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School's Out Forever: The Applicability of International Human Rights Law to Major League Baseball Academies in The Dominican Republic

Ryan S. Hanlon*

“There is no room in baseball for discrimination. It is our national pastime and a game for all.”¹

—Lou Gehrig

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* J.D., University of the Pacific, McGeorge School of Law, to be conferred May 2013; B.S., American Studies, University of California at Berkeley, 2009. I would like to thank the people who made this Comment possible: my family, for their continued love and support; my former baseball coaches and teammates for their unique perspective and resources; Professor John Sprankling, for his invaluable insight; and my Associate Comment Editor, Christine Dickson, for her dedication and guidance.

1. *Lou Gehrig Quotes*, BASEBALL ALMANAC, <http://www.baseball-almanac.com/quotes/quogehr.shtml> (last visited Nov. 13, 2012).

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I. INTRODUCTION

Today, Major League Baseball (“MLB” or “the League”) undoubtedly reflects Lou Gehrig’s insightful words. Not only has baseball embraced African American athletes,² it has embraced athletes from countries all over the world.³ Although it has been labeled “America’s pastime,” baseball has become global in scope and harbors more international athletes than professional football and basketball combined.⁴ The Dominican Republic (“Dominican”) currently leads all other countries in international baseball talent with eighty-one athletes on MLB rosters.⁵ The 2011 World Series between the St. Louis Cardinals and the Texas Rangers featured eight Dominican-born athletes, including Albert Pujols, who has been considered the best hitter in baseball for nearly a decade.⁶ Another Dominican, Nelson Cruz,⁷ catapulted the Texas Rangers to the World Series with a record breaking thirteen RBI⁸ and six home runs in the 2011 American League Championship Series.⁹ “Baseball is now not only a global game but [also] a global business,”¹⁰ and the Dominican is the most robust international market.¹¹

The wealth of talent coming from the Dominican has clearly caught MLB’s attention.¹² “[MLB] invest[ed] upwards of \$76 million in the Dominican Republic, of which \$15 million is used in the operation of local, official MLB baseball academies, which frequently can be million-dollar training facilities.”¹³

2. *Black Famous Baseball Firsts*, BASEBALL ALMANAC, <http://www.baseball-almanac.com/firsts/first8.shtml> (last visited Oct. 16, 2012).

3. *See Major League Baseball Players by Birthplace*, BASEBALL ALMANAC, <http://www.baseball-almanac.com/players/birthplace.php> (last visited Sept. 4, 2012).

4. *See Opening Day Rosters Feature 229 Players Born Outside the U.S.*, MLB (Apr. 6, 2009, 4:56 PM), http://mlb.mlb.com/content/printer_friendly/mlb/y2009/m04/d06/c4139614.jsp; *see also 16 International Players on the Rosters of NFL Teams on Season-Opening Weekend*, INT’L FED’N OF AM. FOOTBALL (Sept. 20, 2009), <http://www.ifaf.info/articles/view/226/L2FydGlibGVzL2ZlZGVyYXRpb24vMy9wYWdlOjEw/federation:3>; *see also Mariama Diallo, International Players’ Impact on NBA Grows in Past Two Decades*, VOICE OF AM. (Feb. 16, 2011, 7:00 PM) <http://www.voanews.com/content/international-players-impact-on-nba-grows-in-past-two-decades-116426514/163104.html> (stating that today the number of NBA international players has tripled from only twenty-one international players on its rosters in 1992).

5. *Opening Day Rosters Feature 229 Players Born Outside the U.S.*, *supra* note 4.

6. Keith Winters, *Dominican Baseball Players in World Series*, THE DOMINICAN BASEBALL GUY (Oct. 19, 2011), <http://www.dominicanbaseballguy.com/2011/10/dominican-baseball-players-in-world.html>; Allen Barra, *Pujols Is Baseball’s Best*, WALL ST. J. (Apr. 4, 2009), <http://online.wsj.com/article/SB123879977872188279.htm>.

7. Winters, *supra* note 6.

8. The term “RBI” is a baseball acronym for “Runs Batted In.”

9. *See* Associated Press, *Nelson Cruz Sets Home Run Record as Rangers Return to Series*, ESPN.COM (Oct. 15, 2011, 8:05 PM), <http://scores.espn.go.com/mlb/recap?gameId=311015113>.

10. ARTURO J. MARCANO GUEVARA & DAVID P. FIDLER, *STEALING LIVES: THE GLOBALIZATION OF BASEBALL AND THE TRAGIC STORY OF ALEXIS QUIROZ* 194 (2002).

11. *See Opening Day Rosters Feature 229 Players Born Outside the U.S.*, *supra* note 4.

12. *Id.*

13. Kyle Tana, *Realities Behind America’s Pastime: The Dominican Republic’s Cheap Labor Bazaar for the Major Leagues*, COUNCIL ON HEMISPHERIC AFF. (Apr. 20, 2010), <http://www.coha.org/realities-behind>

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In fact, twenty-eight out of thirty MLB teams have established academies in the Dominican.¹⁴ At face value, both MLB and the Dominican benefit from these facilities financially as they have created over 2,000 jobs in a country that needs employment opportunities.¹⁵ Designed to prepare players for the rigors of MLB, these academies house Dominican players that American teams have signed but who are “unable to travel to the United States immediately.”¹⁶ Their inability to travel to the United States could be because of visa restrictions, skill level, or age.¹⁷ In the Dominican, players can legally qualify for admission into these academies as early as age twelve.¹⁸ Aside from the obvious allure of potential Major League stardom, these academies are attractive to Dominicans because they “[offer] housing, food, running water, electricity, [and] an education.”¹⁹ The problem, however, stems from the nature of the education offered to young recruits.²⁰ The education offered at MLB academies is narrowly tailored “to help players assimilate to a future American life.”²¹ The required curriculum includes the English language and classes on cultural adaptation to the United States.²² For the few players who fulfill their dreams of becoming the next Albert Pujols or Nelson Cruz, this system is an effective platform for escaping poverty.²³ However, the vast majority of the academy’s prospects will fail to reach the American spotlight and will return to a life of poverty in the Dominican without a practical education.²⁴

Most critics agree that MLB’s shortcomings in the Dominican are morally questionable,²⁵ but can MLB, as a U.S based corporation, be held legally accountable for failing to provide the Dominican children it employs a formal education? The answer may be explored by an analysis of applicable international law and precedent. This Comment will highlight the inadequacy of

america’s-favorite-pastime-the-dominican-republic’s-cheap-labor-bazaar-for-the-major-leagues/.

14. Press Release, MLB, Dominican Academy Directors Improve Management Skills (Sept. 21, 2009), available at, http://washington.nationals.mlb.com/news/press_releases/press_release.jsp?ymd=20090921&content_id=7079856&vkey=pr_mlb&fext=.jsp&c_id=mlb; Tana, *supra* note 13.

15. Adam Wasch, *Children Left Behind: The Effect of Major League Baseball on Education in the Dominican Republic*, 11 TEX. REV. ENT. & SPORTS L. 99, 101 (2009).

16. Vanessa Marie Zimmer, *Dragging Their Devotion: The Role of International Law in Major League Baseball’s Dominican Affairs*, 4 NW. U. J. INT’L HUM. RTS. 418, ¶ 14, ¶ 20 (2005).

