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Christian J. Tams · Jörg Philipp Terhechte  
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*Editors*

2019

# European Yearbook of International Economic Law



Springer

# **European Yearbook of International Economic Law**

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## Editorial EYIEL 10 (2019)

The signing of the Treaty of Versailles in June 1919 not only marked the formal ending of World War I but also established the International Labour Organization (ILO): a key feature of the inter-war order, alongside the League of Nations. Thus, 2019 is the ILO's centenary year, which makes the ILO one of the oldest international organisations in today's United Nations family. The editors of the European Yearbook of International Economic Law seized this opportunity to devote the special section of EYIEL 10 to the ILO and international labour law in general and their relationship with international economic law. The contributions to this volume highlight the close connection of international labour law and international economic law and invite readers to appreciate the common grounds of, as well as fundamental differences between, the two subfields of international law. We also hope that this volume provides a future research agenda that avoids treating international labour and economic law as entirely separate entities.

The special section is opened by former Director of the Office of Legal Services of the ILO *Anne Trebilcock* who offers a consideration of the ILO as an actor in international economic law in the past and the future. In her chapter, *Trebilcock* traces the evolution of the ILO's mission and means of action in relation to international economic law. She highlights key markers along the road towards the goal of achieving social justice, from the ILO's constitutional origins to major ILO Declarations to the recent ILO Centenary Initiatives. *Trebilcock* laments the divergent paths taken by international economic law and transnational labour law and identifies avenues to bring them closer in order to achieve decent work for all on a sustainable planet.

*Emilios Christodoulidis* reflects on the ILO's centennial anniversary by discussing the shift to a pragmatic "common sense" approach in the ILO context. Taking his cue from Alain Supiot's important defence of the "spirit of Philadelphia", *Christodoulidis* argues that the Philadelphia Declaration of 1944 renewed and deepened the commitments on which the ILO was built in 1919 and seeks a firm theoretical footing in Supiot's defence of the law's "dogmatic" foundations. The chapter then goes on to track a "double mutation", firstly away

from political-constitutionalist protection of work towards a form of human rights protection and secondly away from “hard” institutional processes to “soft” aspirational standards. *Christodoulidis* claims that this separation misreads and undercuts the integrity of international labour law, which depends on holding together its organising principles and their instantiations.

Working relations in global supply chains are not the first, but certainly one of the most important intersections between international labour and international economic law. *Valentina Grado* addresses this intersection as she maps the ILO’s work concerning decent work in global supply chains (GSCs). Although GSCs create millions of jobs and opportunities for economic and social development, they often seriously disregard core labour standards and pose significant challenges to decent work. The chapter illustrates and critically analyses the work of the (2016) 105th Session of the International Labour Conference dealing with GSCs. In addition, *Grado* describes and discusses further significant instruments adopted by the Governing Body to ensure decent work in GSCs, including respect for international labour standards. Finally, she evaluates the adequacy of the recent ILO initiatives in the field of GSCs in delivering better labour conditions for workers within them.

In a similar vein, *Shin-ichi Ago* assesses if and how the supervision of international labour standards can contribute to the implementation of the UN Guiding Principles on Business and Human Rights which were adopted by the UN Human Rights Council in 2011. *Ago* recalls that some specialised agencies of the UN and regional organisations responded to the recommendation of the Human Rights Council and contributed to the implementation of Guiding Principles. In this respect, *Ago* analyses activities of the ILO and concludes that, in the area of labour and social rights, the ILO supervision mechanism also plays an important role in the implementation of the UNGP. However, he highlights the limiting factor that observance of international labour standards is a matter for governments and that enterprises are not directly accountable to the ILO standards. *Ago* also refers to the ILO’s own instrument of corporate accountability, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, which may serve as an additional tool to implement a part of the UN Guiding Principles and which is discussed in greater length by *Jernej Letnar Cernic* in this volume.

The next two chapters address the relationship between international labour law and labour standards on the one hand and specific subfields of international economic law on the other. While *Franz Christian Ebert* addresses international financial institutions (IFIs), *Henner Gött* looks at trade and investment agreements.

Asking about the potential labour safeguards of IFIs to prevent violations of ILO Core Labour Standards, *Ebert* looks at the safeguards’ legal design, reviews the normative content of selected IFI labour safeguards and assesses their relationship with relevant ILO instruments. *Ebert* also scrutinises the scope of relevant labour safeguards and shows several loopholes, which could allow borrowers to avoid many of the requirements by adjusting the project structure. Furthermore, *Ebert* assesses the safeguards’ practical implications and examines the

mechanisms established by several IFIs to prevent and provide remedy for violations of the safeguards' requirements. *Ebert* concludes by emphasising the need for more comprehensive protections of workers with regard to IFI activities.

*Gött* addresses a core topic linking trade and labour law and assesses the linkages of trade, investment and labour in Preferential Trade Agreements (PTAs). The chapter examines the scope and content of contemporary trade-labour and investment-labour linkages in some of the major latest-generation PTAs, analysing both substantive provisions and institutional mechanisms for their implementation. *Gött* argues that the examined substantive provisions have considerable potential for the protection and promotion of labour standards in the context of trade and investment liberalisation. However, whether this potential can be tapped largely depends on how they are implemented. A recurring issue in this respect is that the pertinent implementation mechanisms for labour provisions suffer from a lack of sufficient and necessary structures that persist even in latest-generation PTAs. Against this background, there is a need for a systematic and structural revision of PTA labour provisions.

The last two chapters return to issues closer to international labour law, but with significant implications on international economic relations. *Reingard Zimmer* addresses International Framework Agreements (IFAs) and transnational collective bargaining while *Jernej Letnar Cernic* looks at the ILO Tripartite Declaration on Multinational Enterprises (MNEs).

As the necessity of responses from the workers' side to the internationalisation of business became more and more evident, global trade union federations started to negotiate and sign global agreements with transnational companies. *Zimmer* assesses these International Framework Agreements and the more recent transnational collective agreements. She suggests that as the agreements are the product of social dialogue they are thus a form of collective bargaining. However, *Zimmer* notes the content of agreements with European scope differs significantly from the content of international agreements. While the latter primarily deals with minimum social standards, European agreements cover a wide range of subjects, restructuring being the main topic. The chapter also refers to the Bangladesh Accord on Fire and Building Safety, which contains not only a stronger mechanism of enforcement but also a legally binding dispute resolution mechanism. In summary, *Zimmer* suggests that the development of transnational collective agreements can be characterised as a step towards the internationalisation of industrial relations.

*Cernic* concludes the special section commemorating the 100th anniversary of the ILO with an analysis of the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy as revised in 2017. *Cernic* argues that the ILO Governing Body should rephrase the vague and conditional language of the Tripartite Declaration and improve its implementation tools, particularly the interpretation procedures by opening it to individual claimants. In this way, it would enable the rights-holders to enforce the core labour rights included in the declaration against adverse corporate conduct.

Part II of this Yearbook is devoted to regional issues and focuses on recent developments in North America and the EU.



*Steve Charnovitz* analyses the recent trade strategy of the USA vis-à-vis China and finds that many complaints against China involve behaviour that is contrary to WTO rules, even though the USA lodged only two WTO cases against that behaviour. He argues that this suggests that the current US Administration prefers to confront China with power-based measures in the form of unilateral tariffs. *Jean-Michel Marcoux* assesses the renegotiation of NAFTA in the form of the United States–Mexico–Canada Agreement (USMCA). He suggests that, despite some notable exceptions, several changes included in USMCA reflect the current political landscape in which the renegotiation was held and are hardly reconcilable with the characterisation of the agreement as the most advanced existing trade deal. *Marcoux* also questions the innovation and sophistication of the Agreement by pointing out that several provisions reflect a bilateral approach, either which can potentially restrict trade or partially replicate the language of other free trade agreements.

*Maryna Rabinovych* and *Luke Tattersall* address European topics. *Rabinovych* analyses the promotion of the rule of law through EU Free Trade Agreements. She explores the foundational (“framework”) foreign policy and legal prerequisites behind the EU’s promotion of the rule of law through FTAs and discusses the example of administrative cooperation and public procurement chapters of three categories of EU FTAs. *Tattersall* looks at the challenges to international investment law in the EU in light of the Judgement of the European Court of Justice in the so-called *Achmea* case.

Part III of the Yearbook focusses on institutions with a contribution on the rule of law in International Monetary and Financial Law by *Marcin J. Menkes*, an analysis of the Appellate Body of the WTO by *Fernando Dias Simões* and the assessment of the WTO case law in 2017 by *Kholofelo Kugler*, *Faith Tigere-Pittet* and *Saweria Mwangi*.

Finally, Part IV (which concludes this Yearbook) brings together reviews of recent books; these reflect the breadth and diversity of international economic law, from mega-regional trade agreements to the calculation of damages.

The editorial reforms introduced in Volume 9 of the EYIEL are proving to be successful: Online-first publication is now a standard feature of the Yearbook. Our Assistant Editor *Judith Crämer* has taken up most of the managerial tasks and responsibilities of collecting and editing the contributions to this volume. Without her tremendous commitment and enthusiasm, EYIEL 10 would not have been possible; the editors are therefore most grateful to her. *Judith Crämer* was supported by *Athene Richford* at the University of Glasgow. Finally, we are grateful to *Anja Trautmann* at Springer for her continuing support of EYIEL.

