THE HISTORICAL DEVELOPMENT OF THE "LIGHT WORK" PROVISION OF CONVENTION NO. 138

Rufaro Audrey Mavunga*
LLB LLM

SUMMARY

The Minimum Age Convention no. 138 of 1973 in Article 7 provides that children between the ages of 13 and 15 years may be permitted to undertake a permissible form of child work, namely: light work. Such work should not prejudice the education, health or the general wellbeing of the child. Article 7 does not, however, define or clarify what actually qualifies as light work. The light work provision also seems incompatible with the realities of many developing countries and the values prioritized in different cultures as it seems to place an unnecessarily strict prohibition of work by children below the age of 13 years. Although there seems to be confusion regarding this concept the light work provision is best understood in its historical context. The light work provision first appeared in the Minimum Age (Agricultural) Convention no. 10 of 1921 and was further developed in the Minimum Age (Industry) Convention no. 33 of 1932. Convention no. 138 thereafter revised such conventions with a less detailed description of the concept causing confusion and uncertainty about permissible forms of child work.

1 INTRODUCTION

The Minimum Age Convention no. 138 of 1973 (hereinafter "Convention no. 138") permits children between the ages of 13 and 15 years to undertake light work.[1] This provision provides for a permissible form of child work but only for children between the ages of 13 and 15 years. Contrary to this provision in many traditional African societies, children of all ages are required to undertake some form of work. In these societies adults believe that children should be taught skills through work even at a young age.[2] In some African cultures, children are considered to be adults upon reaching puberty, initiation, circumcision, and marriage, and not necessarily through the attainment of age.[3]

* *LLD* Candidate, Faculty of Law, University of Pretoria.

1 Convention 138 Article 7 states that "national laws or regulations may permit the employment or work of persons 13 to 15 years of age on light work which is (a) not likely to be harmful to their health or development and (b) not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from instruction received".

2 See generally Bennet "Human Rights and the African Cultural Tradition" 1993 *Transformation* 32; Cobbah "African Values and the Human Rights Debate: An African Perspective" 1987 *Human Rights Quarterly* 322; Nhenga-Chakarisa "Who Does the Law Seek to Protect and from What? The Application of International Law on Child Labour in an African Context" 2010 *African Human Rights LJ* 180; Joschi *Child Labour Issues, Challenges and Laws* (2006) 14. According to Kaime *The African Charter on the Rights and Welfare of the Child: A Socio-legal Perspective* (2009) 32.

3 Nhenga-Chakarisa *Application of the International Prohibition on Child Labour in an African Context: Lesotho, Zimbabwe and South Africa* (2008 *PhD Thesis University of Cape Town*) 92;

Children are then expected or required to undertake adult roles which may include work. Another factor that forces children who are below the age of 13 years to get involved in work is poverty. About six hundred million children in developing countries live on less than one dollar a day, with one person dying of starvation every second.[4] Children in these dire situations are forced to seek employment to sustain their families. Further to this, high death rates and the AIDS/HIV epidemic have increased the incidences of child-headed households.[5] Such social problems increase the need for children of all ages to undertake some form of work. The light work provision, therefore, becomes incompatible with the realities of many developing countries and the values prioritized in different cultures as it seems to place an unnecessarily strict prohibition of work by children below the age of 13 years.

The light work provision is, however, best understood in its historical context. Convention no. 138 revised industry-specific conventions[6] that had been adopted by the ILO after 1919.[7] Previous minimum age conventions had applied to certain occupational groups, or to certain sectors of the economy, such as agriculture, industry, and underground work, but Convention no. 138 was intended to have application in all spheres of economic activity.[8] The light work provision first appeared in the Minimum Age (Agricultural) Convention no. 10 of 1921 (hereinafter "Convention no. 10") and was further developed in the Minimum Age (Industry) Convention no. 33 of 1932 (hereinafter "Convention no. 33"). Some of the terms of the light work provision found in Convention no. 33 seem to have been merely copied and reiterated in Convention no. 138 without attempting to factor in the cultural and socio-economic, problems of African countries who were new members of the ILO after colonialism.[9] Although the terms of the light work provision found in Convention no. 138 is to a certain extent similar to the terms found in Convention no. 33, Convention no. 33 was more detailed and provided for special conditions for this type of work.[10]

---

see also Kaime *The African Charter on the Rights and Welfare of the Child: A Socio-legal Perspective* 32; and Cobbah 1987 Human Rights Quarterly 322.

4 See United Nations Children's Fund (UNICEF) "Millennium Development Goals: Goal Eradicate Poverty and Hunger" http://www.unicef.org/mdg/poverty.html. See also International Labour Office (ILO) "Accelerating Action Against Child Labour"(2010) Global Report under the Follow-up to the ILO Declaration on the Fundamental Principles and Rights at Work; see also United Nations "The Millennium Development Goals Report of 2012" http://www.un.org/millenniumgoals/pdf/MDG%20Report%202012.pdf (accessed 2013-05-14), Bhalotra *OECD Social Employment and Migration Working Papers* (2003) 19.

5 See United Nations Children's Fund (UNICEF) "Millennium Development Goals: Goal Eradicate Poverty and Hunger" http://www.unicef.org/mdg/poverty.html. See also International Labour Office (ILO) "Accelerating Action Against Child Labour"(2010) Global Report under the Follow-up to the ILO Declaration on the Fundamental Principles and Rights at Work see also United Nations "The Millennium Development Goals Report of 2012 http://www.un.org/millenniumgoals/pdf/MDG%20Report%202012.pdf (accessed 2013-05-14).

6 Convention 138 revised the following Conventions, the Minimum Age (Industry) Convention no. 5 of 1919, Minimum Age (Sea) Convention no. 7 of 1920, Minimum Age (Agriculture) Convention no. 10 of 1921, Minimum Age (Trimmers and Stokers) Convention no. 15 of 1921, Minimum Age (Non-Industrial Employment) Convention no. 33 of 1932, Minimum Age (Sea) Convention (Revised) no. 58 of 1936, Minimum Age (Industry) Convention (Revised) no. 59 of 1937, Minimum Age (Non-Industrial Employment) Convention (Revised) no. 60 of 1937, Minimum Age (Fisherman) Convention no. 112 of 1959, Minimum Age (Underground Work) Convention no. 123 of 1965.

7 See Convention 138 Article 10(1).

8 Creighton "Combatting Child Labour: The Role of International Labour Standards" 1997 *Comparative Labour LJ* 371.

9 Myers "The Rights Rights? Child Labour in a Globalising World" 2001 *Annals of the American Academy of Political and Social Science* 45.

10 A detailed examination of this Convention will be provided later in the article.

The light work provision, found in Convention no. 138, therefore, reflects the opinions, beliefs and practices of the first industrialized countries who were members of the ILO from its inception.[11] Such membership was predominantly European, while African countries were largely excluded.[12] The purpose of this article is to trace the historical development of the light work provision in order to gain an understanding as to the reasons why children between the ages of 13 and 15 years were specifically chosen to undertake light work and not children of all ages. This article will then start by tracing the general historical development of child-labour laws as the light work provision was developed after a realization that not all child labour was harmful to the child and that in some instances children could benefit from work which was not harmful to health, physical development or education.

2 CHILD LABOUR DURING THE INDUSTRIAL REVOLUTION 1760–1840

The industrial revolution transformed Western countries from agricultural economies into factory towns.[13] In the early phases of the Industrial Revolution (1760–1840) child labour was widespread, economically important and still largely unquestioned.[14] Children were considered as an economic asset by

[11] Myers 2001 *Annals of the American Academy of Political and Social Science* 45, claims that ILO conventions drew on accumulated European concepts and experiences to create its international child-labour standards and policies. Myers claims that after decolonization the ILO merely reinforced and disseminated its existing European-derived policies rather than reconceive them to fit the new realities. Myers strongly believes that Convention 138 is best understood in its historical light as it was not intended just to be about children or to serve only their interests; it was equally about protecting labour markets and adult economic interests.[11] Bourdillon *Development and Change* (2006) 1206. Bourdillon, an advocate of child work, alleged that international standards regulating child labour focus mainly on Western notions of childhood that could not be easily applied to the very different contexts of Africa, with their different experiences of childhood and education. He claimed that the histories of childhood and also the experience of school in Africa and those of children in Europe differed. See also Bourdillon "Children's Work in Southern Africa" 2009 *Werkwinkel* 107; and Bourdillon, White and Myers "Re-assessing Minimum-age Standards for Children's Work" 2009 *International Journal of Sociology and Policy* 107.

[12] *Ibid.*

[13] Pollard "Factory Discipline in the Industrial Revolution" 1963 *Economic History Review* 254. Pollard analyzed factory discipline during the Industrial Revolution. For further reading on the Industrial Revolution see Nicholas and Steckel "Heights and Living Standards of English Workers during the Early Years of Industrialisation 1770–1815" 1991 *Journal of Economic History* 937–956. Nicholas and Steckel assessed the living standards of workers between 1770 and 1815. They came to the conclusion that there was a delayed growth for people between the ages of 13 and 23 and they reveal that there was declining living standards of workers during the Industrial Revolution. For further reading on the standards of living during the Industrial Revolution, see Williams "The British Standard of Living 1750–1850" 1966 *Economic History Society* 581–606; and see also Flinn "Trends in Real Wages" 1974 *Economic History Review* 395–413.

[14] See Humphries "Child Labour Lessons from the Historical Experience of Today's Industrial Economics" 2003 *The World Bank Economic Review* 176. According to Humphries some types of the early machinery were specifically constructed to be used by children to reduce labour costs. See also Humphries "Short Stature among Coal Mining Children: A Comment" 1997 *Economic History Review* 533. See also Rahikainen "Children and 'The Right to Factory Work': Child Labour Legislation in Nineteenth-century Finland" 2001 *Scandinavian Economic History* 45. Rahikainen describes the Finish experience of child labourers during the industrial revolution. Child labour was welcomed by the Finish authorities as a means for pauper children to make their living without a resort to poor relief. See also Fyfe *Child Labour* (1989) 28. Fyfe claimed that industrialization intensified and transformed child labour. See also Nardinelli who dedicated an entire book on child labour and the industrial revolution, see Nardinelli *Child Labour and the Industrial Revolution* (1990).

their parents as they contributed positively to the family income.[15] Owing to technological change, wages were pushed down.[16] As a consequence entire families' men, women and children were forced to work long hours to meet their financial needs.[17] Also due to the competitive drive to make profit, factory and mill owners employed children to increase both the intensity and the period of work.[18] Hurl[19] claims that with industrialization, mechanized production seriously affected the position of the skilled artisan. Machines operated by unskilled labourers reduced or even eliminated the need for skilled artisans in many industries.[20] Many artisans were said to have suffered both a loss in status and income and with a reduction in parental wage, children were withdrawn from school and required to work. Another reason why child labour was important was that the advantages that children possessed as workers were manifold.[21] Early machines which were made of wood had to be built small and closer to the floor to avoid excessive vibrations.[22] Children are generally small in stature and could, therefore, operate such machinery with ease.[23] Child labour also conveyed great benefits to the British economy in the form of greater industrial output and higher national income.[24]

Humphries[25] argues that child workers in mid-Victorian Warrington tended to originate from the poorest families, headed by either a lone parent in a badly

---

15 Nardinelli *Child Labour and the Industrial Revolution* 7; Cunningham and Viazzo "Child Labour in Historical Perspective 1800–1985 – Case Studies from Europe, Japan and Colombia" 1996 *International Child Development Centre, Florence, Italy (UNICEF)*, generally revealed that according to investigations of family budgets in England between 1790 and 1865 children's contributions to the family budget were always greater than those of their mothers. See also Heywood *A History of Childhood* (2001) 135, who discussed the loss of earnings of adults. See also Cunningham and Stromquist "Child Labour and the Rights of Children: Historical Patterns of Decline and Persistence" in Weston (ed) *Child Labour and Human Rights Making Children Matter* (2005) 60.

