

FILLING THE GAPS: NEW PROPOSALS FOR THE CONVENTION ON THE RIGHTS OF A CHILD

Kathleen Boumans[†]

CONTENT

INTRODUCTION	191
I. BACKGROUND INFORMATION	193
A. <i>History and Evolution of Children’s Rights</i>	193
B. <i>The Convention on the Rights of the Child</i>	194
C. <i>Problems with the Convention on the Rights of the Child</i>	199
II. CHANGES TO THE CRC.....	206
A. <i>Compromissory Clause</i>	207
B. <i>Universal Jurisdiction</i>	209
C. <i>Budget Proposal to Article 4</i>	211
D. <i>Language Changes and Clarification to Article 32</i>	215
E. <i>Application</i>	217
III. CONCLUSION.....	220

INTRODUCTION

The Universal Declaration of Human Rights (“Universal Declaration”) was adopted and signed by the United Nations (“U.N.”) General Assembly in 1948.¹ The Universal Declaration guaranteed the rights of every individual everywhere.² The Universal Declaration states that all “persons have the right to life, liberty, and security of person.”³

[†] Syracuse University College of Law, J.D. Candidate, 2016. The author would like to thank her family and friends for all of their continued support. The author would also like to express gratitude to Professor Peter Bell, and to Professor Cora True-Frost for their wisdom and guidance throughout this process.

1. *Universal Declaration of Human Rights: History of the Document*, UNITED NATIONS, available at www.un.org/en/documents/udhr/history.shtml (last visited Nov. 15, 2015).

2. *Id.*

3. G.A. Res. 217 (III) A, Universal Declaration of Human Rights art. 3 (Dec. 10, 1948) [hereinafter Universal Declaration]. In Article 2, the Declaration sets out the basic framework of the document. The Declaration eliminates any form of discrimination against persons.

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without

Even after declaring that all persons would be afforded these protections, there was still a need for more explicit language in providing those rights. Despite the existence of the Universal Declaration, those promises were not made to all individuals. Although the Universal Declaration is not a treaty and it did not directly create legal obligations for states, it has become binding as a part of customary international law.⁴ Its many successors include the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Racial Discrimination, both of which are treaties that have been ratified by states to increase the quality of life.⁵ There have also been treaties and conventions that pertain to labor restrictions in order to protect persons and children in the work environment.⁶ In November of 1989, the Convention on the Rights of the Child (“CRC”) was open for signature and ratification.⁷ As is stands, the CRC fails to address the gaps that still exist and has a long way to come before providing adequate protection that children need.

This paper will address the changes that States must make to fulfill the intentions and purposes behind the ratification of the CRC. As the CRC stands today, it has failed to provide all the protections promised and due to those failed promises, compliance has not been met and many gaps have been created. This paper will outline the language of the CRC’s amendments and discuss how the lack of explicit, mandatory requirements has created problems of interpretation and left large gaps to be filled. It proposes language changes and additions to current amendments that will unambiguously prohibit certain actions and give the CRC’s Committee the authority to levy fines against violations. It will also propose additional amendments that should be adopted by member states to provide better enforcement and protection of children throughout the world. It will bring light to the issues of enforcement of

distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Id. art. 2.

4. *What is the Universal Declaration on Human Rights*, AUSTRALIAN HUM. RTS. COMMISSION, available at <https://www.humanrights.gov.au/publications/what-universal-declaration-human-rights> (last visited Nov. 15, 2015).

5. *Id.*

6. *ILO Conventions and Recommendations on Child Labour*, INT’L LABOUR ORG., available at <http://www.ilo.org/ipec/facts/ILOconventionsonchildlabour/lang—en/index.htm> (last visited Nov. 15, 2015).

7. Convention of the Rights of the Child, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3.

2015]

Filling the Gaps

193

the CRC, and the Committee's continued struggle to have all of the proper data to correctly analyze the reports submitted by each committee. With the changes and proposals suggested in this paper, the true intention and purpose of the CRC can be provided and the gaps will be filled.

I. BACKGROUND INFORMATION*A. History and Evolution of Children's Rights*

The first recognition of children's basic needs was addressed in the Geneva Declaration of the Rights of the Child ("Geneva Declaration") in 1924.⁸ The Geneva Declaration made early recognitions that "'mankind owes to the Child the best that it has to give' and that 'men and women of all nations' accept it as their duty to fulfill their obligations toward the child 'beyond and above all considerations of race, nationality, or creed.'"⁹ The Geneva Declaration focused on five major areas of children's rights: (1) material and spiritual development; (2) "help when hungry, sick, disabled, delinquent or orphaned; (3) to a first call on relief in times of distress;" (4) earn a livelihood free from exploitation; and (5) "an upbringing that instills social responsibility."¹⁰ Unfortunately, the Geneva Declaration did not create an international legally binding treaty that was recognized by a large number of member states.

As mentioned above, the Universal Declaration was adopted in 1948.¹¹ The Universal Declaration briefly discussed the needs of children by stating that they were entitled to special care and assistance.¹² But there was no further effort made in providing protection to children. It merely recognized the importance of providing special protections to children, but failed to provide and take action for any additional guidance. In 1959, the U.N. General Assembly adopted an expanded version of the Geneva Declaration.¹³ The expanded version included the spirit of the Universal Declaration, but expanded it to affirm children's rights to "protection against neglect, cruelty, and exploitation; to prohibition of

8. Kirsten Sandberg, *The Genesis and Spirit of the Convention on the Rights of the Child*, in UNICEF, 25 YEARS OF THE CONVENTION ON THE RIGHTS OF THE CHILD: IS THE WORLD A BETTER PLACE FOR CHILDREN? 59, 59 (2014), available at http://www.unicef.org/publications/files/CRC_at_25_Anniversary_Publication_compilation_5Nov2014.pdf (last visited Jan. 24, 2016). See Geneva Declaration of the Rights of the Child, adopted Sept. 26, 1924, League of Nations [hereinafter Geneva Declaration].

9. Geneva Declaration of the Rights of the Child, adopted Sept. 26, 1924, League of Nations [hereinafter Geneva Declaration]. See also Sandberg, *supra* note 8.

10. Universal Declaration, *supra* note 3. See also Sandberg, *supra* note 8.

11. Universal Declaration of Human Rights, *supra* note 3.

12. *Id.* art. 25

13. G.A. Res. 1386 (IX) (Nov. 20, 1959). See also Sandberg, *supra* note 8.

employment that could prejudice the child's health, education or development; to the opportunity for play and recreation; and to special treatment, education and care for children with disabilities."¹⁴ Although the Geneva Declaration brought awareness and recognition to these essential children's rights, the document was not legally binding on nations, and it failed to provide specific details of such rights.¹⁵

In 1978, a doctor by the name of Janusz Korczak wrote and educated people on the importance of children's rights.¹⁶ This new international recognition prompted Poland to begin the drafting of a convention for children's rights.¹⁷ The growing awareness encouraged the U.N. to declare the following year as the International Year of the Child.¹⁸ Poland's draft was similar to the Geneva Declaration but was more specific in its details; the country hoped to create principles that would be binding on all the states.¹⁹ In 1979, the U.N. created a committee to consider whether or not to accept Poland's proposal.²⁰ It took ten years of redrafting and revisions before States finally accepted it and developed it into the CRC.²¹

B. *The Convention on the Rights of the Child*

"The [C]RC is the most rapidly and widely ratified international human rights treaty in history."²² It has been either signed or ratified by all U.N. member nations except the United States.²³ Somalia most recently ratified the treaty in January of 2015.²⁴ It is the first legally binding international human rights treaty to give norms and standards for the protection of children.²⁵ Although the treaty has been ratified by 194

14. G.A. Res. 1386, *supra* note 13. See also Sandberg, *supra* note 8.

15. Sandberg, *supra* note 8, at 59.

16. *Id.* at 60.

17. *Id.*

18. See *id.* at 62.

19. *Id.*

20. Sandberg, *supra* note 8, at 62.

21. *Id.*

22. *Convention on the Rights of the Child*, UNICEF, available at <http://www.unicef.org/crc/> (last visited Nov. 15, 2015).

23. *Convention on the Rights of the Child*, AMNESTY USA, available at <http://www.amnestyusa.org/our-work/issues/children-s-rights/convention-on-the-rights-of-the-child> (last visited Nov. 15, 2015).