17. *Id.* ¶ 20.

18. *Id.* ¶ 14.

19. Tana, *supra* note 13.

20. See Zimmer, *supra* note 16; Tana, *supra* note 13.

21. Tana, *supra* note 13.

22. Zimmer, *supra* note 16; Tana, *supra* note 13.

23. See Ross Newhan & Paul Gutierrez, *Island Fever: Dominican Republic: Beltre Case Wouldn’t Be First Violation of Rules in this Baseball-Mad and Talent-Rich Country*, L.A. TIMES, Dec. 5, 1999, at D1.

24. Tana, *supra* note 13.

25. See, e.g., *id.* (discussing “the systematic practices that are to be found in the Dominican Republic, including the implicit human rights violations being tolerated, as well as the reforms being demanded that would promote for a child’s fundamental right to an education under international law.”).

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recent efforts to combat the issue, explore the possibility of legal ramifications, and stress the need for preventative measures on the part of MLB. More specifically, it will examine applicable international law and provide a framework for the argument that MLB's operations in the Dominican may amount to violations of international human rights; however, this Comment will conclude that internal preventative measures on the part of MLB, namely educational reform in MLB's Dominican academies, is the most effective solution to the problem.

By way of background, Part II provides a description of the state of the educational system in the Dominican as well as a detailed description of the process by which a Dominican player is recruited and trained by MLB teams. Part III contemplates and analyzes MLB's exploitation of Dominican children and its failure to provide access to basic education at their facilities in light of international law and precedent. Part IV then discusses the social impact of human rights lawsuits against corporations and their potential to foster institutional change. Part IV proposes a model educational reform plan for MLB's Dominican academies.

II. EDUCATION IN THE DOMINICAN AND THE ROLE OF THE ACADEMY

A. *Trends in the Dominican Educational System*

Generally speaking, education in the Dominican is inadequate, and much of the responsibility to remedy the educational system rests on the Dominican government.²⁶ Education is certainly not a priority in the Dominican as the government's public spending on education ranked 139 out of 161 countries.²⁷ Yet, the strong influence of MLB has a drastic impact on the educational opportunities of Dominican children.²⁸ The perceived potential for high salaries and international stardom, akin to that achieved by Nelson Cruz and Albert Pujols, perpetuate the attitude that education takes a backseat to baseball in the Dominican.²⁹ Players hailing from the Dominican are excluded from the MLB draft,³⁰ and most Dominican players do not have the opportunity to go to an American high school or college and enter the MLB draft as Dominican-born superstar Alex Rodriguez did.³¹ Thus, with hopes of getting into an MLB team's baseball academy, thousands of Dominican children spend their childhood on the

26. See Wasch, *supra* note 15; see also Tana, *supra* note 13.

27. Tana, *supra* note 13.

28. See Wasch, *supra* note 15.

29. *Id.*

30. See Zimmer, *supra* note 16.

31. See Wasch, *supra* note 15.

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baseball diamond instead of in the classroom.³² In the Dominican, only 58.9% of boys entering the first grade reach the fifth grade while the parallel percentage for girls is 87.8%.³³ Moreover, only 27% of Dominican boys reach some form of secondary school.³⁴ The ratio of literate young females to males ages fifteen to twenty-five ranks seventh highest out of 123 nations (102.6%).³⁵ This discrepancy between boys and girls and the downward trend of male participation in the Dominican educational system illustrates the influence of MLB in the Dominican.³⁶ Though foregoing educational opportunities to pursue a career in baseball is most certainly a life changing path for a few, most children in Dominican baseball academies will not get the opportunity to play baseball in the United States.³⁷ In addition, there are thousands of Dominican children that fail even to reach a baseball academy and have no education to fall back on.³⁸ After all, only an estimated one in forty Dominican children makes it into a baseball academy.³⁹

B. Academies and the Road to the MLB

The predominant road to MLB for a Dominican child is through admission into an official or unofficial baseball academy.⁴⁰ Official academies are those owned and operated by MLB teams, while unofficial academies are operated by independent and historically corrupt Latin agents called *buscones*.⁴¹ MLB teams often rely on *buscones* to aid their search for talent in the Dominican.⁴² MLB's exploitive process begins when competing scouts or *buscones* attempt to recruit promising young Dominicans to baseball academies.⁴³ Some of these academies are not owned or operated by MLB and do not have access to the funding of MLB academies, so children are subjected to substandard living conditions and inadequate health and nutrition.⁴⁴ Historically, at *buscone*-run academies, reports of performance enhancing drugs and fraudulent birth certificates have been

32. *Id.*

33. *Id.*

34. *Dominican Republic, I LOVE BASEBALL*, <http://ilovebaseball.org/dominican-republic.html> (last visited Nov. 11, 2012).

35. Wasch, *supra* note 15.

36. *Id.*

37. Tana, *supra* note 13.

38. *Id.*

39. *Id.*

40. Wasch, *supra* note 15.

41. *Id.*

42. Angel Vargas, *The Globalization of Baseball: A Latin American Perspective*, 8 IND. J. GLOBAL LEGAL STUD. 21, 24 (2000).

43. *Id.*

44. *Id.* at 30.

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frequent.⁴⁵ Often, these academies are used to prepare children for entry into official academies or hide talented children who are too young to sign from other scouts or MLB teams.⁴⁶ Technically, MLB has no legal affiliation with unofficial academies, but they should still recognize and regulate their relationship with these academies where children's fundamental human rights are being violated.⁴⁷

Official MLB academies, while better funded and more habitable, are not devoid of exploitive tactics.⁴⁸ Because MLB rules do not prohibit teams from accommodating players younger than the legal signing age, MLB academies sometimes harbor children as young as twelve years old.⁴⁹ While these children are not technically employees, they are subjected to the same routine as their employed counterparts and receive no formal education.⁵⁰ MLB does impose restrictions on the minimum age at which a Dominican player may be signed to an employment contract.⁵¹ "According to Major League Rule 3(a)(1)(B), a player not subject to the Draft may be signed at age seventeen, or at age sixteen, providing he will turn seventeen prior to either the end of the baseball season in which he is signed or September first of the year in which he is signed."⁵² If a player cannot obtain a visa to train and live in the United States, or if he is too young or not yet capable to perform in MLB's minor league system, he is required to train at the team's Dominican based baseball academy.⁵³

Another problem with MLB's operations in the Dominican is the strategy MLB teams use to acquire Latin talent.⁵⁴ In an effort to acquire talent as cheap as possible, MLB teams practice what is known as the "boatload mentality."⁵⁵ According to former Colorado Rockies executive Dick Balderson, "[the] boatload mentality means that instead of signing [four] American guys at \$25,000 each, you sign [twenty] Dominicans for \$5,000 each."⁵⁶ Most of the players that are signed by MLB teams employing this strategy are released within

45. Tana, *supra* note 13.

46. Vargas, *supra* note 42.

47. *See id.* at 34.

48. Tana, *supra* note 13, at 30.

49. Jenny Anderson, *Training in Baseball's Cradle? It's a Spring Break Option*, N.Y. TIMES (Mar. 30, 2012), <http://www.nytimes.com/2012/03/31/nyregion/world-travel-opportunities-grow-at-private-schools.html>; Wasch, *supra* note 15, at 100-01.

