Index

Aagaard, T. 553–4
Aarhus Convention 66–67, 70
Abbott, K. 363, 552, 561–2
Abi-Saab, G. 322, 323
Adams, Z. 9–10, 111–23, 131, 133, 306
Africa
Chinese investment and aid programmes 162–3
Sub-Saharan Africa, child labour see Sub-Saharan Africa, child labour and fragile states
African Charter on the Rights and Welfare of the Child 538, 544
African Commission, Centre for Minority Rights Development (Kenya) v. Kenya 68
agriculture sector 145, 147, 353–4
see also migrant workers
Albertson, P. 13, 282, 305, 403, 404, 474–93
Allain, J. 29, 523–35
Allen, W. 52, 55, 56
Alston, P. 14, 57, 192, 308, 320, 324, 327, 328, 476, 514
Americas, labour rights and trade agreements 474–93
Canada agreements 490–91
EU agreements, Generalized System of Preferences (GSP) programs, preferential tariff treatment 476–7
EU agreements, trade agreements 489–90, 492–3
EU agreements, trade agreements, ‘sustainable development’ chapters 489, 490
ILO standards ‘strive to ensure’ clause 478, 479, 485
NAFTA, North American Agreement on Labour Cooperation (NAALC) and complaints mechanism 477–8, 490, 491
US Generalized System of Preferences (GSP) programs 475–7
US Generalized System of Preferences (GSP) programs, Guatemala labour rights reforms 476
US Generalized System of Preferences (GSP) programs, internationally recognized worker rights (IRWR) 475–6, 485
US Office of Trade and Labor Affairs (OTLA) review and report process 480–81, 486
US Trade Promotion Authority (TPA) Act and Latin American agreements, dispute settlement process 479–80
US-Jordan trade agreement 478–9
Americas, labour rights and trade agreements, CAFTA-DR (Central America/Dominican Republic) arbitration use 403–4
Congress approval 486
dispute settlement process 479–80
Guatemala freedom of association case 473, 480–84, 493
Guatemala freedom of association case, arbitral panel request 482, 484
Guatemala freedom of association case, Enforcement Plan (EP) 473, 482–4
Americas, labour rights and trade agreements, Latin America, May 10 template and ‘adopt and maintain’ clause 485–6
Labour Education in the Americas Project (US LEAP) 488, 489
labour rights organizations and trade unions, opposition from 486–7, 489
legislative changes and complaints 486–9
Anderson, B. 241, 371, 373, 427
Anghie, A. 124, 128, 136
Anmer, M. 101, 103, 130, 217, 273, 276, 278, 282
Antoine, R. 9, 18, 100, 284–97
Arato, A. 263
arbitration
Guatemala freedom of association case 482, 484
procedures, international framework agreements (IFAs) 228
Southern Africa Development Community (SADC), Commission for Conciliation, Mediation and Arbitration (CCMA) 460, 463, 464, 472

565
Adelle Blackett and Anne Trebilcock - 9781782549796
Downloaded from Elgar Online at 07/25/2019 07:49:08PM via free access
arbitration use in deciding international labour issues 395–407
arbitration process 397–9
breaches of contract 397
confidentiality concerns 405–6
employment disputes involving international organizations 405
future prospects 405–6
ICJ involvement 399–400
and ILO Declaration on Fundamental Principles and Rights at Work 402–3
ILO instruments and voluntary system of arbitration 399
international disputes and internationalized labour practices 396–7
‘international labour dispute’ definition, need for 406
labour-specific agreements 399–400
legal basis and written agreement 397
arbitration use in deciding international labour issues, investment and trade agreements 400–404
CAFTA-DR (Dominican Republic–United States Central American Free Trade Agreement) 403–4
EU free trade agreements 402–3
investor protection 402
Model bilateral treaties 400, 401
‘non-lowering of standards’ clauses 401
North American Free Trade Agreement (NAFTA) 403
US free trade agreements 403
Arendt, H. 232–3
Argentina, structural adjustment programme 130
Arthurs, H. 6, 13, 23, 31, 42, 559
Asante, A. 21, 333, 343–56
Ashiagbor, D. 6, 437
Atleson, J. 38, 39
austerity 9–12, 114–119, 123, 164–167, 172, 175, 306, 541
anti-austerity activism, Spain see Spain, anti-austerity activism strategies
Australia, Tang (slavery and sex workers) 527
Auvergnon, P. 540
Avilés, A. 4

Balotra, S. 540
Bamu, P. 19, 27, 455–73
Banana Republic experiment, private labour regulation 366–7
Bangladesh
Accord on Fire and Building Safety 336–7, 340–41, 370–71
Rana Plaza Arrangement on payments to victims and their families 337–8, 341
Rana Plaza (building collapse) 21, 24, 104, 218, 228, 336, 361, 370, 394
Banks, K. 227
Barenberg, M. 76–92, 104, 135, 282, 289
Barnard, C. 119, 203
Bayart, 547
Beaurepaire, X. 313, 325
Beaumont, P. 444, 447, 450
Bellace, J. 8, 14, 20, 103, 181–93, 200, 316, 334, 499, 500
Benjamin, P. 462
Bensusán, G. 17, 103, 136, 273–83, 404
Bercusson, B. 196, 197
Berg, J. 80, 135
Bernal, F. 347, 348, 350
Bertóla, L. 276, 277, 280
Betten, L. 13–14
Bhagwati, J. 22
Biddulph, S. 153, 155, 159
Bilchitz, D. 95, 102
Blanchard, F. 303
Blanchard, O. 127, 129
Blanpain, R. 195, 198
Bogg, A. 164
Boisson de Chazournes, L. 9, 21, 30, 65–75, 205, 320, 420
Bonnet, M. 540, 545, 546–7, 549
Botero, J. 83
Brautigam, D. 162
Bravo, K. 344
Bronfenbrenner, K. 217
Bruun, N. 197, 198, 201
Cammett, M. 84
Canada
Americas, labour rights and trade agreements 490–91
corporate governance cases 55, 59, 63
temporary migrant labour regulation see under racism and regulation of migrant labour, temporary labour migration and removal of unfreedoms
Index 567

