

ITCILO World of Work Series

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# DICTIONARY OF INTERNATIONAL AND EUROPEAN LABOUR LAW



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## FOREWORD

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The Dictionary of International and European Labour Law aims to give a comprehensive overview of the latest development of labour law and industrial relations issues, including globalization and international labour standards. In this Dictionary, the reader will find reference to current achievements, debates, ideas and programmes, as highlighted in the various reports of the ILO Director-General in the last few years. Moreover, there are cross-references to international labour standards and European Union directives, resolutions and regulations. In this respect, the reader will notice that some of the definitions from the public domain are taken from legislative and specialised texts dealing with international law and institutions.

The Dictionary of International and European Labour Law touches on the most relevant issues surrounding the global debate on the 2030 UN Agenda on sustainable development, on the Future of Work Initiative of the ILO and to the latest initiative of the ILO for a Global Coalition for Social Justice.

Moreover, the Dictionary examines the various procedures by which EU labour law is made; it sets the legal materials in their policy context and identifies the major issues, which have shaped the development of EU labour law and are likely to determine its future, including the economic crisis and the debate on fundamental rights in the EU.

The Dictionary has been conceived as an educational and learning tool, and aims to be a storehouse of practical definitions providing practitioners and scholars with advice and suggestions that may be taken into account in their day-to-day activities. The definitions given go further than suggesting specific tools, approaches and policies. Governments', workers' and employers' representatives can also profit from this Dictionary by familiarizing themselves with recognised and accepted international labour practices in a number of domains of interest to them.

Even where definitions of specific industrial relations topics and/or standards are not of immediate practical relevance to their daily work, the Dictionary should nevertheless give readers a useful perspective on the subject matter in question, which can broaden their horizons, sharpen their

awareness of possible future problems and ultimately be used when they are faced with specific challenges. We hope that the Dictionary of International and European Labour Law can also contribute to the overall development of a sound social dialogue and industrial relations system at different levels of the economy. However, it is in no way intended to offer an exhaustive and detailed treatment of all labour law and industrial relations issues, rather a reference tool on selected issues found in international instruments and/or governance institutions.

With this objective in mind, and to make the significant provisions of labour law and industrial relations more understandable to a wider audience, certain liberties have been taken by the authors when reformulating and, in several cases, simplifying the terminology involved. We hope that this has been accomplished without betraying the meaning of the various standards or their interpretation by the competent supervisory bodies. Moreover, we have sought – wherever relevant – to sketch the practices surrounding the various provisions and to elaborate on their significance and the possible utility of certain provisions for workers, employers and government’s representatives. The Dictionary should not be used or regarded as an authoritative text on individual international labour standards or on European Union labour law, rather as an easy reference work for practitioners and scholars in the field of comparative labour law and industrial relations.

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# INTRODUCTION

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## 1. Labour law

Labour law, taken as a whole, has been developing since the second half of the nineteenth century in the countries of progressive industrialization. It consists of various rules and sources, kept together by the aim of protecting at different levels the weakest part of the employment relationship (i.e. the employee) and other subjects deemed worthy of protection. Traditionally, these rights are distinguished in trade union law, labour law and social security law in their respective strict sense. For example, trade union law refers to freedom of association, the right to collective bargaining and the right to strike. Labour law strictly regulates the legal relationship between the parties of the employment contract (employer and employee). The social security law deals with the protection of persons against harmful events during their life (accidents, disability, old age, unemployment, etc.).

## 2. International law and international labour law

What challenges do international law and international labour law in particular face today in such an emergency situation as a result of the COVID-19 pandemic and the conflicts around the world, including the Ukraine war? How can both legal systems be applied in the current circumstances?

With reference to war conflicts, it should be noted that such tragic events are not only a severe humanitarian crisis. For international lawyers, the wars, including the Ukraine war are an outright attack on the core values that underpin the whole discipline of international law. War is certainly a symptom and consequence of the malfunctioning of international law, understood as a system and mechanism. However, when the mechanism does not work, we certainly do not have to dismantle it and refuse to use it any further or stop believing in its usefulness. Rather, we must find out what went wrong and the reasons why.

For example, as far as the economic and social consequences of the COVID-19 pandemic and of the Ukraine war, the national and international institutions did not turn their backs to the running of the welfare systems.

One could blame international law for its incapacity to prevent or stop the war in Ukraine. Nevertheless, we face the war in Ukraine with the toolkit that was unavailable to the past generations back in 1914 and 1939. It is only because of the solid stance of international lawyers of the past, their faith in the values they fought for as well as their patience and foresight, that international law was resilient and evolved from where it was hundred years ago.

