

Sustainable Development, Global Trade and Social Rights

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Editors

Professor Alan Neal (founding editor of the *International Journal of Labour Law and Industrial Relations*, and Convenor of the European Association of Labour Law Judges); Professor Manfred Weiss (past president of the International Industrial Relations Association); and Professor Birgitta Nyström (professor of private law at the Law Faculty, University of Lund, Sweden, and member of the European Committee of Social Rights).

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Sustainable Development, Global Trade and Social Rights

Edited by

Adalberto Perulli

Tiziano Treu



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Editors

Adalberto Perulli is Full Professor of Labour Law at the Ca' Foscari University of Venice and Visiting Professor at the University of Paris Ouest Nanterre La Défense since 2000. He is the Director of Master in Labour Law at the Ca' Foscari University of Venice. He did research and studies for the European Commission and for the International Labour Organization (ILO) of Geneva. Prof. Perulli has been rapporteur to the XVIII ISLSSL World Congress of Labour and Security Law on "Labour Law and productive decentralization" in Paris, on 2006; He is Master EMA Director at EIUC (European Inter-University Centre for Human Rights and Democratisation) and also member of the scientific and editorial staff of several Italian and foreign labour law reviews. Among his most important publications: Perulli A., Treu T., (ed. by), *Enterprise and Social Rights*, Kluwer, 2017; Perulli A., *Sustainability, Social Rights and International Trade: The TTIP*, in *International Journal of Comparative Labour Law and Industrial Relations*, vol. 32, 2015; Perulli A., *Fundamental Social Rights, Market Regulation and EU External Action* in *International Journal Of Comparative Labour Law And Industrial Relations*, vol. 30, 2014; Perulli A., Casale G., *Compliance with labour legislation: its efficacy and efficiency*, Ginevra, ILO, 2010; Perulli A., *Economically dependent / quasi-subordinate (parasubordinate) employment: legal, social and economic aspects*, European Commission, Brussels, 2002.

Tiziano Treu is Professor Emeritus of Labour Law, Catholic University of Milan, Law School, and President of ISLSSL – International Society of Labour and Social Security Law. Previously he has been President of the Italian Association of Labour Law and Social Security. During his political experience Prof. Treu has been Minister of Transportation and Minister of Labour and Social Security in the Italian Government, and more recently President of the XI Commission (Labour and Welfare) of the Italian Senate. Among his recent publications: *Diritto del lavoro dell'Unione Europea* (7th ed., with M. Roccella), *Labour Law in Italy* (4th revised ed.), *Verso nuove relazioni industriali*, (with M. Carrieri, eds.).

Contributors

Janice R. Bellace is the Samuel Blank Professor of Legal Studies, and Professor of Legal Studies & Business Ethics, and Management at the Wharton School of the University of Pennsylvania. She is president-elect of International Society of Labour and Social Security Law. Previously she has been President of the International Labour and Employment Relations Association (ILERA), and president of the American Labour and Employment Relations Association (LERA). She is a member of the editorial board of several international labour and labour law reviews. She authored books, chapters and articles on comparative and international labour law and labour relations, including Labour, Business and Human Rights (forthcoming, Elgar). She was a member of the ILO's Committee of Experts for fifteen years.

Vania Brino is Associate Professor in Labour Law and Director of the International Master Program "Global economics and Social Affairs," Ca' Foscari University of Venice.

She is editorial member of various journals and reviews. She is the author of publications in national and international labour law.

Valentina Cagnin is Research Fellow at the Venice Ca' Foscari University for a research project on Digitalization and Labour Relationship. She has a PhD in European Law on Civil Commercial and Labour Contracts and a Degree in Economics and Finance at the Venice Ca' Foscari University. Her main research fields are: Corporate Social Responsibility, Italian, European and International Labor Law, Sustainable Development, Sustainability, EU GSP, Free Trade Agreements (CETA, TTIP, TTP), and ISDS (Investor-State Dispute Settlement).

Giuseppe Casale is Deputy Director of the International Training Centre of the ILO, Director of the Turin School of Development and Secretary General of the International Society for Labour and Social Security Law. He is a visiting professor at the Cà Foscari University, Venice and lectures in international and comparative labour law in several European universities. He is an editorial member of various international journals and reviews. He is the author of several publications in international and comparative labour law, and comparative industrial and employment relations.

Michele Faioli is a professor at Law School of Tor Vergata University in Rome (Italy). He teaches courses in the areas of labor relations and comparative labor law, including industrial relations, social security, European labor law.

Professor Faioli is a Faculty Fellow at Scuola Europea di Relazioni Industriali (SERI) where he chairs the theme project on Industrial Relations, Comparative Studies and European Labor Law. Faioli's comparative research mainly looks at collective bargaining impact on labor relations. Faioli also maintains a website on these matters aimed at colleagues and students (www.seri-fgb.eu). SERI's initiatives are also carried out with Fondazione Giacomo Brodolini.

Mario Fasani is Senior Research Coordinator at the Turin School of Development (TSD) of the ITCILO. He was a former labour lawyer at the International Labour Organization in Geneva, where he authored and co-authored several publications in the field of labour law.

Adrián Goldin is Professor Emeritus of the University of Buenos Aires and former Director of the Department of Labour Law and Social Security of its Law School. Former full professor at the University of San Andrés (Buenos Aires, Argentina) and also Professor Emeritus of that university. He's been the president of the International Society for Labour and Social Security Law (2012–2015), and he is currently its Honorary President. He is a fellow full member ("Academico de Número") of the Academia Iberoamericana de Derecho del Trabajo y de la Seguridad Social, corresponding member of the Brazilian Academy for Labour Law and former president of the Argentinean Association of Labour Law and Social Security. He is also a member of the editorial board of many international Labour Law journals. He has authored books, contributed to edited collection, and published some 150 articles and research reports in Argentina and abroad on labour law and labour relations.

Sheldon Leader is Professor of Law and Director of the Essex Business and Human Rights Project, University of Essex (UK). He focuses on bringing academics and non-academics together in collaborative projects, aiming to formulate and apply principles linking business activity and human rights standards, often with the tools of legal and political theory. Relevant publications include "Human Rights and the Constitutionalized Corporation" in *Multinationals and the Constitutionalization of the World Power System* edited by Stephane Vernac, et al. Ashgate Publishing Ltd. (2016); "Coherence, Mutual Assurance, and a Treaty on Business and Human Rights" in Surya Deva and David Bilchitz (eds) *Business and Human Rights: Exploring the Contours of a Treaty* (Cambridge University Press, 2017); "Collateralism" in R. Brownsword (ed.) *Global Governance and the Search for Justice* (Hart Publishing; 2005); *Freedom of Association: A Study in Labor Law and Political Theory* (Yale University Press, 1992).

Antoine Lyon-Caen President of the "Institut International Pour les Etudes Comparatives," he is Professor Emeritus at the Law School of the University of Paris Ouest Nanterre La Défense, Professor at the Higher School of Social Sciences (Chair: Law, Economy and Enterprise) and Barrister at the Conseil d'Etat and the Supreme Court of

cassation. He is Director of *Revue de droit du travail* (Labour Law Journal) since its creation and Member of editorial committees of several European journals as well as author of various books in Labour Law, concerning European Social Policy, Social Policy and Competition Law, Law and Globalization. Critical approach of Law and Economics (Last book published: *Multinationals and the constitutionalization of the world power system* with J.-P. Robé, S. Vernac, Préface J.G. Ruggie, éd. Routledge, 2016).

Manfred Weiss is Professor of Civil Law and Labour Law first since 1974 at the University of Hamburg and from 1977 to 2008 at the Goethe University in Frankfurt. Visiting Professor in many countries. Former President of the International Labour and Employment Relations Association (ILERA). Consultant to the EU Commission, to the ILO and to foreign Governments for many years. Many publications in labour law and Industrial Relations. In 2015 he received the Labour Law Research Network's (LLRN) award for his achievements in international labour law. He holds honorary doctorates from universities in France, Hungary, Peru and South Africa.

Summary of Contents

Editors	v
Contributors	vii
Introduction <i>Adalberto Perulli</i>	1
PART I Sustainable Development and International Trade	13
CHAPTER 1 Sustainable Development, Global Trade and Social Rights: An Evolutionary Perspective <i>Adalberto Perulli</i>	15
CHAPTER 2 Sustainable Development, Social Rights and International Trade <i>Antoine Lyon-Caen</i>	33
PART II International Trade Agreements: The Linkage Between Trade and Social Rights	39
CHAPTER 3 The MERCOSUR (Southern Common Market): Argentina, Brazil, Paraguay, Uruguay and Venezuela <i>Adrián Goldín</i>	41
CHAPTER 4 The Link Between Trade and Social Clauses <i>Janice R. Bellace</i>	57

Summary of Contents

CHAPTER 5	
Atlantic Transitions for Law and Labor: CETA First and TTIP Second?	
<i>Michele Faioli</i>	71
PART III	
The European Union Internal and External Action in the International Trade Relationships Context	97
CHAPTER 6	
Globalization and Human Rights: Social Clauses in Trade Agreements and in International Exchanges among Companies	
<i>Tiziano Treu</i>	99
CHAPTER 7	
The EU Generalised Scheme of Preferences and the Special Incentive Arrangement for Sustainable Development and Good Governance	
<i>Manfred Weiss</i>	121
PART IV	
Investments, IMF, ISDS (Investor-State Dispute Settlement) Clauses and the Arbitral Procedures to Resolve a Conflict	129
CHAPTER 8	
Social Rights and the Janus Face of International Investment: The Role of Commercial Banks and Project Finance	
<i>Sheldon Leader</i>	131
CHAPTER 9	
Stabilization Clauses in State-Investor Agreements: A Brief Overview	
<i>Vania Brino</i>	141
CHAPTER 10	
New Generations Treaties and the Attempts for a Renewal of the ISDS	
<i>Valentina Cagnin</i>	155
PART V	
The ILO Perspective	169
CHAPTER 11	
An Overview of the Main ILO Policies and Tools in the Organization of Promotional Activities on Social Rights	
<i>Giuseppe Casale & Mario Fasani</i>	171
Index	193

Table of Contents

Editors	v
Contributors	vii
Introduction <i>Adalberto Perulli</i>	1
PART I	
Sustainable Development and International Trade	13
CHAPTER 1	
Sustainable Development, Global Trade and Social Rights: An Evolutionary Perspective <i>Adalberto Perulli</i>	15
1 Sustainable Development, Global Trade and Social Rights: The Renewal of an Historical Link	15
2 The Evolutionary Perspective of the Linkage	20
3 Internormativity and Globalization: An Evolutionary Perspective	21
4 Social Rights, Content and Regulatory Value of the Social Clause in an Evolutionary Perspective	23
5 Social Clause and Industrial Relations	26
6 Economic and Social Rationalities: The Positive Effects of Respect for Social Rights	27
7 Impact Assessment and Implementation Mechanisms	29