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**Part I**  
**100 Years International Labour**  
**Organization**

# The ILO as an Actor in International Economic Law: Looking Back, Gazing Ahead



Anne Trebilcock

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## 1 Introduction

The 100th anniversary of the founding of the International Labour Organization (ILO) in 1919 presents an opportune moment to reflect on its past and its possible future as an actor in international economic law (IEL). Yet most texts on IEL do not even mention the body of international law that governs many labour issues, whether

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in the form of classic international labour law<sup>1</sup> or of the more broadly conceived transnational labour law.<sup>2</sup> Today, international economic law is most often thought of as encompassing fields dealing with international trade, foreign investment, monetary issues, often intellectual property, and sometimes international development.<sup>3</sup> While a few authors, notably Petersmann,<sup>4</sup> have taken a more inclusive view of IEL to embrace its normative aspects, the bulk of writing in the field has focused on more specific and often highly technical issues, without any reference to possibly relevant elements of the ILO's work. Using harsher terms, Chimni argues that since international labour law is not viewed by mainstream international economic law to be part of that body of law, the latter does not treat "the exploitation of those directly involved in wealth creation" as a central concern.<sup>5</sup> In light of globalization, Arthurs goes so far as to suggest the possible absorption of labour law into "the law of economic subordination and resistance" to "super-ordinate economic power".<sup>6</sup>

Definitions of IEL vary in amplitude and depth,<sup>7</sup> but for present purposes, a brief one will suffice: "the Public International Law analysis of the economic phenomena of international concern".<sup>8</sup> Surely standards setting minimum conditions at work and in social protection as part of a country's international competitiveness and development strategy fall within that scope. As do rules governing migration of workers as labour market actors. While such standards can lay down ground rules for the respect for human dignity in a globalized economy, at the same time an economy's functioning directly affects society. The impact of international economic, financial and trade policy and practices can be severe, from job creation or displacement traceable to international trade to erosion of collective bargaining.<sup>9</sup> In short, there is a continuing interplay between macroeconomic policy and frameworks for addressing labour and social protection issues, including their relationship to the major challenge of today: coming to grips with climate change.

On balance, the ILO's work has been met with both praise (e.g. Charnovitz, Helfer, Jenks, Sinclair) and critique (Langille, Maupain).<sup>10</sup> Will the organization be nimble enough to confront the challenges of its second century? It will certainly be put to the test. This essay traces the ILO's concern with IEL over time, before looking at possible pathways to greater convergence between the ILO's mission and macroeconomic policy frameworks. Space constraints unfortunately do not permit

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<sup>1</sup>For an overview of international labour law, see e.g. Servais (2017) and Thouvenin and Trebilcock (2013).

<sup>2</sup>Blackett and Trebilcock (2015) and Trebilcock (2017).

<sup>3</sup>Qureshi (1999).

<sup>4</sup>Petersmann (2002, 2012).

<sup>5</sup>Chimni (2013), p. 253.

<sup>6</sup>Arthurs (2014), pp. 138 and 141.

<sup>7</sup>See Charnovitz (2011).

<sup>8</sup>Qureshi (1999), p. 11.

<sup>9</sup>Compa (2014) and Rittich (2015).

<sup>10</sup>Charnovitz (2000), Helfer (2006), Langille (2010, 2015), Maupain (2019) and Sinclair (2018).

examining regional dimensions of the situation, such as the interplay between the ILO and the European Union, but this does not imply their lack of importance alongside initiatives taken at the global level.

## 2 The ILO's Concern with International Economic Law

### 2.1 *Preamble to the ILO Constitution*

Highlights on the ILO's century timeline reveal the Organization's consistent concern with economic factors as both influences on and means of achievement of the ILO's mission: social justice. Established through Chapter XIII of the Treaty of Versailles, the ILO has a constitution whose preamble states in part:

[...] whereas conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required [...].

Written in 1919, these words unfortunately still resonate a century later. As do the preamble's concerns with "the regulation of labour supply," "the provision of an adequate living wage," "equal remuneration for work of equal value," "protection of the interests of workers when employed in countries other than their own [...]" and more. Yet it is the so-called comparative advantage paragraph of the preamble that has been cited more often in recent years: "the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries." Drawing on the work of Sen and Nussbaum, Langille has pointed out that the preamble as a whole, linking social justice and the maintenance of peace, sees social justice "as the very point of development and its necessary precondition."<sup>11</sup> The ILO's construct based on social dialogue also set out an alternative to what international bolshevism had on offer, with article 427 of the Versailles treaty proclaiming that "labour should not be regarded merely as a commodity or article of commerce".

### 2.2 *Constitutional Framework*

With pre-World War I antecedents that aimed at harmonization of labour legislation,<sup>12</sup> the ILO was given several unique constitutional features, sketched here in summary form. It is a tripartite organization in which representatives of governments, employers and workers share, on a 2:1:1 basis in plenary sessions, decision-

<sup>11</sup>Langille (2009), Sen (1999, 2000) and Nussbaum (1999, 2000).

<sup>12</sup>Servais (2017), pp. 21–24.

making power in the International Labour Conference (ILC) and in the Governing Body.<sup>13</sup> This competence extends to taking financial and operational measures for the functioning of the institution; adopting international conventions, which are treaties, and recommendations, which provide guidance; making decisions in relation to complaints of a state's failure to give effect to a ratified convention<sup>14</sup>; and directing the work of the secretariat (the International Labour Office). The Secretariat in turn may undertake research and statistical work and advise member states in line with decisions taken at the annual ILC. The Constitution provides the basis for the Secretariat to engage in technical cooperation carried out in a number of the ILO's 187 member states and for the Organization to conclude agreements with them as well as with other international and regional organizations.<sup>15</sup>

As the prominent international jurist C Wilfred Jenks (ILO Legal Adviser and later Director-General of the Organization) observed, the ILO had always employed "a dynamic interpretation" of its Constitution.<sup>16</sup> The ultimate arbitrator of its meaning, and of that of ILO Conventions, lies with the International Court of Justice (ICJ), although the ILO is also empowered under Article 37(2) of the Constitution to set up its own tribunal for this purpose. (The ICJ's predecessor, the Permanent Court of International Justice, was called upon six times to interpret the ILO Constitution or an international labour convention.) Many key elements of the system set up to supervise the effect given to ILO Conventions and Recommendations, as well as of freedom of association principles, are not mentioned in the Constitution, but rather grew out of decisions taken by the annual Conference or by the Governing Body. A number of such ILO innovations were later adopted by other international organizations.<sup>17</sup>

### 2.3 *Early ILO Positions on IEL*

Before the outbreak of the Second World War led to the dissolution of the League of Nations, the ILO was structurally linked to it. In that period, some of the work of the secretariat and several resolutions adopted by the International Labour Conference evidenced the Organization's early concern with selected economic issues.<sup>18</sup> ILO

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<sup>13</sup>For details, see the Standing Orders of the International Labour Conference and the Rules of the ILO Governing Body. Publications and official documents of the ILO may be found on its website, [www.ilo.org](http://www.ilo.org).

<sup>14</sup>For descriptions of the process of adoption of Conventions and Recommendations and the various supervisory procedures and complaint mechanisms, see International Labour Office (2019).

<sup>15</sup>See Articles 10 (on functions of the International Labour Office) and 12 (on cooperation with other public international organizations).

<sup>16</sup>Sinclair (2018), p. 105; Trebilcock (2018).

<sup>17</sup>Sinclair (2018) and Charnovitz (2000).

<sup>18</sup>For instance, the Resolution concerning the effect of rationalization and international industrial agreements upon the conditions of labour (1928), the Resolution concerning measures to be taken in the economic sphere to remedy the international crisis in the coal industry (1931), Resolution

officials participated in diplomatic discussions of monetary policy at the Genoa Conference in 1922.<sup>19</sup> Five years later, the ILO was a co-convener, with the League of Nations and the International Management Institute, of the World Economic Conference. As the economic depression of the 1930s deepened, “it became evident that the ILO’s traditional standard-setting activities were no longer an adequate response” to the crisis.<sup>20</sup> In 1932, the ILO Conference called on states to lay the foundations for a stable international monetary system, and with the most representative organizations of employers and workers to examine “the problems of production and international trade.”<sup>21</sup> In 1933, the ILO drew the attention of the forthcoming Monetary and Economic Conference to a need for restoration of stable monetary conditions, with a system to avoid future price-level fluctuations, cessation of economic warfare through trade, increase in purchasing power, and adoption of [employment-generating] public works.<sup>22</sup> After that Conference failed to reach agreement on these issues, the ILO appealed to the League of Nations to ensure that national economic measures should take account of those points.<sup>23</sup> Serious statistical and economic research work backed up ILO positions on such topics.<sup>24</sup>

Furthermore, aside from the notable ambivalence about the exploitation of resources (including human) in colonies of major member states,<sup>25</sup> the ILO’s first decades were also a period of sowing the seeds of basic human rights principles such as freedom of association,<sup>26</sup> the abolition of forced labour<sup>27</sup> and protection of children from economic exploitation.<sup>28</sup> At the same time, much of the ILO’s work in this period focused on technical issues such as hours of work, minimum wage-fixing, health and safety at work, labour inspection, maternity protection, and minimum labour conditions for seafarers. In the early years of the ILO, restrictions

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concerning the gold truce (1932), Resolution concerning measures to overcome the economic crisis (1934).

<sup>19</sup>Sinclair (2018), p. 44.

<sup>20</sup>Id., p. 95.

<sup>21</sup>Resolution concerning action to be taken to remedy the present crisis, adopted by the International Labour Conference, 16th Session, Record of Proceedings (1932), pp. 839–840.

<sup>22</sup>Resolution addressed to the World Monetary and Economic Conference, adopted by the International Labour Conference, 17th Session, Record of Proceedings (1933), p. 686.