International law, and for its part international labour law, lives off crises, lives its crises, and lives in crises. In a nutshell, international law is a legal discourse for crisis, about crisis, and in crisis. That is to say, international law is a continuous legal crisis discourse.

International lawyers represent the masters of a legal discourse that is all about containing, managing and surviving to the crises. Against this background, the very extensive literature that burgeoned following the outbreak of the COVID-19 is nothing but business as usual for a crisis discourse like international law.

The dialectic between continuity and change lies at the heart of international law, which seeks to foster peaceful, just, and prosperous relations among nations. International law endeavours to govern the future by applying, in the present, norms that are inherited from the past. Nonetheless, everything flows and in an ever-changing world, some change is needed within the international legal system to ensure its stability, especially in times of emergency. Crises not only can constitute the means for the development of international law, but they can test, undermine or ultimately buttress the structure of international law. One could argue that the sources of international law have been changed in the last decades. In this regard, what about the changes in the sources of international labour law?

This Dictionary of International and European Labour Law provides with a series of answers to such questions. In the following pages, we have tried to show how the sources of international labour law have been adapted to the changes that took place in social and labour relations due to the crises and emergencies of the last few years, and how they have affected the needs and values of the international community.

Such a matter evidently assumes a specific relevance, because it touches particularly sensitive issues in the field of international law such as the principle of sovereignty and the protection of human rights.

These challenges have to be met by current international law, which, being subject to a gradual transformation, from the right of an interstate com-

munity (or “community of states”) to the right of a global community, presupposes an equally gradual erosion of the principle of sovereignty with a view to ensuring the universal protection of human rights.

From this perspective, it has emerged the need for an extensive interpretation of the notion of democracy, which, detached from the traditional purely state connotation, can be understood in a global sense. In fact, a notion of democracy based on the global dimension of human rights inspires documents and acts of the United Nations, the European Union and other international organizations.

The crises of the recent years outline an international reality in which not only new actors are acting, but new problems, different from the past, have emerged. In particular, from a legal point of view this situation seems to have exacerbated the need to guarantee the protection of the human rights, also in relation to the principle of state sovereignty. As a matter of fact, more and more is argued that the theory of “responsibility to protect” was born precisely to give an impulse, justified by humanitarian reasons, to the general reluctance of nations to limit their sovereignty.

### **3. Social legislation**

In line with what was mentioned above, social legislation appeared in many countries at different times and with various degrees of development. In all countries, the very first social legislation dealt with the work of women and children. It focused on the working hours, the banning of night work, the prohibition of dangerous occupational activities. In this context, there was a significant advance over traditional civil law and social legislation was gaining ground and being distinguished as a separate legal discipline of what we call today labour law. Social legislation interacts with a number of specific objectives of the ILO, such as full employment, the increasing of living standards, training and learning innovation, better wages, reduction of working hours, health and safety, the effective recognition of freedom of association and the right to collective bargaining, the extension of social security measures, provisions for a basic income to all in need of protection, and medical care.

This has characterised the development of social legislation both at the national and international level, and in the years labour law has become the predominant term to be used.



## 4. Consolidation of labour law: constitutionalisation and internationalization

### 4.1. *The constitutionalisation of labour rights*

In the liberal legal tradition, the Constitution was considered as an organic text law of the State, which regulated the relations between public authorities and individuals. In fact, the Civil Code was generally considered as the main normative body of the, since it was in charge of regulating legal-economic relations between individuals in society. The Constitution of Querétaro (Mexico) of 1917 and the Constitution of Weimar (Germany) of 1919 are the two pioneering Constitutions that, for the first time, contemplated in their articles social rights. Both constitutional texts represent the original landmarks for future Constitutions that expanded rapidly in Europe and other countries, particularly in Latin America. The centrality of labour rights in this process is known and labour rights occupy a major place in the catalogue of new social rights. For this reason, labour law experts talk about the “constitutionalisation of labour law” or of “constitutional labour law”.

According to the late Oscar Ermida, the constitutionalisation of labour law has important consequences for the legal system<sup>1</sup>. In fact, the elevation of labour rights to the text of the Constitution denotes: (i) the high value of the interests protected by labour law; (ii) its intangibility by legislative norms; (iii) consideration of specific fundamental labour rights; (iv) from a functional perspective, such constitutional rights operate as a limit to de-regulatory tendencies.

