

Table of Contents

The Author	3
List of Abbreviations	13
Foreword	15
Preface	19
General Introduction	21
Chapter 1. The Founding Principles of ILO and their Relevance Today	21
§1. THE FOUNDING PRINCIPLES OF INTERNATIONAL LABOUR LEGISLATION	21
§2. THE FIRST WORLD WAR AND THE FOUNDING OF 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 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	63
Chapter 1. The ILO Constitution	65
Chapter 2. The International Labour Conventions	66
§1. PREPARATION, REVISION AND TERMINATION OF ILO CONVENTIONS	66
I. Preparation	66
II. Revision, Withdrawal, Abrogation	68
§2. THE EFFECTS OF INTERNATIONAL LABOUR CONVENTIONS	69
I. The 'Objective' Entry into Force of the Conventions	69
II. Bringing the Conventions before the Competent Authorities	70
III. The 'Subjective' Entry into Force of the Conventions: Ratification	73
A. Concept and Conditions	73
B. Effects of Ratification	74
IV. The Cessation of Effects	77
A. Denunciation	77
B. Withdrawal from the Organization	78
C. Succession of States	78
D. War, and Radical and Unforeseeable Changes in Circumstances	78
§3. THE INTERPRETATION OF ILO CONVENTIONS	78
I. Principal Interpreters	79
A. Constitutional Bodies	79
B. Interpretation by the Organization's Secretariat	80
C. Interpretation by ILO's Supervisory Bodies	80
II. Matters Relating to Method	81
A. Consideration of Economic and Social Conditions	81
B. Interpreting the Conventions Separately or as Part of a Legal Corpus	85
C. The Programmatic Conventions	86
§4. THE CHARACTERISTICS OF ILO CONVENTIONS	87
Chapter 3. The Other Standard-Setting Instruments	89
§1. PRECARIOUS EMPLOYMENT AND ILO STANDARDS	89
§2. THE OTHER ILO STANDARD-SETTING INSTRUMENTS	92
I. Recommendations	92
II. Declarations and Resolutions	93
A. The Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy	94
B. The Declaration on Fundamental Principles and Rights at Work	95
III. Model Codes and Codes of Practice	98

Table of Contents

§3. CODES OF CONDUCT AND SIMILAR INITIATIVES	98
I. OECD Guidelines for Multinational Enterprises	99
II. Social Initiatives by Multinational Enterprises	102
A. Codes of Conduct	102
B. Other Social Initiatives	104
Chapter 4. Conflicts between International Labour Standards	105
Part II. The Content of International Labour Standards	107
Chapter 1. Freedom of Association and Social Dialogue	108
§1. GENERAL STANDARDS ON FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING	110
I. Freedom of Association for Workers and Employers	110
A. The Freedom to Create and Join and Association	110
B. The Right to Form Federations and Confederations and to Join International Employers' and Workers' Organizations	111
C. The Protection of Trade Unions from Administrative Suspension or Dissolution	112
D. Rights and Guarantees of Trade Union Activity	112
E. Freedom of Association, Civil and Political Rights	114
II. Collective Relations between Social Players	115
A. The Promotion of Collective Bargaining	115
B. Social Dialogue	116
C. Strikes	117
D. Voluntary Conciliation and Arbitration	118
E. The Elimination of Anti-Trade Union Employment Practices	119
§2. SPECIFIC STANDARDS ON INDUSTRIAL RELATIONS WITHIN THE UNDERTAKING	121
I. The Protection of Workers' Representatives	121
II. Participative Management	122
III. Grievances	123
§3. FREEDOM OF ASSOCIATION AND SOCIAL RIGHTS	125
Chapter 2. Labour and Employment	128
§1. FORCED LABOUR AND CHILD LABOUR	128
I. Forced Labour	129
II. The Prohibition of Child Labour	133
III. The Protection of Young People at Work	138
A. Medical Examinations	139
B. Arrangement of Working Time	140
C. Dangerous Work	141
D. Facilities	141

Table of Contents

§2. EQUALITY OF OPPORTUNITY AND TREATMENT	142
I. The Promotion of Occupational Equality	144
A. The Causes of Discrimination	144
B. The Areas Protected	146
C. Discriminatory Acts and Situations	147
D. The Scope and Implementation of the Standards on Equality	150
II. Equality between Men and Women	151
§3. EMPLOYMENT POLICY AND PROMOTION	155
I. Social Policies and Job Stimulation	158
II. Enhancing Occupational Skills	160
A. International Law on Vocational Training and Orientation	161
B. The Scope of the Standards	165
III. Dismissal	166
IV. Unemployment Benefits and Employment	172
§4. LABOUR ADMINISTRATIONS	174
I. Employment Services	174
II. Monitoring Employment Conditions	178
III. The Settlement of Labour Disputes	181
IV. International Labour Relations	182
V. An Efficient Labour Administration	183
§5. WORKING TIME	184
I. General Overview	184
II. Hours of Work	187
III. Night Work	188
A. Convention No. 89 (Revised), on Night Work (Women), 1948	189
B. The 1990 Protocol to Convention No. 89	190
C. Convention No. 171 and Recommendation No. 178	190
IV. Rest Periods	191
A. Weekly Rest	191
B. Paid Leave	192
§6. WAGES	194
I. Overview of International Legislation	194
II. Wage Protection	195
III. Labour Clauses in Public Contracts	198
IV. Fixing the Minimum Wage	199
§7. OCCUPATIONAL HEALTH AND SAFETY	201
I. The International Dimension of Regulations on Occupational Health	202
II. Changes in ILO Standards on Occupational Health	204
A. The Changing Field of Application	204
B. Changes in the Methods of Protecting Health	205
C. A New Vision of Occupational Health Standards	207
III. National Implementation of the Standards	209
A. The Obstacles Overcome and Lasting Difficulties	209
B. The Cost of Occupational Health Standards	211

