



*See* Collingsworth Declaration, Ex. B. It was not intended to, and indeed could not by its nature, create a set of binding principles. Indeed, the Legal Advisor for the ILO specifically clarified that “it is legally impossible in the framework of the Declaration to impose any new obligation whatsoever on Members with regard to Conventions that they have not ratified.” *See* Ex. A, Report of the Committee on the Declaration of Principles, International Labour Conference, 86<sup>th</sup> Sess., at ¶ 325 (1998) (“Committee Report”). Furthermore, “the Declaration and its follow-up does not and cannot impose on any member State any obligation pursuant to any Convention which that State has not ratified through its own constitutional or other requisite legal procedure.” *Id.* It “is recognized by everyone as not being a binding instrument.” *Id.* Thus the Declaration adds no legal significance to ILO Convention No. 29 (Forced Labor Convention, 1930), which plaintiffs described in their principal memorandum as “the primary source of the definition of ‘forced labor’” but which has not been ratified by the United States. Plaintiffs’ Mem. of Points and Authorities in Opp. To Defs.’ Mot. to Dismiss Pursuant to Fed. R. Civ. P. Rules 12(b)(1) and 12(b)(6), Mar. 20, 2006 (“Pls.’ Resp.”), at 6.

Second, the Committee Report demonstrates plainly the lack of specific, universal and obligatory norms prohibiting forced labor and child labor required by *Sosa*. If such norms did exist, the question of the legal status of the Declaration would be moot. *See* Committee Report, ¶ 191 (“indeed, if all countries had ratified [the Conventions], this Declaration would have no *raison d’etre*”). Again and again the signatories to the Declaration recognized that its specific provisions were not binding – and they did so in the face of the general norm referenced by Mr. Collingsworth’s declaration. *See e.g., id.* at ¶¶ 183 (Government member of India stating that “one could not create from a legally non-binding document such as the Declaration a set of legally binding duties”), 186 (Government members of Egypt, Lebanon and Cuba noting that any

attempt to bind States to Conventions they had not ratified was rejected as matter of principle), 188 (“[a] number of Government members expressed concern over what they considered the binding nature” of proposed language, including China, Sudan, Republic of Korea and Japan because “in international law, instruments are only binding on States that have ratified them”), 193 (Worker members stressing that “the Declaration would not impose any legal obligation in and of itself” and noting that some governments “did not want to admit to any moral obligation, let alone legal obligation, and did not want to commit themselves to anything”). The suggestion that the Declaration created a new set of international legal norms binding on all countries, much less private actors, is belied by the Committee Report.<sup>1</sup>

Moreover, the differences of view reflected in the Committee Report among the various countries explicitly demonstrates the *absence* of a specific, universal and obligatory norm. For example, with respect to the language used regarding child labor, both the Government members from Bolivia and Guatemala acknowledged that child labor was common in some social and economic situations. *Id.* at ¶¶ 224, 226. Indeed, the Legal Advisor clarified that the language “effective abolition of child labour” within the Declaration “could and must be understood in a promotional and progressive sense.” *Id.* at ¶ 230.

Indeed the child labor provisions of ILO Convention No. 138 (Minimum Age Convention, 1950) are clearly not indicative of a specific, universal and obligatory norm of international law. Because the United States has not ratified the Minimum Age Convention, the U.S. Government

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<sup>1</sup> An entirely different set of international instruments apply to non-State actors such as multinational corporations. The ILO Tripartite Declaration of Principles Concerning Multinational Enterprises incorporates the principles from the Declaration and recommends that companies observe the principles “on a voluntary basis.” Ex. B, ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (Third Edition) (2001), at 3, ¶ 7. The U.N. Global Compact also incorporates the principles from the Declaration. It is a “voluntary corporate citizenship initiative” that “relies on public accountability, transparency and the enlightened self-interest of companies.” *See* Ex. C, Corporate Citizenship in the World Economy, The Global Compact (2004), at 2.