Regardless of the implications of the constitutionalisation of labour rights for the system of normative sources regulating labour relations, what should be noted is that this process of constitutionalisation of social rights started from the phase of the liberal state towards the social state of law, which is characterised by the intervention in labour relations to correct the inequalities existing in society.

It is interesting to note that labour codes or other forms of comprehensive labour legislation and ministries of labour were not introduced until the 20th century. The first labour code (which, like many of its successors, was a consolidation rather than a codification) was projected in France in 1901 and promulgated in stages from 1910 to 1927. Among the more advanced for-

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<sup>1</sup>ERMIDA URIARTE, O., *La constitución y el derecho laboral*, en *Treinta y seis estudios sobre fuentes del Derecho del Trabajo*, Montevideo, diciembre 1995, p. 111 y siguientes.

mulations affecting the general conditions of labour were, as mentioned above, the Mexican Constitution of 1917 and the Weimar Constitution of Germany of 1919, both of which gave constitutional status to certain general principles of social policy regarding economic rights. Provisions of this kind have become increasingly common and are now widespread in many regions of the world.

Departments or ministries of labour responsible for the effective administration of labour legislation and for promoting its future development were established in Canada in 1900, in France in 1906, in the United States in 1913, in the United Kingdom in 1916, and in Germany in 1918. They became more general in Europe and were established in India and Japan during the following years and became common in Latin America in the 1930s. A labour office was established in Egypt in 1930, but only in the '40s and '50s did similar arrangements begin to take root elsewhere in Asia and Africa. Of course, under different political circumstances there continue to be wide variations in the authority and effectiveness of such administrative machinery.

#### 4.2. *Internationalisation of labour law*

Throughout the twentieth century, there has been the so-called “internationalization” of labour law, which has run on two fronts: universal and regional. Thus, to the extent that labour rights were included in international human rights treaties, a generic framework was incorporated that incorporates labour rights into economic, social and cultural rights. The development of labour rights in generic international instruments has been progressive since they have been a constant concern of governments. However, there are in the universal scope instruments of specific content, produced by the International Labour Organization, which, since its creation in 1919, has become the main body producing international labour standards. Its main characteristic is its tripartite composition, since all its internal organs are integrated by the governments, workers and employers.

The ILO’s normative production focuses on two types of instruments: Conventions and Recommendations. Both Conventions and Recommendations seek to “establish a minimum level of social protection in all States”, forcing States to adopt this level of protection in its domestic legislation, while ensuring compliance<sup>2</sup>. Thus, the closes link between this process and

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<sup>2</sup>CRUZ VILLALÓN, J., *Compendio de Derecho del Trabajo*, Madrid, Tecnos, 2008, p. 60.

the constitutionalisation of labour rights<sup>3</sup> can be clearly seen, both of which complement each other in their objective that is to say the effective protection of workers' rights.

Finally, on the internationalisation of labour law carried out under ILO instances, it should be noted that the ILO's programme of action has had to adapt itself to the different conjunctures that the world was facing in the 20th and 21st centuries, starting from the development of its principles enunciated in 1919, then moving towards the need for economic and social cooperation between nations after World War II. This has brought to the transformation of the world (and rights) of work to its present configuration<sup>4</sup>.

The general tendency in the modern development of labour law has been the strengthening of statutory requirements and collective contractual relations at the expense of rights and obligations of individual employment relationships. How important these remain depends, of course, on the degree of freedom in the given society as well as the autonomy of both employers and workers permitted. In matters such as hours of work, health and safety conditions, or industrial relations, the statutory or collective elements may define most of the substance of the rights and obligations of the individual worker, while with respect to items such as the duration of appointment, the level and extent of responsibility, or the scale of remuneration are provided essentially in individual contracts.

It has long been recognised that some fundamental principles and rights at work need to be respected at all events, regardless of the level of development of the country. While the laws on employment conditions (especially pay) depend on the state of economic development of each country, the fundamental rights can be conceived as preliminary conditions for the free market. Only where the fundamental rights have been defined and respected, it is said, will the labour market function in such a way as to enable a real improvement in employment conditions and a fair distribution of resources and the benefits of economic progress. These rights essentially take the form of internationally recognised human rights, sanctioned at the level of customary law, charters or similar provisions, and therefore binding on the international community.

As mentioned above, conflicts and disasters are present in day-to-day life

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<sup>3</sup> For Ermida, the labour content of the Constitutions is complementary to the international standards on human rights. ERMIDA URIARTE, cit., p. 117.