Table of Contents

§8. NON-STANDARD FORMS OF EMPLOYMENT	212
I. The Applicability of International Labour Standards to the Various Forms of Employment	213
A. Freedom of Association	213
B. Labour and Employment	214
1. Forced Labour and Child Labour	214
2. Equality of Opportunity and Treatment	215
3. Employment Policy and Promotion	215
4. Labour Administration	216
5. Conditions of Work	217
C. Social Security	217
II. The Specific Standards	218
A. Independent Work	219
B. Family Work	221
C. Apprenticeship	222
D. Homework	223
E. Part-Time Work	225
§9. FOREIGN WORKERS	226
I. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	227
II. ILO Instruments on Migrant Workers	230
A. Field of Application	230
B. Conditions of Access to Foreign Employment Markets	230
C. Equality of Opportunity and Treatment	232
D. Policy of Integration and Respect for Identity	233
III. The Provisions on Migrant Workers in ILO General Instruments	235
§10. SPECIAL CATEGORIES OF WORKERS	236
I. Specific Standards Owing to Personal Conditions	236
A. Women Workers	236
B. Older Workers	241
II. Specific Occupation-Related Standards	243
A. Hotel and Restaurant Workers	243
B. Nursing Personnel	244
C. Plantation Workers	245
D. Dockworkers	246
E. Fishermen	247
F. Seamen	249
III. Indigenous and Tribal Peoples	253
Chapter 3. Social Security	256
§1. GENERAL PRINCIPLES	256
I. Historical Markers	256
II. Common Principles	259
A. Field of Application: Universality and Flexibility	259
B. Method for Calculating Cash Benefits	260

Table of Contents

C. Organization and Administration	261
D. Suspension, Refusal, Withdrawal of Benefits	263
E. The Beneficiaries' Right of Appeal	263
§2. THE BRANCHES OF SOCIAL SECURITY	264
I. Employment Injury	264
A. Definition of the Contingency	264
B. Beneficiaries	265
C. Benefits	266
D. Conditions of Allocation	267
II. Medical Care	267
A. Definition of the Contingency	268
B. Beneficiaries	268
C. Benefits	268
D. Conditions of Allocation	269
III. Sickness Benefits	269
A. Definition of the Contingency	269
B. Beneficiaries	270
C. Benefits	270
D. Conditions of Allocation	270
IV. Invalidity Benefits	271
A. Definition of the Contingency	271
B. Beneficiaries	271
C. Benefits	271
D. Conditions of Allocation	272
V. Survivors' Benefits	272
A. Definition of the Contingency	272
B. Beneficiaries	273
C. Benefits	273
D. Conditions of Allocation	274
VI. Old-age Benefits	274
A. Definition of the Contingency	274
B. Beneficiaries	275
C. Benefits	275
D. Conditions of Allocation	276
VII. Maternity Benefits	276
A. Definition of the Contingency	276
B. Beneficiaries	276
C. Benefits	277
D. Conditions of Allocation	277
VIII. Family Benefits	278
A. Definition of the Contingency	278
B. Beneficiaries	278
C. Benefits	278
D. Conditions of Allocation	279
IX. Unemployment Benefits	279
A. Definition of the Contingency	279
B. Beneficiaries	280

Table of Contents

C. Benefits	280
D. Conditions of Allocation	280
§3. THE SOCIAL SECURITY OF MIGRANT WORKERS	282
I. Equality of Treatment	283
II. Maintenance of Acquired Rights and Provision of Benefits Abroad	283
III. Maintenance of Rights in Course of Acquisition	284
IV. Applicable Legislation	285
V. Mutual Administrative Assistance and Assistance to Persons	285
 Part III. The Effectiveness of International Labour Standards	 287
Chapter 1. The Supervision and Promotion of ILO Standards	289
§1. GENERAL SUPERVISORY PROCEDURES	289
I. Regular Supervision	289
A. The Committee of Experts on the Application of Conventions and Recommendations	290
B. The International Labour Conference Committee on the Application of Conventions and Recommendations	291
II. Representations and Complaints	292
§2. SPECIAL PROCEDURES	293
I. The Complaints Procedure for Violations of Freedom of Association	293
II. The Credentials Committee	297
III. Other Special Procedures	298
§3. PUTTING THE SUPERVISORY MECHANISMS IN PERSPECTIVE	299
§4. PROMOTION AND CO-OPERATION	303
 Chapter 2. Implementation Difficulties	 308
§1. THE PROBLEMS RAISED	309
§2. RESPONSES GIVEN	312
§3. ONGOING DIFFICULTIES	317
I. Difficulties Relating to the Existence of the Standard and its Wording	317
II. Difficulties Relating to Supervision of Labour Standards	321
III. Factors Relating to the Socio-economic Context	324
IV. Striking a Balance: the Decent Work Approach	325
 Alphabetical Index	 333