THE QUEST FOR A NEW GENERATION OF LABOR CHAPTER IN THE TTIP

by Michele Faioli

The TTIP (Transatlantic Trade and Investment Partnership Agreement) may be key for the EU-USA forthcoming vision of labor and industrial relations. The TTIP may be turned into an opportunity to ground a new generation of labor chapters in investment/partnership treaties. In line with preliminary outputs, a practical proposal is introduced. This essay is also aimed at analyzing, under a critical legal approach, why, to what extent and how the TTIP labor chapter may be set up. A special focus on the TTIP and ISDS in labor items is included.

Il saggio presenta un modello di nuova generazione di capitolo sociale da considerare ai fini della negoziazione del TTIP. In tale prospettiva sono posti in evidenza i problemi connessi alla compatibilità tra clausola ISDS e sistema legale europeo, così come definito dal Trattato di Lisbona. Vengono altresì analizzati gli aspetti che riguardano il documento declassificato sull'autorizzazione a negoziare il TTIP, con l'intento di far emergere le potenzialità di tale documento con riguardo alle tutele del diritto del lavoro e della previdenza sociale.

1. The TTIP and its (possible) labor chapter

In order to assess whether the TTIP could act as an impediment to the achievement of sustainable development in the context of labor standards in the EU/USA, the approach should be related to the perspective of "unsustainable development". Unsustainable development, in this research, means that economic objectives trump all others, or growth takes place at the expense of a country's social or natural capital, limiting the ability of future generations to meet their needs. The main questions on unsustainable development are: (*i*) whether limits should be placed on the ability of States, in the EU and the USA, to influence investment inflows through the deregulation of labor, and whether/to what extent/how this should be done by integrating labor standards in the TTIP; and (*ii*) investment-labor linkage in the TTIP may lead to more effective enforcement of the already existing ILO standards in the EU and the USA, knowing that labor provisions are actionable if this is in the interest of the host State, and when the derogation is related to investment or trade. The most significant legal point in this argumentation is the debatable vision according to which a treaty, «being an international agreement, cannot, as such, create direct rights and obligations for private individuals» (Jurisdiction of the Courts of Danzig, Advisory Opinion of 3 March 1928, PCIJ, 1928, Series B, No. 15, advisory opinion, March

Michele Faioli, University of Rome – Tor Vergata Law School, SERI – Scuola Europea di Relazioni Industriali, www.seri-fgb.eu.

3, 1928, p. 17). On the other hand, there is agreement that investors have at the least been vested with the right to enforce the provisions of the investment treaty. This is an argumentation confirmed by the International Court of Justice already in its judgment in Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain), ICJ Reports 1970, second phase, judgment (February 5, 1970).

However, in order to better specify this legal point, I need to focus on possible regulatory distortions in the TTIP impact on the EU/USA labor schemes. Regulatory distortions can be analyzed within an *ex post* vision (i.e. evaluating the derogations from labor standards once mega-treaties are implemented and effective) and an *ex ante* vision (i.e. delineating legal policies proposals to avoid the derogations from labor standards). The latter is actually the most important vision at this stage of negotiations in the TTIP case.

In general, within the frames of mega-treaties, 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. In other words, there is 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 capital. This is one of the most complex legal argumentation it can be analyzed in respect of the TTIP: States, in our case the respective EU and the USA domestic labor systems, may lower standards to attract the related TTIP investments. As a scholar, by means of an *ex post* argumentation, I should evaluate individual case studies, without investigating whether derogations are systematic and/or reciprocal. This means that I can not use methods aimed at measuring regression in foreign investments inflows with indicators on labor standards because this is a typical *ex post* labor economics approach (i.e. the well-known paradigm of the race to the bottom). The main normative questions, within an *ex post* vision, are related to regulatory distortions and jurisdictional competition. In essence, this implies that the possible regulatory distortions of the TTIP and of mega-treaties are an inter-state problem. If no regulatory distortions materialize, someone can argue that the legal rationale for a labor chapter in mega-treaties diminishes. Therefore, *ex post* investigations should be carried out case by case in respect of the States that, by means of their already existing low labor standards, 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. A regulatory distortion can be categorized *ex post* as a distortion if it deteriorates labor standards, because the law is subject to modifications in line with such aim, 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).

Unfortunately, if for labor economics analysis the demarcation line between "market-seeking" foreign investments[1], which are responsive to market size and per capita GDP,

[1] For Dunning, Kogut and Blomstrom (1991), market-seeking investment occurs when firms internationalize to a particular country because they want to supply this particular market with goods or services to grow in that market, and to be competitive within the industry as well as to provide opportunities to achieve economies of scale in production. Market-seeking investment becomes preferable either if there are substantial barriers to exporting from the home country or if local markets offer potential foreign investors significant opportunities to achieve scope and production economies of scale as well as a chance to grow. The most important reason for market-seeking investment is the attitude of host governments towards such investment and their encouragements. Firms engage in market-seeking investment in foreign markets through lowering costs. One of the most important reasons for companies to establish a subsidiary in a foreign market is to reduce transportation costs in that particular market. According to the results

and "resource-seeking" foreign investments[2], which are more shaped by low labor costs, appears to be clear, in the current legal studies, this distinction and the related labor effects are still not clear.

For legal studies such demarcation line would be related to what I call "*ex post*" analysis on the effects of mega-treaties. This would allow labor law scholars to understand which foreign investments, in mega-treaties, are aimed at getting cheap labor resources, and the portion/quantity of aggregate global investments that are aimed at such result. In other words, in my view, the labor law approach should not overestimate the effects of labor standards on some foreign investments in mega-treaties. The labor law approach, instead, should evaluate case by case, and in an *ex post* vision, the effects of labor standards on inward investments and the effects of competition for inward investments on labor standards (see also Prislan, Zandvliet, 2014). Such evaluation of the effects of labor standards could be easily carried out when the economies are not peer (developing country vs developed country). The evaluation can be not easy when we face with peer economies (developed country vs developed country). The TTIP is within the most difficult frame because it will correlate two peer macro-economies, with differences at the single domestic/national level and quasi-similarity in *de facto* implementation of labor standards at continental-transnational level.

A case-by-case analysis, with an *ex post* vision, was already carried out in relation to the EU multinational investing in the USA (Compa, 2010). These studies outline that there are situations in which corporations try to benefit from lower labor conditions in certain domestic labor systems. In other cases, a case-by-case analysis may show that corporations intend to adopt forms of labor protection that the State refrains from adopting because it fears that, by doing so, it might violate investment agreements or implement a new regime implying more labor costs.