Table of Contents

CHAPTER 2

Sustainable Development, Social Rights and International Trade

Antoine Lyon-Caen

33

- 1 Introductory Proposal 33
 - 1.1 Notions 33
 - 1.2 State or Inter-State Perspectives 35
 - 1.3 Perspectives Centred on Enterprises 37

PART II

International Trade Agreements: The Linkage Between Trade and Social Rights

39

CHAPTER 3

The MERCOSUR (Southern Common Market): Argentina, Brazil, Paraguay, Uruguay and Venezuela

Adrián Goldin

41

- 1 Sustainable Development and Decent Work 41
- 2 On the MERCOSUR 42
 - 2.1 Institutional Development 42
 - 2.2 Labour Rights 43
 - 2.2.1 Influences and Common Traits 43
 - 2.2.2 The Authoritarian Factor 46
- 3 Sustainable Development in the MERCOSUR 47
 - 3.1 Analysis of Certain Social Indicators 48
 - 3.2 Regulatory Level 49
 - 3.3 Specific Regulatory Instruments of the MERCOSUR 50
 - 3.3.1 The Social and Labour Declaration of the MERCOSUR 51
 - 3.3.1.1 Its Approval and Amendment 51
 - 3.3.1.2 The Principles 52
 - 3.3.1.3 Regulation Contents: Rights 52
 - 3.3.1.4 Implementation and Follow-Up 54
 - 3.3.2 The Multilateral Agreement on Social Security 55

CHAPTER 4

The Link Between Trade and Social Clauses

Janice R. Bellace

57

- 1 Introduction 57
- 2 The Specter of NAFTA 59
 - 2.1 The Impact on Jobs of Trade Liberalization 59
- 3 The Rights in Labor Clauses 60
 - 3.1 Meaning of the ILO Fundamental Principles 62
 - 3.2 The Meaning of the Rights in Labor Clauses 64

4	Monitoring and Enforcement	65
5	The Undercutting of Any Meaning of the Labor Standards in the TPP	66
6	Next Generation Labor Clauses	67
	References	68
CHAPTER 5		
	Atlantic Transitions for Law and Labor: CETA First and TTIP Second?	
	<i>Michele Faioli</i>	71
1	Introduction: Regulatory Distortions	72
2	For Delineating an ex post Investigation Method: Convergence and Quasi-Similarities	77
3	For Testing an ex ante Investigation Method: The EU Model Versus the ISDS Mechanisms	80
4	The CETA Labor Chapter	84
5	Conclusions: Proposal	88
	References	91
PART III		
	The European Union Internal and External Action in the International Trade Relationships Context	97
CHAPTER 6		
	Globalization and Human Rights: Social Clauses in Trade Agreements and in International Exchanges among Companies	
	<i>Tiziano Treu</i>	99
1	Economic and Social Rationale in International Trade	99
	1.1 The Diffusion of Social Clauses	100
2	Social Clauses: Economic Motivations and Sustainable Development	101
	2.1 The Reactions of the Public Opinions	103
3	Different Categories of Social Clauses	103
	3.1 Different Contents and Languages	104
4	Procedures and Enforcement	105
	4.1 The Clause ISDS	106
	4.2 The Weakness of the Procedures	107
5	Uncertain Outcomes	108
	5.1 The (Possible) Pattern Setting Value of the CETA	109
6	International Exchanges among Companies	109
	6.1 Company Regulations and Corporate Social Responsibility	110
7	Transnational Agreements	111
8	Pilot Cases	112
9	Possible Innovations	113
10	Multiple Instruments and Strategies for International Social Regulation	114
	References	118

Table of Contents

CHAPTER 7

The EU Generalised Scheme of Preferences and the Special Incentive Arrangement for Sustainable Development and Good Governance

<i>Manfred Weiss</i>	121
1 Introduction	121
2 The Legal Basis for the Present System	122
3 The Different Schemes	123
3.1 General Scheme of Preferences	123
3.2 Special Incentive Arrangement for Sustainable Development (GSP+)	124
3.3 Everything but Arms Arrangement	124
4 Sanctions in Case of Violation	125
4.1 Temporary Withdrawal (Common to All Arrangements)	125
4.2 Monitoring Mechanism for GPS+	125
4.2.1 'Scorecard'	126
4.2.2 'GSP+ Dialogue'	126
5 General Safeguards	126
6 Evaluation	127

PART IV

Investments, IMF, ISDS (Investor-State Dispute Settlement) Clauses and the Arbitral Procedures to Resolve a Conflict	129
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CHAPTER 8

Social Rights and the Janus Face of International Investment: The Role of Commercial Banks and Project Finance

<i>Sheldon Leader</i>	131
1 The Basic Framework	131
1.1 What Are the EPs?	131
1.2 The Discipline of Project Finance	132
2 Evaluation	133
2.1 The Impact of PF on Social Rights and Sustainable Development	133
2.2 Risk to Basic Rights and Risk to Profit	135
2.3 Two Examples	136
2.3.1 Social Change as a Transition to Sustained Prevention of Serious Social Damage	137
2.3.1.1 No-Go for a Proposed Project	138
2.3.1.2 Lack of Transparency	138
2.3.1.3 Competition among Banks Affecting the Categorization Process	139
2.3.2 Social Change as Fundamental Transformation	139
3 Conclusion	140

CHAPTER 9	
Stabilization Clauses in State-Investor Agreements: A Brief Overview	
<i>Vania Brino</i>	141
1 Framing the Issue	141
2 The Increasing Role of Multinational Enterprises in the Rule Making Process at Global Level	144
3 Stabilization Clauses: Meaning and Problems	146
3.1 Stabilization Clauses: Aims, Effects and Models	147
4 What About the Trends for the Future?	151
CHAPTER 10	
New Generations Treaties and the Attempts for a Renewal of the ISDS	
<i>Valentina Cagnin</i>	155
1 Investor-State Dispute Settlement: A Controversial Tool for Dispute Resolution	155
2 ISDS and Social Rights: The Risk of Freezing the Law	160
2.1 <i>Veolia Propreté v. Egypt Case</i>	160
2.2 <i>Centerra v. Kyrgyz Republic</i>	161
2.3 <i>Piero Foresti & Others v. South Africa Case</i>	161
3 New Generation Treaties (CETA, TTIP, TPP and EUSFTA) and the Progress Made in Developing a Balanced and Forward-Looking Approach in the International Investment Policy	162
4 The Questions on the Compatibility of the Investment Court System (ICS) with the EU Law	166
PART V	
The ILO Perspective	169
CHAPTER 11	
An Overview of the Main ILO Policies and Tools in the Organization of Promotional Activities on Social Rights	
<i>Giuseppe Casale & Mario Fasani</i>	171
1 Introduction	171
2 The Role of International Labour Standards	172
3 An International Legal Framework for a Fair Globalization	173
3.1 Freedom of Association	174
3.2 Forced Labour	175
3.3 Discrimination	175
3.4 Child Labour	175
3.5 Fair Globalization	175
4 A Path to Decent Work	176
5 The 2030 Agenda on Sustainable Development and Decent Work	177

Table of Contents

5.1	Targets for SDG 8: Decent Work and Economic Growth	177
5.2	Evaluation of the Impact of the ILO Declaration on Social Justice for a Fair Globalization	178
5.3	Priority Areas for Action	179
5.4	Productive and Decent Jobs	182
5.5	Social Protection	182
5.6	Social Dialogue and Tripartism	183
5.7	MNE Declaration	184
5.8	2014 Follow-Up Mechanism and 2016 Revision of the MNE Declaration	185
5.9	Principles Directed to Governments	187
5.9.1	General Policies	187
5.9.2	Employment	188
5.9.3	Training	188
5.9.4	Conditions of Work and Life	188
5.9.5	Industrial Relations	188
5.10	Principles Directed to Enterprises	189
5.10.1	General Policies	189
5.10.2	Employment	189
5.10.3	Training	189
5.10.4	Conditions of Work and Life	189
5.10.5	Industrial Relations	190
References		190
Index		193

CHAPTER 5

Atlantic Transitions for Law and Labor: CETA First and TTIP Second?

Michele Faioli

It is not matter that generates thought,
but thought that generates matter.

Giordano Bruno

This essay is based on an ongoing legal analysis of the investment-labor linkage in the forthcoming transatlantic investment mega-treaties (in particular, the Comprehensive Economic and Trade Agreement, CETA). Should there be a form of EU-wide screening for foreign investment? Theories and practice are observed in order to create a possible template proposal for the forthcoming mega-treaties' labor chapter involving the EU (paragraph 5). From this viewpoint, it will be pulled out from the impact of labor rights on the investment law the meaning that labor rights can have in the transatlantic relations, also in view of the Investor-State Dispute Settlement (ISDS)/labor law conflict (i.e. Can the EU conclude investment treaties on its own, or only together with the Member States? Can the EU's proposed investment court system be implemented? (paragraphs 1, 2, and 3). This allows the detection of the rationale of labor provisions in the CETA (paragraph 4). In paragraph 2, in particular, it will be described the method he is using in his current investigations to comparatively evaluate quasi-similarities in the application/implementation of labor protections in the involved domestic labor systems.

1 INTRODUCTION: REGULATORY DISTORTIONS

Since 2009 the EU has concluded trade and investment agreements. One of the most recent is the CETA – with Canada¹. It is a special mega-treaty, based on bilateral negotiations, given the European single market, on one side, and the Canadian single market, on the other. The EU is also negotiating an agreement with China and the TTIP agreement with the USA. In connection with those negotiations, the European Union (EU) has also prompted a reexamination of policies regarding promotion and protection of foreign direct investments, and the use of ISDS.

As to the geographical free trade agreement (FTA) and labor approach, the transnational labor/industrial relations should be analyzed nowadays at least in view of the following trade negotiations: (i) EU/USA – the first round of the TTIP talks took place in Washington, D.C. in July 2013; (ii) EU/Canada – the 2014 developments are related to the CETA;² (iii) EU/Asia – *the EU and China* are two of the biggest traders in the world. At the 15th EU-China Summit held in September 2012, both sides agreed to launch negotiations on a bilateral investment agreement as soon as possible; the parties had a meeting in July 2017; (iv) *the EU and India* hope to increase their trade in both goods and services, as well as investment through the FTA negotiations launched in 2007. Following the EU-India Summit in February 2012 negotiations entered an intense phase; at the EU-India Summit of October 6, 2017 the leaders “expressed their shared commitment to strengthening the Economic Partnership between India and the EU and noted the ongoing efforts of both sides to re-engage actively towards timely re-launching negotiations for a comprehensive and mutually beneficial FTA”;

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1. On July 6, 2017, the EU and Japan reached an agreement on the main elements of an Economic Partnership Agreement at the EU-Japan summit. *See also* the EU Global Trade developments in http://trade.ec.europa.eu/doclib/docs/2006/december/tradoc_118238.pdf.
 2. The European Parliament voted in favor of the CETA on February 15, 2017. The CETA is considered a mega-treaty based on mixed competencies. Although the CETA is already effective, at least for the sections related to the exclusive EU competencies, the national parliaments must approve the CETA before it can take full effect (*see* Article 207 of the Treaty on the Functioning of the European Union – TFEU). *See also* the recent opinion 2/15 of the Court of Justice of the European Union of May 16, 2017 “The Free Trade Agreement between the European Union and the Republic of Singapore falls within the exclusive competence of the European Union, with the exception of the following provisions, which fall within a competence shared between the European Union and the Member States: (i) the provisions of Section A (Investment Protection) of Chapter 9 (Investment) of that agreement, in so far as they relate to non-direct investment between the European Union and the Republic of Singapore; (ii) the provisions of Section B (Investor-State Dispute Settlement) of Chapter 9; and (iii) the provisions of Chapters 1 (Objectives and General Definitions), 14 (Transparency), 15 (Dispute Settlement between the Parties), 16 (Mediation Mechanism) and 17 (Institutional, General and Final Provisions) of that agreement, in so far as those provisions relate to the provisions of Chapter 9 and to the extent that the latter fall within a competence shared between the European Union and the Member States”.