Caraway, T. 84, 129, 130, 133, 136, 137
see also domestic workers
Carrington, M. 368
Castells, M. 53
Castles, S. 138, 146, 430
Cazes, S. 80, 135
Central America
CAFTA-DR see Americas, labour rights and trade agreements, CAFTA-DR (Central America/Dominican Republic)
labour rights see Mexico and Central America, human rights based labour policy and labour rights
Charnovitz, S. 5, 10, 19, 26, 204, 205, 216, 400, 411–24, 500–501
Chigara, B. 21, 333, 343–56
child labour 24, 28–30, 43, 72, 81, 100, 102, 105, 181, 221, 333, 367, 374, 376–384, 393, 402, 458, 475, 477–9, 531, 536–7
children’s organizations and working children, protection of 548–9
education access 379, 381–2, 384
global incidence of child labour 537, 538–9
globalization and liberal policies, effects of 547
ILO Decent Work Agenda 545
ILO Declaration on Fundamental Principles and Rights at Work 544–5
parents, parental interest 374, 380–1
persistence 539–43
regulation in India 376, 377–8
religious choice 382, 384
SADC Code of Conduct on Child Labour 459
sex discrimination and education 541
State decline, effects of 547–8
UNICEF 537–8
China 11, 150–63, 212, 270, 305, 371, 401, 459
bilaterial relations, concerns over 162–3
challenge to labour law 150–63
cheap labour availability 153–4
collective contracts, promotion of 157–8, 159
countries emulating China 154, 161–2
economic growth effects 152–3
employment termination conditions 155–6
freedom of association violation 160
fundamental labour rights, violation claims 154
global working conditions, perceived link to worsening 153
industrial action, permission of limited 158
International Labour Organization (ILO) re-engagement 151–2, 161
international norms, engagement with 160–63
Labour Contract Law 155–6, 157, 159
labour demand exceeding supply 158
labour disputes 155, 156, 158
labour hire arrangements, limiting excessive use of 156, 157, 161
Labour Law 151, 152–3, 155
labour law reforms, ‘second wave’ 154–60
labour law revival and market reforms 150–52
minimum wage level rises 158–9
perceived as threat to labour standards (1990s) 152–4
short-term contracting reforms 155
social security measures 157
state intervention and mediation 155, 157, 158–60
trade and investment negotiations 401
trade unions 155, 212, 270–71
Twelfth Five Year Plan 157, 158–9
workers’ regulation exclusions, concerns over 160
workforce contract formalisation, promotion of 156
Chinkin, C. 321, 322
Christodoulou-Varotsi, I. 332
Chuang, J. 29
civil law effects 40–43, 105, 287
civil servants’ right to strike 200, 201
civil society, non-governmental organizations (NGOs) 4, 15, 29, 37, 47–8, 69, 97, 154, 159, 204–6, 207–8, 210, 214, 216, 217, 263, 276, 280, 341, 344, 363–5, 394, 475, 480, 483, 488, 490–2, 561
CJEU see EU, Court of Justice of the European (CJEU)
Clapham, A. 94, 95, 97, 106
Claussen, K. 6, 218, 305, 395–407, 423
Clean Clothes Campaign (CCC) 46–7, 49
Cleveland, S. 52–3
climate change and labour 551–63
bargaining power inequality 555–6
environmental and labour law, differing objectives 556
‘green jobs’ concept 557
ILO Green Jobs Initiative (GJI) 552
legal model to address climate change 557
legal taxonomy, importance of 553–4
traditional perspectives 555–6
UN Conference on Sustainable Development Outcome Document 552, 561
worker and union solidarity, call for 557
climate change and labour, Just Transitions (JT) as goal and challenge 552–3, 556–60
‘differentiated responsibility’ approach 559
environmental justice 558–9
and flexicurity 558
‘historical emissions’ approach 559–60
ILO involvement 558, 561
International Trade Union Confederation (ITUC) campaign for international instruments 560–61
remapping potential of legal issues 559
strong labour laws and collective bargaining, need for 558
and theory of justice 558, 559
transnational law 560–62
United Nations Environmental Programme (UNEP) programme 561
codes of conduct 62–63, 191–3, 375
Rugmark 378–9
see also consumocratic law, corporate social responsibility, private labour regulation
Cohen, L. 264
collective contracts, promotion of, China 157–8, 159
Costa Rica 277, 279
Eurozone crisis and structural adjustment 115, 116–17, 119–20
inequality of bargaining power 12–13, 555–6
International Monetary Fund (IMF) and labour law 127, 133–4
self-governance, strengthening 264
Spain, anti-austerity activism strategies 168–9, 172, 175
see also freedom of association; ILO Conventions; strike headings; trade unions
Collins, H. 53
Compa, L. 13, 274, 282, 305, 403, 404, 474–93
competition 13, 50, 54, 57, 77, 152, 186, 260–1, 275–6, 282, 303–4, 344, 349, 444, 498
fair competition/ unfair competition 310, 343, 349, 355, 417, 438, 498, 499, 502
international competition 411, 414
organized competition of national labour laws 8
Conley, J. 59
consumer citizenship, private labour regulation 368–71
consumer-driven regulation, private labour regulation 364–8
consumocratic law 374–84
producer cooperation and setting of goals 383
Rugmark code development 378–9
‘societal information’ provision 375–6, 383
State law complementarity 382–4
transculturalism 383–4
see also codes of conduct, corporate social responsibility
contracts
breaches, arbitration use 397
corporate governance structures and practices 56–7
importance of, maritime labour law 354–5
individual see EU, private international law rules, Rome I Regulation and individual employment contracts
Labour Contract Law, China 155–6, 157–8, 159
subcontracting effects 275–6, 277–8, 431
Cooney, S. 11, 150–63, 212, 270, 365, 500
Cordova, E. 206, 500
corporate governance structures and practices, corporate decision making structures 51–64, 271
benchmarking 54
‘business judgment rule’ 55
corporate law and model of corporate governance 52, 54–6
corporation loyalty by directors and management 54–5
directors’ fiduciary duties 58–9, 60
efficient capital markets hypothesis and shareholder value 55–7
employment contracts 56–7
financial performance pressures 57, 61–2
‘holding company’ strategy 52
legal connection between business
corporation and firm, lack of 52–3
national labour laws based on model of
integrated firm 54
outsourcing 53–4
productivity and competitiveness 54
shareholder interests and status 55–7,
59–60, 61–3
worker protection policies, need for 56–7
corporate social responsibility, 57–63, 220
Global Reporting Initiative (GRI) and
Global Compact 60, 61
ILO standards 60–61, 63
ISO standards 59, 60
socially responsible investment (SRI) 59–60
stakeholder theory and workers’ status 62
see also Bangladesh, codes of conduct,
corporate social responsibility
corruption, anti-corruption 70, 90, 160, 278,
353, 521, 547
Costa Rica, collective action 277, 279
Countouris, N. 14
Covarrubias, A. 277
Cunill Grau, N. 281, 282
Darbon, D. 540, 547
D’Aspremont, J. 75, 321, 325
Daugareilh, I. 218, 221, 223
Davidov, G. 8, 61, 258
Davies, P. 502
Dawson, L. 505, 506
De Boer, T. 443
De Burca, G. xiv, 10, 362
De Cooker, C. 405
De Felice, D. 104
De Givry, J. 305
De Sousa Santos, B. 5, 6, 31
De Wet, E. 31
Dealize, S. 9–10, 12–13, 54, 56, 80, 83,
111–23, 131, 203, 226
Deinert, O. 440, 443, 448
Deneulin, S. 141, 143–4
Derman, B. 561
Devetet, F. 237
‘dialogic’ approach, see social dialogue
Diller, J. 9, 21, 24, 70–71, 329–42, 361
dismissal protection 128, 155–6, 168, 169,
171
dispute resolution
arbitration use see arbitration use in
deciding international labour issues
CAFTA-DR (Central America/Dominican
Republic) 479–80
freedom of association in international
framework agreements (IFAs) 226–7,
228
Mexico and Central America 280
OECD, Guidelines for Multinational
Enterprises 394
and public intervention 69
Southern Africa Development Community
(SADC) see Southern Africa
Development Community (SADC),
labour alternative dispute resolution
(ADR) mechanisms
WTO see World Trade Organization
(WTO), lessons from ILO, labour
origins of trade dispute settlement
see also social protection
domestic workers, marginalized workers
234–6
accreditation of agencies and the
implementation of activities 238
‘Borloo Plan’ on social cohesion 237
childcare arrangements 240
collective autonomy, France, regulation of
domestic work 236–42
equitable access to collective bargaining
235
freedom of association and right to
collective bargaining 235
freedom of expression and freedom of
association 239
justice access 236
labour law, and centrality of collective
autonomy 231–3
national collective agreement characteristics
237–42
personal care services 238
principle of parity 240
reasonable hours of work principle 234–5
right not to reside in household of employer
234
service cheque program 238
service provider relationship 237
signatory union federations 239
Siliadin v. France 242
social protection arrangements 240–42
specific jobs involved in domestic work 240
State role 232–3
territorial scope for ‘targeted’ work, classification challenges 239
wage levels 242
worker representation 231–2
working hours limitations 241
unionization, lack of 234
see also care economy, health care
Dominican Republic, CAFTA-DR see Americas, labour rights and trade agreements, CAFTA-DR (Central America/Dominican Republic)
Doorey, D. 30, 551–63
Dorssenmont, F. 196, 197, 202
Doumbia-Henry, C. 343
Drouin, R. 8, 9, 15, 43, 105, 217–29
Dubois, W. 234
due diligence 9, 68, 73, 93–4, 96, 98–106, 191, 331, 431
Dufour, S. 53
Dukes, R. 7
Dumas, P. 24–25, 374–84
Dussuet, QA. 237, 241
Ebert, F. 26, 70, 124–37, 325, 389, 402, 540
economic adjustment programmes (EAPs), Eurozone crisis 114–17
see also structural adjustment
economic exploitation, Sub-Saharan Africa 537–8, 542–3
economic growth effects, China 152–3
Edet, G. 546
Elliott, K. 366–7
Employers’ group challenge on right to strike 316–17, 318, 319, 321, 322, 327–8, 336, 354
employment relationship 13, 56, 63, 156, 218, 331, 354, 371, 431, 442, 471, 542, 555
see also ILO Recommendations
Engerman, S. 142
environmental accident 69
industrial relations environments 7, 280, 287
market environment 373,
Index 571

Disclosure of non-financial and diversity information by certain large companies and groups 96
Seasonal Workers 26, 427, 429, 431, 437 sectoral 429
Single Permit 429
social policy 116
Temporary Agency Work 161
Transfer of Undertakings 39
EU, private international law rules, Rome I Regulation and individual employment contracts 438–54
Article 3 (party autonomy and law governing contract) 439
EU, private international law rules, Rome I Regulation and individual employment contracts, Article 8 (‘weaker party’ contracts and habitual place of work) 439–47
CJEU interpretation 441–6, 453–4
employment conditions of migrants and problems with interpretation 443–6
lex causae (law governing contract), limited relevance 446–7
place of business of employer as connecting factor 441–3
protection principle and conflict-of-laws mechanism 443–4
transport workers and legal uncertainty 445–6
worker protection and relative weight of habitual place of work 443–5
EU, private international law rules, Rome I Regulation and individual employment contracts, Article 9 (free movement of services) and Posted Workers Directive (PWD) 447–54
application of host State rules to posted workers 448–51
CJEU interpretation 448–51
enforcement proposal 452, 454
home country control rule claim 451–2
inequality in labour protection 449
mandatory protection rules as overriding mandatory protection 450–51
posting types 450
Rome I Regulation interaction 451–3
European Committee on Social Rights, Eurozone crisis and structural adjustment 116
European Convention on Human Rights (ECHR) 116, 117, 198–9
European Court of Human Rights

