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## Article

**\*99 CHILDREN LEFT BEHIND: THE EFFECT OF MAJOR LEAGUE BASEBALL ON EDUCATION IN THE  
DOMINICAN REPUBLIC**

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## ABSTRACT

Major League Baseball (MLB) employs over a thousand Dominican high school-aged boys in twenty-nine baseball academies around the impoverished country. Thousands of boys devote their young lives to the sport, because they view baseball as the only way off the island. Bird-dog scouts, known locally as 'buscones', scour the Dominican country-side in search of talented middle school-aged boys. They do this in an effort to train them in an unofficial baseball training facility until they reach the age of sixteen, the legal signing age. At that time, buscones sell their commodities to the highest bidder. Once the boys get sold to a MLB team, they spend every waking hour playing baseball in the team's baseball academy. The boys are either sent to the U.S. to play baseball or left in the dust. An estimated ninety-seven percent of these boys get left behind. These boys find themselves without an education and without hope for a productive future. This article is written for them. This article discusses three topics: (1) MLB's effect on education in the Dominican Republic (DR); (2) the international legal standards that protect a child's right to an education; and (3) whether MLB has a legal obligation as a U.S. based multinational corporation (MNC) to provide a formal education to the children it employs in the DR. This article calls for MLB to enact a corporate policy that provides a formal education to all of its teams' Dominican child-employees within the baseball academies and offers two solutions that MLB should follow in order to avoid legal liability and to avoid negative publicity in the court of public opinion.

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**\*100 I. Introduction**

MLB teams operate training facilities in the Dominican Republic (DR) known as “baseball academies.” The primary purpose of these facilities is to hone the skills of MLB's Dominican recruits--boys at or near high school age, before sending them to a team's Minor League Baseball affiliates in the U.S. Baseball academies range in size housing a few dozen to a few hundred Dominican boys each year. MLB scouts must wait until a Dominican boy turns sixteen years old before they can sign him to play at a team's baseball academy. [FN1] However, bird-dog scouts, known locally as buscones, do not have that restriction.

Buscones roam the Dominican countryside in search of talented, young Dominican boys eager to play professional baseball. Buscones provide training, housing and food for the boys before literally selling them to the highest MLB bidder. Buscones run private camps that mimic the MLB-owned baseball academies, but there is no official entity regulating these camps. While allegations of extortion [FN2] and rampant drug-use [FN3] have \*101 surfaced over the past few decades, MLB scouts work with buscones to get the best talent. Some MLB officials believe that buscones serve a vital purpose, because buscones are able to find the best young talent in a country where organized baseball is not the norm. [FN4] With the MLB scouts and buscones working together in the DR to find talent, thousands of young Dominican boys each year find themselves under the “web” cast by MLB. Additionally, it has been reported that thousands more Dominican boys, those that do not find themselves under the care of a buscone or in a baseball academy, devote their young lives to making an MLB roster and forego a normal childhood. [FN5]

Both MLB and the Dominican government benefit financially from their symbiotic relationship. In fact, it has been estimated that the investment MLB has made in the DR is more than seventy-five million dollars. [FN6] Additional estimates show that MLB has created more than two thousand jobs in a country that needs employment. [FN7] The underlying cost is that, since the first baseball academy opened in the mid 1980s, tens of thousands of Dominican boys have not received a formal education in the Dominican school system due to their love of the game.

There are MLB teams operating baseball academies in the DR that now provide a formal education. For example, the Padres opened a brand new, state-of-the-art facility in Najayo, DR, where teachers and college students teach English, culture, and provide a curriculum to the high school boys. [FN8] In an effort to convince MLB teams to “follow the leaders,” this article highlights the other MLB teams that currently provide a formal education to their recruits in the DR. Additionally, this article points out that MLB's failure to provide a formal education violates key provisions of international child labor law that provide for the child's right to an education. Lastly, this article opines that providing a formal education [FN9] to recruits makes better baseball players in the long run.

\*102 Part II discusses the background of the current situation in the DR through a historical, statistical, and legal analysis of MLB's effect on education in the DR. Part III analyzes the pertinent international child labor law standards that provide for a child's right to an education and discusses the scholarly articles from years past that have called for MLB to change its business practices in the DR. Part IV identifies the problem in the DR by using a real-life scenario of a Dominican boy in of the baseball academies. This Part provides two solutions: (1) the drafting of a MLB Child Labor Code of Conduct and (2) including Dominican high school graduates in an international draft. Part V concludes that MLB teams should pay the extra expense to provide a formal education to its recruits, because providing a formal education to its recruits will make better baseball players and also give the ninety-seven percent of young boys that do not end up on a Major League roster a better future.

## II. Background

A person who cuts sugarcane should earn \$80 a day, but they only get \$7. Who's going to cut sugarcane when they see Alex Rodriguez get \$252 million? It's very clear: You play baseball. [FN10]

The 2009 World Baseball Classic was comprised of the world's best baseball players competing to determine which country was the best in the world. While the DR was shockingly eliminated by the Netherlands, the small country fielded a team of MLB players that would make any MLB general manager salivate. The DR roster included MLB veterans Moises Alou, Pedro Martinez, David Ortiz, Alex Rodriguez, Miguel Tejada, and Fernando Tatis. [FN11] MLB up-and-comers, including Hanley Ramirez, Jose Reyes, Robinson Cano, Willy Taveras, Johnny Cueto, Carlos Marmol, Miguel Olivo, and Edinson Volquez, also played for their country. [FN12] Hall-of-Famer Felipe Alou managed the DR team. Dominican-born MLB players Adrian Beltre, Vladimir Guerrero, Francisco Liriano, Carlos Pena, Albert Pujols, Ervin Santana, Francisco Cordero, Fausto Carmona, and Alfonso Soriano were not on the WBC roster.

Dominicans take various routes to get to the Majors. For Alex Rodriguez and Albert Pujols, their path was the “easy” route through high school, college, the MLB Draft, and a short stint in the Minor Leagues. However, most Dominican Major Leaguers do not have the same opportunity to go to an American high school or college and then get drafted. Players hailing from Latin America are excluded from the MLB draft. Like thousands of other Dominican ballplayers, they find themselves playing baseball throughout their entire childhood in hopes of getting seen by a MLB scout or a buscone who can get them into a MLB team's baseball academy. The following is a brief look at the various Dominican paths to the Majors, which also imparts the history of MLB recruitment in the DR.

Like many young Dominicans, Felipe Alou felt pressured to sign an MLB contract for only \$200 due to family financial problems. [FN13] In 1955, Alou had been pursuing his \*103 education to be a doctor but saw baseball as a path to financial security for his family. [FN14] “I looked at the tired walls of our home, at the crowded rooms, at the weariness in my parents' faces,” said Alou recalling the day that he signed his contract. “I could only hope that better days were coming and that I would help bring them.” [FN15] Two other Hall-of-Famers in Alou's era, Juan Marichal and Orlando Cepeda, received \$500 as a signing bonus but many young Dominicans in the 1950s only received passage into the United States as payment for their services. [FN16] By the late 1970s and early 1980s, the “quality in quantity” [FN17] principle remained in order, as baseball's activities entered the current “age of the academy.” [FN18] While MLB's baseball academies introduced young Dominican players to American life and the English language, the perceived prestige that came along with the title “baseball academy” masked the serious financial discrepancies between what clubs spent on Dominican recruits compared to their North American counterparts. [FN19]

Miguel Tejada was found in the DR by a buscone, Enrique Soto, and was hand delivered to the Oakland Athletics in 1993 for \$2,000. [FN20] Soto currently runs his own private baseball academy in Bani, DR, that houses anywhere from sixty to one hundred and twenty Dominican boys until they are ready to be sold to the highest MLB bidder. [FN21] Soto takes a twenty-five percent cut on the signing bonuses given to the players from his Enrique Soto School, which he founded while working for the Oakland Athletics. [FN22] The school was formed under the premise that MLB teams would pay more for well-trained, well-fed players. [FN23] “You have to get them when they're young,” Soto explained to the Washington Post's Steve Fainaru. [FN24]

MLB veteran Adrian Beltre, a member of the semi-finalist 2006 Dominican WBC team and current third baseman for the Seattle Mariners, was involved in a well-publicized violation of league rules in 1994. Beltre was signed to the Los Angeles Dodgers' baseball \*104 academy at Campo Las Palmas on July 7, 1994. [FN25] Beltre's agent, Scott Boras, listed his age as sixteen, but accurate birth documents showed that he was actually only fifteen when signed; a violation of MLB's seventeen year-old rule. [FN26] As a penalty, Commissioner Bud Selig shut down their facility in the Dominican Republic for a year but allowed them to keep Beltre. [FN27]

Dominican pitchers Edinson Volquez, Johnny Cueto, and Fausto Carmona are the new breed of Dominican pitchers that are quickly making an impact in MLB. Volquez was seventeen when he was signed by Texas for an estimated

\$20,000. Volquez admitted that a scout told him he had to change his name to Julio Reyes and shave a year and a half off his age. “A lot of the players in the Dominican change their name,” Volquez told ESPN.com. [FN28] “If you go one year lower, you're gonna get more money. It's all about money.” [FN29] Cueto signed with the Reds in 2004 for \$35,000 and was sent to the Reds Dominican baseball academy before being shipped to the Minor Leagues. [FN30] Carmona, from the small town Naranjo Atta Viejo Yamasa, signed with the Indians at seventeen. [FN31] After a short stint in the Indians' Dominican baseball academy and Minor Leagues, Carmona was called up to the Majors and is currently in the middle of a four-year, \$15 million deal through 2011. [FN32] To many baseball insiders, including Mets general manager Omar Minaya, Volquez, Cueto, and Carmona are just three players out of a “growing pool of promising young Dominican pitchers in the major leagues.” [FN33]

Over the past century, the stories of Cueto, Carmona, and Tejada are rare. For every story of a Dominican player making it to the Majors, there are tens of thousands more stories that never get told. These are the stories of the Dominican boys in official and unofficial baseball academies that do not get the opportunity to play baseball in the U.S. On top of that, there are thousands more that do not even get the opportunity to play in an official or un-official baseball academy. One DR scout has estimated that one in forty Latino children baseball players actually makes it to a baseball academy. [FN34] Even less make it to a MLB roster. [FN35]

The left behind Dominican children relinquish their education to play baseball because they see it as the only way to make a respectable living. Rafael Perez, an MLB official in the DR, estimated that the education-level of the kids entering the MLB-run baseball academies is at a middle school level. [FN36] Diana Spagnuolo, in her comment *Swinging for the Fence: A Call for Institutional Reform as Dominican Boys Risk Their \*105 Futures for a Chance in Major League Baseball*, [FN37] quotes the former Vice President of MLB's Latin American Operations Lou Melendez: “We are aware of the problem with kids leaving school in the Dominican Republic to go learn and hopefully become baseball players. We are also aware of the fact that once they get released from the academy that they don't go back to school.” [FN38] Most of the children under the web cast by MLB are placed back into an impoverished society without an education, which leaves little hope for procuring a respectable job. [FN39] The following section discusses the history of education in the DR through a historical analysis of the relationship between Dominican boys and MLB. Section B discusses the current state of education in the DR through a statistical analysis of information provided by the United Nations (U.N.), and Section C discusses MLB's response to the educational crisis in the DR.