<sup>23</sup>Resolution concerning measures to overcome the economic crisis, adopted by the International Labour Conference, 18th Session, Record of Proceedings (1934), p. 662.

<sup>24</sup>Rodgers et al. (2009), pp. 172–176.

<sup>25</sup>Maul (2012), p. 11.

<sup>26</sup>Right of Association (Agriculture) Convention 1921 (No. 11).

<sup>27</sup>Forced Labour Convention, 1930 (No. 29), which was adopted as a corollary to the Slavery Convention (1926), originally had the dual aim of prohibiting forced labour while in the meantime improving conditions endured by workers in colonies of major powers (background documents from this time displayed racist stereotypes that make the modern reader cringe).

<sup>28</sup>Such as the Night Work of Young Persons (Industry) Convention, 1919 (No. 6). This and other minimum age instruments were later displaced by the Minimum Age Convention, 1973 (No. 138) and the Worst Forms of Child Labour Convention, 1999 (No. 182), which are two of the ILO’s core labour Conventions (see Sect. 2.8).

were also placed on women's work in certain fields and at certain hours, topics on which various women's movement networks had divergent views.<sup>29</sup> These instruments were later replaced by ones aimed at equality of opportunity.<sup>30</sup> The 1919 Women's Labour Congress (which convened in parallel to the first International Labour Conference of the ILO and influenced its agenda) highlighted both the direct contribution (as labour market participants) and indirect contribution (as enablers for others to participate in the labour market) of women to national economies.<sup>31</sup> The Global Commission on the Future of Work (see Sect. 3.3.1) recently returned to the question of recognizing unpaid as well as paid work in economic terms.

## 2.4 *The Declaration of Philadelphia and the New Impetus for Employment Promotion*

After arranging the wartime relocation of its headquarters to Canada, the ILO adopted what is known as "the Declaration of Philadelphia" at a conference held in that city in 1944. The Declaration reoriented the ILO's work in important ways.<sup>32</sup> It reaffirmed in Para. I that "(a) labour is not a commodity; (b) freedom of expression and of association are essential to sustained progress; (c) poverty anywhere constitutes a danger to prosperity everywhere; (d) the war against want requires [...] continuous and concerted international efforts [...]".<sup>33</sup> The Declaration explicitly empowered the Organization to further programmes to achieve more specific goals, including in Para. III(d) "policies in regard to wages and earnings, hours and other conditions of work calculated to ensure a just share of the fruits of progress to all, and a minimum living wage to all employed and in need of such protection." "[T]he collaboration of workers and employers in the preparation and application of social and economic measures" was also foreseen in Para. III(e).

Later incorporated into the Organization's Constitution, the Declaration proclaims, in Para. II(d), a "responsibility" of the ILO "to examine and consider all international economic and financial policies and measures in the light of [the] fundamental objective" of lasting peace based on social justice. The Declaration of Philadelphia and the 1948 Havana Charter arising out of the UN Conference on Trade and Employment together would have anchored an institutionalized role for

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<sup>29</sup>Boris et al. (2018).

<sup>30</sup>Equal Remuneration Convention, 1951 (No. 100) and Discrimination (Employment and Occupation) Convention, 1958 (No. 111), which are fundamental labour Conventions. See also the gender-neutral Workers with Family Responsibilities Convention, 1981 (No. 156) and the Night Work Convention, 1991 (No. 171). Maternity protection instruments were also later revised; the up-to-date treaty is the Maternity Protection Convention, 2000 (No. 183).

<sup>31</sup>Boris et al. (2018).

<sup>32</sup>Blackett (2018), Ghebali (1989), Jenks (1970), Maupain (2013) and Supiot (2012).

<sup>33</sup>Declaration concerning the aims and purposes of the International Labour Organisation, Annex to the ILO Constitution, para. I.

the ILO in relation to trade. Since the Charter never entered into force, the connection with the ILO was left unmade.<sup>34</sup> Instead, the Bretton Woods institutions, initially the International Monetary Fund and the International Bank for Reconstruction and Development (the World Bank), were set up. Their work later significantly challenged the ILO's approach towards labour standards and social protection (see Sect. 2.5). This was in part because much of IEL has remained philosophically resistant to suggestions for redistribution, although some cracks are appearing<sup>35</sup> in light of growing awareness of the corrosiveness of stark inequalities within and between nations.

Shortly after the United Nations was established in 1945, the ILO reached an agreement with it, which recognized the ILO as a specialized agency responsible for taking action under its basic instrument to accomplish its purposes.<sup>36</sup> However, once the Economic and Social Council of the United Nations was up and running, the ILO did not have the impact on broader policies it had hoped.<sup>37</sup> It did, however, convince ECOSOC to endorse the importance of national and international policies for the attainment of full employment, a leitmotif of the ILO's work in line with Keynesian economics. The emergence of development economics in the 1950s extended the ILO's work on employment and working conditions in the context of decolonization as from the end of that decade.<sup>38</sup> In 1964, the ILO adopted the Employment Policy Convention (No. 122), which requires ratifying states to declare and pursue policies to promote full, productive and freely chosen employment, and to consult employer and worker organizations in the process. It reflected an approach of state-centred development, which was also pursued by the World Bank at the time.<sup>39</sup> In the same year, the ILO established its International Training Centre in Turin for what it termed agents of development.

Also in 1964, the ILO Conference adopted its first Declaration concerning the Policy of Apartheid in South Africa, relying on the Declaration of Philadelphia in its rationale. Among other elements, the Declaration appealed to governments, employers and workers in all ILO member countries to "apply all appropriate measures to lead South Africa to renounce apartheid". In "ILO-speak," this acknowledged economic measures such as divestment, boycotts and sanctions being called for by anti-apartheid activists. Annual discussion of reports under this Declaration, revised twice, kept up the pressure even though the country had withdrawn from the ILO (it remained bound by conventions it had ratified). The ILO also engaged in technical cooperation and training in front line states, and worked intensively with South Africa once it had abandoned apartheid and rejoined the Organization.<sup>40</sup>

<sup>34</sup>Charnovitz (2000), p. 178; Stoll (2018), pp. 18–19.

<sup>35</sup>Ratner (2017), pp. 754–756 and 772–774.

<sup>36</sup>Agreement between the International Labour Organisation and the United Nations (1945), Article I.

<sup>37</sup>Alcock (1971).

<sup>38</sup>Maul (2012).

<sup>39</sup>Sinclair (2018), pp. 243–244.

<sup>40</sup>Maul (2012), pp. 238–245; Rodgers et al. (2009), pp. 54–56. For further detail, see Rubin (2008).

The launch of the World Employment Programme in 1969 spurred ILO research in a number of countries to challenge received notions about the post-colonial development process,<sup>41</sup> including its gender dimension.<sup>42</sup> One track explored pursuing development through “redistribution with growth,” an idea endorsed at the World Employment Conference in 1976. That meeting also highlighted the role of international economic reforms and cooperation in meeting the basic needs of the poor.<sup>43</sup> Another major thread put the focus on rural workers, especially women, producing work that later informed debate on the informal economy.

By the end of the 1960s, it had become more than clear that the power wielded by multinational corporations could rival the capacity of a number of states. Global production systems came to replace much nationally-based industry. Such developments led the Organisation for Economic Co-operation and Development (OECD) to adopt its Declaration for Multinational Enterprises in 1976. Under that Declaration, OECD National Contact Points began to play an active role in vindicating labour and social rights.<sup>44</sup> A year later, the ILO Governing Body adopted the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration). However, since the complaint procedure atrophied after a stalemate in the early years, the ILO MNE Declaration has been used chiefly as a promotional tool, providing guidance on labour standards to firms (now done through a “Help Desk”). Both the OECD and ILO instruments have been revised, the ILO MNE Declaration most recently in 2017.<sup>45</sup>

At the other end of the economic spectrum, the informal economy—first known as the informal sector—posed some apparent dilemmas for ILO constituents.<sup>46</sup> Much of traditional labour law centred around the formal employment relationship, and few workers in the informal economy were organized. With the ILO’s increasing focus on poverty, however, debate in the Organization moved from calls to stamp out the informal economy to seeing a need to upgrade it and forge links with formal enterprises. This took the Organization as a whole some time to absorb, finally adopting a Conference resolution on the topic in 2002 that helped pave the way for the adoption of the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 201). This Recommendation served as a reaffirmation that the ILO’s mandate covers all workers. The new instrument called for an integrated framework, including *inter alia* a comprehensive employment policy framework that might include “pro-employment macroeconomic policies that support aggregate

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<sup>41</sup>Rodgers et al. (2009), pp. 185–188.

<sup>42</sup>Britwun (2018), pp. 307–308.

<sup>43</sup>Rodgers et al. (2009), pp. 193–194.

<sup>44</sup>Bonucci and Kessedjian (2017).

<sup>45</sup>For a detailed discussion see the contribution by Jernej Letnar Cernic in this volume.