filed a report indicating its laws and practices with respect to child labor in accordance with the Follow-up to the Declaration.<sup>2</sup> Ex. D, Compilation of Annual Reports by the International Labour Office, United States and Liberia Governments (2000) (“Annual Reports”), at 5-12. The report focused primarily on the Federal Labor Standards Act (FLSA), “the major federal child labor statute.” *Id.* at 5. As noted, “under the FLSA’s child labor provisions, certain employment of those under 16 years is not considered oppressive child labor within the meaning of the Act and certain employment is exempt from the requirements of the Act.” *Id.* at 8. Specifically exempt from the child labor provisions of the FLSA is the employment of children in agriculture outside of school hours for the school district where they live while so employed; the employment of minors, including those under 14, when the minors are employed by their parents (a parent or a person standing in place of a parent may employ his own children or a child in his custody under the age of 16 in any occupation other than mining, manufacturing and those found by the Secretary to be hazardous or detrimental to health or well-being). 29 U.S.C. 213(c)(1); 29 CFR § 570.126. Also exempt from the Act’s provisions are those minors engaged in the delivery of newspapers (29 U.S.C. 213(d); 29 C.F.R. § 570.124); homeworkers engaged in making wreaths (29 CFR § 213(d)); and child actors/performers (29 U.S.C. § 213(c)(3); 29 C.F.R. 570.125). Implicitly recognizing that there is not a specific, obligatory and universal norm on child labor, the United States has explicitly rejected the application of its child labor standards in

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<sup>2</sup> In accordance with the Follow-up to the Declaration, Member States are to file annual reports its position of the law and practice in regard to matters dealt with by any of the fundamental conventions that it has not ratified. *See* Ex. E, Follow up to Declaration on Fundamental Principles and Rights at Work (1998), § II(B). The United States has filed annual reports on the effective abolition of child labor and the elimination of forced labor since it has not ratified the Minimum Age Convention or the Forced Labor Convention. *See, e.g.*, Ex. D, Annual Reports. Liberia has also not ratified the Minimum Age Convention but no report on the effective abolition of child labor was filed in 2000. *See id.* at 5.

foreign countries. *See* 29 U.S.C. 213(f) (FLSA child labor provisions do not apply to those employed in foreign countries).<sup>3</sup>

Third, even if the Declaration created a norm of international law of sufficient specificity and universality to meet the requirements of *Sosa*, which it did not, the ILO has made it clear that economic necessity, as alleged by plaintiffs here, does not amount to forced labor. With respect to the aspiration of the “elimination of all forms of forced or compulsory labour,” the ILO indicated that “[e]conomic circumstances can compel people to barter away their freedom, and labour exploitation can occur in many forms. But forced labour (to use a short comprehensive term) is something quite distinct.” Ex. F, ILO Declaration - The Issues, “Elimination of All Forms of Forced of Compulsory Labour”.

Moreover, the ILO has provided very clear guidance on what is *not* forced labor:

“[A] domestic worker is in a forced labour situation where the head of a household takes away identity papers, forbids the worker to go outside and threatens him or her with , for instance, beatings or non-payment of salary in case of disobedience. The domestic may also work for an unbearably low wage, but that is another matter. *If he or she were free to leave, this would not amount to forced labour – but to exploitation.*”

*Id.* (emphasis added). Plaintiffs do not allege that Firestone has taken away their identity papers, that Firestone forbids them from going outside, or that Firestone threatens them with beatings or non-payment of salary. Plaintiffs cannot argue that they are not free to leave their jobs, as demonstrated by the recent strike actions. *See* Supplemental Declaration of Charles Stuart, Ex. A. They may choose not to leave their jobs due to a lack of other employment opportunities available to them. Liberian President Ellen Johnson-Sirleaf recently submitted the budget for the

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<sup>3</sup> The minimum wage provisions of the FLSA are also not applicable in foreign countries. *See* 29 U.S.C. 213(f).

fiscal year 2006/07 to the National Legislature, which includes a 73% salary increase for civil servants, raising the salaries to \$1 per day.<sup>4</sup> See Ex. G, Compilation of Press Articles. In comparison, plaintiffs allege that they earn \$1.59 or \$3.19 per day depending on the number of trees tapped.<sup>5</sup> Compl. at ¶47. So while plaintiffs may feel that they cannot afford to leave their jobs, they are free to do so. Plaintiffs' allegations do not amount to forced labor.