#### A. Historical Analysis: From Quality in Quantity to the Age of the Academy

Historically, the literacy rate in the DR was never higher than thirty percent in the 1950s. [FN40] During that time, MLB scouts were competing intensely to sign Dominican baseball talent. [FN41] Scouts like Joe Cambria and Howie Haak scoured Latin America for prospects and found many young players who practically begged for the opportunity to play in the U.S. [FN42] Hall-of-Famers Juan Marichal and Orlando Cepeda signed for \$500 each, and most players signed contracts that simply paid for their passage to the United States. [FN43] After Haak's first full year of scouting Latin America, he boasted that he signed “four gems for about a thousand dollars of bonus money-total . . . [t]o get four guys that good in the states might've cost a hundred thousand.” [FN44] This period in MLB history was appropriately dubbed by scholars as the “quality in quantity” era. [FN45] MLB continued to treat Latin American baseball players like commodities and gave little attention to helping the often “star-struck recruits” adjust to North American culture. [FN46]

During the late 1960s and early 1970s, the World Bank and other international agencies intervened to create many of the most recent initiatives in the Dominican educational system. [FN47] These organizations began teaching English to Dominicans and used scholarships to create a professional elite class, which was formed in American universities.

[FN48] The educational system in the DR, as well as the economy, saw a steady growth in the seventies and eighties. However, scholars have argued that MLB continued to treat Latin American baseball players like commodities and give little attention to helping \*106 the often “star-struck recruits” adjust to North American culture. [FN49] By the end of the 1970s and into the 1980s, the “quality in quantity” [FN50] principle remained in order as baseball's activities entered the “age of the academy.” [FN51]

While the DR's economy enjoyed steady growth during the nineties and the first decade of the new millennia, the government simply did not invest money in education. [FN52] In fact, the DR government's investment in education was and still is one of the lowest in Latin America. [FN53] Similarly, MLB was not investing in education either. The “age of the academy” continued through the nineties with little change in MLB's education policy for its child recruits. [FN54] Clearly, there was little-to-no governmental or private investment to send those students that were in the baseball academies to school.

Despite the fact that public and private investment in education has been historically miniscule, the DR has implemented some key educational programs this decade, including the following: (1) an increase in the amount of compulsory education to nine years of basic education, including a preschool year; (2) new textbooks published and distributed throughout rural and urban schools; (3) new curricula developed for Basic Education; and (4) new education laws to replace the obsolete legislation of 1951. [FN55] Middle school in the DR now begins after the sixth grade. Once a child passes the sixth grade, two tracks are established for continuing students: (1) the “academic track” that continues on through the twelfth grade with academic studies for those Dominican students who wish to pursue a university education, and (2) the technical-professional tracks, for those who wish to enter any of the technical schools. [FN56] Secondary school begins in the tenth grade, where the students can receive a tecnico basico after one year or secondary degrees in business training (for the bachillerato commercial certification), agricultural training (for the Perito agronomo, or 13th grade agricultural diploma), and industrial training certifications after either two or three years. [FN57] Unfortunately, for every 1,000 Dominican students entering the first grade, only 219 make it to ninth grade. [FN58]

In 2000, MLB opened its Dominican Baseball office. [FN59] Through this office, MLB established standards that each team must follow for field conditions, housing and nutrition. [FN60] Additionally, the Dominican MLB office enforces the policy that mandates \*107 every Latin American baseball academy to provide, at the very least, “English” or “cultural classes.” [FN61] This is still the only MLB standard for education in the DR.

#### B. Statistical Analysis of Education in the DR: Boys Drop Out After Fifth Grade

Statistically, the Dominican government spends 2.3 percent of its nation's GDP on education, which ranks 122 out of 132 nations according to NationMaster, a compilation of data from such sources as the CIA World Factbook, the U.N., and the Organisation for Economic Co-operation and Development (OECD). [FN62] It is no wonder that the DR ranks in the bottom half of educational statistics such as educational spending, literacy, average years of schooling, and educational enrollment. [FN63] It can be argued that some key aspects of the NationMaster data could be used to show that MLB's operation in the DR has had an effect on the education of young boys. The DR's young girls have far better rankings and percentages than the boys in almost every key educational statistic at the middle school and secondary level. [FN64]

The disparity in educational statistics between Dominican boys and girls starts at the primary education level. [FN65] According to NationMaster, the percentage of Dominican boys starting the first grade and reaching grade five is 58.9 percent (71st out of 101 nations), while the same percentage for girls is 87.8 percent (48th out of 101 nations). [FN66] The girl to boy ratio at the primary education level is .95 (103rd out of 183 nations), however at the secondary level the

girl to boy ratio is the fifth highest out of 172 nations at 1.21. [FN67] The ratio of female to male primary education enrollment is 95.22 percent (64th out of 174 nations), however the ratio of female to male at the secondary education level is 121.29 percent (4th out of 162 nations). [FN68] The ratio of boys to girls in primary and secondary education combined is 110.62 percent (9th out of 157 nations), and the ratio of young literate females to males ages 15 to 25 is 102.6 percent (7th out of 123 nations). [FN69] Girls score better than boys in other categories including the following: education enrollment ratio, primary education completion rate, and persistence to the fifth grade. [FN70]

Analyzing the numbers shows that boys and girls enter the Dominican educational system at the same rate in the first grade, but as the Dominican students go through the system, more and more boys drop out drastically increasing the girl to boy ratio as the students get to the secondary level. Only 58.9 percent of boys entering the first grade reach the fifth grade. [FN71] These are the statistics that could be used as circumstantial evidence to show that families send their boys to the ball fields rather than schools because they see baseball as an easier way to get out of poverty.

**\*108 C. MLB's Response to the Educational Crisis in the DR: Highlighting the "Leaders"**

The San Diego Padres, Cleveland Indians, and New York Mets have noticed the educational crisis in the Dominican Republic and have been among the few teams that have taken action to provide a formal education to their Dominican recruits. The Padres invested more than \$5 million into their new baseball academy, which houses more than sixty players and features two regulation-size fields, a half-field, batting cages, a clubhouse, a weight room, a training room and a dining hall. [FN72] Additionally, the facility also features on-site classrooms. [FN73] Prior to the opening of the facility, the Padres partnered with the Dominican government, the American Chamber of Commerce in the Dominican Republic and the U.S. Agency for International Development (USAID) to improve the quality of basic public education in the Dominican Republic, specifically, Basica La Playa Elementary School and the surrounding schools that sit only a few miles away from the team's new multi-million dollar baseball academy. [FN74]

In 2006, the Indians began sending every player in its Dominican baseball academy back to school, shuttling them from the baseball field to a classroom three to five nights a week for as many as three-and-a-half hours of study. [FN75] By the end of that first year, three players had graduated from grammar school, and five more earned high school diplomas. [FN76] Additionally, if a Dominican recruit gets hurt or released, he has the option of studying for another career, something he would not have had before, because a high school diploma is a prerequisite for college on the island. [FN77] "It's a nice byproduct that we graduate Dominicans from high school, but our focus is to make more complete baseball players," says Ross Atkins, Cleveland's director of Latin American operations. [FN78] "Their ability to learn is crucial in their development as a baseball player. And a secondary benefit is that they have something in life beyond baseball should baseball not work out." [FN79]

The Mets followed the Indians lead and recently began enrolling their Dominican prospects in the same classes at Colegio Instituto Escuela, a modest private school hidden in a leafy upper-middle-class neighborhood not far from Santo Domingo's historic port. [FN80] There, the players study basic subjects such as civics, geography, algebra and world history, while also learning French and basic computer skills. [FN81] Unfortunately, MLB.com reported that two other teams contacted Valoree Valdez de Lebrón, the director of the only school in the Dominican accredited to teach the kind of classes the Indians and Mets are offering, but both were put off by the cost of the school, which is nearly \$800 a student for nine months \*109 of classes. [FN82] "In baseball you have leaders and you have followers," Mets' Director of International Development Rafael Perez told MLB.com. [FN83] "Cleveland is a visionary. The education part comes because it will help develop players. A better-educated player will . . . have a better chance of making it to the big leagues." [FN84]

Due to the lack of governmental support for education and the lack of an MLB initiative to educate the Dominican boys, the private sector is attempting to step in and pick up the slack. [FN85] Harold Mendez, a Philadelphia attorney, and his partner, sports activist Charles S. Farrell founded the Dominican Republic Sports and Education Academy (DRSEA), a college prep-school aimed at providing Dominican ballplayers “more options than a slim shot at baseball glory or dead-end poverty.” [FN86] The freshman class is scheduled to start in the Fall of 2010. [FN87] “It would be special to create the next Manny Ramirez, that would be something” Mendez told the New York Daily News, “it would also be special to create the next Dr. Ramirez.” [FN88] DRSEA will offer a full high school curriculum including algebra and literature, as well as real-world classes related to the business of baseball such as how to hire an agent, how to handle the media, how to manage money, and how to deal with a buscone. [FN89] MLB has not endorsed DRSEA, but a few baseball insiders are involved with the project. [FN90]

### III. International Law Analysis

Major League Baseball's historical lack of emphasis on providing education to its Dominican recruits leads to the following questions: At what point does MLB cross the line by violating its corporate responsibility under international law that protects a child's right to education? Does MLB have a legal obligation, as a U.S. based multinational corporation (MNC), to educate these children-employees?

