

Restructuring International Labor Governance

By Bo Wen

The growing divide of income inequality and the impoverishment of the working class are strong evidence cited in opposition to globalization. The current international labor governance framework fails to address the political economy in the global value chain and neglects to provide regulators with enough incentives to enforce robust labor standards. This process may be reversed by incentivizing states, especially those with large market size and significant consumer power, to enhance their domestic regulations and encourage other states to do the same.

To date, the cornerstones of international labor governance are multilateral organizations, championed by the International Labour Organization (ILO). Notwithstanding its tripartite system, which includes governments, employers, and worker representatives,¹ the realization of labor standards relies heavily on the ratification and voluntary enforcement of the standards at the state level.² The initial idea was that responsibility for corporations' liability for labor rights violations should be dealt with by the corresponding host states, given the limitations of territorial jurisdiction. However, such mechanisms have failed to adapt to the fundamental changes in the political economy of the world caused by globalization, which has impaired both the willingness and the ability of States to regulate their internal labor markets.³ With multinational corporations (MNCs) gaining the opportunity to pick amongst almost any state to accommodate their production lines, states, especially less developed ones, inevitably become involved in the downward regulatory competition for lower labor standards where they feel compelled to offer corporations the "best" terms for labor and tax rates. This phenomenon is often referred to as a "race to the bottom."

Admitting that the old supervisory system is ineffectual, anachronistic and counter-productive,⁴ the ILO has shifted to a "soft law" approach, anchored by adoption of the 1998 *ILO Declaration on Fundamental Principles and Rights at Work*. This Declaration aims to bind all ILO member states, regardless of whether they have ratified the relevant ILO conventions, and seeks the adherence of a wider range of actors, including trade unions and corporations, to its core principles.⁵ Although the principles are widely referenced and often reproduced in free trade agreements between states and within voluntary codes of conduct of MNCs, some argue that the lack of definable standards renders them hollow slogans. Even worse, because of the way the language of the Declaration has been interpreted, the Declaration has been used by selective actors to contradict the established interpretation of the core labor principles and threaten the normative coherence of the ILO's standards system.⁶ In assessing the practice of freedom of association, the ILO itself observes that while all codes of conduct chapters in corporations call for respect for freedom of association, many of them do not specify the right to form

¹ See <https://www.ilo.org/global/about-the-ilo/who-we-are/tripartite-constituents/lang--en/index.htm> (last visited on 26 Feb. 2019)

² Hendrickx et al. 'The Architecture of Global Labour Governance', 155 *International Labour Review* (2016) 339, at 341.

³ Kennedy. 'The Globalisation of Critical Discourse on Law', in Claire Kilpatrick et al., *Critical Legal Perspectives on Global Governance* (2014) 34, Hart Publishing.

⁴ Langile. 'The ILO and the New Economy: Recent Developments', 117 *International Journal of Comparative Labour Law and Industrial Relations* (1999) 43.

⁵ *Supra* note 2, at 345.

⁶ Alston. 'Facing Up to the Complexities of the ILO's Core Labour Standards Agenda', 16 *The European Journal of International Law* (2005) 467, at 474.

and join trade unions.⁷ Some Corporate Social Responsibility (CSR) initiatives surveyed by the ILO even contain language that could be interpreted as undermining these fundamental principles.⁸

The rise of private regulation is arguably one of the most important developments in global governance. Opponents have listed the risks of private regulation, which include lack of representation, insufficient transparency and total absence of external enforcement, as endangering the integrity and credibility of global governance. Examples of bad CSR initiatives or non-compliance in labor areas are not rare,⁹ and private actors face a lack of incentive in complying with international labor regulations. In the current phase of globalization, regulatory competition between corporations is no less fierce than that between states, especially in the labor-intensive industries.¹⁰ While the failure to implement adequate labor standards may only amount to some degree of reputational loss, the comparative disadvantage of high labor costs may drive businesses out of the market.