16 See Hurl "Restricting Child Factory Labour in Late Nineteenth Century Ontario" 1988 *Labour/Le Travail* 90. See also Heywood who claimed that necessity was the greatest cause of child labour. When a father's earnings were relatively low or the mother was not working families needed the extra income and children were then forced to work. Heywood *A History of Childhood* 135.

17 See Hurl 1988 *Labour/Le Travail* 90. See also Horrell and Humphries *Explorations in Economic History* (1995) 501 who arguedthat industrialization also destroyed the family economy in that children were no longer employed in domestic and agricultural industry under the supervision of their parents. Parents and children competed for the same jobs.

18 See Motkuri "Child Labour and Schooling in a Historical Perspective: The Developed Countries Experience" 2004 C*entre for Development Studies, Thiruvananthapuram, India MPRA Paper No 48416* 3.

19 Hurl 1988 *Labour/Le Travail* 90, the pauper apprentices of the early Industrial Revolution were more vulnerable to abuse. Children suffered at the hands of adults impatient with the quality or the pace of their work. Although long hours had been the custom for agricultural and domestic workers for generations, the factory system was criticized for strict discipline, harsh punishment, unhealthy working conditions, low wages, and inflexible work hours. The factory depersonalized the employer-employee relationship and was attacked for stripping the worker's freedom, dignity and creativity.

20 Hurl 1988 *Labour/Le Travail* 90.

21 Cunningham and Stromquist in Weston (ed) *Child Labour and Human Rights Making Children Matter* 59.

22 *Ibid.*

23 Cunningham and Stromquist in Weston (ed) *Child Labour and Human Rights Making Children Matter* 59–60. Heywood claims that steam power and machinery allowed women and children to take over work that had previously required the strength and skill of adults. Heywood claims that children under 13 years actually accounted for 40 per cent of the workforce in Robert Owen's Mill. Heywood *A History of Childhood* 131.

24 Nardinelli *Child Labour and the Industrial Revolution* 25.

25 Humphries 1997 *Economic History Review* 535; and see also the Children's Employment Commission of 1842 Report by James Mitchell which indicates that "boys in consequence of

paid job. To support such claims reports of the Children's Employment Commission of 1842 also claim that many child witnesses had lost both parents and many more had sick or incapacitated fathers.[26] Some witnesses testified that children employed in factories were not worse off than children outside the factories.[27] Many witnesses, then, gave favourable testimony about the employment of children, while other witnesses testified that child labour was cruel, unhealthy and immoral.[28] Children also told stories of cruel treatment and ruined health. Working around machines in poorly ventilated factories supposedly ruined the health of children in factories.[29] According to a Report by the Children's Employment Commission of 1842 investigating children involved in coal mining, many children were reported to be "chicken breasted, asthmatic, pallid, prone to headaches and rheumatoid, had bent legs, curved spines, turned ankles and scars of various injuries".[30] Nutrition was also a problem in the mines. Breakfast was a hasty meal, eaten before work, which started at five in the morning or even earlier, and then miners including children did not eat again properly until they arrived home at night.[31] Food taken to work had to be consumed on the job in unappetizing and unhygienic conditions.[32] Majority of miners felt that underground work damaged young children but acknowledged that as long as there was no alternative employment and/or male wages remained at the same level, it was necessary for families that had experienced death, injury or incapacitation of the male head.[33] Children worked long hours, were frequently beaten and paid a pittance.[34] Heywood[35] claims that, while children were subjected to bad working conditions, as described above they had some scope for escaping from difficult circumstances by changing jobs, or if the worst came to the worst, staying at home.[36] Unfortunately children that

their poverty or the poverty of their parents are for the most part sent to work in the pits, when they reach their tenth year".

26 See the Employment Commission Report of 1842; and see also Humphries 1997 *Economic History Review* 535.

27 Nardinelli *Child Labour and the Industrial Revolution* 26.

28 Nardinelli *Child Labour and the Industrial Revolution* 2. Tuttel argues that there were a few optimists who argued that the employment of children in factories was beneficial to the child, family and country. They argued that the work was necessary to the family's income. Factory owners also argued that it was necessary for production to run smoothly and for their products to become competitive. See Tuttel Child Labour During the British Industrial Revolution www.eh.net/encyclopedia/article/tuttle.labor.child.britain; and see Heywood who claims that critics argued that children were "pale ... and slow in movement" due to the work they conducted Heywood *A History of Childhood*. Nardinelli makes references to the Factory Movement, (1830–1847) which was a coalition of textile workers, sympathetic mill owners and reformers. The plight of children was equated with that of West Indian slavery. The leaders of this movement accepted and indeed approved of child labour. What they objected about was to unregulated child labour and such regulation would eventually lead to the regulation of all labour. The factory movement advocated for the "10 hours bill", which would limit not only the daily working hours of children but adults as well.

29 Nardinelli *Child Labour and the Industrial Revolution* 77. Heywood claims that children were "pale and slow in movement" due to the work they conducted Heywood *A History of Childhood*.

30 See the Employment Commission Report of 1842; and see also Humphries 1997 *Economic History Review* 532.

31 *Ibid.*

32 *Ibid*.

33 Employment Commission Report of 1842.

34 Rahikainen *Centuries of Child Labour: European Experiences from the 17th to 20th Century England* (2004) 195. See also Humphries 1997 *Economic History Review* 533–534. Humphries describes the conditions in the mines as appalling. Miners' food was often uncooked and meals were irregular.

35 Heywood *A History of Childhood* 138.

36 *Ibid*.

did work were considered as an economic asset by their parents because children substantially contributed to the family economy.[37]

In terms of legislation in the United Kingdom the Heath and Morals of Apprentices Act of 1802, was adopted to protect apprentices in the cotton and woollen mills.[38] This Act laid down regulations that apprentices should receive tutoring in literacy and arithmetic for the first four years of their apprenticeship.[39] The Act also stated that children could work no more than 12 hours a day between 6 am and 9 pm.[40] The Act authorized inspections of factories to report on the state and condition of mills and factories.[41] This piece of legislation did not, however, state at what ages children could become apprentices at factories nor what type of work children could undertake. Mahaim[42] argues that this Act was enacted due to the fact that the public was shocked by the conditions found to exist amongst the so-called apprentices. The legislation did, however, attempt to a certain extent to provide some form of protection for apprentices.

3 CHILD LABOUR 1840–1919

By the end of the 1800s and the beginning of the 1900s the extensive use of child labour began to decline significantly in the first industrial nations.[43] Cunningham[44] describes four leading reasons for the decline in child labour as

(1) Parental Decisions

(2) State Action

(3) Development of Capitalist Labour Markets

(4) Cultural Change.

With regard to the decisions of parents, Cunningham argues that in cases of real poverty the family would maximize income by putting children to work.[45] As standards of living rose in the course of the century the rational choice was to invest in the child's education in order to get better paying jobs in the future.[46]

---

37 *Ibid.*

38 Heath and Morals of Apprentices Act of 1802; and see also Hobbs, McKechnie and Lavalette *Child Labour: A World History Companion* (1999) 85, who discuss this Act.

39 Heath and Morals of Apprentices Act of 1802; and see s VI of Hobbs *et al Child Labour: A World History Companion* 85, who discuss this Act.

40 Heath and Morals of Apprentices Act of 1802, and see s IV of Hobbs *et al Child Labour: A World History Companion* 85.

41 Heath and Morals of Apprentices Act of 1802, and see s IX of Hobbs *et al Child Labour: A World History Companion* 85, who discuss this Act.

42 Mahaim "The Historical and Social Importance of International Labour Legislation" in Shotwel (ed) *The Origins of the International Labour Organisation* (1934) 14.

43 See Cunningham "The Decline of Child Labour: Labour Markets and Family Economies in Europe and North America Since 1830" 2000 *Economic History Review* 409–419; and see Nardinelli "Child Labour and the Factory Acts" 1980 *Journal of Economic History* 741–742, who similarly addresses the reasons for the decline of child labour.

44 Cunningham 2000 *Economic History Review* 409–419.

45 See Cunningham 2000 *Economic History Review* 415. Nardinelli 1980 *Journal of Economic History* 748, also argues that with the improvement of adult wages the need for children to work was unnecessary.

46 Cunningham 2000 *Economic History Review* 414; and see also Feinstein "Pessimism Perpetuated: Real Wages and the Standard of Living in Britian during and after the Industrial Revolution" 1998 58 *Journal of Economic History* 649. Feinstein argues that from 1778 to 1853 there was indeed an increase in earnings in Great Britain, that positively affected family incomes and later their need to resort to child labour.

As is the case with many countries today as family income increases the need for children to work is reduced.[47] Cunningham claims that child labour also decreased due to state action.[48] State action was evident through the enactment of national child-labour laws and importantly the establishment of school laws.[49] Fyfe[50] claims that through the investigations of the Sadler Committee of 1832 and the Factory Commission of 1833 there was an increased awareness of the harmful conditions children were subjected to in the factory and the physical affects of such work. Such reports revealed that children were often employed from as early as the age of six years and were made to work 14 to 16 hours a day.[51] There was a revelation that "children were beaten and kept awake by beatings."[52] At the end of the day children are said to have fallen asleep, too exhausted to eat.[53] There was a curvature of the spine and thigh bones due to protracted standing, while the appalling atmospheric conditions led to chronic pulmonary complaints.[54] As a result of such problems legislation was viewed as a necessity.[55] In 1833 the Factory Act was adopted and this Act set a minimum age for work at nine years of age.[56] Between the ages of nine and 13 years no child was to work more than 48 hours a week.[57] Night work was also outlawed for anyone under 18 years of age.[58] Children below the age of 13 years had to be medically certified to be capable to undertake such work.[59] This Act, however, applied to textile factories only and did not seem to protect children in other industries in which they could work. According to Fyfe enforcement of this law was relatively ineffectual because there was no civil registration of births until the 1830s.[60] In 1844 another Factory Act was enacted which reduced the working day for children between the ages of eight and 13 years to six-and-a-half hours per day.[61] The Act expressly excluded certain types of work for children. Children were not to be employed in any part of the factory in which wet spinning of flax, hemp or jute was carried on.[62] This Act also prohibited children from cleaning mill gear while such machinery was in motion.[63] The Act, therefore, identified specific forms of work that children were not to undertake and also required the tightening of regulations, certificates revealing age and school attendance lists.[64] The Act also stated that any parent or person benefiting from the wages of a child could permit a child to combine work with school attendance.[65]

---

47 Hobbs *et al Child Labour: A World History Companion* 85.

48 Cunningham 2000 *Economic History Review* 416.

49 *Ibid.*

50 Fyfe *Child Labour* 29.

51 *Ibid.*

52 See Extracts of the Factory Inspectors Report of 1833, see also Fyfe *Child Labour* 29.

53 *Ibid.*

54 Fyfe *Child Labour* 29.

55 Cunningham 2000 *Economic History Review* 416; and see also Humphries 2003 *World Bank Economic Review* 191. Nardinelli 1980 *Journal of Economic History* 743 argues that an alternative hypothesis would be that child labour was already declining relative to adult labour and the Factory Act only speeded up the change. The relative decline in child labour may have been caused mainly by falling demand.