#### A. Child's Right to an Education Embedded in International Law

The United Nations Children's Fund (UNICEF), the UN agency most directly connected with children's issues, understands that children work to supplement a low- income household, but the agency's concern lies where children are being denied other basic rights because of their employment, like the “right to education.” [FN91] The child's right to education is enumerated in such international treaties and conventions as the United Nation Convention on the Rights of the Child (UNCRC), the United Nations Declaration of \*110 the Rights of the Child (UNDRC), and the United Nations Convention Against Discrimination in Education (UNCADE). [FN92]

The UNCRC recognizes 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.” [FN93] Additionally, Article 28(1)(e) provides that State Parties shall “[t]ake measures to encourage regular attendance at schools.” [FN94] Article 28(3) speaks to relations between State Parties. It states:

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. [FN95]

Since the UNCRC's adoption in 1989, after more than 60 years of advocacy, the UNCRC has been ratified more quickly and by more governments than any other human rights instrument. [FN96] Like many other Latin American countries, the Dominican Republic has ratified the UNCRC. [FN97] On February 16, 1995, the U.S. signed the Convention indicating the nation's intent to consider ratification. [FN98] That is as far as it has gone to date. The only other government that has not ratified the UNCRC is Somalia. [FN99] Clearly, however, there exists a “general state practice [in the U.S.] and the understanding that the practice is required by law.” [FN100]

The UNDRC calls upon parents, individuals, voluntary organizations, local authorities and national governments to observe the rights of the child as set forth in the declaration so that children may enjoy their childhood and have the be-

nefit of the rights and freedoms granted therein. [FN101] Among the rights and freedoms granted to children is the right to receive education. [FN102] Principle 7 states:

**\*111** The 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 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. The best interests of the child shall be the guiding principle of those responsible for his education and guidance; that responsibility lies in the first place with his parents. The child shall have full opportunity for play and recreation, which should be directed to the same purposes as education; society and public authorities shall endeavor to promote the enjoyment of this right. [FN103]

The General Assembly of the United Nations adopted the current, expanded version of the UNDRC on November 20, 1959. [FN104]

The UNCADE was adopted by the General Conference of the United Nations Educational, Scientific, and Cultural Organization on December 14, 1960. [FN105] This Convention commits each party to develop and apply a national policy which will tend to promote equality of opportunity and of treatment in the matter of education. [FN106] In particular, the parties must make primary education free and compulsory; make secondary education generally available and accessible to all; make higher education equally accessible to all on the basis of individual capacity, and assure compliance by all with the obligation to attend school prescribed by law. [FN107]

## B. Alien Tort Claims Act

While international law is particularly difficult to enforce against a non-State actor, plaintiffs have brought numerous claims against U.S. based MNCs under the Alien Tort Claims Act (ATCA). ATCA grants U.S. Federal courts “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.” [FN108] For jurisdiction to fall under ATCA, a plaintiff must allege facts sufficient to establish that: (1) they are aliens (2) suing for a tort (3) committed in violation of the law of nations or a treaty of the United States. [FN109] In the context of assessing liability to a U.S. based MNC, however, two thresholds must be reached. First, it must be determined whether there exists a claim that violates “the law of nations” (i.e., a customary **\*112** international law). [FN110] Second, it must be determined whether the Federal court will extend liability to a non-state, corporate actor, such as MLB. [FN111]

While corporate liability under ATCA has evolved over the past decade, no plaintiff to date has received a successful jury verdict on an ATCA claim. [FN112] The main reason no plaintiff has been successful in bringing an ATCA claim can be attributed to the 2004 Supreme Court holding in *Sosa v. Alvarez-Machain*. [FN113] ATCA has been used as a vehicle for foreign plaintiffs to allege violations of customary international law against U.S. based MNCs in recent years, [FN114] but the *Sosa* court severely narrowed the scope of violations of “the law of nations” that can be alleged under ATCA. The *Sosa* decision was deemed by two scholars as a successful “result of an attempt by the Bush administration and the business community to halt the use of ATCA.” [FN115] Essentially, *Sosa* not only limited the claim that could be brought against an MNC, but it also limited the scope of liability of corporate actors for violations of customary international law. [FN116] Post-*Sosa*, foreign plaintiffs have had varied success bringing ATCA claims against U.S. based MNCs. For example, the Eleventh Circuit Court in *Aldena v. Del Monte Fresh Produce, N.A., Inc.*, affirmed the dismissal of all non-torture ATCA claims including the claims for cruel, inhuman, and degrading treatment; arbitrary detention; and crimes against humanity. [FN117] Additionally, the Third Circuit dismissed claims of sexual harassment and assault, because they did not meet the “rigorous *Sosa* requirements.” [FN118]

These holdings are not stopping plaintiffs from bringing actions in United States courts. To date, there are pending ATCA cases against Unocal, ExxonMobil, Coca-Cola, and Occidental, among other U.S. based MNCs. While MLB might not currently have a legal obligation under federal law, a lawsuit under the Act could be a nightmare in the court \*113 of public opinion such as the one Nike has faced with their “sweatshops” . Currently, Bridgestone Corporation is facing that nightmare situation in the court of public opinion and a U.S. federal court with their rubber plantation in Liberia, Africa.

#### C. John Roe I v. Bridgestone Corp.: Extreme Violations of International Child Labor Law Meet Sosa Standard

The Seventh Circuit, in the pending case John Roe I v. Bridgestone Corp., held that an allegation of an “extreme” violation of international child labor law meets the Sosa standard. [FN119] In Bridgestone, International Labor Rights Fund (ILRF), a Washington-based advocacy group, filed a federal class-action suit against Bridgestone/Firestone for what it called “a gulag of misery” on the Firestone Rubber Company's 200-square-mile rubber plantation in Harbel, Liberia. [FN120] The plaintiffs are tree “tappers” that work on the corporation's plantation. [FN121] To earn a daily wage equivalent to \$3.19, the tree tapper must tap one complete “task” of 750 trees and half of a second “task,” or another 375 trees. [FN122] If the tapper completes 750 trees but not the additional 375 trees, he is paid only half of the daily wage, or \$1.59. [FN123] The difference between \$3.19 and \$1.59, according to the complaint, is the “difference between subsistence and starvation.” [FN124] The plaintiffs allege that earning \$3.19 is physically impossible for one adult without unpaid help from their children. [FN125] The plaintiffs alleged that the Bridgestone/Firestone Plantation managers and overseers knew that the quotas effectively required child labor. [FN126] The plaintiffs also alleged that Bridgestone/Firestone encouraged plaintiffs, who complained about the quotas, to use their children to help meet the quotas. [FN127]

The federal district court took language straight from Sosa and determined that the issue of the case 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 conducts, or violations of the rights of ambassadors in 1789.” [FN128] The Bridgestone court held that the allegations of child labor met the “Sosa standard” for ATCA claims. The court relied on the International Labour Organization (ILO) Convention No. 182, which addresses the “worst forms of child labor,” in making its decision to deny the defendants' motion to dismiss on the child labor allegation. [FN129] The court expressed its concerns about the practical consequences of recognizing child labor claims under ATCA and international law, but in a sufficiently “extreme” case, such as this one, the court opined that Sosa leaves the ATCA door open. [FN130]

Thus, as ATCA currently stands, claims for extreme violations of international child labor law could meet the rigorous Sosa standard. Scholar Christopher Kern has stated that \*114 depriving the child of a formal education “recycles poverty and hopelessness by turning today's generation of child laborers into tomorrow's sick, unemployed, uneducated and unproductive adults.” [FN131] Additionally, the harm that child labor imposes on children has a “ripple effect” on society as a whole. [FN132] While thousands of Dominican boys employed by MLB are not provided with a formal education that would make them productive adults, this violation of international law would not be classified as an “extreme violation” under ILO Standard 182.

#### D. Scholarly Calls for MLB to Change its Latin American Policies

Over the past decade, several scholars have made calls for MLB to change its operating policies in Latin America. Some authors believe that MLB has a responsibility to provide a formal education to their employees, while others believe it is the responsibility of the DR itself to educate the kids. Essentially, the latter argument is the following: MLB

has no obligation to provide a formal education because the children do not attend school anyway due to the DR's lack of quality educational opportunities for its children. One commentator placed a legal and moral duty on the Latin American governments to regulate MLB's business practices within their country's baseball academies. [FN133]

Vanessa Marie Zimmer, in her 2005 article, *Dragging Their Devotion: The Role of International Law in Major League Baseball's Dominican Affairs*, [FN134] recommended that the Inter-American Commission on Human Rights (IACHR) carry out an on-site observation of the recruiting process, prepare a report on possible human rights violations, and make recommendations to the country's government to remedy any problems. [FN135] After all, the DR's government "has the duty to ensure that all international legal wrongs committed in its territory have been dealt with to the degree that international law requires." [FN136]

Diana Spagnuolo, in her 2003 comment, discussed the lack of serious educational activities at the baseball academies with MLB insiders. [FN137] Wil Tejada, while in his position as Head Scout of the Philadelphia Phillies Dominican Baseball Academy, explained that the strenuous schedule simply leaves no time for a formal education. [FN138] Lou Melendez, then President of MLB's Latin American Operations and current MLB Vice President for International Operations, admitted to the education problem and stated that MLB was "working on a solution." [FN139] The interview took place over six years ago and no standardized measures have been enacted by MLB, on the whole, to cure the problem.

While MLB fans are privy to the multimillion dollar contracts signed by the elite Latin American talent, Arturo Marcano and Professor David P. Fidler asked: what happens to \*115 the hundreds, if not thousands, of other prospects who do not make the cut? [FN140] They answered: "[a]fter years of struggling in baseball academies and/or the minors, they generally return home without fame, fortune, or formal education." [FN141] By citing the United Nations Convention of the Rights of the Child (UNCRC) and the Minimum Age Convention (MAC), Marcano and Fidler were two of the first scholars to address MLB's violation of the child's "right to education." [FN142] They held MLB accountable for operating facilities in Latin American countries that do not respect the child's right to education "embedded in international law." [FN143]

Angel Vargas, while in his position as President of the Venezuelan Professional Baseball Players Association, identified this issue in his article *The Globalization of Baseball: A Latin American Perspective*. [FN144] Vargas stated his concerns about how the baseball academies interfere with the education of the children employees. [FN145] When attendance at the baseball academies occurs during the school year, as it often does, Vargas alleged that the players have "no chance to attend school and a baseball academy." [FN146] Vargas stated that, within the baseball academy, MLB teams "provide little more than simple English lessons narrowly related to playing baseball." [FN147] Vargas also alleged that MLB teams have "little interest in educating the Latino children that are brought into the system." [FN148] Vargas also received other common complaints about Venezuelan baseball academies, which include: "security against personal and property crimes; consistent and adequate supplies of clean water; consistent and adequate sanitary services (e.g., toilets); well-maintained buildings; sufficient food and nutrition; trained medical staff; serious educational activities; and high-quality playing facilities." [FN149] Although MLB did open an office in the DR to quell reports of under-age signings and deplorable conditions in the baseball academies as described by Vargas [FN150], no proactive measures have been taken by MLB to remedy the education crisis in the DR. In fact, MLB on the whole has never addressed that there is a problem.