<sup>4</sup> CASALE, G., *The Fundamentals of International Labour Law*, 3<sup>rd</sup> edition, Giappichelli, Turin, 2023.

and the ILO has treated these aspects in its Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205). The linkages between conflicts and disasters are manifold. For example, disasters (e.g. drought, earthquakes, cyclones) might create conflicts over resources, or might provoke internal displacement that may breed conflicts. At the same time, disasters, like conflicts, might as well disrupt societies, create a ‘crisis situation’ with an increase of inequalities, a breakdown of social justice that might also create conflict, or an un-peaceful situation. Such a ‘un-peaceful’ situation is of major concern for the ILO.

The ILO was created in 1919 by part XIII of the Versailles Treaty that put an end to World War I. It was created in the wake of immense destruction and division among nations. It was aimed, among others, at avoiding that such events – wars - and the social and economic crisis that flowed from them could occur again. The adoption of ‘international labour standards’ to improve working conditions, as well as tripartism between governments, employers’ and workers’ organisations, was perceived to be key factors to ensure lasting peace and to consolidate social justice. In fact, the ILO has been established on the assumption that universal peace can be established only if it is based on social justice (Preamble of the ILO Constitution, 1st para.), and “whereas conditions of labour exist involving such injustice, hardship and privation (...) produce unrest so great that the peace and harmony of the world are imperilled” Preamble of the ILO Constitution, 2nd para).

The ILO has been active in putting forward the protection and respect of some of the fundamental human rights. This question was inserted in the agenda of the 86th Session of the International Labour Conference (1998), which adopted the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up. Taking its inspiration from its own Constitution, the ILO’s 1998 Declaration is a new type of legal instrument, distinguished by its promotional nature from the other international agreements on labour. The intention is to encourage ILO member States to observe a certain number of the Organization’s core standards. The Declaration has been enriched in June 2022 by the insertion of the ILO Conventions Nos. 155 and 187 on occupational safety and health as the fifth category among the fundamental and principles and rights at work<sup>5</sup>.

The adoption of the Declaration marked the seal on the universal acceptance of a set of core labour standards that are recognised as having a special status in the context of the global economy. By virtue of the constitutional value of the Conventions recognised as being “fundamental”, both

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<sup>5</sup> CASALE, G., *The Fundamentals of International Labour Law*, 3<sup>rd</sup> edition, cit.

within and outside the ILO, the 1998 International Labour Conference declared that all member states, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization, to respect, to promote and to realise, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; (d) the elimination of discrimination in respect of employment and occupation; e) a safe and healthy working environment.

At the time the Declaration was adopted, seven Conventions were considered to be fundamental: (a) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (b) Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (c) Forced Labour Convention, 1930 (No. 29) (d) Abolition of Forced Labour Convention, 1957 (No. 105) (e) Minimum Age Convention, 1973 (No. 138) (f) Equal Remuneration Convention, 1951 (No. 100) (g) Discrimination (Employment and Occupation) Convention, 1958 (No. 111). The Worst Forms of Child Labour Convention (No. 182), which was adopted in June 1999 and entered into force on 17 November 2000, was added later. As well the Occupational Safety and Health Convention, 1981 (No. 155) and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) were added in 2022.

The Declaration underlines that the Organization is obliged “to assist its Members, in response to their established and expressed needs, in order to attain these objectives by making full use of its constitutional, operational and budgetary resources” (para. 3). The Declaration expressly indicates that these means include the mobilisation of its own resources and external support, and that the Organization should encourage other international organizations with which it has established relations to support these efforts. More specifically, paragraph 3 lists three forms of support: (a) offering technical cooperation and advisory services to promote the ratification and implementation of the fundamental Conventions; (b) assisting those Members not yet in a position to ratify some or all of these Conventions in their efforts to respect, to promote and to realize the principles concerning fundamental rights which are the subject of those Conventions; and (c) helping the Members in their efforts to create a climate for economic and social development.

The ILO Declaration of 1998 is a valuable document for the promotion of fundamental rights at work. It established a follow-up mechanism that would

give a certain level of effectiveness to its content, where member States would prepare annual reports on their progress in the field of labour protection and even report their progress on matters contained in non-binding agreements.

The Declaration of 1998 has to be considered hand-in-hand with the ILO Centenary Declaration of 2019 in which there is a strong call for the need of reinvigorating the Social Contract with a view to sharing economic progress and reinforcing the respect of workers' rights. The Social Contract needs to be based on a human-centred agenda in which people and the work they do are at the centre of economic and social policy and business practice. In this regard, the human centred agenda consists of three pillars of action, in which there is a harmonious combination of growth, equity and sustainability. This is the main reason why, Member States should increase investment in people's capabilities, in the institutions of work and in decent and sustainable work.