<sup>46</sup>La Hovary (2015).

demand, productive investment and structure transformation [...] and trade, industrial, tax, sectoral and infrastructure policies that promote employment, enhance productivity and facilitate structural transformation processes”.<sup>47</sup>

Another huge group of largely forgotten workers, those engaged in domestic work in private households, finally achieved comprehensive recognition of their rights in the Decent Work for Domestic Workers Convention (No. 189) and Recommendation (No. 203), 2011. The background work and the instruments themselves reflect the important transnational migration aspects of this large economic sector, a source of remittances for many sending states.<sup>48</sup>

## 2.5 *The Challenge of the “Washington Consensus”*

Back to the 1970s. A push by many emerging countries for a “New International Economic Order” to adapt rules of the global economy more towards development proved highly contentious, including in the ILO.<sup>49</sup> While the ILO was continuing to rally around various means of employment promotion with emphasis on government action, a shadow fell over its time line. This was the emergence of the so-called Washington consensus, in which neoliberal economists stressed private enterprise, property rights, freer markets and smaller government. This thinking was to gain the upper hand as guidance for economic development, thereby marginalizing much of the ILO’s normative and advisory work, and challenging trade unions and their members as “insiders” or even as “rent seekers”. The neoliberal school of thought saw national labour regulation such as minimum wages, severance pay and social security schemes only as market distortions, raising the cost of labour, and as contributing to, rather than combatting, poverty.<sup>50</sup> Beginning in the 1980s, structural adjustment programs linking loans or financial support to policy reforms pushed by the World Bank and the IMF led to widespread retrenchment in the civil service of many countries, often alongside a scaling back of social benefits, a relaxation of legislative labour protections, a weakening of labour inspection through decentralization and reduced resources, as well as the dismantling of peak level collective bargaining. While civil society groups and trade unions voiced opposition to such measures, employer representatives largely took the view that the international finance institutions’ (IFI) approach involved purely macroeconomic issues that fell outside the ILO’s mandate.

It was difficult for the ILO, with its vastly lower level of human and financial resources, to counter neoliberal narratives effectively, but it tried. Clashes in the streets of some countries over trade liberalization and IFI-imposed reform made the

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<sup>47</sup>Recommendation No. 2014, para. IV.15.

<sup>48</sup>Blackett (2019).

<sup>49</sup>Stoll (2018), pp. 20–22; Rodgers et al. (2009), pp. 212–214.

<sup>50</sup>Deakin (2011, 2016); Rodgers et al. (2009), pp. 104 and 195–196; Berg and Kucera (2008). See also Leimgruber (2013).



ILO's emphasis on social dialogue look more attractive. The clear divergence of approaches between the ILO and the IFIs also led to some outreach, such as informal agreement in the mid-1990s between the ILO, the IMF and the World Bank to exchange drafts of their flagship reports for comment prior to publication.<sup>51</sup> In the late 1990s, the Bank began to pursue a milder, more participatory "Post-Washington Consensus".<sup>52</sup>

By the beginning of the twenty-first century, the Bank was also placing greater emphasis on quantification and indicators, including on "voice" (defined much more loosely than freedom of association and collective bargaining), "regulatory burden" and "rule of law".<sup>53</sup> Some of this work has been sharply criticized on various grounds. For instance that, "[...] the widely used datasets of the work Bank [...] focus on 'costs to business' in a narrow and literal sense of firms' compliance costs. This omits consideration of the costs to employers of the absence of labour law rules, which might take the form of lack of access to skilled labour, weak domestic demand for goods, and weak governance."<sup>54</sup> For example, the World Bank's Doing Business Index, before its revision in light of serious questioning of its methodology, viewed a country's repeal of laws preventing unfair termination of employment as a positive factor in its rankings.<sup>55</sup> This applied regardless of whether the relevant ILO Convention had been ratified or not, suggesting a rather selective approach to an otherwise broad support for the rule of law by the IFIs.

Eventually, however, the IFIs joined the growing consensus that respect for core labour standards was part and parcel of "good governance" (see Sect. 2.6). The International Finance Corporation (IFC) adopted its Policy and Performance Standards on Social and Environmental Sustainability in 2006, a step followed and enhanced by the European Bank for Reconstruction and Development in 2008.<sup>56</sup> The World Bank also followed suit, albeit less vigorously. Although such developments have certainly marked victories for ILO principles, debate continues over the role of labour market institutions in tackling inequality not only of opportunity, but inequality of outcomes as well.<sup>57</sup>

## 2.6 *Trade Liberalization and the "Social Clause" Debate*

Part of the rule of law involves adherence to the fundamental principle of freedom of association. The ILO's longstanding insistence on this freedom for all workers gave

<sup>51</sup>Rodgers et al. (2009), p. 201.

<sup>52</sup>Charnovitz (2000); for ILO arguments, see e.g. Sengenberger (2005).

<sup>53</sup>Sinclair (2018), p. 278.

<sup>54</sup>Deakin (2016), p. 55.

<sup>55</sup>See e.g. Berg (2015), pp. 9–10.

<sup>56</sup>Novitz (2010).

<sup>57</sup>Berg (2015), p. 2.

crucial support to the *Solidarnosc* trade union in Poland, which lit the spark that eventually led most countries in the former Soviet bloc to opt for political democracy and market economies.<sup>58</sup> After the fall of the Berlin Wall in 1989, however, the lead role in those countries' transitions fell to the World Bank, IMF and the OECD, not the ILO. Deep reforms, pursued quickly, were accompanied by growing inequality that later engendered populist movements. The financial institutions' advocacy of privatization and liberalization of trade, exchange rates, capital accounts and the labour market all at once led to major disruption in many people's lives. Although the need for step-by-step action, accompanying measures and greater participation in such transitions has since become well recognized,<sup>59</sup> the ILO's call to cushion the blows of the 1990s transitions (through supportive institutions, social protection systems and industrial relations systems to handle conflict based on freedom of association and collective bargaining) went largely unheeded.

This was also the period in which an ever greater share of production was moving from economically developed to emerging economies, many of which were showing high growth rates. More open markets and trade liberalization were seen as bringing risks as well as benefits, however. As the development debate on the issue of child labour continued, calls for its elimination intensified<sup>60</sup>; the ILO launched its major International Programme for the Elimination of Child Labour in 1992. Some countries in the North began to link trade and respect for workers' rights, at least on paper, as from the mid-1980s, and later many trade agreements added a social dimension.<sup>61</sup> By the 1990s, it had become more than clear that globalization had wrought fundamental change in a number of sectors. Methods of production increasingly relied on global supply chains. As the ILO's 75th anniversary (1994) approached, the Organization embarked on a reflection about its role in a transformed post-Cold War and increasingly globalized world. The Director-General's report to the Conference contained a frank assessment of the ILO's so far limited ability to fulfil the role foreseen for it in the Declaration of Philadelphia.<sup>62</sup>

Just after that session of the Conference, the ILO Governing Body set up an open-ended Working Party on the Social Dimensions of the Liberalization of International Trade (later renamed the Working Party on the Social Dimension of Globalization). In a rather extraordinary exercise of self-censorship, this forum agreed not to mention linking trade and labour standards through trade sanctions (the so-called "social clause" debate). This did not make the issue go away. Indeed, it spilled over to derail the OECD's efforts in the mid-1990s to gain an agreement on multilateral investment rules and coloured meetings of the General Agreement on Tariffs and Trade (GATT) and its successor, the World Trade Organization (WTO).<sup>63</sup>

<sup>58</sup>Rodgers et al. (2009), p. 51.

<sup>59</sup>Trebilcock (2014) and Fenwick and Novitz (2010).

<sup>60</sup>Nesi et al. (2008).

<sup>61</sup>International Labour Office/International Institute of Labour Studies (2013).

<sup>62</sup>International Labour Office (1994), pp. 91–94.

<sup>63</sup>Compa (1998). See also Hepple (2005) and Kaufmann (2007).

## 2.7 *World Summit for Social Development and the WTO Singapore Declaration*

In the meantime, the 1995 World Summit for Social Development sought common ground, and its outcome document called for simultaneous progress on the economic, environmental and social fronts. Consensus began to build around the idea of core labour standards. At the end of 1996 delegates to the first Ministerial Meeting of the WTO adopted the Singapore Declaration, which recalled countries' commitments to "internationally recognized core labour standards."<sup>64</sup> The Singapore Declaration also recognized that the ILO was the competent body to set and deal with these standards, and that economic growth, development and further trade liberalization contribute to the promotion of these standards. Largely in response to emerging economies' concerns, the Declaration rejected the use of standards for protectionist purposes.<sup>65</sup> In the same period, an influential OECD study on core workers' rights and international trade provided support for examining a range of mechanisms for the mutual reinforcement of core labour standards and trade.<sup>66</sup> In addition, the Asian financial crisis (1997) cast serious doubt on the pretension that economic success depended upon weak labour market institutions and "rights free" space. Indeed, the IMF even came out in favour of ratification of core labour standards in several of the countries affected.

## 2.8 *ILO Declaration on Fundamental Principles and Right at Work*

Within the ILO, the debate was basically resolved through the adoption of the Declaration on Fundamental Principles and Rights at Work in June 1998. Its rationale, similar to that of the Declaration of Philadelphia, is enabling people "to claim freely and on the basis of equality of opportunity their fair share of the wealth which they have helped to generate, and to achieve fully their human potential." The Declaration highlights principles and rights that enable people, with equal opportunity, to enjoy their childhoods without exploitation and to shape their own destinies, freely building their own occupational organizations to bargain on their behalf.<sup>67</sup> It can be seen as stating a development goal to be achieved through political liberalism, with an assumption that this approach will lead to more equitable distribution.

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<sup>64</sup>World Trade Organization (1996), Singapore Ministerial Declaration, WTO Ministerial Conference, Singapore, 9–13 Dec. 1996, WT/MIN(96)/DEC/W, 13 December 1996.

<sup>65</sup>See para. 5 of the 1998 ILO Declaration; see also Hesterman (2014).

<sup>66</sup>Organisation for Economic Co-operation and Development (1996).

<sup>67</sup>Trebilcock (2004), p. 350.