50. Diana L. Spagnuolo, *Swinging for the Fence: A Call for Institutional Reform as Dominican Boys Risk Their Futures for a Chance in Major League Baseball*, 24 U. PA. J. INT'L ECON. L. 263, 269 (2003).

51. Zimmer, *supra* note 16.

52. *Id.*

53. *Id.*

54. Vargas, *supra* note 42.

55. *Id.* at 27.

56. *Id.*

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two years and return to a life of poverty.⁵⁷ In effect, these boys are scouted as cheap commodities and used in a form of child labor.⁵⁸

Baseball is a lifestyle at MLB academies.⁵⁹ A typical day starts with breakfast at 6 a.m., followed by fielding and hitting practice, games against other academies, lunch, a workout in the gym, then more hitting practice in the batting cage, dinner, English classes, and a 10 o'clock curfew.⁶⁰ With so little time devoted to education, and with that time being restricted to learning English and American culture, players are left with no guidance or life skills to survive in the Dominican if and when their dream of playing in the United States dies.⁶¹

While a few individual teams have invested in a formal education for their players,⁶² MLB as a corporation has made no steadfast commitment to invest in educational programs.⁶³ MLB cannot be held entirely responsible for the fundamental problems with the Dominican educational system, but it should at least be held accountable for the quality of educational opportunities afforded to the children at its own baseball academies.

C. The Role of Integrity in Baseball and MLB's Response

The globalization of baseball means that MLB teams now have global responsibilities.⁶⁴ MLB has created a global reach in an effort to maximize its ability to capture economic returns.⁶⁵ Their efforts in the Dominican proceed unchecked and unchallenged, giving no deference to fostering educational growth in the country's most important commodity, its youth.⁶⁶ If baseball is America's pastime, as Lou Gehrig once proclaimed, then it is inherently tied to the perception of America. The exploitation of Dominican youth by MLB is not an accurate perception of America, nor should it be the policy of an organization whose history is so deeply entrenched in American culture. Americans, Dominicans, and fans and athletes of baseball around the world deserve better. At the very least, they deserve to feel confident that MLB is adhering to minimum standards of international human rights and conducting themselves with integrity in their foreign relations.

57. *Id.*

58. *See generally* Zimmer, *supra* note 16.

59. *See* Wasch, *supra* note 15, at 117-18.

60. *Id.*

61. *See* Zimmer, *supra* note 16.

62. *See* Wasch, *supra* note 15, at 108-10.

63. Tana, *supra* note 13.

64. *See* GUEVARA & FIDLER, *supra* note 10, at 194.

65. *See Opening Day Rosters Feature 229 Players Born Outside the U.S.*, *supra* note 4.

66. *See generally* Zimmer, *supra* note 16.

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A few individual MLB teams have taken it upon themselves to make a commitment to formal education in their relations with the Dominican.⁶⁷ For example, the Boston Red Sox, Cleveland Indians, Seattle Mariners, and New York Mets have formed a partnership with a school in Santo Domingo that offers high school diplomas.⁶⁸ Further, the San Diego Padres have partnered with the Dominican government to improve basic public education in the Dominican.⁶⁹ Most MLB teams, however, are unwilling to invest any extra money towards funding educational opportunities at their facilities or in the community,⁷⁰ and MLB as a governing body has failed to impose further restrictions on teams operating in the Dominican.⁷¹

MLB has taken some action regarding education in the Dominican.⁷² In 2000, MLB opened a Dominican baseball office responsible for regulating its operations within the country, and, in 2010, MLB sent emissary Sandy Alderson to further investigate.⁷³ With respect to education, the MLB office has adopted “the policy that mandates every Latin American baseball academy to provide, at the very least, ‘English’ or ‘cultural classes.’”⁷⁴ Accordingly, the Dominican players that enter into MLB academies are only required to receive classes that “prepare them for communicating in English with future teammates” and coaches, along with classes aimed at familiarizing them with U.S. culture and day-to-day life.⁷⁵ Not only is this regulation next to useless for most Dominican children, it is inherently self-serving for MLB because the few that do make it to MLB stardom are better prepared to adapt and succeed under the MLB spotlight.⁷⁶ On the other hand, the players that do not make it to the United States are left without the necessary life skills to survive in life after baseball.⁷⁷ During his work with the Dominican, Alderson identified education as a fundamental problem and encouraged teams to implement their own educational programs.⁷⁸ However, no further educational reform has since taken place, though it is said to be in the works.⁷⁹ Alderson has since taken a job with the New York Mets, and

67. See Wasch, *supra* note 15, at 108.

68. *Id.*

69. *Id.*

70. See generally *id.*

71. *Id.*

72. See Michael S. Schmidt, *Baseball Emissary to Review Troubled Dominican Pipeline*, N.Y. TIMES, Mar. 10, 2010, at B13; see also Wasch, *supra* note 15, at 106-07.

73. T.J. Quinn, *MLB Pushes into Dominican Republic*, ESPN.COM (Oct. 10, 2011, 7:53 AM), http://espn.go.com/espn/otl/story/_id/7067334/major-league-baseball-pushes-dominican-republic-not-drawing-some-concern.

74. Wasch, *supra* note 15, at 106-07.

75. Tana, *supra* note 13.

76. *Id.*

77. *Id.*

78. Quinn, *supra* note 73.

79. See *id.*

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Bud Selig named Rafael Perez, former Director of International Operations for the New York Mets, as the new Director of MLB Dominican Operations on October 31, 2011.⁸⁰ The task of education reform will now be his responsibility.⁸¹

There is a level of social responsibility to be expected from an organization such as MLB. Unfortunately, relying on MLB's high-ranking officials to uphold this social responsibility and foster positive change has proven to be an inadequate safeguard for the integrity of America's most cherished pastime.⁸² While preventative measures on the part of MLB, such as a comprehensive educational program in MLB's Dominican academies, are certainly the ideal solution, it may be necessary to turn to the rule of law for accountability and for fundamental change with respect to MLB's foreign relations.

III. INTERNATIONAL HUMAN RIGHTS LAWS

A child's right to education is highlighted in a number of treaties and conventions making it a universally recognized right embedded in international law.⁸³ As a U.S.-based multinational corporation, MLB has a moral obligation to educate the children they employ at their academies, and their failure to do so may even amount to a violation of corporate responsibility under international law.⁸⁴

A. The Child's Right to Education in International Law

The child's right to an education is a basic right that is fundamental to international law.⁸⁵ The United Nation's Children's Fund ("UNICEF") defines the issue of child labor not in terms of whether or not the children work, but if

80. Christian Red, *MLB Announces Rafael Perez as New Head of Dominican Operations*, N.Y. DAILY NEWS (Oct. 31, 2011, 3:32 PM), <http://www.nydailynews.com/sports/baseball/mlb-announces-rafael-perez-head-dominican-operations-article-1.969979>.

81. *Id.*

82. See Tana, *supra* note 13.

83. See Declaration of the Rights of the Child, G.A. Res. 1386 (XIV), U.N. GAOR, 14th Sess., Supp. No. 16, U.N. Doc. A/4354, at 19 (Nov. 20, 1959), available at [http://www.undemocracy.com/A-RES-1386\(XIV\).pdf](http://www.undemocracy.com/A-RES-1386(XIV).pdf); see also Convention on the Rights of the Child art 28, para. 1, Nov. 20, 1989, 1577 U.N.T.S. 3, available at <http://www2.ohchr.org/english/law/crc.htm>; see also Convention Against Discrimination in Education art. 5, para. 1(b), Dec. 14, 1960, 429 U.N.T.S. 93, available at www.unesco.org/education/pdf/DISCRI_E.PDF.