56 Factory Act of 1833 s VII.

57 Factory Act of 1833 s VIII.

58 Factory Act of 1833 s II.

59 Factory Act of 1833 s XIII.

60 Fyfe *Child Labour* 29.

61 Factory Act of 1844 s XXIX.

62 Factory Act of 1844 s XIX.

63 *Ibid*.

64 Factory Act of 1844 s III–XVIII.

65 Factory Act of 1844 s XXXVIIIXXVIII.

School was therefore recognized as important but child work was equally important and a child could combine work and school. This Act still applied only to children in the factory and not working in other industries.

Hobbs *et al*[66] claim that the Factory Acts positively contributed to the decrease in child labour. They claim that legislation through the need to provide medical certificates and evidence of school attendance made it less economically viable for manufacturers to employ children.[67] Nardinelli,[68] however, asserts that the British experience shows that child employment before and after school was still normal, particularly as school-leaving age neared. Nardinelli argues that the overriding reason was the need to contribute wages to the family economy. Fyfe[69] claims that in Victorian Britain there remained many working children who were beyond the reach of regulations. Fyfe further claims that the legislation was ineffective in invisible garment industry. A census conducted in Britain in 1851 revealed that more than one million women and girls worked in the garment industry. By 1891 there were 1.4 million female workers, of whom 107 167 were aged between 10 and 14 years of age.[70] Cunningham[71] correctly claims that laws required political will to be effective and provides evidence to show that laws simply pushed children into other forms of employment though authorities never systematically analysed such work.[72] Nardinelli[73] declares that the timing of child-labour legislation followed a specific pattern. Laws were never enacted during the formative stages of the industrial growth. They came later after industry had been established.[74] An excuse for the late enactment of legislation was that people were not aware at first of the abuses of the system, and reform had to wait on the public awareness.[75] Nardinelli[76] discards this contention as inadequate and claims that journalists and state commissions publicized abuses and called for legislation long before most laws were enacted. The process to regulate child labour was, therefore, slow-paced and dependent heavily on the state positive action.

Cunningham[77] brings in a third reason for the decline in child labour, namely, the development of capitalist markets that were accompanied by technological change that created enormous opportunities for speeding the pace of work.[78] As a result, demand for jobs was high and children were gradually undercut and removed from the workplace to pave way for adults. Humphries agrees with Cunningham and claims that technology rendered child labour un-productive and economic growth eventually trickled down to raise adult male earnings.[79] The fourth reason for the decrease in child labour was cultural change that resulted from romantic conceptions of the child as dependant and

---

66 Hobbs *et al Child Labour: A World History Companion* 86.
67 *Ibid.*
68 Nardinelli *Child Labour and the Industrial Revolution* 115.
69 Fyfe *Child Labour* 32.
70 *Ibid.*
71 Cunningham 2000 *Economic History Review* 416.
72 *Ibid*.
73 Nardinelli *Child Labour and the Industrial Revolution* 124.
74 *Ibid*.
75 *Ibid.*
76 *Ibid.*
77 Cunningham 2000 *Economic History Review* 415.
78 *Ibid*; and Nardinelli 1980 *Journal of Economic History* 745 also agrees that that technological change in general tended to reduce the relative demand for child labour. Better organized factories required fewer secondary workers and the relative demand for child labour decreased.
79 See Humphries 2003 *World Bank Economic Review* 189.

needing protection.[80] Humphries[81] claims that Victorian working men embraced the schooled child along with a non-working wife as hallmarks of a desirable and respectable family. Humphries argues that there is also extensive literature that suggests that strong trade unions and campaigns for family wages led to the rise of the male bread-winner family.[82] Scholars like Jean-Jacques Rousseau argued that children had a right to a childhood and to enjoy it.[83] He believed in the spontaneity, purity, strength, and joy of childhood.[84] Rousseau believed that young children were not capable of reason.[85] In his writings he proposed development stages of human beings as: the age of nature (from birth to 12 years), the age of reason/ intelligence (from 12 to 15 years); the age of energy or life force (from 15 to 20 years) and the age of wisdom (from 20 to twenty 25 years.) [86] Popular figures such as the writer Charles Dickens, also exhibited information of factory conditions in a fictional form in which a mass national audience could identify.[87] Such writings enlightened and also caused agitation amongst the masses and prompted public investigation of factory conditions and thereafter a change in working conditions.[88] A mass movement of protest in opposition to child labour was then birthed. In 1832 a meeting was held at the Castle Yard in York, where delegates listened to speeches in protest of poor working conditions.[89] Children were also given the platform to speak and they described the poor working conditions in factories and were able to generate pity for child workers. Some people imagined a brave new world where children never worked.[90] According to Cunningham and Stromquist[91] much more common were the efforts to eliminate the worst forms of child labour, without pretending that it was either possible or desirable to eliminate the work of children altogether. A new sense of urgency for the rights of children was thus birthed.

Humphries[92] argues that child labour did not, however, rapidly disappear as historians have claimed. He states that "child labour was not a dinosaur, perfectly adapted to early industrial conditions but then driven rapidly to extinction when times changed."[93] Humphries[94] acknowledges that there was a decline in child labour which he claims began around 1850. He claims that the

---

80 Cunningham 2000 *Economic History Review* 415; and see also Nardinelli *Child Labour and the Industrial Revolution* 17, who agrees with Cunningham.

81 Humphries 2003 *World Bank Economic Review* 192.

82 Humphries 2003 *World Bank Economic Review* 188; and Cunningham 2000 *Economic History Review* 415.

83 Gianoustsos "Locke and Rousseau: Early Childhood Education" 2006 4 *Pulse* 1.

84 *Ibid.* Another important scholar Rousseau, recommended that for a child to reach his/her full potential, a nurturing and a protective environment were a requirement. Rouseeau described childhood with the hope of minimizing the obstacles of civilization and bringing man as near to nature as possible. Rousseau contended that men could attain this freedom and independence of thought through naturalistic education. For further reading on the issue of cultural change see generally Abernethie "Child Labour in Contemporary Society: Why do we Care?" 1998 *International Journal of Children's Rights* 89; and see also Hurl 1988 *Labour/Le Travail* 109.

85 Gianoustsos 2006 4 *Pulse* 1.

86 Abernethie 1998 *International Journal of Children's Rights* 89.

87 Fyfe "The World-wide Movement Against Child Labour – Progress and Future Directions" 2007 *Paper Prepared for the ILO Office* 6; and see also Heywood *A History of Childhood* 134.

88 See Heywood *A History of Childhood* 141–142.

89 Cunningham and Stromquist in Weston (ed) *Child Labour and Human Rights Making Children Matter* 61.

90 *Ibid.*

91 *Ibid.*

92 Humphries 2003 *World Bank Economic Review* 179.

93 *Ibid.*

94 *Ibid.*

withdrawal of child workers was age-specific and started with children between the ages of five to nine years of age being withdrawn from the workplace first. The withdrawal of children aged 10–14 years came later in 1870. In 1851, 30 per cent of children between the ages of 10–14 years worked, but by 1901 the figure had fallen to just 17 per cent.[95] The retreat of child labour was uneven but did not signal the death of child labour.[96]

Another milestone in the campaign against child labour was the first international discussion on child labour which took place at the Initial Congress of the "International" held in Geneva in 1866.[97] At this meeting child labour was deemed a social injustice that warranted international concern. Participants largely relied on Karl Marx's theories on child labour.[98] Marx believed that children below the age of nine years should not work and there-by categorized older children into three groups.[99] Children between nine and 12 years, he believed, should be allowed a maximum of two hours of work per day, while those between the ages of 13 to 15 years should be allowed three hours of work, while children between the ages of 15 and 17 years should be allowed six hours of work a day. Marx held that it was desirable for children to begin elementary school before the age of nine years.[100] He advocated that no parent nor employer should use child labour except when it was combined with education.[101] Under his watch the employment of children between the ages of nine and 17 years in night work, and all health-injuring trades were strictly prohibited by law.[102] Although debates on child labour were not in line with complete abolition, Marx played a major role in categorizing the ages of children into three groups and also the combining work with education.[103] Potter[104] claims that the proceedings of the "Inter-national" were, however, interrupted by the Franco-German War and events that led to it.

In 1890 the Kaiser convened a meeting in Berlin which attracted twelve European countries.[105] At this discussion the agenda focused around Sunday

---

95 Humphries 2003 *World Bank Economic Review* 179.

96 Cunningham and Stromquist in Weston (ed) *Child Labour and Human Rights Making Children Matter* 71 see also Humphries 2003 *World Bank Economic Review* 179.

97 Fyfe 2007 *Paper Prepared for the ILO Office* 17. Potter "The Movement for International Labour Legislation" 1910 *Economic Journal* 347, claims that documents relating to this initial meeting were unfortunately lost in America, but claims that countries represented were England, France, America, Belgium, Germany, Austria, Switzerland Italy and Spain.

98 Fyfe 2007 *Paper Prepared for the ILO Office* 17

99 Fyfe 2007 *Paper Prepared for the ILO Office* 7.

100 Marx *The International Working Man's Association: Instructions to the Delegates of the Provisional General Council. The Different Questions* (1866).

101 *Ibid.*

102 *Ibid*.

103 *Ibid.*

104 Potter 1910 *Economic Journal* 347. See also Bernstein who claims that the "International" had a major weakness as there were sharp divisions on important questions. Further to this the "International" forever needed funds and many states were in arrears with payments of their dues. For a detailed analysis of the work and progress of the "International" see Bernstein "The First International and the Great Powers" 1952 *Science and Society* 247.

105 For an exposition of the detail of this conference see Potter 1910 *Economic Journal* 347; and see also Delevingne "The Pre-war History of the International Labour Organisation" in Shotwell (ed) *The Origins of the International Labour Organisation Vol 1* (1934) 25. Delevingne argues that this conference although it did not initiate, it foreshadowed a new era. It indicated a new attitude of mind on the part of European governments and may be said to have started international cooperation.

work and the work of children, and women in mines and factories.[106] At this meeting it was unanimously decided that children of both sexes who had not reached a certain age should be excluded from industrial employment.[107] An age limit of 12 years was set as such age limit would allow the child to satisfy the provisions concerning primary education.[108] Resolutions did emerge on paper but they did not lead to the conclusion of a convention or to any obligations on the part of governments.[109] In 1900 the International Association for Labour Legislation (hereinafter referred to as the IALL) was founded in Paris.[110] Delevingne[111] argues that the Association was unofficial in character but governments were invited to appoint a representative each through which the Association acted internationally. The IALL was able to examine pressing social issues of the day and form a powerful framework for addressing concrete problems.[112]

In 1912 the IALL produced a report that illustrated the development of labour legislation since 1890.[113] Night work for children was prohibited for children under 15 years in Italy, Romania, Bulgaria, Russia and Japan, while in Germany, Austria-Hungary and Bosnia the age was 16 years.[114] In the United Kingdom, Norway and Serbia the age for night work was prohibited for children under 18 years. Hours of work for children had to be fewer than 10 a day in Germany and the Netherlands. In The United Kingdom, Serbia, Bulgaria and Romania the hours of work could be 10 a day or sixty a week.[115] The 1912 Report also revealed that there were beneficial effects of protective legislation.[116] In England the proportion of boys between 10 and 15 years engaged in industry fell from 37 per cent in 1851 to 22 per cent in 1901.[117] The report also revealed that the decrease was also accompanied by a considerable reduction of industrial accidents.[118] In light of such development the IALL in

[106] Cunningham and Stomquist in Weston (ed) *Child Labour and Human Rights Making Children Matter* 71; and see also Andrews "Beginnings of International Labour Standards" 1935 *American Labour Legislative Reviews* 117, who discusses this meeting in detail.