In particular, the ILO Declaration of 1998 has assisted Member States to bridge the trade-labour divide. After many years, new international bodies started to channel the globalization phenomenon. They include the World Bank and the International Monetary Fund, the World Trade Organization, as well as economic coordinating bodies such as the Organization for Economic Cooperation and Development. For these organisations, opening markets and safeguarding investors' profits was the key to economic growth, and growth was the key to solving social problems.

Yet international trade is strictly linked to social and political considerations, not just commercial ones. Global commerce and trade agreements had profound, accumulating political and social effects on working people around the world. In many countries, shifting patterns of trade and investment uprooted jobs and broke apart social ties. In others, they created jobs and spurred workers migration from agriculture to industry with equally profound effects. These creative and destructive impacts often occurred together.

In this regard, new forms of globalization more recently have started new international labour rights and environment movements. Recent decades also saw the growth of a global supply chain system looking at large multinational apparel and electronics firms to tens of thousands of subcontracted supplier factories around the world. In general, multinationals search for lowest-cost suppliers. Since labour cost is the most elastic, compared with fixed costs of land, machines, materials and energy, workers end up bearing the weight of labour rights undermining in this new global supply chain system.

Most recently and as direct effect of the Covid-19 pandemic, the globali-

zation has pushed labour rights high on the international agenda. One can note that dozens of bilateral and regional trade agreements are referring to a social clause tying trade benefits to respect for workers' rights.

The growing respect for labour rights are accompanied by the action of the ILO and thanks to the Declaration of 1998, there is a growing awareness of the social responsibility in supply chain enterprises.

#### 4.3. *Labour law at regional level*

As for the progression of the rights and the defence of employment at the regional level, it was mainly in Europe that a "social model" emerged and whose fundamental elements were based on national constitutions as well as on social standards adopted at international and European level under the aegis of the United Nations and the Council of Europe.

The already mentioned consideration of rights at work is an expression, in the national ambit, of the importance given by the Constitutions to specific social rights, such as: i) equality, not only through principles but also through effective measures to help those who are excluded or less-privileged; ii) affirmation of the State's commitment to free its citizens from life's anxieties, as long as it can be addressed in the community; iii) recognition of the groups organised by civil society and their rights to defend their interests in a context of common wellbeing; iv) freedom to work as a right.

In a modern State, characterised by democratic values and the full recognition of the social values, work comes as the key priority for the promotion of fundamental rights. Such rights, principles and values are incorporated in the European Union labour law. For example, the Treaties refer to expressions such as pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men, to be found in Article 2 of the Treaty on European Union (TEU). These values must be read in the context of the objectives of the EU listed in Article 3(3) TEU: the imperatives of a "highly competitive social market economy". The fact that these values are explicitly incorporated in the TEU requires that all European Union member States play an active role in pursuing goals of social equity hand-in-hand with the other objectives. These five words –*highly competitive social market economy*– are immediately followed by a reference to the goals of full employment and social progress. The wording of Article 3(3) suggests that a highly competitive social market economy is one of the elements – together with economic growth, price stability and environmental protection – which constitute the basis for Europe's sustainable development. Within that context of sustainable development, the syntax of Article 3(3) indicates that full employment and social progress are to function as

guideposts for the interpretation of the social market economy notion. In this regard, it is clear the direct connection between the economic and social development, and the efforts made to ensure greater coherence between economic and social policies. New mainstreaming provisions have also been introduced. In particular, Article 9 of the Treaty on the Functioning of the European Union (TFEU) requires the Union to take into account the promotion of “a high level of employment, the guarantee of adequate social protection, [and] the fight against social exclusion ...”. At the same time, Article 3(1) TEU provides that “The Union’s aim is to promote peace, its values and the well-being of its peoples”.

Other key elements include Article 119 TFEU which requires the member States and the Union to respect the principle of an open market economy with free competition; and Protocol 27 on the Internal Market and Competition which confirms that the Union’s internal market is still characterised by a system of distorted competition.

Although it lacks an explicit definition of the European Social Model in the Treaties, it can be said that such a model is well rooted in the European construction and enshrined in primary and secondary law. The European Social Model can be characterised by its comprehensive nature, since its aim is to encompass all important social areas and to cover the greatest number of people, something that has been achieved over decades. European community legislation has progressively been extended to cover more and more labour issues, but also has extended its coverage to new categories of workers. Its different elements constitute part of the EU *acquis* that the EU member States – depending on different circumstances – have all been implemented in various ways: basic workers’ rights and working conditions; universal and sustainable social protection; inclusive labour markets; effective social dialogue; services of general interest; social cohesion. Compared with other countries and regions in the world, EU countries are also characterised by high expenditure on social protection, grounded on the principles of solidarity, equality and social cohesion that represent the cement of European “social market economy”<sup>6</sup>.