Fourth, Mr. Collingsworth's submission of the decision in *John Doe I et al. v. Unocal Corp. et al.* is perplexing in a number of ways. Most directly, when the Ninth Circuit granted en banc review of the decision, the opinion submitted by Mr. Collingsworth lost any precedential value. Indeed, the Ninth Circuit specifically held that the "opinion shall not be cited as precedent by or to this court or any district court of the Ninth Circuit, except as to the extent adopted by the en banc court." *Doe I, et al. v. Unocal Corp., et al.*, 395 F.3d 978, 979 (9<sup>th</sup> Cir. 2003).

Moreover, the *Unocal* decision pre-dated *Sosa* and, in concluding that forced labor is actionable under the ATS (at least without concurrent war crimes), relied on the Universal Declaration of Human Rights ("UDHR") and two military tribunals. *Unocal*, 395 F.3d 932, 945 (9<sup>th</sup> Cir. 2002). As the Supreme Court explained in *Sosa*, the UDHR has "little utility under the standard set out in this opinion." *Sosa*, 542 U.S. at 734 ("the [UDHR] does not of its own force impose obligations as a matter of international law"). The agreements establishing two war crimes tribunals are equally unhelpful as they relate to war crimes, a separate and distinct area of international law. See *Kadic v. Karadzic*, 70 F.3d 232, 240 (2<sup>nd</sup> Cir. 1995) (drawing distinction

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<sup>4</sup> President Johnson-Sirleaf indicated that the civil servant salary increase was part of the government's efforts to comply with international calls for a "dollar-a-day" minimum wage. See Ex. H, Republic of Liberia – Millennium Development Goals Report (2004), at 6-8, 13-14 (target 1 is to "halve, between 1990 and 2015, the proportion of people whose income is less than one dollar per day per person").

<sup>5</sup> According to the complaint, it is the difference between \$1.59 and \$3.19 "that is the heart of the system of forced labor and child labor" Compl. at ¶47.

between torture and summary execution outside of war (state action required) versus torture and summary execution as war crimes (no state action required)).<sup>6</sup>

Furthermore, the Court concluded that no state action was required because forced labor “is a modern variant of slavery” and a *jus cogens* violation. Slavery—as defined in the Slavery Convention—may be a *jus cogens* violation, but slavery and forced labor are distinct concepts.<sup>7</sup> *Jus cogens* norms are nonderogable norms of international law that are binding on all nations, regardless of whether they have agreed to be bound. *See Siderman de Blake v. Republic of Argentina*, 965 F.2d 699, 714-15 (9th Cir.1992). Forced labor is clearly not a *jus cogens* violation. Indeed the Forced Labor Convention explicitly allows some forms of forced labor (i.e., prison labor, military service, etc.). *See* Forced Labor Convention (1930), Art. 2(2) and Art. 7(2-3).<sup>8</sup> Rhetorical metaphors do not transform forced labor claims into slavery claims nor do they elevate forced labor to equal status with slavery under international law.

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<sup>6</sup> In the *Unocal* decision, the Ninth Circuit also relied upon *In re World War II Era Japanese Forced Labor Litigation* and *Iwanowa v. Ford Motor Co.*, both of which are war crimes cases and thus inapplicable. *See* Defs.’ Reply Brief at p. 8.

<sup>7</sup> “Forced labor” is defined in ILO Convention No. 29 as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.” Forced Labor Convention (1930), Art. 2. The Slavery Convention (1927) defines “slavery” as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised” and “slave trading” as “all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.” Slavery Convention (1927), Art. 1. In *Unocal*, unlike here, the plaintiffs’ allegations arguably constituted slave-trading. *Doe v. Unocal Corp.*, 963 F.Supp. 880, 892 (C.D. Cal. 1997) (“[t]he allegations of forced labor in this case are sufficient to constitute an allegation of slave trading”).

<sup>8</sup> Compare Ex. I, Convention on the Prevention and Punishment of the Crime of Genocide (1951) Art. 1 (“The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.”) and Art. 4 (“Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials, or private individuals.”)

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned counsel hereby certifies that a copy of the foregoing was filed electronically on this 26th day of July, 2006. Notice of this filing will be sent to the parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. For those parties which are not registered with the Court's electronic filing system, the undersigned hereby certifies that a copy of the foregoing has been served by depositing a copy of the same in the United States mail, first class postage prepaid.

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