[107] Picard "The International Labour Office and the Protection of Children – Labour Legislation in France after the War" 1921 *International Labour Review* 4.

[108] Andrews 1935 *American Labour Legislative Reviews* 117.

[109] See Picard 1921 *International Labour Review* 4; Andrews 1935 *American Labour Legislative Reviews* 117; and see also Delevingne in Shotwell (ed) *The Origins of the International Labour Organisation Vol 1* 25.

[110] Dewet "Governance through Promotion and persuasion: The 1998 ILO Declaration on Fundamental Principles and Rights at Work" 2008 *German LJ* 1431. Dewet claims that this Association was considered the forerunner of the ILO. For a detailed analysis of the Association see Delevingne in Shotwell (ed) *The Origins of the International Labour Organisation Vol 1* 19–54.

[111] Delevingne in Shotwell (ed) *The Origins of the International Labour Organisation Vol 1* 19–54.

[112] Andrews summarizes the aims of the Association as (1) to serve as a bond of union to all who believe in the necessity of labour legislation; (2) to promote international agreements on questions relating to labour; and (3) to facilitate the study of labour legislation in all countries. See Andrews 1935 *American Labour Legislative* Reviews 117. Bauer claims that the Association was there to improve the conditions of employment prepare in a scientific way petitions and memorials in order to establish a basis for international treaties. Bauer "Past Achievements and Future Prospects of International Labour Legislation" 1921 *Economic Journal.* For a detailed overview of the aim of this Association also refer to Van Daele "Engineering Social Peace: Networks, Ideas and the Founding of the International Labour Organization" 2005 *International Review of Social History* 435–466.

[113] Picard 1921 International Labour Review 6.

[114] *Ibid.*

[115] *Ibid.*

[116] Picard 1921 *International Labour Review* 7.

[117] *Ibid.*

[118] Picard 1921 *International Labour Review* 9.

1913 drafted the first international convention prohibiting night work by children.[119] During the proceedings of the IALL meeting the Association proposed the prohibition of night work for children below the age of 18 years. Germany, Austria, Holland, Italy and Belgium opposed this and as a result the age of 16 years was adopted.[120] There were considerable discussions on the exceptions demanded by certain countries. Great Britain wished the Convention would not apply to mines, while Austria and Belgium raised questions concerning the glass industry.[121] Eventually, after much debate, children below the age of 16 years were prohibited from work at night. The hours of work were also regulated as 10 hours a day.[122] This Convention unfortunately failed to be enacted due to the outbreak of the First World War in 1914.[123] Delevingne[124] argues that the War broke the Association despite efforts by some of its "friends" to keep it in being.

4 CREATION OF THE INTERNATIONAL LABOUR ORGANISATION

In 1919 the ILO was established by the Treaty of Versailles.[125] The Treaty of Versailles was an agreement that was negotiated by the victorious allied nations (Britain, France and America) with the defeated central powers (Germany) to end the First World War.[126] The brutality of the First World War had far exceeded anything that had occurred before, and political leaders were open to the idea of fundamental change in politics, economy and society.[127] A commitment was made to build international institutions which could engage all countries on a common ground.[128] The driving forces for the ILO's creation were, thus from security, humanitarian, political and economic considerations.[129] The ILO brought together workers, employers and governments at international level, not in confrontation but in search for common rules,

[119] See Delevingne in Shotwell (ed) *The Origins of the International Labour Organisation Vol 1* 49.
[120] *Ibid*.
[121] Picard 1921 *International Labour Review* 9–10.
[122] Picard (1921) *International Labour Review* 10.
[123] Delevingne in Shotwell (ed) *The Origins of the International Labour Organisation Vol 1* 49. Picard 1921 *International Labour Review* 4; and see also Fyfe 2007 *Paper Prepared for the ILO Office* 9. To understand the reasons for World War 1 see Valticos (1969) *International Labour Review* 394, Beguin (1959) *International Conciliation* 407.
[124] Delevingne in Shotwell (ed) *The Origins of the International Labour Organisation Vol 1* 49. See also Andrews 1935 *American Labour Legislative Reviews* 118, who claimed that this initial organisation was impressed with difficulties, diplomatic and of ensuring effective enforcement of international standards without any official international labour office.
[125] For a detailed account of the preliminaries of the Peace Conference that later adopted the Treaty of Versailles see Picquenard "The Peace Conference" in Shotwell (ed) *The Origins of the International Labour Organisation* (1934) 83–126; and see also Part XIII of the Peace Treaty of Versailles. See also Drake "ILO – First Fifty Years" 1969 *Modern LR* 664.
[126] Drake 1969 *Modern LR* 664; for further reading see Picquenard in Shotwel (ed) *The Origins of the International Labour Organisation* 88; and see also Thomas "The International Labour Organisation: Its Origins, Development and Future" 1921 *International Labour Review* 5–18.
[127] *Ibid.*
[128] Riegelman "War-time Trade-union and Socialist Proposals" in Shotwell (ed) *The Origins of the International Labour Organisation Vol 1* (1934) 76; and see also Picquenard in Shotwell (ed) *The Origins of the International Labour Organisation* 83–126.
[129] See the ILO www.ilo.org/global/about-the-ilo/history/lang--en/index.htm; and see also Davidson "The International Labour Organisation's Latest Campaign to end Child Labour: Will it Succeed where others have Failed?" 2001 *Transnational Labour and Contemporary Problems* 204; and Doctor "Statistical Work of the International Labour Office" 1960 *The Indian Journal of Statistics* 55.

policies and behaviours from which all could benefit.[130] The newly founded organization established a system of international labour standards, which were in the form of international conventions and recommendations drawn up by representatives of governments, employers and workers from around the world covering all matters related to work.[131]

In Article 427 of the Treaty of Versailles one of the major aims of the ILO was "the abolition of child labour and the imposition of such limitations on the labour of young persons as shall permit the continuation of their education and assure their proper physical development". The main reason for the abolition of child labour was to ensure the continuation of education and assure the proper physical development of the child. The term "child labour" was, however, not defined and its parameters not set out in the Treaty of Versailles. During the first three years of the establishment of the ILO, five minimum-age conventions were adopted concerning the employment of children in industry, at sea, agriculture and for trimmers and stokers as well as night work.[132] Although the ILO had started on a high note, many governments felt that there were too many conventions, the budget was too high and the ILO was highly criticized.[133] Despite such criticisms today the ILO is the United Nations' specialized agency which seeks to promote social justice and human rights through the creation of decent working conditions.[134]

5 ILO CONVENTIONS REGULATING CHILD LABOUR AND LIGHT WORK FROM 1919–1972

Between the periods of 1919 and 1965 the ILO adopted ten conventions concerning the minimum age for admission to employment and work.[135] The Conventions can be divided into two groups. The earlier ones adopted between 1919 and 1932 which consist of (1) the Minimum Age (Industry) Convention no. 5 of 1919; (2) the Minimum Age (Sea) Convention no. 7 of 1920; (3) the Minimum Age (Agriculture) Convention no. 10 of 1921; (4) the Minimum Age (Trimmers and Stokers) Convention no. 15 of 1921; (5) the Minimum Age (Non-Industrial) Employment Convention no. 33 of 1932. In all these Conventions a minimum age for admission to employment or work of 14 years was established. Not all the conventions, however, dealt with the light work by

[130] Drake 1969 *Modern LR* 665; and see also Rodgers, Lee, Swepston, Van Daele *Book Samples Paper* (2009) 53 www.digitalcommons.ilr.cornell.edu/book/5.

[131] Doctor 1960 *Indian Journal of Statistics* 56.

[132] Dewet 2008 *German LJ* 1435.

[133] www.ilo.org/global/about-the-ilo/history/lang--en/index.htm. Other scholars have also criticized the ILO. According to Hepple *Labour Laws and Global Trade* (2005) 63, the ILO is in danger of becoming irrelevant. There are 183 Conventions of the ILO of which only 71 conventions and 73 recommendations are up to date. 54 conventions and 67 recommendations are totally out-dated The ratification of conventions is also a cause for concern. Sometimes ratification may occur without a convention having impact on national policy. Member states, especially developing, states ratify conventions but due to the lack of infrastructure and adequate administrative systems implementation is negatively affected. See also Helfer "The Future of the International Labour Organisation" 2007 *American Society of International Law Proceedings* 393, who argue that the monitoring system of the ILO is not very efficient. Member states are obliged to provide reports on the implementation of conventions, but the truth of such reports is not always easy to determine. Trade unions and employers' associations are entitled to cooperate in the elaboration of reports but in some instances the governments are unwilling to cooperate with the trade unions and employee representatives in the drafting of such reports. Another problem of ILO standards is the fact that they are implemented within the formal sector and therefore become difficult to implement in the informal sector.

[134] Dewet 2008 *German LJ* 1435.

[135] Fyfe 2007 *Paper Prepared for the ILO Office* 11.

children. Between 1932 and 1965 the ILO adopted the (1) Minimum Age (Sea) Convention (Revised) no 58 of 1936; (2) Minimum Age (Industry) Convention (Revised) no. 59 of 1937; (3) Minimum Age (Non-Industrial Employment) Convention (Revised) no. 60 of 1937; (4) Minimum Age (Fisherman) Convention no. 112 of 1959; and (5) Minimum Age (Underground Work) Convention no. 123 of 1965. The Conventions drafted between 1932 and 1965 sought to revise the Conventions that had been drafted between 1919 and 1932 and sought to raise the minimum ages from 14 years of age to 15 years of age.

It is unfortunate to note that not many scholars have critically assessed the provisions of these Conventions and many scholars have merely glossed over such Conventions and have gone on to discuss Convention no. 138 and Convention no. 182, which are the current ILO child-labour conventions.[136] Dahlen states that "although child labour has been the object for much public and scholarly debate during the last decade and earlier, the ILO Minimum Age Conventions have not been the focus of much attention".[137] Hanson and Vandaele[138] claim that the study of ILO conventions is, nonetheless, highly instructive for the present international debate on child labour, especially since the ILO was one of the first international organizations to tackle the issue in a global manner. Early ILO conventions had a flexible view on child employment. Convention no. 138, however, created less and less space for child work and created the total abolition of child work as its major aim. For the purpose of understanding the light-work provision found in Convention no. 138 it is, however, important to assess previous child-labour conventions and those that especially addressed light work, as Convention no. 138 revised and consolidated industry-specific conventions that were adopted after 1919.[139] The record of proceedings of the International Labour Conference (ILC), the Conventions themselves and the work of Dahlen will, thus, form an important component of the rest of this article. Dahlen's PhD thesis has been imperative in outlining and providing important detail about such Conventions.[140] Not all Conventions drafted between 1919 and 1965 addressed light work. I shall address the very first child-labour convention adopted in 1919 which reflects the notions and perspectives that the member states of the ILO had at that time and the rest of the article will assess only the conventions that expressly dealt with light-work provision. The reason being that these other conventions do not advance our knowledge in the study of the development for light work.