The principles and rights identified in the Declaration are freedom of association and recognition of the right to collective bargaining, prohibition of forced labour, elimination of discrimination in employment or occupation, and the effective abolition of child labour. Eight Conventions designated as core or fundamental correspond to these principles. This departure of singling out some from a large body of legally equivalent instruments generated heated academic debate,<sup>68</sup> but over time, the Declaration has become generally viewed as having well proved its worth.<sup>69</sup> The fundamental principles have been taken up in numerous other influential instruments and policy documents, such as the UN Global Compact (1999), the UN Guiding Principles on Business and Human Rights (2011), and the OECD Guidelines for Multinational Enterprises (1976, as revised), to name only a few.

Based on constitutional principles, the Declaration applies to all member states whether or not they have ratified the corresponding ILO Conventions. One of the effects of the Declaration was to encourage their ratification, and it succeeded spectacularly by leading to almost universal ratifications of most of these instruments. But a significant portion of the world population lives in large countries that have not yet ratified all of them, particularly the Conventions on freedom of association and collective bargaining. One aspect of the ILO's centenary celebration is to push for missing ratifications and to encourage ratification of the Protocol to the Forced Labour Convention, 1930 (No. 29), adopted in 2014 in the wake of concerns over "modern slavery" and trafficking in persons.

An equally important aspect of the 1998 Declaration was the support pledged by the ILO to member states seeking to make progress in relation to fundamental rights at work. Identification of their needs was informed by the requirement that non-ratifying countries supply annual reports, as foreseen in the follow-up to the Declaration. In addition, the follow-up mandated the ILO secretariat to prepare global reports on one or more of the principles, "to provide a dynamic global picture," and to serve as a basis for assessing effectiveness of the support provided. While the annual reports have since waned in their importance, the initial global reports set the stage for major new technical cooperation programs, most notably on combatting forced labour. Recent global reports have covered all of the fundamental principles at the same time, charting gaps as well as noting progress.

## ***2.9 The Decent Work Agenda and the 2008 Declaration on Social Justice for a Fair Globalization***

Beginning in 1999, the ILO rebranded its social justice mission under the phrase "Decent Work". This concept embraced all forms of work, not just formal employment, and adopted an integrated approach involving rights at work, employment

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<sup>68</sup>Alston (2004), Fudge (2007), Langille (2005) and Maupain (2005).

<sup>69</sup>Reynaud (2018).

generation, social protection and social dialogue, all to be cross-cut by a gender dimension. The Decent Work Agenda focused on “creating opportunities for women and men to obtain decent and productive work, in conditions of freedom, dignity, security and human dignity.”<sup>70</sup> This became converted into the following pillars: employment and enterprise development, social protection, standards and rights at work, and governance and social dialogue—a framework endorsed by the UN Chief Executives Board in 2007.

One of the inevitable conclusions of the “social clause” debate and its sequelae was a renewed call for greater policy coherence. In light of this, the ILO set up a World Commission on the Social Dimension of Globalization in 2003. A year later, its report, *A Fair Globalization*, made a case for reformed global governance, including “fair rules for trade, finance and investment, measures to strengthen respect for core labour standards, and a coherent framework for the cross-border movement of people”.<sup>71</sup> The ILO has continued to pursue greater policy coherence in its active engagement with the G7, the G20 and in other fora such as the World Economic Forum.

Through the Declaration on Social Justice for a Fair Globalization, adopted in June 2008, the International Labour Conference transposed the Decent Work approach more fully into how the ILO itself is to function.<sup>72</sup> Picking up on ideas put forward by the World Commission, the 2008 Declaration also reinforced the Organization’s determination to engage other international actors more fully toward achieving its goals, while leaving it for each State to determine its national needs and priorities, subject to existing international obligations.<sup>73</sup> This instrument also nuanced the statement in the 1998 Declaration concerning comparative advantage and protectionist trade purposes. The 2008 Declaration affirmed that “the violation of fundamental principles and rights at work cannot be invoked or otherwise used as a legitimate comparative advantage and that labour standards should not be used for protective purposes.”<sup>74</sup> In relation to trade, the vast literature on its relationship to respect for labour rights can only be briefly touched upon here. Suffice it to say that while calls for a labour rights conditionality clause in the WTO framework have never gained wide support and are unlikely to do so,<sup>75</sup> a number of regional and bilateral trade and investment treaties do contain labour rights clauses of varying importance.<sup>76</sup> While these can have positive effects on respect for workers’ rights

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<sup>70</sup>International Labour Conference (1999), 87th Session, Decent Work—Report of the Director General, p. 3.

<sup>71</sup>World Commission on the Social Dimension of Globalization (2004), p. 143.

<sup>72</sup>Maupain (2013) and Trebilcock (2010b).

<sup>73</sup>See paras. I.C and II.B of the 2008 ILO Declaration.

<sup>74</sup>ILO 2008 Declaration, para. I.A(iv).

<sup>75</sup>Joseph (2011), pp. 130–137; Hestermeyer (2014).

<sup>76</sup>Atleson et al. (2008), Gött (2018) and ILO/IILS (2013).

and poverty reduction, context and pacing very much matter, as do a range of policy interventions.<sup>77</sup>

## ***2.10 From the 2008 Financial Crisis to the Social Development Goals***

Only months after adoption of the 2008 Declaration, the financial crisis hit, throwing millions out of work and rocking faith in monetary and financial policy as pursued up to then. In June 2009, the Conference adopted a document entitled *Recovering from the Crisis: The Global Jobs Pact*. It put employment and social protection at the heart of crisis response. The Pact included calls for a shift to a low-carbon, environment friendly economy and reiterated appeals for stronger policy coherence among multilateral institutions in support of development. It further stressed the need for building a gender dimension into crisis response.

The ILO ended up with invitations to sit at the head table with the major financial institutions at G20 meetings. In later years, meetings involving only Ministers of Labour and Social Affairs deepened discussions, but were side events. Statements adopted at various G20 sessions have been supportive of the Decent Work Agenda and greater policy coherence. On the ground, however, this has not always been translated into advice given or conditionalities imposed.<sup>78</sup>

What the ILO has not be able to influence *ex ante* does not escape its grasp, however. The ILO supervisory bodies may well be called upon to examine whether economic policy measures taken by governments, willingly or under pressure, are compatible with their giving effect to ratified ILO Conventions. Comments of the independent and well-respected ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) directed to Greece, for example, also had the IMF, the European Commission and the European Central Bank in their cross-hairs. This was because those institutions had, as part of the drastic measures to address the meltdown of the Greek economy, insisted on legislative changes that effectively dismantled centralized collective bargaining in the country. As the CEACR pointed out, under the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), the organizations of employers and of workers must remain free to determine the level at which they choose to bargain.

In relation to Convention No. 98's companion Convention, the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in 2012 the employers in the ILO governing structures reasserted objections raised some 20 years earlier in relation to the right to strike (which is not explicitly

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<sup>77</sup>See e.g. European Parliamentary Research Service, *The Generalised Scheme of Preferences Regulation (No 978/2012), European Implementation Assessment*, PE 627.134, December 2018; Trebilcock (2014).

<sup>78</sup>Bohoslavsky and Ebert (2018) and Ebert (2015).

mentioned in the instrument). Long recognized by the ILO Governing Body's Committee on Freedom of Association (and external human rights bodies, as well as explicitly in Article 8 of the International Covenant on Economic, Social and Cultural Rights) as inherent to the exercise of freedom of association, the right to strike was also seen by the CEACR as being protected by the Convention. The debate escalated to questioning the role of that body in relation to determining the meaning of ILO Conventions. The CEACR has clarified its overall approach to the exercise of its mandate but not backed down on this issue. Although there seems to be a tacit accord to agree to disagree, the dispute between ILO constituents has unnecessarily weakened the institution.<sup>79</sup>

## ***2.11 Business and Labour Rights to the Fore***

A more positive development for the ILO involved the adoption of the UN Guiding Principles on Business and Human Rights in June 2011. The "protect, respect and remedy" framework gave fresh impetus to core labour standards enshrined in the labour rights in the 1998 Declaration and in the labour articles of the International Covenant on Economic, Social and Cultural Rights.<sup>80</sup> The processes put into motion by the Guidelines provide opportunities for deepening understanding of effective measures for enhancing respect for labour rights in firms.<sup>81</sup>

Several high-profile industrial disasters also occurred in this period, with factory fires and building collapses claiming the lives of over 1600 workers in Bangladesh and Pakistan between 2012 and 2013 alone. Following the largest of these, the Rana Plaza disaster, the ILO used its roles as convenor and as neutral broker to facilitate arrangements for setting up a multi-stakeholder scheme for country-wide factory inspections and handling complaints.<sup>82</sup> The ILO also drew on the principles of an earlier technical international labour standard, the Employment Injury Benefits Convention, 1964 (No. 121), as the basis for serving as trustee for an orderly handling of the many compensation claims.<sup>83</sup> These actions represented creative uses of the ILO's mandate and standards in the aftermath of this preventable tragedy.

Such incidents also spurred discussion of global supply chains, known as well as global value chains. In a resolution adopted in 2016, the Conference highlighted the importance of policy coherence among all multilateral initiatives related to decent

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<sup>79</sup>Bellace (2014), La Hovary (2015), Maupain (2019) and Sweptson (2013).

<sup>80</sup>Trebilcock (2015) and Zandvliet and van der Heijden (2015).

<sup>81</sup>See e.g. Zandvliet and van der Heijden (2015).

<sup>82</sup>See e.g. Reinecke and Donaghey (2015).

