

Table of Contents

The Author	3
List of Abbreviations	13
Foreword	15
Preface	19
General Introduction	21
Chapter 1. The Founding Principles of the ILO and their Relevance Today	21
§1. THE FOUNDING PRINCIPLES OF INTERNATIONAL LABOUR LEGISLATION	21
§2. THE FIRST WORLD WAR AND THE FOUNDING OF THE ILO	24
§3. THE INTER-WAR PERIOD AND THE CONSOLIDATION OF THE SYSTEM	26
§4. THE CONSEQUENCES OF THE 1939–1945 WAR: FIRM PRIORITIES	27
§5. ILO STANDARDS AND GLOBALIZATION	32
Chapter 2. The Social Clause Dilemma	34
§1. A DILEMMA THAT STRADDLES THE BORDERLINE BETWEEN LAW AND ECONOMICS	34
§2. A BRIEF LOOK AT THE PAST	34
§3. THE TECHNICAL DIFFICULTIES	37
§4. OTHER POSSIBLE SOLUTIONS	40
I. Unilateral Procedures	40
II. Non-universal Trade Agreements with a Social Component	41
§5. THE ROAD TAKEN BY THE ILO	43
Chapter 3. The Constitutional Framework	45
§1. ILO'S MANDATE AND STRUCTURES	45
§2. THE ADOPTION AND TERMINATION OF ILO STANDARDS	46
I. The Process of Preparation	46
II. The Choice of Subjects	47
III. The Termination of ILO Conventions and Recommendations	49

Table of Contents

Selected Bibliography	51
Part I. The Sources of International Labour Law	65
Chapter 1. The ILO Constitution	67
Chapter 2. The International Labour Conventions	68
§1. PREPARATION, REVISION AND TERMINATION OF ILO CONVENTIONS	68
I. Preparation	68
II. Revision, Withdrawal, Abrogation	70
§2. THE EFFECTS OF INTERNATIONAL LABOUR CONVENTIONS	71
I. The 'Objective' Entry into Force of the Conventions	71
II. Bringing the Conventions before the Competent Authorities	72
III. The 'Subjective' Entry into Force of the Conventions: Ratification	75
A. Concept and Conditions	75
B. Effects of Ratification	76
IV. The Cessation of Effects	79
A. Denunciation	79
B. Withdrawal from the Organization	80
C. Succession of States	80
D. War, and Radical and Unforeseeable Changes in Circumstances	80
§3. THE INTERPRETATION OF ILO CONVENTIONS	81
I. Principal Interpreters	81
A. Constitutional Bodies	81
B. Interpretation by the Organization's Secretariat	82
C. Interpretation by the ILO's Supervisory Bodies	83
II. Matters Relating to Method	84
A. Consideration of Economic and Social Conditions	84
B. Interpreting the Conventions Separately or as Part of a Legal Corpus	87
C. The Programmatic Conventions	88
§4. THE CHARACTERISTICS OF ILO CONVENTIONS	89
Chapter 3. The Other Standard-setting Instruments	91
§1. PRECARIOUS EMPLOYMENT AND ILO STANDARDS	91
§2. THE OTHER ILO STANDARD-SETTING INSTRUMENTS	94
I. Recommendations	94
II. Declarations and Resolutions	95
A. The Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy	96
B. The Declaration on Fundamental Principles and Rights at Work	97
III. Model Codes and Codes of Practice	100