Let's now focus on the most significant *ex ante* vision, which is also a vision related to the analysis of those provisions aimed at preserving a certain regulatory autonomy in labor matters, either directly or indirectly, of the contracting parties. This means that mega-treaties can not prevent States from establishing their own levels of domestic labor rights. As a consequence, it can be noticed that the *ex ante* vision of the regulatory distortions phenomena is strictly related to the capacity of the mega-treaty, i.e. in our case the TTIP, to vest foreign investors with direct rights and to subject them to obligations. The TTIP, in such a view, should be endowed with a sort of extraterritorial regulatory powers. The effect would be the creation of obligations under the international law to ensure that corporations comply with labor standards[3]. While there may still be disagreement as to whether the

of the United Nations Conference on Trade and Development (UNCTAD) Global Survey, market-seeking investment mainly concentrates on industries such as chemicals, food, finance, transport, and communication largely because of local or neighboring multinational companies and their specializations.

[2] Resource-seeking investment mainly focuses on rich raw materials, low-cost unskilled and skilled labor, technological assets, and physical infrastructure. For Dunning, Kogut and Blomstrom (1991), resource-seeking investment may provide training and enhance skills, create opportunities for employment, and reduce underemployment of labor and resources. On the other hand, resource-seeking investment done by foreign multinational companies can be exploitative if monopolization happens in factor markets, and can also be damaging if long-term contracts are combined with monopolization activities of these companies. See also UNCTAD, Foreign Direct Investment Report 2006: FDI From Developing and Transition Economies: Implications for Development (United Nations, 2006).

[3] 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 Human Rights Committee under the International Covenant on Civil and Political Rights (ICCPR) in its recommendations.

substantive rights in mega-treaties are owed to the contracting party itself or directly to its nationals (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), paras. 161–180; and Corn Products International, Inc. v. United Mexican States, ICSID Case No. ARB (AF)/04/01, award (January 15, 2008), paras. 161-179), there is agreement that the investors have at the least been vested with the right to enforce the provisions of the investment treaty – a point that has been acknowledged by the International Court of Justice already in its judgment in Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain), ICJ Reports 1970, second phase, judgment (February 5, 1970), para. 90.

In the TTIP, given the complexity in the respective legal frames – on one side, the EU regulations, and on the other, the USA system – the *ex ante* way to respond to different problems can be found in observing the possible regulations of the TTIP Labor Chapter. This means that the TTIP could be based on: (*i*) provisions responding to potential derogations in the level of labor rights (this type of clause remain concerned with the adoption, maintenance and improvement of labor standards by the contracting parties themselves; emphasis is put on the potential (non-)*regress* in the level of labor standards; the method is imposing new obligations upon the contracting parties); or, in alternative, (*ii*) provisions aimed at the preservation of the parties' policy space in labor matters (this type of clause remain concerned with the adoption, maintenance and improvement of labor standards by the contracting parties themselves; emphasis is put on the potential *progress* in the level of labor standards; the method is regulating how other obligations under the TTIP are interpreted and applied; eventually, (*iii*) provisions focusing on the observance of labor standards by foreign investors (the observance of such standards by foreign investors as the beneficiaries of protection ensured by the TTIP). In other words, in this line, we can wonder if and to what extent the TTIP can create direct rights for any private persons, such as workers and/or unions in the host State receiving the investment and investors, and/or the reciprocity of the investments, dealing with both sides of the TTIP. Consequentially this may determine that the TTIP provides for any new labor rights additional to those that the parties may have already granted under existing labor conventions to which they are party. The main idea is that for a new generation of labor chapters in mega-treaties – and the TTIP labor chapter could be the paradigm of such new generation – it would be acceptable to avoid referring to specific labor conventions, or merely "reaffirm" or "recognize" their obligations descending from the ILO system. In the TTIP case, we need to go behind ILO goals and add protections on top of the ILO system. The problem related to such vision in the TTIP, under the legal viewpoint, is how and to what extent it is possible to add rights/obligations on top of the ILO current system, already implemented and effectively enforceable in the EU and the USA.

This investigation, as it can be appreciated, is mainly aimed at developing such *ex ante* vision.

2. Labor items in the TTIP mandate, as declassified document

Observing the 2014 Declassified Document related to the Directives for the negotiation on the Transatlantic Trade and Investment Partnership between the EU and the USA (hereinafter the "2014 Declassified Document" or the "2014 DD" of October 9, 2014), I noted that the TTIP negotiations started with a certain social dimension as a default feature, avoiding the complications of labor abuses that are usually negotiated when developing countries are involved. The 2014 Declassified Document fixed many areas of labor law, labor rights, labor standards, and social protections. Negotiators can not address them on the premise that more trade automatically advances labor standards. They can support an upward-trending social dynamic, by reinforcing the following items already inserted within the 2014 Declassified Document:

(*i*) the TTIP will be based on common principles: *inter alia*, human rights, fundamental freedoms, sustainable development agenda, decent work agenda as well as compliance with public policy objectives, as safety, labor and environment items (please see the Preamble, para. 6 in the 2014 Declassified Document). This may mean that labor rights are treated as human rights;

(*ii*) the TTIP will be based on the sustainable development agenda, ensuring and facilitating labor agreements/standards consistent with the EU acquis and Member States' labor legislations (please see the Objectives section, para. 8 in the 2014 Declassified Document). This is to avoid that FDI can in some way lower labor standards;

(*iii*) the TTIP should include anti-dumping clauses and countervailing subsides – WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 and the WTO Agreement on Subsides and Countervailing Measures (please see the Market Access section, para. 13, 34, 36 in the 2014 Declassified Document). This can easily lead to reconsider labor standards un-fulfillment also within the dynamic of dumping clauses or unlawful forms of subsides;

(*iv*) the TTIP should be based on the not less favorable treatment rule (please see the Trade in Services and Establishment section, para. 16 and 24 in the 2014 Declassified Document). This could be applied also to the labor and industrial relations regime. In particular, public procurement should in some way fix social clauses that ensure a not less favorable treatment for the workers involved;

(*v*) the TTIP will define the approaches to rules of origin (please see the Trade in Goods section, para. 11 and 18 in the 2014 Declassified Document). This should be regulated also in relation to exceptions for labor regime, posted workers and migrant workers protections within the supply of services;

(*vi*) the TTIP should fix the regulatory compatibility for goods and services (please see the Regulatory Issues section, para. 25 in the 2014 Declassified Document). It is already stated that labor standards are considered to be hurdles to any forms of harmonization;

(*vii*) the TTIP will include provisions to promote adherence to and effective implementation of internationally agreed standards and agreements in the labor domain (please see the Trade and Sustainable Development section, para. 31 and 32-33 in the 2014 Declassified Document). This is the most critical point given the current frame;

(*viii*) the TTIP will be referred to the 1998 ILO Declaration, stress the enforcement of the domestic labor laws, recognize the corporate social responsibility tools, and introduce monitoring mechanisms, also with the involvement of the civil society, and the Sustainable Impact Assessment;

(*ix*) the TTIP should provide for an effective investor-to-state dispute settlement (ISDS) mechanism (please see Investment Protections section, para. 22 and 23). The problem is if and/or to what extent the ISDS should interfere with governmental measures dealing with labor.

