 49-84 and accompanying text.

be counterproductive since they only put states in worse financial positions and render states less able to align their interests with those of the regime. Compliance through enmeshment is the better strategy. I suggest that if one takes the theory of enmeshment as compliance seriously, one can already see a blueprint for securing greater compliance among nations to eradicate the worst forms of child labor. There is already a significant degree of consensus on norms in the field, and some of the tools to enmesh states in the child labor regime already exist.

II. ENMESHMENT AS COMPLIANCE

Enmeshment secures compliance by motivating states to self-enforce precise, obligatory, and interpretable rules. Nations will self-enforce regime rules when: (i) those rules are precise, obligatory, can be objectively interpreted, and (ii) compliance is in their interest and within their capabilities. Self-enforcement thus can take place in what I call “constraining regimes,” regimes that have a sufficient degree of legalization and enmeshment.⁵ Legalization provides the precise and obligatory rules and provides a means of interpretation. Enmeshment addresses the second challenge of making a state’s interests coextensive with the regime’s interests. In other words, nations must over time become reliant upon the regime for economic and political support as well as normative development. The regime also becomes reliant upon its members to produce and sustain norms and to provide economic and political incentives. As nations’ interests and the regime’s interests become coextensive, states will self-enforce regime rules and the regime will become a constraining regime.

To determine whether a regime may be a constraining regime, one must consider both (a) legalization and (b) enmeshment.⁶ Kenneth Abbott, Robert Keohane, Andrew Moravcsik, Anne-Marie Slaughter, and Duncan Snidal have examined varying degrees of “legalization” within international

5. See Claire R. Kelly, *Realist Theory and Real Constraints*, 44 VA. J. OF INT’L L. 545, 547 (2004) [hereinafter Kelly, *Realist Theory*].

6. *Id.* at 546-47.

institutions.⁷ According to these scholars “[l]egalization’ refers to a particular set of characteristics that institutions may (or may not) possess. These characteristics are defined along three dimensions: obligation, precision, and delegation.”⁸

Obligation means that states or other actors are bound by a rule or commitment or by a set of rules or commitments. Specifically, it means that they are *legally* bound by a rule or commitment in the sense that their behavior thereunder is subject to scrutiny under the general rules, procedures and discourse of international law, and often of domestic law as well. *Precision* means that the rules unambiguously define the conduct they require, authorize, or proscribe. *Delegation* means that third parties have been granted authority to implement, interpret, and apply the rules; to resolve disputes; and (possibly) to make further rules.⁹

A regime with a high degree of each of these attributes is highly legalized.¹⁰ A highly legalized regime, however, is not necessarily better than one that is not highly legalized.¹¹ Indeed, different regimes may be better served by different degrees of legalization.¹² A moderate to highly legalized regime is necessary, but not sufficient, to create a constraining re-

7. Abbott et al., *supra* note 2, at 401; *see also* Kenneth W. Abbott & Duncan Snidal, *Hard and Soft Law in International Governance*, 54 INT’L ORG. 421 (2000) [hereinafter Abbott & Snidal, *Hard and Soft Law*].

8. Abbott et al., *supra* note 2, at 401; *see also id.* at 404 (depicting how obligations may be either expressly non-legal—on one end of the spectrum—though binding—on the other; how precision may range from vague to highly elaborated rules; and how delegations of interpretative powers may take the form of diplomacy through international adjudication or domestic application).

9. *Id.* at 401 (emphasis in original).

10. *Id.* at 401-02.

11. *Id.* at 408; *see also* Abbott & Snidal, *Hard and Soft Law*, *supra* note 7, at 423, 434 (noting that international organizations may choose a softer form of legalization depending on the issue involved and require consensus in order to limit costs such as contracting costs).

12. Abbott & Snidal, *Hard and Soft Law*, *supra* note 7, at 423. For example, high degrees of legalization or hard law may be counterproductive in forcing states to comply with rigid provisions. Instead, “hard legalization” may prevent further agreement altogether and may impose high sovereignty costs, forcing states to make tradeoffs between their sovereignty and international agreement. Conversely, soft law for particular issues may reduce con-

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gime.¹³ In addition to legalization, constraining regimes require a compliance mechanism that economically, politically, and normatively enmeshes nations within the regime.¹⁴ The compliance mechanism supports the gradual evolution of norms, political will, and economic investment in the rules of the regime.¹⁵ In other words, it becomes in the states' interest to comply with the fairly precise and obligatory rules of the regime as they are interpreted by a delegated interpreter.¹⁶

Enmeshment is both rationalistic and normative and, in some regards, a function of legalization.¹⁷ Rational nations react to the benefits of legalization.¹⁸ States achieve and respond to efficiencies by shifting domestic preferences to coincide with regime rules. Robert Keohane has identified the effect on domestic decision-making as "institutional

tract and sovereignty costs by encouraging more liberal agreement among states. *Id.* at 435.

13. See Kelly, *Realist Theory*, *supra* note 5, at 585-94, 619.

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14. *Id.* at 585-600. Numerous scholars have explained and examined various compliance mechanisms. See, e.g., CHAYES & CHAYES, *THE NEW SOVEREIGNTY*, *supra* note 1. Thomas Franck argues that legitimacy promotes compliance. See Thomas M. Franck, *Legitimacy in the International System*, 82 AM. J. INT'L L. 705, 706 (1988) (arguing that the perception of legitimacy is partially responsible for compliance with rules). There is also the "political economy or institutionalist" theory of enforcement and compliance which employs a "deterrence strategy designed to maintain cooperation by preventing noncompliance from ever taking place." George W. Downs, *Enforcement and the Evolution of Cooperation*, 19 MICH. J. INT'L L. 319, 319-21 (1998) [hereinafter Downs, *Enforcement*]. For a discussion of various compliance models, see generally Andrew T. Guzman, *A Compliance-Based Theory of International Law*, 90 CAL. L. REV. 1823 (2002) [hereinafter Guzman, *A Compliance-Based Theory*].

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15. See Kelly, *Realist Theory*, *supra* note 5, at 593-96.

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16. *Id.*

17. *Id.* at 594.

18. *Id.* at 593-96. Robert Keohane argues:

Subtler instrumentalist arguments recognize that rules, as part of the environment faced by a state, exert an impact on state behavior. They do so, in this view, not because the norms they reflect persuade people that they should behave differently. Rather, they alter incentives, not merely for states conceived of as units, but for interest groups, organizations, members of professional associations, and individual policymakers within governments.

Robert O. Keohane, *International Relations and International Law: Two Optics*, 38 HARV. INT'L L.J. 487, 490 (1997) [hereinafter Keohane, *Two Optics*]

enmeshment.”¹⁹ Enmeshment may also be normative.²⁰ Regime rules may comport with the nations’ domestic preferences and may even be codified in domestic legislation.²¹ National adoption of international norms has been explored by others. Abram and Antonia Chayes’ managerial model of compliance relies in part on the absorption of norms.²² States that amend domestic laws to signal commitment to international obligations will not easily abandon such commitments.²³ Regime members benefit from maintaining their good standing.²⁴ Harold Koh refers to this process as the “vertical internalization of international norms into domestic legal systems.”²⁵ Koh sees vertical internalization as a key element in a transnational legal process that explains whether nations will comply with international law:

Under this view, the key to understanding whether nations will obey international law, I have argued, is transnational legal process: the process by which public and private actors namely, nation states, cor-

19. Robert O. Keohane, *Compliance with International Commitments: Politics Within a Framework of Law*, 86 AM. SOC’Y INT’L L. PROC. 176, 179 (1992) (discussing “institutional enmeshment,” which “occurs when domestic decision making with respect to an international commitment is affected by the institutional arrangements established in the course of making or maintaining the commitment”).

20. Cf. Harold Hongju Koh, *How Is International Human Rights Law Enforced?*, 74 IND. L.J. 1397, 1404, 1407-08, 1410-11 (1999) (highlighting the significance of “vertical” enforcement and acceptance of international law, where individuals and domestic organizations, rather than nation states, trigger compliance with and normalization of international law) [hereinafter Koh, *How Is International Human Rights Law Enforced?*].

21. See, e.g., Elizabeth P. Barratt-Brown, *Building a Monitoring and Compliance Regime Under the Montreal Protocol*, 16 YALE J. INT’L L. 519, 523-26 (1991) (discussing the Montreal Protocol).

22. CHAYES & CHAYES, *THE NEW SOVEREIGNTY*, *supra* note 1, at 112-134 (generally discussing the role of norms within the managerial model of compliance). R

23. Cf. Robert O. Keohane et al., *Legalized Dispute Resolution and Transnational Law*, 57 INT’L ORG. 457, 466-68 (2000) (discussing the degrees of “embeddedness”).

24. *Weighing Up the WTO*, THE ECONOMIST, Nov. 23, 2002, at 72 (discussing the effectiveness of the WTO and the GATT and the possibility that the WTO benefits members by creating pro trade norms and standards of behavior). R

25. Koh, *How Is International Human Rights Law Enforced?*, *supra* note 20, at 1403.

porations, international organizations, and nongovernmental organizations interact in a variety of fora to make, interpret, enforce, and ultimately internalize rules of international law. The key elements of this approach are interaction, interpretation, and internalization. Those seeking to create and embed certain human rights principles into international and domestic law should trigger transnational interactions, that generate legal interpretations, that can in turn be internalized into the domestic law of even resistant nation states.²⁶

One can see over a period of time that participating in the international legal process causes states to invest (rationally and normatively) in the rules that come out of that process.²⁷ In other words, participation in regimes can lead to enmeshment, both rationalistic and normative.

Enmeshment is not a one size fits all proposition. The route to enmeshment depends on the problems a regime confronts. One must consider “the character of the activity, the character of the accord, country characteristics, policy history, leadership, information, the role of . . . NGOs, actions of other states, and the roles of international governmental organizations (IGOs).”²⁸ Collaboration problems require transparency, communication and, sometimes, coercion. Rewards conditioned on rule observance may be useful in collaboration regimes.²⁹ The threat of sanctions may be helpful to dissuade regime members from cheating.³⁰ Conversely, development problems are less in need of coercion and more in need of resources to enable compliance and normative reinforcement

26. Harold Hongju Koh, *On American Exceptionalism*, 55 STAN. L. REV. 1479, 1502 (2002-03) (footnote omitted).

27. See Keohane, *Two Optics*, *supra* note 18, at 489-92.

28. Harold K. Jacobson & Edith Brown Weiss, *Strengthening Compliance with International Environmental Accords: Preliminary Observations from a Collaborative Project*, 1 GLOBAL GOVERNANCE 119, 124 (1995). For a thoughtful discussion of the dynamic process of international cooperation among legal institutions see Brett Frischmann, *A Dynamic Institutional Theory of International Law*, 51 BUFF. L. REV. 679 (2003) (offering a theory of compliance based upon both game theory and international relations theory).

29. See also ROBERT AXELROD, *THE EVOLUTION OF COOPERATION* 57-60 (1990) (detailing “tit for tat” strategies).

30. See *infra* note 42 and accompanying text.

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of regime rules.³¹ Part III explains collaboration and development problems using the trade regime and the child labor regime as examples.

III. REGIME PARADIGMS AND HOW THEY AFFECT COMPLIANCE STRATEGIES: TRADE AND CHILD LABOR

Regime goals necessarily affect how regimes should seek enmeshment. Enmeshment strategies should depend upon the problems addressed by a regime. The trade regime tackles a collaboration problem. The child labor regime addresses a development (or distributive) problem. Pursuing effective enmeshment strategies necessarily requires understanding the different challenges these different types of problems pose.

A. *The Trade Regime: Addressing a Collaboration Problem*

The trade regime can enmesh states by helping them see the benefits of collaboration and cooperation. The trade regime allows states to collaborate and cooperate based upon the theory of comparative advantage.³² It encourages states to forgo short-term gains of protectionism in favor of long-term gains of collaboration.³³ Where a regime tackles a collaboration (or cooperation) problem,³⁴ it should promote transparency and greater communication to solve the problem.

31. See *infra* note 54 and accompanying text.

32. See generally DAVID RICARDO, PRINCIPLES OF POLITICAL ECONOMY AND TAXATION 92-104 (Prometheus Books 1996) (1911) (explaining the theory of comparative advantage in foreign trade). Countries will realize a comparative advantage by trading goods or services that they can produce most efficiently by accessing markets that desire their exports while importing products that will save them labor and other costs they would have incurred by less efficient production methods. See, e.g., *id.* at 93-95.

33. *Id.*

34. A collaboration problem in game theory parlance is where all states should work together for different reasons. A coordination problem involves a situation where if states only coordinated their actions, the problem would go away. As Kal Raustiala explains, “[c]oordination games refer to situations in which actors benefit from the existence of a shared standard: the paradigmatic case is the rule that one drives on the right (or the left) side of the road, but not both Conversely in collaboration games mixed motives for cooperation exist.” Both rely upon transparency and communication. Kal Raustiala, *Compliance & Effectiveness in International Regulatory Cooperation*, 32 CASE W. RES. J. INT’L L. 387, 400 (2000) [hereinafter Raustiala, *Compliance & Effectiveness*].

Once states see the benefits of complying with regime rules, they should do so. If they fail to do so, sanctions and coercion can play a small part in securing compliance.³⁵ It is important to remember though that such sanctions operate as a part of a larger scheme that enmeshes states within the collaborative regime.

The trade regime protects the collective good of trade liberalization based on the theory of comparative advantage.³⁶ The theory of comparative advantage postulates that if each country produces that which it can produce most efficiently, all countries will benefit.³⁷ In short, comparative advantage supposedly demonstrates that trade liberalization improves the net welfare of countries.³⁸ Trade barriers prevent countries from producing that which they produce most efficiently.³⁹ Thus, countries should coordinate the reduction of trade barriers. Nevertheless, it may be difficult for countries to commit to trade liberalization because of the fear of cheating by their trading partners, either trying to better their situation or succumbing to short-term domestic concerns.⁴⁰ The trade regime, as a collaboration regime, reduces the fear of cheating by revealing the different benefits that nations will receive if they comply.⁴¹ Also, greater transparency and communication

35. Cf. Kenneth W. Abbott, *Modern International Relations Theory: A Prospectus for International Lawyers*, 14 YALE J. INT'L L. 335, 367-68 (explaining how regimes ameliorate cooperation problems and legitimize the imposition of sanctions).

36. RICARDO, *supra* note 32, at 93-104.

37. See *id.* at 93-95; JOHN H. JACKSON, *THE WORLD TRADING SYSTEM: LAW AND POLICY OF INTERNATIONAL ECONOMIC RELATIONS* 11-12 (MIT Press 1997) (1989).

38. *Id.* at 12 (showing that through trade liberalization, countries can realize a comparative advantage and net gain through decreased costs in labor and increased revenue from trading in new markets).

39. See RICARDO, *supra* note 32, at 102 (stating that by manipulating currency or costs of manufacturing of its goods, a country can negatively impact other trading partners); JACKSON, *supra* note 37, at 11 (noting that the theory of comparative advantage relies on "minimizing governmental interference with trade flows").

40. See JACKSON, *supra* note 37, at 18-19 (explaining that, due to domestic issues such as defense or disparity among groups of people, nations sometimes do not follow trade rules).