Table of Contents

§3. CODES OF CONDUCT AND SIMILAR INITIATIVES	101
I. OECD Guidelines for Multinational Enterprises	101
II. Social Initiatives by Multinational Enterprises	104
A. Codes of Conduct	105
B. Other Social Initiatives	106
Chapter 4. Conflicts between International Labour Standards	107
Part II. The Content of International Labour Standards	109
Chapter 1. Freedom of Association and Social Dialogue	110
§1. GENERAL STANDARDS ON FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING	112
I. Freedom of Association for Workers and Employers	112
A. The Freedom to Create and Join an Association	112
B. The Right to Form Federations and Confederations and to Join International Employers' and Workers' Organizations	113
C. The Protection of Trade Unions from Administrative Suspension or Dissolution	114
D. Rights and Guarantees of Trade Union Activity	114
E. Freedom of Association, Civil and Political Rights	116
II. Collective Relations between Social Players	117
A. The Promotion of Collective Bargaining	117
B. Social Dialogue	118
C. Strikes	119
D. Voluntary Conciliation and Arbitration	120
E. The Elimination of Anti-trade Union Employment Practices	121
§2. SPECIFIC STANDARDS ON INDUSTRIAL RELATIONS WITHIN THE UNDERTAKING	123
I. The Protection of Workers' Representatives	123
II. Participative Management	124
III. Grievances	125
§3. FREEDOM OF ASSOCIATION AND SOCIAL RIGHTS	127
Chapter 2. Labour and Employment	130
§1. FORCED LABOUR AND CHILD LABOUR	130
I. Forced Labour	131
II. The Prohibition of Child Labour	135
III. The Protection of Young People at Work	140
A. Medical Examinations	141
B. Arrangement of Working Time	142
C. Dangerous Work	143
D. Facilities	144

Table of Contents

§2. EQUALITY OF OPPORTUNITY AND TREATMENT	144
I. The Promotion of Occupational Equality	146
A. The Causes of Discrimination	147
B. The Areas Protected	149
C. Discriminatory Acts and Situations	149
D. The Scope and Implementation of the Standards on Equality	152
II. Equality between Men and Women	153
§3. EMPLOYMENT POLICY AND PROMOTION	158
I. Social Policies and Job Stimulation	161
II. Enhancing Occupational Skills	164
A. International Law on Vocational Training and Orientation	165
B. The Scope of the Standards	168
III. Dismissal	170
IV. Unemployment Benefits and Employment	175
§4. LABOUR ADMINISTRATIONS	178
I. Employment Services	178
II. Monitoring Employment Conditions	182
III. The Settlement of Labour Disputes	184
IV. International Labour Relations	186
V. An Efficient Labour Administration	186
§5. WORKING TIME	187
I. General Overview	187
II. Hours of Work	190
III. Night Work	192
A. Convention No. 89 (Revised), on Night Work (Women), 1948	193
B. The 1990 Protocol to Convention No. 89	193
C. Convention No. 171 and Recommendation No. 178	194
IV. Rest Periods	195
A. Weekly Rest	195
B. Paid Leave	196
§6. WAGES	198
I. Overview of International Legislation	198
II. Wage Protection	199
III. Labour Clauses in Public Contracts	202
IV. Fixing the Minimum Wage	203
§7. OCCUPATIONAL SECURITY	205
I. The International Dimension of Regulations on Occupational Health	206
II. Changes in ILO Standards on Occupational Health	208
A. The Changing Field of Application	208
B. Changes in the Methods of Protecting Health	209
C. A New Vision of Occupational Health Standards	211
III. National Implementation of the Standards	212
A. The Obstacles Overcome and Remaining Difficulties	212
B. The Cost of Occupational Health Standards	214
IV. Protection of Workers' Personal Data	216