But how can the USA and the EU create a model that combines economic dynamism and social justice? Is a mindful labor chapter possible? How can we prevent the lowering of labor standards, but also how to preserve States' regulatory autonomy in labor matters? The TTIP can be the right situation to create a new model of labor chapter. It should stress that commitment to a social dimension in USA-EU trade will inspire public support for global trade and investment on a sustainable human rights basis.

The USA and the EU need to take the lead in promoting high-road labor policies as a key component of their trade.

3. The clash. EU legal system vs. ISDS mechanisms in the TTIP

The Investor-State Dispute Settlement (ISDS) is, under a legal viewpoint, 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 the rules of mega-treaties on trade, between corporations and States, with possible prevalence of corporations' interests on States'/citizens' interests. Such prevalence is decided by means of arbitrations, and pecuniary sanction may be applied.

The possible implementation of ISDS provisions in the TTIP has become also a legal labor issue. This is my focus here. The problem is mainly related to the resistance in terms of legal compatibility of the ISDS with EU labor law and domestic labor systems.

In general, the critical approach defines the ISDS mechanism as a legal tool that «elevates individual foreign corporations to equal status with a sovereign nation's government. It empowers such investors to skirt domestic laws and courts and privately enforce the terms of a public treaty by directly challenging public interest policies or government actions before foreign tribunals that are authorized to order government compensation be paid to investors for violations of their new rights» (Wallach, 2014, p. 1 ff.)[4]. Political commentators have argued that this adjudication mechanism is unnecessary in the TTIP as US investors can obtain fair treatment in the EU courts and vice-versa. However, the inclusion of the ISDS seems to be justified in the TTIP in order to offer precedential value with a view to forthcoming mega-treaties[5]. In the recent past, the USA, in negotiating its free trade agreement (FTA) with Australia (AUSFTA), did not insist on including any direct ISDS mechanism. The reason was linked to the fact that the USA and the Australian systems have been considered robust, well-developed legal systems for resolving disputes between foreign investors and the government (see documents at http://www.dfat.gov.au/).

The ICSID Convention (Convention on the Settlement of Investment Disputes between States and Nationals of Other States), which entered into force in 1966, envisages arbitration between subnational units (States, provinces, etc.) and foreign investors. In

[4] According to Wallach (2014, p. 1 ff.), «The inclusion of the regime in TTIP would mean that one class of interests – foreign investors and corporations – would be empowered with a new means to attack domestic policies otherwise deemed permissible by domestic courts and established through EU and US. democratic processes. Indeed, a key feature of the regime is that foreign investors are given greater substantive and procedural rights than domestic law provides domestic investors and firms. Large firms exploit this by "forum-shopping" – setting up subsidiaries that allow attacks on numerous countries' laws».

[5] The standard reference is China. Excluding ISDS from TTIP would make it more difficult to get a comprehensive agreement negotiated with China. See the large investment treaty claim that in 2012, Ping An, a major Chinese insurer, filed against Belgium, in http://www.ft.com/intl/cms/s/0/87437290-0620-11e2-bd29-00144feabdc0.html; in addition, please note that recently in the China Australia Free Trade Agreement (CHAFTA), concluded in November 2014, investment arbitration was included.

particular, Article 25, para. 1, permits a contracting State to designate its subdivisions that may consent to arbitration by the International Centre for Settlement of Investment Disputes (ICSID) with a national of another contracting State. Article 25, para. 3 requires the approval of the contracting State on a case-by-case basis, unless this condition is waived. Because subnational units have extensive regulatory powers that can even be exclusive and constitutionally entrenched, as in the case of federated entities, the potential for investment disputes is not insignificant[6].

In the EU system, the matter is dealt with by Regulation (EU) No. 912/2014 of the European Parliament and of the Council of 23 July 2014 establishing a framework for managing financial responsibility linked to investor-to-state dispute settlement tribunals established by international agreements to which the European Union is party. In the light of the above, I will refer to financial responsibility as 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». 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 – Treaty on the Functioning of the European Union, the Union has exclusive competence for the common commercial policy and may be party to international agreements covering provisions on foreign direct investment. European mega-treaties may include an ISDS mechanism. This determines that an investor from a third country may bring a claim against a State in which it has made an investment. ISDS can result in monetary compensation awards. On the top, significant costs for arbitration will occur. The 2014 European rules set that international responsibility for treatment subject to dispute settlement follows the division of competence between the EU and Member States. It is furthermore stated that EU mega-treaties should guarantee foreign investors the same high level of protection as EU law and the general principles common to the laws of Member States grant to investors from within the Union, but not a higher level of protection. Financial responsibility will be divided up, as a matter of EU law, between the Union itself and the Member State responsible for the treatment that can be applied on the basis of the criteria established by this Regulation. EU mega-treaties should ensure that the Union's legislative powers and right to regulate are respected and safeguarded.

It is clear that mega-treaties have brought about a significant impact of investors' rights on the functioning of the EU Internal Market, and this can be demonstrated by case law decided by the Court of Justice of the European Union ("CJEU") rather than by arbitral tribunals (Kleinheisterkamp, 2013)[7]. Recent studies have showed that such case

[6] Experts underline that «Arbitration between subnational units and foreign investors raises policy issues going to the heart of the international investment regime. On the one hand, it could be seen as a step too far in the fragmentation of international investment law. Contracting states would lose control of the settlement of investment disputes, and of the application of their treaties and customary international law. On the other hand, it would seem to be consistent with ICSID's overarching goal of depoliticizing investment disputes. It would put the foreign investor and the author of the impugned measure face-to-face. Damages and arbitration costs could be borne, at least in part, by the losing subnational unit. It would ensure greater accountability for subnational units regarding their breach of international law, which in turn could entail better implementation of investment treaties» (Côté, 2015, p. 2).