24. See *UN Lauds Somalia as Country Ratifies Landmark Children's Rights Treaty*, UN NEWS CENTRE (Jan. 20, 2015), available at www.un.org/apps/news/story.asp?NewsID=49845#.VPS*SfnF9x0 (last visited Sept. 13, 2015).

25. See *Convention on the Rights of the Child*, *supra* note 7.

2015]

Filling the Gaps

195

member nations,²⁶ there are still many gaps and inequalities that exist for children.²⁷ Children are still exploited in many of the countries that have ratified the CRC.²⁸ Problems with enforcement and funding are major issues that need to be addressed in order for the CRC to be more effective.

Until the adoption and ratification of the CRC, children's rights were not explicitly recognized by any treaty, nor was there any legally binding international authority.²⁹ For the first time, children would possess "innate rights, equal to those of adults: rights to health, to education, to protection, and to equal opportunity . . ." ³⁰ The CRC inspired changes in laws to protect children and policies to help them reach their full potential. "More broadly, it has provided a clear mandate to translate the right of every child to health, protection and hope into practical [programs] and services."³¹

The CRC provides for the creation of a Committee on the Rights of the Child ("Committee").³² The Committee is made up of eighteen experts who are responsible for monitoring implementation of the CRC by its State parties.³³ Every five years, each state that is a party to the

26. Kevin Watkins, *The Convention on the Rights of the Child: Delivery on the Promise for Children is Long Overdue*, in UNICEF, 25 YEARS OF THE CONVENTION ON THE RIGHTS OF THE CHILD: IS THE WORLD A BETTER PLACE FOR CHILDREN? 67, 72 (2014), available at http://www.unicef.org/publications/files/CRC_at_25_Anniversary_Publication_compilation_5Nov2014.pdf (last visited Jan. 24, 2016).

27. See UNICEF, *Progress for Children Rights in South Asia, but Inequalities Exist*, UNITED NATIONS SOCIAL DEVELOPMENT NETWORK (Sept. 12, 2014), available at <http://unsdn.org/unicef-progress-for-children-rights-in-south-asia-but-inequalities-exist/> (last visited Nov. 15, 2015).

28. See Katie Hunt, *The 10 Worst Countries for Child Labor*, CNN (Oct. 15, 2013, 3:09 AM), available at <http://www.cnn.com/2013/10/15/world/child-labor-index-2014/> (last visited Nov. 15, 2015).

29. See Anthony Lake, *Children's Rights, Equity and our Common Future, Foreword* to UNICEF, 25 YEARS OF THE CONVENTION ON THE RIGHTS OF THE CHILD: IS THE WORLD A BETTER PLACE FOR CHILDREN? 1, 1 (2014), available at http://www.unicef.org/publications/files/CRC_at_25_Anniversary_Publication_compilation_5Nov2014.pdf (last visited Jan. 24, 2016).

[T]he advance of civilization has been closely tied to the idea that all people have rights: universal, inalienable entitlements to freedom, dignity and security, to be treated fairly and to live free from oppression. The health and soul of all societies depend on how these human rights are recognized – and acted upon.

Id.

30. *Id.* Conforming with the principles of the Charter of the United Nations and the Universal Declaration of Human Rights, the Convention recognizes that the rights are "the foundation of freedom, justice and peace in the world." Convention on the Rights of the Child, *supra* note 7, at preamble.

31. Lake, *supra* note 29, at 4.

32. Convention on the Rights of the Child, *supra* note 7, art. 43.

33. UNICEF, *Is the World a Better Place for Children?: A Statistical Analysis of Progress Since the Adoption of the Convention on the Rights of the Child*, in UNICEF, 25

CRC must submit a follow-up report to address their progress, and any problems they are fixing to meet compliance.³⁴ The Committee is responsible for reviewing the reports that the states are required to provide.³⁵ The reports must reflect the progress they are making to comply with the CRC, and to their legal responsibility to protect the children of their state.³⁶ The Committee focuses on four areas of comment when making their observations; legislative reform, independent institutions, child-focused budgets and participation.³⁷ The Committee, after review of the reports, must then submit observations which contain concerns and recommendations that each State must address over the succeeding five-year period.³⁸

The CRC gives children the right to assemble and have the same rights of expression, as well as freedom of thought, conscience, and religion, regardless of their parent's beliefs.³⁹ This conforms to the key area of participation the Committee sets out. Although the focus of the CRC was to provide children a way to be treated equal in the eyes of the law, no child was present during the drafting of the CRC.⁴⁰ As participation is one of the guiding principles, if the document had been drafted today, or if there were any new impending changes to the CRC,

YEARS OF THE CONVENTION ON THE RIGHTS OF THE CHILD: IS THE WORLD A BETTER PLACE FOR CHILDREN? 7, 41 (2014).

34. *Id.*; Convention on the Rights of the Child, *supra* note 7, art. 43, 44. Article 44 of the CRC states “[r]eports . . . shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.” *Id.* art. 44(2).

35. UNICEF, *supra* note 33, at 41.

36. *Id.*

37. *Id.*

38. *Id.*

39. Convention on the Rights of the Child, *supra* note 7, art. 12-14. Article 12 states that:

States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child . . . For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body . . .

Id. art. 12. Article 13 provides that:

The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

Id. art. 13. Finally, article 14 provides that “State parties shall respect the right of the child to freedom of thought, conscience, and religion.” *Id.* art. 14.

40. Sandberg, *supra* note 8, at 60.

2015]

Filling the Gaps

197

the author believes children would be involved in the process. Children should be allowed to voice their opinions without the fear of repercussion and without barriers impeding their way to full participation. Increased participation would allow for organizations to work more closely with and for the children.⁴¹ The CRC “provides both the legal grounding and the impetus for children’s meaningful participation in the drafting of any and all legislation that affects their well-being.”⁴²

It is discouraging however, that children were not included in the drafting process of the CRC, and the author believes it is one of the major problems surrounding the idea of the CRC. Cambodia made headway when it allowed the children the opportunity to discuss possible drafting and policy considerations of trafficking and sexual exploitation laws when involving children.⁴³ But, it did not allow the children to voice their concerns about opposition to traditional cultural and religious legislative concerns.⁴⁴

The CRC was drafted as an emphasis on children as subject of rights; they are human beings in their own rights, they are not owned by their parents or any other individual person.⁴⁵ If children cannot be heard, then the spirit of the CRC will serve no purpose. If children can be seen as individuals, then their voice can be heard and they will have a voice in their rights. It is impossible for every child to be able to speak on what they believe is right, or where they believe they have been wronged. But, it would be possible to solve those questions of capacity by including provisions in the CRC stating that the child must be of a certain age to participate in any forums and discussions about child legislation. Similar provisions allowing the persons who are most affected by the laws to be involved in the drafting process are seen in other treaties as well. The U.N. Convention on the Rights of Persons with Disabilities (“CRPD”) allowed for persons with disabilities to have a say in the drafting process of the CRPD.⁴⁶

The CRC sets guiding principles for what States must provide to children,⁴⁷ yet, in the author’s opinion, the States often makes decisions

41. Watkins, *supra* note 26, at 67.

42. Sandberg, *supra* note 8, at 60.

43. Watkins, *supra* note 26, at 95.

44. *Id.*

45. Sandberg, *supra* note 8, at 61.

46. See *Committee on the Rights of Persons with Disabilities*, INT’L JUST. RESOURCE CTR., available at <http://www.ijrcenter.org/un-treaty-bodies/committee-on-the-rights-of-persons-with-disabilities/> (last visited Nov. 15, 2015).

47. See Sandberg, *supra* note 8, at 61.

[I]t is not up to the State to decide, for instance, which children go to school, whether

as if it is optional, therefore not complying with the CRC. Children are still being exploited for their labor. Children are still being trafficked across borders and being sexually exploited.⁴⁸ Children are still being forced into soldier positions⁴⁹ and they are still being forced to marry at young ages at the wishes of their parents.⁵⁰ It is the author's contention that these continued violations have negative impacts on children's lives and it cannot be said that they are being protected to the fullest extent while these activities still continue. In a world where almost 250 million children are being forced to work and over 150 million of them are being forced to work in hazardous conditions, it should be a major, if not top priority that states should be addressing.⁵¹ It is not just that children are being exploited at young ages, but they are being forced to work in conditions that no person under eighteen should be forced into.