84. See Wasch, *supra* note 15, at 112.

85. See *Flomo v. Firestone Nat. Rubber Co.*, 643 F.3d 1013, 1021 (7th Cir. 2011) (considering whether the treatment of child labor at the Firestone plantation violated customary international law based on three international conventions: the United Nations Convention on the Rights of the Child, the International Labour Organization Minimum Age Convention and the International Labour Organization Worst Forms of Child Labour Convention and explaining that even "conventions that not all nations ratify can still be evidence of customary international law."); see also Declaration of the Rights of the Child, *supra* note 83; see also Convention on the Rights of the Child, *supra* note 83, at art. 28, para. 1; see also Convention Against Discrimination in Education, *supra* note 83, at art 5, para. 1(b).

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they are being denied basic rights, such as education, as a result of their work.⁸⁶ A child's right to education is enumerated in a number of international agreements such as the International Labor Organization ("ILO Convention")⁸⁷ the United Nations Convention Against Discrimination in Education ("UNCDE"),⁸⁸ the United Nations Declaration of the Rights of the Child ("UNDRC"),⁸⁹ and the United Nations Convention on the Rights of the Child ("UNCRC").⁹⁰ All of the above treaties have been adopted and ratified by both the United States and the Dominican with the exception of UNCDE and UNCRC.⁹¹

The UNCRC, despite being ratified more swiftly and universally than any other human rights instrument, has not been ratified by the United States.⁹² The United States signed the Convention and indicated its intent to ratify it, but no further action has been taken.⁹³ However, due in part to the fact that Somalia is the only other government that has failed to ratify the UNCRC, its contents are considered fundamental pillars of international law.⁹⁴ The UNCRC acknowledges "that every child has 'the right to...education' and that State Parties are to protect children from economic exploitation that might 'interfere with the child's education.'"⁹⁵ Article 28(3) speaks to relations between State Parties.⁹⁶

86. See U.N. Dep't of Pub. Info., U.N. Background Note: Children's Rights (Dec. 1995), <http://www.un.org/rights/dpi1765e.htm>.

87. ILO Convention No. 82: Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, INT'L LABOUR ORG., 87th Sess. (1999).

88. Convention Against Discrimination in Education, *supra* note 83, at art 5, para. 1(b) (stating that "[i]t is essential to respect the liberty of parents . . . to choose for their children institutions other than those maintained by the public authorities but conforming to such minimum educational standards as may be laid down or approved by the competent authorities.").

89. Declaration of the Rights of the Child, *supra* note 83 (stipulating that "[t]he child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education which will . . . enable him . . . to become a useful member of society.").

90. Convention on the Rights of the Child, *supra* note 83, at art. 28, para. 1 (stipulating that "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 . . . [m]ake primary education compulsory and available free to all, . . . [e]ncourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and . . . [t]ake measures to encourage regular attendance at schools and the reduction of drop-out rates.").

91. See *Status of Ratifications of the Principal International Human Rights Treaties*, OFFICE OF THE U.N. HIGH COMM'R FOR HUM. RTS. (July 14, 2006) <http://www2.ohchr.org/english/bodies/docs/status.pdf>; Conventions, U.N. EDUC., SCIENTIFIC & CULTURAL ORG., <http://www.unesco.org/eri/la/convention.asp?KO=12949&language=E&order=alpha> (last visited Dec. 10, 2012).

92. Wasch, *supra* note 15, at 110.

93. *Id.*

94. *Id.*

95. *Id.*

96. Convention on the Rights of the Child, *supra* note 83, at 167.

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It states that:

State Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.⁹⁷

A second source of international law, the UNDRC, grants children the right to receive an education that “will promote his general culture and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgment, and his sense of moral and social responsibility, and to become a useful member of society.”⁹⁸ Additionally, the UNCADE, adopted by the General Conference of the United Nations Educational, Scientific, and Cultural Organization in 1960,⁹⁹ calls upon each party to implement a national policy that promotes equal opportunity and treatment with respect to education.¹⁰⁰

Domestic law is also applicable in deciphering customary international law.¹⁰¹ For example, the United States Fair Labor Standards Act (“USFLSA”) protects a child’s right to education.¹⁰² It prohibits not “child labor,” but “oppressive child labor.”¹⁰³ The doctrine allows employment of minors aged fourteen and fifteen in occupations other than manufacturing and mining so long as the employment does not interfere with education and does not interfere with the child’s health and well-being.¹⁰⁴ All of these standards of both international and domestic law stress the importance of a basic right to education as well as the importance of guaranteeing such a right in developing countries.¹⁰⁵

B. The Alien Tort Claims Act

Imposing international law against a corporate entity, such as the MLB, as opposed to a state actor has proven difficult. However, many claims have been brought against U.S. multinational corporations under the Alien Tort Claims Act (“ATCA”).¹⁰⁶ Pursuant to the ATCA, in order to have jurisdiction in a U.S.

97. *Id.*

98. Declaration of the Rights of the Child, *supra* note 83, at 19.

99. *See generally* Convention Against Discrimination in Education, *supra* note 83.

100. *Id.* at 1015.

101. *See Flomo v. Firestone Nat. Rubber Co.*, 643 F.3d 1013.

102. 29 U.S.C. § 212(c) (1974).

103. *Id.*

104. *Id.*

105. *See* Declaration of the Rights of the Child, *supra* note 83, at 19; *see also* Convention on the Rights of the Child, *supra* note 83, at 167; *see also* Convention Against Discrimination in Education, *supra* note 83.

106. *Wasch*, *supra* note 15, at 111.

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federal court, the plaintiff must allege specific facts that establish “original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.”¹⁰⁷ Because MLB is a non-state actor, it will be difficult to convince the federal court to extend liability.¹⁰⁸ The 2004 Supreme Court decision in *Sosa v. Alvarez-Machain* (“*Sosa*”) sets a high standard for corporate liability under the ATCA.¹⁰⁹ In *Sosa*, the Supreme Court held that the ATCA provides a cause of action for a violation of international norms that are “specific, universal, and obligatory.”¹¹⁰ The *Sosa* decision “severely narrowed the scope of violations of the ‘law of nations’ that can be alleged under the ATCA.”¹¹¹ Despite this high standard, there are currently multiple foreign plaintiffs bringing ATCA cases against U.S.-based multinational corporations such as ExxonMobile, Coca-Cola, and Occidental.¹¹² One recently decided case of particular importance to the issue presented by MLB’s operations in the Dominican is the Seventh Circuit case *John Roe I v. Bridgestone Corp* (“*Bridgestone*”).¹¹³

C. *John Roe I v. Bridgestone Corp.*

Bridgestone involved a 200-square-mile rubber plant based in Liberia where the plaintiffs worked on the corporation’s plantation as tree “tappers” (the process of collecting sap from rubber trees).¹¹⁴ These tree “tappers” received incentive-based increases in pay if they were able to tap an additional 375 trees on top of the required 750.¹¹⁵ The discrepancy in pay, the plaintiffs alleged, was “the difference between subsistence and starvation.”¹¹⁶ Further, the plaintiffs alleged that it was physically impossible for one adult to reach the number of trees necessary for a pay increase without unpaid help from their children and that the managers of the plantation knew that this was occurring and encouraged the practice.¹¹⁷

Derived from the *Sosa* opinion, the issue presented before the court was “whether the conditions violate a norm of international law that is as specific, universal, and obligatory as were the norms against piracy, violations of safe

107. *Id.*

108. *Id.*

109. *Id.* at 112-13

110. *See Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004); *See also* Wasch, *supra* note 15, at 112-13.