41. See also Raustiala, *Compliance & Effectiveness*, *supra* note 34, at 400 (discussing collaboration); cf. Kingsbury, *The Concept of Compliance*, *supra* note 1, at 350-51 (referring to coordination regimes—e.g., the FAA—as virtually

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make cheating more difficult. Countries will be less likely to cheat if others can see them cheating and they fear retaliatory cheating.⁴² Essentially, the trade regime reduces the incentive for an individual nation to try to obtain an advantage over another nation in any one isolated instance.⁴³ Thus, all states should see the benefit of comparative advantage and comply with trade liberalization rules.

Although transparency and better communication should reduce the incentives to cheat on the trading rules, they do not eliminate them altogether;⁴⁴ the threat of sanctions can provide an extra disincentive to cheat.⁴⁵ For example, the United States may understand that the liberalized trade of steel and steel products will ultimately benefit the United States and its trading partners in the amount of X (X being the benefit that the United States gains from being able to purchase cheaper steel overseas and making something else in its place). But the United States may be willing to forgo X because the domestic political sentiment to protect the steel industry is worth 2X to the United States. The existence of the trade regime as a collaboration regime allows the United States to realize the benefit of X, but the threat of sanctions does more. The threat of sanctions may impose a loss of 3X on the United States and thus force the United States to reconsider its calculus in refusing to liberalize its trade in steel. Fortunately for the trade regime, the regime itself controls the potential sanction (i.e., access to trade).

self-enforcing because there would be no benefit to anyone if such coordination rules were not followed).

42. See Anthony Clark Arend, *Do Legal Rules Matter? International Law and International Politics*, 38 VA. J. INT'L L. 107, 120-22 (1998) (explaining rationalist theory and the "advantages to participation in institutional arrangements").

43. Claire R. Kelly, *The Value Vacuum: Self-Enforcing Regimes and the Dilution of the Normative Feedback Loop*, 22 MICH. J. INT'L L. 673, 680-81 (2001) [hereinafter Kelly, *Value Vacuum*] (discussing how institutions promote cooperation); see also AXELROD, *supra* note 29, at 11-14 (detailing cooperative strategies). R

44. See JACKSON, *supra* note 37, at 16-17 (explaining the theory of comparative advantage while noting that some states will not always follow trade laws, despite economic benefits, due to domestic issues). R

45. Cf. Steve Charnovitz, *Rethinking WTO Trade Sanctions*, 95 AM. J. INT'L L. 792 (2001). Charnovitz notes that the possibility of sanctions "fortifies and promotes" WTO rules. He also notes, however, that "it drains away the benefits of free trade and promotes 'sanction envy.'" *Id.* at 792.

Thus, the trade regime effectively uses transparency, communication, and sanctions to encourage states to self-enforce regime rules. Transparency and communication allow states to assure themselves that cheaters will be exposed and thus states are more likely to coordinate a reduction in trade barriers.⁴⁶ Coercion through sanctions is available to further encourage compliance when a state is tempted to forgo long-term benefits for short-term ones.⁴⁷ The combination of transparency, communication, and the threat of sanctions enmeshes states within the trade regime; trade liberalization becomes within each state's interest.⁴⁸

B. *The Child Labor Regime: Addressing a Development Problem*

The child labor regime addresses a domestic development problem. It needs resources and normative shifts to encourage enmeshment.⁴⁹ Many of the immediate causes of child labor, poverty, educational deficits, and the lack of decent work, are essentially domestic development problems.⁵⁰ Development

46. See Arend, *supra* note 42, at 120-22.

47. See Kelly, *Value Vacuum*, *supra* note 43, at 675 (explaining that the trade regime is self-enforcing because, unlike other regimes, it is "capable of imposing direct costs upon regime defectors").

48. Kelly, *Realist Theory*, *supra* note 5, at 580-81.

49. Anjali Garg, *A Child Labor Social Clause: Analysis and Proposal for Action*, 31 N.Y.U. J. INT'L L. & POL. 473, 475-84 (1999) (noting that factors such as cultural attitudes towards child labor and support for education, in addition to state support for eradicating child labor through legislation, often have a greater impact on a state's child labor problem than mere poverty or anti-child labor legislation); see also Ranjan K. Agarwal, *The Barefoot Lawyers: Prosecuting Child Labor in the Supreme Court of India*, 21 ARIZ. J. INT'L & COMP. L. 663, 664 (2004) (noting that although India has extensive legislation prohibiting child labor, the problem continues to exist due to a failure to change existing enforcement, social, and economic structures such as employer attitudes and reliance on the use of child labor); Jennifer Bol, *Using International Law to Fight Child Labor: A Case Study of Guatemala and the Inter-American System*, 13 AM. U. INT'L L. REV. 1135, 1180 (1998) (noting that despite legislation prohibiting child labor, the problem continues in Guatemala due to the state's attitude, or possible collusion with its economic elite, towards lax enforcement of child labor standards which has resulted in little change to the social or economic infrastructure dependent on child labor).

50. INT'L PROGRAMME ON THE ELIMINATION OF CHILD LABOUR, INVESTING IN EVERY CHILD: AN ECONOMIC STUDY OF THE COSTS AND BENEFITS OF ELIMINATING CHILD LABOUR I-8 (2004), available at http://www.ilo.org/public/english/standards/ipecc/publ/download/2003_12_investingchild.pdf. [hereinafter INVESTING IN EVERY CHILD].

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problems require the commitment of resources to help states comply with regime norms and promotion of those norms.

One could argue that, because trade and labor are inextricably linked, labor is, or should be, part of the trade regime. Indeed, thoughtful scholars have argued exactly that.⁵¹ To the extent that trade in some part causes child labor, these arguments seem persuasive, but there are other, and arguably more direct, causes of child labor, and we should consider these causes and how to alleviate them.

The most immediate causes of child labor are primarily, though not exclusively, resource issues:⁵² poverty, decent work alternatives, education, and cultural values.⁵³ States lack the resources to address the causes of child labor.⁵⁴ Addition-

51. See, e.g., Daniel S. Ehrenberg, *The Labor Link: Applying the International Trading System to Enforce Violations of Forced and Child Labor*, 20 YALE J. INT'L LAW 361, 364-65 (1995) (arguing that countries violating certain labor standards are exploiting an unfair comparative advantage for which they may be sanctioned by the trading regime); Raj Bhala, *Clarifying the Trade Labor Link*, 37 COLUM. J. TRANSNAT'L LAW 11, 11 (1998) (noting the true link between the trade and labor regimes "is often clouded by rhetoric").

52. See PETER FALLON AND ZAFIRIS TZANNATOS, CHILD LABOR: ISSUES AND DIRECTIONS FOR THE WORLD BANK 3 (1998) (explaining that the "labor force participation of children aged 10-14 years is extremely high at 30-60 percent in countries with per capita income of \$500 or less But it declines quite rapidly to 10-30 percent in countries with incomes between \$500 and \$1,000." Moreover, "the higher the share of agriculture in the GDP, the higher the incidence of child labor.").

53. Admittedly, poverty and resource deficiency are not the only causes of the problem. As an International Labour Conference Report explains:

Poverty, while inextricably linked to child labour, offers neither a straightforward, nor complete explanation for it. The various dimensions of poverty interact with other factors, which act at all levels from the individual girl or boy to the national economy and even beyond, to determine whether and which children work, go to school, do both or do neither. Inadequate social protection coupled with under-resourced, poor quality education systems play a large part of perpetuating child labour. Policy inconsistencies, such as the existence of a gap between the school-leaving age and the minimum age for employment, exacerbate the situation in many countries.

INTERNATIONAL LABOUR CONFERENCE, *A Future Without Child Labour, Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work 2002* at xii, available at http://www.ilo.org/dyn/declaris/DECLARATIONWEB.DOWNLOAD_BLOB?Var_DocumentID=1566 (last visited May 30, 2005) [hereinafter *A Future Without Child Labour*].

54. See INVESTING IN EVERY CHILD, *supra* note 50, at 4.

ally, child labor contributes to the resources of a state.⁵⁵ For example, one Latin American study indicated that if teens stopped working the poverty rate in nine countries involved would rise by 10 percent.⁵⁶ Likewise, in Nepal's carpet industry, when international attention focused on decreasing child labor, the nation's main source of foreign income diminished.⁵⁷ Thus, efforts to eliminate child labor require resources to attack the causes of the problem and replace the resource contributions from child labor.⁵⁸

Other factors besides poverty need to be addressed to enmesh states in a child labor regime.⁵⁹ These include *inter alia*: the lack of education and educational alternatives,⁶⁰ the lack of decent work for adults,⁶¹ and inadequate social protec-

55. Cf. Press Release, Department for International Development, Helping not Hurting the Children-Trade Sanctions Will Not End Child Labour, Warns Short (Nov. 17, 1999), available at http://www.tgwu.org.uk/TGWUInternatEd/Food/dfid_news.htm (noting that children work because they are poor and because their families need the resources that they contribute); see also LEVISON ET AL., IS CHILD LABOUR REALLY NECESSARY IN INDIA'S CARPET INDUSTRY?, at Foreword, § 5 (Int'l Labour Office 1996), available at <http://www.ilo.org/public/english/standards/ipecc/publ/policy/papers/carpet/index.htm> (last visited Aug. 29, 2003) (noting that the use of children by the carpet weaving industry contributes to the overall national India economy as well as maintaining India's competitive position within the global carpet weaving industry).

56. UNICEF, BEYOND CHILD LABOUR: AFFIRMING RIGHTS 1, 2 (2001), available at http://www.unicef.org/publications/pub_beyond_en.pdf (last visited Jul. 17, 2003) [hereinafter BEYOND CHILD LABOUR].

57. *Id.*; see DEPT. FOR INT'L DEVELOPMENT, POVERTY ELIMINATION: THE ROLE OF ECONOMIC AND SOCIAL RESEARCH 27, at <http://www.dfid.gov.uk/pubs/files/poverty-elimination-esr.pdf> (last visited July 17, 2005).

58. The costs of eliminating child labor result from the need to provide for schools, substitution income to families, and emergency funds to rescue children most at risk. This cost is estimated to be \$760 billion dollars. But it is also estimated that eliminating child labor would reap benefits seven times that amount. INVESTING IN EVERY CHILD, *supra* note 50, at 4.

59. See FALLON & TZANNATOS, *supra* note 52, at 3.

60. *Id.* at 4 (explaining that "the incidence of child labor declines with educational enrollment, though with large cross-country variation" because children often work to finance education); see also Bureau of International Affairs, U.S. Dep't of Labor, *Advancing the Global Campaign against Child Labor: Progress Made and Future Actions*, at 22, available at <http://www.dol.gov/ilab/media/reports/iclp/globcamp/globcampconf.htm> [hereinafter DOL Report].

61. Cf. *id.* at 32 (discussing the lack of decent employment opportunities for educated children).

tion.⁶² In some cases another significant contributor is the AIDS epidemic that has left many children orphaned.⁶³ To some extent these factors play off of or exacerbate each other. Lack of educational alternatives is a function of poverty and in turn imprisons future generations of children in a cycle of child labor. Activist Shantha Sinha found, in one case in India, “that most children worked as farm laborers simply because they were not studying, and not the other way around.”⁶⁴

Normative values, such as the value a society attaches to education or to work, also contribute to the problem.⁶⁵ For example an International Labor Organization (ILO) Report on El Salvador notes “Salvadorians value work, and giving children responsibility from an early age is viewed positively . . . ; there is a very low level awareness among the general popula-

62. *A Future Without Child Labour*, *supra* note 53, at xii (noting that poverty is not the sole cause, but rather one factor that interacts with others, including inadequate social protections). As the Gross Domestic Product (GDP) of a country increases, the level of child labor decreases. See FALLON & TZANNATOS, *supra* note 52, at 3 (explaining that child labor rates for “children aged 10-14 years is extremely high at 30-60 percent in countries with a per capita income of \$500 or less,” but declines to between 10 and 30 percent in countries with a per capita income of 500-1000 and stating that the “higher the share of agriculture in GDP, the higher the incidence of child labor”).

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63. See *A Future Without Child Labour*, *supra* note 53, at 50-51 (noting that the HIV/AIDS epidemic has put pressure on children to enter the labor market). “HIV/AIDS has further heightened the labour crisis for children, particularly in sub-Saharan Africa, where the toll is highest. With more than 10 per cent of children in some countries orphaned and more than 13 million children under the age of 15 orphaned overall, extended families, communities and governments are stretched beyond their capacity to care for them.” BEYOND CHILD LABOUR, *supra* note 56, at 3; see also INVESTING IN EVERY CHILD, *supra* note 50, at 41.

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64. DOL Report, *supra* note 60, at 70; see also INVESTING IN EVERY CHILD, *supra* note 50, at 35.

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65. See, e.g., INT’L. LABOUR ORG., IPEC IN ACTION: ASIA, available at <http://www.ilo.org/public/english/standards/ipec/publ/field/asia/banglad2pr.htm> (last visited Feb. 15, 2005) (noting cultural attitudes towards child labour in Bangladesh); see also INT’L PROGRAMME ON THE ELIMINATION OF CHILD LABOUR, COMBATting CHILD LABOUR: A HANDBOOK FOR LABOUR INSPECTORS 19-20, available at <http://www.ilo.org/public/english/protection/safework/labinsp/handbook.pdf>; INT’L. LABOUR ORG., IPEC COUNTRY PROFILE: EL SALVADOR, available at <http://www.dol.gov/ILAB/grants/education/timebound/IPEC%20in%20E1%20Salvador.pdf> (last visited Feb. 15, 2005); DOL REPORT, *supra* note 60, at 32, 34, 42, 46 (giving examples of cultural attitudes towards work and education).

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tion about the dangers and harmful long-term consequences of child labour”⁶⁶ In some cases the value that the community attaches to education, as opposed to work, is not altogether unjustified. One report concerning three million child agricultural workers (ages six to fourteen) in Kenya revealed that parents had little value for education since work opportunities for educated children and adults were no better than for uneducated children and adults.⁶⁷ Conversely, although India has failed to sign either Convention 138 or Convention 182 in the Indian State of Kerala, child labor has been almost totally eradicated in part due to normative enmeshment.⁶⁸ Despite the poverty in India and in Kerala, the culture in Kerala places value on education and less value on economic activity by children.⁶⁹ The incidence of child labor in Kerala is far below that of the rest of India.⁷⁰ One can argue that the normative values in Kerala contribute to its ability to combat child labor with significant success, despite its poverty.

Gender roles play a part in the dispersion of work between girls and boys and the patterns of abuse. Boys outnumber girls involved in hazardous work (both in relative and ab-

66. IPEC COUNTRY PROFILE: EL SALVADOR, *supra* note 65; *see also* INVESTING IN EVERY CHILD, *supra* note 50, at 53, 60.

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67. *See* DOL REPORT, *supra* note 60, at 32-34; *see also* S.L. Bachman, *A New Economics of Child Labor: Searching for Answers Behind the Headlines*, 53 J. INT’L AFF. 545, 556 (2000) (giving the example of learning the skill of diamond polishing).