[7] CJEU Case C-264/09 European Commission v. Slovak Republic, ATEL, 2011, stated that there is an international obligation assumed before Slovakia became part of the EU and that Slovakia can not 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.

law focused on the real problem, going beyond the allocation of financial responsibility. Regulation (EU) No. 912/2014 sets out the legal grounds for this liability. This is because Member States are facing with important arbitrations[8] and in the EU there is a high degree of legal uncertainty resulting from the vagueness of investors' protection standards. The consequences of this reasoning are that, «if the policy choice of the European Union is to guarantee European investors the highest possible level of legal protection, a consequent policy choice to be made is whether this economic benefit granted to European investors should be cross-subsidized by exposing European taxpayers to non-EU investors' claims which are not currently recognized by the liability rules of the Union and Member States. If the EU wants to set a general framework that depends on the content to be negotiated in future bilateral investment agreements, EU institutions have to meet the challenge of setting general parameters that reconcile the goals of maximizing the protection of its own investors abroad with the need to minimize the exposure of its own taxpayers to claims by foreign investors» (Kleinheisterkamp, 2013, p. 11). Corporations/economic stakeholders must rely on the mechanisms provided for by EU law for protecting private interests and for balancing private and public interests. But if this regime were applied to EU investors in the EU, it could no longer apply to foreign investors in the EU in the case that EU mega-treaties do not specify and select ISDS provisions. In 2013 the European Parliament set out a negative cap on forthcoming mega-treaties, expressing the principle according to which mega-treaties shall (*i*) not provide more protection to foreign investors than European investors are granted by EU law, and (*ii*) include the rules on liability as elaborated by the CJEU[9]. The latter is also defined the no greater rights for foreign investors in the EU principle. This is – as it can be easily understood – a typical highly unilateralist approach. The clash on this topic in the TTIP bargaining is more than likely on this view[10].

In the light of the above, should the TTIP refer to more detailed rules on the exact scope and conditions of the protection granted to investors, excluding labor and industrial relations items? Can the TTIP fix the ISDS mechanism which is neutral in respect

[8] For instance, see German case (Vattenfall AB and others v. Federal Republic of Germany, ICSID Case ARB/12/12, registered 31 May 2012) and Belgian case (Ping An Life Insurance Company of China, Limited and Ping An Insurance (Group) Company of China, Limited v. Kingdom of Belgium, ICSID Case ARB/12/29, registered 19 September 2012).

[9] 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 available 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 recognised 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. 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».

[10] As to the ISDS of the Comprehensive Economic and Trade Agreement (CETA), it should be noted that the Canadian/EU mega-treaty sets out the right to regulate by means of: (*i*) better defining and narrowing key concepts like "fair and equitable treatment" and "indirect expropriation", aimed at narrowing the scope for abuse; (*ii*) the ultimate control over interpretation of the rules that governments – not arbitrators – have (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; (*v*) rules on the mandatory dropping cases in national courts if investors intend to pursue the ISDS.

of labor items? Or, in some cases, can the ISDS support the application of higher labor protections?

Let's focus again on labor provisions and ISDS. Such provisions determine different problems, when it comes to their effective applicability. This is a legal issue because, within the same legal frame of a mega-treaty, some parties are able/empowered to enforce provisions directly, while others are not. There is no parity in positions with worth legal interests in mega-treaties. In particular, when it comes to investment protection guarantees, mega-treaties confer a right to enforce them directly upon investors. On the other hand, when it comes to labor obligations, they do not grant effective powers to workers and/or trade unions. It should be noted that in mega-treaties there is a legal substantive difference between ISDS-related procedures and the procedures used in labor disputes. If we analyze the North American Agreement on Labor Cooperation (NAALC) and the labor side agreements concluded by the EU and Canada, they often contain provisions fostering private action in the enforcement of labor rights. Such provisions are aimed at contributing to the effectiveness of domestic labor law enforcement and at ensuring that persons with a legally recognized interest have appropriate access to domestic tribunals for the enforcement of the party's labor laws. In other cases, on the other hand, compliance with the parties' treaty obligations is merely related to submitting communications on matters related to labor chapters. Such communications are not treaty-based procedures, analogous to ISDS. Such communications filed in front of a National Contact Point and subject to domestic procedures. Consultations may be set up.

But these are not the cases I am studying on the ISDS. I am focusing instead on the cases (not so far from the reality) that foreign investors may apply under the ISDS regime to challenge labor law introduced by host States for the specific purpose of improving labor rights. In other words, given the competition at local level, foreign investors are interested that the host State does not introduce labor standards that could be considered as excessive, with more burdensome obligations and costs. This is not the case regarding the UPS v. Canada case[11]. In that case, the foreign investor asked for the compliance with international core labor rights in an investor-state arbitration. The arbitration failed because the tribunal determined that those parts of the claims which challenged anti-competitive choices, on the basis of Article 1105 of NAFTA, did not fall under the scope of its jurisdiction, and no legal grounds were found for the claim. No legal grounds means that the foreign investor was not deemed to be "in like circumstances" with a domestic one.

The problem, thus, is how the foreign investor can demonstrate that the domestic labor regime, by creating disparities in applying labor rights to domestic entities and to foreign investors without reason, may violate the national treatment standard. That is an obligation envisaged in NAFTA and generally in mega-treaties. In my view, this is key to having a preliminary impact on investment tribunals: if tribunals begin to consider waivers or derogations from domestic labor regimes as part of the scope of dispute settlement provisions under mega-treaties, because of the infringements on the competition regime, ISDS mechanisms may commence to be deemed also effective legal instruments to force the application of labor rules. But this could happen only whether the foreign investor asked for the compliance with the higher international core standards. Above we have already outlined the problem concerning the vague formulas of decency and fairness and the ILO

[11] United Parcel Service of America Inc. v. Government of Canada, Investor's Memorial, merits (March 23, 2005), para. 340-346, 649-671.

conventions implementation in the USA (Alston, 2004, 2005; Langille, 2005). This does not happen often and is complex to build up within an arbitral jurisdiction that is not set up with the aim of creating a link between trade and labor issues.

In my view, it can happen that investors may ask for compliance with international labor standards, as an incidental matter in an ISDS/trade-related dispute. It is quite unlikely that the State raises labor issues as an autonomous head of claim in the framework of the ISDS. Therefore, the cases examined here below are more interesting for the aims of my research which is related to the ISDS and labor items. The cases I am looking for should regard arbitrations commenced by foreign investors against host States in response to significant changes in domestic labor law aimed at improving work conditions. This would be the most relevant legal structure that could occur in the TTIP (e.g. a USA corporation, on the basis of ISDS mechanisms, within a possible TTIP frame/section, will challenge Italy or Hungary for having implemented laws aimed at improving work conditions, and with the consequence of increasing labor costs; this could happen also vice-versa, with an EU corporation operating in the USA). The arbitration would be required to decide whether or not such labor reform is indirectly violating the TTIP section, given the increase of labor cost in that sector or whatever would be supposed not to be in line with the basic work conditions that were fixed at the TTIP bargaining stage, having an impact on the preliminary TTIP sector conditions. Thus, foreign investors, in those cases, assume that breaches of specific sections in mega-treaties occurred because of labor protection improvements at domestic level.