Noting that child labor exploitation is extremely hazardous and should be eliminated, the CRC turned to education as an answer to the problem by making it mandatory that the State provide a public education for all children.⁵² The CRC mandates that children cannot be exploited for child labor and sets some parameters for the actions of child recruitment for military and hostile purposes.⁵³ Most importantly, the

to include children with disabilities in educations or leisure activities or whether to avoid discriminating against girls. The State cannot choose whether it should provide health care to children seeking asylum, or whether to protect children from corporal punishment, sexual abuse or other forms of violence. All of these are the rights of every single child.

Id.

48. *Child Protection from Violence, Exploitation and Abuse*, UNICEF, available at www.unicef.org/protection/57929_58005.html (last visited Dec. 7, 2015). See also Watkins, *supra* note 26, at 91-92.

49. *Child Recruitment by Armed Forces or Armed Groups*, UNICEF, available at www.unicef.org/protection/57929_58007.html (last visited Dec. 7, 2015). See also Watkins, *supra* note 26, at 91-92.

50. *Child Marriage*, UNICEF, available at www.unicef.org/protection/57929_58008.html (last visited Jan. 20, 2016). See also Watkins, *supra* note 26, at 91-92.

51. *Child Labor in the World*, HUMANIUM, available at <http://www.humanium.org/en/child-labour/> (last visited Nov. 15, 2015).

52. Convention on the Rights of the Child, *supra* note 7, art. 28. "States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular . . . make primary education compulsory and available free to all . . ." *Id.*

53. See *id.* art. 32-34.

State Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development . . . State Parties shall in particular: (a) [p]rovide more a minimum age for employment; [and] (b) [p]rovide for appropriate regulation of the hours and conditions of employment.

CRC also dictates that governments take all available measures to ensure these protections are enforced and complied with within their countries,⁵⁴ such as providing appropriate funding of sources to maintain their social services, legal, health, and educational systems.⁵⁵ “They must help families protect children’s rights and create an environment where they can grow and reach their potential.”⁵⁶ Unfortunately, many of the goals of the CRC have yet to be complied with, and although it addresses many of the problems, in the author’s opinion it seems to be more successful at bringing some light to these problems, rather than providing solutions.

C. *Problems with the Convention on the Rights of the Child*

It is difficult for any treaty to have widely effective enforcement and compliance for an array of reasons. “The strength of the [CRC] cannot be measured in ratifications, national laws or government declarations. Ultimately, the real test is whether or not its provisions make a difference in the lives of children.”⁵⁷ The CRC has yet to draw in strong advocacy worldwide. There is little debate about its importance on the international stage. But the CRC lacks the media coverage that other treaties and policy implications have in today’s society.⁵⁸

States that are parties to the CRC either refuse to be serious about their intent in adopting the amendments of the CRC, or they fail to pass legislation that has the necessary enforcement mechanisms to be effective.⁵⁹ The Parties pass the CRC, but make numerous reservations or objections, watering down the effect it was intended to have.⁶⁰ The States pass laws, but the laws do not provide for enforcement, monitoring,

Id. art. 32.

1. State Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts, which are relevant to the child.
2. State Parties shall take all feasible matters to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

Id. art. 38.

54. *See id.* art. 4.

55. *Fact Sheet: A Summary of the Rights Under the Convention on the Rights of the Child*, UNICEF, available at www.unicef.org/crc/files/Rights_overview.pdf (last visited Nov. 15, 2015) [hereinafter *Fact Sheet*].

56. *Id.* “In some instances, this may involve changing existing laws or creating new ones.” *Id.*

57. Watkins, *supra* note 26, at 69.

58. *See id.* at 70. “If the Convention is to become a force for change, it needs to be seen as a reference point for advocacy, campaigning and policy engagement.” *Id.*

59. Watkins, *supra* note 26, at 70.

60. William Schabas, *Reservations to the Convention on the Rights of the Child*, 18.2 HUMAN RIGHTS QUARTERLY 472, 472-73 (1996).

or funding for resources.⁶¹ The author believes that ambiguities in interpretation of its text are another problem that undermines the spirit of the CRC. Methods of enforcement need to change, and avenues for turning the principles of the CRC into practical policy need to be scrutinized closer. The CRC as a whole needs to be renewed and reformed to adjust for the continuing injustices to which children are subjected. “In a world where six million children die before their fifth birthday, where 161 million are stunted, and where more than 250 million are denied even the most basic opportunities for learning, business as usual is unacceptable.”⁶²

Lack of funding is a major problem when it comes to international treaties. Without funding, it is difficult for many states to provide the necessary reform, afford to maintain the reform, and meet compliance standards. Without wider resource availability and awareness, it is unrealistic that all States will be able to comply with the CRC. It is often difficult for formal legal reforms to keep pace with the substantive activities which support developing countries.. As a result, “[i]ntegrating the [CRC]’s principles into legislation does not guarantee child rights.”⁶³ Without awareness and campaigning to help provide the funding to incentivize these countries to implement the laws, it is unlikely that the goals of the CRC will ever be realized. Funding for resources helps close the gap between substantive activities and formal laws, and addresses the problems that exist with inequalities of wealth among countries. Developing countries lack even more of the resources to make compliance with the CRC possible.⁶⁴

The CRPD provides language in the treaty to create an awareness-raising provision.⁶⁵ Article 8 of the CRPD provides that State parties are responsible to “adopt immediate, effective and appropriate measures . . . to raise awareness throughout society . . .”⁶⁶ It also requires that “public awareness campaigns” be initiated and maintained on a regular basis.⁶⁷

61. *Id.*

62. *Id.* at 71.

63. Watkins, *supra* note 26, at 72.

The gap between legal form and institutional substance helps to explain why, in a fast-growing country such as India, child labor laws have little tangible effect on child labor practices. It also helps to explain the failure of governments around the world to act on the commitment to equalize opportunity.

Id.

64. *Id.*

65. G.A. Res. 61/106, Convention on the Rights of Persons with Disabilities art. 8 (Dec. 13, 2006).

66. *Id.*

67. *Id.*

Such provisions could be included in the CRC to encourage even larger developments in children's rights. Bringing attention to the problems children are faced with every day can change the attitudes and stereotypes that currently exist toward children. They are constantly faced with barriers to their health, lifestyle, and education.⁶⁸ If state parties to the CRC are required to have similar obligations to those of Article 8 of the CRPD, then more awareness and campaigns could be organized. Through awareness-raising campaigns, it is possible that promotions could be made to show the effects such negative attitudes have on the children, and how change is not only necessary, but needed immediately. Increased awareness will also help improve understanding of the CRC, and why its proper implementation is important. Awareness-raising campaigns can take the form of events or publications that show interest in the CRC and the protection of children's rights. The more awareness that exists, the better the CRC can be mainstreamed into implementation. Continuing to promote the importance of equality for children should be the main focus for all State parties to the CRC. The greater cooperation in an effort to create awareness, the more issues will be brought to the surface, and the more the imminent need for change will be realized by all states.

Without the proper funding, the disparities and inequalities will only grow larger between the wealthy and more disadvantaged countries of the world.⁶⁹ In the poorer countries of the world child labor laws are poorly enforced.⁷⁰ It is the author's contention that the lack of funding makes it difficult to implement and enforce new policies in order to comply with the CRC. Compliance with the CRC is even worse in poor countries, because they lack the funding to implement new policies, and enforcement of those policies that attempt to comply with the CRC.

Countries with high poverty rates fare badly in the index due to the need for children to supplement their family income . . . but economically important countries like China, India, Russian and Brazil were also found to have extreme risks because child labor laws are often poorly enforced.⁷¹

If funding could be made more readily available, that might encourage developing countries to comply with the CRC. By requiring better compliance, these countries might have the enforcement incentives and mechanisms to stop all forms of child labor exploitation.

68. Watkins, *supra* note 26, at 84.

69. *Id.* at 70.

70. Hunt, *supra* note 28.

71. *Id.* (Referring to the Child Labor Index of 2014).