111. Wasch, *supra* note 15, at 112-13.

112. *Id.*

113. *Id.* at 113.

114. *Id.*

115. *Roe I v. Bridgestone Corp.*, 492 F.Supp.2d 988, 994 (S.D. Ind. 2007).

116. *Id.* at 994.

117. *Id.*

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conducts, or violations of the rights of ambassadors in 1789.”¹¹⁸ The court relied on ILO Convention No. 182, which addresses the worst forms of child labor, in denying the defendants motion to dismiss the child labor allegation due to the “extreme” nature of the allegations.¹¹⁹ This precedent establishes that, in order for foreign plaintiffs to have jurisdiction to bring a claim under the ATCA, they must sufficiently plead facts that amount to extreme violations of international child labor law.¹²⁰

Although the *Bridgestone* plaintiffs won the battle of jurisdiction,¹²¹ they lost the war on the merits of the case.¹²² The district court granted summary judgment in favor of the defendants, but “the plaintiffs appealed only from the judgment in favor of Firestone Natural Rubber Company.”¹²³ In an opinion written by Judge Richard Posner on appeal, the Court rejected claims by twenty-three Liberian children who challenged the working conditions at the rubber plant because there was an inadequate basis to infer that Bridgestone Corp. violated customary international law in using the child labor.¹²⁴ The decision hinged on the fact that it was unclear how many children worked on the farm and how different the situation was for Liberian children who did not live on the farm.¹²⁵ However, Posner accepted the argument that liability could exist under the ATCA where the violations were directed or condoned at the corporate decision making level.¹²⁶ This holding is explored in more depth in the plaintiff’s subsequent appeal; this decision is analyzed in the following section titled “*Flomo v. Firestone Nat. Rubber Co., LLC Opinion*.”¹²⁷

D. Analogizing International Law Precedent with the Facts of MLB Operations in the Dominican

The *Bridgestone* court claimed that the plaintiff’s did not plead sufficient facts to establish a violation of international law that was specific, universal, and obligatory.¹²⁸ The focus of the plaintiff’s allegations was the nature of the working conditions.¹²⁹ The focus of Dominican players’ allegations, however, would center on the fact that, as a result of their employment with MLB, they are

118. Wasch, *supra* note 15, at 113.

119. *Id.* at 112-13.

120. *Id.* at 113.

121. *Id.* at 114.

122. *See Flomo v. Firestone Nat. Rubber Co.*, 643 F.3d at 1024.

123. *See id.* at 1015.

124. *See id.* at 1024.

125. *See id.*

126. *Id.* at 1019.

127. *See Roe I v. Bridgestone Corp.*, 492 F.Supp.2d 988 (S.D. Ind. 2007).

128. *Id.* at 1019.

129. *See id.*

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being denied their basic right to education. Child labor has been identified by the court as too broad and sweeping to be classified as violating a norm of international law.¹³⁰ In order to further define the scope of the term child labor, the *Bridgestone* court relied on a specific source of international law, the ILO Convention 182, which defines the worst forms of child labor to include “work which, by its nature or circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”¹³¹ With respect to the case of MLB’s academies in the Dominican, the question becomes: is MLB’s failure to provide children with a basic education in their academies likely to harm the “health, safety or morals” of the children employed by the MLB?¹³²

The myriad of international sources previously discussed, when analyzed in concert with ILO Convention 182, aid in interpreting the standard used by the *Bridgestone* court because they give meaning to the phrase “health, safety or morals.”¹³³ These sources stress the child’s basic right to an education that promotes the child’s general culture, moral and social responsibility, and ultimately, provide the child with the means to become a productive member of their society.¹³⁴ Based on the provisions of numerous international and domestic sources of law, denying a child the right to a basic education could be considered a violation of customary international law.¹³⁵ Child labor “perpetuates poverty across generations by keeping children out of school and limiting their prospects for upward social mobility.”¹³⁶ The education offered at MLB academies in the Dominican is useless for most of the children that are employed there.¹³⁷ Moreover, MLB’s exploitation of Dominican youth is a perpetual process and extends well beyond the academies sanctioned by the league.¹³⁸ MLB strategically over-signs Dominican players in search of cheap talent, and they cooperate with unregulated agents to seek out talent and feed it into their academies.¹³⁹ MLB facilities in the Dominican also regularly accommodate children as young as twelve in an effort to conceal them from other competing

130. *See id.*

131. *See id.* at 1022.

132. *See id.*

133. *Id.* at 1022-23.

134. *See* Declaration on the Rights of the Child, *supra* note 83, at 19; *see also* Convention on the Rights of the Child, *supra* note 83, at art. 28, para. 1; *see also* Convention Against Discrimination in Education, *supra* note 83, at art. 5, para. 1(b).

135. *See also* *Flomo v. Firestone Nat. Rubber Co.*, 643 F.3d 1013; *see* Declaration of the Rights of the Child, *supra* note 83, at 19; *see* Convention on the Rights of the Child, *supra* note 83, at art. 28, para. 1; *see* Convention Against Discrimination in Education, *supra* note 83, at art. 5, para. 1(b).

136. *Child Labour*, INT’L LABOUR ORG., <http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/child-labour/lang--en/index.html> (last visited Nov. 12, 2012).

137. *See* Tana, *supra* note 13.

138. *See* Vargas, *supra* note 42, at 25.

139. *Id.* at 27.

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MLB teams.¹⁴⁰ Not only are children being denied education upon entry into an official MLB academy, statistics show that they are abandoning formal education at a much younger age to pursue a career in baseball.¹⁴¹ When analyzed in light of baseball's influence on the failing educational system in the Dominican, a strong case could be made that MLB's exploitation of Dominican children and their disregard for basic education in Dominican academies amounts to an extreme violation under ILO Standard 182 that is identifiable, concrete and consistent with the *Bridgestone* opinion.¹⁴² If oppressive child labor denying children their basic right to education can be identified as a sufficiently specific violation of international law, a factual analysis of the MLB and *Firestone* cases demonstrate that the Dominican plaintiffs have a stronger case on the merits than the plaintiffs in *Firestone*.¹⁴³

E. Flomo v. Firestone Nat. Rubber Co., LLC Opinion

In rejecting the plaintiff's claim in the *Firestone* appeal, Judge Posner stressed three distinct issues that influenced the court's decision: (1) the failure to establish the involvement of the corporation's decision makers in the implementation of child labor; (2) the fact that the Liberian children were not actually employed by Firestone; and (3) the fact that the court did not know the situation of Liberian children who didn't live on Firestone's plantation.¹⁴⁴ The facts of MLB's operations in the Dominican, regarding education at their academies, present a much stronger case in favor of the plaintiffs with respect to each of the three prongs identified by Judge Posner in the *Firestone* opinion.¹⁴⁵

1. Involvement of Corporations Decision-Makers

The first issue that Judge Posner discussed was the plaintiff's lack of evidence needed to establish the involvement of the corporation's decision-makers in the implementation of child labor.¹⁴⁶ In his opinion, Posner states that there was some evidence on the record that executives had witnessed child labor and possibly even condoned it,¹⁴⁷ but on the whole, there was not enough evidence to establish the supervisor's routines or how motivated they were to put a stop to the child labor they may have observed.¹⁴⁸ Conversely, MLB executives

140. See Tana, *supra* note 13.

141. See Wasch, *supra* note 15, at 107.

142. See *Flomo v. Firestone Nat. Rubber Co.*, 643 F.3d at 1024.

143. See *id.*

144. See *id.*

145. See *id.*

146. *Id.* at 1016-18.