Nothing similar to the European Social Model can be found in other parts of the world. The model is distinctive, rooted in shared values that have not been replicated so far. It differs sharply from policies and developments in other countries of the G20, for example. The EU model is also more concerned with reducing inequalities. Another force shaping the competitive environment of a country is the distinction between a system that promotes

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<sup>6</sup> ARRIGO, G., *Diritto del lavoro dell’Unione Europea*, PM Edizioni, 2018, p. 172.



individual risk and one that preserves social cohesiveness. The so-called Anglo-Saxon model is characterised by emphasis on risk, deregulation, privatisation and the responsibility of the individual through a minimalist approach to welfare, even more exacerbated by the recent Brexit. In contrast, the Continental European Model, despite the setbacks of economic and financial crisis and the difficulties of cohesion and political integration of the European Union (of which the Brexit is a serious symptom) relies heavily on social consensus, a more egalitarian approach to responsibilities and an extensive welfare system.

Even though social policy has not been eroded everywhere in Europe, we might question the survival of the European Social Model if its dismantling continues in a number of countries, especially with the aim of improving competitiveness by lower wage costs and poorer working conditions. Also important in this regard is the fact that, to date, the European Social Model has depended strongly on shared values and principles that are under threat from “free-rider” strategies. Undoubtedly, they have had a strong impact on the social side, with unprecedented waves of social conflicts, increased low pay and poverty, as well as increasing inequalities. These policies also have not fulfilled initial economic expectations, with increased unemployment, lack of growth recovery and falling consumption.

For the first time in Europe, a generalised erosion of the middle class could be observed, calling into question the viability of the policies implemented so far. There is no doubt that more balanced economic policies are required. They certainly require a more active place for social dialogue, social protection and social cohesion. This requires that EU countries discuss possible alternative policies and implement the right mix of policy reforms without losing the main elements and features of the European Social Model, which is still considered a point of reference in other parts of the world, thus helping Europe to preserve its identity.

The European Union has also inserted workers’ rights provisions into trade agreements with other countries. Since the early 1990s, the EU introduced a human rights clause in trade agreements with developing countries. It implicated fundamental labour rights, but not explicitly. Since then, Europe has moved more pointedly to include labour standards in sustainable development chapters, starting with the EU-Cariforum economic partnership agreement of 2008 and then embodied in the subsequent trade agreements with Central America, Peru and Colombia, for example.

This new generation of agreements carry forward the human rights clause with a commitment to “respect for democratic principles and fundamental human rights”. On labour rights, the EU and its trading partners commit to

effectively implement in their laws and practice the fundamental ILO Conventions, not simply the core principles.

This feature of the EU's agreements is stronger than any other international agreements signed by other countries. However, the EU agreements focus mainly on dialogue and cooperation. They do not link labour standards to any dispute settlement mechanisms that might result in hard fines or trade sanctions. So one can argue that these agreements can only increase public pressure and scrutiny.

For sure, the EU trade agreements also pose interesting challenges for negotiation, in the sense that they insert the need for the beneficiaries of the agreements to ratify the ILO core Conventions. However, it should be noted that this point is still a key policy debate in the international labour law area.

## **5. European Pillar on Social Rights**

Since its creation, the European Union (EU) has aimed to promote convergence among its Member States. Achieving higher economic growth in low-income Member States and reducing labour market and social imbalances between all countries and regions have indeed been at the core of the European integration process. More generally, economic and social convergence has been regarded as a key condition for the continued political support to the European integration project<sup>7</sup>.

Over the past few years, however, the process of economic and social convergence has stalled. Disparities persist in the European Union with respect to employment opportunities, income distribution and social inclusion, creating specific challenges to the euro area in particular. A range of factors are underpinning these gaps and there is a risk that the gaps within and across countries will widen in the context of rapid changes in the nature of employment and skill requirements.

The approach proposed by the European Commission takes into account the fact that labour market and social policies in the EU are mainly the result of national developments. However, it should be noted that consideration needs to be given to the past and current shortcomings in the European governance framework such the continuous prioritization of economic and financial concerns over employment and social issues.

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<sup>7</sup> ILO, *Building a social pillar for European convergence*, International Labour Office, Geneva, 2016.