68. KIDS CAN FREE CHILDREN, VOICES, at http://www.freethechildren.org/voices/writings_childlabor.htm (last visited September 1, 2003) (on file with author). Although Kerala is not a wealthy state, it has been the most successful in diminishing child labor. *Id.*; *see also* Chris Hoskin, *A Cry For Help: Child Labour Problems In India*, at <http://www.wm.edu/SO/monitor/spring98/docs/ChildLabor.html> (last visited Feb. 15, 2005) (stating that “Kerala has the lowest incidence of child labor and Andhra Pradesh the highest”); Mitesh Badiwala, *Child Labour in India: Causes, Governmental Policies and the Role of Education* (1998), at <http://www.geocities.com/CollegePark/Library/9175/inquiry1.htm> (last visited Sept. 1, 2003) (discussing how education policies have worked in Kerala).

69. KIDS CAN FREE CHILDREN, *supra* note 68; *see also* Bachman, *supra* note 67, at 563-64 (stating that Kerala is an often-cited example of a poor area that has “reduced child labor significantly by focusing on primary education and designing programs to meet specific local needs, customs and culture”).

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70. Hoskin, *supra* note 68 (stating that Kerala has the lowest incidence of child labor).

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solute terms).⁷¹ Girls are often employed in domestic service. Domestic work is particularly dangerous because most Child Domestic Workers (CDW) “live-in and have little freedom, their life and safety often depends on the mercy of their employers. An overwhelming majority of CDWs are girls, and many face physical, emotional and sexual abuses.”⁷² Girls are less likely than boys to receive an education.⁷³ Two-thirds of children out of school are girls.⁷⁴ At least one million children per year, mostly girls, work as prostitutes.⁷⁵ Gender roles are also perpetuated by child labor.⁷⁶ One educational study of children in a particular region of Thailand revealed that 10,000 children could not be persuaded to continue on to secondary education. For the half of them who were girls, the

71. INT’L LABOUR OFFICE, EVERY CHILD COUNTS: NEW GLOBAL ESTIMATES ON CHILD LABOUR 23-24 (2002) [hereinafter EVERY CHILD COUNTS]. However, Fallon and Tzannatos note:

There does not seem to be much difference in child participation rates by gender. Differences in child labor between boys and girls are masked by measurement problems, as boys are commonly in more visible types of employment while girls work in unpaid household work. For example, in six countries studied under IPEC, the ratio of boys to girls in the labor force was found to be 3:2, but if domestic activities are included, the numbers become similar. In countries where data exist, girls appear to work more hours, which is consistent with gender differences in educational enrollment rates.

FALLON & TZANNATOS, *supra* note 52, at 2-3.

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72. NELIEN HASPELS & BUSAKORN SURIYASARN, INT’L LABOUR ORGANIZATION, PROMOTING OF GENDER EQUALITY IN ACTION AGAINST CHILD LABOUR AND TRAFFICKING: A PRACTICAL GUIDE FOR ORGANIZATIONS 15 (2003), *available at* http://www.ilo.org/public/english/standards/ipec/publ/download/gender_guide_2003_haspels_en.pdf (last visited Jun. 2, 2005).

73. UNESCO, GENDER SENSITIVE EDUCATION STATISTICS AND INDICATORS 19 (1998), *available at* http://www.uis.unesco.org/file_download.php?URL_ID=5017&filename=10420443980gend-stat.pdf&filetype=application%2Fpdf&filesize=229846&name=gend-stat.pdf&location=USer-S/ (last visited Feb. 20, 2005) (“In most developing countries, girls and women are worse off than boys and men in regards to access and participation in schooling.”).

74. BEYOND CHILD LABOUR, *supra* note 56, at 2.

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75. *Id.* at 2-3.

76. EVERY CHILD COUNTS, *supra* note 71, at 25 (“Whereas boys tend to be trafficked for forced labour in commercial farming, petty crimes and the drug trade, girls mainly appear to be trafficked for commercial sexual exploitation and domestic service.”); *see also A Future Without Child Labour*, *supra* note 53, at 25 (noting that in rural Bangladesh, girls begin work at a younger age because of the domestic tasks they are given).

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reason given was “the prepaid commitment by parents to agents that the girls were to go south and work in sex-related operations, as their mothers and grandmothers had done.”⁷⁷

Developed countries also have failed to eradicate child labor within their own borders. The ILO estimated that in 2000, 2.5 million children in developed countries were economically active.⁷⁸ Human Rights Watch examined conditions for 300,000 agricultural child laborers in the U.S.⁷⁹ Child farm workers account for a disproportionate number of work related fatalities among minors.⁸⁰ Human Rights Watch estimates that “100,000 children suffer agriculture related injuries each year in the United States.”⁸¹ These children are also often underpaid.⁸²

As a regime that addresses a primarily resource-based development problem, the child labor regime should enmesh states by supplying resources and promoting positive norms consistent with the regime’s goals. Sanctions limit resources.

77. DOL Report, *supra* note 60, at 58.

78. EVERY CHILD COUNTS, *supra* note 71, at 16.

79. Human Rights Watch, *Backgrounder: Child Labor in Agriculture* (June 2002), at <http://hrw.org/backgrounder/crp/back0610.htm> (last visited May 2, 2005) [hereinafter *Backgrounder: Child Labor*] (“In the United States, Human Rights Watch examined conditions for the estimated 300,000 children who work as hired laborers in large-scale commercial agriculture, planting, weeding, and picking apples, cotton, cantaloupe, lettuce, asparagus, watermelons, chilies, and other crops.”). For a history of child labor in the United States, see generally Michael A. Pignatella, *The Recurring Nightmare of Child Labor Abuse—Causes and Solutions for the 90’s*, 15 B.C. THIRD WORLD L. J. 171 (1995).

80. *Backgrounder: Child Labor*, *supra* note 79. See also A FUTURE WITHOUT CHILD LABOUR, *supra* note 53, at 12, 26 and 30 (giving examples of child fatalities).

81. *Backgrounder: Child Labor*, *supra* note 79 (noting that “[c]hild farm workers make up only 8 [percent] of the children who work in the United States, yet account for 40 [percent] of work related fatalities among minors”).

82. *Id.* Human Rights Watch noted that:

In the United States, the legal minimum wage is \$5.15 per hour. Approximately one-third of the child farm workers interviewed by Human Rights Watch earned significantly below minimum wage, and some were paid as little as \$2.00 per hour. Some children were instructed by their supervisors what to say if they were approached by a government inspector: “If they ask how much I pay you, say \$5.50” or “say \$6.00.”

Id.

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States cannot be expected to realign their interests with those of the regime without the resources to do so.⁸³ For example, if the child labor regime wants states to educate children—in order to have a more educated and productive society that will have more resources—then it has to enable states to do so.⁸⁴ After a state has the ability to realign its interests, normative shifts can be sought. This process of enmeshment is discussed more fully below.

IV. SEEKING COMPLIANCE IN THE CHILD LABOR REGIME

I explained above how the trade regime and child labor regime address different types of problems. This Part explores how to best seek compliance in the child labor regime. First, proposals to use trade measures as the compliance tool for the child labor regime are briefly explored. I propose that while trade sanctions as compliance tools may be theoretically justified, they will have limited utility. Second, this Part suggests that enmeshment is a workable and better compliance strategy for the child labor regime. The child labor regime already has a sufficiently high degree of legalization such that one can objectively determine the requirements of the regime and whether states are obeying regime rules. The tools for enmeshing states within the regime are readily available and include: (i) reporting mechanisms, (ii) economic assistance (which may be funneled through the trade regime), and (iii) technical assistance and advice. Accepting enmeshment as a theory of compliance suggests that we use these tools in different ways depending upon the level of each nation's development. Reporting and monitoring will be useful for states at all levels of development; financial and technical assistance will be most helpful for developing and transitioning states; and sanctions may have a place for developed states.

A. *Proposals to Use Trade to Promote Child Labor Norms*

Proponents have theoretical and practical justifications for proposals to use trade mechanisms to combat the child labor problem. While I admit that these proposals may have theoretical justifications, and while I agree that some form of

83. See INVESTING IN EVERY CHILD, *supra* note 50, at 4.

84. *Id.*

measured linkage may be appropriate to mediate the effects of trade on human rights norms, I reject the notion that trade mechanisms should be used as an enforcement tool for child labor. To demonstrate the problems with such proposals, I briefly describe both the unilateral and multilateral trade approaches that have been suggested.

Trade-based approaches to the child labor problem are theoretically justified. One can ground linkage between human rights regimes and trade on several bases:

Human rights issues might justifiably be linked with trade for a number of reasons: (1) normative (because linkage is demanded by justice and fairness); (2) coherence (because a free trade regime simply would not make sense if human rights are ignored); (3) consequentialist (because free trade will adversely affect human rights); (4) strategic (because linking these issues in creative package deals leads to more effective negotiations as to both); or (5) effectiveness (because the more effective WTO approach to dispute settlement can be usefully “borrowed” to the benefit of human rights).⁸⁵

Thus, linkage in general terms may make sense because of the externalities that trade causes and because linking the regimes may be a means to secure concessions from states which would otherwise be difficult to obtain.⁸⁶ Trade liberalization requires concomitant labor protection because it contributes to labor abuses.⁸⁷ Arguably, trade liberalization creates new incentives for labor abuses and a race to the bottom of labor

85. José E. Alvarez, *How Not to Link: Institutional Conundrums of an Expanded Trade Regime*, 7 WIDENER L. SYMP. J. 1, 13 (2001). *But see* John O. McGinnis & Mark L. Movsesian, *Against Global Governance in the WTO*, 45 HARV. INT'L L. J. 353, 354 (2004) (arguing that “the WTO should stick to its limited but important role: reducing barriers to trade among nations”).

86. David W. Leebon, *The Boundaries of the WTO: Linkages*, 96 AM. J. INT'L L. 5, 11-14 (2002) (identifying the concept of “strategic linkage”). He also outlines a typology of linkage “means” including: negotiating linkage, hierarchical linkage, membership linkage, incorporation (of an issue area), issue linkages, interpretive linkage, participatory linkage, and permissive unilateral linkage. *Id.* at 16-24. Each of these means incorporates the “decisions, values, or norms in one area or regime” into another. *Id.* at 16.

87. *See* James Salzman, *Labor Rights, Globalization and Institutions: The Role and Influence of the Organization for Economic Cooperation and Development*, 21 MICH. J. INT'L L. 769, 771-72 (2000) (explaining the debate

standards.⁸⁸ Thus, a truly multilateral effort by the WTO should deal with labor issues because labor issues are in part a function of the trade regime.⁸⁹ Yet, some challenge the idea that trade flows are significantly affected by core labor standards and, indeed, there is some evidence indicating the lack of correlation between the two.⁹⁰ One scholar notes that a recent OECD study demonstrates “respect for core labor standards and economic development were mutually reinforcing.”⁹¹

Additional justifications for using trade to combat child labor include the views that: (i) abusive labor conditions are a form of “social dumping” that are an unfair trade practice;⁹² and (ii) globalization, which is a function of trade, causes the disintegration of social safety nets and community support that

on whether labor protection should accompany trade liberalization and, if so, which rights should be protected and how).

88. See Robert Howse, *The World Trade Organization and the Protection of Workers' Rights*, 3 J. SMALL & EMERGING BUS. L. 131, 165 (1999) (explaining the “race to bottom” theory where nations remove labor rights in order to underbid other nations and stay competitive in the international arena). Others note that some nations have other means of protecting their labor standards. See Dani Rodrik, *Labor Standards in International Trade: Do They Matter and What Do We Do About Them?*, in EMERGING AGENDA FOR GLOBAL TRADE: HIGH STAKES FOR DEVELOPING COUNTRIES 44-45 (1996) (noting several ways that countries can purchase higher labor standards for themselves).

89. See Andrew T. Guzman, *Trade, Labor, Legitimacy*, 91 CAL. L. REV. 885, 898-99 (2003) (explaining how the WTO might consider labor issues outside of the dispute settlement body).

90. See Salzman, *supra* note 87, at 796-97 (explaining the study by ELSA and DAFFEE that found there is “no evidence that low-standard countries enjoy better export performance than high standard countries”); see also ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, TRADE, EMPLOYMENT AND LABOUR STANDARDS: A STUDY OF CORE WORKERS' RIGHTS AND INTERNATIONAL TRADE 12 (1996), <http://www.oecd.org/scripts/publications/bookshop/redirect.asp?221996031P1> (last visited Feb. 21, 2005) [hereinafter OECD STUDY].

91. Salzman, *supra* note 87, at 797 (discussing the results of the OECD study, which finds that core labor rights and economic growth go hand and hand); see also OECD STUDY, *supra* note 90, at 13.

92. See Howse, *supra* note 88, at 136 (explaining the concepts of “negative subsidies” and “social dumping,” and noting that “there is little question that the existing law on dumping and subsidization fails to provide legal justification for imposition of duties against products from countries with low labor standards on the basis of commercial unfairness.”).

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exacerbates child labor.⁹³ The idea of bad labor practices being an unfair trade advantage is not new and has spurred prior trade legislation.⁹⁴ Indeed, there is also evidence that globalization and the increased integration of economies disintegrates social safety nets and leaves countries vulnerable to world financial shocks,⁹⁵ both of which can multiply the horrors of child labor. Thus, it may be legitimate for trade to address child labor. Labor issues are, in part, a function of the trade regime and thus the trade regime may be a legitimate labor regulator.

Even if the trade regime can be cast as a legitimate regulator of the child labor problem, it does not necessarily follow that it is the best regulator of child labor. Being able to justify a trade measure as legitimate under the trade regime is not the same as showing that the trade measure will be helpful for the child labor regime.⁹⁶ To answer this second and more useful query, it is necessary to move beyond theoretical justifica-

93. See, e.g., INT'L LABOUR ORG., IPEC IN ACTION: AFRICA, available at <http://www.ilo.org/public/english/standards/ipec/publ/field/africa/tanzan97.htm> (last visited May 20, 2005) (noting that "the incidence of child labour in the United Republic of Tanzania are closely linked to the free market reforms the country has undertaken").

94. The United States barred products made with prison labor in 1890. See Charnovitz, *supra* note 45, at 569 (1987) (citing 26 Stat. 624 (1890)). Charnovitz also gives Argentina and Spain as examples of countries which include "forced labour" in their definitions of dumping. *Id.* at 570. Likewise, the European Union has denied benefits on goods exported to the EU through its European Generalized System of Preferences program to Burma pending the abolishment of forced labor practices in that country. Sarah H. Cleveland, *Norm Internalization and U.S. Economic Sanctions*, 26 YALE J. INT'L L. 1, 14 (2001).

95. See, e.g., Nsongurua J. Udombana, *How Should We Then Live? Globalization and the New Partnership for Africa's Development*, 20 B.U. INT'L L.J. 293, 312-17 (2002) (citing MORRIS GOLDSTEIN, *THE ASIAN FINANCIAL CRISIS: CAUSES, CURES, AND SYSTEMATIC IMPLICATIONS* (1998) and EDDY LEE, *THE ASIAN FINANCIAL CRISIS: THE CHALLENGES OF SOCIAL POLICY* (1999)). "Interdependence brings about volatility, as perturbations in one place reverberate around the entire system. The Asian financial crisis of the mid-1990s, for example, had a global dimension in its causes and consequences as well as long-term implications for political and social dynamics around the world." *Id.* at 318.