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. In my view, those cases are quite limited in precedential value and are not useful for my examination which is related to the possible use of the ISDS in the TTIP. This is because the investment treaties such cases are related to can not be considered properly applicable to the theoretical scheme I am 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 mining sector, claimed that, given the implementation of such reform, its labor costs in the Kyrgyz Republic would significantly increase (approximately USD 6 million per year) and at the bargaining stage of the mega-treaty, 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), we should note that Veolia is a French multinational corporation that in 2012, using the ISDS, filed a petition against Egypt, asking for damage compensation amounting to approximately USD 110 million. The ISDS is related to the France-Egypt Bilateral Investment Treaty (BIT). The main violation that Veolia claimed concerned the fact that Egypt wrongfully terminated a 15-year contract for waste management in Alexandria. One of the secondary claims was related to labor items. In particular, Veolia argued that Egyptian labor laws aimed at increasing minimum wages indirectly impacted the company's investments, thus causing damages. Veolia considers this as a breach of the contract and of the French-Egypt BIT. The case is pending.

In the cases mentioned above, the legal problem is not referred to the ISDS. Better, it is not directly referred to the ISDS. The legal problem is the stabilization clause that mega-treaties contain (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 investments). The ISDS is, at least in these cases, a mere procedural instrument that the parties used to litigate on the stabilization clause effects. If it is true that, by means of the ISDS, the arbitration may decide also on matters indirectly related to labor items, the procedure can not be deemed to be the problem (i.e. the ISDS mechanism), but the legal grounds the litigations is arising from. In other words, if the ISDS concerns the outrageous intention of foreign investors to use arbitration proceedings against States for labor items, mega-treaties provide the legal ground to allow them to go further. This could mean that, under a critical viewpoint, we should more actively act on the legal basis that defines the powers, rights, obligations, and interests of the parties. But unfortunately the evidence is too scanty to pull out principles and ideas on how and to what extent mega-treaties could prevent States from adopting higher labor rights standards[12].

Assuming that such theory is correct, I move my attention on what, should any ISDS implementation occur in the TTIP, can be considered a possible legal ground to support any State's initiatives in adopting higher labor rights standards also under the TTIP and without successful chances in litigations against States for violations under the TTIP.

The key point is that the TTIP should fix a set of rules on how to limit the arbiter's discretionary power to ponder investors' reasonable expectations, on the one hand, and the host State's labor regulatory interests, on the other. This is, in my view, the core of a new generation of labor chapters of mega-treaties. The TTIP, in relation to the implementation of higher labor protection, should find a way to apply the case law principle according to which investors can not legitimately expect that the legal regime "which they face at the time of their first investment will not be substantially altered with the passage of time and the evolution of events" (see the case law Paushok v. Mongolia mentioned below). The reasonable expectations are no longer enforceable if the TTIP states the labor matters are under the States' ongoing sovereignty.

In order to achieve the main point of this section, we can now underline that in general terms mega-treaties do not prevent the adoption of higher labor standards, but domestic regulation, adopted by the host State, could be considered as an interference with foreign investments. The arbitration should define whether that is true, condemning the State to pay compensation. The arbitration is requested to examine the State's interferences that can be considered "undue", and thus to verify whether domestic labor law is opportunistic or not justified. There is an undue interference in case the corporation alleges and proves that the fair and equitable treatment standards have been violated by the State that implements a labor law reform. A violation of the general obligation to provide fair and equitable treatment to investors may occur in such a case[13]. Consequentially, the arbitration has to evaluate the violation of obligations under a mega-treaty in relation to fair and equitable treatment as well as full protection and security of investments. This should

[12] For the sake of completeness, we could also refer to two further and not marginal 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); Piero Foresti, Laurade Carli & Others v. Republic of South Africa, ICSID Case No. ARB(AF)/07/01, award (August 4, 2012).

[13] In Caratube International Oil Company LLP v. The Republic of Kazakhstan, Claimant's Memorial (May 14, 2009), Caratube filed a petition against Kazakhstan, assuming that an oppressive campaign of labor investigations was commenced. This was considered by Caratube a violation of fair and equitable treatment under the US-Kazakhstan BIT. The petition was rejected on jurisdictional grounds.

also be compared with the obligation not to impair the investment by unreasonable or discriminatory measures.

We also know that, according to the prevailing case law, such a balancing test between the fair and equitable treatment obligation and the domestic law reforms could be not interpreted as a total suspension of the State's intention to implement new regulations. This may arise only from a stabilization clause specifically granted to foreign investors[14]. This is a typical analysis on what we call "bona fide" in the fulfillment of obligations. However – this is the main point – the arbitration can not use its discretion to evaluate what mega-treaties have defined as labor matters belonging to the States' sovereignty and/or related to international labor instruments. This principle is established under international law: a State retains sovereign powers to regulate matters other than those not regulated by the treaty in question (see the recent ICJ's judgment Costa Rica v. Nicaragua, ICJ Rep. 213, 2009). In addition, given that Article 21(3) of UNCITRAL Arbitration Rules, 2012, states that "the respondent may make a counterclaim […] provided that the arbitral tribunal has jurisdiction over it" and usually the foreign investor is entitled to the right of recourse to the ISDS under mega-treaties (not the State), a State's counterclaim, once the investor has already initiated arbitration proceedings, is unlikely to be filed, even though the matters are related to labor violations. It would be, in any case, difficult to prove the relation between counterclaims and investor's own conduct because mega-treaties do not subject foreign investors to obligations.

As a pragmatic result of the reasoning presented above, we should foster the idea according to which the TTIP should, on the one hand, not contain any stabilization clauses and, on the other, specifically regulate labor matters in order to avoid that arbitration, under ISDS mechanisms, could ponder and consider illegal labor instruments adopted at the domestic level. In my proposal, explained below, the specification of labor matters could be carried out by means of the international frame sectoral collective bargaining. Such international frame agreement would be empowered by the TTIP to regulate what it can be added on top of the ILO/UN formulas.

This will not allow the use of the ISDS mechanism. However, also in case of ISDS application, the ISDS, affecting labor matters, should be related solely to non-regress clauses. Counterclaims, arising from States, should be allowed for labor matters, although connections to key matters of petition are not sure.