Another reason the CRC has not seen the success many had hoped for is because state parties can make reservations and declarations to the treaty. When countries make reservations and declarations to the CRC they are picking what parts they will choose to enforce.⁷² The procedures governing reservations to treaties have changed over time. The traditional rule was that any reservation a State made would not be accepted if it was not affirmatively accepted by all parties.⁷³ If the reservation was not accepted by all States, the State making the reservation was excluded from the treaty.⁷⁴ The modern custom, however, imposes a duty on States to protect the human rights of its own citizens.⁷⁵ The many reservations made to the Genocide Convention, “all but gutt[ed] its protections.”⁷⁶ Concerned about whether or not the reservations should count toward bringing the Genocide Convention “into force,” the U.N. requested an advisory opinion of the International Court of Justice (“ICJ”).⁷⁷ The ICJ held that States need to be allowed to make any reservation they so choose, as long as it is not contrary to the “object and purpose” of the CRC.⁷⁸ This ruling loosened the rules and restrictions, making it easier for a state to attach a reservation to a treaty.⁷⁹

Because the rules were relaxed, no longer requiring unanimous acceptance of a reservation, the ICJ allows States to make reservations and not be cut off from the legal force of the treaty. When a State makes a reservation, it leaves the remaining members of the treaty to either choose to accept the reservation, reject the reservation and refuse to join the treaty with the reserving State, or the objecting State can refuse to sign on to the section of the treaty to which the reservation is made.⁸⁰ This not only makes it easy for the States making reservations to pick and choose which parts of the treaty they will accept, but also which parts they will refuse to comply with, making it the decision of the rest of the

72. Convention on the Rights of the Child, *supra* note 7, art. 28. Afghanistan, Egypt, Iran, Iraq, Jordan, Kuwait, Maldives, and Qatar are States that have ratified the CRC, but have reserved all rights to express reservations on all provisions of the convention that are incompatible with the laws of Islamic Shari’a and the local legislation in effect. *See id.* at Reservations and Declarations Made Upon Signature.

73. DAVID J. BEDERMAN, INTERNATIONAL LAW FRAMEWORKS 32 (3rd ed. 2010).

74. *Id.*

75. *Id.*

76. *See generally id.* at 33. *See infra* Part II for further reference to the Genocide Convention and how similar actions could be taken to help enforcement issues of the CRC.

77. *Id.* at 33.

78. BEDERMAN, *supra* note 73, at 33.

79. David S. Jonas, *The Object and Purpose of a Treaty: Three Interpretive Methods*, 43 VAND. J. TRANSNAT’L L. 565, 583 (2010).

80. *Id.* at 585.

States to either enforce the treaty or choose to not ratify those parts. This creates gaps, as well as attitudes for the States willing to agree to all the terms of the treaty, while letting other States who make reservations off the hook. It is a frustrating process, and in the Advisory Opinion that the ICJ released, they created an objective test for whether or not a reservation violates the object and purpose of the treaty, which rarely finds reservations invalid.⁸¹

Countries that have ratified the CRC make these reservations or declarations because they believe the treaty will conflict with their own laws or traditions, and because it may provide issues of enforcement and monitoring. Other states make a reservation or declaration to certain aspects of the Convention simply because they may disagree with them. As with reservations made to the Convention to Eliminate all forms of Discrimination Against Women (“CEDAW”),⁸² religious reservations were made to the CRC where the amendments conflicted with the principles of Islamic Sharia law.⁸³ The other States party to the CRC should have objected more sternly to these reservations, arguing that they were clearly contradictory to the object and purpose of the CRC. The Maldives made a reservation to CEDAW, stating that Sharia law superseded any contradictory protections afforded by CEDAW.⁸⁴ This reservation created a virtually complete exception to the purpose of CEDAW.⁸⁵ In response to this reservation, the remaining parties to CEDAW sought to its nullification.⁸⁶ Finally, the Maldives chose to drop the reservation and replaced it with a less “far reaching one.”⁸⁷

Algeria also made an interpretive declaration to the CRC stating that Article 14 shall be interpreted by the Algerian Government in compliance with the basic foundations of the Algerian legal system.⁸⁸ Andorra also made a declaration stating its disapproval of Article 38 of the CRC and its failure to prohibit the use of children in armed conflicts.⁸⁹ Additionally,

81. *See id.* at 583-89. “[T]he ICJ explicitly rejected the unanimous consent rule and intrudes the object and purpose test as an alternative limit on reservation making. Some limit was necessary, the Court explained, because to hold otherwise would ‘sacrifice the very object’ and ‘frustrate the purpose’ of a treaty.” *Id.* at 588-89.

82. *Id.* at 590.

83. Convention on the Rights of the Child, *supra* note 7, art. 28, Reservations and Declarations Made Upon Signature.

84. Jonas, *supra* note 79, at 590-91.

85. *Id.* at 591.

86. *Id.*

87. *Id.*

88. Convention on the Rights of the Child, *supra* note 7, Declarations and Reservations Made Upon Signature.

89. *Id.*

Andorra expressed disagreement with allowing the participation and recruitment of children of ages fifteen or older.⁹⁰ Furthermore, Singapore made a reservation in regards to complying with Article 37, which fails to explicitly prohibit the use of capital punishment on children.⁹¹ Although the CRC is the most widely adopted international law, it has failed to have the effect that was intended. States cannot be stopped from making reservations or declarations, so it becomes even more important for the CRC to be renewed and reformed so as to provide better protection against the existing gaps.

Similar actions to those against the Maldives reservation to the CEDAW should have been taken when identical reservations were being made to the CRC. There is no explanation for why such pushback against the Maldives was made, but when it came to similar reservations to the CRC, such pushback was nowhere to be found. States should have taken a harsher position when going forward with the ratification. It is the author's belief that the reservations that were made to preserve the superiority of Islamic Sharia law clearly violate the purpose of the CRC. Sharia law allows for the denial of education to women, compulsory child marriage, and discrimination against women in general.⁹² Such allowances conflict with numerous articles of the CRC. Article 3 refers to the absolute protection of the best interests of the child.⁹³ The Article also explicitly requires that the states look to their existing laws and assess the changes that are necessary for compliance.⁹⁴ Article 12 focuses on respecting the views of the children and allowing them to make decisions on matters that affect their lives, also in direct conflict with reservations that have been made due to Sharia law.⁹⁵ Finally, in direct conflict with Sharia law, Articles 28 and 29 are the requirements that deal with education.⁹⁶ All children have the right to a primary education⁹⁷ and to develop their abilities to the fullest.⁹⁸ The same pressure that was applied to the Maldives' when they objected to CEDAW should have been applied in the situation here. Similar alternatives could and should

90. *Id.* art. 28.1(a). Singapore also made a reservation concerning Article 37 in the way that it does not make primary school compulsory. *Id.* at Declarations and Reservations Made Upon Signature.

91. *Id.*

92. Jonas, *supra* note 79, at 591.

93. Convention on the Rights of the Child, *supra* note 7, art. 4.

94. *Id.*

95. *Id.* art. 12.

96. *Id.* art. 28, 29.

97. *Id.* art. 28.

98. Convention on the Rights of the Child, *supra* note 7, art. 29.

2015]

Filling the Gaps

205

have been made by states who follow Islamic Sharia law. By applying pressure, forcing the States to stick to the CRC's purpose, and keeping the CRC coherent, many gaps could have been avoided, and many issues of non-compliance would be moot.

The CRC fails to provide the protections children need in regards to child labor exploitation. The CRC does not stand for the idea that children should be prohibited from performing any type of work during childhood. A common misconception that leads to confusion over the scenarios in which the child is actually being exploited is found in the difference between child work and child labor.⁹⁹ Child work is defined as an economic activity that does not negatively affect the health of the child, nor can it interfere with their education.¹⁰⁰ Child labor refers to any child who is working in contravention of ILO standards "engaged in more than light work," and any child "engaged in the worst forms of child [labor]."¹⁰¹ These distinctions are important because States are not prohibited from allowing children to work, but they cannot exploit the children to work in conditions that are hazardous to their health. But, with the confusion, States are still forcing children to perform duties and work in environments that they deem to be hazardous, even when they are blatantly violating the CRC.¹⁰²

Although the CRC provides for the protection of children in the labor environment in Article 32, it failed to effectively prohibit those exploitations from happening in countries that have ratified the CRC.¹⁰³ States that have ratified the treaty are still exploiting the labor of children. Afghanistan, Pakistan, Burundi, Nigeria, Yemen, and Zimbabwe are all countries that are on the top ten list of worst child labor conditions on record in the world.¹⁰⁴ Problems will continue if change doesn't take effect soon. "We cannot afford to continue at the same pace for the next 25 years. Unless efforts are stepped up, the rights of millions of children will continue to be violated."¹⁰⁵ The CRC has clearly failed on many levels to provide the necessary protection to children. The next section

99. *Factsheet: Child Labour*, UNICEF, available at www.unicef.org/protection/files/child_labour.pdf (last visited Nov. 15, 2015).