Adelle Blackett and Anne Trebilcock - 9781782549796
Downloaded from Elgar Online at 07/25/2019 07:49:08PM via free access
civil servants’ right to strike 200–1
collective action rights 199–202
Demir and Baykara 199–200, 326, 502
Enerji Yapı-Yol Sen v. Turkey 200, 201 326, 502
international labour standards 200–1, 325–6
RMT/United Kingdom 201–2
secondary strike action 201–2
Siliadin v. France 242, 527, 529
slavery interpretation 526–7, 529
Tătar v. Romania 69
Trofimchuk v. Ukraine 202
Van Droogenbroeck 529

European Employment Strategy (EES) goals
of full employment 82–3
European Social Charter 116, 198, 200, 502
Eurozone crisis and structural adjustment
111–23
collective bargaining, legal framework
governing 115, 116–17, 119–20
debt reduction strategies 117
draft budget requirements 118
ECB, changing role of 120–23
ECB single interest rate policy effects
112–13, 114
economic adjustment programmes (EAPs)
114–17
Euro Plus Pact (EPP) 119–20
European Committee on Social Rights 116
European Convention on Human Rights and
freedom of association 116, 117
European Court of Justice (CJEU),
‘negative integration’ through case law
of internal market 114, 116, 117, 120, 121
European Stability Mechanism (ESM)
120–21, 122–3
‘excessive public spending’ wrongly blamed
113–14
Fiscal Compact 120
and German approach to monetary policy
112, 113, 119
Greece, sovereign default 113, 115
inequality and social deprivation effects 117
institutional roots of crisis 111–14
labour market deregulation, thinking behind
114–15
Maastricht Treaty and monetary union
111–12
‘macro imbalance procedure’ (MIP) 118–19
Memoranda of Understanding (MoUs)
114–17, 120

national-level labour laws, reshaping
116–17
‘new economic governance’ 118–20
Outright Market Transactions programme
(OMT) 121–2
pre-Maastricht exchange rate fluctuations
113
real economies, lack of convergence 112
sanctions 118
social security and pension changes 115–16
Stability and Growth Pact (SGP) 112, 115–16, 118, 120
Treaty on Stability, Coordination and
Governance (TSCG) 119, 120
unemployment 117
wage levels and employment conditions
115–16

Ewelukwa Ofodile, U. 162
Ewing, K. 164, 221, 316, 500, 502
export processing zones (EPZ) 486
Fair Trade certification 39, 372–3
Fan, Y. 159–60
Fantasia, R. 265
Fashoyin, T. 462, 463, 500
Felli, R. 558, 559, 561
Fenwick, C. 16, 19, 462, 463
Fichter, M. 45, 219, 225
financial crises see Eurozone crisis and
structural adjustment; Spain,
anti-austerity activism strategies
Fischer-Lescano, A. 3
fishing sector, maritime labour law 352, 355
Fishman, R. 165
Footer, M. 96
forced labour, xiii, 28–9, 43, 72, 79, 81, 153, 181, 185, 318, 325, 331, 393, 402, 477–9, 499, 509,
see also ILO Conventions, Myanmar and
forced labour; slavery, servitude
foreign investment and development
assistance 49–50, 162–3, 276, 277
Fraterman, J. 515
Freedland, M. 14, 28
freedom of association 13–16
constitutional principle 182–3, 188–9
European Court of Human Rights 199–200, 202
global framework agreement (GFA) 45–6
Guatemala see under Americas, labour
rights and trade agreements,
CAFTA-DR (Central America/Dominican Republic)
ILO Credentials Committee see ILO Credentials Committee and freedom of association
Inter-American system on human rights 288, 291–2, 294
lack of universal effectiveness 305–6
marginalized (domestic) workers, France 235, 239
violation, China 160
see also collective bargaining
freedom of association in international framework agreements (IFAs) 217–29
collective bargaining practices 218–19
corporate social responsibility strategy 220
fundamental labour rights, impact on 224, 226
ILO Declaration on Fundamental Principles and Rights at Work 220–21, 228–9
implementation mechanisms 222, 223, 226–7, 228–9
international labour organisations as bargaining partners, recognition of 223
multi-level strategies 224, 226
negotiating IFAs 219–22
social dialogue and organising 222–4
transnational corporations (TNCs) 217–18, 220, 223–6
and UN Global Compact 72, 221
Universal Declaration of Human Rights 221
freedom of association in international framework agreements (IFAs), improvement challenges and options 225–9
arbitration procedures, generalising stipulations 228
dispute resolution 226–7, 228
global production chains 225
national laws and legal status 227–8
public institutions, role of 228–9
subsidiaries and subcontractors 228
transnational corporations (TNCs), organisational structure effect 225–6
union network creation 226
Freeman, R. 58, 153, 157, 366–7
Freund, O. 236
Friere, P. 233
Fudge, J. 8, 17, 28, 145, 248, 257, 258, 425, 499
full employment 413–14
Gallagher, M. 152, 155, 156–7, 160
Gallin, D. 42, 219
Gennard, J. 43
Gereffi, G. 362
Germany 10, 44, 73, 83, 113–14, 119, 197, 260, 378, 442, 48–49, 499
collective agreements and proportionality test 197
monetary policy 112, 113, 119
Outright Market Transactions programme (OMT) 122
Ghai, D. 254
Glenn, H.P. 30
Global South, protectionism 47–9
global supply chains see supply chains
global trade union organizing and domestic constraints 37–50
civil litigation effects 40–43
classification of workers as independent contractors 41
Clean Clothes Campaign (CCC) 46–7, 49
contractors, outsourced workers as employees of 39–40
cross-border mergers and solidarity 37, 42–3
global framework agreement (GFA), and corporation’s subsidiaries and supply chains 44–5, 47
global framework agreement (GFA), interpretation of standards on trade union rights, problems with 45–6
global framework agreement (GFA) as unfulfilled promise 43–6
Global Union Federations (GUFs) 37, 38–9, 44, 45–6
‘Going Global: Organizing, Recognition and Union Rights’ conference 39
human rights standards and corporate conduct 39
ILO, Multinational Enterprises Programme 44
India, Garment and Textile Workers Union (GATWU) and G-Star (Netherlands) 46–9
international aspirations and national obstacles 38–40, 44, 46
international development assistance allocation and supervision 49–50
International Union of Foodworkers, and Fair Trade-certified tea plantations in India 39
mobilization and resistance in Global South 46–50
mobilization and resistance in Global South, protectionism and reputation concerns 47–9
multinational corporations 40–41, 43–5
outsourcing employees 41
racketeering concerns 40–42
true global union, understanding of 42
union recognition through ‘card check’ and majority representation (US) 41, 42
universal ‘living wage’ principles, difficulties in applying 39, 44
Walmart campaign and United Food and Commercial Workers International (UFCW) 60
Workers Uniting cross-border merger 42–3
Goldin, A. 313
Grau Crespo, A. 278, 279–80
Gravel, E. 326
Greece 10, 89, 112, 114–115, 117, 131, 133, 165, 426
Greer, S. 111, 114, 117, 123
Grotius, H. 346
Guatemala
freedom of association case see under Americas, labour rights and trade agreements, CAFTA-DR (Central America/Dominican Republic)
labour rights reforms 476
Guinier, L. 265
Haas, E. 305, 416
Hagen, K. 124, 135
Hainmueller, J. 366
Handl, G. 321
Hansmann, H. 56
Heenan, J. 14, 192
Heilmann, S. 151, 155, 159
Held, D. 254–5, 369
Helfer, L. 19, 207, 513
Hendricks, F. 227
Hendy, J. 502
Hepple, B. 18, 26, 154, 191, 248, 251, 254, 257, 304, 329, 396, 400, 498, 500, 539, 548
Herrnstadt, O. 45, 226
Hiscox, M. 366
Honoré, A. 366, 527–8
Horsey, R. 510, 511, 512, 515, 516, 517, 518, 519, 520, 521
Houwerzijl, M. 438, 446, 448, 451
Howse, R. 26
Hudec, R. 416
human rights 16–18, 39, 67–9, 128, 145–6
European Convention on Human Rights (ECHR) 116, 117, 198–9
European Court of Human Rights see European Court of Human Rights
Inter-American system see Inter-American system on human rights, constitutionalising labour in Mexico and Central America see Mexico and Central America, human rights based labour policy and labour rights and soft law 189–91
Hunt, J. 26, 425–37, 438
Huntington, S. 267
Hyde, A. 20
Hyde, J. 23
Hyman, R. 90
ICJ see International Court of Justice (ICJ)
ILO
Better Work program 335, 341 and climate change 558, 561
corporate social responsibility (CSR), opportunities and challenges 60–61, 63
Decent Work Agenda 79–80, 91, 253–4, 257, 331, 332, 462, 545
eerging roles 4, 5, 18–21
IMF and core labour standards 133–5
OECD cooperation 390, 393
re-engagement, China 151–2, 161
and trade in services 498–9, 499–500
tripartite character 186–8, 204–8, 308, 393
and WTO. see World Trade Organization (WTO), lessons from ILO
ILO Committee of Experts (CEACR), see under ILO’s supervisory bodies’ ‘soft law jurisprudence’
ILO Conventions
core labour standards 124, 129–31, 133–4, 136–7, 220–1, 308, 324, 386, 402, 479, 491, 485, 500–1
see also child labour, equality, forced labour, freedom of association
Discrimination (Employment and Occupation) 249–50
Decent Work for Domestic Workers 234–6, 253
Equality of Treatment (Accident Compensation) 416
Equal Remuneration 250, 391–2