96. Cf. Sara Dillon, *A Farewell to "Linkage": International Trade Law and Global Sustainability Indicators*, 55 RUTGERS L. REV. 87, 126 (2002) (noting that the presence of social clauses will not necessarily lead to a mature system of global governance).

tions to consider some specific proposals for the use of trade and trade sanctions.

The specific proposals to use trade to address labor issues are varied and have been delineated more fully elsewhere;⁹⁷ however, it is worthwhile to discuss some ideas briefly here. The WTO could deal with labor issues, and specifically child labor, in several ways, such as by: (i) allowing countries to discriminate against products created with child labor because they are not “like products” with other products; (ii) allowing countries to unilaterally discriminate against such products free of WTO sanctions because such discrimination would be an exception to the trading rules (under some interpretations of GATT/WTO Article XX); (iii) treating products made with child labor as socially “dumped” products; (iv) employing a “safeguards” mechanism to products of child labor; (v) creating an independent trade/labor body that deals proactively with labor problems.⁹⁸

The first avenue would require an interpretation of the WTO concept of “like products” to allow for distinctions of likeness to be made on attributes other than the physical characteristics of the product.⁹⁹ That is, countries could make regulatory distinctions between products based upon Process Pro-

97. See generally Halina Ward, *Common But Differentiated Debates: Environment, Labour and the World Trade Organization*, 45 INT'L & COMP. L.Q. 592 (1996) (outlining various proposals in the context of both labor and the environment); Ehrenberg, *supra* note 51, at 364-65 (arguing that countries violating certain labor standards are exploiting an unfair comparative advantage for which they may be sanctioned by the trading regime); David W. Leeborn, Symposium, *The Boundaries of the WTO: Linkages*, 96 AM. J. INT'L L. 5 (2002) (suggesting “more creative (and looser) modalities for linkage”); see also Benjamin James Stevenson, *Pursuing an End to Foreign Child Labor Through U.S. Trade Law: WTO Challenges and Doctrinal Solutions*, 7 U.C.L.A. J. INT'L L. & FOREIGN AFF. 129, 153 (2002) (evaluating whether a law that prohibits the importation of products made with child labor would “pass WTO muster”).

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98. See *infra* notes 110 to 111 and accompanying text; see also Daniel C. Esty, *Linkages and Governance: NGOs at the World Trade Organization*, 19 U. PA. J. INT'L ECON. L. 709 (1998) (suggesting that NGO participation in the “trade and” debates can bring a helpful intellectual competition where WTO expertise is lacking).

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99. See Howse, *supra* note 88, at 138-41. The author explains that nations have the right to regulate imported products to insure safety so long as like domestic products are subject to the same regulations. This provision is known as the National Treatment Standard. Two unadopted GATT panels

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duction Methods (PPMs). If the PPMs involved child labor, countries could discriminate against them without violating WTO rules.

Alternatively, even if products produced with child labor and those not produced with child labor are still “like products” it may be possible to argue that a country could treat those products differently and avoid WTO countermeasures by invoking an Article XX exception.¹⁰⁰ Article XX allows, but does not require, countries to take measures that would otherwise violate the trading rules in certain limited circumstances.¹⁰¹ Dealing with child labor issues through Article XX is problematic because currently there is no Article XX exception that squarely addresses child labor issues. Robert Howse has argued, however, thoughtfully and persuasively that Articles XX(a) and XX(b) may be interpreted to allow for such an exception.¹⁰²

Dumping and social safeguards proposals would allow importing nations to protect themselves from the competition of

decided that products are like or equal if they have the same physical characteristics regardless of how the product was produced. *Id.*

100. Stevenson, *supra* note 97, at 156-66 (arguing that using trade sanctions to enforce labor norms would either not be a violation of WTO rules or, if it was, that it would still be permissible as an Article XX exception). R

101. General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194 [hereinafter GATT]. Article XX provides general exceptions to GATT in certain circumstances, such as when it is “(a) necessary to protect public morals; (b) to protect human, animal, or plant life or health; or when there is an issue (e) relating to the products of prison labour.” *See also* Steve Charnovitz, *The Influence of International Labour Standards on the World Trading Regime*, 126 INT’L. LAB. REV. 565, 571 (1987) (noting that proposals to limit trade in goods made with child labor go back to 1917).

102. *See* Howse, *supra* note 88, at 142-45. The author considers whether Articles XX(a) and XX(b) be invoked to justify trade sanctions against products that involve the use of child labor. Article XX(a) allows nations to take actions otherwise inconsistent with GATT when necessary to protect public morals. Article XX(b) allows nations to take inconsistent actions when human life or health is at stake. Article XX already specifically deals with prison labor. *Id.* Even under this approach there may still be problems such as the “jurisdictional gap in the definitional conceptualization of ‘discrimination’ between the ILO and WTO contexts.” Yasmin Moorman, Note, *Integration of ILO Core Rights Labor Standards into the WTO*, 39 COLUM. J. TRANS-NAT’L. L. 555, 557 (2001). This commentator evaluates the Howse proposal in light of the fact that the WTO would likely only recognize de jure discrimination (and not de jure and de facto discrimination as the ILO recognizes) in permitting an exception to the trading rules. *Id.* R

child labor.¹⁰³ Dumping and subsidy actions in the trade regime generally view certain practices that allow companies to sell goods at cheap prices as unfair trade practices.¹⁰⁴ Thus, a government subsidy (i.e., grant) may allow a company to compete unfairly. A company may purposefully sell products at less than cost (i.e., dump) in order to capture market share.¹⁰⁵ Countries injured by dumping may respond by imposing anti-dumping duties.¹⁰⁶ “Social dumping” extends this view of unfair trade practices to selling products cheaply as a result of lower social protections in the country of production.¹⁰⁷ Another creative proposal to link the trade and labor regimes deals with labor standards and would treat labor standards (specifically, trade based on differences in labor standards) as a technology from which a country could protect itself through a safeguards clause.¹⁰⁸ A country could protect itself from imports due to lower labor standards, but it would have to compensate the affected nations.¹⁰⁹

Yet another suggestion is to create an independent and autonomous labor department within the WTO to deal specifically with international trade-related labor issues.¹¹⁰ The department would be staffed by labor experts and would periodi-

103. See, e.g., Larry A. DiMatteo et al., *The DOHA Declaration and Beyond: Giving a Voice to Non-Trade Concerns Within the WTO Trade Regime*, 36 VAND. J. TRANSNAT'L L. 95, 125 (2003).

104. JOHN H. JACKSON ET AL., *LEGAL PROBLEMS OF INTERNATIONAL ECONOMIC RELATIONS: CASES, MATERIALS AND TEXT ON THE NATIONAL AND INTERNATIONAL REGULATION OF TRANSNATIONAL ECONOMIC RELATIONS* 676-82 (4th ed. 2002).

105. *Id.* at 681.

106. JACKSON, *THE WORLD TRADING SYSTEM*, *supra* note 37, at 21. See KEITH E. MASKUS, SHOULD CORE LABOR STANDARDS BE IMPOSED THROUGH INTERNATIONAL TRADE POLICY? 61 (World Bank Policy Research Working Paper 1817, 1997), available at <http://www.worldbank.org/html/dec/Publications/Workpapers/WPS1800series/wps1817/wps1817.pdf> (discussing social dumping proposals) (last visited May 27, 2005).

107. *Id.*

108. See Rodrik, *supra* note 88, at 41-43, 63-66. Cf. DiMatteo et al., *supra* note 103, at 118 (discussing the use of safeguard measures for environmental purposes). See also Maskus, *supra* note 106, at 61 (discussing safeguard proposals).

109. Rodrik, *supra* note 88, at 65 (discussing the requirement of compensation).

110. See, e.g., Guzman, *Trade, Labor, Legitimacy*, *supra* note 89, at 889 (suggesting the creation of a labor department within the WTO); see also Andrew T. Guzman, *Global Governance and the WTO*, 45 HARV. INT'L L.J. 303 (2004).

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cally meet with the trade department(s) to openly discuss, negotiate, and resolve trade-related labor issues using the WTO's effective dispute resolution tactics and experience.¹¹¹ This suggestion seems the most likely to be able to confront labor issues holistically as necessarily a function of trade.

Even if the measures proposed above can be theoretically justified, they have some very practical stumbling blocks. First, a solution that deals only with goods made by child labor will be woefully inadequate and may make the child labor situation worse. Only a small percentage of child laborers work in export industries,¹¹² and there is a great deal of evidence that improved child labor standards increase, rather than decrease, a country's competitiveness in trade.¹¹³ In other words, simply banning trade in goods made with child labor will do little to attack the causes of child labor. With such a small percentage of the child labor problem attributable to exports,¹¹⁴ any trading measure targeting goods produced with child labor can have only a limited impact.¹¹⁵

111. Guzman, *Trade, Labor, Legitimacy*, *supra* note 89, at 889.

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112. FALLON & TZANNATOS, *supra* note 52, at 2 ("Probably less than 5 percent of child laborers are employed in the export manufacturing or mining sectors, and only 1 to 2 percent are employed in export-oriented agriculture."). See also Bachman, *supra* note 67, at 547 (noting that "estimates of child laborers in export-related jobs hover around 5 percent of total child-labor production") (citing U.S. Department of Labor Estimates); see also DANO KUCERA & RITASH SARNA, CHILD LABOR AND EXPORT PERFORMANCE (ILO Working Paper No. 52, 2004) at http://ilo.org/public/english/bureau/integration/download/publicat/4_3_302wp-52.pdf. *A Future Without Child Labour*, *supra* note 53, at 21 (noting that 5 percent of child labourers work in "formal economy, export-related jobs").

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113. See Salzman, *supra* note 87, at 797.

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114. See *A Future Without Child Labour*, *supra* note 53, at 21; Jagdish Bhagwati, *Symposium: The Boundaries of the WTO, Afterword: The Question of Linkage*, 96 AM. J. INT'L L 126, 132 (2002); FALLON & TZANNATOS, *supra* note 52, at 2 (citing International Labour Organization, *Child Labour: Targeting the Intolerable*, Report VI (International Labor Conference, 86th. Sess., Agenda Item 6, 1996), available at <http://www.ilo.org/public/english/standards/ipecc/publ/policy/target/target.pdf>). Fallon and Tzannatos note that "probably less than 5 percent of child laborers are employed in the export manufacturing or mining sectors, and only 1 or 2 percent are employed in export-oriented agriculture." FALLON & TZANNATOS, *supra* note 52, at 2.

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115. Ward, *supra* note 97, at 625 ("If the central concern of the social clause is to provide a mechanism for progressing towards social justice, it is anomalous that links should be established only to labour standards applied to products in international trade.").

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Arguably, a trade solution could address more than goods produced by child labor. Trade sanctions could be aimed at products not produced with child labor because of a country's failure to address the problem more generally.¹¹⁶ But this type of ban would not seem to fall under the WTO's Article XX exceptions.¹¹⁷ Moreover, any attempt would be subject to discretionary abuse and manipulation.¹¹⁸ And there would be serious concerns about disguised protectionism.¹¹⁹

Second, trade sanctions are likely to be unhelpful and indeed counterproductive in the child labor regime. As discussed above, sanctions alter the calculus of regime participants.¹²⁰ Undeniably, imposing sanctions on countries with child labor would alter the calculus of the states involved, but not in a way that will help the vast majority of child laborers. For example, in Bangladesh when the garment industry was threatened with U.S. boycotts, the manufacturers fired all the child laborers.¹²¹ Unfortunately, this drastic approach may have made things worse for these children because their families were abruptly deprived of necessary income.¹²² Worse still, the alternative income sectors for these children would likely be the informal child labor sector that can often be

116. Carlos Manuel Vázquez, *Trade Sanctions and Human Rights—Past Present and Future*, 6 J. INT'L ECON. L. 797, 811-30 (2003) (discussing both tailored trade sanctions and more general trade sanctions with respect to various human rights issues).

117. See *supra* notes 100-101 and accompanying text (outlining the GATT/WTO Article XX exceptions, as well as proposals for countermeasures against "social dumping" and import surges). R

118. Trade sanctions are more likely to be used against smaller countries. Ward, *supra* note 97, at 624 (noting that sanctions, although weighty in effect, are unlikely to be used against "major trading nations"). Susan Esserman & Robert Howse, *The WTO on Trial*, FOREIGN AFF., Jan.-Feb. 2003 at 137 (noting that sanctions can cause more disproportionate harm to smaller countries than to larger, more developed nations). R

119. Piggybacking of agendas under the trade and labor debate is objectionable to many commentators as part of a Northern media campaign that fails to adequately take into account the interests and views of developing countries. Bhagwati, *supra* note 114, at 127-28. R

120. See *supra* notes 50-52 and accompanying text.

121. IPEC IN ACTION: ASIA, *supra* note 70 (explaining that when the international community threatened sanctions against the Bangladeshi garment industry, employers fired child workers, and poor families lost that source of income).

122. *Id.*; see also FALLON & TZANNATOS, *supra* note 52, at 11. R

worse than working in a factory.¹²³ Thus, while the threat of sanctions may perform the same function in the child labor regime (altering behavior) it does not alter behavior that addresses the problem (i.e., resource allocation). Others have documented this deficiency of trade sanctions:

First, if, as is usually the case, exports produced in the formal sector are the products most hit by trade measures, the effect will be to force child workers into the informal sector where working conditions are worse. Second, smaller countries are more likely to be targeted, given international concerns about the global effects of sanctions on large countries. Third, the imposition of sanctions may be little more than a cover for those who wish to introduce trade protectionist measures in developed countries and may be implemented in a discretionary way that has little to do with child labor. Fourth, the use of child labor in countries party to social clauses or labeling schemes may simply be non-monitorable, thus rendering these measures ineffective.¹²⁴

In short, sanctions can make things worse.¹²⁵ And they will likely have limited utility. As indicated earlier, only 5 percent of children work in export-related jobs.¹²⁶ Likewise, the majority of commercial sexual exploitation of children is domestic.¹²⁷ Moreover, the majority of child laborers is in the informal and agricultural sectors of societies.¹²⁸ Sanctions drive child labor abuses into the domestic (non-export) mar-

123. UNICEF, *THE STATE OF THE WORLD'S CHILDREN 60* (1997), available at <http://www.unicef.org/sowc97/> (last visited May 22, 2005).

124. FALLON & TZANNATOS, *supra* note 52, at 12.

125. See Howse, *supra* note 88, at 155 (citing empirical studies about the effects of trade sanctions aimed at enforcing child labor norms); see also Dillon, *supra* note 96, at 139 (noting that "superimposing these standards on the current regime may impose intolerable costs on the developing world").

126. *A Future Without Child Labour*, *supra* note 53, at 21 (noting that "5 percent of child labourers work in formal economy, export-related jobs"); see also *id.* at xi (noting that "the majority of child laborers in manufacturing toil in supply chains producing for the domestic market . . .").

127. *Id.* at 21 (stating that "commercial sexual exploitation of children is dominated by local rather than foreign customers").

