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A ‘north star’ in governing global labour migration? The ILO and the Fair Recruitment Initiative

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journals.sagepub.com/home/gsp**Katharine Jones** 

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Abstract

In 2014, the International Labour Organization (ILO) launched the Fair Recruitment Initiative (FRI) with the aim of tackling labour exploitation widely associated with the recruitment of low-wage migrant workers. To date, scholars have largely neglected the ILO’s role in developing ‘fair recruitment’ as a mechanism of global social policy. In response, this article analyses the ILO’s harnessing of fair recruitment to the global governance of migration. Through engaging in significant knowledge production activities, the ILO has promoted ‘fair recruitment’ as a new norm, generating consensus from these partners, despite its absence from international legal standards. In utilising multiple and varied tools, the article argues that the FRI is an example of the ‘coordinated governance’ which the ILO has had to pragmatically resort to in externally and internally challenging environments, and regardless of whether states have ratified its main convention on recruitment, C181. However, as of 2022, the concept of fair recruitment remains a muted challenge to the hegemonic precarity and inequalities associated with international labour migration in the 21st century.

Keywords

Employment agencies, Fair Recruitment Initiative, global governance, ILO, knowledge production, labour migration, recruitment

Introduction

In 2014, the International Labour Organization (ILO) launched the Fair Recruitment Initiative (FRI) at the annual International Labour Conference in Geneva. The FRI aimed to tackle ‘substantial evidence of widespread abuse connected with [recruiters’] operation’ which could ‘give rise to extremes of exploitation’ (ILO, 2014a: 15).

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Recruitment – the brokering of cross-border employment of migrants – was not an entirely new area of policy for the ILO. The ILO's mandate in the world of work and unique tripartite structure provides it with special responsibilities regarding migrant workers (ILO, 2004). The FRI coalesced and amplified its long-standing- but previously ad hoc and regionally disparate- programming on this topic (ILO, 2014a). The FRI was, the incoming Director General explained, a more strategic response by the Organisation to address gaps in existing ILO standards and new forms of recruitment-related mistreatment of migrants (ILO, 2009a, 2015). To achieve this, the FRI would generate knowledge on recruitment practices, strengthen national laws and policies in line with ILO standards, improve recruitment business practices and foster social dialogue on recruitment (ILO, 2014a: 28). This article analyses the ILO's role in catalysing 'fair recruitment' as a major new social policy in the governance of international migration.

For the past three decades, the ILO has increasingly utilised non-binding and advisory soft governance mechanisms defined as distinct from the 'hard law' of the Convention standards (Thomas and Turnbull, 2017). Critics argue that non-binding soft law instruments, such as the Declaration on Fundamental Principles & Rights at Work, 1998, widely regarded as the first instrument in the ILO's pivot to soft law, dilute the legally enforceable rights contained in the conventions (Alston, 2005; Standing, 2008). Nevertheless, arguably the soft governance turn was – and continues to be – a pragmatic response by the ILO to extremely challenging external and internal environments (Baccaro and Mele, 2012; Newlands, 2010). Soft governance mechanisms have enabled the ILO to maintain its global relevance and institutional authority (Hughes and Haworth, 2012; Maupain, 2013). In general, soft law instruments designed to extend, promote and mobilise partnerships in support of labour standards have enabled the ILO to generate consensus and new norms on basic workplace rights, regardless of whether states have ratified core conventions (Hovary, 2015). Moreover, via soft law, the ILO has been able to extend the normative framework of labour protections to workers in the informal economy in poorer countries (Vosko, 2002). In the process, the ILO transformed itself from a relatively closed institution into a dynamic global development actor (Chen, 2021). As of 2020, the ILO's global platform is stable: it remains operational in over 100 countries worldwide, conducting over 600 programmes and projects with 120 partner organisations (ILO 2020b).

Critics of the ILO tend to artificially distinguish between a period of 'hard' (legal standards) and 'soft' governance (e.g. non-binding instruments, guidance, capacity building) while insufficiently distinguishing between the *different types* of soft governance, regulatory forms and partnerships the ILO now engages in (Bair, 2017). Posthuma and Rossi (2017) describe this as a 'coordinated governance' approach in which the ILO applies its structure and normative framework to continually create *new configurations* of governance tools at international and national levels. Tools include ('hard') labour standards as well as ('soft') declarations, agendas, guidance, promotion activities, soft law instruments and technical cooperation, and partnerships with civil society and the private sector (Chen, 2021; Piper et al., 2019). However, missing in these interpretations is an account of how knowledge production by international organisations often lies behind these coordinated governance tools (Beland and Orenstein, 2013). Organisations produce research and statistics on topics, (re)interpret standards into policy guidance,