If adequate resources are given to the socio-economic convergence, notably allocation of resources to employment and social objectives at the national level, the construction of a European Pillar of Social Rights could really make a significant contribution to the 2030 Agenda for Sustainable Development of September 2015. In particular such a Pillar could be relevant to the achievement by EU Member States of Goal No 1 on ending poverty and Goal No 8 on the promotion of inclusive and sustainable economic growth, employment and decent work for all<sup>8</sup>.

The promotion of economic and social convergence is at the heart of the European integration project although key indicators shows that EU Member States are either diverging in terms of socio-economic performance or converging towards deteriorating outcomes, such as worsening inequality and widening structural imbalances, including higher levels of poverty and inequality for the EU as a whole.

In addition, the changing nature of work characterised by the intensification of new technologies and increased fragmentation of production could exacerbate both income polarisation within countries and income divergence across EU Member States.

At the same time, traditional work patterns are being challenged by an increase in the diversity of non-standard forms of employment, and new forms of work are emerging between dependent employment and self-employment. The result is a need for increased legal clarity on workers' employment status and employers' responsibility.

These trends point to some degree of imbalance in the European socio-economic governance process. Unlike the procedures established to monitor and correct Member States' macroeconomic situations, which are binding, the so-called "soft" coordination mechanisms used in the employment and social fields have failed to achieve upward convergence. Policy coordination in these areas would be more effective if it were built upon common social conditions in all Member States. By bringing the employment and social performance of the Member States to the fore, the European Pillar of Social Rights offers an opportunity for a more balanced EU governance framework.

Convergence towards better socio-economic outcomes, underpinned by such the Social Rights Pillar, could be the foundation for a more integrated and stable Europe and a fully functioning EMU. Moreover, fostering upward convergence of socio-economic conditions is a necessary condition for political and societal support for the continued construction of the EU.

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<sup>8</sup> UN, A/Res/70/1, *Transforming our world: the 2030 Agenda for Sustainable Development* (Resolution adopted by the General Assembly on 25 September 2015).

A range of policy and institutional tools at the EU level, many guided by international labour standards, could strengthen existing rights, improve social standards and foster upward convergence in the social and employment fields. A number of critical areas could assist in reducing low-wage competition and promote sustainable enterprises and economic development<sup>9</sup>.

– *Minimum income*: The establishment of national adequate minimum income guarantees covering as many people as possible, based on obligations arising from European and ILO treaties and assessed as part of comprehensive national social protection systems, would help make sure that no one is left behind in the EU. A common approach could focus on ensuring that: (i) there is effective coverage of everyone in need, (ii) the levels of benefits provided are adequate to allow life in dignity and (iii) social partners and other relevant organizations participate in the design and review of the schemes.

– *Work and family reconciliation*: Increased policy coordination at the EU level to reconcile work and family life in line with relevant ILO standards could raise living standards, reduce inequalities and narrow gender gaps. Work–family policies have been found to be effective in increasing women’s labour market participation in several EU Member States and in influencing longer term trends in population and labour supply. Key principles on which to promote a common approach at the EU level could focus on encouraging men’s involvement in care, investing in care services and promoting workplace arrangements through social dialogue and collective bargaining.

– *Employment promotion and unemployment protection*: Stronger linkages between ALMPs and unemployment benefits provide much needed income support, improve skills attainment and act as an effective economic stabilizer. The effectiveness of unemployment benefit schemes should also promote employment and employability at the same time. A smart benchmarking strategy for ALMPs and unemployment benefits at the EU level should be demand driven and flexible, both across economic cycles and country characteristics and circumstances. It would require focusing on the level of expenditure and, consequently, on the coverage across countries, as well as on the quality of the services provided. A set of principles strengthening upward convergence of unemployment benefits could be set up, structured around both a qualitative and a quantitative framework, incorporating relevant ILO standards, which are widely ratified by the EU Member States.

– *Skills development*: The speed and nature of globalization, technologi-

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<sup>9</sup> Cfr. ILO, *Building a social pillar for European convergence*, cit.

cal evolution, changes in work organization and demographic trends have profound effects on the world of work. Policies focusing on human capital and skills development are essential to turn these structural changes into an opportunity for all, by increasing productivity levels and quality of life in the EU. Based on relevant ILO standards, policies should include anticipating skills needs and adapting policies, reinforcing the role of training and work-based learning and enhancing the adaptability of workplaces.