147. *Id.* at 1024.

148. *Id.* at 1018.

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set requirements for what is to be taught at their academies, which consists of only two classes: the English language and classes on cultural adaptation to the United States.¹⁴⁹ There is plenty of evidence that MLB is aware of the problem of education in the Dominican.¹⁵⁰ In 2000, MLB opened a Dominican baseball office,¹⁵¹ and in 2010 MLB commissioner Bud Selig sent Sandy Alderson, a former general manager and top executive, to the Dominican to spearhead a reform of MLB's Dominican operations.¹⁵² Alderson identified education as a glaring problem in the country and an educational initiative was allegedly in the works.¹⁵³ Yet, in 2012, there has been no change in the education the MLB requires at their academies.¹⁵⁴ Obviously MLB is aware of both the age of the children in their academies, at least to the extent MLB rules provide, as well as the educational requirements set by their executive officers.¹⁵⁵ Therefore, proving MLB decision-makers are fully aware the Dominican children housed at their academies have no access to a basic education would not be an issue as it was in the *Firestone* appeal.¹⁵⁶ MLB executives are fully aware of what goes on in their academies with regard to education¹⁵⁷ and have made a conscious choice to place no value in providing their teenage employees a basic education.¹⁵⁸

2. Actual Employment

Posner also pointed to the fact that the Liberian children were not actually employed by Firestone.¹⁵⁹ Instead, the allegations were that employees were coerced to use their children in order to meet the high quotas.¹⁶⁰ This factual issue posed a problem for the plaintiffs because it further blurred any link between the corporation and the children.¹⁶¹ For example, the fact that the children were not actually employed by the corporation meant it was difficult for the court to determine exactly how often the child labor was occurring.¹⁶² When an MLB team signs a player to a contract they become an employee of that particular

149. Wasch, *supra* note 15, at 106-07.

150. See generally Tana, *supra* note 13.

151. Wasch, *supra* note 15, at 106.

152. Jeff Passan, *Alderson Addresses Dominican Corruption*, YAHOO! SPORTS (Apr. 22, 2010), <http://sports.yahoo.com/mlb/news?slug=jp-dominican042210>.

153. See Quinn, *supra* note 73.

154. See generally *id.*

155. See Tana, *supra* note 13.

156. See *Flomo v. Firestone Nat. Rubber Co.*, 643 F.3d at 1024.

157. See Zimmer, *supra* note 16, ¶ 45.

158. See generally Zimmer, *supra* note 16; see Quinn, *supra* note 73.

159. *Flomo v. Firestone Nat. Rubber Co.*, 643 F.3d at 1023.

160. *Id.*

161. *Id.*

162. See *id.*

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team.¹⁶³ MLB teams such as the Boston Red Sox or the San Francisco Giants are franchises of MLB and each specific MLB franchise is subject to the control of MLB.¹⁶⁴ As the governing body, MLB has a constitution and a set of rules that all teams and players must comply with.¹⁶⁵ These rules range from mandatory drug testing to the procedure to sign players.¹⁶⁶ Because MLB teams employ teenagers directly,¹⁶⁷ and because MLB controls the teams through the promulgation of the rules for employment¹⁶⁸ as well as the requirements at their academies,¹⁶⁹ the link between the child employees and the corporation (MLB) is direct and concrete.¹⁷⁰

In the *Firestone* appeal, the fact that the corporation did not contractually employ the children made it difficult for the court to determine the extent of the child labor.¹⁷¹ Conversely, in the case of MLB's Dominican academies, the extent of employment, at least of children sixteen to eighteen years old, is readily determinable.¹⁷² Furthermore, the systematic exploitation of children even younger than the minimum signing age of sixteen is a well-known practice to critics and MLB alike.¹⁷³ MLB's international operations have been under fire in the media and the court of public opinion for some time now, and MLB has done nothing more than superficially address these issues.¹⁷⁴ MLB has boasted about the need for educational reform and sent executives to the Dominican to address the issue, but no significant reform has materialized from these efforts.¹⁷⁵

3. *Benefit/Burden Analysis*

Posner claimed that the biggest objection to the lawsuit was the fact that the court did not know the situation of Liberian children who did not live on Firestone's plantation.¹⁷⁶ Posner articulates, "[t]here is a tradeoff between family

163. See MAJOR LEAGUE CONST. art. VI, § 3 (2005), available at <http://bizofbaseball.com/docs/MajorLeagueRules-2008.pdf>.

164. *Id.*

165. See generally *id.*; Maury Brown, *Rare Documents: MLB Constitution and Bylaws Now Available Online*, THE BIZ OF BASEBALL (June 17, 2010, 1:27 PM), http://bizofbaseball.com/index.php?option=com_content&view=article&id=4452:rare-documents-mlb-constitution-and-by-laws-now-available-online&catid=43:bsn-news&Itemid=114; 2012-2016 BASIC AGREEMENT (2012), available at <http://bizofbaseball.com/docs/2012-16CBA.pdf>.

166. See generally Brown, *supra* note 165; MAJOR LEAGUE BASEBALL'S JOINT DRUG PREVENTION AND TREATMENT PROGRAM (2006), available at mlb.mlb.com/pa/pdf/jda.pdf.

167. See Zimmer, *supra* note 16.

168. MAJOR LEAGUE CONST. art. VI, § 3.

169. See Quinn, *supra* note 73; see generally Brown, *supra* note 165.

170. Tana, *supra* note 13.

171. See *Flomo v. Firestone Nat. Rubber Co.*, 643 F.3d at 1023.

172. See Zimmer, *supra* note 16.

173. *Id.*

174. See Quinn, *supra* note 73.

175. *Id.*

176. *Flomo*, 643 F.3d at 1024.