128. THE INTERNATIONAL LABOUR OFFICE, *FACTS ON CHILD LABOUR*, at <http://www.ilo.org/public/english/bureau/inf/download/child/factsonchild.pdf> (last visited Feb. 22, 2005) [hereinafter ILO STATISTICS].

ket and into more exploitative forms of labor (prostitution).¹²⁹ They can also remove the only income or means of survival available to some families.¹³⁰

Finally, actually imposing sanctions undermines both the trade and child labor regimes. Sanctions can be counter-productive in the trade regime.¹³¹ In the child labor regime, they can be more destructive. First, if states impose sanctions through trade, they necessarily disrupt comparative advantage and efficient trades, diminishing efficiency and resource availability.¹³² In addition, they can further diminish resources in countries where the lack of resources is a principal cause of the child labor problem.¹³³

Arguably, trade sanctions may address the normative causes of child labor. In addition to resource problems, child labor also stems from attitudes that view it as acceptable.¹³⁴ Parents may feel that an education is wasted money (especially where there are uncertain prospects for better jobs for edu-

129. FALLON & TZANNATOS, *supra* note 52, at 12.

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130. BEYOND CHILD LABOUR, *supra* note 56, at 2 (discussing the necessity of child labor to some families); *see also* Press Release, Department for International Development, Helping Not Hurting Children—Trade Sanctions Will Not End Child Labor (17 Nov. 1999), *available at* <http://www.dfid.gov.uk>.

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131. *See* Bhagwati, *supra* note 114, at 132 (discussing countermeasures in the trade and labor context); Esserman & Howse, *supra* note 118, at 137 (noting the perverse effect that sanctions may have by creating greater distortion). Countermeasures or sanctions in trade can be counter-productive because, if they fail to alter behavior, the offending nation foregoes gains from comparative advantage and suffers losses from the sanctions. We know from the theory of comparative advantage that efficient trade benefits all nations, thus inefficient trade hurts all nations. In addition, the sanctions make offending nations that much more inefficient and may make all trading partners that much worse off.

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132. Charnovitz, *supra* note 45, at 792, 810 (explaining how the use of sanctions in the WTO “undermines the trading system” by weakening open trade and encouraging trade discrimination).

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133. FALLON & TZANNATOS, *supra* note 52, at 8-9 (noting the International Labour Organization’s reference to sanctions as a negative incentive in combating child labor due to their unintended financial imposition upon poor countries as opposed to positive, more productive efforts such as financial aid for education) (citing INTERNATIONAL LABOUR OFFICE, CHILD LABOUR: WHAT IS TO BE DONE? (1996)).

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134. *See A Future Without Child Labour*, *supra* note 53, at 48 (noting that “[t]raditions and cultural expectations play a role” in the demand for child labor).

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cated workers in that country).¹³⁵ Some cultures view children as old enough to leave home to work at twelve years of age.¹³⁶ Gender biases may contribute to a view that girls should be trained for domestic service or that boys should shoulder some of the responsibility for maintaining the family.¹³⁷ For example, in Bangladesh, the view of girls as only transitory members of the family and a drain on family resources decreases their protection from child labor.¹³⁸ These views, combined with rampant poverty, leave girls and young children especially vulnerable to trafficking as a means to supplement a family's income.¹³⁹ Sanctions may send a signal that such views are inappropriate.¹⁴⁰

But such signals are paternalistic and unhelpful if not supported by a comprehensive approach to offer alternatives.¹⁴¹ Countries may be more likely to make greater normative commitments when they are free from the threat of sanctions and the possibility that such commitments will be manipulated for protectionist purposes.¹⁴² The use of sanctions may also be

135. *Id.* at 49-50 (noting that perceptions concerning the value of education may be a contributing factor in whether parents allow their children to work).

136. INTERNATIONAL LABOUR ORGANIZATION, INTERNATIONAL PROGRAMME ON THE ELIMINATION OF CHILD LABOUR, RAPID ASSESSMENT ON TRAFFICKING IN CHILDREN FOR EXPLOITATIVE EMPLOYMENT IN BANGLADESH 55 [hereinafter EXPLOITATIVE EMPLOYMENT IN BANGLADESH] (citing a study conducted in Bangladesh which found that approximately half of the parents interviewed believed twelve to be the age that a child was grown enough to leave home for work).

137. *See A Future Without Child Labour, supra* note 53, at 25 (noting that gender roles may play a part in determining the type of work that is attributed to children within the family). R

138. EXPLOITATIVE EMPLOYMENT IN BANGLADESH, *supra* note 136, at 45, 53 (noting that "[i]n the eyes of poor parents, girls are little more than economic burdens" due to the dowry required to ultimately marry them off). R

139. *Id.* at 22 (noting that almost one-third of child survivors of trafficking interviewed "initially left home to avoid poverty-induced hardship").

140. *See Sarah H. Cleveland, Norm Internalization and U.S. Economic Sanctions*, 26 YALE J. INT'L. L. 1, 6 (2001); *see also* INVESTING IN EVERY CHILD, *supra* note 50, at 4. R

141. *See, e.g., DOL REPORT, supra* note 60, at 37-38; *see also* INVESTING IN EVERY CHILD, *supra* note 50, at 4. R

142. *Cf. MARK W. ZACHER, THE UNITED NATIONS AND GLOBAL COMMERCE* 45 (1999) (explaining why it has been possible for parties to agree to core labor standards). The influence of political factors has been noted in the application of preferential trade agreements. *See Maskus, supra* note 106, at R

arbitrary and thus lack any real normative force. For example, states may be hesitant to impose sanctions unilaterally (or multilaterally) for reasons other than national security.¹⁴³ An offending nation may be an important ally for geographic reasons or represent a significant market.¹⁴⁴ Thus, the imposition of sanctions in other cases becomes arbitrary.

There are several possible reasons why trade proposals to solve child labor problems persist. One may view the trade and labor regimes as fundamentally linked. Trade affects labor and thus it is legitimate for the trade regime to help regulate labor to reduce the trade's negative labor externalities. In addition, there may be a visceral reaction that leads to the punitive or protectionist appeal of sanctions. Such proposals may also be rooted in the desire to send a normative signal about child labor. Alternatively, it may be the sense that the trade regime's compliance mechanism successfully works for trade, so it can be made to work for other regimes as well.¹⁴⁵

None of these reasons justify a strategy of coercion as a compliance tool. Legitimacy does not equal efficacy. Punitive and protectionist impulses are wasteful and counterproductive. Sending signals about child labor norms is important but cannot work alone. As to the efficacy of the trade regime, I suggest that the trade regime is effective because it promotes enmeshment, not because it uses trade sanctions (although sanctions may be a small part of enmeshment in the trade regime). If the trade regime's effectiveness appeals to us, we should emulate it by seeking compliance through enmeshment in the child labor regime.¹⁴⁶ As will be discussed in Part IV.B, compliance through enmeshment can happen in the

63 (noting the criticism of U.S. suspension of benefits under the Generalized System of Preferences).

143. Ehrenberg, *supra* note 51, at 375 (noting that the imposition of sanctions may get in the way of states' other interests that they may view as "more important").

144. *Id.* (discussing states' unwillingness to "unnecessarily . . . sully their political and economic relationships with each other").

145. See Kevin C. Kennedy, *Why Multilateralism Matters in Involving Trade-Environment Disputes*, 7 WIDENER L. SYMP. 31, 68 (2001) (commenting on "DSU envy").

146. The problem is "best addressed within the overall context of national socio-economic development." INT'L LABOUR ORG., IPEC ACTION AGAINST CHILD LABOUR: HIGHLIGHTS 2002, at 47 (2003), available at http://www.ilo.org/public/english/standards/ipecc/about/implementation/ipecc2002_en.

child labor regime because there is a moderate to high degree of legalization within the regime as well as enmeshment tools in place to encourage states to realign their interests.

B. *Pursuing Enmeshment as a Compliance Strategy in the Child Labor Regime*

Pursuing enmeshment as a compliance strategy in the child labor regime is possible because there is a fair degree of legalization that provides the parameters for compliance, and there are enmeshment tools already in place that can be used to encourage states to realign their interests with those of the regime. First, I will explain the degree of legalization in the child labor regime and how it establishes the parameters of compliance. Then, I will explore the enmeshment tools that can be used—monitoring, economic incentives, and technical assistance—and suggest when such tools should be used. I suggest that each set of tools may be more or less appropriate depending upon whether a state is a developed, transitioning, or developing country.

1. *Legalization*

There is a good deal of consensus in the child labor regime as to what should be abolished, and there are objective criteria to measure states' conformance with the international consensus. Child labor that should be abolished includes the "worst forms of child labor," defined as slavery, prostitution, drug trafficking, and "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."¹⁴⁷ Numerous international conventions and declarations evidence the obligatory nature of these norms. The Convention on the Rights of the Child (CRC)¹⁴⁸ is universally accepted and binding on its signato-

pdf (last visited Aug. 31, 2003) [hereinafter IPEC ACTION AGAINST CHILD LABOUR: HIGHLIGHTS 2002].

147. ILO Convention 182, Convention Concerning the Prohibition and Immediate Action for Elimination of the Worst Forms of Child Labour, June 17, 1999, art. 3, S. TREATY DOC. NO. 106-5, 38 I.L.M. 1207, at 4 (1999) [hereinafter ILO Convention 182].

148. G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/49 (1989) (entered into force Sept. 2, 1990) [hereinafter CRC].

ries.¹⁴⁹ Other international agreements provide further support: the ILO's Convention on the Worst Forms of Child Labor (Convention 182),¹⁵⁰ the ILO's Minimum Age Convention (Convention 138),¹⁵¹ the United Nations Declaration on the Rights of the Child (UNDRC),¹⁵² the Universal Declaration of Human Rights (UDHR),¹⁵³ the International Covenant of Civil and Political Rights (ICCPR),¹⁵⁴ and the International Covenant on Economic, Social, and Cultural Rights (ICESCR).¹⁵⁵

The conventions prohibiting child labor are also precise. First, they prohibit or seek to eliminate child labor.¹⁵⁶ The end goal of the regime is clear; it is meant to eradicate child

149. Office of the United Nations High Commissioner for Human Rights, *Status of Ratifications of the Principal International Human Rights Treaties*, at <http://www.unhchr.ch/pdf/report.pdf> (last viewed May 22, 2005). It has been signed by all countries but not ratified by Somalia or the United States. *Id.*

150. ILO Convention 182, *supra* note 147. 156 States have ratified this convention. ILOLEX: DATABASE OF INTERNATIONAL LABOUR STANDARDS, available at <http://www.ilo.org/ilolex/english/newratframeE.htm> (last visited Aug. 4, 2005). R

151. ILO Convention 138, Convention Concerning Minimum Age for Admission to Employment, June 26, 1973, in INT'L LABOUR ORG., INTERNATIONAL LABOUR CONVENTIONS AND RECOMMENDATIONS: 1919-1981, at 730 (1982). 140 States have ratified this convention. ILOLEX: DATABASE OF INTERNATIONAL LABOUR STANDARDS, available at <http://www.ilo.org/ilolex/english/newratframeE.htm> (last visited Aug. 4, 2005).

152. G.A. Res. 1386, U.N. GAOR, 14th Sess., Supp. No. 16, at 20, U.N. Doc. A/4354 (1959).

153. G.A. Res. 217, U.N. Doc. A/810, at 73, 75 (1948).

154. International Covenant on Civil and Political Rights, *adopted* Dec. 19, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976).

155. International Covenant on Economic, Social and Cultural Rights, *adopted* Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976). Although the ILO Conventions do not have universal acceptance, they have significant acceptance. Rodrik, *supra* note 88, at 48 (noting that the ILO conventions "come perhaps closest to representing a universal set of labor standards"); see also Anjali Garg, Note, *A Child Labor Social Clause: Analysis and Proposal for Action*, 31 N.Y.U. J. INT'L L. & POL. 473, 512 (1999) (explaining that "[o]n the basis of such widespread support for the spirit and principles of the ILO conventions and the recognition of the ILO as an authoritative institution on the issue of child labor, a case can be made for viewing ILO child labor standards as CIL [customary international law]" and that the "assertion that ILO conventions contribute to the formation of CIL is not novel"). R

156. See ILO CONVENTION 182, *supra* note 147, at art. 3. R

labor. Second, they are relatively precise in their definition of what is prohibited.¹⁵⁷ Convention 138 sets fifteen as the minimum age for child workers.¹⁵⁸ Article 32 of the CRC provides that children have the right to be protected “from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.”¹⁵⁹ ILO Convention 182 calls upon Member States to take action to eliminate and prohibit the “worst forms of child labor.”¹⁶⁰ The worst forms of child labor are specifically delineated by the Convention and include slavery, bondage, prostitution, drug trafficking, and any work likely to harm the health, safety or morals of children.¹⁶¹ It envisions consultation with members’, workers’, and employers’ organizations.¹⁶² In determining the types of work to be considered hazardous:

157. Ehrenberg, *supra* note 51, at 383 (explaining the adoption process of ILO Conventions, distinguishing them from the less formal Recommendations and characterizing the economic and social rights they address).

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158. Convention Concerning the Minimum Age for Admission to Employment, June 26, 1973, art. 2.3, 1015 U.N.T.S. 297, 300 (1973). Article 2.3 specifically provides that “the minimum age specified in pursuance of paragraph 1 of this Article shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years.” *Id.*

159. CRC, *supra* note 148, at art. 32.

R

160. ILO CONVENTION 182, *supra* note 147, at art. 1. Article 1 provides that “[e]ach Member . . . shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.” *Id.*

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161. *Id.* at art. 3. Article 3 of the convention provides that:

[f]or 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.

Id.

162. *See id.* at art. 5. Article 5 specifically mentions “consultation with both employers’ and workers’ organizations” in implementation of the convention. *Id.*

[C]onsideration should be given to children whose work exposes them to physical, psychological or sexual abuse, is located underground, under water, at dangerous heights, or in confined spaces; involves dangerous machinery, equipment and tools, or which involves manual handling or transport of heavy loads, exposes them to hazardous substances, agents or processes, or to temperatures, noise levels or vibrations damaging to their health; and occurs under particularly difficult conditions such as long hours or during the night or work where the child is unreasonably confined to the premises of the employer.¹⁶³

These provisions establish a precise set of rules for obligatory minimum treatment for children. They specify the age at which children are allowed to work and the conditions under which work is prohibited.¹⁶⁴

Admittedly, delegation within the child labor regime could be stronger. For example, although all states are required under the CRC to take appropriate legislative and/or administrative measures to assure conformance with Article 32, the CRC has no real assessment procedure except under Articles 44 and 45 which require states and UN agencies to monitor and report upon the implementation of rights recognized by the CRC.¹⁶⁵ The ILO also has a procedure that could be characterized as delegation, although it is not the adjudicatory delegation model.¹⁶⁶ States submit reports under the ILO monitoring system that are reviewed by an ILO Committee of Experts.¹⁶⁷ The Committee seeks additional information from other sources and makes reports.¹⁶⁸ There is also a complaint

163. INT'L LABOUR ORGANIZATION, RECOMMENDATION 190: WORST FORMS OF CHILD LABOUR RECOMMENDATION, ¶ 3(a)-(e) (1999), available at <http://www.ilo.org/ilolex/english/recdisp1.htm> (last visited Feb. 21, 2005).