#### IV. Commentary: MLB Should Step to the Plate

MLB has the financial resources to provide teachers and a curriculum to the children in its baseball academies. It is time now for MLB to step to the plate. Dominican boys are not going to school in order to chase the dream of playing

baseball in the United States. Thousands of Dominican boys under the age of sixteen are working with buscones to get sold to the highest bidder. Thousands more have signed employment contracts with MLB in baseball academies scattered around the country, and most of these boys are still not receiving a proper education outside of “cultural assimilation” - learning English and \*116 American culture lessons to help them adjust to American life and give them an opportunity to better communicate with their teammates. Additionally, educated players have a better chance of “just saying no” to outside influences, such as steroids, and - in the long run - a formal education will make those Dominican boys that actually make it to a Major League roster better all-around ballplayers. Providing a formal education to their recruits and taking a key role in improving education throughout the country is a win-win situation for MLB.

#### A. Addressing the Problem: No Formal Education and a General Lack of Regulation in the “Wild, Wild West”

In 2007, Minor Leaguer Luis De La Cruz had his own “rags to riches” story in the DR. [FN151] Luis, a seventeen year old boy, was living in a small wooden house without running water or electricity. [FN152] He spent his days hacking down sugar cane stalks. [FN153] A month later, Luis found himself in the Seattle Mariners baseball academy taking hacks at fastballs and curveballs. [FN154] “I’m making my biggest effort to go to the U.S. and play,” De La Cruz said. [FN155] “This is the only way I can help my family from being poor.” [FN156] In order to fulfill his dream of making it to the Major Leagues, Luis had to drop out of high school. [FN157]

Odds are heavily stacked against Dominican boys like Luis fulfilling their dreams of making it in MLB. In 2007, the academies in the DR and other Latin American countries housed and trained about 1,400 Latin American children, the majority of which were under the age of eighteen. [FN158] Of the Latino children employed at MLB’s training facilities, it is estimated that about three to five percent of them will achieve the “rags to riches” dream of making it to the Major Leagues. [FN159] Doing the simple math, at the most sixty Latin American children per year will make it to the Majors at some point in their career. On average, the cold reality is that less than two children per baseball academy, which typically house 60-100 children, per season will make it onto a Major League roster over the course of his career. MLB’s baseball academies have been operating in this fashion, with similar odds, for decades.

At the St. Louis Cardinals’ baseball academy, located on the outskirts of the small town of Villa Mella, DR, academy managers require the Dominican boys “to work out from sunrise to sunset.” [FN160] The Cardinals’ facility consists of a well-maintained baseball field, a batting cage, and a three-story concrete dormitory. [FN161] On a typical day, the Major League “hopefuls wake up at 6 a.m. to a hearty breakfast of mashed plantains and meat to help them gain weight and build muscle.” [FN162] According to Oz Campo, the manager of the Cardinals’ baseball academy, the boys practice fielding and hitting after breakfast; then, \*117 “they play games against other academies almost everyday, followed by lunch, a workout in the gym and more time in the batting cage.” [FN163] Campo told Bloomberg.com that:

Most evenings are filled with dominoes, merengue music and baseball on an old television in the dormitory lounge, which is furnished with a few old couches. Curfew is 10 p.m. Many go to bed earlier, exhausted from the day’s work. They live this life 10 months a year for up to three years. [FN164]

Chris Kline, from Baseball America, was in the Dominican Republic before the start of the 2008 MLB season to get a first-hand look at the baseball academies and reported the “surreal” situation. [FN165] Two of the facilities Kline visited were the multi-million dollar baseball academies of the New York Mets and the New York Yankees in Boca Chica, just outside of Santo Domingo. [FN166] Kline stated that every Dominican child dreams of making it to the “pristine, well-manicured grounds” of these two baseball academies, but “for the overwhelming majority, chances are that will never happen.” [FN167] Kline talked to a scout in the Dominican, who estimated that one in forty child baseball players actually makes it to a MLB club’s academy. [FN168] Kline stated that “the ones that do not [make it into an academy] usually

have sacrificed education for a potential way off the island.” [FN169] Kline interviewed Ron Anderson, the English teacher employed by the New York Yankees baseball academy, who plainly stated the educational program inside the walls of the academy is limited to English and “culture.” [FN170]

MLB and its teams are operating what has been called a “freewheeling, unpoliced atmosphere” in the Dominican Republic. [FN171] Freelance writer Joe Connor visited the Dominican Republic and wrote about his findings for ESPN.com in 2006. Connor likened a Latin American baseball academy to a “baseball boarding school” except for the teenagers guarding the entryways with a shotgun. [FN172] According to Connor, the “signed Dominican” children “play baseball seven days a week, all day long, seldom venturing outside the grounds of [the] academy.” [FN173] Connor's account of the daily life of a signed, child employee in a MLB baseball academy goes as follows:

\*118 At the academy, every day starts with a 7 a.m. wake-up call to eat a big, buffet-style breakfast that included fat-filled pancakes. The players will put on an average of eight-to-10 pounds per month over the next 12 months, or about 120 pounds. The few studs in a group of the 30 to 40 new players every year may even be summoned to rookie ball in North America. After breakfast and stretching, it's baseball from 8:30-noon, with instruction that includes as many as seven coaches along with drills and some intra-squad games. Following a hearty hour for lunch, the players usually return to the fields or lift weights until around 5 p.m., when they break for a big fat dinner. English classes follow supper, after which most Dominicans are so exhausted they go to sleep. [FN174]

Former Major Leaguer Jose Rijo runs a private academy in San Cristobal, DR, at a facility built in 1999 called Loma Del Sueno, which rents space to MLB teams. [FN175] “We know the only way to leave the country is by swinging or throwing,” Rijo, who grew up in San Cristobal and pitched 14 years in the big leagues, told The Free Lance-Star. [FN176] In 2006, Washington Nationals General Manager Jim Bowden stated:

The Cowboys were America's team. We would like to be the world's team. We want to dominate the Dominican Republic. With Manny Acta being the only active Dominican manager in baseball and with Rijo leading the way, we want to end up dominating. We want every young boy [FN177] wanting to be a Washington National. [FN178]

Loma Del Sueno houses up to 250 Dominican boys at a time. At a cost of ten million dollars, the facility has a cafeteria, dormitory, and a weight room. The boys take English and Spanish lessons to prepare them for a potential life in the big leagues. “It seemed to me at the time it was the best way to invest my money in something that I know and that I love, and it's the best way to give back to the community . . . They've got everything here.” [FN179] Everything does not include a formal education.

According to Dominican Senator Charles Noel Mariotti Tapia, MLB's baseball academies offer players, such as De La Cruz, very little help in finishing their education, drawing the ire of some of the DR's government leaders. “Social responsibility has been \*119 practically nonexistent,” Mariotti told Bloomberg.com. [FN180] “There should be a stronger commitment for the things that are key to the country's development. The vast majority of these youngsters don't have diplomas.” [FN181] However, after decades of business dealings, an overarching relationship [FN182] has developed between MLB and the DR. [FN183] The DR has developed a financial dependence on MLB, which makes it unlikely that the impoverished country would call for an investigation, for example, that Vanessa Zimmer suggested in her comment. [FN184] The DR had an estimated 2008 gross national income per capita of \$2,850. [FN185] The investment made by MLB in the Dominican Republic has been estimated to be at least \$76 million, according to Dominican-baseball.com, of which at least \$15 million is accounted annually for the operation of MLB's twenty-nine Dominican baseball academies. [FN186] The website estimated that MLB's presence in the DR creates 1,200 full-time jobs and an additional 900 indirectly created jobs within the informal sector of Dominican baseball culture, such as buscones. [FN187] This relationship has essentially allowed MLB to operate its baseball academies without government regulation. [FN188]

## B. Two Possible Solutions

The effect that MLB has on education in the DR raises international child labor issues that have been a public nightmare for other U.S.-based multinational corporations, including Nike, Reebok, and Gap. By failing to enforce its child labor laws and its compulsory education requirements, the DR's government has breached its legal obligations under the UNCRC, UNDRC, and the UNCADE as well as the International Labour Organization's Minimum Age Convention. Despite the lack of governmental enforcement, MLB must take an active role in educating the Dominican children under its "web". MLB is in a unique position to promote the benefits of education in the DR, and the league has the financial \*120 ability and wherewithal to effectively better the lives of thousands of young Dominican boys.

Two solutions can quell the outcries for international legal sanctions against MLB: (1) implementing a MLB Child Labor Corporate Code of Conduct and (2) including Latin American high school graduates in the MLB Draft.

### 1. Solution: Include Dominican High School Graduates in the MLB Draft

MLB officials and scholars alike have made calls for MLB to implement an international draft that would include Dominican-born players and all players not included in the current MLB Draft - comprised of Americans, Canadians, and Mexicans. Mike Arbuckle, the Philadelphia Phillies' assistant general manager who oversees scouting, said:

The reality is, we're finding that there have been dollars not going to players - guys who used to get \$30,000 but are now getting reported bonuses of \$350,000 are actually getting \$75,000 and the rest is going to other places . . . [P]art of the response is, we eliminate a lot if we just put these guys into the draft. This is a way of cleaning it up. [FN189]

In fact, MLB and its players union agreed to the concept of a worldwide draft during the labor deal of August 2002. [FN190] An addendum to that contract said, "The parties agreed that there should be a worldwide draft," and officials said it would be implemented by 2004 at the latest. [FN191] Unfortunately, the topic was dropped from discussion during the 2006 labor talks. [FN192]

In 2009, the calls for an international draft got louder after the FBI began a probe into the Washington Nationals former GM Jim Bowden and former Special Assistant Jose Rijo. [FN193] The Nationals controversy involved allegations of bonus skimming in Latin America. [FN194] However, prior talks about the possibility of an international draft have been focused on the resulting competitive balance. [FN195] Supporters of the international draft are advocating that MLB and the MLB player's union adopt an international draft in the next collective bargaining agreement in 2012. [FN196] Not only would the international draft clean up the "Wild, Wild West" [FN197] in Latin America, but it would also give small market MLB teams an equal opportunity to sign Dominican talent.