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income and child labor; children are helped by the former and hurt by the latter; we don't know the net effect of their welfare of working on the plantation."¹⁷⁷ There is little doubt that most of the children in MLB's Dominican Republic academies would be better off if they pursued a formal education as opposed to entering an MLB academy.¹⁷⁸ Realistically, less than one percent of hopeful young Dominican athletes will ultimately play MLB.¹⁷⁹ Instead, most children pursuing this alluring path will return to life in the Dominican after missing years of formal schooling without the life skills to survive as a productive member of society.¹⁸⁰ After a shoulder injury derailed his promising baseball career, former Dominican prospect Edgar Ferreira told ESPN, "[m]y spirit sank . . . I screamed a lot. I'm not going to be able to help my family anymore."¹⁸¹ With MLB teams strategically over-signing Dominican players in an effort to acquire talent as cheaply as possible, Ferreira's story is no anomaly.¹⁸² Hundreds of players each year are released and left with a similar fate.¹⁸³

Yet, it is difficult to frame this issue as such in the case of the Dominican because there is no guarantee that children in MLB's academies would actually pursue a formal education if they were not in the academy.¹⁸⁴ Even if they did not participate in basic schooling, they would likely be better off working in skilled labor because they would acquire useful skills allowing them to be productive members of society for years to come.¹⁸⁵ The alternative for a vast majority of children is a signing bonus of approximately five to ten cents on the dollar compared to their American counterparts, and most of the children fail to blossom into superstars and are released from their employment uneducated, unskilled, and destined for a life of poverty.¹⁸⁶ There is a much stronger argument concerning this benefit-burden analysis in the MLB case than in the *Firestone* appeal. Also, the wealth of evidence showing that the existence of MLB academies in the Dominican perpetuates the broad educational shortcomings of the Dominican provides support for this argument.¹⁸⁷ Statistics show that male retention in educational institutions is a significant issue, and this discrepancy is attributed to MLB's strong foot hold in the Dominican.¹⁸⁸

177. *Id.*

178. *See generally* Tana, *supra* note 13.

179. *Id.*

180. *See generally* Quinn, *supra* note 73.

181. *Id.*

182. *See* Vargas, *supra* note 42.

183. *See generally* Quinn, *supra* note 73

184. Wasch, *supra* note 15.

185. *See generally id.*

186. *See* Tana, *supra* note 13.

187. *See* Wasch, *supra* note 15.

188. *See id.* at 105-07.

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According to Flavio Espinal, an attorney and the former Dominican ambassador to the U.S.:

In the Dominican, most of those kids, when they show talent, they're taken out of school. They're taken out of their natural environment to be put in a place to play baseball and get trained. They receive some education, maybe on the weekend or maybe one or two hours a night. They go to an independent trainer's facility, and from there they move to the possibility of signing with a club.¹⁸⁹

In the *Firestone* appeal, there was no evidence presented that the plantation was a central part of a larger fundamental problem in the country.¹⁹⁰

IV. SOCIAL IMPACT AND PROPOSED REFORM

In the event that a lawsuit against MLB overcame the jurisdictional hurdle and failed on the merits, it would still prove to be a valuable method to facilitate change in MLB's international operations.¹⁹¹ Over the past few years, MLB's international operations have been increasingly scrutinized in the media, resulting in heightened public awareness.¹⁹² Articles have been published in numerous journals and newspapers, and there have even been books dedicated to the issue.¹⁹³ In addition, ESPN recently produced a special highlighting the shortcomings of MLB's conduct in the Dominican.¹⁹⁴ A lawsuit would be extremely high profile and generate a significant amount of media attention.¹⁹⁵ The power of social movements with respect to corporate change should not be taken lightly.¹⁹⁶ Examples of social impact on corporate responsibility include Nike's issues with labor conditions and BP's backlash from the oil spill.¹⁹⁷

189. Quinn, *supra* note 73.

190. See *Flomo v. Firestone Nat. Rubber Co.*, 643 F.3d at 1013.

191. See generally Jane Mundy, *Yaz Lawsuit Raises Public Awareness*, LAWYERS & SETTLEMENTS (Feb. 3, 2010, 2:00 PM), <http://www.lawyersandsettlements.com/articles/yasmin-side-effects-yaz-blood/yasmin-birth-control-pill-yaz-side-effects-22-13527.html>; see also Simon Zadek, *The Path to Corporate Responsibility*, HARV. BUS. REV., Dec. 2004, available at <http://hbr.org/2004/12/the-path-to-corporate-responsibility/ar/1>.

192. See Tana, *supra* note 13; see also Wasch, *supra* note 15; see also MARCANO & FIDLER, *supra* note 10.

193. See Tana, *supra* note 13; see also Wasch, *supra* note 15; see also MARCANO & FIDLER, *supra* note 10.

194. See *Outside the Lines: Reforming Baseball in the Dominican Republic*, ESPN.COM (Oct. 5, 2011, 5:57 PM), <http://espn.go.com/video/clip?id=7064219>.

195. See generally Mundy, *supra* note 191.

196. See Beth Kytle & John Gerard Ruggie, *Corporate Social Responsibility as Risk Management: A Model for Multinationals*, (Harv. Univ. John F. Kennedy Sch. of Gov't Working Paper No. 10, Mar. 2005), available at http://www.hks.harvard.edu/m-rcbg/CSRI/publications/workingpaper_10_kytle_ruggie.pdf; see also Zadek, *supra* note 191.

197. Akhila Vijayaraghavan, *CSR Disasters: BP Spill, A Year On*, JUSTMEANS (Apr. 21, 2011, 2:41

*2013 / School's Out Forever**A. The Power of Public Awareness*

In their article entitled “*Corporate Social Responsibility as Risk Management: A Model for Multinationals*,” Beth Kytte and John Gerard Ruggie discuss the concept of “social risk” and its wide-ranging impacts on various aspects of business.¹⁹⁸ According to Kytte and Ruggie, pressures on businesses by civil society and stakeholders (customers, employees, etc.) constitute social risk, and the emergence of social risk has forced corporations to adjust their business strategies.¹⁹⁹ One way to spark pressure from civil society and influence MLB’s international business strategies is a lawsuit, such as the one analyzed in this Comment.²⁰⁰

However, this social risk does not always hinge on guilt or fault of a corporation.²⁰¹ In fact, “large multinational corporations can also [be] targeted for the sheer fact that [they do] have a global reach and capacity, and that [they are] capable of implementing decisions at a pace that neither governments nor international agencies can match.”²⁰² This process is exemplified by Coca-Cola’s business in Africa.²⁰³ Activists at the 2002 Barcelona AIDS conference targeted Coca-Cola not because of “any intrinsic connection to HIV/AIDS, but because it has a prominent global brand and one of the largest distribution networks in Africa.”²⁰⁴ In response, Coca-Cola agreed to provide treatment to its own employees and the staff of its independently owned African bottlers.²⁰⁵ Coca-Cola, like Nike, realized that this type of business practice would give it a competitive edge and contribute to its long-term success.²⁰⁶ Businesses in numerous industries have realized the importance of realigning their strategies to address responsible business practices.²⁰⁷ For example, food companies are attempting to address issues about how their products affect their customers’ health, and automobile companies recognize that their futures depend on developing environmentally safer automobiles.²⁰⁸

Few would dispute that MLB has a global reach similar to that of Coca-Cola and Nike. Public awareness has heightened due to media coverage,²⁰⁹ and the possibility of a lawsuit would seem to provide ample incentive for MLB to take

AM), <http://www.justmeans.com/csr-disasters-bp-spill-a-year-on/48568.html>.