574 Research handbook on transnational labour law

Houwerzijl, M. 438, 446, 448, 451
Howse, R. 26
Hudec, R. 416
human rights 16–18, 39, 67–9, 128, 145–6
European Convention on Human Rights (ECHR) 116, 117, 198–9
European Court of Human Rights see European Court of Human Rights
Inter-American system see Inter-American system on human rights, constitutionalising labour in Mexico and Central America see Mexico and Central America, human rights based labour policy and labour rights and soft law 189–91
Hunt, J. 26, 425–37, 438
Huntington, S. 267
Hyde, A. 20
Hyde, J. 23
Hyman, R. 90
ICJ see International Court of Justice (ICJ)
ILO
Better Work program 335, 341 and climate change 558, 561
corporate social responsibility (CSR), opportunities and challenges 60–61, 63
Decent Work Agenda 79–80, 91, 253–4, 257, 331, 332, 462, 545
eerging roles 4, 5, 18–21
IMF and core labour standards 133–5
OECD cooperation 390, 393
re-engagement, China 151–2, 161
and trade in services 498–9, 499–500
tripartite character 186–8, 204–8, 308, 393
and WTO. see World Trade Organization (WTO), lessons from ILO
ILO Committee of Experts (CEACR), see under ILO’s supervisory bodies’ ‘soft law jurisprudence’
ILO Conventions
core labour standards 124, 129–31, 133–4, 136–7, 220–1, 308, 324, 386, 402, 479, 491, 485, 500–1
see also child labour, equality, forced labour, freedom of association
Discrimination (Employment and Occupation) 249–50
Decent Work for Domestic Workers 234–6, 253
Equality of Treatment (Accident Compensation) 416
Equal Remuneration 250, 391–2

Adelle Blackett and Anne Trebilcock - 9781782549796
Downloaded from Elgar Online at 07/25/2019 07:49:08PM
via free access
Forced Labour 96, 104, 318, 330–1, 332, 524–5, 532–4, 544, see also ILO, Myanmar and forced labour
Forced Labour Protocol 330–31, 332
Indigenous and Tribal Peoples 66, 68–9
Labour Inspection in Agriculture 353–4
Maritime Labour 21, 305, 332–434, 347–52
Migrant Workers 253, 499, 506
Minimum Age 72, 279, 377, 458, 537
Convention ratification advantages 309–10
Social Security (Seafarers) 350–51
Work in the Fishing Sector 352, 355
Worst Forms of Child Labour 72, 377, 386, 458, 531, 536
ILO Credentials Committee and freedom of association 204–16
class and worker identity 206–7
constitutive practices 211–12
democratic procedural norms 212–13, 215
governance structure stability 214
ILO Committee on Freedom of Association 200–201, 202
ILO tripartite structure and multi-interest approach 204–8
interest representation 209–13
internal functioning approach 208–16
monitoring, civil society groups 214, 216
in relation to Myanmar case 209–10
West/rest perspective and tripartite structure 205–6
worker identity and tripartite structure 206–7
ILO Declaration on Fundamental Principles and Rights at Work 14, 60, 71–2, 97, 201, 393, 485, 499, 544
freedom of association in international framework agreements (IFAs) 220–21, 228–9
and ILO normative action 304, 308
ILO, pluralism and privatization in transnational labour regulation 322–23, 333
ILO’s supervisory bodies ‘soft law jurisprudence’ 189–193, 316–328, 322, 324
Mexico and Central America, human rights based labour policy and labour rights 274–5
and UN Guiding Principles on Business and Human Rights 100–101
and US–Jordan trade agreement 478–9
ILO Declaration on Social Justice for a Fair Globalization 5, 306–07, 333–4, 353
ILO Equality at Work reports 251–2, 258
ILO Green Jobs Initiative (GJI) 552
ILO Helpdesk for Business 72
ILO ‘magisterial function’ 301, 307–13
ILO Multinational Enterprises Programme 44, 334
ILO, Myanmar and forced labour 509–22
administrative innovations 514–15
delaying tactics 518
forced labour assessment 513–15
ILO Commission of Inquiry 516–17
ILO Committee of Experts role 513–14, 515–16
ILO Conference Committee role 514
ILO Governing Body role 517, 518
interpretations and ‘painstaking’ jurisprudence 514
military regime use of forced labour 515–16
Myanmar facts 511
Myanmar isolationism and self-interest effects 519–20
as only case of ILO involvement 512
‘regime change’ recommendation 517
sanctions threat, effects of 519–20
securing compliance 517–19, 520, 521
‘supervisory’ process 513–14, 515
Declaration on Fundamental Principles and Rights at Work 304, 308
Declaration on Social Justice for a Fair Globalization 306
international labour standards, need for 301–2
legal balance requirements 314
‘regulatory function’ 301, 306, 309–10
tripartite structure and universality 308
historical background 307–8
labour law and institutions, improving effectiveness 312–13
national legislation conformity 311
non-compliance procedures 310–11
ratification reward through strategic use of technical assistance 312–13
supervision benefits to ratifying Members 310–11
ILO normative action, reciprocal efforts 302–7
economic competition regulation failures 303–6
freedom of association and collective bargaining, lack of universal effectiveness 305–6
historical background 302–3
Members’ parallel commitments, diversity of 306
monitoring each Member’s overall resolve and specific (reciprocal) efforts 304
international cooperation in public-private action 334–9
international labour standards 330–34; see also ILO Conventions; ILO Recommendations
internationalization of business and capital flows 330
Multinational Enterprises and Social Policy (MNE Declaration) 334
national regulatory jurisdiction collaboration 332–3
occupational safety and health management systems (OSH-MS) ISO pilot 339, 341
transnational industry standard setting 338–9
Consultation and Cooperation between Employers and Workers at the Level of the Undertaking 393
Decent Work for Domestic Workers 16, 231–232, 234–236, 239, 242, 331, Employment Relationship 62, 238, 331–332, 354,
fishing sector 352
HIV and AIDS at Work 392, 543, Human Resources Development 393
List of Occupational Diseases 393
Older Workers 392
Safety and Health in Agriculture 353
Social Protection Floors 543
Forced Labour (Supplementary Measures) 332, 544
Voluntary Conciliation and Arbitration Recommendation 399, 462
ILO Strengthening Labour Administration in Southern Africa projects 461–2
ILO supervisory bodies
CAS (Committee on the Application of Conventions and Recommendations), influence of 302, 310, 312, 314–15
Commissions of Inquiry 19, 29, 314, 399, 419–20, 423, 493, 512, 516–21, 534
Committee of Experts (CEACR), General Surveys 320
Committee of Experts (CEACR), independence, composition and expertise 323
Committee of Experts (CEACR), interpretation 316–19, 321, 322, 323, 324–5, 327–8
Committee of Experts (CEACR), ‘jurisprudence’ 319–21, 323
and Declaration on Fundamental Principles and Rights at Work 322, 324
Committee on Freedom of Association (CFA), see freedom of association
Employers’ group challenge on right to strike 316–17, 318, 319, 321, 322, 327–8
interpretation concerns 317–19, 324–5; see also Vienna Convention on the Law of Treaties
‘soft law jurisprudence’ and development over time 316–28
soft law, European Court of Human Rights (ECtHR), use of ILO standards 325–6
soft law, legal effects 322–3
ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy 95, 190, 334, 393, 499
IMF see International Monetary Fund (IMF)
India
child labour laws and Rugmark code development 378–9
Child Labour (Prohibition and Regulation) Act (CLPRA) 376, 377–8
contract labour 40
Foreign Currency Regulation Act 49
Garment and Textile Workers Union (GATWU) and G-Star (Netherlands) 46–9
International Union of Foodworkers, and Fair Trade-certified tea plantations 39
indicators 9, 75, 76–92, 97, 99, 103–4, 118–9, 282–3, 288–90, 296, 387, 389
employment protection, OECD 387

