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International Employment and Labour Law **by Jean-Michel Servais. A Review**

Christopher Leggett *

The International Labour Organisation (ILO) was the only agency of the League of Nations, formed in 1919 after the First World War, to continue as an agency of the United Nations, after the Second World War. The ILO's webpage *How the ILO works* specifies its purposes and maps the formal organisation through which it works: it is "responsible for drawing up and overseeing international labour standards" which are set by the annual International Labour Conference, and its main aims are "to promote rights at work, encourage decent employment opportunities, enhance social protection and strengthen dialogue on work-related issues"¹, but offers little about *how* it works.

The ILO is distinguished by its tripartite structure, to reflect the views of what today are called "the social partners", its executive is the Governing Body and its administrative headquarters is the International Labour Office in Geneva, and to some extent this structure is iterated at the regional level. Whether ratified or not, it is the ILO's conventions that are the main (but not the only) source of international labour law, the subject of Servais' 2011 monograph, *International Employment and Labour Law* which offers an informed insight into the role of the ILO in the generation, implementation and supervision of international labour standards and its attempts today to balance economic progress with social justice.

* Christopher Leggett is Adjunct Professor at the James Cook University, Australia. The present review refers to J.-M. Servais, *International Employment and Labour Law*. Kluwer Law International, Alphen aan den Rijn, 2011. 362 pp. ISBN 978 90 654 4905 4.
¹ ILO, *How the ILO Works*, online, 2012.

In his account, Servais excludes indirect sources of international standards that are explicitly concerned with social justice, such as the International Covenants on Human Rights from *International Employment and Labour Law*, as beyond its scope, in order to focus on the ILO as the main source of international labour standards. As befits the bibliographical format of a ‘monograph’ *International Employment and Labour Law* is confined to a single topic, the ILO as a source of international labour law. Servais’ three reasons for becoming acquainted with international labour law (he does not specify by whom other than, tautologically, those researchers and practitioners already familiar with it) are the relationship with the legal instruments in force and with the scope of states’ obligations, the influence of the conventions and recommendations on the conduct and regulation of industrial relations, and its function as a benchmark for comparative labour law.

In keeping with the orderliness of an international bureaucracy and its manner of legal documentation the monograph is highly structured: paragraphs (1141 in all) are enumerated in one sequence throughout the text, and the chapters of each of the parts are divided into numbered sections, making it easy for those who might want to use *International Employment and Labour Law* as an encyclopaedic reference. Although Servais, who was an official in various roles in the International Labour Organisation (ILO) and the International Institute of Labour Studies (IILS) from 1972 to 2005, roles he has combined with a scholarly orientation, claims to have pitched *International Employment and Labour Law* at those already familiar with employment and labour law, it is quite understandable, but not easily read, by those of us for whom labour law is but one dimension of a broader framework of industrial and employment relations usually published in more of a narrative format. Its overall purpose appears to be to justify international labour regulation— noting the inequalities and conflicts generated by social and economic structural and technological change and acknowledging the difficulties of interpretation of the regulations. Servais argues that the need for international labour regulations is as valid now as it was when the ILO was founded.

Servais divides his monograph into three parts, four if you count the extensive “General Introduction” that is part historical, part contemporary and part the ILO’s constitutional framework, and which is followed by a “Select [but extensive] Bibliography”. Prophetically, a “Forward”—by Kari Tapiola, Executive Director, Standards and Fundamental Principles and Rights at Work, International Labour Office—is “to the First Edition” so presumably the publishers anticipate

future updates. Part I examines the ILO—its constitution and conventions—as the main of source of international labour standards, but also examines other sources, and analyses the clashes between them. Part II focuses on the substance of international labour law—freedom of association and social dialogue, labour and employment, and social security. The concern of Part III is with their supervision and promotion and with the difficulties of their implementation.

International Employment and Labour Law is exhaustive in detail, especially of the content of international labour standards and as such would serve as a vital reference for those for whom their practice and research of labour matters is focused on international labour standards, and includes the range of employment relations issues, from forced labour and foreign workers to the terms and conditions of employment.

Although it is an encyclopaedic source of ILO made international labour law *International Employment and Labour Law* is mindful of the economic and social dimensions of that law, and acknowledges the social clause dilemma that “straddles the borderline between law and economics”, as manifested for example in the 1998 Declaration of Fundamental Principles and Rights at Work that seeks to associate social justice with economic growth.

Servais acknowledges that the institutional economic and employment shift from international to global has lessened the control that the state and the national “social partners” have over the “social game” and wrestles with the consequent difficulty of the implementation of ILO labour standards. The interactions of the players have become more “transnational”, including regional, with the increase in multi-national employers and other transnational entities. This overarching source of difficulty in implementing ILO sourced international labour law is compounded by the difficulties of supervision (of implementation), and of evaluating the impact of labour laws. From this acknowledgement Servais proceeds to “new solutions” that include the aegis of the concept of decent work. “Decent work”, he writes, “as used by the ILO, seeks to group under one umbrella all the elements of harmonious economic and social development, of which protective labour rules are an essential component”. He quotes the retiring Director General of the ILO who as the visible proponent of the decent work campaign explained:

The goal is not just the creation of jobs, but the creation of jobs of acceptable quality. The quantity of employment cannot be divorced from its quality. All societies have a notion of decent work, but the quality

of employment can mean many things. It could relate to different forms of work, and also to different conditions of work, as well as feelings of value and satisfaction. The need today is to devise social and economic systems which ensure basic security and employment while remaining capable of adaptation to rapidly changing circumstances in a highly competitive global market.²

Finally, Servais suggests a new role for the ILO arising out of the increase in the insertion of minimum labour standards in legislation as well as in trade agreements. The expertise of the ILO and its “first-hand knowledge of development in less industrialized countries” make the ILO “an ideal neutral third party charged with examining the social provisions introduced in non-universal treaties”.

International Employment and Labour Law is not an easy work to read but it offers a wealth of detail and some interesting analyses that may serve the information requirements of researchers in the field of labour studies, regardless of their specialist foci, and provide a ready reference for labour lawyers, academic and practicing.

² J. Somavia, *Decent Work*. Report of the Director-General to the 87th session of the ILO, ILO, Geneva, 1999.

Adapt International Network



ADAPT is a non-profit organisation founded in 2000 by Prof. Marco Biagi with the aim of promoting studies and research in the field of labour law and industrial relations from an international and comparative perspective. Our purpose is to encourage and implement a new approach to academic research, by establishing ongoing relationships with other universities and advanced studies institutes, and promoting academic and scientific exchange programmes with enterprises, institutions, foundations and associations. In collaboration with the Marco Biagi Centre for International and Comparative Studies, ADAPT set up the International School of Higher Education in Labour and Industrial Relations, a centre of excellence which is accredited at an international level for research, study and postgraduate programmes in the area of industrial and labour relations. Further information at www.adapt.it.

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