raise awareness on and advocate for specific issues, and identify and implement technical assistance programmes for social policy problems. They promote a particular view and interpretation of a social policy topic (Merry, 2016). Knowledge production by international organisations is therefore a means of strategically asserting institutional authority (Maupain, 2013), including in relation to other UN bodies (Korneev, 2018). Although knowledge production is not new to it, since the 1990s, the ILO has more explicitly sought to become ‘the global reference point for knowledge on employment and labour issues; the centre for normative action in the world of work; a platform for international debate and negotiation on social policy; and a source of services for advocacy, information and policy formulation’ (ILO, 1999: 3, also ILO, 2020b: 2). In other words, knowledge production has more explicitly become a global governance tool for the ILO (Merry, 2016).

As the editors of this Special Issue note, to date, scholars have neglected the analysis of the ILO’s role in the global governance of migration (Piper and Jensen, forthcoming). This lacuna in the literature extends to the ILO’s role in developing ‘fair recruitment’ as a mechanism of global social policy on international migration. In response, this article outlines the genesis of the FRI, focusing on three of its main components: research on recruitment, the soft law instrument General Principles and Operational Guidelines on Fair Recruitment, 2016 and the ILO’s ‘fair recruitment pilot’ conducted between Nepal and Jordan between 2016 and 2018. The article argues that the FRI is a significant example of the ILO’s coordinated approach to the global governance of migration (Bair, 2017; Posthuma and Rossi, 2017). To make this argument, it first contextualises the FRI by applying the framework of coordinated governance (Posthuma and Rossi, 2017) to the ILO’s governance of international migration. This is followed by an outline of the ILO standards on – and politics of – recruitment. A brief review of research methods precedes analysis of the case-study. The article advances the concept of coordinated governance to show how in this case, the ILO has in addition embarked on significant knowledge production on what constitutes fair – and unfair – recruitment (Merry, 2016). This has enabled the ILO to harness its existing normative framework and standards to cross-border recruitment – an erstwhile gap – while amplifying its own institutional authority (Korneev, 2018). In the process, the ILO has embedded the concept of fair recruitment in its vision of the global governance of migration. However, as this is largely a neoliberal model of flexible and ‘managed migration’ (Likic-Brboric, 2019), to date, fair recruitment remains a highly muted challenge to the prevailing precarity associated with international migration (Schierup et al., 2015).

The ILO and coordinated governance of international migration

Migration is an area of social policy in which the ILO has pragmatically sought to use multiple types of governance mechanisms to extend and promote international labour standards to new regions and audiences (Bair, 2017; Posthuma and Rossi, 2017). In part this was because at the turn of the 21st century, the ILO recognised that its two migration conventions – C97 Migration for Employment (Revised), 1949 and C143 Migrant Workers (Supplementary Provisions), 1975 were unlikely to be further ratified (ILO,

2004). Adopted in specific time-periods in which states first sought to facilitate migration for post-second world war reconstruction (C97), and then to institute greater migration controls (C143), neither was viewed by the ILO as fully responsive to the 1990s onset of increased global mobility and consequent rapid downgrading of workers' rights in global supply chains (Ruhs, 2012). The ILO faced the additional challenge that the Employers' and Workers' Groups in the ILO (two of its three pillars of tripartism) historically disagreed on migration because of the issues of (in)equality and discrimination between nationals and migrants it raises (Newlands, 2010). By the 1990s the states with the most substantial leverage within the ILO were predominantly concerned with controlling (irregular) immigration rather than worker rights (Ruhs, 2012). Despite this and its overall pivot to utilising an increased volume and variety of soft governance mechanisms, throughout the 2000s, the ILO managed to incorporate protections for migrants into new legal standards. C188 Work in Fishing, 2007, the Maritime Labour Convention, 2006 and C189 Domestic Workers, 2011, introduced and updated employment protections for workers in occupations that predominantly hired migrants, often informally.