Adelle Blackett and Anne Trebilcock - 9781782549796
Downloaded from Elgar Online at 07/25/2019 07:49:08PM via free access
international labour see international labour indicators
progressiveness, Inter-American system on human rights 289–90, 294–6
Indonesia, IMF assistance 129–30, 131
industry standards, setting 338–9
informality (labour market), informal economy, informal sector 17, 161, 247, 257, 278, 308, 331, 468, 541, 546
Inter-American system on human rights, constitutionalising labour 284–97
labour rights 291–3, 294
legal framework 284–5
principle of non-discrimination and equality 284
Protocol of San Salvador 285, 288–90, 293, 294, 296
right to work and right to associate 291–2, 294
strike action rights 292–3
trade union leaders, protection of 292
Inter-American system on human rights, constitutionalising labour, economic, social and cultural (ESC) rights 284–90, 293–6
access to justice and due process in labour context 287–8
common law versus civil law jurisdictions 287
information access 287
non-discrimination and special attention to vulnerable groups 285–7
platform to address labour cases 293–6
progressiveness indicators 289–90, 294–6
race discrimination 286
right to a fair trial 287, 288
right to work and freedom of association 288
salary and pension cuts 294–5
social security rights 296
state’s duty to eradicate discrimination 286–7
Inter-American Commission on Human Rights (IACHR), Inter-American Court 18, 94, 284, 291, 297
Belo Monte Dam 67–8
Abrill Alosilla v. Peru 288, 290
Baena-Ricardo v. Panamá 288, 289–90, 291, 292
Dismissed Congressional Employees (Aguado-Alfaro) v. Peru 296
Finca La Exacta v. Guatemala 288, 292
‘Five Pensioners’ v. The Republic of Peru 289–90, 295–6
Huilca-Tecse v. Peru 292
Milton García Fajardo v. Nicaragua 292, 293
Simone André Diniz (Brazil) 286
International Court of Justice (ICJ) 68, 200, 317, 322–3, 326, 399–400, 419–420, 422, 424, 514, 517, 519
Diallo 320
Human Rights Committee case law, use of 326
Pringle v. Government of Ireland 121
Pulp Mills on the River Uruguay (Argentina v. Uruguay) 68
International Covenant on Civil and Political Rights (ICCPR) 100, 531
International Covenant on Economic, Social and Cultural Rights (ICESCR) 100, 104
international framework agreements (IFAs), global framework agreements (GFAs) 8, 15, 38, 41, 43–5, 105, 217–229, 324, 561
freedom of association in IFAs 220, 223–4, 225–6
International Labour Conference (ILC), right to strike see strike, pushback on right to, International Labour Conference (ILC), 2012 General Survey
‘international labour dispute’ definition, need for 406
international labour indicators 76–92, See also indicators
academic researchers, indicator systems constructed by 83–4
bureaucratic command-and-control methods of regulation, perceived failure of 77
collective bargaining, replacement of standard-setting and enforcement through 77
complex political institutions, problems changing 88
elites, influence of 90–91
European labour indicators and European Employment Strategy (EES) goals of full employment 82–3
ILO indicators of ‘decent work’ 79–80, 91
indicator-driven regulation, rise of 76–7
Inter-American Commission on Human Rights 87
labour representatives, restricted influence 91
‘new governance’ and performance metrics 88
power and democracy 90–92
transnational networks, regulation by 77
UN Office of the High Commissioner on Human Rights 87
US Bureau of International Labor Affairs (ILAB) and National Academy of Sciences (NAS) indicators 81–2, 87
World Bank ‘Employing Workers Indicators’, criticism of 80–81, 83
international labour indicators, sub-indicators 78, 80, 81, 82, 83
data problems 87
enforcement actions and institutional resources, measurement of 89
framing and applying 84–6
input vs. outcome 87–90
legal competence, reasons for need for 85–6
Principle Components Analysis (PCA) 86–7
regime type comparisons 89–90
similarly situated countries, comparison problems 89
weighting and aggregating 86–7
International Labour Organization see ILO
international labour standards see also ILO
Conventions, ILO Recommendations and European Court of Human Rights 200–201
interpretation, and terminology concerns 318–19, 324–5
need for 301–2
pluralism and privatization in transnational labour regulation 330–34
International Maritime Organization 21, 349
International Monetary Fund (IMF) and labour law 124–37
Argentina, and structural adjustment programme 130
centralized collective bargaining role 127, 133
dischissal protection laws 128
‘dual employment protection’, avoidance of 128
employment, emphasis on bringing workers into 128
external influences and Global South 136–7
financial assistance arrangements and conditionality 126
Greece, labour market restrictions, concerns over 131, 133
ideological bias 134–7
ILO’s core labour standards, compliance with commitment to 133–5
IMF as sporadic promoter and frequent deregulator of labour law 129–32
inconsistencies between discourse and practice 132–4
Indonesia assistance 129–30, 131
labour law as instrument for minimum protection of workers 128–9
labour law as obstacle to growth and employment 127–8
‘labour market flexibility’ programmes 131
Mexico, decentralization of collective labour relations 131
minimum wage legislation 128–9
policies of member countries, influence on 126–7, 130, 132, 135
policy prescriptions and objectives of growth and employment creation, link between 132–3
Poverty Reduction Strategy Paper for developing countries 126
Romania, labour law reforms, concerns over 133–4
socioeconomic human rights policies 128
World Bank as main reference point 135
International Organization of Standardization (ISO) voluntary standards 338–9, 342
International Trade Union Confederation (ITUC) campaign for international instruments 560–61
investment and trade agreements see arbitration use in deciding international labour issues, investment and trade agreements
ISO (International Organization of Standardization) 59, 60, 338–9, 341, 342
ITO (International Trade Organization) procedures 421–2, 423–4
Jenks, C. W. 20, 22, 318
Jessup, P. 22, 61, 348
Jordan, US-Jordan trade agreement 478–9
Just Transitions (JT) see climate change and labour, Just Transitions (JT) as goal and challenge
Kahn-Freund, O. 223, 555
Kalula, E. 457, 461, 462
Kay, T. 282, 478
Kennedy, David 5, 7, 23, 31
Kennedy, Duncan 7
Kenner, J. 111
Keynes, J. 22
Kilpatrick, C. xiv, 10
Kingsbury, B. 30, 75, 266
Klabbers, J. 322, 334
Klare, K. 4
Knox, J. 96
Kohiyama, T. 389, 390
Kolben, K. 9, 24–25, 45, 97–8, 218, 274, 361–73, 426
Kornblum, W. 264–5
Koskeniemi, M. 7, 31
Kraakman, R. 56
Krause, R. 44, 227
Labour Inspection 545–6, 431,
  on-farm system of inspections 435–6
  safety inspections 21
  see also under Bangladesh
La Hovary, C. 8, 14, 20, 74, 184, 191, 200, 274, 305–306, 316–28, 334, 500, 514
La Rosa, A. 420
Lamour, M. 394
Langille, B. 8, 18, 20, 25, 141–2, 144, 164, 192, 254–55, 258, 399, 421, 498, 509–22, 535, 553, 555
Latin America, May 10 template see
  Americas, labour rights and trade agreements, Latin America, May 10
template
Lazarus, R. 556
Leary, V. 16, 25, 26, 204
Lee, Chang-Hee 151, 156
Leys, C. 139–40
Liu, M. 156, 159–60
Locke, R. 15, 94–5, 101, 103, 164, 271
López, J. xiii, 12, 16, 164–76
Löcher, K. 199, 200, 201, 202
Lowenfeld, A. 504
McConnell, M. 305, 343, 349, 350, 355
McCorquodale, R. 93–4
McCrudden, C. 252
McElevy, P. 444, 447, 450
Majone, G. 433, 501
Mankowski, P. 445, 446, 448
Mantouvalou, V. 325
Mares, R. 95–6
  agriculture sector implications 353–4
  decent work concept 343–4
  decent work deficit, addressing 344–6
  fishing sector implications 352, 355
  flags of convenience 345, 346, 352
  ILO Convention Concerning Work in the Fishing Sector 352, 355
ILO Declaration on Social Justice for a Fair Globalization 353
Maritime Labour Certificate 345, 348–9, 355
‘no more favourable treatment’ clause 345, 349
open registries 346
Paris Memorandum of Understanding on Port State Control, certification and inspection powers 347–50, 355
social security 350–51
markets
deregulation, thinking behind 114–15
efficient capital markets hypothesis 55–7
globalization and liberal policies,
  Sub-Saharan Africa 547
migrant labour regulation 142–3, 144, 146
  and neoliberal ideology 77
reforms, China 150–52, 161
Marshall, F. 260
Marshall, S. 19, 63, 153
Martin, E. 93
Martin, I. 8, 46, 51–64, 102
Martin, P. 145, 497, 503, 505
Martin, S. 273
Martin-Huan, J. 237
Marx, K. 7, 11, 140, 142, 154, 233, 372
Maupain, F. 19, 79, 184, 248, 301–15, 316, 323, 326, 328, 386, 420, 509–10, 515, 516, 518, 520, 522
Mbaye, K. 544
Mechlem, K. 319, 324, 326
Merrett, L. 440, 444, 446, 448
Mexico, decentralization of collective labour relations 131
Mexico and Central America, human rights based labour policy and labour rights 273–83
Costa Rica 277, 279
development level effects 276
dispute resolution 280
employee interests, lack of representation 275–6
foreign direct investment effects 276, 277
governance strategy suggestion 282
ILO Declaration on Fundamental Rights at Work 274–5
ineffectiveness of respect for labour rights 277–80
international treaties, disappointing effects 273–5
judicial system and labour inspectorate 278, 280
Mexican automobile industry, lack of distribution of economic success 277
negative convergence of labour rights 275–7
non-governmental organizations, international agreements, involvement of 281–2
subcontracting and outsourcing effects 275–6
technology reliance effects 276–7
temporary contracts and subcontracting effects 277–8
trade union rights’ violations 278–80
wage levels and working hours 278
EU governance of migration 427–32
Council Resolution on admission of third country nationals 427–29
equal treatment principle 430–31, 436
GAMM (Global Approach to Migration and Mobility) 428
Hague Programme on legal immigration for employment purposes 428
See also ILO Conventions, ILO
Recommendations
Miles, R. 142, 427
Milman-Sivan, F. 15, 30, 204–16
Mitchell, L. 57, 58, 60, 63
Molina Rojas, N. 278, 279–80
Moreau, M. 136, 203, 218, 222
Morin, M. 51, 54, 61
Morris, G. 164
Mosley, L. 271, 273, 275, 276, 277
Muchlinski, P. 102, 106–7
Mudarikwa, R. 19, 27, 455–73
multi-level, multi-level governance 4, 26, 172, 174, 224, 230, 456, 562
multinational corporations, enterprises, operations 15, 17, 21, 25, 37–40, 42–4, 47, 49, 71, 75, 91, 94–5, 205, 217, 275–7, 282, 334, 361, 370, 393, 402, 497, 500, 504–5, 561
see also OECD Guidelines
Munck, R. 145, 146, 148
Mundlak, G. 16, 98, 235
Murray, G. 6, 54
Murray, J. 221, 329
Musukubili, F. 462, 463
Mutua, M. 26
Myanmar and forced labour see ILO, Myanmar and forced labour
NAFTA (North American Free Trade Agreement) 403, 477–8, 490, 491
national action plans, UN Guiding Principles on Business and Human Rights 97
national legislation
.corporate governance structures and practices 54
freedom of association in international framework agreements (IFAs) 227–8
global trade union organizing see global trade union organizing and domestic constraints
home country control rule claim, EU Posted Workers Directive 451–2
international cooperation in public-private action 334–8
labour laws, reshaping, and Eurozone crisis 116–17
legislation conformity, and ILO normative action, ‘magisterial function’ 311
regulatory jurisdiction collaboration 332–3
state intervention and mediation, China law 155, 157, 158–60
State role, marginalized (domestic) workers, collective autonomy 232–3
State’s duty to eradicate discrimination, Inter-American system 286–7
and working together transnationally 260, 269–70, 271–2
national security issues 148, 428
Nedelsky, J. 232
Netherlands, G-Star and Garment and Textile Workers Union (GATWU), India 46–9
non-State actors, ‘dialogic’ approach see ‘dialogic’ approach and non-State actors
Nononsi, A. 13, 536–50
Norlund, I. 151
normative action, ILO see ILO normative action
Noussia, K. 395
Novitz, T. 3, 8, 16, 28, 40, 164, 183, 316, 438, 497–508
Nussbaum, M. 18, 232
Obradovic, D. 212, 215
Ocampo, J. 276, 277, 280
agricultural workers 430, 434–6
extractive sector safety and security 72–4
Investment and trade agreements 400, 475, 477–9, 485, 491, 
Posted Workers 450