164. Efforts continue to promote even more precise obligations. For example, to aid legislators in their jobs IPEC has published a handbook for Parliamentarians, entitled "Eliminating the Worst Forms of Child Labour: A Practical Guide to ILO Convention 182." See IPEC ACTION AGAINST CHILD LABOUR: HIGHLIGHTS 2002, *supra* note 146, at 23.

165. CRC, *supra* note 148, arts. 44, 45.

166. Ehrenberg, *supra* note 51, at 384.

167. *Id.* at 383-84.

168. *Id.* at 387-88.

procedure under the ILO Constitution.¹⁶⁹ A complaint may result in the establishment of a Commission of Inquiry that eventually issues a report.¹⁷⁰ Ultimately, the report, if not acted upon, may be referred to the International Court of Justice (although this has never happened).¹⁷¹ The Committee of Experts acts as a quasi-judicial body,¹⁷² and its reports serve as a repository for objective findings and assessment by the ILO of its members' compliance with ILO obligations.¹⁷³ This system necessarily requires the ILO to interpret and apply the states' obligations under the conventions given specific factual contexts. Although the system falls short of an adversarial adjudicatory model, it is important to note that delegation does not require an adversarial adjudicatory model.¹⁷⁴

One path to improving delegation is found in the ILO's International Program for the Elimination of Child Labor (IPEC). IPEC works toward the elimination of child labor by strengthening national capacities to confront the causes of child labor.¹⁷⁵ It runs Time Bound Programs (TBPs), which are programs that "link[] action against child labour to national development policy."¹⁷⁶ Each TBP targets a particular

169. ILO CONST. arts. 26-29, 31-34, *available at* <http://www.ilo.org/public/english/about/iloconst.htm> (last visited July 26, 2003).

170. Ehrenberg, *supra* note 51, at 387 (discussing the Committee of Inquiry and characterizing it as a quasi-judicial body). R

171. *Id.* at 388; ILO CONST., *supra* note 169, arts. 29, 31. It is up to the state to refer the matter to the ICJ; if it does not, it is presumed that the Report's findings are accepted by and binding upon the state. Ehrenberg, *supra* note 51, at 388. R

172. Ehrenberg, *supra* note 51, at 387. R

173. *Id.* at 388. ILO CONST., *supra* note 169, arts. 22-23. *See generally* INT'L LABOUR OFFICE, REPORT OF THE COMMITTEE OF EXPERTS ON THE APPLICATION OF CONVENTIONS AND RECOMMENDATIONS, 91ST SESSION (2002-2003), *available at* <http://www.ilo.org/public/english/standards/relm/ilc/ilc91/reports.htm> (last visited Feb. 21, 2004) (noting specific nation state violators of Conventions). R

174. Abbott et al., *supra* note 2, at 417 (noting that delegation is "not confined to dispute resolution" but can also range from "consultative arrangements to full-fledged international bureaucracies"). R

175. IPEC ACTION AGAINST CHILD LABOUR: HIGHLIGHTS 2002, *supra* note 146, at 7. R

176. INT'L PROGRAMME ON THE ELIMINATION OF CHILD LABOUR, ELIMINATING THE WORST FORMS OF CHILD LABOUR: AN INTEGRATED AND TIME-BOUND APPROACH 1 (Apr. 2001), *available at* <http://www.ilo.org/public/english/standards/ipec/timebound/manual.pdf> [hereinafter ELIMINATING THE WORST FORMS OF CHILD LABOUR].

locale and labor sector and aims to eliminate the worst forms of child labor within that locale and sector “within a period of 5-10 years.”¹⁷⁷ IPEC TBPs set long-term goals while at the same time monitor the implementation of specific, targeted IPEC programs. “The time horizon of a TBP is proposed to be between five and ten years, depending on the availability of resources, the prevalence of the worst forms of child labour, the level of local expertise and other circumstances in each programme country.”¹⁷⁸ So there is a set period of engagement with “phases to allow for assessment, refinement, evaluation, and replication of the programmes.”¹⁷⁹ TBPs “combine policy-related upstream interventions aimed at creating an environment conducive for eliminating child labour with downstream service-orientated activities at the community level.”¹⁸⁰ For example, TBPs may provide loans to parents to help them

177. *Id.*

178. See ILO, TIME-BOUND PROGRAMMES FOR THE ERADICATION OF THE WORST FORMS OF CHILD LABOUR, available at <http://www.ilo.org/public/english/standards/ipecc/timebound/tbp.htm>.

179. *Id.* These TBPs are linked to national political commitment, development, poverty reduction and education and are meant to:

[I]nvolve innovative partnerships between governments, international institutions, workers’ and employers’ groups, and other elements of civil society.

[P]rovide children and their families with viable educational and economic opportunities.

[And r]equire major national information campaigns so that key audiences understand the horrible effects of abusive child labor and recognize that children must be protected and educated.

ELIMINATING THE WORST FORMS OF CHILD LABOUR, *supra* note 176, at 9, 41-42. R

180. IPEC ACTION AGAINST CHILD LABOUR: HIGHLIGHTS 2002, *supra* note 146, at 15. The ILO has targeted programs such as those aimed at combating trafficking. It works with regional groups and enlists the help of workers in the shipping industries, police, vendors, and others to spot possible trafficking. Its Programme on the Prevention and Elimination of Commercial Sexual Exploitation of Children and Adolescents focuses on the borders of Brazil and Paraguay and works to educate these communities and support efforts to stem trafficking. The program includes “a review of gaps in the legal system and a bringing-together of information” to combat child trafficking and provides families with “alternative means of earning a living.” INT’L LABOUR ORG., INTERNATIONAL PROGRAMME ON THE ELIMINATION OF CHILD LABOUR, UNBEARABLE TO THE HUMAN HEART, CHILD TRAFFICKING AND ACTION TO ELIMINATE IT, 37 (2002), available at <http://www.ilo.org/public/english/standards/ipecc/publ/childtraf/unbearable.pdf> (last visited May 29, 2005). R

increase their own production so that they do not need their children's labor. As one parent recalls:

I learned about the program while we were working at the river. Some people came and they talked to us and offered us a loan The truth of the matter is that we were extremely afraid because we didn't understand very well why they were going to give us this money We were able to buy a stone crushing machine [U]sing that machine meant that the stone crushing could be done mechanically, and Juan and his siblings could go to school.¹⁸¹

TBPs combine progressive resource building initiatives with ongoing self-assessment. Although this means of assessment differs from the typical adjudicatory assessment that one would consider delegation, it serves the same purposes of delegation. It objectively assesses compliance with rules set forth by the regime.¹⁸²

Thus, the child labor regime has a moderate to high degree of legalization. There exists a set of fairly precise and obligatory rules, and the ILO signatories have assigned the task of implementing them to the ILO. The ILO, through its IPEC TBPs, increases precision, obligation, and delegation. However, compliance has always been the challenge for the child labor regime.¹⁸³ The next section proposes how that compliance can best be attained through the process of enmeshment.

2. *Enmeshment Tools*

The child labor regime can use various enmeshment tools to gradually realign states' normative, political and economic interests with those of the regime.¹⁸⁴ As discussed in Part II, different regime paradigms require different tools to en-

181. DOL Report, *supra* note 60, at 16-17.

182. *Cf.* Abbott et al., *supra* note 2, at 417 (discussing delegation).

183. Some note that states may agree to child labor norms knowing that the labor regime lacks sufficient compliance mechanisms. *See, e.g.*, David W. Leebron, *Linkages*, 96 AM J. INT'L L. 5, 25 (2002) (noting where linkage may lead to a ratcheting down and a weaker regime).

184. Enmeshment recognizes that simply imposing standards on states which lack the means to fulfill those standards is a waste of time. The regime and the state need to be in a symbiotic relationship where the regime needs and helps the state and the state needs and helps the regime. *See generally* Dillon, *supra* note 96, at 140-41 (using the EU model to explain that

courage states to align their interests with regime norms. Additionally, the development status of each state may warrant different tools at different times.¹⁸⁵ Specifically, a state-by-state approach to enmeshment suggests different tools may be used to secure enmeshment depending upon whether a country is a developed, transitioning or developing country.¹⁸⁶ Available enmeshment tools include: (i) supervision and reporting, (ii) economic incentives, and (iii) technical assistance and advice. It is useful to examine each of these tools and evaluate how successful they may be for each type of country. There are already a number of organizations that provide many of these tools to combat the worst forms of child labor including the ILO,¹⁸⁷ UNICEF,¹⁸⁸ and the World Bank.¹⁸⁹

“integration without preparation, and integration with gross inequality intact, are inherently dangerous, and perhaps impossible”).

185. Jacobson & Weiss, *supra* note 28, at 124 (noting factors that affect a country’s compliance with international agreements).

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186. *A Future Without Child Labour*, *supra* note 53, at xii (noting that national governments are the “essential players in the abolition of child labour”).

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187. The ILO uses “tripartite plus” networks consisting of governments, workers’ and employers’ organizations, and civil society to provide advocacy and action against child labor by supporting the conventions, gathering data, and instituting specific programs to alleviate child labor and improve labor conditions more generally. See IPEC ACTION AGAINST CHILD LABOUR: HIGHLIGHTS 2002, *supra* note 146, at 16. Compliance is encouraged through international supervision and pressure placed on national governments. JAMES MICHAEL ZIMMERMAN, EXTRATERRITORIAL EMPLOYMENT STANDARDS OF THE UNITED STATES: THE REGULATION OF THE OVERSEAS WORKPLACE 15-16 (1992). An ILO project, IPEC, partners with employers’ and workers’ organizations, NGOs, and other members of society to identify priority groups and coordinate awareness and analyses to develop policies and programs to combat child labor. IPEC ACTION AGAINST CHILD LABOUR: HIGHLIGHTS 2002, *supra* note 146, at 16-18. It provides technical and legal advisory assistance to members as well. *Id.*

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188. The United Nations International Children’s Emergency Fund (UNICEF) addresses child labor as part of its larger mission to help children. UNITED NATIONS, EVERYMAN’S UNITED NATIONS: A HANDBOOK ON THE WORK OF THE UNITED NATIONS 274-77 (10th ed. 1986). For example, in Brazil, UNICEF partners with the ILO, several NGOs, the Government, and business and trade union partners to “launch projects to bring children back to school, introduce activities to complement school, promote family and community participation and organize courses on citizenship for children, adolescents and families.” BEYOND CHILD LABOUR, *supra* note 56, at 7. In Nepal, UNICEF works with national and international partners to develop community-based child development centers to “increase parents’ awareness of the

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a. Supervision and Reporting

Supervision and reporting are useful in promoting political, normative, and economic enmeshment, particularly in developed and transitioning countries. They are also useful for developing countries if combined with economic incentives and technical assistance.

The ILO, as well as various members of civil society,¹⁹⁰ promote political and normative enmeshment by supervising,

harmful effects of child labour through a Parenting Education (PE) initiative, to give children . . . a safe, encouraging place to learn and play.” *Id.* at 8. In Tanzania, UNICEF works with the ILO and community-based groups to “develop the capacities of communities to assess the reasons that push children into work and to devise ways to get them into school.” *Id.* at 10.

189. The International Bank for Reconstruction and Development (World Bank) has begun to address child labor through both its non-lending and lending activities. *See* FALLON & TZANNATOS, *supra* note 52, at 13-18. The World Bank Group has established a child labor program within its Human Development Network’s Social Protection Unit. It develops and identifies strategies meant to complement the World Bank’s work on children through its ongoing poverty reduction efforts. *See* FALLON & TZANNATOS, *supra* note 52, at vi-vii. The World Bank provides a Country Assistance Strategy (CAS) for each World Bank borrower which reviews recent economic reforms and social reforms as well as the borrower’s development objectives and policies. THE WORLD BANK, OPERATIONAL MANUAL: BANK PROCEDURES, COUNTRY ASSISTANCE STRATEGIES, at 2.11 (1995). It has also attempted to redesign its lending activities to reduce incentives for child labor. FALLON & TZANNATOS, *supra* note 52, at 13.

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190. *See, e.g.*, Anti-Slavery International, at <http://www.antislavery.org/homepage/resources/PDF/PDFchildlabour.htm> (last visited May 20, 2005); Press Release, Child Labor Coalition, Campaign Launched to End Child Labor in Agriculture (Dec. 14, 1997), at <http://www.stopchildlabor.org/pressroom/kidlabpr.html>; Human Rights Watch and Child Workers in Asia, at <http://www.hrw.org/children/child-links.htm>. Consumer efforts have been aimed at the crisis. The Campaign for Labor Rights (CLR) informs and mobilizes activists in solidarity with international anti-sweatshop efforts. CLR coordinates local grassroots efforts to organize and establish better working conditions. Campaign for Labor Rights, About CLR, at <http://campaignforlaborrights.org/whois.html> (last visited Feb. 22, 2005). The National Labor Committee works with non-governmental, human rights, religious and labor groups, primarily in Latin America to educate and involve the public in ending labor abuses. It has specifically targeted the child labor problem through its “disclosure campaign” which seeks to have corporations disclose the conditions under which their products are produced. NAT’L LABOR COMM., EXECUTIVE SUMMARY, at <http://www.nlcnet.org/nlc/Essummary.shtml>, (last visited May 22, 2005). In India, Pakistan, and Nepal, an NGO called RUGMARK works to end child labor through education and monitoring of the rug industry. It offers manufacturers who comply with its educa-

reporting, shaming, and pressuring countries to comply with norms concerning child labor.¹⁹¹ The ILO has an effective monitoring system already established, as Daniel Ehrenberg explains:

The ILO enforcement system is sophisticated and multi-faceted. It includes two noncontentious reporting procedures: the normal reporting system on ILO Conventions and Recommendations, which involves the submission and examination of annual reports, and the “direct contacts” procedure, which deals with member states that persistently fail to comply with their organizational obligations. The enforcement system also includes two contentious procedures involving representations and complaints, and techni-

tion and monitoring program the right to put the “RUGMARK” label on their products. RUGMARK, ABOUT RUGMARK, at <http://www.rugmark.org/about.htm> (last visited May 25, 2005).

191. See generally *A Future Without Child Labour*, *supra* note 53, at 61-66 (outlining the ILO approach). This compliance method is closest to a “managerial method of compliance.” Various compliance strategies can move nations towards accepting norms and obligations and gradually bring along normative, economic, and political enmeshment that will lead to self-enforcing regimes. Abram Chayes and Antonia Handler Chayes articulated the “managerial model.” See CHAYES & CHAYES, *THE NEW SOVEREIGNTY*, *supra* note 1, at 229. The managerial model values the treaty process as a tool of persuasion. The regime guides “the evolution of the normative structure in the direction of the overall objectives of the regime.” *Id.* The managerial approach is illustrated by the Montreal Protocol. Montreal Protocol on Substances that Deplete the Ozone Layer, Sept. 16, 1987, 26 I.L.M. 1550, adjusted and amended Jun. 19, 1990, 30 I.L.M. 537, 550 [hereinafter Montreal Protocol]. In the Montreal Protocol, a fund compensates developing countries costs incurred in meeting their obligations. *Id.* at art. 10, as amended Jun. 19, 1990. Its Non Compliance Procedures (NCP) promote compliance through an atmosphere of cooperation as well as continued negotiation and economic assistance. See Emeka Duruigbo, *International Relations, Economics and Compliance with International Law: Harnessing Common Resources to Protect the Environment and Solve Global Problems*, 31 CAL. W. INT’L L.J. 177, 192 (2001). Others have already suggested that the Montreal Protocol is a good example for the labor regime to follow. Ward, *supra* note 97, at 626 (noting it can be used for domestic and export industries). See also INT’L LABOUR ORG., WORKING PARTY ON THE SOCIAL DIMENSIONS OF THE LIBERALIZATION OF INTERNATIONAL TRADE, COUNTRY STUDIES ON THE SOCIAL IMPACT OF GLOBALIZATION: FINAL REPORT at ¶ 72 (1999), available at <http://www.ilo.org/public/english/standards/relm/gb/docs/gb276/sdl-1.htm> (last visited May 30, 2005) (arguing for a more integrated approach) [hereinafter FINAL REPORT].