4. For modern legality in the globalizing labor regulation

The TTIP, in this viewpoint, can be more than mere black letter laws; it could be a form of new culture and, at the same time, a construction and deployment of a new legal cultural methodology. Setting a human rights foundation for treating labor issues and taking up the problem of distinguishing between labor rights, which are fundamental rights, and standards, which vary with policy choices, examining the USA and the EU approaches to labor rights, the TTIP could focus on new labor and industrial relations systems to be developed, the way of moderating the possible race to the bottom affecting labor and industrial relations in the TTIP context, as well as on guidelines as a viable way for unions and employers' organizations to pursue labor rights and improve working conditions.

[14] See Parkerings-Compagniet AS v. Republic of Lithuania, ICSID Case No. ARB/05/8, award (September 11, 2007).

In the same line, but at second stage, considering that transnational collective bargaining is the solution for many trade union internationalists and that in this frame workers may pool their strengths across borders, matching their level of organization to the scale of sectors/industries and multinational company to take wages out of competition, the TTIP could focus on the way to moderate the TTIP possible impact on wages/conditions of workers. The TTIP can be used as an instrument for the promotion of investment and/or sustainable development and/or labor. The TTIP should be a preliminary stone to set disciplines to promote foreign investments and strengthen investors' compliance with labor, going beyond the legal complexity and including binding obligations on private parties in an international instrument. This could be done by means of international frame agreements and rules binding firms' controlled assets in a number of jurisdictions under a common umbrella.

There are several ways to reach these aims. Two proposals, not in contradiction with one another, are here placed for examination.

The first proposal is the following. Pursuant the most recent studies concerning the TTIP and its labor chapter (Compa, 2014, p. 19), the EU and the US «should bring the social dimension of a trade agreement to new, higher standards of both substance and process that go beyond their latest iterations».

My proposal, the second one, also comparable and in line with some items of the previous one, is the following. The proposal is aimed at drafting the possible structure of the TTIP labor chapter and will be better explained in a forthcoming essay. This proposal is hereinafter presented to promote debate and more considered steps to remove social problems.

This proposal is based on a broad analysis of the theories of investment-labor linkage and the labor rights potential impact on investment law of labor rights within the concept of sustainable development. This concept is of increasing importance also for the international trade regulation. For this reason, I analyzed the rationale for including labor provisions into the TTIP. This is aimed at reducing the potential of normative conflicts between domestic labor laws and the TTIP regimes. This will also facilitate overcoming inconsistencies between different systems at the level of the same instrument. It increases the potential for regulating investment and labor rights in a comprehensive and integrated manner. In that way the prospects of the TTIP may become an instrument for the achievement of sustainable development.

1. The FIRST BEST

– The TTIP 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

– The TTIP 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).

– The TTIP should empower international framework sectoral/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[15],

[15] Regarding the dispute at the ILO between employers' and employees' representatives regarding the unexpected

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.)

– Such TTIP-related international framework sectoral agreements could be considered a new form of "nodal governance", given that they refer to temporary networks or alliances at transnational level.

– The TTIP international sectoral agreements will be empowered by a special extraterritorial effect, i.e. the workplace is not limited to the space of one nation and the TTIP international sectoral agreements will operate in any country that is a signatory of the TTIP.

– The TTIP should state enforceability mechanisms of the mentioned international frame sectoral agreements (please see point 1 above) and the listed labor rights (material scope), beyond the domestic labor court. We are reasoning on the possible application of the Section 301 unfair trade practice petition under the USA Trade Act, or on an extension of the Section 301 mechanism to international frame sectoral agreements.

– The TTIP should define the foreign investments for purposes of liberalization along the lines of the OECD/IMF and allow for the definition of investor with the identification of ultimate beneficial ownership and control.

– The TTIP 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.

– The ISDS, affecting labor matters, should be related solely to clauses of non-regress. Counterclaims, arising from States, should be allowed for labor matters, although connections to key matters of petition are not sure.

– In any case no second chance to overrule the decisions of national courts will be offered to investors by means of ISDS schemes.

– The TTIP 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* vs *lex loci domicilii*) and the applicable social security regime.

– As a consequence, a new social security coordination regime for migrant workers, aimed at creating one and only one EU/USA regulation, should be negotiated within and/or related to the TTIP. The principle of aggregation of contributions should be fixed in relation to old age pension and for other comparable social security schemes. Contributions will be paid according to the *lex loci domicilii* (the place of origin) principle in case of secondment.

3. IN ANY CASE

– The TTIP should be made aware that the EU project to adopt a common European unemployment scheme (Dullien, 2014; Faioli, 2014) is key to coping with a mindful TTIP labor chapter. The EU should learn lessons from the common unemployment scheme in

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).

the USA, not only because such scheme provides significant stabilization to US 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 that would also represent the competition with the USA in the TTIP scenario.

References

ADAMS A., DEAKIN S. (2014), *Institutional Solutions to Precariousness and Inequality in Labour Market*, "British Journal of Industrial Relations", 52, p. 779.

ALES E. (2011), *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.

ALSTON P. (2004), *Core Labour Standards' and the Transformation of the International Labour Rights Regime*, "European Journal of International Law", 15, p. 457.

ID. (2005), *Facing Up to the Complexities of the ILO's Core Labour Standards Agenda*, "European Journal of International Law", 16, p. 467.

ARTHURS H. (2005a), *Corporate Codes of Conduct: Profit, Power and Law in the Global Economy*, in W. Cragg (ed.), *Ethics Codes, Corporations and the Challenges of Globalization*, Edward Elgar, Cheltenham (UK)-Northampton (MA).

ID. (2005b), *The Administrative State Goes to Market (and Cries 'Wee, Wee, Wee' All the Way Home)*, "University of Toronto Law Journal", 55, p. 797.

ID. (2007), *Corporate Self-Regulation: Political Economy, State Regulation and Reflexive Labor Law*, in B. Bercusson, C. Estlund (eds.), *Regulating Labor in the Wake of Globalization*, Hart Publishing, Oxford-Portland (OR) 2008.

ATLESON J. (2004), *The Voyage of the Neptune Jade. The Perils and Promises of Transnational Labor Solidarity*, "Buffalo Law Review", 52, p. 85.

AUTOR D. (2010), *The Polarization of the Job Opportunities in the US Labor Market: Implications for Employment and Earnings*, Center for American Progress and the Hamilton Project, April, in http://economics.mit.edu/files/5554.

BARNARD C. (2012), *The Financial Crisis and the Euro Plus Pact: A Labour Lawyer's Perspective*, "Industrial Law Journal", 41, p. 98.

BARTELS L. (2013), *Human Rights and Sustainable Development Obligations in the EU's Free Trade Agreements*, "Legal Issues of Economic Integration", 40, p. 297.