100. *Id.*

101. *Id.*

102. Watkins, *supra* note 26, at 90.

103. See Convention on the Rights of the Child, *supra* note 7, art. 32.

104. Hunt, *supra* note 28.

105. Lake, *supra* note 29, at 50. Lake expresses his continued concern that the CRC has failed on many levels to provide the protection that it promised to children. *Id.* The losses are still felt by children and their families worldwide, especially in countries that have ratified the Convention. *Id.* at 3. "[W]e cannot claim that children's rights are being upheld when 17,000 children under the age of five die every day." *Id.*

of this paper will address changes that can be made to the CRC to give it more enforcement power and propose amendments that will help fill the gaps that States have been able to create.

II. CHANGES TO THE CRC

The changes proposed here will address the concerns that States have made in either their reservations or their declarations to the CRC. In a perfect world, these changes would be accepted without reservation and enacted with full force, but that is a feat which is impossible. International law is a complex area that makes it difficult to provide for a utopian world. Although there will be pushback for the proposals and changes that are absolutely necessary, the blowback should be minimal, and even though imperfect, will be one step closer to providing the protection that should be afforded to the children of the world.

Some States, such as Cambodia, Bulgaria, Iraq, Iran, and Nigeria to name a few, have been open to changes and amendments to the CRC, signing and ratifying optional protocols.¹⁰⁶ Three optional protocols have been ratified since the original ratification of the CRC in 1989.¹⁰⁷ These optional protocols, the third one being the most recent, ratified in April of 2014, have been an attempt to fix the vagueness and looser articles of the CRC.¹⁰⁸ The first optional protocol was focused on affording more protection to children in armed conflicts.¹⁰⁹ Article 3 of the Protocol requires states to raise the minimum age for voluntary recruitment into the armed forces.¹¹⁰ The Protocol mandates that no person under the age of eighteen can be recruited or used in hostilities.¹¹¹ This Protocol was created because Article 38 of the Convention sets the age at fifteen.¹¹² The second optional protocol dealt with matters of child sex exploitation.¹¹³ The Protocol's purpose is to extend protection beyond that of Articles 1, 11, 21, 32, 33, 34, 35, and 36 of the CRC.¹¹⁴ Finally, the most recent optional protocol deals with allowing children, who are

106. See *Advancing the CRC*, UNICEF, available at http://www.unicef.org/crc/index_protocols.html (last visited Nov. 15, 2015).

107. *Id.*

108. *Id.*

109. *Id.*

110. G.A. Res. 54/263, Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict and on the Sale of Children, Child Prostitution and Child Pornography, art. 3 (May 25, 2000) [hereinafter *Optional Protocol*].

111. *Id.* art. 1.

112. See *id.*; Convention on the Rights of the Child, *supra* note 7, art. 38.

113. *Advancing the CRC*, *supra* note 106.

114. See *Optional Protocol*, *supra* note 110. See Convention on the Rights of the Child, *supra* note 7, art. 1, 11, 21, 32-36.

2015]

Filling the Gaps

207

citizens of a state party to the CRC, to have their grievances addressed.¹¹⁵ The third protocol allows children subjected to violations to submit these violations directly to the Committee to seek redress.¹¹⁶ These protocols are optional only in the sense that, because they are changes to the CRC, they will legally bind only States that also ratify the individual protocols.¹¹⁷ With the hope that states are willing to change and are open to change, hopefully more protections will be extended and afforded to the children.

A. Compromissory Clause

Even when ratified, a treaty is still open to change and amendment. “There is a need for change in international law, and treaties would not be an effective source of international legal obligation if anachronistic rules were forever graven in stone.”¹¹⁸ Many treaties are drafted with the intention of later amendments and changes being made.¹¹⁹ It is “exceedingly common” that states choose to provide new conditions to the treaty.¹²⁰ Any proposed changes cannot be amended into the treaty until all parties have expressed approval.¹²¹

Although there is no international police force that can arrest and bring every State who violates the CRC into court, there are other means by which the threat of punishment and enforcement can be provided.¹²² Instead of international police, there is a World Court.¹²³ The ICJ was created as part of the U.N., with the hope of creating an international adjudicatory body to provide for the enforcement of international law.¹²⁴ The ICJ is the forefront vehicle in helping to dissolve international law disputes and helping to provide enforcement of agreements that are made between parties.¹²⁵ The problem with the ICJ is that, similar to a treaty, no state can be forced to consent to the Court’s jurisdiction.¹²⁶

The first proposal that should be added to the CRC is a clause in the

115. *Advancing the CRC*, *supra* note 106.

116. *Id.*

117. *Id.*

118. BEDERMAN, *supra* note 73, at 37.

119. *Id.* at 38.

120. *Id.*

121. *Id.* at 37-38.

122. *Id.* at 9.

123. BEDERMAN, *supra* note 73, at 255.

124. *Id.*

125. *See id.* at 257.

126. *Id.*; Maurice Mendelson, *The Formation of Customary International Law*, 272 RECUEIL DES COURS 155, 169 (1998).

treaty, which would bind each state to give their consent to have all matters heard before the ICJ. The clause would simply provide that “any such dispute which cannot be settled shall be referred, at the request of any one of the States party to the dispute, to the ICJ for a decision.” These types of agreements are described as compromissory clauses.¹²⁷ Such clauses are becoming increasingly accepted in the international society, and are ways of making it easier for the ICJ to invoke jurisdiction.¹²⁸ Such a clause would waive a State’s objections to consenting to jurisdiction to the ICJ. The ICJ has the authority to make decisions in accordance with international law for “disputes of a legal nature that are submitted to it by States . . . and it gives advisory opinions on legal questions at the request of the organs of the [U.N.] . . .”¹²⁹ By waiving their objections, the ICJ would have jurisdiction to hear all the matters that dealt with the enforcement of the CRC. Allowing the ICJ to hear these disputes provides an international forum that although is not a police force, would still allow for better protection and enforcement.

Of course, in order to make such a clause binding on the States, it would have to be ratified and all the member parties would have to agree and sign the addition. Giving the ICJ such authority might provide a neutral forum to work out disputes dealing with enforcement and compliance with the CRC. Consenting to the Court’s jurisdiction might also provide a backbone to the CRC, an overarching notion that compliance with the CRC will be mandatory. By consenting to the jurisdiction, the States are allowing the ICJ to resolve the dispute and demand them to comply. It would also be a statement that states are willing to take serious actions to stop any offenses and violations to the CRC. It might pressure other States to do the same until they all agreed. Embarrassment in the international community is often avoided at all costs. Calling out States that refuse to make the same serious declarations, could create an additional source of pressure. The CRC would have to provide a provision that would prohibit any state from making a reservation to the consent of ICJ jurisdiction. If not, it is likely that states could object to consenting to the jurisdiction, failing to allow the Court to provide relief for violations.

Allowing the ICJ to have jurisdiction to hear the disputes could provide a uniform system in which matters will be resolved. Although

127. BEDERMAN *supra* note 73, at 257. “Compromissory clauses are included in bilateral and multilateral conventions. Such provisions allow, in the event of a dispute arising under the treaty, that the matter will be submitted to the Court.” *Id.*

128. *Id.*

129. *Jurisdiction*, INT’L CT. JUSTICE, available at <http://www.icj-cij.org/jurisdiction/index.php?p1=5> (last visited Nov. 16, 2015).

some resistance can be expected, such clauses are not unheard of. Many treaties have such clauses consenting to ICJ jurisdiction; it would not be a stretch to amend the CRC to require the same type of compromissory clause.¹³⁰ It creates clarity and consistency amongst states, and will ensure that every State party to the Convention will comply with the promises they made.