(v) the *EU/Latin America* – the EU is currently negotiating a trade agreement with Mercosur as part of the overall negotiation for a bi-regional association agreement that also covers a political and a cooperation pillar. At the *EU-Mercosur* trade ministerial meeting held in Santiago in January 2013, the EU and Mercosur agreed to exchange offers on customs duties and quotas no later than in the last quarter of 2013. These negotiations with Mercosur were officially launched at the EU-Mercosur summit in Madrid in May 2010. The next round had taken place in the first week of December 2017.

Such mega-treaties also deal with labor and industrial relations.³ Labor relations choices, impacting on the globalizing world, have significant moral and economic consequences (Katz, 2015). Mega-treaties are instruments to foster globalization and, to some extent, they may become an important occasion to advance better work conditions, too.

Starting around 1970, the Western economies began to be knocked by three global changes: (i) the technological revolution (computers, internet, mobile telephony); (ii) the rise of Asia within the world economy; and (iii) the emerging ecological crises (Sachs, 2011). Such changes determined ongoing shifts of incomes, jobs, and investments all over the world. Between 2003 and 2011, GDP in current prices grew by a cumulative 35% in the USA, and by 32%, 36%, and 49% in the United Kingdom, Japan, and Germany, respectively, all measured in U.S. dollars. In the same period, nominal GDP soared by 348% in Brazil, 346% in China, 331% in Russia, and 203% in India. Even Kazakhstan's output expanded by more than 500%, while Indonesia, Nigeria, Ethiopia, Rwanda, Ukraine, Chile, Colombia, Romania, and Vietnam grew by more than 200% each (Hausmann, 2013).

According to the Atlas of Economic Complexity (<http://www.atlas.cid.harvard.edu/>), these economies began to produce and trade more and more products/services. In this view, mega-treaties are instruments of inter-state cooperation for the promotion of economic growth. As such, mega-treaties were aimed at creating the conditions to foster an exchange between the flow of capital, technology, and human resources into the economy of the host State, on the one hand, and a basic treatment guarantee for foreign investors, on the other (e.g., the right to be treated in a nondiscriminatory, fair, and equitable manner, and to be compensated in case of expropriation). Such an exchange was mainly based on the assumption that a proper treatment of investors could determine the flow of capital/technology and, to a certain extent, the development of the host State. There is an exchange between economic objectives and noneconomic

3. For the specific purpose of this research, “mega-treaty” means any international investment agreement (IIA), and in particular the essay refers also to the bilateral investment treaties (BITs), the multilateral investment agreements, FTAs, and the economic partnership agreements (EPAs) that contain investment chapters and, in some way, labor/social clauses. The TTIP and CETA are here considered the most significant mega-treaties in course of negotiation. *See also*, for a recent analysis of the complex mega-treaties systems, Johnson and Sachs (2014).

objectives. It appears like an equation where the latter were subordinated to the economic ones in order to increase investments and create a positive growth spillover effect. Economic objectives and emphasis on the high level of protection for investments influenced the construction of terms of mega-treaties. Noneconomic objectives, and thus labor and industrial relations protection, do not influence the construction of mega-treaties.

But, in this context, we are wondering where the labor problem is with mega-treaties. The forms of protection they guarantee are broadly formulated standards (e.g., decency at work, fairness, equality, etc.), not directly enforceable under the domestic law, and therefore it depends on how these standards are applied by tribunals in the circumstances of each case (*see* the debate, Alston, 2004 and 2005; Langille, 2005. *See also* Compa, 2002 and 2014; Perulli, 2015; Treu, 2016).⁴ Understanding why, what, and how to compare labor/industrial relations systems, also by means of an interdisciplinary approach, is a starting point to detect the impact of such broad standards on the domestic labor laws. In order to investigate these items, two important trends in world labor markets of these last decades should be stressed (Ansley, 1998). The mobility of industrial capital from North to South, from West to East, and vice versa, on the one side, and the mobility of immigrant workers from South to North, from West to East, and vice versa, on the other, are opposite sides of a single global phenomenon. As trade has caused markets of goods and services to interpenetrate among countries, labor markets have intertwined simultaneously through movement of work between countries and through movement, lawfully or unlawfully, of workers. But such a double approach is no longer suitable to the current investigations. We need to observe the lead protagonist of globalization, that is the multinational company, with operations located in more than one country. U.S. multinational giants often have half (or more) of their global workforce outside the USA (e.g., in 2010, General Electric – GE – employed 133,000 workers in the USA, 154,000 overseas, with more than half of its revenue earned outside the USA – *see* the GE website for details). This is to emphasize the erosion of nation-state control over other actors like multinational corporations and the debate about the meaning of labor law (i.e., whether domestic, European, or international, and the extent to which private actors can or should be able to create something labeled “law” without state or prior

4. According to Alston (2005), “it is precisely the role of the scholar to evaluate the policies put forward by the officials of the ILO against the normative framework agreed to by the Member States and to call them to account when their choices are clearly found wanting. The bottom line is that the ILO’s traditional system of promoting respect for labour rights is in crisis”. However, although obligations under the 1998 ILO Declaration on Fundamental Principles and Rights at Work are broadly formulated, they should be interpreted according to the *Djibouti v. France* case, i.e., the ICJ (International Court of Justice) stated that it is possible to refer to the provisions of another treaty, even where the latter were “formulated in a broad and general manner, having an aspirational character.”– *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France)*, I.C.J. Reports 2008, judgment (June 4, 2008), paragraph 113.

governmental delegation of authority and without subsequent legislative enactment). There is a challenge to central State power from local/district levels, even firm level, seeking more autonomy beyond borders, and in particular beyond geographical and legal borders of a nation-state labor/industrial relations system (see also Treu, 2016. As to the U.S. experiences, see Estlund, 2005).

The most general trade frame is based on the facts that by 2009 China's exports to the USA had soared to USD 296.4 billion, i.e., 2.1 % of U.S. GDP – 19 % of the value added of the U.S. manufacturing. The involved sectors are computers, telecommunications, television sets, textiles, apparel, and toys. Although the USA lost around 2 million jobs in those sectors between 1998 and 2009 (U.S. Bureau of Labor Statistics), the exports significantly increased in the same period.⁵ According to the 2012 National Intelligence Council, it is likely that China and/or India will overtake the USA/Europe within the next two decades. This will change not only trade but labor/industrial relations systems as well. The integration of China, Brazil, India, and other emerging economies is causing shifts in income, employment, investment, and trade.⁶

From this viewpoint, mega-treaties may create labor regulatory distortions. Regulatory distortions delineate the host State's right to regulate, vis-à-vis other States, situations in which standards are explicitly lowered in order to attract investments. There can be a form of jurisdictional competition between States to attract investments and this may lead to derogations from labor standards that would not have occurred absent the investments and the movement of capitals. States could decide to lower standards to attract mega-treaties related investments. Regulatory distortions can be analyzed within an: (i) '*ex post*' vision – i.e., evaluating the derogations from labor standards once the mega-treaties are implemented and effective, and an (ii) '*ex ante*' vision – i.e., creating legal frames to avoid the derogations from labor standards (Faioli, 2015; Prislán and Zandvliet, 2014).

Ex post investigations should be carried out on a case-by-case basis in respect of the States that, by means of their already existing low labor standards,

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5. Therefore, in this research, changes in geopolitics are significant if they have played a key role in the emergence of globalization. We take into consideration that, starting in the 1960s, several developing economies in Asia joined the global trading system, welcoming foreign investments from the USA, Europe, and Japan. This created hosting export-oriented production facilities in special areas. In 1978 the People's Republic of China opened its economy to global trade and foreign investments; in 1991 India followed this model. Virtually the entire world is connected by trade finance and production: goods and services that were produced in Europe or in the USA are now produced in developing countries and then exported to high-income countries. This determines effects on employment and incomes in the USA and/or Europe: employment and income are subjected to a tremendous upheaval (Sachs, 2011).
 6. The law itself in this area is in constant development as the pressure of changing trends reshapes labor and industrial relations systems. Questions arise such as what is a transnational labor and industrial relations system, whether it may exist, what such a changing trend underlies. The dynamics labor academics note worldwide are: (i) flexibilization, (ii) globalization, and (iii) privatization (Stone, 2007).

are effectively more attractive for foreign investments (i.e., multinationals and corporations exploit the opportunities in regulations and legal systems) or, in order to remain attractive, decide to further deteriorate existing labor standards. There is no alternative to such case by case analysis. The risk to carry out an ideological analysis is high. The case by case analysis should detect whether the law is subject to modifications in line with the aim to make more attractive domestic labor regime, or the enforcement of such labor standards is weakened on the basis of a specific intent to attract foreign investments (e.g., by decreasing public enforcement or investigations). The labor law approach can only evaluate, case by case, the effects of labor standards on inward investments and the effects of competition for inward investments on labor standards. Such an evaluation of the effects of labor standards could be more easily carried out when the economies are not peer (developing country versus developed country). The evaluation can be not easy, almost impossible, when we face with *peer-to-peer economies* (developed country versus developed country – CETA and TTIP) and there is “quasi-similarity” between the two legal labor systems (exp., EU versus Canada)

The ‘*ex ante*’ vision of regulatory distortion phenomena is strictly related to the capacity of the mega-treaty to vest direct rights and to subject them to obligations. While there may still be disagreement as to whether the substantive rights in the mega-treaties are owed to the contracting party itself or directly to its nationals,⁷ for sure the investors have been vested with the right to enforce the provisions of the investment treaty.⁸ On one side, this means that the ISDS mechanisms are part of such a legal frame in which foreign investors can exercise rights against States (Faioli, 2015). On the other side, there are also (increasing) obligations under investment treaties to ensure compliance with labor rights by corporations (mega-treaties’ labor chapters). However, such labor obligations, in case of violations, are generally without effective and applicable sanctions against corporations (Compa, 2010 and 2014; Vogt, 2014; Treu, 2016). The effect would be creating obligations under international law to ensure labor rights compliance directly by corporations.⁹ Given that, the *ex ante*

7. Both views have been upheld in the jurisprudence of investment tribunals; see, e.g.: *Archer Daniels Midland Company and Tate & Lyle Ingredients Americas, Inc. v. The United Mexican States*, ICSID Case No. ARB (AF)/04/05, award (November 21, 2007), paragraphs 161–180; and *Corn Products International, Inc. v. United Mexican States*, ICSID Case No. ARB (AF)/04/01, award (January 15, 2008), paragraphs 161–179.