5 1 The Minimum Age of (Industry) Convention no. 5 of 1919

In 1919 the ILO conducted a survey in the form of a questionnaire in order to determine the minimum age for which children should work.[141] In countries like the United States of America, Belgium, Great Britain, Bulgaria, Denmark and

[136] See Dahlen *The Negotiable Child. The ILO Child Labour Campaign 1919–1973* (2007 *PhD Thesis University of Uppsala*) 52.

[137] See Dahlen (2007 *PhD Thesis University of Uppsala*) 52; and see also Mendelievich "Child Labour" 1979 *International Labour Review* 557–568.

[138] Hanson and Vandaele "Working Children and International Labour Law" 2003 2 *International Journal of Children's Rights* 98.

[139] Article 10(1).

[140] Dahlen (2007 *PhD Thesis University of Uppsala*).

[141] The League of Nations (1919) "Report on the Eight-hours a day or Eight Hours a Week" Prepared by the Organising Committee for the International labour Conference Washington 45.

New Zealand 14 years was the established minimum age for employment.[142] In countries like France, Germany, the Netherlands, Sweden and South Australia a minimum age of 13 years for employment was established. In Italy Japan, Mexico and Portugal a minimum age of 12 years in employment was legal. In countries like Spain 10 years was the minimum age of employment, while it was nine years in India.[143] In preparation for the first ILC with the findings of this questionnaire the Blue Report was issued and this Report provided recommendations to adopt a Convention that would provide a universal age for the admission to employment for all members of the ILO.[144] The Blue Report provided important information for the ILC and it revealed that the age of admission to industrial employment was 14 years in 45 countries.[145]

In 1919 the first ILC met in Washington. On the agenda of the meeting was the issue of raising the minimum age of employment to at least 14 years of age as this was the age that most members of the ILO had already stipulated in national legislation.[146] The majority of the member states were willing to place a minimum age of employment at 14 years and when the Convention was adopted it merely reiterated what was already established by most countries.[147] Italy raised important issues concerning the fact that education was compulsory only until the age of 12 years and those children between the ages of 12 and 14 would become unoccupied. The Conference did not, however, give special consideration to this situation and rather requested that countries with such concerns should rather co-ordinate their legislation to comply with the requirements of the proposed Convention.[148]

Some members of the ILO desired that the Convention be extended to all employment and not just industrial undertakings, but certain important questions were raised. There had been no examination of other employment scenarios and only industrial undertakings had been critically assessed; there also were no representatives of agriculture, commerce or other employments present at the conference.[149] The delegates of the Conference could not, therefore, make a decision on matters on which they did not have sufficient information. At the 14th session of the ILC the Minimum Age (Industry) Convention no. 5 (hereinafter "Convention no. 5") was officially adopted. This Convention was adopted with regard to the employment of children in industrial undertakings. This Convention was the very first attempt to adopt a universal minimum age for entrance to employment. The Convention contained 14 articles, some of which I shall discuss below.

In terms of Article 2 of this Convention children below the age of 14 years were not to be employed or work in any public or private industrial undertaking. Industrial undertakings included work in mines, quarries, industries in which materials were manufactured, construction and the transportation of

[142] League of Nations (1919) "Report on the Employment of Women and Children and the Berne Conventions of 1906" Prepared by the Organising Committee for the International Labour Conference Washington 45.

[143] The League of Nations (1919) "Report on the Eight-hours a day or Eight Hours a Week" Prepared by the Organising Committee for the International labour Conference Washington 45.

[144] The League of Nations (1919) "Report on the Eight-hours a day or Eight Hours a Week" Prepared by the Organising Committee for the International Labour Conference Washington 48.

[145] *Ibid.*

[146] The League of Nations (1919) "Report on the Eight-hours a day or Eight Hours a Week" Prepared by the Organising Committee for the International Labour Conference Washington 48.

[147] Picard 1921 *International Labour Review* 15.

[148] *Ibid*.

[149] International Labour Conference (1919) "Report of Proceedings of the First Annual Meeting" 92.

passengers.[150] The Convention thus compiled a list of employment scenarios that fell under the term "industrial undertaking". Such list could be considered as rigid as it is not clear if all employment scenarios within industrial undertakings were actually covered by this provision. An exception was created for an undertaking in which members of the same family were employed.[151] This exception was created due to the difficulties of application and supervision in such cases. Work within the family setting was therefore approved, but despite problems of difficulties with application and supervision an assumption was created that work in family situations was not a cause of concern, yet children could actually have been abused in such family undertakings.

The work of children in technical schools was permitted provided that such work was approved and supervised by public authority.[152] Every employer in an industrial undertaking was required to keep a register of all persons under the age of 16 years employed by him and the dates of their births.[153] Such information may have been useful to determine the number of children actually employed in an industrial undertaking and could also have been useful when labour inspectors or other compliance officers came to monitor compliance with the stipulations of the Convention. Such details could, however, have been fraudulently misrepresented if the employer had the intention of employing children below the minimum age. Despite possible misrepresentation by employers the Convention is, however, commendable for its attempts to hold employers accountable for the children they employed who were below the age of 16 years.

From a perusal of this convention no mention of the word child labour is actually used in this Convention, and reference is made to the terms "employment and work." Smolin[154] correctly argues that the lack of the terms "child labour" or any reference to the abolition of child labour reflects that the total abolition of child labour was not the main purpose of the ILO. The ILO's intention was merely to divide employment into different areas and types, and limit the ages in which children could be employed in each area.[155] The Convention does not use modern terms such as "harmful work", "work that is prejudicial" or "light work". It merely stipulates that children below the ages of 14 years should not be employed in any public or private undertaking. Children of all ages could, therefore, be employed in non-industrial work and they could also work on family undertakings which had the potential to abuse children. Although the Convention seems inadequate to protect children in non-industrial activities there seems to have been a keen appreciation that children below 14 years should not work in industry.

---

[150] Article 2(b) Industrial undertaking also included industries in which articles were manufactured, altered, cleaned, repaired, ornamented, finished adapted for sale, broken up or demolished, or in which materials, including shipbuilding and the generation transformation and transmission of electricity and motive power of any kind. 2(c) industrial undertaking also included construction, reconstruction, maintenance, repair alteration, demolition of any building, railway and harbour, 2(d) industrial undertaking also included transport of passengers or goods by road or rail or inland waterway. The Convention attempted to cover a wide scope of industrial undertakings in which children could participate.

[151] Article 2.

[152] Article 3.

[153] Article 4.

[154] Smolin "Conflict and Ideology in the International Campaign against Child Labour" 1999 *Hofstra Labour and Employment LJ* 409.

[155] *Ibid*.

5 2 Minimum Age (Agriculture) Convention no. 10 1921

In the early 1920s agricultural work became an area of concern for the ILO. After the First World War with the expansion of industry, came an influx of agricultural workers to towns, workers seeking ways to make their lives better.[156] Dahlen[157] alleges that one of the reasons for adopting Conventions and Recommendations in respect of agricultural work, was the belief that granting the same protection and benefits to agricultural workers as to workers in industry, would prevent agricultural workers from leaving agriculture and moving into the factory towns.[158] If working conditions were made equal to those granted in industry through the Conventions of 1919 the problematic migration of the rural population would diminish.[159]

In 1920 a questionnaire was sent to the members of the ILO in which the ILC asked questions about whether a minimum age should be extended to agriculture, or whether work should be done before or after school.[160] In 1921 the ILC met in Geneva with 39 delegates present at the conference.[161] During the meeting the Belgium workers' representative argued that with regard to children in agriculture, children should be employed only in light forms of work. They argued that physical development was not hindered in this employment as children were not doing tasks that were too great for them. They, therefore, proposed for the prohibition of hard forms of labour.[162] Belgium did not, however, provide a list of what they considered as light forms of employment. The Swiss government delegate argued that matters of agriculture should be dealt with in individual countries due to the different conditions prevailing in different countries. The workers' delegate of Switzerland on the other hand argued that agricultural workers had a right to legislation which would improve the conditions of life. If regulations were adopted for the agricultural labourer in the same way as in industrial labour Switzerland would not suffer.[163] The Canadian government representative argued that Canada was a great agricultural country, having enormous stretches of agricultural land. The delegate argued that it was highly desirable that no restrictions be placed in agriculture which would revert to poor development of this great land. The Canadian government delegate argued that agriculture was a seasonal industry and that the regulation of agricultural matters would decrease the world production materially.[164] The Greek government representative argued that rural Greece suffered from a lack of labour due to the fact that people were moving from the country to the towns. They argued that it was necessary to discuss the issue of labour and to take measures of improving the conditions. Albania argued that workers in the land had a direct share, namely a third in the profits of agricultural undertakings. Adoption of special protective measures would then be of no value since peasants regulated their own work.[165]

Eventually a vote was conducted and a majority of countries voted in favour of an extension to agriculture, while 17 countries voted against regulating

[156] Dahlen (2007 *PhD Thesis University of Uppsala*) 163.
[157] Dahlen (2007 *PhD Thesis University of Uppsala*) 161.
[158] International Labour Office (1921) Agricultural Questions 5.
[159] Dahlen (2007 *PhD Thesis University of Uppsala*) 161.
[160] International Labour Conference (1921) Supplementary Report 10.
[161] Dahlen (2007 *PhD Thesis University of Uppsala*) 162.
[162] International Labour Conference (1921) Record of Proceedings 267.
[163] *Ibid.*
[164] International Labour Conference (1921) Record of Proceedings 269.
[165] International Labour Conference (1921) Supplementary Report 11.

agricultural matters. There was, however, a general agreement that children of the great agricultural population had to have the same educational and cultural opportunities as the children in towns. The International Labour Office then adopted a convention in which

> "children under the age of 14 years may not be employed or work in any public or private agricultural undertaking or in any branch thereof save out-side the hours fixed for school attendance. If they are employed outside the hours of school attendance the employment was not be such as to prejudice their attendance at school."[166]

From an assessment of this provision it can be deduced that children of all ages could undertake work outside the hours fixed for school attendance.[167] Work was not prohibited completely; it was not supposed to interfere with school attendance. It is, therefore, not clear if a child of maybe four years of age who had not started compulsory schooling would have been protected by the terms of such Convention. The general sense of the Conference was that the matter of main importance was to prevent any prejudice to the education of children owing to any duties that they might be called upon to do on the farm.[168] According to the arguments of the Secretary General of the International Labour Office at the ILC meeting it was believed that there was no means of controlling the work of children in the country except by the control of school attendance.[169] Such control could, however, only take place assuming that there was a proper system of schools in a country. The Convention did not also mention how many hours a child could work until such work was considered as prejudicial to school attendance. The article also only makes reference to school attendance but does not adequately protect children during the period when they are not attending compulsory school such as during the school holidays.

Article 2 read as follows:

> "For the purposes of practical vocational instruction the periods and the hours of school attendance may be so arranged as to permit the employment of children on light agricultural work and in particular on light work connected with the harvest, provided that such employment shall not reduce the total annual period of school attendance to less than eight months."