In a survey conducted after Rana Plaza explosion,¹¹ all the corporate-controlled initiatives to provide timely and adequate compensation and improve the working environment and safety conditions in the factories were deemed to be insufficient. Hopes for the Bangladeshi government to modify its labor laws in line with international standards did not come to fruition. The most concrete achievement may be the Bangladesh Accord, a binding pact that contains an escalation procedure for non-complying factories and an arbitration process for disputes.¹² The stories after Rana Plaza remind us that private regulations still depend on state interventions to be effective.¹³

In recognition that State interests are quite heterogenous, it has proven difficult to reach consensus on a universal convention on CSR that legally binds MNCs.¹⁴ One solution to the multilateral dilemma is recognizing the continued relevance of powerful states in maintaining global standards and encouraging such practices. Examples range from the Ethical Trade Incentives promoted by the USA, the UK and the Scandinavian countries, to the recently passed UK Modern Slavery Act, to the French duty of care law, which provides state jurisdiction to punish corporations' extraterritorial violations of human rights and places on parent companies a due diligence obligation to monitor their subsidiaries.¹⁵ The UK and the US have also put pressure on the Bangladeshi government to improve building safety in the readymade garment sector, including restricting access for Bangladeshi products to their markets. They also

⁷ Information Note on Corporate Social Responsibility and International Labour Standards, para 5, ILO Doc. GB.286/WP/SDG/4(Rev.) (2003).

⁸ Ibid, para 6.

⁹ Lopez. 'Towards an International Convention on Business and Human Rights (Part I)', available at <http://opiniojuris.org/2018/07/23/towards-an-international-convention-on-business-and-human-rights-part-i/> (last visited on 11 Oct. 2018).

¹⁰ Arthurs. 'Making Bricks Without Straw: The Creation of a Transnational Labor Regime', in *supra* note 3, 129.

¹¹ The New York Times. 'Building Collapse in Bangladesh Leaves Scores Dead', available at <https://www.nytimes.com/2013/04/25/world/asia/bangladesh-building-collapse.html> (last visited on 9 Oct. 2018).

¹² Clean Clothes Campaign. 'Five Years since the Rana Plaza Collapse', available at <https://cleanclothes.org/resources/publications/five-years-since-the-rana-plaza-collapse-what-has-happened-in-the-field-of-prevention-and-remedy/view> (last visited on 11 Oct. 2018), at 4.

¹³ Borzel. 'Multinational Corporations, Corporate responsibility and the Nation State: Does It Really Take the State?', 14 *Business and Politics* (2014) 1.

¹⁴ *Supra* note 10.

¹⁵ Knudsen and Moon. *Visible Hands: Government Regulation and International Business Responsibility* (2017), at chapter 5.

encouraged the Bangladeshi government to support the Accord and Alliance, founded in the aftermath of Rana Plaza, which arrange reparations and enhance safety standards.¹⁶

The political willingness to engage in such practices may come from concern about the regulatory race to the bottom, which gives developing countries a competitive advantage over developed nations, given the comparatively high costs of material and human resources in many developed countries. Another way for developed country governments to maintain their international competitiveness might be to encourage corporations producing in other states to enhance their labor practices and to punish cheating.¹⁷ Developed countries are in a better situation to harness the conduct of corporations because their own citizens consume the products made by corporations, thus giving them more bargaining power to influence the MNCs. Sheer market size may be enough to induce “involuntary incentives” of corporations to adjust to the strict labor rules of the regulator.

In conclusion, international labor governance in its current stage is a myriad framework of governmental, international-organizational and private regulations. Governments, especially developed nations on the consumption end of production, should take a central role in influencing other state and corporate actors to avoid the regulatory race to the bottom and establish better labor conditions in global value chains for all.

¹⁶ Ibid, 126-127.

¹⁷ Zielonka. 'Europe as a Global Actor: Empire by Example?', 84 *International Affairs* (2008) 471.