8. This is a point that has been acknowledged by the ICJ already in its judgment in *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, I.C.J. Reports 1970, second phase, judgment (February 5, 1970), paragraph 90.

9. See also the Guiding Principles on Business and Human Rights (2011), developed by J. Ruggie, UN Special Representative. The UN Guiding Principle stressed the importance for States to clearly set out the expectation that corporations domiciled in their jurisdiction respect human rights. In the same line, see also the recommendations of the Human Rights Committee under the ICCPR (International Covenant on Civil and Political Rights).

vision is the field that in the future will open more chances to labor law researches concerning policies to implement and, likely, case law to study.

2 FOR DELINEATING AN EX POST INVESTIGATION METHOD: CONVERGENCE AND QUASI-SIMILARITIES

Varieties of liberalization may mean varieties of labor laws (Thelen, 2014). National borders are becoming more and more permeable, also in favor of labor regulations spreading “by other means” (Arthurs, 2010; Stone, 2007). At least three contradictory views can be pointed out. First viewpoint: unionists feared that globalization can mean the demise of workplace rights in the Western world. Second viewpoint:, labor economists have found that generally companies are moving low-skilled jobs to low-wage, low-union density countries. Third viewpoint: many labor lawyers have found that globalization undermines the strength of domestic labor organizations and laws. The Western labor legal regimes fashioned a stronger link between labor rights and trade, creating a sort of global common law in the field of labor and industrial relations. Such a global common labor law arises from precedents under applications, interpretations, and international protocols.

As labor law and industrial relations researchers, also in relation to the TTIP and CETA, we are requested to be comparative, transnational, and local (Stone, 2007).¹⁰ In order to focus the specific problem statement, we assume that *all workplaces can generate their own law* (Arthurs, 2010).¹¹

10. Being comparative can mean that we should understand how work practices are in relation to the established collective labor relations. Being transnational can mean imagining the possibilities of cross-border unionism and employers’ organizations. This is to some extent a form of transnational labor regulation. This is to go beyond the labor protections offered by the ILO, the EU, and NAFTA (North American Free Trade Agreement). The challenge of globalization forces us to think transnational and protect labor rights across borders. Being local can mean understanding how strategies are working in the localized context.

11. According to Arthurs, 2010, the law of the workplace “comprises not only state labor law but also formal contractual understandings, workplace customs, low-visibility behavioral, daily routines, and workplace cultures. The law of the workplace, given the unwillingness or incapacity of states to regulate the labor practices of transnational corporations, is relatively free to develop their own normative regimes. The law of the workplace is therefore not unduly influenced by national legal systems, though for their own reasons corporations may choose whether and to what extent they will comply with the local law of the countries in which they operate. Labor is not a discrete domain of law and policy. Trade and taxation, homeland security and health insurance, insolvency, immigration laws and policies (to name but a few) have profound effects on labor markets in general, and therefore on particular economic sectors, enterprises, and workplaces. The result is that in many advanced economies, industrial relations, labor and policy become an incidental by-product, an externality, of other political preoccupations. The bargaining power of unions, the enforcement of labor standards legislation, and the provision of employment opportunities for excluded minorities are often determined in a practical

The questions the ongoing investigations are trying to answer are the following:

- (i) what kind of new labor and industrial relations systems can be developed in the USA and the EU in the context of the TTIP and CETA? Will the TTIP or CETA affect labor and industrial relations at domestic and transnational levels? Does economic dependency change the nature of rights as human or labor rights, or is their status independent of their environment?
- (ii) are guidelines and/or soft laws and/or indications provided by the International Labour Organization (ILO), the EU, OECD (Organisation for Economic Co-operation and Development) (and/or further institutions) or contained in FTAs an avenue for unions and employers' organizations to guarantee labor rights and the improvement of working conditions in the USA, in Canada and the EU? If so, why and how?
- (iii) Do extraterritorial effects of foreign labor law have an effect on the domestic labor laws and practice in the TTIP or in the CETA frame? If yes, when and how? To what extent does the TTIP or CETA impact on profits of corporations versus wages of workers? How are the configurations of the labor and industrial institutions changing in the TTIP or the CETA frames?
- (iv) Will we improve our understanding on who controls the global workplaces within the TTIP or the CETA frames? And who will be the global counterpart? Will it be worth supporting actions in disseminating transnational framework agreements in connection with the TTIP or CETA? How will the TTIP or CETA influence the current practice in investors-to-state dispute clauses and their relation with labor/industrial relations systems?

The method could be perceived as a field of nearly theoretical interest with some practical approaches (Aaron, 1977). Therefore the investigation is based on three schemes of legal comparison: (i) *comparing standards*,¹² (ii) *comparing implementation and enforcement*¹³ of standards and regulations, and (iii) *comparing firm-level regulations*. The normative sources of labor/industrial relations

sense by public policies whose primary purpose is to encourage or discourage consumption, pacify or punish particular political constituencies, or realign relations with foreign trading partners.”

12. Comparing standards. This analysis is performed knowing that the difficulty increases in direct proportion to the economic, political, cultural, and legal language, translation of legal concepts, and legal culture distance between any of the labor/industrial relations systems being compared. These include labor law, industrial relations, labor market, economic factors, legal procedural differences, differences in institutional enforcement, judicial capabilities, and remedies.
13. Comparing enforcement. The domestic law and the surrounding legal and institutional regime in which labor/industrial relations are embedded must be compared to the provisions and requirements of international instruments. In case of a clause such as those

may be found at the micro-level of the workplace, and this workplace is more global and permeable than whatever national or global macro-level.¹⁴

To this purpose, this essay will analyze: (i) the economic background, such as GDP, employment, unemployment, female employment, productivity, inflation, labor costs, gross annual earnings, and minimum wages; (ii) industrial relations characteristics, such as collective bargaining coverage, organization density, industrial action, collectively agreed pay, collectively agreed working hours, and actual working hours; (iii) the economic and legal context, as well as the main industrial relations trends; and (iv) the main developments, such as labor market issues, policies, workplace representation, and tripartite dialogue. The comparative method is conceptualized as a vertical line (international law versus domestic law), in the sense that a common body of public international law applies to all nation-states (all those accepting treaties or international instruments¹⁵), as well as being based on a horizontal line (domestic law – nation-state versus nation-state). This is more specifically the case. In particular, this research is dealing with comparative law that examines the similar bodies of law, such as dismissal, collective bargaining, equal treatment, etc. between nation-states.

The domestic labor and industrial relations items are categorized, focusing on the body of domestic labor/industrial relations in terms of strengths and weaknesses (i.e., the substantive labor and industrial relations provisions; the procedures necessary to be protected against violations; the availability and effectiveness of any publicly provided prosecutorial enforcement agency or other institutional support to take the burden of enforcement off the workers' shoulders; the deterrent effect of any remedy provided as well as of the litigation process itself; the compensatory effect of any remedy in terms of making the victim whole; the ability of the remedy to encourage workers to step forward).

contained in the ILO or UN frames or in regional agreements that include labor rights provisions obligating countries to enforce their domestic labor laws, a further comparative and international law analysis is required. The comparative method is aimed at taking into account the interaction effects of all types of domestic and international law. This will allow for the possibility of tracing out the chain of causation, and of showing how different the regimes are, the power of state and non-state actors, the labor market and its regulation, and collective bargaining at national and firm level.

14. They may be secreted in the interstices of corporate organization, encoded in systems of production and distribution, embedded in shop-floor customs and usages, or imbricated in patterns of quotidian relations between and amongst workers and managers. To some extent, of course, global workplaces are regulated by labor laws enacted by home and host States; but to a considerable extent, workplace actors are the primary authors of the visible and invisible rules that govern employment relations on a daily basis (Arthurs, 2010).
15. These international obligations appear directly within the party States' domestic system through automatic incorporation or are transformed into domestic law by adopting statutory provisions. I will observe when and how international instruments, if any, are being developed, and our comparative analysis will take place in relation to the potential impact of those instruments on domestic law.

Labor/industrial relations comprise all normative influences, of whatever provenance, that deeply conform to labor markets. These influences are not strictly related to geographical borders. They originate in a certain political economy, in its demography or culture, in its social structures or relations, or in its system or legal culture that is beyond the borders we assume being at stake. In fact, in the current context, it is important to note that they may also originate in the global political economy, in the institutions governing labor rights within the economy, or in relations amongst transnational actors.

At the end of the investigation process, it will be feasible to formulate a classification of the elements found in most substantive labor/industrial relations systems that may lead to check out to what extent the U.S., Canadian, and EU legal labor orders can be considered in a *pathway of quasi-similarity*.¹⁶

The main outcomes of this ongoing comparative investigation will be related to three scopes: (i) *firm-level bargaining*, (ii) *contingent work*, and (iii) *dismissal regime*.

3 FOR TESTING AN EX ANTE INVESTIGATION METHOD: THE EU MODEL VERSUS THE ISDS MECHANISMS

Foreign investors may activate the ISDS regime to challenge labor law introduced by host States for the specific purpose of improving labor rights (Faioli, 2015). Given the competition at local level, foreign investors are interested that the host State does not introduce labor standards, which could be considered as excessive, with more burdensome obligations and cost.¹⁷ The most critical point

16. The concept of “similarity” in the comparative labor law is developed in theories and practices (*see*, in particular, Stone, 2007). The concept of “quasi-similarity”, that is a matter of interpretation, is specifically based on the legal frame that this comparative research selected (i.e., de facto application of EU, Canada and U.S. labor laws) and what here it is called the de facto implementation of labor law at domestic levels. De facto implementation means that the analysis should focus on what in the reality occurs in relation to labor law application.

17. There are cases, already well known in the labor law academic community and unionists, referring to *Centerra v. Kyrgyz Republic* and *Veolia Propreté v. Egypt*. Those cases are quite limited in precedential value and are not useful for examination related to the possible use of the ISDS in the TTIP. This is because the investment treaties such cases are related to cannot be considered properly applicable to the theoretical scheme here we are looking for. The facts and the argumentation could be explained in this way. In particular, taking into consideration that arbitration official documents are not available, *Centerra v. Kyrgyz Republic* is referred to an arbitration that Centerra commenced against the Kyrgyz Republic. The facts are based on a labor reform that the Kyrgyz Republic implemented in order to improve the salary of workers operating at high altitude. Centerra, a multinational operating in the gold mines, alleged that, given the implementation of such a reform, its labor costs in the Kyrgyz Republic would have significantly increased (approximately USD 6 million per year), and at the bargaining stage of the mega-treaty, the salary conditions were not expected to change. The arbitration was settled in 2009. As to the *Veolia Propreté v. Egypt* case (the official documents are not available), it should be noted that Veolia is a French multinational corporation that in 2012, using the ISDS, filed a petition against

of the ISDS clauses is generally related to the stabilization clause the mega-treaties fixed (i.e., the clauses that the parties bargained in order to “freeze” the law of the host State in respect of the life cycle of the investments). The ISDS is a procedural instrument that the parties used to litigate on the stabilization clause effects (Faioli, 2015). The ISDS is a system of enforceability of corporations’ interests over the right of States to govern their own affairs. It is a sort of private self-regulation of sanctions for violations of mega-treaties’ rules on trade, between corporations and States, with possible prevalence of corporations’ interests on States’/citizens’ interests.¹⁸ Such prevalence is decided by means of arbitrations; significant pecuniary sanction may be applied.