Once again the attendance of school was the main priority but the International Labour Office came to the realization that for the purpose of practical learning children should be given an opportunity to participate in some form of work.[170] The Convention does not, however, adequately describe what work can fall under the term "light agricultural work" or "the light work" connected with a harvest. No minimum age was also stated for such light work. The Belgium workers' delegate argued that to employ children in light work prevented harm to their physical development.[171] They also sought to prevent the situation where children arrived at school already tiered and sleepy and in no fit state to undergo instruction.[172] The Secretary General of the International

[166] Article 1.
[167] Dahlen (2007 *PhD Thesis University of Uppsala*) 169.
[168] International Labour Office (1926) International Labour Organisation and the Protection of Children 5.
[169] International Labour Conference (1921) Record of Proceedings 282.
[170] Cullen in Weston (ed) *Child labour and Human Rights, Making Children Matter* 90.
[171] International Labour Conference (1921) Record of Proceedings 281.
[172] *Ibid.*

Labour Office argued that it was not the intention of the ILO to prohibit a child from being employed after school hours on such work, for instance as taking a cow to pasture.[173] No standard test was, however, established to show how much work or how many hours of work will become prejudicial to education. The International Labour Office believed that there was no means of controlling the work of children in the country except by the control of school attendance, that is to say, that was the only way in which the country districts could have real control over the employment of children.[174] The Secretary General of the ILC made reference to agriculture in Switzer-land. The delegate argued that in each commune and district, authorities had the power to decide the dates of when school vacations would take place. The delegate argued that at haymaking time, the harvest season, children could be given holidays so that they could undertake work with their parents in the fields. The delegate argued that the intention was to create flexibility that adapted to the conditions in the prevailing country.[175] In order to control school attendance the time period of eight months was proposed as sufficient to prevent harm to schooling and also provide flexibility for school attendance.[176]

Although there was indeed the desire to look out for the best interests of the child there was no clear indication of the forms of work that children could and couldn't do. They failed to adequately determine the form of work they were trying to regulate. The system relied heavily on school attendance, yet such school monitoring could be heavily affected by the availability of resources, teachers and the like. The importance was placed on school attendance, yet the actual harm or benefit was not adequately investigated The Agricultural Convention does stand out as it referred to work performed by children of all ages outside school hours and during school hours. It is unclear as to why a minimum age was even set at 14 years when the Convention simply meant to protect the education of children. Restrictions on agricultural work were much less stringent than those in industrial and sea employment and essentially lacked a minimum age for work performed outside of school hours. This convention is, however, important for the historical development of light work. Light work in this case was intended to be for practical vocational training but was not meant to affect the school attendance of children. The Convention does not, however, enlighten us as to what kind of activities would have fallen under the light-work provisions. There is also no indication of an age group for participation in such light work by children.

5 3 Minimum Age (Non Industrial Employment) Convention no. 33 of 1932

In 1930 a survey conducted by the Ministry of Labour in Britain revealed a lacuna in child protection. There had been regulation of the work of children in agriculture, the sea, and industry, but a big gap in other forms of work.[177] The survey revealed that there were many forms of employment, for instance a motor-van boy who began work at 6am and sometimes continued work till midnight. A girl of 14 years was also reported of had been working about 67

[173] International Labour Conference (1921) Record of Proceedings 282.
[174] *Ibid.*
[175] International Labour Conference (1921) Record of Proceedings 282–283.
[176] *Ibid.*
[177] International Labour Office (1932) International Labour Organisation and the Protection of Children and Young person's 10.

hours in a week in a confectionary store.[178] In New Zealand reports revealed that children were out as early as 3am carrying big milk cans for delivery up as many as 200 flights of stairs.[179] Teachers in New Zealand complained that children were unproductive, while physical instructors complained that children were becoming malformed, round-shouldered and flat-chested through the carrying of cans.[180] In Romania great numbers of children were employed in vegetable-selling for low wages.[181] The International Labour Office realized that there was a serious gap in international legislation that regulated non-industrial work, and such gap needed to be filled urgently.[182]

In 1931 the International Labour Office conducted a survey of national legislation with the intention of adopting a convention that would apply to non-industrial employment.[183] Within the survey questions with regard to light work were posed. In response to these questions the Government of Austria stated that light employment should be conditioned at the age of 10 years for admission to private domestic service, but 12 years for other occupations and employment.[184] The Austrian Government proposed that the issue of light work be defined in general terms in a Convention and should rather be defined in the national legislations of the different countries. Light work, they proposed, should be work that was not injurious to the health, did not impede their physical and mental development and was not an obstacle to completion of their school attendance.[185] Belgium, on the other hand, argued that they were in favour of prohibiting any employment, even light employment, under the general age and outside school attendance.[186] Belgium did, however, acknowledge that there could be special circumstances such as climate and other factors which could determine whether children should participate in light work. They therefore suggested that light work be considered by the competent authority in each country.[187] Brazil argued that light work should be possible for children of 12 years of age.[188] They argued that child development and employment varied considerably according to climate and race. Therefore it was preferable to leave it to the competent authorities of each country to decide on what forms light work. Brazil proposed that on school days a maximum of 3 hours of light work should be given to a child while during holidays a maximum of 6 hours a day.[189] Bulgaria argued that conditions of light work should be considered by individual countries, having regard to their local conditions, the intellectual level of the population and the aptitude of the public services for exercising their functions.[190] They argued that light work should be subject to

[178] *Ibid*.
[179] *Ibid*.
[180] International Labour Office (1932) International Labour Organisation and the Protection of Children and Young Person's 10.
[181] *Ibid*.
[182] International Labour Office (1932) International Labour Organisation and the Protection of Children and Young Person's 10; and see also Dahlen (2007 *PhD Thesis University of Uppsala*) 187.
[183] Dahlen (2007 *PhD Thesis University of Uppsala*) 190.
[184] International Labour Conference (1932) The Age of Children to employment in Non-Industrial Occupations 58.
[185] *Ibid.*
[186] *Ibid.*
[187] *Ibid.*
[188] International Labour Conference (1932) The Age of Children to employment in Non-Industrial Occupations 59.
[189] *Ibid.*
[190] International Labour Conference (1932) The Age of Children to employment in Non-Industrial Occupations 61.

the consent of parents, teachers and the local medical authority. Germany stated that a lower admission age should be fixed, provided that no endangering of the health or morals of a child is to be feared.[191] Germany argued that it would be desirable that what should be regarded as light employment should not be detailed in the draft Conventions, but that the provision in this regard should be left to the member states.[192] Great Britain suggested that light work could include work by children over 12 years of age, involving work such as delivery of milk, newspapers, goods and parcels; agricultural work such as feeding stock and fruit picking. With regard to the number of hours Great Britain claimed that it was important for such work to be regulated by the competent authority in each country as conditions in the different countries are so different that the exact nature should rather be considered at the national level.[193] Countries like Chile, Cuba and Finland proposed that light work be considered by the competent authority in their country. They all agreed that the hours should be limited on days when children attended school.[194] Canada argued that light work should not be under-taken by children who are under the minimum age for employment but should rather be for children above the minimum age.[195] France argued similarly and stated that no exception to the general age of admission to the occupations covered should be allowed for lighter employment outside school hours.

In light of the governments' responses the International Labour Office decided that the age of 12 years could secure a two-thirds majority and that many countries would be able to reach an agreement on that age.[196] The International Labour Office also proposed to give a general definition of light work in the convention in order that the competent authorities in the different countries could determine the specific forms of light work. The International Labour Office then drafted a Convention that was to be presented and discussed at the ILC. The International Labour Office recommended that in order that children may derive full benefit from their education and that their physical, intellectual and moral development might be safeguarded. It was desirable that so long as they were required to attend school their employment should be restructured to as great an extent as possible.[197] For this purpose the International Labour Office recommended each state member to fix even light work at an absolute minimum age limit which should be as near as possible to the school-leaving age.[198] The International Labour Office did not consider whether children of even younger ages could benefit from light work. It was argued during the prepatory meeting of the ILC that the desire of the International Labour Office was that children arrive in school in a condition to benefit from school instruction. In other words, children were not to go to school exhausted that, although they were present, they sometimes during instruction could benefit from such instruction. This draft Convention then developed light

[191] International Labour Conference (1932) The Age of Children to employment in Non-Industrial Occupations 68.
[192] *Ibid*.
[193] International Labour Conference (1932) The Age of Children to employment in Non-Industrial Occupations 69.
[194] International Labour Conference (1932) The Age of Children to employment in Non-Industrial Occupations 64–68.
[195] International Labour Conference (1932) The Age of Children to employment in Non-Industrial Occupations 62.
[196] *Ibid*.
[197] See the text of the draft recommendation concerning the minimum age for admission to non-industrial employment prepared by the international labour office.
[198] *Ibid*.

work by setting several conditions designed to protect the children thus engaged.[199]

During the ILC session held in 1932 the provisions of the draft Minimum Age (Non-Industrial) Convention no. 33 were discussed. At this meeting the Netherlands Government delegate argued that the draft article on light work seemed too detailed and would hinder the ratification of the Convention.[200] He argued that they needed provisions that would be clear and definite, and on the other hand take into account existing legislation. Poland brought up the important issue of enforcement. The Government delegate of Poland argued that the application of laws and regulations affecting children required the services of a specifically trained staff.[201] Non-industrial occupations were carried on under a variety of conditions and they were particularly open to abuse. Police officers were also not always in a position to carry out inspections.[202] The Government adviser of Spain brought to light that the issue of light work could be extremely harmful because it was not usually subject to supervision. The Government delegate of Great Britain argued that there was a great difficulty in defining light work.[203] He argued that work that was usually and superficially referred to as light in character was not by all means so light in practice, for example, the scrubbing of floors as light work. Even the delivering of newspapers where children had to walk through various streets and even climb stairs to deliver newspapers could not be defined as hard work. He argued that there was great difficulty in defining light work and argued that many governments would not ratify the Convention with the definition of light work.[204] He also argued that inspection would be difficult. Such enforcement would require a large cost for the administration and inspection which many governments would not be willing to pay.[205] Great Britain actually advocated that the issue of light work be removed. Great Britain acknowledged that they were breaking new ground in this Convention and it was difficult to regulate owing to the diverse character of the numerous occupations in which children were engaged.[206] Great Britain also argued that the drafting of a list of occupations that would qualify as light work would be extremely difficult. "This would be extremely laborious because these miscellaneous occupations were so varied and it would be impossible to make sure that everything had been included."[207] The delegate from Great Britain made valid claims that can be applied to the light-work provision found in Convention no. 138. In defence of light work the Government delegate of Yugoslavia argued that children of 12 years who were unable to attend school and who would in most cases be unable to obtain work, would often be left at home with no supervision.[208] Yugoslavia argued that the moral and physical danger that such children would have been exposed to by being idle and without parental control would be higher than the danger involved in being employed in light work.[209] The International Labour Office then simply referred to the views and thoughts of the majority of the governments and then later

[199] Cullen in Weston (ed) *Child labour and Human Rights, Making Children Matter* 90.
[200] International Labour Conference (1932) Record of Proceedings 374.
[201] *Ibid*.
[202] *Ibid.*
[203] International Labour Conference (1932) Record of Proceedings 388.
[204] *Ibid.*
[205] *Ibid.*
[206] *Ibid.*
[207] *Ibid.*
[208] International Labour Conference (1932) Record of Proceedings (1932) 385.
[209] *Ibid.*

adopted an instrument that would probably have been approved by many governments.[210]

In 1932 the ILO adopted the Minimum Age (Non-Industrial) Convention which was meant to apply to children not covered by the Conventions fixing the minimum age for labour in regard to sea, agriculture and industry.[211] Smolin[212] applauded this Convention and claimed that it was an important step when it defined "non-industrial" employment as all employment not covered by the prior three area conventions (industry, agriculture and sea employment) and thus for the first time created a comprehensive regulatory regime for minimum age. In terms of this Convention, children under 14 years of age who were still required by national laws or regulations to attend primary school were not to be employed except as provided by the terms of the Convention.[213] The Convention did not, however, apply to (a) employment in sea fishing, (b) work done in technical and professional schools.[214] According to this Convention the competent authority in each country could exempt the following from the application of the Convention (a) employment in family establishments in which only family members were employed and (b) domestic work in the family performed by members of the family.[215] For the first time the Convention limited the exception where such employment was harmful to the health or normal development of children, dangerous to their lives, or prejudiced their attendance or performance at school. Smolin[216] argued that the domestic work exception acknowledged the breadth of the Convention for it implied that normal domestic tasks undertaken within the family, such as kitchen work, cleaning and child care would be subject to the Convention.