B. Universal Jurisdiction

A second approach that can be taken to provide for better enforcement would be allowing member States to the CRC to police the other states. Such practices already exist, not only codified in international law, but as a practice of customary international law, giving states the power and responsibility to hold accountable states who violate treaties they have ratified.¹³¹ The Geneva Convention requires member States to search for persons who have made grave violations to the CRC, extradite them, and prosecute them if possible.¹³² Not only do states have the ability to engage in policing states to the CRC who are committing war crimes or genocide, but it confers upon them the absolute responsibility that they must investigate any breaches, and bring to justice those states committing the violations.¹³³

Universal jurisdiction is a long-standing notion of international law when it comes to punishing violations of such egregious human rights.¹³⁴ It is the principle that requires states to police and bring criminal

130. *Practical Information*, INT'L CT. JUSTICE, available at <http://www.icj-cij.org/information/index.php?p1=7&p2=2> (last visited Nov. 16, 2015) (noting that over 300 treaties contain similar compromissory clauses giving the ICJ jurisdiction to hear disputes that the States to the treaty may submit).

131. *Rule 158. Prosecution of War Crimes*, INT'L COMMITTEE RED CROSS, available at https://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter44_rule158 (last visited Nov. 16, 2015). "Rule 158. States must investigate war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects." *Id.*

132. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field art. 49, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea art. 50, Aug. 12, 1949, 6 U.S.T. 3217, 75 U.N.T.S. 85; Geneva Convention Relative to the Treatment of Prisoners of War art. 129, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135; Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 146, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287.

133. *Rule 158. Prosecution of War Crimes*, *supra* note 131.

134. The Scope and Application of the Principle of Universal Jurisdiction, UNITED NATIONS, available at http://www.un.org/en/ga/sixth/65/ScopeAppUniJuri_StatesComments/Kenya.pdf (last visited Nov. 15, 2015).

proceedings against international crime violations.¹³⁵ It acknowledges that some crimes are such large violations of human rights, that they cannot go unpunished. Making states obligated to bring such proceedings, and to take such actions to extradite persons who are committing the violations, despite their nationality or location, creates the notion that human rights are being given heightened priority and will not be compromised.¹³⁶ It allows for the prosecution of international crimes committed by anybody anywhere.¹³⁷

If the same obligations were put upon the members of the CRC, then even if a state refuses to ratify the compromissory clause, enforcement of violations can still take place. Crimes against any child are a serious and egregious act that cannot go unpunished. There is no reason as to why the same weight cannot be afforded to the protection of children as is to the violation of war crimes and genocide. They both are actions that greatly impact the future of the world and society. Young children are impressionable and all precautions should be taken to ensure they have a healthy and positive upbringing.¹³⁸ If the states have agreed to such obligations and mandatory duties previously, the same should be done here. Allowing universal jurisdiction, and the requirement and responsibility to protect all children of the international community, would help to ensure that children are not being exploited in any part of the world.

A change of this magnitude would not only help to fill the gaps that have been left by the drafters of the CRC, but would also create a sense of responsibility and awareness to the continued violations and exploitations of children. By allowing states to police the other states who are party to the CRC, more children will be afforded protection, and the ultimate goals and purposes of the CRC will be upheld. It would create greater international awareness of the issues that are often swept under the rug on a daily basis. By calling out state actors who choose to violate the CRC, which they have signed and ratified as a member, more pressure can be put on them, and they can ultimately be prosecuted for their violations. It may cause those who are committing the violations to

135. *Id.*

136. *See id.*

137. Rome Statute of the International Criminal Court pmbl., July 17, 1998, 2187 U.N.T.S. 90. "Affirming that the most serious crimes of concern to the International community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation." *Id.*

138. *See generally* Louise Lemyre et al., *Psychosocial Considerations about Children and Radiological Events*, 142 RADIATION PROTECTION DOSIMETRY 70 (2010).

2015]

Filling the Gaps

211

think twice: not only if they are convicted for their crimes, but also when they are thrust into the public eye.

If a state refuses to comply with the obligations of the CRC, implementing policing mechanisms would create better compliance with the CRC. This would put the pressure on the members of the international community who chose to ratify the CRC, to fulfill their obligations as a necessary step to go forward with the changes and reform that are necessary. It is the author's belief that the threat of cutting off aid and support, as well as the awareness that their actions are being monitored, will push states towards compliance, therefore protecting the children who are the most vulnerable to the decisions of others.

Being part of the international community, and choosing to sign and ratify treaties needs to stand for something more serious and concrete. It should not be enough for a State to put their name on a piece of "legally binding" paper, and then violate the very principals they promised to uphold. Unless states are willing to hold each other accountable for their actions, and create better enforcement mechanisms, no degree of specificity will ever be the answer. Universal jurisdiction and consent of waiver to jurisdiction before the ICJ, are steps that must be taken to give the CRC more teeth, and to ensure that if violations are committed, those persons and states will be held to answer for their actions.

C. Budget Proposal to Article 4

The first article that should be added/amended to the CRC, is one that addresses funding, and provides aid and supplies to the states that are parties to the CRC. Article 4 of the CRC focuses on the governments' responsibility to take all measures to assess and make sure that social services, legal services, and educational systems have the appropriate funding to provide the requisite needs to the citizen children.¹³⁹ In addition to Article 4, additional paragraphs should be mandated as follows:

2. States Parties shall undertake all measures appropriate to make sure that a certain percentage, to be set by the Committee, is being allocated to the social, legal, and educational services of the State. To the maximum extent possible, annual budget allocations for these services will be mandated, before spending can be allocated elsewhere, so far as it does not interfere with funding that is allocated to the defense and infrastructure of the State. States shall make sure that all barriers impeding the accessibility to the resources are removed, so as to make

139. Convention of the Rights of the Child, *supra* note 7, art. 4; *Fact Sheet*, *supra* note 55.

the resources accessible to all citizen children, so that they can take full advantage of the systems, allowing them to use them to develop into better citizens.

3. States will be required to submit their budget and spending allocations annually to the Convention's Committee to be reviewed and approved. If State's fail to pass the Committee's review, they shall be required to take the necessary adjustments within 90 days to allocate their resources as the Committee deems appropriate.

4. The committee will set the sliding percentage scale to determine, based off the Member State's gross income, what allocations will be deemed appropriate.

5. Failure to comply with any part of the Convention will lead to a fine, which will be paid to an account that is held by the Committee, and then allocated to States who need additional funding, as seen fit by the Committee.

The additional provisions to Article 4 of the CRC can help the states who are a party to the treaty in many ways.

First, by setting strict budget percentage requirements, states will be required to provide funding to support children in all of the public services the states are required to provide. As the CRC stands now, the Article only requires that the states, as they see fit, make sure that services are available to children.¹⁴⁰ By allowing states to pick and choose when and where to allocate their services, they often nickel-and-dime the services that are necessary to further the best interests of children. Not only are they providing little funding and aid toward these services and programs, but often provide none at all, claiming that they do not have the resources available to provide to these services.¹⁴¹ Such relaxed policies occur when states are allowed to choose what the maximum is that they will allocate.¹⁴² This also leads to one of the major reasons why non-compliance issues still arise on a daily basis.

Second, the provisions this paper proposes are better than the existing language of Article 4, because it will help address the issue of the wealth inequality and distribution among the Member States. It is the author's belief that a major concern is that the CRC, as it is written, fails to fix the problem of the wealth inequalities among the states.¹⁴³ Poorer states do not have the funding, so their maximum extent available does

140. Convention of the Rights of the Child, *supra* note 7, art. 4; *Fact Sheet*, *supra* note 55.

141. Watkins, *supra* note 26, at 70.

142. Convention of the Rights of the Child, *supra* note 7, art. 4; *Fact Sheet*, *supra* note 55.

143. Watkins, *supra* note 26, at 70, 73.

2015]

Filling the Gaps

213

little, if nothing, to provide the necessary resources to keep services necessary to promote the development of children.¹⁴⁴ By allowing poorer states to slip by without enhancing public services to the children, it makes it difficult to mandate that the wealthier states, which can afford to allocate more funding and resources to the program, to do so. That should be a major red flag in the mind of any person who reads the CRC. These wealth disparities are issues that can be addressed and fixed, yet they have not been. Wealth disparities among the states are a problem because it makes it difficult for poorer states to comply with the CRC. The poorer the states, the worse off the conditions are for the children of that state.¹⁴⁵