By means of the ISDS, the arbitration may decide on matters indirectly related to labor items: if the ISDS concerns the direct or indirect action of foreign investors to use arbitration proceedings against States for labor items, mega-treaties could represent the legal ground/means to allow foreign investors to go further and probably obtain to not reform domestic labor law, or to freeze domestic labor law reform, or lowering domestic labor standards.¹⁹ The violations to ISDS awards and/or, more in general, ISDS regime means financial responsibility for the State that is not in line with mega-treaty’s obligations. Should be this the case, also in labor matters, the ISDS application would be referred to the following legal items: (i) allocation of costs (i.e., how much will the case cost and how will it be paid for?) (ii) remedies and enforcement (i.e., what happens if the investor prevails in the case?); (iii) forum shopping (i.e., who is going to decide the case and subject to what rules?); and (iv) predictability (i.e., what are the chances of success?). These four items can be summarized

Egypt, asking for damage compensation amounting to approximately USD 110 million. The ISDS is related to the France-Egypt BIT. The main violation that Veolia alleged concerned the fact that Egypt wrongfully terminated a fifteen-year contract for waste management in Alexandria. One of the secondary claims was related to labor items. In particular, Veolia argued that Egypt’s labor laws aimed at increasing minimum wages indirectly impacted the company’s investments, creating damages. Veolia considers this as a breach of the contract and of the France-Egypt BIT. The case is pending.

18. See the recent research of Van Hurten and Malysheuski, 2016. They collected “data on the size and wealth of the foreign investors that have brought claims and received compensation due to ISDS. [...] main findings are that the beneficiaries of ISDS, in the aggregate, have overwhelmingly been companies with more than USD 1 billion in annual revenue – especially extra-large companies with more than USD 10 billion – and individuals with more than USD 100 million in net wealth. ISDS has produced monetary benefits primarily for those companies or individuals at the expense of respondent states. Incidentally, we also found that extra-large companies’ success rates in ISDS, especially at the merits stage, exceeded by a large margin the success rates of other claimants. It was evident that ISDS has also delivered substantial monetary benefits for the ISDS legal industry.”
19. For the sake of completeness, we could also refer to further, not marginal three cases: *Caratube International Oil Company LLP v. The Republic of Kazakhstan*, Claimant’s Memorial (May 14, 2009); *Sergei Paushok, CJSC Golden East Company and CJSC Vostokneftegaz Company v. The Government of Mongolia*, UNCITRAL, award on jurisdiction and liability (April 28, 2011); and *Piero Foresti, Laurade Carli & Others v. Republic of South Africa*, ICSID Case No. ARB(AF)/07/01, award (August 4, 2012).

into the legal concept of “financial responsibility” of institutions negotiating and applying the ISDS.

In the EU system, the matter is stated by Regulation (EU) No. 912/2014 of July 23, 2014, establishing a framework for managing financial responsibility linked to ISDS tribunals established by international agreements to which the EU is party.²⁰ The regulation sets that international responsibility for treatment subject to dispute settlement follows the division of competence between the EU and Member States.²¹ As a matter of fact, in light of the regulation, the EU mega-treaties have to afford foreign investors the same high level of protection as that offered to investors from within the Union by EU law and the general principles common to the laws of the Member States, but not a higher level of protection (Faioli, 2015; Kleinheisterkamp, 2013).²² The European Parliament stated a negative cap on forthcoming mega-treaties, expressing the principle according to which mega-treaties: (i) shall not provide more protection to foreign investors than that European investors are granted by EU law, and (ii) they shall include the rules on liability as elaborated by the Court of Justice of the European Union (CJEU).²³ The latter is also defined as “the no greater rights for

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20. Financial responsibility is an “obligation to pay a sum of money awarded by an arbitration tribunal or agreed as part of a settlement and including the costs arising from the arbitration” and to the ISDS as a “mechanism provided for by an agreement by which a claimant may initiate claims against the Union or a Member State”. The ISDS can result in awards for monetary compensation. On the top, significant costs for arbitration will occur.
 21. With the entry into force of the Lisbon Treaty, foreign direct investment is included in the list of matters falling under the common commercial policy. In accordance with Article 3(1)(e) of the TFEU, the Union has exclusive competence for the common commercial policy and may be party to international agreements covering provisions on foreign direct investment.
 22. CJEU Case C-264/09 *European Commission v. Slovak Republic*, ATEL, 2011, stated that there is an international obligation assumed before Slovakia was part of the EU and that Slovakia cannot force SEPS (State-owned network operator in Slovakia) not to follow the terms of the contract without infringing its obligations under the investment protection agreement.
 23. See CJEU 9 September 2008 in Joined Cases C-120/06 P and C-121/06 P, *FIAMM and Fedon v. Council and Commission*, 2008. See also the European Parliament 2013 report at: <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2013-0124&language=EN>. “(3a) Financial responsibility cannot be properly managed if the standards of protection afforded in investment agreements were to exceed significantly the limits of liability recognized in the Union and the majority of the Member States. Accordingly, future Union agreements should afford foreign investors the same high but no higher level of protection than Union law and the general principles common to the laws of the Member States grant to investors from within the Union. (3b) Delineation of the outer limits of financial responsibilities under this Regulation is also linked to the safeguarding of the Union’s legislative powers exercised within the competences defined by the Treaties, and controlled for their legality by the Court of Justice, which cannot be unduly restrained by potential liability defined outside the balanced system established by the Treaties. Accordingly, the Court of Justice has clearly confirmed that the Union’s liability for legislative acts, especially in the interaction with international law, must be framed narrowly and cannot be engaged without the clear establishment of fault. [...]

foreign investors in the EU principle.” This creates a legal clash between the EU legal order and the ISDS (Faioli, 2015).

Such a legal clash can be partially found in the CETA. The Canada/EU mega-treaty fixes the right to regulate by means of the following: (i) better definition and narrowing of key concepts like “fair and equitable treatment” and “indirect expropriation,” aimed at narrowing the scope for abuse; (ii) governments, not arbitrators, have ultimate control over the interpretation of rules (i.e., the EU and Canada can agree on making ineffective an arbitrator’s determination); (iii) a code of conduct for arbitrators and transparency models; (iv) an appeal mechanism; and (v) rules on the mandatory dropping of cases in national courts if investors intend to pursue the ISDS.

There is maybe an alternative to such regime. Currently the European Commission’s proposals are the following ([seehttp://trade.ec.europa.eu/doclib/docs/2015/march/tradoc_153258.pdf](http://trade.ec.europa.eu/doclib/docs/2015/march/tradoc_153258.pdf)): (i) including a full article in the TTIP text that “makes clear that governments are free to pursue public policy objectives and they can choose the level of protection that they deem appropriate;” (ii) “a clause that says that investment protection rules offer no guarantee for investors that the legal regime under which they have invested will stay the same;” (iii) appointing “a limited list of trustworthy arbitrators who would decide on all TTIP investment cases,” but “this does not go the whole way to creating a permanent investment court, with permanent judges who would have no temptation to think about future business opportunities;” (iv) “the fact that ISDS tribunals don’t have appeal mechanisms is one of the things that united business and NGO respondents to the consultation. [...] We will also be proposing an appeal mechanism to our other negotiating partners, including in Canada;” (v) as to the relationship between domestic legal systems and the ISDS, no second chance to overrule the decisions of national courts will be offered to investors (e.g., this by forcing investors to choose between national courts and the ISDS, or by obliging investors to abandon any proceedings they have started in national courts if they launch an ISDS case). However, although such EU alternative to the ISDS clause, the mentioned legal clash does not fully disappear. In fact, the EU proposal shaped such an international court as a commercial arbitral process. In fact, it is stated that “final awards issued pursuant to this Section shall be deemed to be arbitral awards and to relate to claims arising out of a commercial relationship or transaction.” This is controversial because, on one side, it seems that the EU intends to move away from international arbitration as a means of resolving investment disputes (i.e., New York Convention model), also for the criticism and the possible legal clash with Regulation (EU) No. 912/2014 of July 23, 2014, and yet, on the other side, it seems that the EU intends to get back the advantage arising from the application of the international enforcement regime (Gaffney, 2016).

Future investment agreements to be concluded by the Union should respect these safeguards to the Union’s legislative powers and should not establish stricter standards of liability allowing a circumvention of the standards defined by the Court of Justice.”

4 THE CETA LABOR CHAPTER

The labor provisions in the mega-treaties have a great deal of diversity (Vogt, 2014). The large majority of labor provisions that are presently in mega-treaties try to get back to the distorting possible effects resulting from lowering labor rights protection as an incentive to attract foreign investment. Such labor provisions require the parties to refrain from lowering domestic labor rights protection. Their contents depend on the instrument they are associated with. For instance, labor matters in BITs are usually related to preambles or self-standing treaty clauses and they are not subject to detailed regulation. This is to stress that BITs are mainly limited to promotion and protection of investments. In FTAs, by contrast, labor matters are usually related to a more comprehensive chapter, specifically regulated (as in the case of U.S. FTAs) or side-agreements specifically devoted to labor issues (as in the case of some Canadian FTAs). If this is the theoretical frame, the practice is much more complex. My investigation determined a sort of scheme aimed at pulling out from the large majority of labor provisions a key idea. I discerned such labor provisions in relation to: (i) *language*, fixing the principle that we can have a high level of aspirational language (i.e., “should not waive or derogate” from the domestic labor standards) and a low level of aspirational language, given forms of obligations of conduct and obligations of result; and (ii) *commitments* for the States.