Since the beginning of the Eurozone crisis in 2009, the EU has experienced a series of challenges, including a massive influx of refugees, Brexit, the COVID-19 pandemic<sup>10</sup>, and the Russian invasion of Ukraine. The EU's record of accomplishment of crisis management over the last decade offers lessons that can be applied to current and future challenges. The EU's financial crisis (2009–2012) brought about major innovations in the EU's financial architecture, and the massive influx of refugees into Europe in 2015 and 2016 resulted in a substantial upgrading of the mechanisms to secure the EU external borders. The British decision to leave the EU ended up enhancing the cohesion of the Union's remaining members and unblocked negotiations on defence policy. The early months of the COVID-19 pandemic led to the EU recovery fund, which constituted a breakthrough for the financial solidarity of Member States, and gave rise to the European Union's first collective vaccination program. Moreover, Russia's invasion of Ukraine prompted a massive mobilization of the EU's external policy in support of Ukraine including, for the first time, the delivery of weapons and a tough sanctions regime against the Russian Federation.

Once, Jean Monnet, one of the EU's founding fathers, offered an explanation for this creative effect: "People only accept change when they are faced with necessity, and only recognize necessity when a crisis is upon them". What is true about people is truer about a complex, multilevel organization with heavy decision-making procedures and all the inherent difficulties of collective action. Strong external or internal pressure, acute urgency, and the clear risk of inaction are often necessary to convince the EU to break with its preference for incremental progress through long technocratic negotiations and to act instead boldly and decisively.

Overall, the European integration project cannot work without social dialogue. While the dynamism of social dialogue is uneven across the EU 27 Member States, investing in effective and inclusive dialogue is in the interests of all.

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<sup>10</sup> ARRIGO, G.-CASALE, G.-FASANI, M.-VILLASMIL PRIETO, H., *Reflections on Labour Law at the time of COVID-19 Crisis*, Giappichelli, Turin, 2021.

## 6. Conclusion

The basic subject matters of labour law can be considered under the following broad heads: individual employment relationships; trade unions and industrial relations; wages and remuneration; conditions of work; health, safety, social security and welfare; employment; administration of labour law; and special provisions for particular occupational or other groups.

All these elements are treated in the entries of this new Dictionary of International and European Labour Law highlighting the development stages and those of recent stagnation or decline, determined by restrictive social policies adopted by countries, partly as a result of the economic and financial crisis of the first two decades of the XXI century.

Under the formidable influence of this crisis, labour law undertook a process of relevant change, affecting the individual and collective elements of its historical model, due to the difficulty of responding to the challenges generated by the transformation of the economic and technological paradigm, and the deep changes under the pressure of globalization, that requires structural reforms of labour market.

As a matter of fact, labour law is modifying its scientific paradigm and its disciplinary matrix. The employment relationship is no longer considered as a system of powers to be balanced, within the more general framework of the relations of production, but, as a market relationship, in which the informational asymmetries need to be corrected, referring to structural measures of welfare: income protection, active labour market policies, training and education, etc. From a collective perspective, the strong tendency of a company level collective bargaining, which characterises the decentralisation of some European countries, seems to represent the beginning of a deconstruction of the trade union rights, while the trend becomes more realistic to mechanisms of unilateral management by the enterprise. Within these dynamics, and in the related decision about policy law, the question is to understand if this deep transformation is continuing to give labour law a real function of balancing/conciliating the various interests in the complex relationship between economic and social rights, or if the traditional axiological-protective value of labour law and Constitution is permanently over – in the context of opposition between capital and labour. In this second perspective, new regulatory scenarios are replacing the old certitudes based on the rights, benefitting mobile, unstable and procedural prerogatives as in the model of capabilities and new “procedural” social rights. Therefore, it is necessary to ponder on the ideological and real dimension and idea of labour law, and thus identifying the essential points of the discipline and its possible func-

tion of social regulation. Moreover, it should be noted that international labour legal and policy concerns are becoming more and more relevant in the today world. National governments, international institutions, multinational enterprises, NGOs, trade unions, multi-stakeholder bodies, socially responsible investment groups and other organizations are more and more interested in the application of fundamental principles and rights at work.

In approximately two centuries of history, labour law has been forged as an autonomous discipline, which regulates the subordinate provision of services of the worker. In historical terms, it is a relatively short period, especially if we consider the various phases that have taken place and the profound transformations in some cases that have occurred in our discipline throughout these decades. It was born and matured quickly, but not without little effort, establishing a protective logic that tries to level the original inequality that exists between the parts of the employment contract, and guaranteeing the worker's freedom and dignity through the respect of minimum legal standards and of the conventional or autonomous regulation, product of industrial relations. In this regard, the ILO action and the role that the EU social policies have played have been remarkable for the progress made in labour law policy.