Arturo Marcano, the aforementioned scholar and long-time advocate of Dominican players' rights, told Tim Lemke of the Washington Times:

We have always claimed that one of the best ways to deal with this was to have a worldwide draft. One of the biggest reasons is that there would be a set of \*121 clearly identified rules that everybody has to follow. You would need to have an office that is better structured with more resources to do things like verify ages and determine how these players were trained and who's training them. [FN198]

Rob Manfred, MLB's Executive Vice president for Labor Relations told the Washington Times that:

It is a topic that is of renewed interest among the clubs, and it's something we're going to look very hard at. I think there is a much stronger consensus in favor of the worldwide draft than there was five years ago. I think the

worldwide draft would help because it would reduce the financial incentives that would be problematic. To the extent that you have a nice, open system and everybody is looking at the same players and you can verify records before the draft, obviously it would clean up a lot of the problems that we've had. It would be an additional benefit that might flow from this. [FN199]

Steve Phillips, the former New York Mets GM, opined:

I've always been against it because I felt like if we were doing our job right running our team, we can beat you by not restricting ourselves with the draft. If it's open competition it would be better. I think there's another thought that [open competition] would be better for the kids down there because more would get opportunities this way than they would out of a draft when you're restricted to 50 rounds for the selections and such. [FN200]

Based on the years of alleged and proven abuses of the current scouting process that exists in the DR, it is clear that many MLB teams are not "doing [their] job right running [their] team." [FN201] Implementing an international draft would reduce the risk of signing underage Dominican boys, keep every interaction between MLB and these boys "on the books" and not under the table, and also provide an added incentive for teams to follow the rules since bending them will not get them better players.

However, the international draft alone would be like putting a band-aid on a gaping wound. The international draft would not tame the "Wild West". Without the appropriate provisions in the 2012 collective bargaining agreement, the international draft will not prevent buscones from taking young Dominican boys out of school. These scouts would still work to get their cut of the signing bonus. The international draft would not, by itself, promote Dominican boys going to high school. In fact, without provisions condoning buscones and promoting education, there would be a greater incentive for boys to skip high school to concentrate on their game just as Dominican boys are doing now. In other words, the same problems that have existed over the last few decades in terms of the educational crisis would still persist.

Not only does MLB need to implement an international draft, but it needs to include the same "high school requirement" for Latin American players as it does for American, \*122 Canadian, and Puerto Rican players. According to the MLB draft rules, the basic categories of players eligible to be drafted are the following:

High school players, if they have graduated from high school and have not yet attended college or junior college; College players, from four-year colleges who have either completed their junior or senior years or are at least 21 years old; and Junior college players, regardless of how many years of school they have completed. [FN202]

Giving the Dominican boys an incentive to attend high school and graduate with a degree before getting signed by a MLB team would be the best and most obvious way to increase school attendance in the DR. Additionally, the inclusion of Dominican high school graduates in the MLB Draft would satisfy MLB's corporate responsibility to respect the child's right to an education and also diminish the role of buscones in the DR.

## 2. Alternatively, MLB Should Draft MLB Child Labor Corporate Code of Conduct

In the alternative, since there is an obvious lack of governmental intervention, MLB should enact a Child Labor Corporate Code of Conduct - just as Nike, Reebok, and Levi Strauss & Co. have done in the wake of international child labor law crises - that directly addresses the educational crisis in the DR. Corporate codes of conduct are voluntarily adopted guidelines that corporations abide by in the course of their operations. Corporations draft codes of conduct "because they are an asset in public relations with consumers, employees and investors/shareholders." [FN203] Public sentiment shows that corporations breaking child labor laws "ranks somewhere up there with toxic dumping or unsafe products in the list of evils that can blacken the image of a successful corporation." [FN204]

As the idea of globalization expands, the power and influence of MNCs has grown exponentially. In fact, the economies of most U.N. Member States are smaller than the annual revenues of the largest MNCs. [FN205] Thus, the role of a U.S. based MNC - such as MLB - in the global economy puts it “in an influential position in the area of human rights.” [FN206] MLB is “uniquely positioned” to protect against violations of child labor law and to effect progress in the arena of child labor in Latin America. [FN207] The following is an example of what the MLB Child Labor Code of Conduct should look like:

#### MLB Child Labor Corporate Code of Conduct

**Definition of a Child.** A child in this context is a person younger than 17 years old, or 16 years of age in accordance with Major League Rule 3(a)(1)(B) (i.e., the MLB “seventeen year-old rule”).

**\*123 Child Labor Code.** Major League Baseball bases its child labor code on the UN Convention on the Rights of the Child article 32.1. We “recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development.”

**Implementation of the MLB Child Labor Corporate Code of Conduct.** Major League Baseball does not accept child labor. We acknowledge that it exists and realize that it cannot be eradicated simply by drafting this code of conduct, but by actively contributing to the improvement of children's social and educational situations. We as a corporation endeavor to improve the situation for anyone affected by our child labor ban. This includes increasing educational opportunities for children that cannot work. Major League Baseball will act in the overall best interest in the child. A satisfactory solution is whatever improves an individual child's overall situation, and Major League Baseball will cover the costs.

**Enforcement of MLB's Child Labor Code of Conduct.** Major League Baseball will discontinue cooperation with any third-party that persists in non-compliance with our MLB Child Labor Code of Conduct.

**Apprenticeship Programs.** Major League Baseball accepts apprenticeship programs for children between the ages of fourteen and sixteen years, but only under certain conditions. The total number of hours spent on work and school together should never exceed seven hours per day. The apprentice must prove that work is not interfering with the child's education, that the apprenticeship is limited to a few hours per day, that the work is light and clearly aimed at training, and that the child is properly cared for, housed, and fed. Apprenticeship program directors must file a report with the league that details that their apprentices are receiving a quality, formal education. We will not work with apprenticeship programs that do not comply with these terms.

**Special Recommendations.** Major League Baseball acknowledges that according to Article 1 of the UN Convention on the Rights of the Child, a person is a child until the age of eighteen. We therefore recommend that children in the age group of 14-18 be treated accordingly (i.e., by limiting the total number of working hours per day and implementing appropriate rules for overtime). Children in this age group are not allowed to perform strenuous work that will impair their ability to receive an education.

**The Principle of Trust and Cooperation.** Major League Baseball expects its employees, team officials, scouts, and third-parties receiving monetary compensation from the league to respect this Child Labor Corporate Code of Conduct and to actively do their utmost to achieve its standards. Major League Baseball is prepared to cooperate with its employees, team officials, scouts, and \*124 those receiving monetary compensation from the league to achieve adequate solutions. Major League Baseball is also prepared to take cultural differences and other relevant factors into consideration, but we will not compromise on the fundamental requirements described in this Code.

Monitoring. All Major League Baseball employees, team officials, scouts, and apprenticeship program directors are obliged to keep Major League Baseball informed about the status of every child under the care of Major League Baseball and its affiliates until that child reaches the age of majority. Major League Baseball also reserves the right to let an independent party make an inspection of all facilities that house and train children without notice. [FN208]

Child labor corporate codes of conduct promote general goodwill on behalf of MNCs and show the general public that the MNC acknowledges the importance of complying with child labor laws. Legally, however, corporate codes of conduct suffer because many do not provide for implementation or enforcement. In other words, MNCs will not be legally liable under international law for violations of their corporate codes of conduct. Scholars have criticized corporate codes of conduct as “ineffective across the board because their rules are easily circumvented and may be given no legal significance.” [FN209] One business ethicist at the Wharton School of Business writes that “too many companies don't do anything with the [codes]; they simply paste them on the wall to impress employees, customers, suppliers and the public.” [FN210] Therefore, MLB must flex its muscles and implement a corporate policy that would encourage young Dominicans to attend high school and also include Dominican High School graduates, or those similarly situated, in the MLB Draft.

## V. Conclusion

MLB is in a unique position to promote the benefits of education in the DR, and the league has the financial ability and popularity to effectively better the lives of thousands of young Dominican boys. Providing a formal education would give Dominican, high school-aged recruits that do not make it to MLB a chance at a better life outside of baseball. For those that actually make it through the current system to a Major League roster, a formal education will make those Dominicans better baseball players, better teammates, and better people. Implementing an international draft with the same high school requirement for Dominican recruits that currently exists for American and Canadian recruits would be the most effective and direct way to increase school attendance in the DR. Alternatively, by drafting a MLB Child Labor Code of Conduct, MLB has an opportunity to show that, as a U.S. based MNC, it is aware of the child labor issues facing the league and that the league will work to meet the international standards providing for a child's right to an education.

[FN1]. Adam Wasch, J.D., 2009, Florida International University College of Law; Managing Editor, 2008-09 FIU Law Review; Associate, Wicker, Smith, O'Hara, McCoy & Ford, P.A. Special thanks to FIU College of Law Professors Lillian Aponte Miranda and Andre Smith for their guidance and insight throughout the process of writing this article. As always, thanks and love to my family and my wife for their support in my professional and scholarly endeavors.

[FN1]. Major League Rule 3(a)(1)(B). The “seventeen year old rule” provides that a player who is not subject to the draft and who is not under contract with a MLB team can be signed by any team if (1) he is seventeen years old at the time of signing, or (2) he is sixteen years old at the time of signing and he will turn seventeen prior to the later of (i) the conclusion of the baseball season in which he signed and (ii) September 1 of the year he signs.

[FN2]. See Steve Fainaru, *The Business of Building Ballplayers*, Wash. Post, June 17, 2001, at A01, available at <http://www.latinamericanstudies.org/sports/dominicanballplayers.htm>. The example often used to show the power position buscones hold over Dominican children is the case of Major Leaguer Willy Aybar and his buscone, Enrique Soto. Dominican born Aybar grew up in poverty helping his family by baking and selling bread for five dollars a day. Enrique Soto plucked Aybar from his home near Banj River, taught him how to switch hit and field, housed him, and fed him. When Aybar turned sixteen, Soto sold him to the Dodgers for a then record \$1.4 million. Aybar's U.S. agent sent the first

of two \$490,000 installments to Soto, who gave Aybar's mother \$60,000 and pocketed the rest. Aybar refused to press charges stating that Soto “deserved the money.”