In particular, *first focusing on language*, this could be considered binding, under international law, if obligations of conduct (i.e., parties “shall strive to ensure”) or obligations of result (i.e., parties “shall not or will not derogate” from their labor legislation) are fixed. On the contrary, under labor law, this language can be considered binding exclusively if obligations are created for States by the mega-treaties and, consequentially, individuals can vest/exercise rights in relation to such obligations, if sanctions are applied, and if labor judges/inspectorate can intervene. This does not occur in the cases we know. Let’s observe, for instance, the obligation of conduct, not binding under labor law, given the aspirational language (“strive to ensure”).²⁴

24. We can pull out such aspirational language from a number of agreements: the Agreement between Japan and the Republic of the Philippines for an Economic Partnership (September 9, 2006), Article 103(1); the 2004 USA Model BIT, Article 13(1); the Treaty between the Government of the United States and the Government of the Republic of Rwanda concerning the Encouragement and Reciprocal Protection of Investment (February 19, 2008); the Agreement between the United States of America and the Hashemite Kingdom of Jordan on the Establishment of a Free Trade Area (October 24, 2000), Article 6(2); the USA-Singapore FTA (May 6, 2003), Article 17.2(2); the USA-Chile FTA (June, 6, 2003), Article 18.2(2); the USA-Australia FTA (May 18, 2004), Article 18.2(2); the USA-Bahrain FTA (September 14, 2004), Article 15.2(2); the Dominican Republic-Central America-United States FTA (August 4, 2004), Article 16.2(2); the USA-Morocco FTA (June 15, 2004), Article 16.2(2); and the Agreement between the Government of the United States of America and the Government of the Sultanate of Oman on the Establishment of a Free Trade Area (January 19, 2006), Article 16.2(2). The obligation of result determines similar effects in terms of legal labor binding provisions. We find aspirational language as well

Labor provisions could also be observed by means of the *commitments* the States assume. Also in this case, we cannot find labor provisions that allow individuals to vest rights. If we detect commitments, a variety of comprehensive duties are placed. First, some mega-treaties refer to derogations that can occur also as a result of omissions [“shall not fail to effectively enforce its labor laws [...] through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the Parties” – see: the USA-Colombia FTA, 2006, Article 17.3(1)(a); the 2012 USA Model BIT; the Canada-Peru Labor Cooperation Agreement (LCA), 2008, Article 3; the Peru-Korea FTA, 2010, Article 18.2(1); and the EFTA-Montenegro FTA, 2011, Article 34(1)]. In other cases, mega-treaties define only those derogations that are inconsistent with ILO norms. This means that the party that currently observes, in its domestic legislation, labor standards required by the ILO, can thus lower its standards without violating the labor clause. There are cases where a party cannot “defend failure to enforce its labor laws on the basis of resource limitations or decisions to prioritize other enforcement issues” [see the USA-Korea FTA, 2007, Article 19.3(1)(b)].

There is an ongoing set of international labor standards that can serve as benchmark for permissible derogations.²⁵ EU has evolved in its approach to the

where the form “shall not or will not derogate” is fixed [see labor chapters/side agreements of FTAs concluded by Canada, Korea, and the European Free Trade Association (EFTA): the Agreement on Labor Cooperation between Canada and the Republic of Peru (May 29, 2008), Article 2; the Agreement on Labor between the EFTA States and Hong Kong, China (June 21, 2011), Article 4; and the Peru-Korea FTA (November 14, 2010), Article 18.2(2)]. But, in this line of obligation of result, the worst aspirational language is related to “inappropriateness” (parties “recognize that it is inappropriate to encourage investment by weakening or reducing” labor protections). This is the worst case because it is not at all binding. You can find it, for instance, in the Agreement for the Promotion and Protection of Investment between the Government of the Republic of Austria and the Government of the Republic of Kosovo (signed on January 22, 2010). In this regard, two legal points should be stressed. First, all these labor provisions do not prohibit derogations from domestic labor law. This implies that if a State intends to abolish the right to unionize or strike, or to reduce the quality/quantity of social security schemes, also in order to attract investment, this would in any case not violate the terms of the mega-treaty’s labor chapter and, should in theory a violation occur, no sanctions can be applied and no labor judges can intervene. Second, these labor provisions are mostly based on trade relations that are set up between developing States and developed States. In this context, we have to assume that developed States are subject to regulatory distortions (i.e., standards are lowered to attract investments) and developing States are more subject to regulatory chilling effects (States refrain from adopting new labor regulations). While, going back to the TTIP or CETA, it is important to stress again that we are facing with legal labor systems that feature a *de facto* application in a situation of quasi-similarity.

25. U.S. agreements have evolved since NAFTA’s “enforce your own laws, they don’t have to meet international standards” approach in its labor supplemental agreement, the NAALC (North American Agreement on Labor Cooperation). The latest U.S. agreements with Peru, Colombia, and Korea go farther. They require parties to “adopt and maintain” labor laws that comply with ILO core standards and provide “acceptable” wages, hours, and health and safety conditions and to effectively enforce such laws. The EU and Korea went

trade-labor linkage. In its 1990s trade agreements with Chile, Argentina, and Mexico, labor rights as such were absent. Instead, they were subsumed under a general human rights rubric and a mutual commitment in Article 1 that “Respect for democratic principles and fundamental human rights, proclaimed by the Universal Declaration of Human Rights, underpins the domestic and external policies of both Parties and constitutes an essential element of this Agreement.” Recently the EU insisted on the democracy clause in all its trade agreements (Bartels, 2013). For instance, the *EU-Korea agreement (2010)* stressed language on labor rights and labor standards, starting with the objective “to promote foreign direct investment without lowering or reducing environmental, labor or occupational health and safety standards in the application and enforcement of environmental and labor laws of the Parties.”²⁶

In these lines, the *2017 CETA Labor Chapter* has slightly, but not marginally for the geopolitical scenario, advanced procedural/legal innovations concerning States’ commitment. Unfortunately, the CETA did not significantly update the “classic” aspirational language we have already indicated above.

The *CETA* has a general purpose that is defined by means of a high-level commitment (the parties “recognise the contribution that international trade could make to full and productive employment and decent work for all and commit to consulting and cooperating as appropriate on trade-related labour and employment issues of mutual interest [...] and the importance of social dialogue on labour matters among workers and employers, and their respective organizations, and governments, and commit to the promotion of such dialogue” – Article 23.1 Context and objectives). As to the abovementioned aspirational language matters, the CETA states that each Party: (i) “shall seek to ensure those laws and policies provide for and encourage high levels of labour protection and shall strive to continue to improve such laws and policies with the goal of

further than the USA in their commitment to ratifying ILO conventions. The parties “reaffirm the commitment to effectively implementing the ILO Conventions that Korea and the Member States of the European Union have ratified respectively.”

26. Chapter 13 of the EU-Korea agreement is titled “Trade and Sustainable Development”. While they recognize that economic development and social development “are interdependent and mutually reinforcing components of sustainable development,” the EU and Korea pointedly add that “it is not their intention in this Chapter to harmonize the labor or environment standards of the Parties” and “The Parties stress that environmental and labor standards should not be used for protectionist trade purposes. The Parties shall make their best efforts to accommodate advice or recommendations of the Panel of Experts on the implementation of this Chapter. The implementation of the recommendations of the Panel of Experts shall be monitored by the Committee on Trade and Sustainable Development. The report of the Panel of Experts shall be made available to the Domestic Advisory Group(s) of the Parties.” In the EU-Colombia/Peru agreement it is stated that “the Parties agree to promote best business practices related to corporate social responsibility.” It does not link labor to any dispute settlement mechanisms (EU-Colombia/Peru FTA (2012), Article 268). These EU agreements provide for consultation with civil society, but do not provide for a complaint mechanism allowing trade unions or NGOs to allege violations.

providing high levels of labour protection” (Article 23.2 Right to regulate and levels of protection); and (ii) shall ensure that its labor law and practices provide protection for the fundamental principles and rights at work.

Such principles are related to the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up of 1998 (freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labor; the effective abolition of child labor; and the elimination of discrimination in respect of employment and occupation) plus the ILO Declaration on Social Justice for a Fair Globalization of 2008 (health and safety at work; establishment of acceptable minimum employment standards for wage earners, including those not covered by a collective agreement; and nondiscrimination in respect of working conditions, including for migrant workers).

In Article 23.4-5 the parties recognize that it is inappropriate to encourage trade or investment by weakening or reducing the levels of protection afforded in their domestic labor law. They state that they shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, their own domestic labor regime in order to encourage trade or the establishment, acquisition, expansion, or retention of an investment in their territory. Therefore, the parties shall promote compliance with and shall effectively enforce their labor law, including by labor inspection and not unnecessarily by complicated or prohibitively costly administrative and judicial proceedings.

In Article 23.7 the parties state that they will consider any views provided by “representatives of workers, employers, and civil society organisations when identifying areas of cooperation, and carrying out cooperative activities.” Cooperative activities are mainly related to dialogue and information sharing on labor provisions.

Each Party will designate an office to serve as the contact point with the other Party for the implementation of the Labor Chapter (Article 23.8 Institutional mechanisms). In Article 23.10 it is stated that “a Party may, 90 days after the receipt of a request for consultations under Article 23.9.1, request that a Panel of Experts be convened to examine that matter, by delivering a written request to the contact point of the other Party.” The Panel of Experts is composed of three panelists who have specialized knowledge in labor law or in the resolution of disputes arising under international agreements. They must be independent and must comply with the CETA Code of Conduct. The panelists are required to examine, in the light of the relevant provisions of the CETA Labor Chapter, the litigation matters and they can seek information from the ILO, including any pertinent available interpretative guidance, findings, or decisions. The Panel may request information to unions, too. This regime is regulated in accordance with the Rules of Procedure for Arbitration set out in Annex 29-A. The Panel of Experts has to draft and issue to the parties a report concerning facts, determinations, and recommendations. If such a report determines that a Party has not conformed with its obligations under the CETA Labor Chapter, the parties will “identify appropriate measures or, if appropriate, [...] decide upon a

mutually satisfactory action plan.” Article 23.11 fixes that obligations of the CETA Labor Chapter are “binding and enforceable through the procedures for the resolution of disputes provided in Article 23.10.” This specifically means “meetings of the Committee on Trade and Sustainable Development, [...] policy developments in each Party, developments in international agreements, and views presented by stakeholders.”

This CETA regime is, therefore, in line with experiences that have been already studied (Compa and Brooks, 2015). The effectiveness of the CETA provisions are mostly related to the political frame. For instance, we know that there are forty complaints under the NAALC/NAFTA and seven complaints related to the U.S. agreements.²⁷ Usually the National Contact Point, in case labor violations are proved, offers no fruitful solution (Compa and Brooks, 2015). The case related to the union rights violations in Guatemala can determine a possible new path, although it is based on severe labor violations and concerned a State of marginal importance for the USA.²⁸

The real problem is still there, in spite of the slight innovations that the CETA introduced: there is no effective remedy to labor violations within mega-treaties legal frame (i.e., individuals cannot plead/complain in front of judges for obtaining protections) that can be compared to the ISDS legal scheme effects, where rights are vested by corporations and obligations are binding for States. There is, in other words, an unbalanced playfield under mega-treaties legal regimes: on one side, labor chapters are still ineffective, given that labor rights are not vested by individual and/or unions; on the other side, the ISDS are fully effective, as we already noticed, and the ISDS, directly or indirectly, may determine labor standards lowering or freezing.

This argumentation is merely aimed at basing, promoting and fostering (at least, at academic level) more in-depth investigations on a new generation of labor chapters for the forthcoming mega-treaties.