It is extremely unfortunate that where a child is born, in a wealthier or poorer state, affects their life expectancy. A child born in Chad has an increased risk of mortality by a factor of thirty-five relative to France.¹⁴⁶ These disparities matter immensely, and they are at the heart of the CRC. These disparities take away a child's basic opportunity to education, health, and survival.¹⁴⁷ "They violate the letter and the spirit of the [CRC]. Under article 4 of the [CRC], governments around the world have a responsibility to advance child rights and combat the unjust inequalities inherent in discrimination."¹⁴⁸ Such changes to Article 4 would make other aspects of the CRC more realistic and easier to comply with. Article 24 of the CRC requires states to "strive to ensure that no child is deprived of his or her right of access to such health care services" and to "take all appropriate measures . . . [t]o diminish infant and child mortality."¹⁴⁹ Article 28 also requires that states provide an equal opportunity for children to have access to education.¹⁵⁰ If states are required to provide a certain percentage of their resources to furthering these fundamental rights, they will be better equipped to provide resources to the children. "Research by UNICEF found that scaling up low-cost interventions aimed at eliminating the coverage gap between rich and poor households could save two-million lives between 2012 and 2015, cutting child mortality by 13%."¹⁵¹ These changes can make a huge difference in the lives of many children. It is impossible to fix all of the wealth disparity

144. See Hunt, *supra* note 28.

145. See *id.*

146. Watkins, *supra* note 26, at 72.

147. *Id.* at 73.

148. *Id.*

149. Convention of the Rights of the Child, *supra* note 7, art. 24; *Fact Sheet*, *supra* note 55.

150. See Convention on the Rights of the Child, *supra* note 7, art. 28.

151. Watkins, *supra* note 26, at 78.

gaps that exist internationally, but little steps over time can make a difference that is necessary. In the long run these changes will be beneficial to all persons, not just the children of these states.

Finally, giving the Committee more control over these matters, and giving them the ability to set the requirements, puts the control into a neutral body whose only purpose is to advance the purposes of the CRC. The Committee has the better resources to research and gather information on the wealth disparities and to know what percentages of allocations are appropriate so that the necessary enhancements to public services are made. Also, by requiring yearly compliance checks, it also gives them more authority over making sure the sources are being provided every year and not just every five years. Finally, by imposing a fine on any state who fails to comply with the CRC adds another sense of consequence and accountability for their actions. States will be more apprehensive to commit the violations if they know they are required to pay additional fines, on top of the resource allocations they are already required to make. Creating more caution against committing violations will clearly further the purpose of the CRC, and further the best interests of the children. If wealthier states continue to commit the violations, they will be subject to punishment and fines, providing more funding not only to allocate to the poorer states, but also more funding for the Committee to look into violations, and expand their control and authority over the CRC.

Now is an appropriate place to discuss the impact that UNICEF could have in furthering the spirit of the CRC, by requiring them to provide funding and requiring them to play a bigger role in enforcing the CRC. The CRC is the first human rights treaty that allows a specialized agency, such as UNICEF, to have a role in the enforcement and implementation of the treaty.¹⁵² UNICEF plays a large part in the advocacy and funding for humanitarian acts in the international community.¹⁵³ In 2012, UNICEF was able to raise close to \$1.5 billion in humanitarian funds, worldwide.¹⁵⁴ UNICEF could take affirmative steps to team up with the Committee and not only help provide funding for enforcement and wealth issues, but it could help bring greater awareness to the CRC and its purpose. Greater awareness means larger amounts of funding, which means a greater chance of having more teeth for

152. *Monitoring the Fulfillment of States Obligations*, UNICEF, available at http://www.unicef.org/crc/index_30210.html (last visited Nov. 15, 2015).

153. See *Overall Funding Trends*, UNICEF, available at http://www.unicef.org/appeals/funding_trends.html (last visited Nov. 15, 2015).

154. *Id.*

2015]

Filling the Gaps

215

enforcement. If more states are aware of the requirements of the CRC, they are more willing to act and notice violations, and be more willing to report those violations.¹⁵⁵ If UNICEF, the U.N., and other international actors are willing to help create awareness and funding for the CRC, a step towards filling the gaps would be made.

D. Language Changes and Clarification to Article 32

The second proposal this paper will address is to Article 32 of the CRC. Article 32 refers to the CRC's requirements for child labor.¹⁵⁶ Article 32 focuses on child labor exploitation and why protections must be put in place.¹⁵⁷ It prohibits States from allowing children to perform any work "that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development."¹⁵⁸ But the Article fails to provide, with any clear specificity, as to what the law is. Paragraphs 2(a) and 2(b) fail to clarify a specific age limit, or a specific number of hours allowed.¹⁵⁹ Finally, it concludes by providing that appropriate penalties or sanctions must be provided by the State to ensure the effective enforcement.¹⁶⁰ Article 32 is extremely vague,¹⁶¹ and it is clear why the percentages of child labor exploitation are still running high throughout the international community.¹⁶² Instead, a new proposal with a few language changes to the Article that would read as follows should be implemented:

2(a). States Parties shall provide for a minimum age, or ages for admission to employment, the minimum age not being younger than 14.

2(b). States Parties shall provide for appropriate regulation of the hours of employment, the maximum allowance not being more than 20 hours per workweek.

2(c). States Parties shall provide a minimum wage for payment that cannot be less than the minimum wage requirements for any person employed in the State.

2(d). States Parties shall undertake all measures possible to ensure that children are not being permitted to work in any conditions that are

155. See Watkins, *supra* note 26, at 94.

156. Convention on the Rights of the Child, *supra* note 7, art. 32.

157. See *id.*

158. *Id.*

159. See *id.*

160. See *id.*

161. See Convention on the Rights of the Child, *supra* note 7, art. 32.

162. Watkins, *supra* note 26 at 68-70, 90.

deemed hazardous to the well-being of the children.

3. The Convention's Committee will provide a list of employment conditions that any child will be prohibited from being subjected to. The list will not be exhaustive, and will be subjected to additions at any time the Committee deems it necessary and appropriate to do so. Some prohibited activities will include; slavery, child trafficking, bondage, sexual exploitation, illicit/illegal activities or crimes, and any work which is likely to harm the health, safety, or morals of children. The Committee will also provide for the appropriate penalties and sanctions for any non-compliance violations.

3(a). The States Parties shall comply with the listed employment conditions that the Committee finds prohibited from child employment. If the States Parties fail to comply with the Convention, or the Committee's stated purpose, they will be subjected to any penalty or sanction the Committee has deemed appropriate for the violation. The Committee has the authority when levying fines to consider the State's wealth, the seriousness of the violation, and whether or not the State has repeated issues of non-compliance.¹⁶³

Such changes are necessary because children are still being exploited through their labor, throughout the international community. Watkins states that:

215 million children worldwide are involved in child labour, with more than half of them under age 15 and 91 million less than 12 years old. Many of these children are involved in hazardous employment, working long hours in dangerous occupations such as artisanal mining, sugar cane cutting and unregulated informal activities.¹⁶⁴

Not only is this a concern that aims toward eliminating any dangers and hazards to the health and well-being of any child, but it also has a ripple effect throughout other areas of the CRC as well. If States are allowing children to be exploited for their labor for long hours per week, whether it be under hazardous conditions or not, they are taking that child out of school, which, directly contradicts Article 28 of the CRC.¹⁶⁵ This may potentially have a long standing effect on not only a child's intelligence level, but also on their ability to develop fundamentally, socially and morally. By allowing states to take children out of school, and allowing them to work long workweeks, they are going against the

163. Convention on the Rights of the Child, *supra* note 7, art. 32

164. Watkins, *supra* note 26, at 90.

165. See Convention of the Rights of the Child, *supra* note 7, art. 28; Watkins, *supra* note 26, at 74. Noting that Article 28 is the recognizing the importance of education, and the States Parties obligations to ensure that children are being provided with a primary education that is compulsory and available free to all. *Id.*

2015]

Filling the Gaps

217

purpose of the CRC, which is to ensure the best interests of the children are being protected.