*respondeat superior* principle 103, 104

seafarers’ safety, health or security 333, 343, 347–8
seasonal workers 440
strict liability 106

Accord on Fire and Building Safety in Bangladesh 218, 228, 336–337, 370, 397,
Voluntary Principles on Security and Human Rights 72

OECD, diffusion and leveraging of transnational labour norms 385–94
employment protection indicators 387
Employment of Women Recommendation and Declaration 391–2
freedom of association complaints 390
Gender Equality in Education, Employment and Entrepreneurship Recommendation 392

Guiding Principles in the textile and garment sector 394
ILO cooperation 390, 393
labour law and economic development links 386–7
link between core labour standards and trade 386
Recommendations and Declarations 391–4
Spain, labour law reform responses 388
‘Strategy for Employment’ 387

OECD Guidelines for Multinational Enterprises 25, 39, 47, 94, 96, 102, 324, 334, 388, 391–2, 393–4
dispute resolution 394
follow-up mechanism 388
Model Supply Chain Policy 102
National Contact Points (NCPs) 393–4
Trade Union Advisory Committee (TUAC) approach and influence 387–8, 390–91

Oelz, M. 325
Olufemi, E. 405
O’Rourke, D. 62, 63, 364
Osiike, E. 208, 209
Ostrom, E. 562
outsourcing 41, 53–4, 131, 276, 363

*see also* supply chains
Owens, R. 258

Papadakis, K. 222
Paris Memorandum of Understanding *see under* maritime labour law

Pataut, E. 441, 448
Petersmann, E. 418
Phelan, E. 419
Piore, M. 215, 429
Pitkin, H. 211, 212
pluralism, pluralist 4, 7, 23, 62, 218, 221, 230, 241, 329, 331, 334, 339, 342, 375, 552
reflexive law, reflexive approaches 4, 6–7, 9, 30–31, 271, 375
interlegality 23
new governance 4, 88, 205, 214, 362
polycentric legal ordering 3, 23, 552–3, 562
trade union pluralism 25, 85, 389

Politakis, G. 185, 186, 249, 303, 308, 309, 318, 534
Poruthiyil, P. 46
Posner, E. 415–16, 560
Posthuma, A. 26, 402
Potter, E. 344
Pourtrier, R. 540
poverty reduction 126, 258, 540–41
Pries, L. 44–5, 329
private international law rules *see* EU, private international law rules, Rome I
Regulation and individual employment contracts
private labour regulation 361–73
Banana Republic experiment 366–7
Bangladesh Rana Plaza collapse *see* Bangladesh

brand reputation and image influence 367
collective responsibilities 365–6
communication technology effects 370–71, 371–2
and company codes of conduct 191–3
consumer citizenship 368–71
consumer-driven regulation 364–8
‘direct trade’ sourcing process 372–3
‘ethical consumerism’ doubts 367–8
Fair Trade certification 39, 372–3
firms’ contractual relationship factors 365
firms’ reputational damage fears 365, 367
global supply chain regulation 361–2
global supply chain rise and decline of direct employment 362–3
imagined community 371–3
transnational labour activist networks (TLANs) 363–4, 365–6, 372

*see also* codes of conduct, corporate social responsibility
privatization 329, 341, 547, 549
productivity
582  Research handbook on transnational labour law

corporate governance structures and practices 54
increased productivity objective, EU Common Agricultural Policy (CAP) 432, 433
regulation of labour as factor of production 28–30
progressiveness indicators, Inter-American system on human rights 289–90, 294–6
protectionism, Global South 47–9
public international law see under ILO Conventions, ILO normative action, individual treaties
public participation in governmental decision-making processes 66–7, 69
public policy 90, 296, 339, 341, 435, 447–8, 451, 540, 548
Putnam, R. 262–3
rational discrimination 261–2, 267, 286 see also equality
race and regulation of migrant labour 138–49
Bretton Woods and new international monetary system 140
capability (human freedoms) approach 141–4, 146
classical liberal assumptions about labour markets 142–3, 144
development studies 139–44
labour law as human development 141, 142–3
socio-historical processes in constructing freedoms, impact of 143–4
Third World and ‘self-estrangement’ critique 140
and unfree labour 142–3
race and regulation of migrant labour, temporary labour migration and removal of unfreedom labour
border control use 146
Canada, Agricultural Stream (AS) 145
Canada, legal protections for workers 147–8
Canada, Live-In Caregiver Program (LCP) 145, 147
Canada, racialized dimensions of Canada’s labour migration programmes 146–7, 148
Canada, recruitment of workers from the global South 149
Canada, Seasonal Agricultural Workers Program (SAWP) 145, 147