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cal cooperation programs to help Member States comply with their ILO obligations. Largely as a result of this intricate supervisory system, the ILO has been successful in ensuring member states' adherence to formal obligations.¹⁹²

The ILO's supervisory process consists both of regular and ad hoc supervision. Signatories to a convention submit regular reports to the ILO Independent Committee of Experts that supervises the application of conventions and recommendations.¹⁹³ The Committee of Experts reviews the reports and all pertinent information and may request further information if the obligations of the convention are not being fulfilled satisfactorily.¹⁹⁴ The Committee of Experts' reports are published and submitted to the International Labor Conference.¹⁹⁵ The ILO Constitution also provides for ad hoc procedures where employers, workers, and other governments may submit allegations to be examined by ILO bodies.¹⁹⁶

The ILO efforts extend to non-signatories as well. For example, the ILO gathers information concerning the labor practices of non-signatories. As part of the ILO Declaration on Fundamental Principles and Rights at Work,¹⁹⁷ it publishes comprehensive reports that gather, evaluate, and disseminate information involving various labor issues and a plan of action or recommended good practices to address those issues.¹⁹⁸

192. Ehrenberg, *supra* note 51, at 382.

193. *Id.* at 383-84; ILO CONST., *supra* note 169, art. 22.

194. Ehrenberg, *supra* note 51, at 384; ILO CONST., *supra* note 169, art. 22.

195. Ehrenberg, *supra* note 51, at 384-85; ILO CONST., *supra* note 169, art. 23.

196. Ehrenberg, *supra* note 51, at 385-86; ILO CONST., *supra* note 169, arts. 24-30.

197. International Labor Organization Declaration on Fundamental Principles and Rights at Work, June 18, 1998, 37 I.L.M. 1233 (1998).

198. INT'L LABOR ORG., About the Declaration, at http://www.ilo.org/dyn/declaris/DECLARATIONHOME?var_language=EN (last visited Feb. 22, 2005) (listing the three primary reports used by the ILO in carrying out its provisions from the Declaration and stating the use of the Global Reports). These annual global reports have included such themes as A Future Without Child Labour (2002) and Time for Equality at Work (2003). INT'L LABOR ORG., PRINT PRODUCTS: GLOBAL REPORTS, at http://www.ilo.org/dym/declaris/DECLARATIONWEB.GLOBALRERPORTSLIST?var_language=EN (last visited Feb. 22, 2005).

Other reporting and monitoring functions are preformed by UNICEF or Human Rights Watch.¹⁹⁹

There is room for other monitoring groups to play a part in normative and political enmeshment.²⁰⁰ Transgovernmental networks may be useful in helping the process along.²⁰¹ As Kal Raustiala points out, “the confluence of a

199. See *infra* note 217 and accompanying text; see also, e.g., Human Rights Watch, *Backgrounder: Child Labor in Agriculture* (June 2002), at <http://hrw.org/backgrounder/crp/back0610.htm> (last visited July 17, 2003).

200. Unions have focused efforts on the child labor problem as well. The Concerned for Working Children has been operating in India since 1980. It has developed children's unions, started a research center to explore child labor issues, and supported legislation to limit abuses. THE CONCERNED FOR WORKING CHILDREN, ABOUT US, at <http://www.workingchild.org> (last visited May 29, 2005). The AFL-CIO and the International Confederation of Free Trade Unions have also been active. AM. FED'N OF LABOR-CONGRESS OF INDUSTRIAL ORGS., ISSUES IN POLITICS: GLOBAL ECONOMY-CHILDREN IN THE GLOBAL ECONOMY, at <http://www.aflcio.org/issuespolitics/globaleconomy/children.cfm> (last visited Feb. 15, 2005). Numerous other groups have tried to deal with some of the specific problems faced by children in the workforce as well as the larger issue of child labor. These groups include: Campaign Against Child Labor, Center for Alternative Development and Media Action, Center for Community Health Research, Center for Rural Education Research and Development Association, Center for the Protection of Children's Rights Foundation, Child Labor Action Network, Child Workers in Nepal, Children at Risk, Children in Domestic Work, Consuelo Foundation, Inc., Council for Socio-Economic Benevolent Action, Defense for Children International, Educational Trust of India, Farmers Development Agency, Foundation for International Human Development Environmental Studies, Global March Against Child Labor, Janavikas Society, Kenya Plantation and Agricultural Workers Union, KIDAT, Lembaga Keparhatainam Manusia Dan Lingkungan, Movement for Alternatives and Youth Awareness (MAYA), National Child Labor Committee, National Council of Churches of Christ USA, Network Against Child Labor, New Life Foundation of Bangladesh, Paraspara Trust, People's Association for Rural Women Development Trust, Regional Working Group on Child Labor, Rural Education Center for Development, Sambhav Social Service Organization, Sarvodaya Gram Sevak Sangh, Sithabile Child and Youth Care Center, Social Education and Environmental Development, Street Children and Child Workers Support Center Philippines, Inc., Tamilnadu Primary School Improvement Campaign, United Action for Children, UNITE, Women Activities for Voluntary Empowerment, and Yayasan Bina Potensi Masyarakat.

201. See Kal Raustiala, *The Architecture of International Cooperation: Transgovernmental Networks and the Future of International Law*, 43 VA. J. INT'L L. 1, 4 (2002) [hereinafter Raustiala, *Architecture*] (explaining that “transgovernmental networks are expanding rapidly, and their growth is especially apparent in regulatory cooperation”). A “transgovernmental network” is a group of professionals or specialists from the same field who work in different na-

globalized world economy and diverse national regulations prompts cooperation, both through liberal internationalism and through networks.”²⁰² Just as trade disputes illustrate the need to harmonize or mutually recognize diverse regulatory standards in the trade regime,²⁰³ the externalities of child labor may promote cooperation and norm harmonization on labor issues. Unfortunately, these networks have yet to develop.²⁰⁴

These reporting efforts are useful with states at all levels of development. Reporting and monitoring promote political and normative enmeshment of developed countries by shaming them to improve their practices.²⁰⁵ Developed countries have the resources to improve child labor practices and thus reporting and shaming can be very effective. Transitioning countries can also be shamed into improving their child labor records, especially where those countries are seeking the benefits of the international system more generally.²⁰⁶

tions but assist each other, coordinate efforts, and share knowledge informally. *Id.* at 3-4; see also Anne-Marie Slaughter, *A NEW WORLD ORDER* 6 (2005) (explaining a new lens to see the world as “disaggregated rather than unitary states”).

202. See Raustiala, *Architecture*, *supra* note 201, at 14.

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203. For “whatever the reason, networks, for the moment at least, have a decidedly economic and environmental, rather than social, regulatory character.” *Id.*

204. See *id.* at 16.

205. See Ibrahim F.I. Shihata, *Implementation, Enforcement, and Compliance with International Environmental Agreements—Practical Suggestions in Light of the World Bank’s Experience*, 9 *GEO. INT’L ENVTL. L. REV.* 37, 46-47 (1996) (noting how the use of monitoring, in compliance with environmental treaties and requirements, is an effective mechanism to compel greater internal compliance with environmental standards because monitoring can result in the “blacklisting of violators, based not on official international regulatory action, but on national regulatory decisions” and can create “compliance through peer pressure”); see also Frischmann, *supra* note 28 at 742-43 (noting that the use of incentive mechanisms in international law has led to widespread state adoption of monitoring systems to track internal compliance with international laws and treaties).

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206. See, e.g., *infra* note 226 and accompanying text. IPEC reinforces its activities through Global Awareness Campaigns. In 2002, it initiated two high profile campaigns: the “Red Card to Child Labor Campaign,” and the SCREAM Stop Child Labor Project (Supporting Children’s Rights through Education, Arts and the Media). IPEC ACTION AGAINST CHILD LABOUR: HIGHLIGHTS 2002, *supra* note 146, at 22. Media campaigns support direct services efforts. In the Phillipines, IPEC targeted communities with chil-

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Normative enmeshment can sustain efforts beyond a developing or transitioning country's resources. For example, the normative values in the Indian state of Kerala clearly do not stem from monitoring; they are the result of a complex set of factors and are very much intertwined with the state's unique history.²⁰⁷ It is not difficult to see, however, that monitoring can help reduce corruption and ensure the social safety mechanisms that can reinforce the normative values within a society.²⁰⁸

Moreover, there is some evidence that increased economic investment will follow positive human rights reports. Positive reports signal stability and safety for investment and trade flows.²⁰⁹ Thus, reporting and monitoring can promote the economic development and thereby promote the economic enmeshment of a country in the child labor regime.

b. Economic Incentives

Economic incentives, both positive—such as aid—and negative—such as sanctions, are useful in promoting the eco-

dren in hazardous work, including: “communities with children working in ports; sugar plantations, farming and fishing; mining and quarrying; home-based work relating to garment production; commercial sex; domestic service and scavenging.” DOL REPORT, *supra* note 60, at 26. It and its local partners established media campaigns to change attitudes toward child labor as well as provide direct services to families to prevent children from entering the occupations in the first place. *Id.*

207. See generally, PATRICK HELLER, *THE LABOR OF DEVELOPMENT: WORKERS AND THE TRANSFORMATION OF CAPITALISM IN KERALA, INDIA 171-182* (1999) (chronicling the Labor Movement in Kerala).

208. Robert D. Tronnes, *Ensuring Uniformity in the Implementation of the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, 33 GEO. WASH. INT'L L. REV. 97, 125-26 (2000) (discussing how the role of monitoring by NGO's and other external groups is essential in combating corruption by ensuring compliance and substantive change with the OECD rather than facial compliance). Monitoring and transparency will ensure that “strong laws do not become dead letters” simply because states “decide bribery is a low priority.” *Id.* at 126 (citing to Transparency International South Africa, Corruption Monitor Website, at <http://www.transparency.org>); see also Wendy Schoener, *Non-Governmental Organizations and Global Activism: Legal and Informal Approaches*, 4 IND. J. GLOBAL LEGAL STUD. 537, 539, 555-56 (1997) (discussing the influence of NGO's on social norms, such as women's rights, through their efforts in “information gathering and dispensing” as well as through their ability to “cooperate and embarrass governments”).

209. Daniel A. Farber, *Rights as Signals*, 31 J. LEGAL STUD. 83, 98 (2002).

conomic enmeshment of countries and also promote normative and political enmeshment. Positive aid is needed for developing and transitioning countries, but negative economic incentives could be useful for developed and perhaps even transitioning countries.

Positive economic incentives are useful, indeed necessary, for both developing and transitioning countries. Economic assistance allows poorer countries to invest in human capital and break the cycle of poverty that causes child labor. A recent ILO report suggests that the economic benefits to eliminating child labor are seven times greater than the costs.²¹⁰ Still, poor countries cannot bear these costs alone and must be given incentives by means of development assistance and debt relief.²¹¹ One program initiated in Guatemala by Habitat (a developmental NGO) and IPEC illustrates how economic incentives can promote enmeshment.²¹² The program sought to rescue children from quarries by offering educational alternatives and funding technology improvements that would improve the earning capacity of parents.²¹³ The nineteen-month program “progressively withdrew children from work by offering improved technology for rock crushing and providing educational alternatives,” while at the same time incorporating “child labor into the Ministry of Labor’s social developmental agenda.”²¹⁴ Tying economic incentives to productive practices that benefit both parents and the government enmesh all involved in the eradication of child labor. Adhering to the program benefits everyone and, as a result, norms and values change. Of course, this type of economic incentive, unlike sanctions, requires a significant outlay of money²¹⁵ and lacks the punitive appeal of a sanction.

Economic enmeshment may also be secured through incentives offered by development institutions. The World Bank and the European Bank for Reconstruction and Development can be helpful in addressing poverty.²¹⁶ For example, the

210. INVESTING IN EVERY CHILD, *supra* note 50, at 4.

211. *Id.* at 90.

212. DOL Report, *supra* note 60, at 76.

213. *Id.*

214. *Id.*

215. INVESTING IN EVERY CHILD, *supra* note 50, at 4.

216. FALLON & TZANNATOS, *supra* note 52, at 13, 15 (discussing World Bank poverty reduction efforts).

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World Bank is working with IPEC and UNICEF on information gathering and capacity building.²¹⁷ It is also becoming more active in improving social conditions within countries.²¹⁸ Its 2002 Country Assistance Report on Brazil indicates that the funds it loaned to Brazil, that enabled Brazil to rebuild its economy, were tied to public investment and social reforms including education and labor issues.²¹⁹ The World Bank and the IMF also offer a framework for the development of Poverty Reduction Strategy Papers (PRSPs) which are “comprehensive development plans covering many economic and social sectors, including education, health, employment and agricul-

217. *A Future Without Child Labour*, *supra* note 53, at xii-xiii.

218. See THE WORLD BANK, 10 THINGS YOU NEVER KNEW ABOUT THE WORLD BANK (2004), available at <http://www.worldbank.org/tenthings/> (last visited May 24, 2005) (“Over the past 20 years, our focus has changed and so has our approach. We are now dealing with newer issues like gender, community driven development and the rights and role of indigenous people in development. Our support for social services like health, education, nutrition, education and pensions has grown from 5 percent in 1980 to 22 percent in 2003.”). *But see* Celia Dugger, *World Bank Challenged: Are the Poor Really Helped?*, N.Y. TIMES, July 28, 2004, at A3 (“A recent in-house review of bank projects during the past four to five years found that only 2 percent had been properly evaluated for whether they made a difference, according to Mr. Bourguignon [the bank’s chief economist].”). See also Editorial, *World Bank Job*, WALL ST. J., Jan. 11, 2005, at A20 (stating that “we don’t put much faith in foreign aid as a development tool” because “nations develop when local leaders decide to establish and defend a rule of law, property rights and monetary stability” and that “the [World] bank’s operational weaknesses are no big secret”).