[FN3]. See Arturo J. Marcano & David P. Fidler, [Fighting Baseball Doping in Latin America: A Critical Analysis of Major League Baseball's Drug Prevention and Treatment Program in the Dominican Republic and Venezuela](#), 15 U. Miami Int'l & Comp. L. Rev. 107 (2007).

[FN4]. *Id.* at 134. Ronaldo Peralta, the manager of MLB's Latin American operations, observed that buscones “are a very important part of the industry. They help fill a gap, because there's not a lot of organized baseball in the Dominican Republic. They provide a service.”

[FN5]. See, Diana L. Spagnuolo, Comment, [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, 266-67 (2003).

[FN6]. Office of the Commissioner MLB-Dominican Republic, MLB investment in the Dominican Republic, <http://www.dominican-baseball.com/articles/article.php?artid=9> (last visited Oct. 27, 2009).

[FN7]. *Id.*

[FN8]. Washington and Lee University, W&L Students to Teach English at San Diego Padres' Baseball Academy, <http://www.wlu.edu/x30554.xml> (last visited Oct. 27, 2009). “Most of the players have very little education, so the Padres are trying to develop more of the education side of the academy, including English classes to make the adjustment easier in case they make it to the major leagues,” says Ellen Mayock, professor of romance languages and one of the faculty members leading the project. “Since very few will make it that far, the Padres want to provide them with an education that will stand them in good stead when they return to their homes....”

[FN9]. The term “formal education” is used in this article to describe elementary school, middle school, and high school where trained teachers provide a standard curriculum that includes, at the very least, reading, writing, math, and science.

[FN10]. Jim Salisbury, Search for Dominican Talent no Longer a Hit-or-Miss Affair, Players with Big-League Potential are Bound to Get Noticed, July 23, 2002, Phil. Inquirer, available at <http://www.angelfire.com/vt/prospectwatch/inx169.html>; <http://xml.newspday.com/sports/baseball/bal-tejada-photogallery06586290.photogallery?index=56> (quoting Enrique Soto).

[FN11]. WorldBaseballClassic.com, Dominican Republic, 2009 Statistics, <http://web.worldbaseballclassic.com/stats/index.jsp?team=dom>.

[FN12]. *Id.*

[FN13]. Samuel O. Regalado, [Latin Players on the Cheap: Professional Baseball Recruitment in Latin America and the Neocolonialist Tradition](#), 8 Ind. J. Global Legal Stud. 9, 11 (2000).

[FN14]. *Id.*

[FN15]. *Id.*

[FN16]. *Id.*

[FN17]. *Id.* at 18. The “quality in quantity” principle has also been called the “boatload mentality.” MLB's approach to

recruiting in Latin America is “to cast a wide net by signing as many players as possible and holding as many others inside the academy.” Spagnuolo, *supra* note 5, at 271. According to Spagnuolo, the “boatload mentality” describes teams that sign Latin American players for a fraction of the cost of American players.

[FN18]. *Id.*

[FN19]. *Id.* (“[I]n the 1975 June draft, MLB clubs paid on average \$60,000 to players from the United States while Latino signees received a paltry \$5,000. Six years later, the Philadelphia Phillies revealed that Players Development funding for North American players was \$355,000 compared to \$25,000 for Latin American recruits.”); see also *Id.* at 17 (“Felipe Alou signed for a \$200 bonus, Juan Marichal and Orlando Cepeda each signed for \$500, and Roberto Clemente received a remarkable \$10,000. Nevertheless, these cases were rare. Most players signed contracts that merely paid for their passage to the United States.”); see also *Reds Hope Cueto is First of Many Dominicans to Play in Cincy*, [http://sports.yahoo.com/mlb/rumors/post/Reds-hope-Cueto-is-first-of-many-Dominicans-to-p;\\_ylt=Aq3sKwgFOeu6BeUCdXzYPrWpu7YF?urn=mlb,74994](http://sports.yahoo.com/mlb/rumors/post/Reds-hope-Cueto-is-first-of-many-Dominicans-to-p;_ylt=Aq3sKwgFOeu6BeUCdXzYPrWpu7YF?urn=mlb,74994). In this example, 22 year-old Cincinnati Reds rookie pitcher Johnny Cueto, who won in his first MLB start on April 3, 2008, signed to play at the Reds' Dominican baseball academy in 2004 for \$3,500--later reported to be \$35,000. Meanwhile, three months after Cueto signed, the Reds signed prospect Homer Bailey, an American-born player that is currently still in the Minor Leagues, for \$2.3 million.

[FN20]. Salisbury, *supra* note 10.

[FN21]. Steve Fainaru, *The Business of Building Ballplayers: In Dominican Republic, Scouts Find the Talent and Take the Money*, June 17, 2001, *Wash. Post.*, at A01, available at <http://www.latinamericanstudies.org/sports/dominican-ballplayers.htm>.

[FN22]. *Id.*

[FN23]. *Id.*

[FN24]. *Id.* According to the *Philadelphia Inquirer*, Soto has also had a very good relationship with the Phillies. Soto has sold Dominican players from his school to the Phillies including Franklin Perez, Robinson Tejeda, Juan Richardson, and Martire Franco. Salisbury, *supra* note 10.

[FN25]. Murray Chass, *Dodgers Get to Keep Beltre, but are Penalized*, *N.Y. Times*, Dec. 22, 1999, at D1, available at <http://query.nytimes.com/gst/fullpage.html?res=9F0CE5DC1739F931A15751C1A96F958260&sec=&spon=&pagewanted=2>.

[FN26]. *Id.*

[FN27]. *Id.*

[FN28]. Amy K. Nelson, *Volquez Earning ‘Little Pedro’ Nickname on the Mound*, *ESPN.com*, May 13, 2008, <http://sports.espn.go.com/mlb/news/story?id=3392657>.

[FN29]. *Id.*

[FN30]. Joe Kay, *RH Johnny Cueto a Hopeful Sign for Reds' Future*, *U.S.A. Today*, Apr. 28, 2008, available at [http://www.usatoday.com/sports/baseball/2008-04-28-1259962335\\_x.htm](http://www.usatoday.com/sports/baseball/2008-04-28-1259962335_x.htm).

[FN31]. Anthony Castrovince, *Tribe Signs Carmona to a Long-term Deal*, MLB.com, Apr. 10, 2008, [http://mlb.mlb.com/news/article.jsp?ymd=20080410&content\\_id=2511589&vkey=news\\_cle&fext=.jsp&c\\_id=cle](http://mlb.mlb.com/news/article.jsp?ymd=20080410&content_id=2511589&vkey=news_cle&fext=.jsp&c_id=cle).

[FN32]. *Id.*

[FN33]. James Wagner, *The Pitch of an Island*, Wall St. J., July 11, 2008, available at [http://online.wsj.com/public/article\\_print/SB121573942686244721.html](http://online.wsj.com/public/article_print/SB121573942686244721.html).

[FN34]. *Id.*

[FN35]. See Spagnuolo, *supra* note 5.

[FN36]. Kay, *supra* note 30.

[FN37]. Spagnuolo, *supra* note 5.

[FN38]. *Id.*

[FN39]. See, e.g., Christopher M. Kern, *Child Labor: The International Law and Corporate Impact*, 27 *Syracuse J. Int'l L. & Com.* 177 (2000) (citing Jennifer Bol, *Using International Law to Fight Child Labor: A Case Study of Guatemala and the Inter-American System*, 13 *Am. U. Int'l L. Rev.* 1135, 1156 (1998)); see also Spagnuolo, *supra* note 5 (describing Felipe Alou's signing for \$200).

[FN40]. StateUniversity.com, *Dominican Republic - History & Background*, <http://education.stateuniversity.com/pages/386/Dominican-Republic-HISTORY-BACKGROUND.html> (last visited October 28, 2009).

[FN41]. *Id.*

[FN42]. *Id.*

[FN43]. *Id.*

[FN44]. *Id.*

[FN45]. See Regalado, *supra* note 13, at 18; see also Spagnuolo, *supra* note 5, at 271.

[FN46]. *Id.* at 11.

[FN47]. StateUniversity.com, *Dominican Republic - History & Background*, *supra* note 40.

[FN48]. *Id.*

[FN49]. Regalado, *supra* note 13, at 11. While the globalization of MLB began in the early 1900s, Regalado explains that, as early as 1880, Latin American leaders were openly embracing “investments from Western industrial giants” to draw revenues into their respective countries. *Id.* at 10. This foreign investment “negatively... affected the Dominican Republic's independence.” *Id.* at 10-11. Overseas banking interests, in particular, controlled the Dominican economy which accommodated American sugar interests. Regalado compares the relationship between MLB and Latin America to neo-colonialism. “Within this neocolonialist environment, professional baseball organizations from the United States had

taken notice of the resources in Latin America by the first decade of the twentieth century.” Id. at 11. The coveted “resources” in the region were the Latino baseball players that were “full of youthful vigor.” Id.

[FN50]. Id. at 18. See discussion, *supra* note 17.

[FN51]. Id.

[FN52]. StateUniversity.com, Dominican Republic - History & Background, *supra* note 40.

[FN53]. Id.

[FN54]. Regalado, *supra* note 13 at 18.

[FN55]. StateUniversity.com, Dominican Republic - History & Background, *supra* note 40.

[FN56]. StateUniversity.com, Dominican Republic - Secondary Education, <http://education.stateuniversity.com/pages/386/Dominican-Republic-HISTORY-BACKGROUND.html> (last visited Oct. 28, 2009).

[FN57]. Id.

[FN58]. Id.

[FN59]. Tom Weir & Blane Bachelor, Spanish-speaking Players Get Lessons in American Life, USA Today, Apr. 13, 2004, available at [http://www.usatoday.com/sports/baseball/2004-04-13-cover-latinos\\_x.htm](http://www.usatoday.com/sports/baseball/2004-04-13-cover-latinos_x.htm).

[FN60]. Id.

[FN61]. Id. The children are provided these English and culture lessons, typically on a daily basis, to acclimate them to American life if they make it to the U.S to play baseball.