Canada, Stream for Lower-skilled Occupations (SLO) 145
international human rights frameworks 145–6
migration management 145–6
national security and racialized differentiation of migrant labour 148
neoliberal migration and low-skilled labour 146
precarious migration status as mechanism for distributing resources and privileges 147
remittance-driven approach 146
UN Human Development Report, Overcoming Barriers 146
Ravallion, M. 152, 539
Reich, R. 267
religion 85, 100, 249, 253, 255–57, 261–62, 382, 384, 392
remittances 146, 233
reputation concerns 47–9, 365, 367
Reuss, A. 142, 143
Richmond, A. 267
Rigaux, M. 8
right to fair trial, Inter-American system 287, 288
right to ownership, and slavery 527–8
right to strike see also freedom of association and ILO crisis 184–57
constitutional principle of freedom of association 182–3, 188–9
Employers’ group challenge 316–17, 318, 319, 321, 322, 327–8
European Court of Human Rights see European Court of Human Rights, collective action rights, and prospects for change in CJEU case law, jurisprudence on right to strike
ILO General Survey 181–4, 184–9
Spanish legislation 166–72, 175
Riisgaard, L. 222, 223, 224
Rittich, K. 16, 104, 140
Robé, J. 3, 52, 53
Rodgers, G. 5, 205, 498
Rogowski, R. 6–7, 16, 30
Romania, labour law reforms, concerns over 133–4
Romanos, E. 172, 173
Rosado Marzan, C. 63, 223, 226
Ruggie, J. 16, 39, 95, 437
Rugmark see consumocratic law, child labour and thickening of soft law, child labour laws and intervention of Rugmark
Index 583

Bellagio-Harvard Guidelines on the Legal Parameters of Slavery 527–8

conventional definitions 525–6

Global Slavery Index 528

servitude legislative history 528–32

slavery legislative history 525–8

Smith, A. 22, 503

Smith, A.A. 5, 11, 19, 138–49

Smith, M. 39–40

Smith, S. 553

social capital, need for formation of 262–3, 266, 268

social dialogue 8, 15, 17, 21, 65, 134, 206, 217–9, 222–4, 226, 229, 231, 254, 280, 282, 323, 334–5, 340, 344, 462, 558
delegation of regulatory powers by governments to national agencies 70
dialogic approaches 8–9, 21, 65–66, 74–75

Equator Principles 73–4

public participation guarantees 66–7, 69

Rio Declaration on Environment and Development 66

standard setting pressures 70–71

UN Global Compact Labour Working Group 72

social protection
corporate social responsibility strategy 220

EU Seasonal Workers Directive and immigration policy 430–31

European Social Charter 116, 198, 200, 502

marginalized (domestic) workers, France 240–42

non-State actors, responsibility and transparency 70–75

see also dispute resolution

social regionalism 25, 27, 455, 460, 472

social security 5–6, 115–16, 157, 296

soft law 9, 14, 20, 24–5, 29, 44, 96, 184, 189–93

and child labour see consumocratic law, child labour and thickening of 'soft law jurisprudence' see ILO supervisory bodies' 'soft law jurisprudence'

strike, pushback on right to 189–93

thickening 24–5, 189–93, 316–28

social solidarity 12, 15, 17, 38, 166, 168, 171–2, 175–6, 201–2, 217, 219, 260, 264–5, 268, 272, 371, 534, 540 542, 557

'solidarity associations' (employer-led) 279

cross-border solidarity, transnational solidarity 37, 207, 271

regime solidarity 457

solidarity-building 261, 267, 269
solidarity strikes 197
South Africa 27, 50, 94, 103, 368, 402, 455–6, 460–3, 466–7, 468–73, 526
South Korea 133, 389–90
Southern Africa Development Community (SADC), labour alternative dispute resolution (ADR) mechanisms 455–73
ADR adoption, causes and driving forces 460–68
Charter on Fundamental Social Rights 458–9
Codes of Conduct 459
Commission for Conciliation, Mediation and Arbitration (CCMA) 460, 463, 464, 472
country comparisons 465–8
ILO core Conventions ratification 458
ILO Decent Work Agenda 462
ILO Strengthening Labour Administration in Southern Africa (SLASA) project 461
ILO/Swiss Improving Labour Systems in Southern Africa (ILSSA) project 461–2
Industrial Relations Conference 461
institutional independence of SADC 457
labour law reforms 462–3
labour migration issues 459–60
labour and social protection 458–60
memoranda of understanding (MOUs) with neighbouring countries 463
pre-existing labour dispute resolution challenges 463–4
Protocol on Employment and Labour 459
regional cooperation 458
SADC history 456–7
SADC Human Resource Development Sector 458
‘South African effect’ on labour reform 462–3
sovereignty issues 457
supranational extent of SADC 456–7
vulnerable groups of workers, protection for 458–9
Zimbabwean land reform programme 457
Southern Africa Development Community (SADC), labour alternative dispute resolution (ADR) mechanisms, performance assessment 468–72
accessibility 469–70, 471
effectiveness and settlement rate 470
quality assessments 471
resource access 470–72
simplicity and informality 468–9
speedy procedures 469, 471
Spain, anti-austerity activism strategies 164–76
15M movement 167
conflict and protest, place for 164–5
Constitution, and freedom of expression and freedom to strike 169–70
ECJ ruling against Spain’s mortgage law compatibility 173
employment dismissal cases 168, 169, 171
financial crisis effects 165
healthcare sector, ‘Europe 2020 – for a healthier EU’ 174
hospital privatisation and ‘white wave’ protests 174
ILO Conventions, role of 172
‘indignados’ movement 172
Labour Law Reform measures 167, 172
Labour Market Reform measures 168
Mohamed Aziz v. Caixa Catalunya 173–4
PAH (Mortgage Victims’ Platform) 173–4
right to strike and role played by law and jurisprudence 166–72
solidarity through ‘waves’ of protest, and court involvement 172–4
strikes, incidence of 166–8, 169
strikes, proportionality and mutual sacrifice considerations 171
unemployment levels 165
Spain, labour law reform responses 388
Stevis, D. 45, 206, 225, 557, 558, 559, 561
Stewart, F. 257
Stone, K. 13, 57, 175, 344
Stout, L. 55, 59, 63
Strauss, K. 28
strike, right to see right to strike; freedom of association
strikes
Inter-American system on human rights 292–3
Spain, anti-austerity activism strategies 166–8, 169, 171
US New Jersey steel plant wildcat 265
see also collective bargaining
structural adjustment 540–1
Sub-Saharan Africa, child labour and fragile states 536–50
economic exploitation and infringing on right to learn and play 537–8
economic exploitation and transformation of traditional placement system 542–3
normative framework of child labour and its limits 544–6
United Nations Convention on the Rights of the Child (CRC) 544, 545, 548
universal compulsory education and its limits 546–7
subcontracting effects 275–6, 277–8, 431
Sukthankar, A. 19, 24, 37–50, 103, 136
supervisory bodies’ ‘soft law jurisprudence’ see ILO supervisory bodies’ ‘soft law jurisprudence’
Supiot, A. 22, 51, 53, 54, 57, 64, 230, 232, 233, 538, 542, 544
supply chains 6, 21, 24, 38, 43–44, 76, 96, 101–107, 152, 190, 265, 267, 270–1, 330–1, 335–36, 342, 361–6, 368–9, 371–3, 394, 426, 500
international framework agreements (IFAs) 225
International Labour Conference (ILC), 2012 General Survey 190
subcontracting effects 275–6, 277–8, 431 see also outsourcing
UN Conference on Sustainable Development 552, 561
sustainability goals 258, 435–6
Swartz, D. 478
Sweden, collective bargaining 197–8
Sweepston, L. 19, 185, 512, 520
Swiatkowski, A. 201
Sykes, A. 415–16
Tangian, A. 83, 86
Tapiola, K. 19, 161, 186, 512, 520
Tarrow, S. 168
technology, technological innovation 3, 22, 78, 153, 276–7, 370–2