<sup>83</sup>However, there are also fears that the new paradigm represented by the Accord could risk courts' deferral to a new type of private ordering; see Salminen (2018).

work in global supply chains, and made some specific suggestions in this direction.<sup>84</sup> It also reiterated a long-standing appeal to remove exclusions of the application of labour legislation in export processing zones. From the post-Rana Plaza response to more classic ILO approaches of using pressure to push member states to effect change (such as in Myanmar or Qatar in relation to forced labour<sup>85</sup>), the ILO has resorted to a wide range of strategies to nudge countries towards compliance with universal norms.

## 2.12 *Addressing the Future of Work*

In the run up to the ILO's 90th anniversary, the ILO Century Project began filling some gaps in the ILO's history.<sup>86</sup> In 2017 the ILO turned its gaze to its Future of Work Centenary Initiatives on the future of work, an end to poverty, women at work, green growth and jobs, standards, enterprises and (mostly internal) governance. Within this framework, the standards initiative has several aspects, a major one involving a stepped up review of much of the body of ILO standards. This is being pursued by the ILO Governing Body's Standards Review Mechanism (SRM), one response to some critiques that the ILO body of standards is too large and, in some instances, not up to date.<sup>87</sup> The tripartite SRM has been proceeding cautiously, and the results cannot be predicted. Clear candidates for standards that are obsolete are already being declared so by the International Labour Conference under the 1997 amendment to the ILO Constitution that entered into force in 2015.

As the centenary approached, the ILO organized national and regional future of work dialogues in more than 110 states and set up the Commission on the Future of Work, co-chaired by two Heads of State. Drawing on research as well as consultations, the Commission's report of early 2019 highlighted the unprecedented changes faced by the world of work in relation to technology and artificial intelligence, demographics, climate change, and globalization. While predicting a massive realignment of jobs, it struck a positive note about the opportunities also created, such as major investment and innovation opportunities in renewable energy and environmentally sustainable construction.<sup>88</sup> The Commission's recommendations touched upon skills, transformative and measurable gender equality, a universal social protection floor (already the subject of the Social Protection Floor Recommendation, 2012 (No. 202)), harnessing and managing technology for decent work, and collective representation through social dialogue as a public good. The group

<sup>84</sup>ILO (2016), Resolution concerning decent work in global supply chains, International Labour Conference, 105th session, 2016, paras. 16(m) and 23(e).

<sup>85</sup>See e.g. Tapiola and Swepston (2010); Graham (2018); but see Langille (2015).

<sup>86</sup>See e.g. Kott and Droux (2013), Maul (2012) and Rodgers et al. (2009).

<sup>87</sup>Langille (2010) and Maupain (2013).

<sup>88</sup>Global Commission on the Future of Work (2019), p. 10.



pointed out the usefulness of collective bargaining, but strangely did not mention their global corollary, international framework agreements.<sup>89</sup> The Commission laid out the contours of a Universal Labour Guarantee, to apply regardless of employment status, that would encompass fundamental workers' rights, an adequate living wage, limits on and flexibility in working hours, and protection of safety and health at work. It stressed that this would apply to all workers, including those in digitally mediated work in the platform economy.<sup>90</sup>

Furthermore, the Commission encouraged incentives to promote investments in key areas for decent and sustainable work.<sup>91</sup> It urged reshaping business incentive structures for longer-term investment approaches and exploring supplementary indicators of human development and well-being. This would incorporate a measure of unpaid work performed in the service of households and communities. Finally, noting that "there are strong, complex and crucial links between trade, financial, economic and social policies," the Commission called for more systematic and substantive working relations among the WTO, the Bretton Woods institutions and the ILO.<sup>92</sup> Related to this idea is the Commission's suggested new indicator or indicators "to measure the distributional and equity dimensions of economic growth [...]."<sup>93</sup>

With a nod to the critical role of the private sector, the Commission suggested that enterprises account for the impact of their activities on the environment and on communities.<sup>94</sup> The ILO had shown a long-standing interest in environmental issues both inside and outside workplaces, and the Rio Declaration on Sustainable Development (1992) had formed the basis for a special ILO programme on work and the environment in the 1990s. With the current debate on climate change, it has returned to the topic, and the Global Commission has underscored the importance of such a reorientation.

### 2.13 *A Few Elephants in the Room*

One issue that the Global Commission mentioned rather in passing was migration. The very mention of the "protection of the interests of workers when employed in countries other than their own" in the Preamble to the ILO Constitution had already signaled an opening up from a staunch position of state sovereignty in relation to this controversial topic. The ILO has adopted a number of instruments on the topic, ranging from equal treatment between nationals and non-nationals in social security,

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<sup>89</sup>See the contribution by Reingard Zimmer in this volume.

<sup>90</sup>Global Commission on the Future of Work (2019), pp. 38–39 and 43–44.

<sup>91</sup>Id., pp. 46–51.

<sup>92</sup>Id., p. 14.

<sup>93</sup>Id., p. 50.

<sup>94</sup>Id., p. 49.

including acquired rights, to more comprehensive instruments. The Migration for Employment Convention (Revised), 1949 (No. 97) and the Migrant Workers (Supplementary Provisions) Convention (No. 143) and its accompanying Recommendation influenced the United Nations Convention on the Rights of All Migrant Workers and Members of their Families (adopted in 1990, entry into force 2003). The relatively low level of ratifications of these instruments led ILO constituents to adopt the ILO's Non-Binding Multilateral Framework on Migration (2006). This document, together with conclusions of an ILO Conference discussion on the subject in 2017,<sup>95</sup> became reflected in the Global Pact for Safe, Orderly and Regular Migration, adopted by the UN General Assembly in December 2018.<sup>96</sup> Given the differing perspectives of sending and receiving countries, however, none of these texts has seriously tackled the root issue of the fundamental imbalance of having expanded freedom of movement of capital, goods and services, but not of labour, in the world economy. The issue is not going to go away, and indeed the Global Pact cites climate change as one of the drivers of migration. These two areas yell out for integrated, sensible approaches and concrete action, beginning at the international level. On top of these factors comes a shift in geopolitics in a reshuffled, multipolar world that leaves many uncertainties about future adherence to human rights values. Perhaps a deeper examination of the underlying moral assumptions could help arrive at understanding in relation to IEL.<sup>97</sup>

### 3 Pathways to Convergence?

#### 3.1 *Back to Basics for Avoiding Conflict*

The divergence of the paths taken by transnational labour law and IEL has impoverished both fields. The side-lining of social issues has contributed to populist backlash against trade liberalization and necessary restructuring measures. It need not have been so. The missions of the IMF, the WB and the WTO are, to quote the Global Commission, “complementary and compatible objectives”.<sup>98</sup> The WTO, for instance, was set up with the aim of “raising standards of living, ensuring full employment and a large and steadily growing volume of real income.” And yet it often seems as if expansion of trade or adherence to certain monetary policies have become ends in themselves, divorced from a *raison d'être* that shares much with the ILO's aim of peace based on social justice, with full and productive work front and centre.

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<sup>95</sup>The discussion was based on the CEACR's General Survey on Conventions Nos. 97 and 143, and the latter's accompanying Recommendation, No. 151.

<sup>96</sup>UN General Assembly Res/73/195, 11 January 2019 (adopted 19 December 2018).

<sup>97</sup>Ratner (2017).

<sup>98</sup>Global Commission on the Future of Work (2019), p. 56.

### 3.1.1 International Law Devices

As several authors have suggested, there are a number of means for avoiding a conflict of norms. The most obvious is coordination *ex ante*.<sup>99</sup> Consultations are already foreseen in the ILO standard setting regime, at least in relation to UN bodies, when a draft ILO Convention or Recommendation “affects the activities of such organization”.<sup>100</sup> In addition, the ILO has a number of institutional cooperation agreements with non-UN organizations, such as with the Organisation for Economic Development and Co-operation, but not yet with the IMF, the WTO or the World Bank. Promising appears to be the idea of mutual supportiveness.<sup>101</sup> The Better Work programmes undertaken by the International Finance Corporation together with the ILO in a number of countries have drawn much praise for linking improvement of working conditions and expanded market access in selected sectors.<sup>102</sup>

Pauwelyn cautions about having clarity about the nature of an apparent (or real) conflict before selecting a possible device, such as reference to other relevant rules of international law.<sup>103</sup> “There is no need to expand the mandate of the WTO as an international organization for the WTO to take account of other trade concerns [...]. The fact that the WTO is part of international law should suffice.”<sup>104</sup> Further support comes from references in the preamble to the WTO’s founding instrument to “raising standards of living, [and] ensuring full employment [...]”. Analysis of public procurement regulatory regimes and labour rights also illustrates how a careful reading of the processes involved reveals openings for achieving both economic and social goals.<sup>105</sup>

Other devices for avoiding a norm conflict include systemic integration through conflict avoidance by reliance on Art. 31(1)(c) of the Vienna Convention on the Law of Treaties.<sup>106</sup> The ILO’s own approach to treaty law has reflected both leaning towards an evolutionary approach in interpretation while moderating this by greater reference to preparatory works than is normally the case.<sup>107</sup> In some but not all cases, the doctrine of *lex specialis* will help resolve the issue.<sup>108</sup> Similarly, a close look at the terms of a particular instrument may reveal that there is in fact no conflict and/or that multiple objectives may be given effect simultaneously.<sup>109</sup> Many of the criticisms of ILO standards as being “too one size fits all” or “too prescriptive” fail to

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<sup>99</sup>Pauwelyn (2003), pp. 237–240.

<sup>100</sup>Standing Orders of the International Labour Conference, Article 39bis.

<sup>101</sup>Finke (2014), pp. 435–437.

<sup>102</sup>Maupain (2019), Langille (2015) and Rossi et al. (2014).