5 CONCLUSIONS: PROPOSAL

In light of the above, the following proposal is aimed at reducing the potential of normative conflicts between domestic labor laws and mega-treaty regimes. It is a theoretical proposal (already indicated in Faioli, 2015) for a labor chapter of new generation:

27. See <http://www.dol.gov/ilab/trade/agreements/fta-subst.htm>.

28. For the Guatemala case, *see also* Initial Written Submission of the United States, In the Matter of Guatemala – Issues Relating to the Obligations under Article 16.2.1(a) CAFTA-DR, November 3, 2014. This is the only case which is based on a dispute settlement mechanism activation. The process lasted more than six years. The dispute is related to serious breach of union/freedom of association rights in Guatemala.

1. The First Best

- 1.1. The mega-treaty should fix that the right of establishment is connected to the mandatory application of the most favored domestic labor regime, beyond the application of the law where the worker performs his/her job activities (*lex loci laboris*) and/or the law of the place of origin of the worker (*lex loci domicilii*).

2. The Second Best

- 2.1. The mega-treaty should fix that forms of stabilization clauses can never apply in labor matters (i.e., stabilization clauses are inserted in private contracts between investors and States, which either have the effect of “freezing” the law of the host State with respect to the investment project over its life cycle, or otherwise provide the investor with compensation for the cost of complying with new laws).
- 2.2. The mega-treaty should empower international framework sectorial/industry agreements to add on top of the ILO/UN/OECD standards a list of labor rights, not yet included in the ILO/UN/OECD regime, but significantly linked to the sector they arise from, negotiated with unions/employers’ organizations at transnational level, as well as in the same legal context (e.g., the right to strike,²⁹ protection of secondary or sympathetic action/strike, equal pay for women and men, prevention of occupational injuries and illnesses, compensation in cases of occupational injuries and illnesses, protection of migrant workers, maternity/paternity leave, etc.):
- 2.2.1. Such mega-treaty related international framework sectorial agreements could be considered a new form of “nodal governance,” given that they refer to temporary networks or alliances at transnational level.
- 2.2.2. The mega-treaty international sectorial agreements will be empowered by a special extraterritorial effect, i.e., the workplace is not limited to the space of one nation and the mega-treaty international sectorial agreements will operate in any country that is a signatory of the mega-treaty.
- 2.2.3. The mega-treaty should state enforceability mechanisms of the mentioned international frame sectorial agreements (please see point 1 above) and the listed labor rights (material scope), beyond the domestic labor judge. For the TTIP, a possible application of the section 301 unfair trade practice petition under the USA Trade Act, or an extension of the

29. Regarding the dispute at the ILO between employer and employee representatives regarding the unexpected question whether the right to freedom of association encompasses the right to strike, please see ILO, Provisional Record, 101st session, Geneva, May–June 2012, 19 (REV).

- section 301 mechanism to international frame sectorial agreements can be studied.
- 2.3. The mega-treaty should define foreign investments for purposes of liberalization along the lines of the OECD/International Monetary Fund (IMF) as allowing for the definition of investor with the identification of ultimate beneficial ownership and control.
 - 2.4. The mega-treaty should clearly define a legal instrument to connect labor rights law and investment arbitrations. This will be carried out in order to specifically integrate labor rights considerations into arbitral proceedings. This means that academics and think tanks should be formally appointed to periodically examine which labor rights issues may be implicated in investment disputes, and at the same time to provide an overview of labor rights norms and frameworks that are relevant to investors and governments and explore how parties might effectively raise labor rights norms and issues in the course of an arbitration. This material will be used as guidelines for the future:
 - 2.4.1. The ISDS, affecting labor matters, should be related solely to non-regression clauses. Counterclaims, arising from States, should be allowed for labor matters, although connections to key matters of petition are not sure.
 - 2.4.2. In any case, no second chance to overrule the decisions of national courts will be offered to investors by means of ISDS schemes.
 - 2.5. The mega-treaty should impose a special section for migrant/posted workers. They have a special status and deserve, also in public procurement situations or supply of services, a special treatment. This will impact on the applicable labor law (*lex loci laboris v. lex loci domicilii*) and the applicable social security regime:
 - 2.5.1. As a consequence, a new social security coordination regime for migrant workers, aimed at creating one and only one regulation, should be negotiated within and/or related to the mega-treaty. The principle of aggregation of contributions should be fixed in relation to old-age pension and for further social security schemes that can be compared. The contributions will be paid according to the *lex loci domicilii* (the place of origin) in case of secondment.
3. In Any Case
 - 3.1. Also in light of the mega-treaties, the EU should adopt a common European unemployment scheme (Dullien, 2014; Faioli, 2014 and 2017) is key to coping with a mindful TTIP labor chapter. The EU should learn lessons from the common unemployment scheme in the USA, not only because such a scheme provides significant

stabilization to U.S. business cycles, but also because the variety of unemployment schemes in Europe, although they are already coordinated under EU regulations, may be part of a possible unfair jurisdictional competition.

References

- Adalberto Perulli, *Diritti sociali fondamentali e regolazione del mercato nell'azione esterna dell'Unione europea*, 2 *Rivista giuridica del lavoro e della previdenza sociale*, 321 (2013).
- Adalberto Perulli, *Sostenibilità, diritti sociali e commercio internazionale: la prospettiva del Transatlantic Trade and Investment Partnership (TTIP)*, *WPCSDLEMASSIMO D'ANTONA.IT*, 115, 2015.
- Andrea K. Bjorklund (ed.), *Yearbook on International Investment Law & Policy 2012–2013*, Oxford University Press, 2013.
- Anil Verma, *Global Labor Standards: Can We Get from Here to There?*, 19 *International Journal of Comparative Labour Law and Industrial Relations*, 4, 515 (2003).
- Archon Fung, Dara O'Rourke and Charles Sabel, *Ratcheting Labor Standards*, *Boston Review*, February–March 2001, available at: <http://bostonreview.net/BR26.1/fung.html>.
- Bob Hepple, *Can Collective Labour Law Transplants Work? The South African Example*, 20 *Industrial Law Journal*, 1 (1999).
- Brian Bercusson, *Globalizing Labor Law: Transnational Private Regulation and Countervailing Actors in European Labor Law*, in *Global Law Without a State*, Gunther Teubner (ed.), 1997.
- Brian Langille, *Core Labour Rights – The True Story*, 16 *European Journal of Industrial Relations*, 409 (2005).
- Carolyn Penfold, *Offshoring and Decent Work. Worlds' Apart?*, 24 *International Journal of Comparative Labour Law and Industrial Relations*, 573 (2008).
- Catherine Barnard, *The Financial Crisis and the Euro Plus Pact: A Labour Lawyer's Perspective*, 41 *Industrial Law Journal*, 98 (2012).
- Charles-Emmanuel Côté, *Toward Arbitration Between Subnational Units and Foreign Investors?*, *Columbia FDI Perspectives*, 145, 2015.
- Chris Howell and Rebecca Kolins Givan, *Rethinking Institutions and Institutional Change in European Industrial Relations*, 49 *British Journal of Industrial Relations*, 231 (2011).
- Claire Kilpatrick, *The ECJ and Labor Law: A 2008 Retrospective*, 38 *Industrial Law Journal*, 180 (2009).
- Clive Thompson, *Borrowing and Bending. The Development of South Africa's Unfair Labor Practice Jurisprudence*, in *The Changing Face of Labor Law and Industrial Relations: Liber Amicorum for Clyde W. Summers*, Roger Blanpain and Manfred Weiss (eds.), 1993.

- Cynthia Estlund, *Rebuilding the Law of the Workplace in an Era of Self-Regulation*, 105 *Columbia Law Review*, 2, 319 (2005).
- David Autor, *The Polarization of the Job Opportunities in the US Labor Market: Implications for Employment and Earnings*, Center for American Progress and the Hamilton Project, May 2010.
- David J. Doorey, *Who Made That?: Influencing Foreign Labor Practices Through Reflexive Domestic Disclosure Regulation*, 43 *Osgoode Hall Law Journal*, 353, 384 (2005).
- Don Wells, “Best Practice” in the Regulation of International Labor Standards: Lessons of the U.S.-Cambodia Textile Agreement, 27 *Comparative Labor Law & Policy Journal*, 357 (2006).
- Donald H.J. Hemann and Yvonne S. Sor, *Property Rights in One’s Job: The case for Limiting Employment at Will*, 24 *Arizona Law Review*, 763, 820 (1982).
- Douglas Meyer, *Building Union Power in the Global Economy: A Case Study of the Coordinated Bargaining Committee of General Electric Unions (CBC)*, 26 *Labor Studies Journal*, 60 (2001).
- Edoardo Ales, *Dal caso FIAT al caso Italia. Il diritto del lavoro di prossimità, le sue scaturigini e i suoi limiti costituzionali –FIAT and industrial relations in Italy*, *Diritto delle relazioni industriali*, 4 (2011).
- Enrico Moretti, *The New Geography of Job*, 2012.
- Frank Borger, *Global Unionism – Beyond the Rhetoric: The CWA North Atlantic Alliance*, 24 *Labor Studies Journal*, 107 (1999).
- Frederick Meyers, *Ownership of Jobs: A Comparative Study*, 1964.
- Gino Gorla, *Il contratto; problemi fondamentali trattati con il metodo comparativo e casistico*, 1954.
- Gunther Teubner, *Regulatory Law: Chronicle of a Death Foretold*, 1 *Social & Legal Studies*, 451 (1992).
- Gus Van Harten and Pavel Malysheuski, *Who Has Benefited Financially from Investment Treaty Arbitration? An Evaluation of the Size and Wealth of Claimants*, Osgoode Hall Law School – Legal Studies Research Paper Series, Research Paper, 14, 2016.
- Harry Arthurs, *Corporate Codes of Conduct: Profit, Power and Law in the Global Economy*, in *Ethics Codes, Corporations and the Challenges of Globalization*, Wesley Cragged (ed.), 2005.
- Harry Arthurs, *Corporate Self-Regulation: Political Economy, State Regulation and Reflexive Labor Law*, in *Regulating Labor in the Wake of Globalization*, Brian Bercusson and Cynthia Estlund (eds.), 2007.
- Harry Arthurs, *Extraterritoriality by Other Means: How Labor Law Sneaks Across Borders, Conquers Minds, and Controls Workplaces Abroad*, Osgoode Hall Law School, *Comparative Research in Law & Political Economy*, Research Paper Series Research Paper No. 25/2010.
- Harry Arthurs, *The Administrative State Goes to Market (and Cries “Wee, Wee, Wee” All the Way Home)*, 55 *University of Toronto Law Journal*, 797 (2005).
- Harry C. Katz, Thomas A. Kochan and Alexander J.S. Colvin, *Labor Relations in a Globalizing World*, 2015.