technology of governance 76
Temba, F. 464, 468, 469, 470, 471
Tessier, H. 541
Teubner, G. 3
Theron, J. 471
Thomas, A. 303, 412
Thomas, C. 140, 312
Thompson, D. 213
Thouvenin, J. 12, 19, 39, 385–94, 498
trade agreements
and arbitration see arbitration use in deciding international labour issues, investment and trade agreements
bilateral arrangements 63–4, 162–3, 332, 400, 401
ITO (International Trade Organization) procedures 421–2, 423–4
trade in services, commodities and beneficiaries 497–508
trade in services, commodities and beneficiaries, industrialisation and trade in goods 497–502
EU and ‘Social Europe’ 501–2
ILO migrant worker Conventions 499, 506
ILO standards and functions 498–9
ILO standards and functions, challenges to 499–500
WTO and ILO collaboration 500–501
trade in services, commodities and beneficiaries, labour standards evasion 503–8
cross-border trade in services, developing countries and export of skilled labour 505–6
cross-border trade in services, GATS Mode 4 – movement of ‘natural persons’ 504–6
EU Posted Workers Directive and free movement of services 506–8
EU Posted Workers Directive and free movement of services, legal protection concerns 507–8
‘means of production’, understanding of 503
services trading definition 503
trade unions
China 155, 212, 270–71
global see global trade union organizing and domestic constraints
Latin America, May 10 template 486–7, 489
leaders, protection of, Inter-American system on human rights 292
marginalized (domestic) workers 234
network creation 226
rights violations, Mexico and Central America 278–80
Trade Union Advisory Committee (TUAC) 387–8, 390–91
see also collective bargaining
training, role of 78, 241, 278, 313, 325, 335, 339, 353, 355, 386, 391, 392, 459, 461, 462, 463, 471–2, 505, 538, 541, 545, 549, 558
transnational corporations see multinational corporations
transnational labour activist networks (TLANs) 363–4, 365–6, 372
transport workers and legal uncertainty, EU 445–6
Travieso, M. 389, 390
treaties
see under Aarhus Convention; EU; human rights; ILO Conventions; trade agreements; Vienna Convention on the Law of Treaties
Trebilcock, A. 3–31, 45, 93–107, 231, 331, 345, 387
Trebilck, M. 24, 140
Trubek, D. 4, 140
UK
Transfer of Undertakings (Protection of Employment) Regulations 39–40
Workers Uniting cross-border merger 42–3
UN Aarhus Convention 66, 67
UN Children’s Fund (UNICEF) 537–8, 544, 546
Declaration on Education for All 544, 546
UN Conference on Sustainable Development Outcome Document 552, 561
UN Convention on the Protection of the Rights of All Migrant Workers (ICRMW) 499
UN Convention on the Rights of the Child 376, 544, 545, 548
UN Convention on The Law of the Sea (UNCLOS) 346
UN Economic and Social Council (ECOSOC), Supplementary Convention on the Abolition of Slavery and Servitude 529–32
UN Environmental Programme (UNEP) 561
UN Global Compact 61, 70–72, 94–5, 190, 221
UN Guiding Principles on Business and Human Rights 71, 93–107
business reporting, information and indicators 103–4
and civil law 105
cross-overs between developments in corporate social responsibility and public international law norms 95–6
firms’ risk management strategies and human rights commitments 102–3
foundational principles 98–9
and ILO Declaration on Fundamental Principles and Rights at Work 100–101
and International Covenant on Civil and Political Rights (ICCPR) 100
and International Covenant on Economic, Social and Cultural Rights (ICESCR) 100, 104
occupational health and safety and respondeat superior principle 103, 104
OECD Model Supply Chain Policy 102
operational principles 98
as possible legal action shield 104–6
‘Protect, Respect and Remedy’ Framework 95–6, 191, 192–3
reductionism of richer body of human rights law 97–8, 104
state national action plans, proposed 97
substantive scope in relation to labour issues 100–101
supply chain dilemma 101–3
tort law and duty of care 106
UN Global Compact and direct involvement of enterprises 94–5
and Universal Declaration of Human Rights (UDHR) 100, 104
UN Human Development Report, Overcoming Barriers 146
UN Human Rights Council 191, 192–3
undocumented workers 268, 269
unemployment levels 115, 117, 128, 165, 413, 414
unions see trade unions
Universal Declaration of Human Rights (UDHR) 100, 104, 221
United States (US)
Bureau of International Labor Affairs (ILAB) indicators 81–2, 87
In re Caremark Derivative Litig. 59
Cintas Corporation v. UNITE HERE 40–41
Doe v. Wal-Mart Stores 63
free trade agreements 403, 474–495
Generalized System of Preferences (GSP) programs see under Americas, labour rights and trade agreements
global supply chains, Banana Republic experiment 366–7
Kiobel v. Royal Dutch Petroleum Co. 52–3
LEAP (Labour Education in the Americas Project) 488, 489
Model bilateral investment treaty 401
multinational corporations and civil litigation 40–41
National Labor Relations Act (NLRA) 41
Office of Trade and Labor Affairs (OTLA) review and report process 480–81, 486
Overnite Transportation v. International Brotherhood of Teamsters 41
Index 587

Racketeer Influenced and Corrupt Organizations Act (RICO) 40–42
Service Employees International Union (SEIU) 41–2
Siemens campaign 45
Smithfield Foods v. United Food and Commercial Workers 40
Sodexo v. SEIU 41
South Chicago steelworkers, working together transnationally 264–5
Trade Promotion Authority (TPA) Act and Latin American agreements 479–80
undocumented workers and anti-union discrimination 268
union recognition through ‘card check’ and majority representation 41, 42
US-Jordan trade agreement 478–9
Wackenhut Corporation v. Service Employees International Union 40
Walmart campaign and United Food and Commercial Workers International (UFCW) 60
Workers Uniting cross-border merger 42–3
Utting, P. 15
Vallée, G. 12, 13, 230, 231
Valticos, N. 183, 185, 307, 320, 323, 325, 420
Van der Heijden, P. 18
Van Hoek, A. 6, 27–28, 227, 397, 438–54, 506
Vanqa-Mgijima, N. 235
Varoufakis, Y. 113, 117
Verge, P. 12, 13, 53, 54, 230, 231
Vidmar, J. 31
Vienna Convention on the Law of Treaties 200–201, 293, 523
Von Potobsky, G. 183, 185
Vosko, L. 254, 258, 499

wage levels
Eurozone crisis and structural adjustment 115–16
marginalized (domestic) workers, France 242
minimum wage levels 128–9, 158–9
reductions, Inter-American system 294–5
universal ‘living wage’ principles, difficulties in applying 39, 44

...and working hours, Mexico and Central America 278
Walby, S. 254, 257
Walmart campaign and United Food and Commercial Workers International (UFCW) 60
Warneck, W. 40, 196, 198
Weil, P. 321
Weisband, E. 229
Weiss, M. 61, 191–2, 255, 327
Weissbrodt, D. 485
Weller, J. 274
Wilkinson, F. 3
Williams, C. 52, 59, 61
Wills, J. 128, 129, 223, 224
Wolfrum, Rüdiger 9, 104, 127, 319
Woods, N. 126, 127, 365
Workers Uniting cross-border merger 42–3
working hours 234–5, 241, 278
working together transnationally 37–50, 260–72
social capital, need for formation of 262–3, 266, 268
transnational trade union solidarity actions 37–50
workplace diversity and discrimination problems 260–64
workplace voice, disappearance of 260
demographic characteristics and corporate hierarchies 267, 268
language and communication problems 268, 269, 270
politics of immigration 267–9
World Bank ‘Employing Workers Indicators’, criticism of 80–81, 83, 135
World Trade Organization (WTO) dispute resolution 25–7
trade in services and ILO collaboration 500–501
World Trade Organization (WTO), lessons from ILO 411–24
developing countries, lower obligations 415–16
GATS (General Agreement on Trade in Services) 417
GATT (General Agreement on Tariffs and Trade) 414–15, 416, 418, 422
ILO Declaration of Philadelphia 413, 414, 415–16, 418
ILO origins 412–13
ILO trade liberalisation policies 415
international competition, shielding domestic economies from 414–15
most-favoured-nation (MFN) treatment for foreign-service suppliers 417
World Trade Organization (WTO), lessons from ILO, labour goals transplanted into trading system 413–18
fair labour standards 417–18
full employment 413–14
migrant worker protection 416–17
special and differential (S&D) treatment 415–16
trade and development 414–15
World Trade Organization (WTO), lessons from ILO, labour origins of trade dispute settlement 418–24
compliance by defaulting state, focus on 421
ILO Constitution procedures 420–21
ITO (International Trade Organization) procedures 421–2, 423–4
Permanent Court of International Justice (PCIJ) involvement 419–20
reparation principle, absence of 421
Treaty of Versailles 418–19, 421
WTO dispute settlement understanding (DSU) 422–4
Young, I. 24, 207, 365, 366, 369
Zack, A. 25, 399, 405
Zandvliet, R. 18
Zeitlin, J. 205, 213, 214, 216
Zemanek, K. 322
Zimbabwe, land reform programme 457
Zimmer, R. 8, 14, 20, 40, 194–203, 326, 397, 451, 507
Zumbansen, P. 6, 23, 61, 562
Zürcher, G. 145