BELLACE J. (2011), *Achieving Social Justice: the Nexus between the ILO's Fundamental Rights and Decent Work*, "Employee Rights and Responsibilities Journal", 55, 1, p. 101.

BERCUSSON B. (1997), *Globalizing Labor Law: Transnational Private Regulation and Countervailing Actors in European Labor Law*, in G. Teubner (ed.), *Global Law without a State*, Dartmouth Publishing, Aldershot (UK)-Brookfield (VT).

BJORKLUND A. K. (ed.) (2013), *Yearbook on International Investment Law & Policy 2012–2013*, Oxford University Press, Oxford.

BLOOM N., DRACA M., VAN RENEEN J. (2011), *Trade Introduced Technical Change? The Impact of Chinese Imports on Innovation, Diffusion IT and Productivity*, NBER Working Paper No.16717, National Bureau of Economic Research.

BLOWFIELD M. (2002), *ETI: A Multi-Stakeholder Approach*, in R. Jenkins, R. Pearson, G. Seyfang (eds.), *Corporate Responsibility and Labor Rights: Codes of Conduct in the Global Economy*, Earthscan Publications, Sterling (VA).

BOGNANNO M. F., LU J. (2003), *NAFTA's Labor Side Agreement. Withering as an Effective Labor Law Enforcement and MNC Compliance Strategy?*, in W. N. Cooke (ed.), *Multinational Companies and Global Human Resource Strategies*, Quorum Books, Westport (CT).

BORGERS F. (1999), *Global Unionism – Beyond the Rhetoric: The CWA North Atlantic Alliance*, "Labor Studies Journal", 24, p. 107.

BRUUN N., LÖRCHER K., SCHÖMANN I. (2014), *The Economic and Financial Crisis and Collective Labour Law in Europe*, Hart Publishing, Oxford.

BUDD J. (2011), *The Thought of Work*, ILR Press, Ithaca (NY).

COMPA L. (1993), *Labor Rights and Labor Standards in International Trade*, "Law and Policy in International Business", 25, p. 165.

ID. (2002), *Pursuing International Labor Rights in US Courts*, "Industrial Relations", 57, p. 48.
ID. (2004), *Trade Unions, NGOs, and Corporate Codes of Conduct*, "Development in Practice", 14, p. 210.
ID. (2010), *A Strange Case: Violations of Workers' Freedom of Association in the United States by European Multinational Corporations*, Human Rights Watch Report.
ID. (2014a), *Labor Rights and Labor Standards*, in *Transatlantic Trade and Investment Negotiations: An American Perspective*, Transatlantic Stakeholder Forum Working Paper Series, Johns Hopkins University, Baltimore.
ID. (2014b), *The Wagner Model and International Freedom of Association Standards*, in D. Roux (ed.), *Autonomie Collective et Droit du Travail: Mélanges en l'Honneur du Professeur Pierre Verge*, Press de l'Universitè Laval, Editeur Depuis, Laval (Canada).
CÔTÉ C.-E. (2015), *Toward Arbitration between Subnational Units and Foreign Investors?*, "Columbia FDI Perspectives", 145, p. 1.
COUNTOURIS N., FREEDLAND M. (2013), *Resocialising Europe in a Time of Crisis*, Cambridge University Press, Cambridge.
COX R. W. (1971), *Labor and Transnational Relations*, "International organization", 25, p. 554.
ID. (1977), *Labor and Hegemony*, "International organization", 31, 385, p. 394.
DOH J. P., GUAY T. R. (2004), *Globalization and Corporate Social Responsibility. How Non-Governmental Organizations Influence Labor and Environmental Codes of Conduct*, "Management International Review", 44, p. 7.
DOHERTY M. (2013), *When You Ain't Got Nothin', You Got Nothin' to Lose... Union Recognition Laws, Voluntarism and the Anglo Model*, "Industrial Law Journal", 42, p. 369.
DOMBOIS R., HORNBERGER E., WINTER J. (2003), *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*, "International Journal of Comparative Labour Law and Industrial Relations", 19, p. 421.
DOOREY D. J. (2005), *Who Made That?: Influencing Foreign Labor Practices Through Reflexive Domestic Disclosure Regulation*, "Osgoode Hall Law Journal", 43, p. 353.
DULLIEN S. (2014), *A European Unemployment Benefit Scheme. How to Provide for More Stability in the Euro Zone*, Verlag Bertelsmann Stiftung, Gütersloh (Germany).
DUNNING J., KOGUT B., BLOMSTROM M. (1991), *Globalization of Firms and the Competitiveness of Nations*, Chartwell-Bratt Publishing & Training Ltd., Bromley (UK).
ESTLUND C. (2005), *Rebuilding the Law of the Workplace in an Era of Self-Regulation*, "Columbia Law Review", 105, 2, p. 319.
FAIOLI M. (2009a), *Decency at Work. Della tendenza del lavoro alla dignità*, with the preface of H. Arthurs, Nuova Cultura, Roma.
ID. (2009b), *Effettività territoriale del diritto del lavoro e tutela del lavoro all'estero*, "Massimario di giurisprudenza del lavoro", 8, 1.
ID. (2014), *Diritti al jobs compact europeo. Cosa può fare il diritto del lavoro a sostegno dell'Europa che cambia*, "www.nelmerito.it.".
FAIOLI M., HEGE A., DUFOUR C., HAIPETER T., LEHNDORFF S. (2014), *Contrattazione collettiva decentrata in Europa. Analisi comparata tra Francia, Germania e Italia*, "Economia & Lavoro", 48, 1, p. 7.
FRUNDT H. J. (1996), *Trade and Cross-Border Labor Strategies in the Americas*, "Economic and Industrial Democracy", 17, p. 387.
FUNG A., O'ROURKE D., SABEL C. (2001), *Realizing Labor Standards*, "Boston Review", February-March, in http://bostonreview.net/BR26.1/fung.html.
GLASSNER V., KEUNE M., MARGINSON P. (2011), *Collective Bargaining in a Time of Crisis: Developments in the Private Sector in Europe*, "Transfer: European Review of Labour and Research", 17, p. 303.
GORLA G. (1954), *Il contratto; problemi fondamentali trattati con il metodo comparativo e casistico*, Giuffrè, Milano.
GOULD IV W. B. (2010), *Labor Law Beyond US Borders: Does What Happens Abroad Stay Abroad?*, "Stanford Law & Policy Review", 21.
HAUSMANN R. (2003), *The End of the Emerging-Market Party*, in http://www.project-syndicate.org/.
HECKER S. (1993), *US Unions, Trade and International Solidarity: Emerging Issues and Tactics*, "Economics & Industrial Democracy", 14, p. 355.
HEPPLE B. (1999), *Can Collective Labour Law Transplants Work? The South African example*, "Industrial Law Journal", 20, p. 1.
HIRSCH J. M. (2008), *Employee Collective Action in a Global Economy*, in K. G. Dau Schmidt, S. D. Harris,

O. Lobel (eds.), *Labor and Employment Law and Economics*, Edward Elgar, Cheltenham (UK)-Northampton (MA).

HOWE J. (2013), *Poles Apart? The Contestation between the Ideas of No Fault Dismissal and Unfair Dismissal for Protecting Job Security*, "Industrial Law Journal", 42, p. 122.