[FN62]. NationMaster.com, Dominican Education Statistics, <http://www.nationmaster.com/red/country/dr-dominican-republic/edu-education&all=1> (last visited Sept. 18, 2009).

[FN63]. Id.

[FN64]. Id.

[FN65]. Id.

[FN66]. Id.

[FN67]. Id.

[FN68]. NationMaster.com, *supra* note 62.

[FN69]. Id.

[FN70]. Id.

[FN71]. Id.

[FN72]. Jesse Sanchez, Padres to Help with Dominican Schools, MLB.com, Jan. 24, 2007, available at [http://sandiego.padres.mlb.com/news/article.jsp?ymd=20070124&content\\_id=1785761&vkey=news\\_sd&fext=.jsp&c\\_id=sd](http://sandiego.padres.mlb.com/news/article.jsp?ymd=20070124&content_id=1785761&vkey=news_sd&fext=.jsp&c_id=sd). Josefina Pimentel, representing the Dominican Ministry of Education, described the partnership with the Padres as “without precedent.” “The San Diego Padres have a vision and understand that education is the way to help to form values that will help our entire country,” Pimentel said, “Never before has an academy committed to a community this way. It shows the Padres not only care about players but also care about the humanity of our island. It is historic, and I am honored to be a part of it.”

[FN73]. Id.

[FN74]. Id.

[FN75]. Kevin Baxter, Teams are Teaching Players More Than Just English, ESPN.com, Mar. 1, 2006, <http://sports.espn.go.com/mlb/latinosrise/columns/story?id=2332945>.

[FN76]. Id.

[FN77]. Id.

[FN78]. Id.

[FN79]. Id.

[FN80]. Id.

[FN81]. Id.

[FN82]. Baxter, *supra* note 75.

[FN83]. Id.

[FN84]. Id.

[FN85]. Michael O’Keeffe, Dominican Republic Sports and Education Academy Aims for Reform, N.Y. Daily News, Oct. 5, 2008, available at [http://www.nydailynews.com/sports/baseball/2008/10/04/2008-10-04\\_dominican\\_republic\\_sports\\_and\\_education\\_.html](http://www.nydailynews.com/sports/baseball/2008/10/04/2008-10-04_dominican_republic_sports_and_education_.html).

[FN86]. Id.

[FN87]. Id.

[FN88]. Id.

[FN89]. Id.

[FN90]. Id.

[FN91]. United Nations Department of Public Information, United Nations Background Note, ht-

[tp://www.un.org/rights/dpi1765e.htm](http://www.un.org/rights/dpi1765e.htm) (last visited Oct. 28, 2009).

[FN92]. Other international treaties also enumerate the right to education: Article 26(1) of the Universal Declaration of Human Rights, although it does not mention child labor, states, “Everyone has a right to an education.” It further mandates that elementary education be free and compulsory. Article 26(2) states: “Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.” Gen. Assem. Res. 217A (III), U.N. Doc A/810 at 71 (Dec. 10, 1948), available at <http://www.un.org/en/documents/udhr/>.

[FN93]. See Arturo J. Marcano & David P. Fidler, *The Globalization of Baseball: Major League Baseball and the Mis-treatment of Latin American Baseball Talent*, 6 *Ind. J. Global Legal Stud.* 511, 559 (1999). Arturo Marcano and Professor David P. Fidler held MLB accountable for operating facilities in Latin American countries that do not respect the child’s right to education “embedded in international law.”

[FN94]. Convention on the Rights of the Child, Gen. Assem. Res. 44/25, Annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49, (Nov. 20, 1989), available at <http://www2.ohchr.org/english/law/crc.htm>.

[FN95]. *Id.*

[FN96]. Child Rights Information Network, <http://www.crin.org/resources/treaties/CRC.asp?catName=International+Treatie> (last visited Oct. 27, 2009).

[FN97]. Office of the United Nations High Commissioner for Human Rights, Status of Ratifications of the Principal International Human Rights Treaties, July 14, 2006, available at <http://www2.ohchr.org/english/bodies/docs/status.pdf>.

[FN98]. Amnesty International USA, [http://www.amnestyusa.org/children/crn\\_faq.html](http://www.amnestyusa.org/children/crn_faq.html) (last visited Oct. 27, 2009).

[FN99]. *Id.*

[FN100]. See *Estate of Rodriguez v. Drummond*, 256 F.Supp. 2d 1250, 1263 (N.D. Ala. 2003) (“[N]orms of international law are established by general state practice and the understanding that the practice is required by law. In addition, international treaties can embody customary international law.”).

[FN101]. Declaration of the Rights of the Child, Gen. Assem. Res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354 (Nov. 20, 1959), available at [http://www.undemocracy.com/A-RES-1386\(XIV\).pdf](http://www.undemocracy.com/A-RES-1386(XIV).pdf).

[FN102]. *Id.*

[FN103]. *Id.*

[FN104]. *Id.*

[FN105]. Convention Against Discrimination in Education, Dec. 14, 1960, 429 U.N.T.S. 93, available at <http://treaties.un.org/doc/Publication/UNTS/Volume%20429/volume-429-I-6193-English.pdf>.

[FN106]. *Id.* at art. 4.

[FN107]. *Id.* at art. 4.

[FN108]. 28 U.S.C.A. § 1350 (West 2006).

[FN109]. See *Sarei v. Rio Tinto PLC.*, 221 F. Supp. 2d 1116 (C.D. Cal. 2002); *Kadic v. Karadicz*, 70 F.3d 232, 238 (2d Cir. 1995) (“[I]t is not a sufficient basis for jurisdiction to plead merely a colorable violation of the law of nations. There is no federal subject-matter jurisdiction under the Alien Tort [Claims] Act unless the complaint adequately pleads a violation of the law of nations (or treaty of the United States)”; see also *Beanal v. Freeport McMoran*, 197 F.3d 161, 164-65 (5th Cir.1999).

[FN110]. See Lillian Aponte Miranda, *The U'Wa and Occidental Petroleum: Searching for Corporate Accountability in Violations of Indigenous Land Rights*, 31 *Am. Indian L. Rev.* 651, 667 (2006-2007).

[FN111]. *Id.*

[FN112]. Kyle Whitmire, *Alabama Company is Exonerated in Murders at Colombian Mine*, N.Y. Times, July 27, 2007, at C2 (The first ATCA case to go to jury occurred in 2007. In July 2007, *Estate of Rodriguez v. Drummond* ended with a jury verdict after a two-week trial in a Birmingham Federal District Court. The jury found that Drummond, an Alabama-based coal company, was not liable for the deaths of three union leaders at its mine near La Loma, Colombia, in 2001. At trial, the plaintiffs could not prove clear connections between the company and the paramilitary groups. “[J]ust because this case was not successful, it does not mean that other cases cannot make that step,” said Beth Stephens, a law professor at Rutgers University, Camden, N.J.)

[FN113]. 542 U.S. 692 (2004).

[FN114]. Press Release: Business and Human Rights Resource Centre launches first online portal profiling human rights lawsuits against companies, available at <http://www.reports-and-materials.org/Press-release-Legal-Accountability-Portal-29-Oct-2008.pdf> (Oct. 29, 2008). Current ATCA cases are pending against Coca-Cola, DynCorp, Chevron, ExxonMobil, Occidental, Freeport McMoran, Shell, and Rio Tinto. See also Corporate Legal Accountability Portal, available at <http://www.business-humanrights.org/LegalPortal/Home> (for complete list of lawsuits) (last visited Nov. 12, 2009).

[FN115]. See Aaron J. Schindel & Jeremy Mittman, *Workers Abroad, Trouble at Home: Multinational Employers Face Growing Liability for Labor Violations of Overseas Suppliers*, 19-SPG *Int'l L. Practicum* 40, 41 (2006) (“In response to the revival of ATCA as a potential cause of action, the Bush Administration attempted to intervene, arguing that lawsuits of this kind interfere with foreign policy and open [MNCs] to frivolous or irrelevant grievances that, if they should be litigated at all, should be brought in the foreign plaintiffs' own fora.”).

[FN116]. See Miranda, *supra* note 110, at 667.

[FN117]. 416 F.3d 1242 (11th Cir. 2005).

[FN118]. *Jama v. U.S.I.N.S.*, 343 F. Supp. 2d 338 (D.N.J. 2004). In this Third Circuit case, the plaintiffs' claim under ATCA for “the inhumane treatment of a huge number of persons accused of no crime and held in confinement” as a violation of the law of nations under ATCA. However, claims of sexual harassment and assault did not meet the “rigorous Sosa requirements.” Additionally, the Eleventh Circuit Court of Appeals, in *Aldana v. Del Monte Fresh Produce*, affirmed the federal district court's dismissal of all “non-torture” ATCA claims including the claims for cruel, inhuman, and degrading treatment; “arbitrary” detention; and crimes against humanity.

[FN119]. *John Roe I v. Bridgestone Corp.*, 492 F.Supp.2d 988, 1009 (S.D.Ind. 2007).

[FN120]. *Id.* at 991; Shashank Bengali, Firestone Catches Heat for its Treatment of Liberian Workers, McClatchy Newspapers, Dec., 26, 2006, available at <http://www.commondreams.org/headlines06/1228-05.htm>.

[FN121]. *Bridgestone*, 492 F.Supp.2d at 994.

[FN122]. *Id.*

[FN123]. *Id.*

[FN124]. *Id.*

[FN125]. *Id.*

[FN126]. *Id.*

[FN127]. *Bridgestone*, 492 F.Supp.2d at 994.

[FN128]. *Id.* at 1018 (citing *Sosa*, 542 U.S. at 732-33).

[FN129]. *Id.* at 1022.

[FN130]. *Id.*

[FN131]. Kern, *supra* note 39, at 180 (citing Pharis J. Harvey & Lauren Riggins, Trading Away the Future: Child Labor in India's Export Industries 18 (1994)).

[FN132]. *Id.*

[FN133]. See Vanessa Marie Zimmer, Comment, *Dragging Their Devotion: The Role of International Law in Major League Baseball's Dominican Affairs*, 4 Nw. U. J. Int'l Hum. Rts. 418, 432 (2005).

[FN134]. *Id.*

[FN135]. *Id.* at 418.

[FN136]. *Id.* at 431.

[FN137]. See Spagnuolo, *supra* note 5, at 281.