Child labor exploitation has always been a growing concern in the international community, and it lacks the awareness that it should be attracting. The issue of child labor exploitation is a sensitive one that creates difficult problems. There is no perfect solution to fixing and stopping all child labor exploitation throughout the world, but if more steps and efforts are made, it can be combated, and the percentages could drastically drop. Child labor exploitation should be one of the top focal points when it comes to children's rights. There are serious negative effects that child labor exploitation has on children, whether it is work that is not dangerous, or work that is extremely hazardous. Serious problems with premature aging, malnutrition, depression, and drug dependency are all impacts that can be linked to child labor exploitation.¹⁶⁶ There is absolutely no protection for children who are subjected to such conditions. "Their employers do whatever necessary to make them completely invisible and are thus able to exercise an absolute control over them."¹⁶⁷

Similar to the pros of the budget proposal to Article 4, giving the Committee more authority, and the ability to get more involved in mandating compliance is an added advantage. The Committee is not only more involved in issuing the penalties and sanctions, but they are also closer to the problems and better able to observe them. With the implication of the changes addressed in this paper, the Committee will be better set to gather truthful statistics and percentages of the continued exploitations of children. By creating greater awareness and seeing firsthand the violations that are taking place, the Committee can not only themselves sanction the state parties, but they can also report them to other agencies in charge of punishing the violations.¹⁶⁸

E. Application

If the proposed changes were applied, they would afford better

166. *Child Labor in the World*, *supra* note 51.

167. *Id.* Going on to further state that "children work in degrading conditions, undermining all principles and fundamental rights based in human nature." *Id.*

168. *Watkins*, *supra* note 26, at 91.

Child labour in India is a good example. While official data place the figure as low as 5 million, credible civil society sources suggest that the real figure may be 10 times this level. Meanwhile, prosecution of firms and individuals responsible for child labour has been limited: An analysis by one NGO suggests that just 0.7 per cent of reported cases result in conviction.

Id.

protections to children and create better enforcement and compliance mechanisms. The application of the proposed CRC will be used in the scenario of child labor exploitation in Zimbabwe, Nigeria, Burundi, China, Russia, and Brazil, all of which are states that have signed and ratified the CRC. Zimbabwe, Nigeria, and Burundi are countries that considered to be developing still,¹⁶⁹ while China, Russia, and Brazil are considered countries that are economically developed.¹⁷⁰

In compliance with the budget proposal to Article 4, all states should be required to allocate a certain percentage of their funding, as determined by the Committee to the social, legal, and educational services of the state. China, Russia, and Brazil, having more wealth to distribute, should be required to allocate a larger amount of funding than the developing countries of Zimbabwe, Nigeria, and Burundi.¹⁷¹ With these allocations, states will ensure that educational and health services are being given top priority, and that children's access to them is not being impeded. Better education systems will allow for education to be free and mandatory for all children in the States. It is my argument that the better the education infrastructure, the more likely children will attend school, which in turn, will make it so more children are getting an education, and less children are being forced into child labor. By having more funding available, it will not only be free for families, but more of their burdens of transportation and uniform costs will be provided through the funding for developing countries.

A large reason why states argue they are unable to provide a free education made available to the children is because they cannot afford to allocate their resources to education and the related costs, because it takes away from other areas of the budget they would wish to allocate their spending.¹⁷² But with the required allocation of funding, no state, no matter what their economic wealth is, will be allowed to forgo the mandatory funding for education. If states make education free, it could promote the seriousness of educating children, and make sure that an education is beneficial. In developing countries, more funding for education means that educational reform can take place. It may mean

169. *Developing Countries*, INT'L STAT. INST., available at <http://www.isi-web.org/index.php/news-from-isi/20018-dc014> (last visited Nov. 16, 2015).

170. See Hunt, *supra* note 28.

171. *Developing Countries*, *supra* note 158. Similar to a flat tax rate, countries would be required to allocate a certain percentage of their resources to education and these social services. For example, both Zimbabwe and Russia would be required to each allocate 7% of their funding. Because Russia is the wealthier country, they will be allocating a larger amount of funding in comparison to Zimbabwe.

172. See Mark J. Epstein & Kristi Yuthas, *Redefining Education in the Developing World*, 10 STAN. SOC. INNOVATION REV. 19, 19 (2012).

2015]

Filling the Gaps

219

that the infrastructure of the system be more focused on independent living and financial responsibility, in contrast to the educational systems in more developed countries.

Because Article 4 of the proposed CRC mandates a fine to any state party who refuses to comply with the Article,¹⁷³ the CRC can impose fines on them. The Committee through the authority of the CRC can use its discretion on where to allocate the fines that are received through the violations. In this scenario, it would allow States such as Zimbabwe, Nigeria, and Burundi, to receive additional funding to allocate directly into the education and social services infrastructure. With regards to China, Russia, and Brazil, by mandating that they provide funding for education, whether they already have a system in place allowing for free education, under the newly proposed CRC, they are still required to allocate further funding to their education systems. That funding may be received in the form of uniforms or transportation reimbursements for families to get their children to school. They will not be able to allocate the resources to wherever they choose; the article doesn't impose a sliding scale ration based on the quality of their education, but it is based on their gross income. Education can only be improved and made better under these proposals. The main focus is to get the children into school, and not have them working in hazardous environments.

With the changes and clarifications being made to Article 32 of the CRC, child labor exploitation is explicitly prohibited. This will have major effects on all states, whether developing or not. Zimbabwe, Nigeria, Burundi, China, Russia, and Brazil, all are states that have high percentages of child labor exploitation, yet they have all signed onto the CRC.¹⁷⁴ In compliance with the changes to Article 32, no child, under no exception, will be allowed to work at an age younger than fourteen, nor will they be allowed to work more than twenty hours per week. So, under the proposed condition, if a twelve-year-old girl from Russia is found to have been working in a crop spraying pesticides, Russia will be in violation of the CRC. Not only has Russia allowed for the exploitation of a twelve-year-old child, but they have also allowed for her to be working in an environment that is extremely hazardous to her health. Zimbabwe is considered one of the top ten worse countries for child labor exploitation.¹⁷⁵ But, under the new CRC, it would no longer be allowed to employ children in tobacco fields. Children will no longer be able to be used as drug smugglers, or for sexual exploitation if the new CRC

173. Convention on the Rights of the Child, *supra* note 7, art. 4.

174. Hunt, *supra* note 28.

175. *Id.*

were to be adopted.

Russia and Zimbabwe, clearly in violation of the CRC, will be forced to face some consequences under the new treaty. Not only does the Committee have the discretion to now fine both Zimbabwe and Russia, but both states have also consented to the jurisdiction of the ICJ and will be forced to answer for their violations. There are more repercussions and serious offenses for their violations. By consenting to the ICJ, all state parties to the CRC will be considered serious offenders of the treaty in front of the entire international community. As mentioned before, not only are they subjected to sanctions from the ICJ, but also the Committee can still choose to impose fines upon them for their serious violations. The Committee has the discretion to determine the appropriate fine in balance with the offense. The Committee then has the authority to allocate those fines to countries who are in dire need of more funding so that they can comply with the CRC. The Committee also has the discretion to allocate some of the fines to campaign awareness activities to further the purpose of the CRC. States will now have some fear for their violations and non-compliance. The CRC has more teeth and enforcement mechanisms to ensure compliance by all states.

III. CONCLUSION

In conclusion, the CRC is not a complete failure at providing protection for children. The CRC has made significant strides at bettering the world for children, and has been successful at eliminating many of the dangerous threats they are constantly faced with. But, just because there is a body of law that exists, with the goal of eliminating dangers and creating additional safeguards does not mean it is having the effect that it was meant to have.

By amending the CRC to include the changes proposed, it will not only close the gaps in enforcement, but it will create more specificity to existing amendments, extending the sphere of protection. One of the major problems with the CRC is that it is too vague, and allows states wiggle room to pick and choose which provisions to enforce. By changing the language and requiring States to comply with the specific requirements, it will eliminate the relaxed provisions, and mandate compliance. Second, by giving the Committee more authority to oversee issues of compliance, it creates a larger police force, making sure that the CRC is being upheld to the maximum extent possible. The ability to handle issues of monetary funding is also another way of giving the Committee the power and resources to police the States to the best of their ability. More resources and funding is the ultimate answer to make the biggest changes to reach the real purposes of the CRC. More resources

2015]

Filling the Gaps

221

creates more awareness, which creates more authority and more accountability. States will be more aware of the issues and be more willing to make sure every party is complying with the CRC and hold each other accountable. With the new CRC, the gaps will be filled and children will be protected and provided the same equalities as every other person.