<sup>103</sup>Pauwelyn (2003), pp. 253–256.

<sup>104</sup>Id., 492; see also Hesterman (2014), pp. 281–285.

<sup>105</sup>Corvaglia (2017) and Hassel and Helmerich (2016).

<sup>106</sup>Finke (2014), pp. 431–435; Karamanian (2012), p. 270; Pauwelyn (2003), pp. 263–268.

<sup>107</sup>Trebilcock (2018), pp. 855 and 871–873.

<sup>108</sup>Finke (2014), pp. 427–431.

<sup>109</sup>Karamanian (2012), p. 271.

take into account the broad consultation that occurs prior to their adoption as well as of the many flexibility devices used in such instruments, not to mention the substance of their texts (Trebilcock 2010a). A more difficult scenario emerges when ILO Conventions are simply ignored, such as in law-making in the area of insolvency law by the UN Commission on International Trade Law (UNCITRAL).<sup>110</sup>

### 3.1.2 Data, Research and Reports

Other ways to facilitate greater coherence involve reliance on data, research and major reports. Although the use of indicators in relation to respect for international labour standards is controversial, it is incontestable that for economists, what can be counted counts. Since 1923, the ILO has convened a periodic International Conference of Labour Statisticians. Its decisions and recommendations have guided policy makers over decades on a range of issues, such as consumer price indices, real wages, statistics on employment injuries and occupational diseases, social protection coverage and more. Recent action by this forum, and the ILO secretariat work that supports it, have been significant in two respects. Firstly, progress has been made in connection with developing Decent Work Indicators and statistical methods that will be used to feed into the SDG process (see Sect. 3.2). Secondly, it has responded to the challenge of capturing the many different forms of work, not just formal employment.

ILO statistical work is also used to inform ILO research reports and flagship reports. A yearly research conference brings labour economists and lawyers together around a decent work theme.<sup>111</sup> The annual World Employment and Social Outlook focuses on changing themes, with recent attention given to green jobs and sustainable enterprises and jobs. In addition, the Global Wage Report uses data to draw policy conclusions, such as the 2018/2019 publication on closing the gender wage gap. The biannual World Social Protection Report tracks trends and new developments. Each of these flagship reports provides opportunities for collaboration or at least discussion with other multilateral organizations. Moreover, since the early days of the ILO, the periodical International Labour Review has published articles by leading economists alongside authors from other disciplines.

In recent years, the ILO and the WTO secretariats have done joint studies on trade and employment, and the ILO and the World Bank have collaborated in highlighting good practices in the area of training. More such endeavours would serve to enhance deeper understanding between the institutions involved, and help support greater

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<sup>110</sup>This was not surprising, since the ILO did not put much effort into convincing the multiple actors involved in these negotiations of the need to respect provisions of the Protection of Workers' Claims (Insolvency of the Employer) Convention, 1992 (No. 173); see Block-Lieb and Halliday (2017), p. 287.

<sup>111</sup>See its outputs such as Berg (2015), Rossi et al. (2014) and Berg and Kucera (2008).

policy coherence. For a critical challenge still lies in shifting the narrative around the relationship between labour markets, labour standards and economic growth.<sup>112</sup>

### ***3.2 Could the SDGs Enhance Social and Economic Policy Coherence?***

Another avenue worth pursuing runs through the Social Development Goals (SDGs), adopted by the UN General Assembly in 2015. The tracking of progress towards achieving the SDGs by 2030 may offer a way to move forward towards achieving the aims of the 2008 and the Philadelphia Declarations. As the CEACR recently recalled, “[t]he Decent Work Agenda, and the international labour standards benchmarking it, suffuse the 17 Sustainable Development Goals (SDGs) adopted by the UN General Assembly.”<sup>113</sup> The targets and indicators adopted permit tracking progress towards the Goals.<sup>114</sup> The ILO is the custodian of 17 of the indicators and recently issued a guidebook that explores them in more depth.<sup>115</sup>

The 2030 Agenda reflects an understanding that “decent work is both a means and an end to sustainable development.”<sup>116</sup> The Agenda “commits to fostering a dynamic business sector and protecting labour rights and environmental and health standards in accordance with international instruments, including ILO standards and the UN Guiding Principles on Business and Human Rights.”<sup>117</sup> Yet as before, the challenge will be to translate this into reality.

Under SDG 8 (“Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all”), Indicator 8.8.2 is the “increase in national compliance of labour rights (freedom of association and collective bargaining) based on International Labour Organization (ILO) textual sources and national legislation, by sex and migrant status”. The “textual sources” include CEACR reports, and a resolution adopted by the ICLS will assist on methodology.<sup>118</sup> Several other SDG indicators refer to legislation and policies that

<sup>112</sup>Arthurs (2014); Rittich (2015); and Sengenberger (2005).

<sup>113</sup>Committee of Experts on the Application of Conventions and Recommendations (2019), General Report, International Labour Conference, 108th Session, General Report, p. 14, citing ILO (2016).

<sup>114</sup>The Goals and Indicators appear in UN General Assembly (2015), Transforming our World: the 2030 Agenda for Sustainable Development, Resolution adopted by the General Assembly on 25 September 2015, UNGA Res. A/RES/70/1, 21 October 2015, pp. 14/35–27/35.

<sup>115</sup>ILO (2018), Decent Work and the Sustainable Development Goals: A Guidebook on SDG Labour Market Indicators.

<sup>116</sup>International Labour Office (2016), para. 10.

<sup>117</sup>Id., para. 52.

<sup>118</sup>20th International Conference of Labour Statisticians (ICLS), Geneva, 10–19 October 2018, Resolution concerning the methodology of SDG indicator 8.8.2 on labour rights (ICLS/20/2018/Resolution II).

fall within the domain of many ratified ILO Conventions. For instance, SDG 8.7 aims at ending forced labour and child labour. SDG 8.5 pledges achieving “full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value.” Under Goal 5 (“Achieve gender equality and empower all women and girls”), Indicator 5.5.1 is “whether or not legal frameworks are in place to promote, enforce and monitor equality and non-discrimination on the basis of sex”. In addition, SDG 10 envisages “an assault on discrimination and implementation of reinforced pro-equality measures, especially fiscal, wage and social protection policies”.<sup>119</sup> Detail-rich CEACR reports could inform the work of the High-level Political Forum on Sustainable Development’s annual review.

SDG 17 addresses issues, which include enhanced global macroeconomic stability and policy coherence, investment promotion and trade. Indicator 17.14 is on enhancement of policy coherence for sustainable development, but no data are specified in this respect. This could provide an opening for the ILO to seize. The Global Commission has also suggested a new indicator “to measure the distributional and equity dimensions of economic growth”.<sup>120</sup> The logic of the 1998 and 2008 Declarations implies that these goals should not be allowed to be seen in isolation from core labour standards and well-functioning labour market institutions. In the ILO’s view, “a strong and distinctive feature of the Agenda is that it stresses enhanced global economic governance aimed at providing an enabling international economic environment for sustainable development, and commits to the pursuit of policy coherence as a key means of implementation.”<sup>121</sup>

SDG Goal 12 concerns ensuring sustainable consumption and production patterns. Target 12.7, to promote sustainable public procurement practices, offers considerable scope for building in social and environmental as well as economic criteria. Without delving into the intricacies of this under various regimes, it can be said that, “the different international regulations on public procurement offer – in both their negotiating and reform processes – the possibility of including social and labour concerns in the conduct of the procurement process[. . .]”<sup>122</sup>

The aspiration to decouple economic growth from environmental degradation reflects the attention given to climate change under SDG 13. “The ILO tripartite ‘Guidelines for a just transition towards environmentally sustainable economies and societies for all’ can play a vital role in this respect.”<sup>123</sup> The ILO’s work on green growth and green jobs is likely to accelerate, providing new opportunities for cooperation on macroeconomic issues. Like other international organizations, the ILO has recognized the “urgent action required to safeguard the future of the

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<sup>119</sup>International Labour Office (2016), para. 41.

<sup>120</sup>Global Commission on the Future of Work (2019), p. 50.

<sup>121</sup>International Labour Office (2016), para. 64.

<sup>122</sup>Corvaglia (2017), p. 233.

<sup>123</sup>International Labour Office (2018); International Labour Office (2016), para. 30.

planet.”<sup>124</sup> The Global Commission on the Future of Work has highlighted the importance of involving employer and worker organizations closely in the many transitions that will be required.

With periodic reporting on progress to the General Assembly, there is guaranteed attention to them through 2030. The SDG process is thus likely to be helpful in bringing social, environmental, and economic policy onto the same page. The fly in the ointment, however, is that like the ILO’s, a UN process based on regular reporting by states—albeit it with much civil society input along the way—is not going to be a game-changer. Yet, no one seems to be calling for making dispute resolution mechanisms stronger, to bring them more into line with the systems in place for trade and investment.

### 3.3 *Additional Proposals*

#### 3.3.1 **Global Commission Proposals**

The Global Commission on the Future of Work has made some additional recommendations that, if pursued, could also have important economic implications. One is to abandon companies’ quarterly earnings reports in order to give them space to pursue longer-term strategies. Another is to include the cost of externalities in business decision-making, calling on firms to calculate in costs of clean-up and of medical care when environmental and social harm results from their activities.