HOWELL C., KOLINS GIVAN R. (2011), *Rethinking Institutions and Institutional Change in European Industrial Relations*, "British Journal of Industrial Relations", 49, p. 231.

IRTI N. (2006), *Norma e luoghi. Problemi di geo-diritto*, Laterza, Roma-Bari.

JOHNSON L., SACHS L. (2014), *International Investment Agreements, 2011–2012: A Review of Trends and New Approaches*, in A. K. Bjorklund (ed.), *Yearbook on International Investment Law & Policy 2012–2013*, Oxford University Press, New York.

KATZ H. C., KOCHAN T. A., COLVIN A. J. S. (2015), *Labor Relations in a Globalizing World*, ILR Press, an imprint of Cornell University Press, Ithaca (NY).

KILPATRICK C. (2009), *The ECJ and Labor Law: A 2008 Retrospective*, "Industrial Law Journal", 38, p. 180.

KLEINHEISTERKAMP J. (2013), *Financial Responsibility in European International Investment Policy*, "International and Comparative Law Quarterly", 63, 2, p. 449.

LANGILLE B. (2005), *Core Labour Rights – The True Story*, "European Journal of Industrial Relations", 16, p. 409.

LASSER M. (2009), *Judicial Transformations: The Rights Revolution in the Courts of Europe*, Oxford University Press, Oxford-New York.

LEHNDORFF S. (2011), *Before the Crisis, in the Crisis, and Beyond: The Upheaval of Collective Bargaining in Germany*, "Transfer: European Review of Labour and Research", 27, p. 341.

LOBEL O. (2004), *The Renew Deal. The Fall of Regulation and the Rise of Governance in Contemporary Legal Thought*, "Minnesota Law Review", 89, p. 498.

MEYER D. (2001), *Building Union Power in the Global Economy: A Case Study of the Coordinated Bargaining Committee of General Electric Unions (CBC)*, "Labor Studies Journal", 26, p. 60.

MEYERS F. (1964), *Ownership of Jobs: A Comparative Study*, Institute of Industrial Relations, University of California, Los Angeles.

MOLDOF S. B. (2005), *Union Responses to the Challenges of an Increasingly Globalized Economy*, "Richmond Journal of Global Law and Business", 5, p. 119.

MORETTI E. (2012), *The New Geography of Job*, Houghton Mifflin Harcourt, Boston.

NJOYA W. (2007), *Property in Work*, Ashgate, Aldershot (UK)-Burlington (VT).

PENFOLD C. (2008), *Offshoring and Decent Work. Worlds' Apart?*, "International Journal of Comparative Labour Law and Industrial Relations", 24, p. 573.

PERULLI A. (2013), *Diritti sociali fondamentali e regolazione del mercato nell'azione esterna dell'Unione europea*, "Rivista giuridica del lavoro e della previdenza sociale", 2, p. 321.

ID. (2015), *Sostenibilità, diritti sociali e commercio internazionale: la prospettiva del Trans-Atlantic Trade and Investment Partnership (TTIP)*, "WP CSDLE Massimo D'Antona.int", 115.

POSNER M., NOLAN J. (2003), *Can Codes of Conduct Play a Role in Promoting Workers' Rights?*, in R. J. Flanagan, W. B. Gould IV (eds.), *International Labor Standards: Globalization, Trade and Public Policy*, Stanford Law and Politics, Stanford (CA) (2004 printing).

PRISLAN P., ZANDVLIET R. (2014), *Labor Provisions in International Investment Agreements: Prospects for Sustainable Development*, in A. K. Bjorklund (ed.), *Yearbook on International Investment Law & Policy 2012–2013*, Oxford University Press, New York.

RUSSO J. (1999), *Strategic Campaigns and International Collective Bargaining: The Case of the IBT, FIET, and Royal Ahold NV*, "Labor Studies Journal", 24, p. 23.

SACHS J. D. (2011), *The Price of Civilization. Reawakening American Virtue and Prosperity*, Random House, New York.

ID. (2015), *The Age of the Sustainable Development*, Columbia University Press, New York.

SCIARRA S. (2007), *The Evolution of Collective Bargaining. Observations on a Comparison in the Countries of the European Union*, "Comparative Labor Law & Policy Journal", 29, 1.

ID. (2011), *Uno sguardo oltre la FIAT. Aspetti nazionali e transnazionali nella contrattazione collettiva della crisi*, "Rivista italiana di diritto del lavoro", 2, p. 169.

TEUBNER G. (1992), *Regulatory Law: Chronicle of a Death Foretold*, "Social & Legal Studies", 1, p. 451.

THELEN K. (2014), *Varieties of Liberalization and the New Politics of Social Solidarity*, Cambridge University Press, Cambridge-New York.

THOMPSON C. (1993), *Borrowing and Bending. The Development of South Africa's Unfair Labor Practice Jurisprudence*, "International Journal of Comparative Labour Law and Industrial Relations", 9, 3, p. 183.

TREU T. (2013), *Le istituzioni del lavoro nell'Europa della crisi*, "Giornale di diritto del lavoro e di relazioni industriali", 140, p. 597.
VERMA A. (2003), *Global Labor Standards: Can We Get from Here to There?*, "International Journal of Comparative Labour Law and Industrial Relations", 19, 4, p. 515.
VOGT J. S. (2014), *Trade and Investment Arrangements and Labor Rights*, in L. Blecher, N. Kaymar Stafford, G. C. Bellamy (eds.), *Corporate Responsibility for Human Rights Impacts*, American Bar Association, Chicago.
WALLACH L. M. (2014), *Investor-State Dispute Settlement in the Transatlantic Trade and Investment Partnership*, Transatlantic Stakeholder Forum Working Paper Series, Johns Hopkins University, Baltimore.
WELLS D. (2006), *"Best Practice" in the Regulation of International Labor Standards: Lessons of the US-Cambodia Textile Agreement*, "Comparative Labor Law & Policy Journal", 27, p. 357.
ZUMBANSEN P. (2013), *Lochner Disembedded: The Anxieties of Law in a Global Context*, "Indiana Journal of Global Legal Studies", 20, 1.