- Henry J. Frundt, Trade and Cross-Border Labor Strategies in the Americas, 17 *Economic and Industrial Democracy*, 387, 405 (1996).
http://www.nelmerito.com/index.php?option=com_content&task=view&id=2060.
- James Atleson, The Voyage of the Neptune Jade. The Perils and Promises of Transnational Labor Solidarity, 52 *Buffalo Law Review*, 85, 124 (2004).
- Jan Kleinheisterkamp, Financial Responsibility in European International Investment Policy, 63 *International and Comparative Law Quarterly*, 2, 449 (2013).
- Janice Bellace, Achieving Social Justice: The Nexus Between the ILO's Fundamental Rights and Decent Work, 15 *Employee Rights and Responsibilities Journal*, 1, 101 (2011).
- Jeffrey D. Sachs, *The Age of the Sustainable Development*, 2015.
- Jeffrey D. Sachs, *The Price of Civilization. Reawakening American Virtue and Prosperity*, 2011.
- Jeffrey M. Hirsch, Employee Collective Action in a Global Economy, in *Labor and Employment Law and Economics*, Kenneth G. Dau-Schmidt et al. (eds.), 2008.
- Jeffrey S. Vogt, Trade and Investment Arrangements and Labor Rights, in *Corporate Responsibility for Human Rights Impacts*, Lara Blecher, Nancy Kaymar Stafford and Gretchen C. Bellamy (eds.), 2014.
- Jeffrey Vogt, The Evolution of Labor Rights and Trade – A Transatlantic Comparison and Lessons for the Transatlantic Trade and Investment Partnership, in 18 *Journal of International Economic Law*, 4, 844 (2015).
- Joanna Howe, Poles Apart? The Contestation Between the Ideas of No Fault Dismissal and Unfair Dismissal for Protecting Job Security, 42 *Industrial Law Journal*, 122 (2013).
- John Budd, *The Thought of Work*, 2011.
- John Dunning, Bruce Kogut and Magnus Blomstrom, *Globalization of Firms and the Competitiveness of Nations*, 1991.
- John Gaffney, The EU Proposal for an Investment Court System: What Lessons Can Be Learned from the Arab Investment Court?, *Columbia FDI Perspective*, 181, 2016.
- John Russo, Strategic Campaigns and International Collective Bargaining: The Case of the IBT, FIET, and Royal Ahold NV, 24 *Labor Studies Journal*, 23 (1999).
- Jonathan P. Doh and Terrence R. Guay, "Globalization and Corporate Social Responsibility." How Non-Governmental Organizations Influence Labor and Environmental Codes of Conduct, 44 *Management International Review*, 7 (2004).
- Katheleen Thelen, *Varieties of Liberalization and the New Politics of Social Solidarity*, 2014.
- Lance Compa and Tequila Brooks, *NAFTA and the NAALC. Twenty Years of North American Trade-Labour Linkage*, 2015.

- Lance Compa, *A Strange Case: Violations of Workers' Freedom of Association in the United States by European Multinational Corporations*, Human Rights Watch report (2010).
- Lance Compa, *Labor Rights and Labor Standards in International Trade*, 25 *Law and Policy in International Business*, 165 (1993).
- Lance Compa, *Labor Rights and Labor Standards in Transatlantic Trade and Investment Negotiations: An American Perspective*, Transatlantic Stakeholder Forum Working Paper Series, J. Hopkins University, 2014.
- Lance Compa, *Pursuing International Labor Rights in U.S. Courts*, 57 *Industrial Relations*, 48 (2002).
- Lance Compa, *The Wagner Model and International Freedom of Association Standards*, in *Autonomie Collective et Droit du Travail: Mélanges en l'Honneur du Professeur Pierre Verge*, Dominic Roux (ed.), 2014.
- Lance Compa, *Trade Unions, NGOs, and Corporate Codes of Conduct*, 14 *Development in Practice*, 210, 211 (2004).
- Lise Johnson and Lisa Sachs, *International Investment Agreements, 2011–2012: A Review of Trends and New Approaches*, in *Yearbook on International Investment Law & Policy 2012–2013*, Andrea K. Bjorklund (ed.), 2014.
- Lorand Bartels, *Human Rights and Sustainable Development Obligations in the EU's Free Trade Agreements*, 40 *Legal Issues of Economic Integration*, 297 (2013).
- Lori M. Wallach, *Investor-State Dispute Settlement in the Transatlantic Trade and Investment Partnership*, Transatlantic Stakeholder Forum Working Paper Series, J. Hopkins University (2014).
- Mario F. Bognanno and Jianfeng Lu, *NAFTA's Labor Side Agreement. Withering as an Effective Labor Law Enforcement and MNC Compliance Strategy?*, in *Multinational Companies and Global Human Resource Strategies*, William N. Cooke (ed.), 2003.
- Michael Posner and Justine Nolan, *Can Codes of Conduct Play a Role in Promoting Workers' Rights?*, in *International Labor Standards: Globalization, Trade and Public Policy*, Robert J. Flanagan and William B. Gould IV (eds.), 2003.
- Micheal Doherty, *When You Ain't Got Nothin', You Got Nothin' to Lose.... Union Recognition Laws, Voluntarism and the Anglo Model*, in 42 *Industrial Law Journal*, 369 (2013).
- Michele Faioli, Adelheid Hege, Christian Dufour, Thomas Haipeter, Steffen Lehndorff, *Contrattazione collettiva decentrata in Europa. Analisi comparata tra Francia, Germania e Italia*, in 48 *Economia&Lavoro*, 1, 7 (2014).
- Michele Faioli, Annamaria Simonazzi, *Introduction*, in *Economia&Lavoro*, 2, 7 (2015).
- Michele Faioli, *Decency at Work. Della tendenza del lavoro alla dignità*, with the preface of Harry Arthurs, 2009.
- Michele Faioli, *Diritti al jobs compact europeo. Cosa può fare il diritto del lavoro a sostegno dell'Europa che cambia*, www.nelmerito.it- (2014).

- Michele Faioli, Effettività territoriale del diritto del lavoro e tutela del lavoro all'estero, in 8 *Massimario di giurisprudenza del lavoro*, 1 (2009).
- Michele Faioli, The Quest for a New Generation of Labor Chapter in the TTIP, in *Economia & Lavoro*, 2, 103 (2015).
- Michele Faioli, Libero scambio, tutele e sostenibilità. Su cosa il ttip interroga il (nuovo) diritto del lavoro, in *Rivista Giuridica di diritto del lavoro e della previdenza sociale*, 781, (2015).
- Mick Blowfield, ETI: A Multi-Stakeholder Approach, in *Corporate Responsibility and Labor Rights: Codes of Conduct in the Global Economy*, Rhys Jenkins, Ruth Pearson and Gill Seyfang (eds.), 2002.
- Mitchel Lasser, *Judicial Transformations: The Rights Revolution in the Courts of Europe*, 2009.
- Natalino Irti, *Norma e luoghi. Problemi di geo-diritto*, 2006.
- Nicholas Bloom, Mirko Draca and John Van Renssen, Trade Introduced Technical Change? The Impact of Chinese Imports on Innovation, Diffusion IT and Productivity, NBER Working Paper, 16717, National Bureau of Economic Research, 2011.
- Nicola Countouris and Mark Freedland, *Resocialising Europe in a Time of Crisis*, 2013.
- Niklas Bruun, Klaus Lörcher and Isabelle Schömann, *The Economic and Financial Crisis and Collective Labour Law in Europe*, 2014.
- Orly Lobel, "The Renew Deal." The Fall of Regulation and the Rise of Governance in Contemporary Legal Thought, 89 *Minnesota Law Review*, 498 (2004).
- Peer Zumbansen, Lochner disembedded: The Anxieties of Law in a Global Context, 20 *Indiana Journal of Global Legal Studies*, 1 (2013).
- Phil J. White, Unfair Dismissal Legislation and Property Rights: Some Reflections, 16 *Industrial Relations Journal*, 98, 105.
- Philip Alston, Core Labour Standards' and the Transformation of the International Labour Rights Regime, 15 *European Journal of International Law*, 457 (2004).
- Philip Alston, Facing Up to the Complexities of the ILO's Core Labour Standards Agenda, 16 *European Journal of International Law*, 467 (2005).
- Rainer Dombois, Erhard Hornberger and Jens Winter, Transnational Labor Regulation in the NAFTA – A Problem of Institutional Design? The Case of the North American Agreement on Labor Cooperation Between the USA, Mexico and Canada, 19 *International Journal of Comparative Labour Law and Industrial Relations*, 421 (2003).
- Ricardo Hausmann, *The End of the Emerging-Market Party*, 2013, available at: <http://www.project-syndicate.org/>.
- Robert W. Cox, Labor and Hegemony, 31 *International Organization*, 385, 394–400 (1977).
- Robert W. Cox, Labor and Transnational Relations, 25 *International Organization*, 554 (1971).

- Sebastian Dullien, *A European Unemployment Benefit Scheme. How to Provide for More Stability in the Euro Zone*, 2014.
- Silvana Sciarra, *The Evolution of Collective Bargaining. Observations on a Comparison in the Countries of the European Union*, 29 *Comparative Labor Law & Policy Journal*, 1 (2007).
- Silvana Sciarra, *Uno sguardo oltre la Fiat. Aspetti nazionali e transnazionali nella contrattazione collettiva della crisi*, *Rivista italiana di diritto del lavoro*, 2, 169 (2011).
- Steffen Lehndorff, *Before the Crisis, in the Crisis, and Beyond: The Upheaval of Collective Bargaining in Germany*, in 17 *Transfer: European Review of Labour and Research*, 341 (2011).
- Stephen B. Moldof, *Union Responses to the Challenges of an Increasingly Globalized Economy*, 5 *Richmond Journal of Global Law and Business*, 119 (2005).
- Steven Hecker, *US Unions, Trade and International Solidarity: Emerging Issues and Tactics*, 14 *Economics & Industrial Democracy*, 3, 355, 362 (1993).
- Tiziano Treu, *Globalizzazione e diritti umani. Le clausole sociali dei trattati commerciali e negli scambi internazionali fra imprese*, in WPCSDLE "Massimo D'Antona".INT - 133/2017 (2017).
- Tiziano Treu, *Le istituzioni del lavoro nell'Europa della crisi*, *Giornale di diritto del lavoro e di relazioni industriali*, 140, 597 (2013).
- Vera Glassner, Maarten Keune and Paul Marginson, *Collective bargaining in a time of crisis: developments in the private sector in Europe*, 17 *Transfer: European Review of Labour and Research*, 303 (2011).
- Vid Prisljan and Ruben Zandvliet, *Labor Provisions in International Investment Agreements: Prospects for Sustainable Development*, in *Yearbook on International Investment Law & Policy 2012–2013*, Andrea K. Bjorklund (ed.), 2014.
- Wanjuru Njoya, *Property in Work*, 2007.
- William B. Gould IV, *Labor Law Beyond U.S. Borders: Does What Happens Abroad Stay Abroad?*, 21 *Stanford Law & Policy Review* (2010).
- Zoe Adams and Simon Deakin, *Institutional Solutions to Precariousness and Inequality in Labour Market*, 52 *British Journal of Industrial Relations*, 779 (2014).