[FN138]. *Id.* at 273.

[FN139]. *Id.* at 281 (Telephone Interview by Diana L. Spagnuolo with Lou Melendez, Vice-President of Latin American Operations, Major League Baseball (Nov. 2, 2002) (“We [MLB] are aware of the problem with kids leaving school in the Dominican Republic to go learn and hopefully become baseball players. We are also aware of the fact that once they get released from the academy that they don't go back to school.”)).

[FN140]. See Marcano & Fidler, *supra* note 93, at 542.

[FN141]. *Id.*

[FN142]. *Id.* at 559. (citing Gen. Assem. Res. 44/25, U.N. Doc. A/RES/44/25 (Nov. 20, 1989) and ILO Convention No. 138, Minimum Age Convention, 1973, available at <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C138>.)

[FN143]. *Id.* at 561.

[FN144]. See Angel Vargas, *The Globalization of Baseball: A Latin American Perspective*, 8 *Ind. J. Global Legal Stud.* 21 (2000).

[FN145]. *Id.* at 32.

[FN146]. *Id.*

[FN147]. *Id.*

[FN148]. *Id.*

[FN149]. *Id.* at 29-30.

[FN150]. Weir et al., *supra* note 59.

[FN151]. Danielle Sessa, *Baseball's All-Star Secret: Camps Offer Kids Low Pay, No School*, *Bloomberg.com*, Mar. 5, 2007, <http://www.bloomberg.com/apps/news?pid=20601082&sid=a1DgIDh8YXoY&refer=canada>.

[FN152]. *Id.*

[FN153]. *Id.*

[FN154]. *Id.*

[FN155]. *Id.*

[FN156]. *Id.*

[FN157]. See Sessa, *supra* note 151.

[FN158]. See *id.*

[FN159]. Spagnuolo, *supra* note 5, at 282.

[FN160]. Sessa, *supra* note 151.

[FN161]. *Id.*

[FN162]. *Id.*

[FN163]. *Id.*

[FN164]. *Id.*

[FN165]. Chris Kline, *Seeing is Believing in the Dominican*, *Baseball Am.*, Mar. 10-23, 2008, at 16. Kline called his trip to the Dominican baseball academies “surreal” because of the areas surrounding the “off-the-beaten-path” baseball

academies. For example, Kline writes about scouts watching a Dominican child run the 60 yard dash only to be interrupted by two 10 year-old boys herding cattle in the pasture past the left-field wall. *Id.* Kline also reports how MLB affects not only the children within the walls of the academy but also the way of life in Latin America. *Id.* Kline describes the scene at a rickety field adjacent to the Astros' baseball academy: "They soon notice a different presence in their midst, as someone who is obviously a scout steps out of the SUV only when something important is happening, and they shout in Spanish for their children--even if he's 6 years old or younger--to be seen by MLB eyes." *Id.*

[FN166]. *Id.*

[FN167]. *Id.*

[FN168]. *Id.*

[FN169]. *Id.*

[FN170]. BaseballAmerica.com, Caribbean Series Special Podcast, [http:// media.baseballamerica.com/mp3/free/080204.mp3](http://media.baseballamerica.com/mp3/free/080204.mp3)(last visited Sept. 14, 2009).

[FN171]. Chass, *supra* note 25.

[FN172]. Joe Connor, Welcome to the Dominican Republic, ESPN.com, Jan. 16, 2006, <http://sports.espn.com/mlb/worldclassic2006/news/story?id=2291226>.

[FN173]. *Id.*

[FN174]. *Id.*

[FN175]. Todd Jacobson, The Game is the Curriculum: Nats' Dominican Academy Instructs and Recruits, Freelance Star, Dec. 18, 2006, available at [http:// fredericksburg.com/News/FLS/2006/122006/12182006/244676](http://fredericksburg.com/News/FLS/2006/122006/12182006/244676). Rijo was recently fired by the Nationals as special assistant due to allegations of bonus skimming. William F. Yurasko, Jose Rijo Fired, is Jim Bowden Next? I Hope So, William World News, Feb. 25, 2009, <http://www.yurasko.net/wfy/2009/02/jose-rijo-fired-is-jim-bowden-next-i.html>.

[FN176]. *Id.*

[FN177]. One such player is Esmailyn Gonzalez, who at "sixteen" signed a contract with a guaranteed \$1.4 signing bonus on July 2, 2006. In February 2009, it was discovered that Gonzalez was actually 23 year-old Carlos Alvarez Daniel Lugo. MLB is investigating the relationship between Basilio Vizcaino, Gonzalez's buscon, Jose Baez, the Nationals director of operations in the DR, and Rijo. Mark Fainaru-Wada and T.J. Quinn reported that Bowden and Rijo are also being investigated for bonus-skimming stemming from an incident where a Nationals employee was stopped at customs with \$40,000 in cash. The MLB investigations unit is "looking at everything, A to Z, speaking to players, scouts, people that run the academies." The investigators are also delving into the issue of access to, and distribution of, steroids to ball-players in the DR. Mark Fainaru Wada & T.J. Quinn, Sources: Bowden, Rijo Investigated in Pair of Probes in Dominican Signings, Espn.com, July 12, 2008, [http:// sports.espn.com/mlb/news/story?id=3483972](http://sports.espn.com/mlb/news/story?id=3483972).

[FN178]. Jacobson, *supra* note 175.

[FN179]. *Id.*

[FN180]. Sessa, *supra* note 151.

[FN181]. *Id.*

[FN182]. Douglas M. Branson, *The Social Responsibility of Large Multinational Corporations*, 16 *Transnat'l Law* 121, 129-31 (2002). Professor Doug Branson provided an example of the power that an MNC might possess over its host country. In 2002, Unilever-Best had a combined \$54 billion in sales that exceeded the Gross Domestic Product (GDP) of all but about 50 nations, then ranking just behind the Republic of Ireland (\$59.9 billion). With this type of spending power, the countries in which subsidiaries operate and in which externalities are most felt do not have the power (or the will) to regulate. Branson also stated that host countries may refuse to take adequate action because of the fear that large multinationals may reincorporate elsewhere.

[FN183]. Dave Zirin, *How Baseball Strip-Mines the Dominican Republic*, *Common Dreams*, Oct. 28, 2005, <http://www.commondreams.org/views05/1028-25.htm>.

[FN184]. U.S. Dept. of State, 2009 Investment Climate Statement, available at <http://www.state.gov/e/eeb/rls/othr/ics/2009/117425.htm>. (last visited Nov. 10th, 2009). According to the U.S. Department of State, the Dominican Republic government has significant systemic problems that can make investing in the country a risky undertaking. "Foreign investors cite a lack of clear, standardized rules by which to compete and a lack of enforcement. Complaints have included corruption, requests for bribes, delays in government payments, failure of the Dominican government or of Dominican private sector entities to honor contracts, disregard for Dominican court rulings, and non-standard procedures in Customs for valuation of imported goods." Corruption is also a problem "in government, in the private sector, and within law enforcement agencies nationwide."

[FN185]. *Doing Business in Dominican Republic*, <http://www.doingbusiness.org/ExploreEconomies/?economyid=59> (last visited Oct. 29, 2009).

[FN186]. *Dominican Baseball, General Information, MLB investment in the Dominican Republic*, <http://www.dominican-baseball.com/articles/article.php?artid=9> (last visited Oct. 29, 2009).

[FN187]. *Id.*

[FN188]. Maria Burns Ortiz, *Politics Makes Toxic Mix With MLB's Investment in Venezuela*, *ESPN.com*, Nov. 18, 2007, <http://sports.espn.go.com/mlb/news/story?id=3077371>.

[FN189]. Alan Schwartz, *Pressure Building for Draft of Players from Outside the U.S.*, *N.Y. Times*, July 13, 2008, available at <http://www.nytimes.com/2008/07/13/sports/baseball/13draft.html>.

[FN190]. *Id.*

[FN191]. *Id.*

[FN192]. *Id.*

[FN193]. See e.g., Nick Cafardo, *Clean-up Crew Hard at Work*, *The Boston Globe*, Aug. 16, 2009, available at [http://www.boston.com/sports/baseball/articles/2009/08/16/clean\\_up\\_crew\\_hard\\_at\\_work/](http://www.boston.com/sports/baseball/articles/2009/08/16/clean_up_crew_hard_at_work/).

[FN194]. *Id.*

[FN195]. Id.

[FN196]. See id.

[FN197]. Schwartz, *supra* note 189.

[FN198]. Tim Lemke, Change in Draft may Halt Troubles, Wash. Times, Mar. 4, 2009, available at <http://www.washingtontimes.com/news/2009/mar/04/change-in-draft-may-halt-troubles/>.

[FN199]. Id.

[FN200]. Id.

[FN201]. Id.

[FN202]. First Year Player Draft, Official Rules, MLB.com, <http://mlb.mlb.com/mlb/draftday/rules.jsp>. (last visited Oct. 29, 2009) (emphasis added).

[FN203]. Su-Ping Lu, Corporate Codes of Conduct and the FTC: Advancing Human Rights Through Deceptive Advertising Law, 38 Colum. J. Transnat'l L. 603, 604 (2000).

[FN204]. Id.

[FN205]. See Douglass Cassel, Corporate Initiatives: A Second Human Rights Revolution, 19 FORDHAM INT'L L.J. 1963, 1984 (1996); see also Lu, *supra* note 203.

[FN206]. Lu, *supra* note 203.

[FN207]. Id.

[FN208]. This Code of Conduct was modeled after the one drafted by Ericsson Corporation. Ericsson Code of Conduct, available at [http://www.ericsson.com/cn/images/chongqing/rule\\_e.pdf](http://www.ericsson.com/cn/images/chongqing/rule_e.pdf) (last visited Nov. 12, 2009).

[FN209]. Lu, *supra* note 203; see also Mark B. Baker, Private Codes of Corporate Conduct: Should the Fox Guard the Henhouse?, 24 U. Miami Inter-Am. L. Rev. 399, 417 (1993).

[FN210]. Lu, *supra* note 203; see also Erin L. Borg, Note: *Sosa v. Alvarez-Machain and the future of ATCA Litigation: Examining Bonded Labor Claims and Corporate Liability*, 106 Colum. L. Rev. 112 (2006) (citing Thomas Donaldson, Values in Tension: Ethics Away From Home, Harv. Bus. Rev., Sept.-Oct. 1996, at 48).

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