Table of Contents

§8. NON-STANDARD FORMS OF EMPLOYMENT	217
I. The Applicability of International Labour Standards to the Various Forms of Employment	218
A. Freedom of Association	218
B. Labour and Employment	219
1. Forced Labour and Child Labour	219
2. Equality of Opportunity and Treatment	219
3. Employment Policy and Promotion	220
4. Labour Administration	221
5. Conditions of Work	221
C. Social Security	222
II. The Specific Standards	223
A. Independent Work	223
B. Family Work	227
C. Apprenticeship	228
D. Homework	229
E. Part-Time Work	231
§9. FOREIGN WORKERS	232
I. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	234
II. ILO Instruments on Migrant Workers	236
A. Field of Application	236
B. Conditions of Access to Foreign Employment Markets	237
C. Equality of Opportunity and Treatment	238
D. Policy of Integration and Respect for Identity	240
III. The Provisions on Migrant Workers in ILO General Instruments	241
§10. SPECIAL CATEGORIES OF WORKERS	242
I. Specific Standards Owing to Personal Conditions	243
A. Women Workers	243
B. Older Workers	247
II. Specific Occupation-related Standards	249
A. Hotel and Restaurant Workers	249
B. Nursing Personnel	250
C. Plantation Workers	251
D. Dockworkers	252
E. Fishermen	253
F. Seamen	255
III. Indigenous and Tribal Peoples	258
Chapter 3. Social Security	261
§1. GENERAL PRINCIPLES	261
I. Historical Markers	261
II. Common Principles	264
A. Field of Application: Universality and Flexibility	264
B. Method for Calculating Cash Benefits	265
C. Organization and Administration	266

Table of Contents

D. Suspension, Refusal, Withdrawal of Benefits	268
E. The Beneficiaries' Right of Appeal	268
§2. THE BRANCHES OF SOCIAL SECURITY	269
I. Employment Injury	269
A. Definition of the Contingency	269
B. Beneficiaries	270
C. Benefits	270
D. Conditions of Allocation	272
II. Medical Care	272
A. Definition of the Contingency	272
B. Beneficiaries	273
C. Benefits	273
D. Conditions of Allocation	274
III. Sickness Benefits	274
A. Definition of the Contingency	274
B. Beneficiaries	274
C. Benefits	275
D. Conditions of Allocation	275
IV. Invalidity Benefits	275
A. Definition of the Contingency	275
B. Beneficiaries	276
C. Benefits	276
D. Conditions of Allocation	277
V. Survivors' Benefits	277
A. Definition of the Contingency	277
B. Beneficiaries	278
C. Benefits	278
D. Conditions of Allocation	279
VI. Old-age Benefits	279
A. Definition of the Contingency	279
B. Beneficiaries	279
C. Benefits	280
D. Conditions of Allocation	280
VII. Maternity Benefits	281
A. Definition of the Contingency	281
B. Beneficiaries	281
C. Benefits	281
D. Conditions of Allocation	282
VIII. Family Benefits	283
A. Definition of the Contingency	283
B. Beneficiaries	283
C. Benefits	283
D. Conditions of Allocation	283
IX. Unemployment Benefits	284
A. Definition of the Contingency	284
B. Beneficiaries	284

Table of Contents

C. Benefits	285
D. Conditions of Allocation	285
§3. THE SOCIAL SECURITY OF MIGRANT WORKERS	287
I. Equality of Treatment	288
II. Maintenance of Acquired Rights and Provision of Benefits Abroad	288
III. Maintenance of Rights in Course of Acquisition	289
IV. Applicable Legislation	289
V. Mutual Administrative Assistance and Assistance to Persons	290
Part III. The Effectiveness of International Labour Standards	291
Chapter 1. The Supervision and Promotion of ILO Standards	293
§1. GENERAL SUPERVISORY PROCEDURES	293
I. Regular Supervision	293
A. The Committee of Experts on the Application of Conventions and Recommendations	294
B. The International Labour Conference Committee on the Application of Conventions and Recommendations	295
II. Representations and Complaints	295
§2. SPECIAL PROCEDURES	297
I. The Complaints Procedure for Violations of Freedom of Association	297
II. The Credentials Committee	301
III. Other Special Procedures	302
§3. PUTTING THE SUPERVISORY MECHANISMS IN PERSPECTIVE	303
§4. PROMOTION AND COOPERATION	307
Chapter 2. Implementation Difficulties	313
§1. THE PROBLEMS RAISED	314
§2. RESPONSES GIVEN	317
§3. ONGOING DIFFICULTIES	322
I. Difficulties Relating to the Existence of the Standard and its Wording	323
II. Difficulties Relating to Supervision of Labour Standards	327
III. Factors Relating to the Socio-economic Context	331
IV. Striking a Balance: the Decent Work Approach	333
Index	341