While pushing for greater coherence in the work of the various multilateral institutions, the Global Commission put several ideas to the 2019 International Labour Conference to consider about the ILO’s own future role. It recommended that the ILO put in place institutional arrangements for it to be the focal point in the international system for the development and comparative policy analysis of national future of work strategies, drawing on a deepened understanding of how processes of digitalization and automation are affecting the world of work.<sup>125</sup> The Commission further urged evaluating ILO standards to make sure they are “up to date, relevant and subject to adequate supervision,”<sup>126</sup> a process already underway. In stressing the universality of the ILO’s mandate while calling for innovative action to address the growing diversity of situations in which work is performed, the Commission expressed faith in the ILO’s mandate and involvement of employers and workers alongside governments as equipping it well for these tasks.<sup>127</sup> Whether and how the International Labour Conference intends to follow these and other recommendations will start to be known as from June 2019.

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<sup>124</sup>Id., para. 82.

<sup>125</sup>Global Commission on the Future of Work (2019), p. 55.

<sup>126</sup>Id.

<sup>127</sup>Id., p. 57.

### 3.3.2 Individuals' Proposals

Several ILO observers, both those with insider knowledge and relatively detached academics, have put forward ideas for reinvigorating the ILO to make it better fit for purpose in the years to come. A few are highlighted here; it is likely that more ideas will emerge from the impetus given by the centenary. The planned publications from the recent ILO's Law for Social Justice conference and the McGill Law course on Transnational Futures of International Labour Law look quite promising in this respect.

Former ILO Legal Adviser and Adviser to various Director-Generals, Francis Maupain, who played a pivotal role in relation to both the 1998 and the 2008 Declarations, holds out hope for the SDGs as a force for greater coherence. He argues that "in a sense, [the ILO's] comparative advantage may have to do more with the blind spots in the 2030 strategy, as regards the 'enabling' policies and institutions that will become necessary to make the adjustments implied by the simultaneous pursuit of these goals acceptable and effective."<sup>128</sup> To operationalize this, he suggests that the ILO could put in place a regular tripartite discussion with representatives of international financial institutions at the annual ILO conference, to heighten awareness of the impact of their policies on employers and workers. This is an idea worth pursuing. Another proposal of his, for the ILO to grant a "decent work" label to multinational enterprises that make a commitment to offer all workers along the supply chain some fundamental guarantees consistent with ILO standards,<sup>129</sup> is much more problematic. It ignores the complexity of corporate law and business strategy that strive to limit liability along supply chains; it would also run the risk of a charge of "bluwashing" that was made earlier against the UN Global Compact. All the same, Maupain usefully reminds us of the space and opportunity created by the ILO's tripartite structure, anchoring it in the real economy, and by the wording of its Constitution.

Steve Charnovitz tips his hat to the ILO's influence on the progressive development of human rights over the last century, and notes that now "a key task will be to similarly influence the progressive development of international economic law."<sup>130</sup> Recalling the responsibility laid on the ILO in the Declaration of Philadelphia to examine all international economic and financial policies in light of the Organization's fundamental objectives, he urges it to "rise to that challenge." (id.) As one means to do so, he suggests that the ILO should prepare an annual "social justice impact statement" examining the actions of organizations such as the WTO or the World Bank.<sup>131</sup> This would indeed put flesh on the bones of the Declaration of Philadelphia. He endorses Maupain's proposals for stepping up ILO work on

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<sup>128</sup>Maupain (2019), p. 38.

<sup>129</sup>Id., pp. 47–49.

<sup>130</sup>Charnovitz (2000), p. 184; see also Charnovitz (2006).

<sup>131</sup>Charnovitz (2015), p. 93; Supiot (2012).



employment, but has reservations about the earlier idea of a social labelling system that would be government-based.

Brian Langille also advocates the ILO moving away from setting and supervising formal standards, and towards expansion of the Better Work initiatives.<sup>132</sup> The late Bob Hepple (Sir Bob) made several proposals to “reinvent transnational labour regulation,” including replacing non-core conventions and recommendations by a few framework conventions supplemented by codes of practice and methods of coordination of national policy along the lines of the European Union’s Open Method of Coordination.<sup>133</sup> He also supported use of sanctions in extreme cases, and expansion of positive conditionality in granting trade preferences.<sup>134</sup> Former ILO official Jean-Michel Servais has intimated that European Directives in the areas of civil and commercial law, as well as on accessibility to information, should be a source of inspiration for international labour law.<sup>135</sup> While this may be feasible, it is unlikely to work well in regions with much less economic integration than the EU, however.

Another former ILO official, Janelle Diller, also proposes enhanced cooperation between the ILO and World Bank institutions, with the necessary adjustments in how the ILO itself works.<sup>136</sup> She lauds the legally original approach taken by the ILO’s consolidated Maritime Labour Convention, 1986, as a model built on publicly-authorized certificates of compliance undertaken at industry initiative. How transferable this would be to other sectors without such a strong tradition of social dialogue remains unclear, however. On the other hand, there are many insights to be drawn from the innovative ways in which the ILO has served as neutral chair and trustee in the post-Rana Plaza disaster processes, in which she was directly involved.

Drawing on a notion of shared responsibility for remedying the unjust conditions of labour that goes beyond states, Axel Marx, Jan Wouters, Glenn Rayp, and Laura Beke have argued for “sweeping reform of the entire ILO operational and institutional structure”.<sup>137</sup> This would entail incorporating a conception of shared responsibility into the very structure of the ILO, which the authors themselves admit is aspirational. Yossi Dahan, Hanna Lerner and Faina Milman-Sivan explore how the ILO could play a more active role in relation to corporate social responsibility.<sup>138</sup> Their proposals also foresee a wider range of actors involved in formulating standards, and of the means of reporting and examining complaints. Some aspects would require a structural opening up of tripartism. While tripartism is certainly a strength in comparison to purely inter-governmental organizations, the institution is being

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<sup>132</sup>Langille (2010).

<sup>133</sup>Hepple (2006), pp. 273–274.

<sup>134</sup>Id., p. 274.

<sup>135</sup>Servais (2017), p. 362.

<sup>136</sup>Diller (2013), pp. 146–147.

<sup>137</sup>Marx et al. (2015), p. 304.

<sup>138</sup>Dahan et al. (2016).

increasingly challenged by processes that involve more actors or indeed by the waning force of the traditional ones.<sup>139</sup>

On top of this comes the entrepreneurship of private law entities vying to influence market rules through various means, from codes of conduct to initiatives of the International Organisation for Standardization, which has increasingly encroached on traditional ILO territory. Since the ILO's founding, the world has moved away from an almost entirely state-based system to a situation in which public and private norms and enforcement mechanisms interact.<sup>140</sup> Zandvliet and van der Heijden argue for mechanisms to stimulate greater synergy between public and private orders in the international labour field.<sup>141</sup> The potential for outreach by the ILO in shaping and diffusion of its norms is indeed huge. At the same time, however, the ILO's constitutional safeguards of legitimacy against regulatory capture by non-labour-market actors need to be maintained. Perhaps a hybrid form of "tripartism plus" permitting greater engagement for civil society organizations<sup>142</sup> will emerge alongside the ILO's tripartite core.

## 4 Conclusion

With tectonic changes looming in the world of work and beyond, significant new directions in IEL and transnational labour law are inevitable. Will they mean greater or lesser respect for dignity at work and for encouragement of responsible entrepreneurship in a fair globalization? Words marking the ILO's 75th anniversary ring as well today: "The future role and influence of the ILO will depend in part on developments and decisions [...] over which it may not be able to exert much control. But they will also depend on the readiness and the capacity of the ILO to play such as a role [...]. It must be prepared to take risks [...]"<sup>143</sup> () and have the support of decision makers to do so. The hard work will involve how to overcome resistance to more root-and-branch solutions both among the ILO's tripartite constituents and, within them, the member states that do not necessarily pursue coherent positions across various multilateral organizations.<sup>144</sup> Other multilateral institutions will need to change in tandem. As Compa reminds us, "social justice for working

<sup>139</sup>Arthurs (2014), Block-Lieb and Halliday (2017) and La Hovary (2018).

<sup>140</sup>Hassel and Helmerich (2016), p. 259.

<sup>141</sup>Zandvliet and van der Heijden (2015).

<sup>142</sup>Under the Standing Orders of the International Labour Conference, non-governmental organizations can already apply to be observers, and many of their representatives are present among the average of 5000 persons attending the conference each year.

<sup>143</sup>ILO (1994), pp. 100–101.

<sup>144</sup>See e.g. Hesterman (2014), pp. 284–285.

people is not a by-product of economic growth. Policy makers have to choose it and build it into the architecture of trade and investment systems.”<sup>145</sup>

There is no single path to social justice; it will take a variety of approaches and the mobilization of many actors to achieve. Just societies will be possible only with macroeconomic policies that support well-designed labour market institutions and job creation.<sup>146</sup> The latter will be significantly challenged by the expansion of artificial intelligence. Maupain observed that it has been crises that have pushed the ILO to take its own major institutional initiatives.<sup>147</sup> Today’s looming crisis of climate change may not be a world war, but it threatens to be even more devastating. At the same time, the AI and climate challenges harbour opportunities. The ILO has long been well aware of the crucial interplay among economic, financial and labour/social issues. In its second century, the institution will surely continue to push for still badly needed policy coherence towards social justice and peace on a sustainable planet.

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<sup>145</sup>Compa (2014), p. 15.

<sup>146</sup>See e.g. Berg (2015), pp. 30–31.

<sup>147</sup>Maupain (2019), pp. 49–51.

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# Decent Work in Global Supply Chains: Mapping the Work of the International Labour Organization



Valentina Grado

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## 1 Introduction

Notoriously, economic globalisation has led to a shift in the way business is conducted. Originally it was largely confined within the borders of individual states; then it assumed the form of multinational enterprises (MNEs), with mother

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