198. See Kytte & Ruggie, *supra* note 196.

199. See *id.*

200. See generally Mundy, *supra* note 191.

201. See Kytte & Ruggie, *supra* note 196.

202. *Id.*

203. See *id.*

204. *Id.*

205. See *id.*

206. See *id.*

207. See Zadek, *supra* note 191.

208. See *id.*

209. See *Outside the Lines: Reforming Baseball in the Dominican Republic*, *supra* note 194.

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preventative measures and change their international policies.²¹⁰ If and when social risk is high enough, MLB may essentially be forced to implement new international policies.²¹¹

B. Implementing Effective Educational Reform

Ideally, MLB will take matters into its own hands by initiating educational reform with respect to its operations in the Dominican Republic; efficient and effective action on the part of MLB would negate the possibility of legal action. If effective educational reform is to occur in the Dominican, MLB needs to lead the way.²¹² Critics remain skeptical of MLB's willingness to follow through on such a plan because it will not be profitable for the owners.²¹³ Until MLB introduces and implements a comprehensive educational reform program, many children in the Dominican will be denied their basic right to a formal education.²¹⁴ This plan must not be merely recommended to teams by MLB, it must be a mandatory component of MLB's rules and regulations.²¹⁵ Further, the educational reform plan must require more extensive educational opportunities for children in MLB academies, as well as strategies to improve the structure of the educational system in the Dominican.²¹⁶

Sports activist Charles S. Farrell recently moved to open the Dominican Republic Sports and Education Academy, a college prep school emphasizing baseball and scholarship.²¹⁷ In a report to MLB, he recommended that the following principles be included in educational reform at MLB academies: communication skills, critical thinking, financial planning, computer skills, life skills, and options after baseball.²¹⁸ Farrell's plan emphasizes a broad approach to education.²¹⁹ In addition to the substance of Farrell's plan, if MLB is serious about educational reform, they should construct a system that allocates mandatory class time addressing each of these skills. The plan should include a scheduled regime of classes over a two to three-year period, which is the average

210. See generally Mundy, *supra* note 191; see also Zadek, *supra* note 191.

211. See generally Kytte & Ruggie, *supra* note 196.

212. See generally Quinn, *supra* note 73.

213. *Id.*

214. *Id.*

215. See Michael O'Keefe, *Sports Activist Examines MLB's Decision to Require Educational Programs in Dominican Baseball Academies*, N.Y. DAILY NEWS (Feb. 15, 2011 2:00 PM), <http://www.nydailynews.com/blogs/iteam/2011/02/sports-activist-examines-mlbs-decision-to-require-educational-programs-in-dominican-ba>.

216. *Id.*

217. See Michael O'Keefe, *Sports Activist Examines MLB's Decision to Require Educational Programs in Dominican Baseball Academies*, N.Y. DAILY NEWS (Feb. 15, 2011, 3:00 PM), <http://www.nydailynews.com/blogs/iteam/2011/02/sports-activist-examines-mlbs-decision-to-require-educational-programs-in-dominican-ba>.

218. See *id.*

219. See *id.*

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tenure of athletes at the academies.²²⁰ If properly implemented and administered, this plan will produce better all-around ballplayers as well as address many of the educational problems in the Dominican. The plan is broken into two distinct, yet overlapping, parts.

1. Part I: Communication, Critical Thinking, and Computer Skills

The focus of Part I of the educational reform program should primarily teach skills that can be used practically in life after baseball.²²¹ Many of the athletes at MLB academies have had little formal education and have poor communication skills as a result.²²² Few speak English, and most have poor Spanish speaking skills.²²³ Communication classes should focus not just on the ability to communicate on the baseball diamond; they should be tailored to providing players with the skills to communicate effectively in everyday life.²²⁴ Critical thinking classes are equally important because the teenagers employed by MLB need to “develop skills in conceptualizing, analyzing, evaluating and applying information that they are exposed to.”²²⁵ These skills will make the young players more adept to handle the complex decisions and situations they are presented with as they mature.²²⁶ Computer skills are essential to effectively functioning in the modern world.²²⁷ Also, computers can supplement other educational skills, such as language and critical thinking, through familiarity with programs and internet navigation.²²⁸ All of these skills, especially critical thinking, will ultimately help potential MLB athletes in the game of baseball as well because it is such a cognitive sport.²²⁹

2. Part II: Financial Planning, Options After Baseball, and Life Skills

The focus of Part II of the educational reform program should address issues former players will inevitably have re-assimilating into society and applying skills they learned both through the game of baseball and through the education offered at the academies. Financial planning is essential for any member of society and would benefit the small percentage of players that make the Major

220. *Dominican Republic*, *supra* note 34.

221. *See* O’Keefe, *supra* note 217.

222. *See id.*

223. *See id.*

224. *See id.*

225. *Id.*

226. *Id.*

227. *Id.*

228. *See id.*

229. *Id.*

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Leagues, as well as the majority that do not.²³⁰ A class instructing players how to manage, save, and wisely invest money is of paramount importance to the success of the educational reform plan.²³¹ Players also need to learn life skills to deal with the pace and pressures of their new fast-paced lifestyle.²³² These survival skills include time management, anger management, health and nutrition, and education as to the potential pitfalls of alcohol, drugs, and gambling.²³³ Prospects must also be informed about the MLB system, contracts, and legal obligations.²³⁴ Lastly, since the vast majority of prospects in Dominican academies will never play in MLB, education about options after baseball is crucial to the development of individual prospects and the country as a whole.²³⁵ Players who are informed about possibilities after baseball will be more empowered to take the necessary steps to entertain these opportunities when their baseball careers come to an end, which will inevitably happen even for those that do achieve their ultimate goal of playing in MLB.

V. CONCLUSION

Although some MLB organizations have made positive strides in the area of basic education, the League as a whole has failed to make a commitment to educating the Dominican children in its academies.²³⁶ A lawsuit against MLB under the ATCA could potentially prove a successful route in changing the international policies of MLB generally, while also helping to remedy the educational shortcomings of the Dominican. Although there may be a strong case on the merits, the most practical and efficient solution would be for MLB to implement the necessary changes internally. MLB harbors athletes and fans from all over from the world,²³⁷ yet its iconic status as America's pastime ensures a permanent link to the United States.²³⁸ Therefore, the actions of MLB and its executives overseas in the Dominican reflect upon the United States and its citizens in a profound way.²³⁹ This influential power has had a negative effect on the educational system in the Dominican to date,²⁴⁰ but that does not have to be

230. *See id.*

231. *See id.*

232. *Id.*

233. *See id.*

234. *Id.*

235. *Id.*

236. *See Tana, supra* note 13; *see also Wasch, supra* note 15, at 108.

237. *See Major League Baseball Players by Birthplace, supra* note 3.

238. *See generally* STUART ANDERSON & L. BRIAN ANDREW, COMING TO AMERICA: IMMIGRANTS, BASEBALL AND THE CONTRIBUTIONS OF FOREIGN-BORN PLAYERS TO AMERICA'S PASTIME (2006), available at <http://www.nfap.com/researchactivities/studies/baseballcoming1006.pdf>

239. *See generally id.*

240. *See Tana, supra* note 13.

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the case moving forward.²⁴¹ MLB's international prowess and economic resources put the League in a unique position to promote education in the Dominican.²⁴² The United States should be a leader, not a follower; a complier, not a violator when it comes to human rights issues. By doing so, MLB would better the lives of thousands of young Dominican boys and the country as a whole,²⁴³ setting an example of social and moral responsibility that its fans and athletes could be proud of.

241. See Wasch, *supra* note 15, at 124

242. *Id.* at 100.

243. See *id.*