The final draft of the Convention went further than Convention no. 10 in attempting to regulate the light work of children.

Article 3 read as follows:

"(1) Children over 12 years of age may outside the hours fixed for school attendance be employed on light work:
  (a) which is not harmful to their health or normal development
  (b) which is not such as to prejudice their school attendance or their capacity to benefit from the instruction there given
  (c) the duration of which does not exceed two hours per day on either school days, or holidays, the total number of hours spent at school and on light work in no case to exceed seven per day

(2) light work shall be prohibited –
  (a) On Sundays and legal public holidays
  (b) During the night that is to say during the period of at least 12 consecutive hours comprising the interval between 8 p.m. and 8 a.m.

(3) After the principal organisation of employers and workers concerned have been consulted national laws and regulations shall –
  (a) Specify what forms of employment may be considered to be light work for the purposes of this article
  (b) Prescribe the preliminary conditions to be complied with as safeguards before children may be employed in light work.

[210] International Labour Conference (1932) The Age of Children to Employment in Non-Industrial Occupations 215.
[211] See Article 1.
[212] Smolin 1999 *Hofstra Labour and Employment LJ* 411.
[213] Article 2.
[214] Article 1(2).
[215] Article 1(3) a-b
[216] Smolin 1999 *Hofstra Labour and Employment LJ* 411.

(4) Subject to provisions of subparagraph (a) of paragraph (1) above
   (a) National laws or regulations may determine work to be allowed and the number of hours per day to be worked during the holiday time of children referred to in Article 2 who are over 14 years of age.
   (b) in countries where no provision exists relating to compulsory school attendance the time spent on light work shall not exceed four and half hours per day."

The age for light work was stipulated as 12 years because it was closer to the age of completion of compulsory education.[217] For a child to undertake light work, it was critical that such work be done outside the hours meant for school and only for children above the age of 12 years. Such a provision creates the impression that within the ILO member states of that time all children actually attended school, and school structures were available. Children below the age of 12 years could not, therefore, participate in such work even if such work was outside the time fixed for school. The light-work provision was not supposed to harm the health, moral development nor prejudice attendance at school nor the capacity to benefit from school instruction. The Convention did not, however, provide a set standard to determine when work became harmful to health or moral development. The Convention prescribed the number of hours a child should undertake light work on a school day as two hours. While it is commendable that the ILO came up with a prescribed number of hours to protect children undertaking light work, in some cases 2 hours might not have been sufficient to carry out the relevant tasks allocated to the child. The International Labour Office came to that number of hours, not from an examination of a child's capabilities nor capacity to undertake work for a specific duration of time, but came up with a number of hours that had been merely prescribed by the member states. According to this Article light work was prohibited on Sundays and public holidays. This clause in my opinion was too rigid. On such days children were actually not in school and it could have been better for children to work on such days so that they would not inhibit school attendance or participation. On the other hand, for the purposes of giving children a period of rest, this clause could have been praiseworthy. The Convention did not provide a list of activities that could fall under light work; such responsibility was apportioned to the government, workers and employers' representatives in the different member states. The fact that the Convention did not prescribe the types of work provided the member states with flexibility to consider factors that would suite their particular situation. The provision, therefore, relied heavily on the positive action of such representatives, who could possibly not have simply consulted one another, thereby undermining the terms of the Convention. For countries which did not have a provision relating to compulsory school attendance the time spent on light work was not to exceed four and half hours per day. Such flexibility is commendable as the ILO realized that with regard to education, member states were at different levels of advancement. In terms of article 7 of the Convention to ensure the due enforcement of the provisions of the Convention national laws or regulations were to provide for an adequate system of public inspection and supervision. Light work was different from work in industries and was not so open to regular inspection. It is not clear how effective inspection and supervision could take place in such situations. National laws were also supposed to have provided for penalties for breaches of the law or regulations. Such penalties could have served as a deterrent to potential offenders but due

[217] International Labour Conference (1932) The Age of Children to Employment in Non-Industrial Occupations 215.

to the hidden nature of such work inspection could have been irrelevant because there was no workplace to actually inspect. In terms of Article 8 of the Convention in the annual reports to be submitted in terms of Article 22 of the Constitution a list of the forms of employment which specified light work was to be given by member states. Member states had to determine all the forms of light work and in some cases could leave out some work scenarios, leaving children unprotected by legislation.

Cullen[218] argues that with the adoption of ILO Convention 33 in 1932, ILO standards on child labour were more or less established and remained substantially unchanged until ILO Convention 182 of 1999. Cullen argues that the textual inflexibility of the minimum age convention appeared to be in fact a principal reason why, even after having been ratified they have marked but a large number of compliance problems.[219]

5 4 Minimum Age (Non-Industrial) Recommendation no. 41 of 1932

The Minimum Age (Non-Industrial Employment) Recommendation no. 41 (hereinafter "Recommendation no. 41") stated that in order that children might fully benefit from education, and that their physical, intellectual and moral development might be safeguarded light work was to be restricted to as great an extent as possible.[220] The Recommendation provided a guideline that determined the categories of employment that could define light work, which included running errands, distribution of newspapers, odd jobs in connection with the practice of sport or the playing of games, and picking and selling flowers or fruits.[221] The Recommendation is commendable as it gave clear guidance as to some of the forms of light work that children could undertake. It also prioritized schooling, but such schooling was always dependent on available school structures, teachers and resources which might not always have been available in the member states. The Recommendation also advocated that for the admission of children to employment in light work the competent authorities should require the consent of parents or guardians, a medical certificate of physical fitness for the employment contemplated, and, where necessary, previous consultation with the school authorities.[222] The Recommendation was rigid and inflexible in that it required parents and guardians to provide consent, a medical certificate of physical fitness and consultation with the school authorities. Such processes could be time-consuming and potential employers could have still employed children despite such requirements. Some of the forms of work were also hidden and inspection by labour officers could have been difficult, thereby circumventing any protection the children could have had. The Recommendation did attempt to at least make sure that children who were involved in light work were physically capable of undertaking such work.

The limitations on the hours of work per day of children employed in light work outside school hours were to be adapted to the school timetable on the one hand, and to the age of the child on the other.[223] Where instruction was

[218] Cullen in Weston (ed) *Child labour and Human Rights, Making Children Matter* 90.
[219] *Ibid.*
[220] Minimum Age (Non-Industrial) Recommendation no. 41 of 1932 part I.
[221] *Ibid*.
[222] *Ibid*.
[223] *Ibid.*

given both in the morning and in the afternoon, the child was supposed to be ensured a sufficient rest before morning school, in the interval between morning and afternoon school, and immediately after the latter. The recommendation also distinguished dangerous employment. In this case the competent authorities were to consult with the principal organizations and workers concerned to determine the employment which was to be considered as dangerous to the life, health or morals of the person employed.[224] The Recommendation stated that among kinds of employment which were to be considered as dangerous were work in "public entertainments such as acrobatic performances, in establishments for the cure of the sick, such employment involving the age of contagion or infection and in establishments for the sale of alcoholic liquor such as serving customers."[225] The recommendation identified that different ages for particular employment should be fixed in relation to their specific dangers, and in some cases the age required for girls might be higher than the age of boys.[226]

5 5 Revision of Conventions

In 1937 the ILC discussed the revision of the minimum-age conventions in industry and of those in non-industrial occupations.[227] The ILC sought to revise the minimum age for admission to employment or work from 14 years to the age of 15 years. The reporter of the Committee on Minimum Age stated that the reasons for the revision were that 18 years had passed since the adoption of the 1919 Convention and there had been "great technological changes in which children should share."[228] There had also developed a keen appreciation of the importance of education for all children, and that progress towards equality of opportunity for children would be accomplished by the raising the minimum school age and also that of the minimum age of employment.[229] Most governments at that time had already adopted a standard higher than what had been proposed in Convention no. 5.[230] The Committee also claimed that certain incidental benefits could have been expected from raising the minimum age such as the removal of low-paid competitors with adult labour and taking-up of the slack in times of unemployment.[231] In opposition to the raise the Brazil Government delegate argued that children in the tropics developed physically and mentally more quickly than children in temperate and cold regions.[232] Brazil was therefore not willing to raise the minimum age to 15 years.[233] The Government delegate of Sweden argued that in some of the sparsely populated industrial districts in Sweden it was dangerous to leave the children without any kind of occupation and they therefore agreed that there should be no gap between the school-leaving age and the age of admission to work.[234] In Sweden at that time, there were proposed reforms in education and the age of

[224] Minimum Age (Non-Industrial) Recommendation 41 of 1932 part II(6).
[225] Minimum Age (Non-Industrial) Recommendation 41 of 1932 part II.
[226] *Ibid.*
[227] International Labour Conference (1937) Partial Revision of the Minimum Age (Industry) Convention of 1932 10.
[228] International Labour Office (1937) Record of Proceedings 323.
[229] *Ibid.*
[230] *Ibid.*
[231] *Ibid.*
[232] International Labour Conference (1937) Partial Revision of the Minimum Age (Industry) Convention of 1932 10.
[233] *Ibid.*
[234] International Labour Office (1937) Record of Proceedings 323.

leaving compulsory school had been raised to 15 years in bigger cities but only 14 years in the greater part of the country. There was also a growing opinion in Sweden at that time to favour a higher school-leaving age. On the other hand the Government delegate of Sweden supported the raising of the minimum age due to the fact that there was less demand at that time for the employment of children, and the raising of the minimum age for admission would not meet with any resistance on the part of employers, provided that the youth were trained.[235]

In support of the raising of the minimum ages the Russian workers' delegate brought to light the October Revolution before which Russian capitalists made extensive use of child labour.[236] Children were forced to perform the same work as adults, but after the Revolution children were systematically transferred from factories to schools and many advantages were reported.[237] The health of young persons is said to have greatly improved and a decrease in diseases such as tuberculosis and other social diseases decreased remarkably.[238] Russia, therefore, advocated that there were more benefits in taking younger children out of employment. The Government adviser of Spain objected to the raising of the minimum-age convention due to the difficulty of raising the school-leaving age to 15 years.[239] They questioned why children should have to be devoted during their childhood to work which perhaps they would not like in the future. They argued that "why, at the very moment when they have to make their choice for life should it be settled for them?"[240] Spain argued that many parents would have preferred to be free to put their children to work at an age they think best. Spain made valid arguments pertaining to the liberty that a child requires for his physical development and mental as well as proper development.[241] India's employer representative adamently stated that "there is a kind of national inferiority complex in the economic field owing to the dominance of the stronger powers and we hope that even if there is a feeling, that we do not always conform to higher standards of other countries."[242] The workers delegate of Great Britain argued that the raising of the minimum age to correspond with the school-leaving age would indeed involve great expenditure and much reorganization.[243] They argued that such changes would, however, result in healthier, brighter children who were able to face the impacts of their industrial and social systems.[244] Moreover, employment would be given to teachers, builders and to those responsible for furnishing the schools.[245] They argued that states should rather spend their money on such activities rather than on battleships and other destructive forces.[246] The Chile Government delegate argued that the minimum age should be raised as this would enable workers to receive a higher level of education, and the fact that children received an education at a more advanced age would enable them to