219. Memorandum of the President of the International Bank for Reconstruction and Development and the International Finance Corporation to the Executive Directors on a Country Assistance Strategy Progress Report for the Federative Republic of Brazil, Report Number 24182-BR, World Bank Group, 1-5 (May 20, 2002), available at [http://lnweb18.worldbank.org/external/lac/lac.nsf.0.7f0b9030b410c10885256c38006145c1/\\$FILE/CASPR2002.pdf](http://lnweb18.worldbank.org/external/lac/lac.nsf.0.7f0b9030b410c10885256c38006145c1/$FILE/CASPR2002.pdf) (noting that lending efforts by the World Bank in Brazil have had a significant impact on decreasing Brazil’s education drop-out rate and have been instrumental in the institution of new national legislation aimed at improving labor standards). These efforts were, in part, coordinated with and supported by the IMF. *Id.* at 7-8.

ture.”²²⁰ They focus on broad-based national and subnational participation and political commitment.²²¹

The World Bank’s possible foray into the child labor regime has raised some concerns. Some argue that the World Bank’s mandate not to interfere with the political affairs of any member prohibits it from conditioning lending on improvements in child labor.²²² The overlap between development and the alleviation of child labor suggests that at least the worst forms of child labor need “to be considered as key indicators of economic and social development.”²²³ Undeniably, the World Bank lacks the experience on child labor issues to act unilaterally,²²⁴ but it has expressed its desire to partner with more experienced organizations such as the ILO and has already started to do so.²²⁵

220. IPEC ACTION AGAINST CHILD LABOUR: HIGHLIGHTS 2002, *supra* note 146, at 49. “In many countries PRSPs serve as the basis for the mobilization of resources for development, especially from bilateral donors and the international financial institutions.” *Id.* at 49.

221. *Id.*

222. See, e.g., FALLON & TZANNATOS, *supra* note 52, at 17-18 (explaining that the Bank is limited to conditionality that supports its mandate of development and cannot go beyond that mandate to promote labor rights more generally).

223. *A Future Without Child Labour*, *supra* note 53, at xi; see also FINAL REPORT, *supra* note 191, at ¶ 94. This report also notes that:

Child labour is detrimental to development, since it means that the next generation of workers will be unskilled and less well educated. In today’s increasingly globalized economy, this has especially negative consequences, since, as pointed out in the present report, a skilled and educated labour force is critical to economic development, increasing incomes and social progress.

Id. Arguably the link to development is the real link to trade.

224. FALLON & TZANNATOS, *supra* note 52, at v (noting that, although the Bank has long had a tangential effect on eradicating child labor through poverty reduction by lending to member countries, it has more recently focused on direct initiatives aimed “specifically at combating the most harmful and exploitive forms of child labor”).

225. *Id.* at vii and 15. Likewise, the EBRD also excludes from its Trade Facilitation Programme “activities involving harmful or exploitative forms of forced labor/harmful child labor, discriminatory practices, or practices which prevent employees from lawfully exercising their rights of association and collective bargaining” See European Bank for Reconstruction and Development, *Trade Facilitation Programme, Trade Exclusion List*, available at <http://www.ebrd.com/apply/trade/about/exclude.htm>. See generally <http://www.ebrd.com>.

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Positive economic incentives can also come in the form of conditioned economic benefits. Pressure can be placed on transitioning countries seeking greater economic opportunities. For example, for transitioning countries the OECD may be useful, as it was in the case of South Korea.²²⁶ As James Salzman has documented, the OECD pressured South Korea to improve its labor rights as a condition of accession.²²⁷ Although South Korea's subsequent performance was mixed, the OECD was able to follow up in promoting labor standards.²²⁸

Social clauses in other preferential trade programs can help as well. For example, although it has recently come under attack in the WTO,²²⁹ the Generalized System of Preferences requires countries to abide by core labor standards in order to attain preferential trading status with developed na-

226. See Salzman, *supra* note 87, at 801 (recounting how South Korea's interest in joining the OECD spawned significant debate regarding the country's prior poor labor standards which, in turn, placed international pressure upon the country to change such standards in order to obtain membership to the OECD). R

227. *Id.* (noting that South Korea's desire to join the OECD led the country to adopt internationally recognized labor standards in order to obtain membership to the OECD).

228. As others have recognized, the OECD has the ability to spur the development of labor rights. Salzman, *supra* note 87, at 773, 800-04 (discussing the OECD guidelines for Multinational Enterprises, publications on trade and labor by the Employment, Labor and Social Affairs Directorate, and events surrounding the accession of South Korea to the OECD). It is problematic to suggest that the OECD be the situs of a constraining labor regime as its membership is limited to the most developed countries. Theoretically, as such a small club it could more easily develop standards. As a desirable club to join, other countries would be encouraged to meet these standards in order to join. But this process would undoubtedly take decades. However, it may still have a role to play. As evidenced by the OECD's efforts on corrupt practices, it can serve as an important player influencing normative and economic enmeshment. For example, as Salzman explains, the OECD developed a set of anti-corruption standards to which both members and non members agreed, and after which the UN adopted a declaration referring to, among other things, the OECD Convention. Still, it took the OECD twenty years to get the Convention off the ground. See Salzman, *supra* note 87, at 780 (discussing anti-corruption efforts of the OECD). R

229. European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries, Appellate Body Report and Panel Report, WTDS246/10 (Apr. 23, 2004), available at http://www.wto.org/english/tratop_e/dispu_e/dispu_subjects_index_e.htm#bkmk51.

tions.²³⁰ Also, in the United States, the Overseas Private Investment Corporation conditions insurance of foreign investments in developing and transitioning economies on compliance with internationally recognized human or worker rights.²³¹ While its impact has not been extraordinary, it has rescinded coverage from projects where these rights have not been respected.²³²

Finally, trade liberalization on the part of developed countries can provide important financial aid by helping developing countries grow their economies. It seems odd that developed countries are willing to use trade sanctions as a means of coercion to promote child labor values²³³ but are sometimes unwilling to adopt trade liberalization to achieve the same goal. Developed countries can lend enormous aid (and save money for themselves) by removing the tariff barriers that impoverish developing countries.²³⁴ Huge agricultural subsidies in the United States and Europe strangle economic development in developing nations.²³⁵ Safeguard mechanisms and dumping actions also impede the ability of developing nations to lift people out of poverty. Giving financial aid is helpful, but giving trade opportunities would be more helpful. As one developing country leader puts it “aid without trade is like a lullaby you sing to put a child to sleep.”²³⁶ In this sense, it seems undeniable that labor

230. Generalized System of Preferences, 19 U.S.C. §§2461-2467 (1994 & Supp. V 1999).

231. OVERSEAS PRIVATE INVESTMENT CORP., STRATEGIC PLAN 2000-2005: GLOBAL CHALLENGES, INNOVATIVE SOLUTIONS 13 (2000); 22 U.S.C. §2191(a) (2000) (stating that OPIC “may insure, reinsure, guarantee, or finance a project only if the country in which the project is to be undertaken is taking steps to adopt and implement laws that extend internationally recognized worker rights . . . to workers in that country.”).

232. Diane F. Orentlicher & Timothy A. Gelatt, *Public Law, Private Actors: The Impact of Human Rights on Business Investors in China*, 14 NW. J. INT’L. L & BUS. 66 (1993) (noting the retraction of OPIC in China following noted human rights violations).

233. See, e.g., Child Labor Deterrence Act of 1999, S. 1551, 106th Cong., § 2(a)(11) (1999).

234. *Gauging Generosity*, THE ECONOMIST, May 1, 2003 (noting that one of the best things rich countries can do to aid poor countries is remove their trade barriers).

235. *The Sword and the Shield*, THE ECONOMIST, Sept. 12, 2003.

236. *An Addictive Lullaby: Can Aid Spur Development*, THE ECONOMIST, Jan. 15, 2004, at 12.

problems are fundamentally linked to trade. However, collaboration on trade liberalization is not the problem; the problem is the manipulation of the trade regime by powerful countries and the concomitant failure to secure equitable trade liberalization.²³⁷

There also can be room for negative economic incentives, such as sanctions. Although this Article advocates addressing child labor through a proactive construction of a child labor regime based upon principles drawn from regime theory, there is still a place for the use of trade sanctions to help enforce child labor norms.²³⁸ For instance, sanctions may be appropriate in developed countries, where their imposition would not make the child labor problem worse.²³⁹

In the case of a developed (or perhaps even transitioning) country the called-for partnership with the WTO might be appropriate.²⁴⁰ Even though I have argued that trade sanctions

237. Laurence Helfer has analyzed responsive strategies to WTO dominance. See Laurence R. Helfer, *Regime Shifting: The TRIPs Agreement and New Dynamics of International Intellectual Property Lawmaking*, 29 YALE J. INT'L L. 1, 14, 15, 17 (2004) (discussing regime shifting as well as the realist view of powerful nations as "adroit regime shifters").

238. See Howse, *supra* note 88, at 151 (noting that the use of trade sanctions is "one method among many" for the enforcement of "core labor rights").

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239. Cf. Dillon, *supra* note 96, at 130 (noting that sanctions can be proper and make sense despite the dictates of comparative advantage and that they have often been used as an effective political tool).

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240. As Ehrenberg notes:

Creating one enforcement mechanism through a synergistic combination of ILO and GATT/WTO expertise would provide the most effective means of preventing violations of forced and child labor in the production of goods that enter the international trading system. The ILO would bring to this enforcement mechanism over seventy years of experience, through its reporting and contentious supervisory procedures, in determining compliance with basic international labor standard . . . GATT/WTO possesses expertise in determining the existence and extent of unfair trade practices and in supervising the elimination of those practices through the use of economic penalties . . . GATT/WTO would . . . bring its expertise on trade practices and its well-developed dispute settlement system and enforcement procedures to the joint enforcement system . . . Furthermore, this joint ILO-GATT/WTO enforcement regime would build upon the current procedures employed by each international organization, providing more effective enforcement than does either organization individually.

should not be a vehicle by which child labor norms are primarily enforced, it is possible that the independent efforts to secure enforcement of child labor norms may conflict with general norms of free trade. If sanctions are going to be used—as a last resort—I agree with the suggestion that the imposition of sanctions should be vetted in the WTO so as to distinguish between those legitimately imposed and those imposed as disguised protectionism and that the WTO’s role should be limited to this vetting.²⁴¹ But the use (or threat) of sanctions would be one small part of the endeavor.²⁴²

c. Technical Assistance

Technical assistance promotes economic enmeshment and, in turn, political and normative enmeshment. It is most useful for transitioning and developing countries.

Technical assistance is also invaluable to developing and transitioning countries. The technical assistance provided in TBPs is particularly useful as a holistic approach for lesser developed countries. IPEC also has a Network Initiative,²⁴³ the goal of which “is to stimulate national, regional, inter-regional and eventually global networks of technically competent and committed institutions and associations that can act as an ongoing force for child labour action.”²⁴⁴ IPEC has established the Development Policy Network that integrates child labor reduction into the larger scheme of development and poverty reduction efforts²⁴⁵ and the Hazardous Child Labour

Ehrenberg, *supra* note 51, at 405.

241. Howse, *supra* note 88, at 167 (suggesting this vetting approach as more coherent than an approach in which the WTO would seek to itself impose sanctions for labor rights abuses); *see also* Ward, *supra* note 97, at 623 (noting that with any enforcement mechanism for a social clause it would be vital to “distinguish between social and economic motivations”). Howse also makes the suggestion, which is supported here, that the ILO could evolve into an institution with better compliance mechanisms by increasing its effectiveness in coordination with the WTO. As Howse points out, such an approach could be seen as breaking with ILO tradition, but in a field where there is significant consensus (such as child labor) it may be warranted. Howse, *supra* note 88, at 168-71.

242. *Cf. id.* at 158 (considering when sanctions are effective).

243. IPEC ACTION AGAINST CHILD LABOUR: HIGHLIGHTS 2002, *supra* note 146, at 25.

244. *Id.* at 28.

245. *Id.*

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Networking.²⁴⁶ Finally, the IPEC approach is meant to be an evolving one.²⁴⁷ Technical assistance, whether it be issuing birth certificates to children or maintaining records of who has gone to school, can evolve on a country by country basis as needed.

d. Integrating These Tools

Integrating the tools discussed above is necessary on all levels. A holistic approach must integrate all means of enmeshment—monitoring, economic incentives, and technical assistance. Consider an illustration of one cause of the child labor problem: the need for education. Some argue that compulsory education laws are perhaps the most effective laws against child labor.²⁴⁸ If children are in school, they cannot be on the factory floor or on the farm. But for this to happen, schools in which teachers are paid must exist, and parents must be able to forgo their child's lost income.²⁴⁹ All of this costs money (economic aid). There must be a normative predisposition to educate children.²⁵⁰ There also needs to be documentation on who the children are and where they should be, as well as a means of verifying the ages of those working (technical assistance). As some point out, compulsory education may fail if the pressure to work is too great and enforcement is weak.²⁵¹ Further, it may harm families that depend on the child's income for survival. It may also overburden children who will be required to work during non-school hours.²⁵² Alternative school hours may provide easier access for children, especially in agricultural areas. Reducing the costs (either directly through subsidies) or by substituting the income earned or services (babysitting) provided by children

246. *Id.*

247. *Id.* at 9.

248. See Elliot Schrage, *Child Labor and Exploitation*, 14 ST. JOHN'S J. LEGAL COMMENT. 405, 411-414 (2000) (discussing the role of education in combating child labor); Matthew C. Bazzano, *Child Labor: What the United States and Its Corporations Can Do to Eliminate Its Use*, 18 HAMLIN J. PUB. L. & POL'Y 200, 223 (1996) (noting the expense and importance of education); see also FALLON & TZANNATOS, *supra* note 52, at 10 (discussing the desirability of compulsory education, but noting that it may not be an adequate solution).

249. INVESTING IN EVERY CHILD, *supra* note 50, at 49.

250. FALLON & TZANNATOS, *supra* note 52, at 11.

251. *Id.* at 10.

252. *Id.*

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is yet another approach. Various approaches must be made available through economic assistance; they must be made workable through technical advice; and they must be monitored.

The key is to make it normatively, economically, and politically attractive for societies to pursue education for children and to make it in the best interests of parents and employers to insure that children are in school rather than at work. For parents, this means the income lost must be worth less than the education gained by their children. There must be some sort of income substitution in the interim period so that the family can survive. For employers, that means making it cost-effective to employ adults. Of course, these two prongs may support each other.²⁵³ Integrating these efforts for each cause of the child labor problem, on a state-by-state basis, will be an extraordinarily complex task. Of course, the child labor problem is an extraordinarily complex problem, and it needs to be addressed as such.

V. CONCLUSION

Enmeshment is superior to coercion as a compliance strategy. Enmeshment leads states to self-enforce without the wasteful and unproductive (or counterproductive) use of sanctions. Notions that the trade regime is successful because of its power to coerce are incorrect. The trade regime works because it promotes enmeshment. If one wished to emulate the trade regime one should do so by seeking compliance through enmeshment and not compliance through sanctions.

Enmeshment can also work in the child labor regime if one understands that different regimes solve different problems and that enmeshment needs to be tailored for each set of problems and each type of state. Development problems require monitoring, economic assistance, and technical aid. How these tools are employed depends upon the status of the state in which they are employed. Developing states will more likely become enmeshed in the child labor regime if they are helped with resources and normative encouragement so that they can align their interests with those of the regime. Coer-

253. *Id.* at 12 (noting that “[i]n Europe the employment of children started falling when employers found it in their interest to switch to adults some 50 years before the introduction of legislation”).

cion through sanctions may work in developed or transition-
ing countries when combined with other enmeshment tools.
But coercion alone will never work; it will just cause pain for
those that can least afford to bear it.