[235] *Ibid.*
[236] International Labour Office (1937) Record of Proceedings 332.
[237] International Labour Office (1937) Record of Proceedings 323.
[238] International Labour Conference (1937) Partial Revision of the Minimum Age (Industry) Convention of 1932; and see also International Labour Office (1937) Record of Proceedings 323.
[239] International Labour Office (1937) Record of Proceedings 336.
[240] *Ibid.*
[241] *Ibid.*
[242] International Labour Office (1937) Record of Proceedings 338.
[243] International Labour Office (1937) Record of Proceedings 340.
[244] *Ibid.*
[245] *Ibid.*
[246] *Ibid.*

assimilate that education better.[247] Moreover, the places which they would vacate in industry would be filled by better trained and educated workers, and unemployment diminished.[248] The Cuban Government delegate argued that they would ratify any convention that would improve the working conditions of children and prevent their exploitation in the interests of cheap labour.[249]

With regard to changing the specific ages for light work only two countries reported back on this issue. The United States stated that the minimum age for light work be raised to 14 years.[250] The Danish Government, however, desired that the 12-years stipulation be not changed.[251] The International Labour Office thereby felt that the raising of the minimum age by one year was logical as the minimum age for employment had been raised from the age of 14 to 15 years.[252]

5 6 Minimum Age (Industry) Convention (Revised) no. 59 of 1937

In 1937 the Minimum Age (Industry) Convention Revised no. 59 was adopted (hereinafter "Convention no. 59"). In terms of Convention no. 59 the minimum age for employment in any public or private industrial undertaking was raised to 15 years.[253] Industrial undertaking was still defined the same as in Convention no. 5 of 1919. According to the Convention no. 59 children were not to be employed in work that by the nature or circumstances in which it was carried out was dangerous to the life, health or morals of young persons.[254] In respect of types of employment which by nature or their circumstances under which they were carried out were dangerous to the health, life or morals of a person, national laws were required to prescribe higher than 15 years for admission.[255] In this Convention the ILO expressly made reference to the terms "dangerous to the health" or "morals" of a person. Work by children in family undertakings where only members of the employer's family were employed, was also excluded from the application of minimum ages.[256] Work done by children in technical schools was also excluded, provided that such work was approved and supervised by public authority.[257]

5 7 Minimum Age (Non-Industrial) Convention (Revised) no. 60 of 1937

In 1937 Convention no. 33 of 1932 was also revised by the Minimum Age (Non-Industrial) Employment Convention no. 60 of 1937 (hereinafter "Convention no. 60). With regard to the term "industrial undertaking" the same wording was used, and it was not changed from the terms of Convention no.

[247] International Labour Office (1937) Record of Proceedings 344.
[248] *Ibid.*
[249] International Labour Office (1937) Record of Proceedings 23rd Session 345.
[250] International Labour Conference (1937) Partial Revision of the Minimum Age (Non-Industrial Employment) Convention no. 33 of 1932 21.
[251] International Labour Conference (1937) Partial Revision of the Minimum Age (Non-Industrial Employment) Convention no. 33 of 1932 22.
[252] *Ibid.*
[253] Article 2.
[254] *Ibid.*
[255] Article 5.
[256] Article 2(2).
[257] Article 3.

33. In terms of Convention no. 60 children over the age of 13 years of age, excluding the hours fixed for school attendance, could be employed on light work which (a) was not harmful to their health or normal development, and (b) was not such as to prejudice their attendance at school or capacity to benefit from the instruction there given.[258] A child under 14 years was not to be required to be employed in light work for more than two hours per day, whether it be during the holidays or on a school day.[259] In terms of this Convention national laws or regulations were to prescribe the number of hours per day during which children over 14 years of age could be employed on light work. Light work was still to be prohibited (a) on Sundays and legal public holidays; and (b) during the night.[260] It was the duty of the government to consult with the principal organizations of employers and workers concerned to adopt national laws and regulations which specified what forms of employment might be considered to be light work.[261] Consultation also needed to be conducted with regard to the preliminary conditions to be complied with as safeguards before children might be employed on light work. Generally it was only the age of light work that was raised, but the other conditions for light work remained the same as in Convention 33. The light-work provision created the impression that children below the age of 12 years ought to be prohibited from light work. It also implied that such children would be involved in schooling. Flexibility was, however, created, in that national laws could determine the number of hours that light work could be done. The light-work provision was too restrictive in that it prohibited light work on public holidays and on Sundays. On such days children would in most cases have no school activities and it would have been reasonable to permit light work on such days as children during those times might have been idle.

6 CONVENTION NO. 138

In 1973 Convention no. 138 was established by the ILO. This Convention revised industry-specific conventions[262] that had been adopted after 1919.[263] Previous minimum age conventions had applied to certain occupational groups only or to certain sectors of the economy, such as agriculture, industry, and underground work, but this particular Convention was intended to have application in all spheres of economic activity.[264] Myers[265] alleges that In 1973 Convention no. 138 was adopted not only to cater for the needs of children but

[258] Article 3 (1).
[259] Article 4(1).
[260] Article 4.
[261] Article 6.
[262] The Minimum Age (Industry) Convention of 1919, Minimum Age (Sea) Convention of 1920, Minimum Age (Agriculture) Convention of 1921, Minimum Age (Trimmers and Stokers) Convention of 1921, Minimum Age (Non-Industrial Employment) Convention of 1932, Minimum Age (Sea) Convention (Revised) of 1936, Minimum Age (Industry) Convention (Revised) of 1937, Minimum Age (Non-Industrial Employment) Convention (Revised) of 1937, Minimum Age (Fisherman) Convention 1959, Minimum Age (Underground Work) Convention of 1965.
[263] Article 10(1).
[264] Creighton 1997 *Comparative Labour LJ* 371. According to Creighton, the global survey conducted by the ILO in preparation for Convention 138 provided ample evidence of the failure of previous minimum-age conventions regulating child labour. It reflected that the bulk of child labour was performed in contexts of small-scale informal sectors difficult to control by laws and labour inspection. The approach of Convention 138, however, remained unaffected and the "the minimum age campaign suffered from a permanent hangover". For a detailed discussion about the minimum age campaign also consult generally Bourdillon, White, Myers 2009 *International Journal of Sociology and Social Policies*.
[265] Myers 2001 *American Academy of Political and Social Science* 46.

also as a response to the fear that the participation of children in work undermined adult jobs and incomes.

Article 7 of this Convention states:

> "Member states through their national laws can permit children between the ages of 13 and 15 years of age to undertake light work. Such work should not be likely to be harmful to their health or development and should not prejudice their attendance at school, their participation in vocational orientation or training programmes."

There is a lack of definition or clarity relative to what work actually qualifies as light work. Light work is simply referred to as work that should not likely be harmful to the health or development of children and also not prejudice their attendance at school. The lack of a definition could afford member states some form of flexibility in dealing with circumstances that are unique to themselves. Such definition may, thus, be influenced by environmental, cultural, social, political, and economy circumstances.[266] The absence of a definition may, however, also cause confusion and a general misunder-standing of the concept. This article does not provide any operational guidance for assessing what work qualifies as light work.[267] Despite the confusion and lack of detail of this term, the ILO has, on many occasions, requested member states to adopt legislation and measures to establish and regulate the light work of children.[268] It can also be implied that this Convention did not permit the light work of children below the age of 13 years even if such employment was not hazardous to the health, morals, or development and did not prejudice attendance at school. The fact that children below the age of 13 years could not work, even if such work was not detrimental, seems somewhat unfair and restricting. In many traditional African societies, children at a young age are taught skills through work.[269] In some African cultures, children are considered to be adults upon reaching puberty, initiation, circumcision, and marriage.[270] This provision is, thus, incompatible with many cultures, and it places an unnecessarily strict prohibition of work by children below the age of 12. The ILO should re-consider the possibility of light work for children of all ages. Smolin[271] argued that the provision of light work assumed that children

[266] Hilson in his analysis of child labour in small scale mining communities in Africa came to the conclusion that light work of children differed according to individual circumstances, for instance whether a child was based in the rural or urban areas. In rural Sub-Sahara Africa environments the lack of transportation and machinery made life extremely labour intensive. A simple domestic task of collecting water became a major problem when a child had to walk extremely long distances to collect water. In an urban setting, the availability of municipal water made getting a glass of water very easy and did not take up much time. Light work of children would thus be affected by many differing factors such as accessibility, the local geography, the multiplicity of ethnic groups, languages and systems of socialization and education. See Hilson *Development and Change* (2010) 447.

[267] Swepston 1982 *International Labour Review* 582. Some countries have been said to disagree with the concept of allowing a restricted kind of light work for younger children. Other countries have adopted provisions on light work and have set ages of between 10 and 15 year for such work.

[268] International Labour Conference, 101st Session 2012 http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_174846.pdf.

[269] See generally Bennet *Transformation* 32; Cobbah 1987 *Human Rights Quarterly* 322; and Nhenga-Chakarisa 2010 *African Human Rights LJ* 180.

[270] Nhenga-Chakarisa *Application of the International Prohibition on Child Labour in an African Context: Lesotho, Zimbabwe, and South Africa* 92.

[271] Smolin "Strategic Choices in the International Campaign Against Child Labor" 2000 22(4) *Human Rights Quarterly* 960.

between the ages of 12 and 15 years would be subject to compulsory education laws and enrolled in school. In India, however, approximately 20 per cent of children between the ages of five and 14 years were actually not in school.[272] Smolin[273] rightfully argues that, for the large majority of children not in school, it was difficult to see how their best interests were served by ruling out full-time employment.[274] Smolin[275] rightfully argued that the "desire of a child labour movement to support compulsory education cannot excuse a failure to provide labour standards which meet the actual needs of the current circumstances of many children." He further claimed that the exceptions of light work would channel underage children into unregulated sectors.

7 CONCLUSION

During the industrial revolution child labour was widespread, economically important and largely unquestioned morally. By the end of the 1800s and the beginning of the 1900s the extensive use of child labour began to significantly decrease in the first industrial nations. Such decrease was a result of a combination of factors such as a change in conceptions of childhood, legislation regulating the employment of children, technological change and parental influence. With the creation of the ILO, 10 conventions and recommendations regulating child labour were adopted. The general aim was to prescribe a minimum age of employment for children. The establishment of a minimum age to employment was considered based on legislative provisions already existent in the members of the ILO at that time. A few of these Conventions permitted light work which was supposed to be conducted by a child who was below the minimum age of employment. Light work was not meant to interfere with school and was not to be conducted during Sundays and public holidays. The light-work provision was not carefully addressed in history and created some of the problems that we currently face in Convention no. 138 which merely revised the Conventions that had been drafted between 1919 and 1965.

[272] *Ibid.*
[273] *Ibid*.
[274] While it would be likely to serve the best interest of the child to supply meaningful formal education, in the absence of such opportunities it makes sense to reduce this age group to a significant degree of enforced idleness.
[275] Smolin 2000 22(4) *Human Rights Quarterly* 960.