The ILO also utilised multiple different types of soft law mechanisms, including training through the International Training Centre in Turin, guidance to states, capacity building and research, to promote and extend labour standards, emphasising that *all* standards applied to migrants. The pursuit of new partnerships enabled the construction of broader coalitions outside the ILO which promoted the standards to new audiences (Piper et al., 2019; Vosko, 2002). This enabled the ILO to mitigate the Employers' Group's obstinance over adopting new conventions and supporting ratification of existing standards by states. Moreover, given the unions' historic issues with migration – largely as employers tended to utilise migrant labour to undercut wages and avoid collective bargaining – the ILO's engagement with migrant civil society facilitated a now *global* campaign for decent work for migrants (Grugel and Piper, 2011). This period (2000s) also led to a major new soft law instrument: the Multilateral Framework on Labour Migration, 2006. The Framework expanded an earlier ILO Resolution – the Resolution concerning a fair deal for migrant workers in a global economy, 2004 – and set out a structure for ensuring migrants' entitlement to 'decent work', as interpreted according to ILO standards (Newlands, 2010). As a non-binding document, it had no legal standing (Alston, 2005); instead, the ILO sought to utilise it to strengthen migration standards by integrating related instruments into a more coherent and strategic whole (Maupain, 2013).

Furthermore, the ILO explicitly sought to utilise evidence-based research to address the lacunae the Organisation had identified in the standards on migration (ILO, 2004). In addition to commissioning and producing research, the ILO responded to what it perceived as growing demands from states for policy advice by collating 'best practices' in national migration policies (ILO, 2006b). These were reflected in the form of advice and guidance to states within the Framework document. In the succeeding years, the ILO has commissioned and published research and statistics on migration, collated further 'good practices', drafted guidance, implemented training and capacity-building for state and non-state actors and other forms of technical assistance (Geiger and Pecoud, 2020). In other words, the ILO has leveraged knowledge production as a significant strategy and a source of authority within its global governance of migration (Merry, 2016).

Standing (2008) interprets the ILO's increased engagement in producing and disseminating knowledge on social policy topics, including migration, as evidence of the ILO's transformation into a mere 'knowledge agency'; a downgrading of its role as protector of standards. However, this significantly devalues the importance and influence of the role of knowledge production in global governance (Beland and Orenstein, 2013).

In addition to addressing evidence gaps, migration research and statistics are utilised by policymakers for symbolic purposes (Boswell, 2009). Research provides individuals, governments and their associated agencies with general legitimacy with their audiences while also providing them with an opportunity to justify their policies and narratives (Boswell, 2009). Migration statistics serve the purpose of building a common migration narrative promoted and idealised by international organisations (Scheel et al., 2019). Knowledge production is ultimately a mode of governance (Merry, 2016), enabling international organisations to exercise 'soft power' in the world and over a variety of audiences (Korneev, 2018; Kranke, 2020). Technical assistance projects and guidance enable international organisations to convey what is acceptable and legitimate behaviour by states (Barrett and Finemore, 1999), facilitating influence over national policies (Beland and Orenstein, 2013). Through knowledge generation they can construct the social world even when they lack material resources to do so (Beland and Orenstein, 2013), including in this case, agreement from the ILO's Employers' Group on a controversial topic. These types of activities were critical to the FRI. The following section outlines the ILO's approach to recruitment prior to the FRI's establishment which contextualises the politics and rationale for the FRI.

Recruitment and ILO standards

Like migration, recruitment has long been a contested and problematic issue for the ILO. Internally the ILO has struggled with the intransigence of the Employers' Group to improving recruited workers' rights (Vosko, 2000). Externally, the ILO has sought new ways to respond to the rapidly changing global economy in which recruitment – at least in some regions – played an ever more substantive role (Xiang and Lindquist, 2018). At the turn of the 21st century, the ILO faced an additional challenge arising out of this growth in cross-border recruitment. The Organisation has historically defined and therefore treated recruitment *within* national borders as distinct from cross-border recruitment (of migrants), in part because their form and activities – at least at first sight – appeared different. Within national labour markets and especially in Europe and North America, recruiters usually take the form of employment agencies which supply temporary agency workers, an ongoing and triangular employment relationship between firm, employee and agency (Coe et al., 2010). In effect, agencies 'sell' the labour of agency workers to firms, gaining profit from a 'mark-up' fee charged to employers (their client), which is extracted as a portion of the workers' wages (Vosko, 2000). In contrast, the business model of cross-border recruiters differs in three main ways. First, they also mediate migration, organising immigration documentation and transport as well as employment (Jones, 2021). Second, unlike employment agencies, cross-border recruiters do not operate alone: instead, they work in long transnational subcontracting networks extending into rural areas and including family, friends and neighbours (Deshingkar, 2019). Third,

rather than receiving a mark-up fee from employers, cross-border recruiters usually charge a fee direct to workers (ILO, 2015). Nevertheless, both are forms of labour market intermediaries which broker employment, especially flexible employment associated with fewer worker rights, for a fee (Coe et al., 2010).

Both forms of recruiters are also implicated in the severe downgrading of workers' rights. In Europe and North America, since the 1990s employment agencies have driven significant and system-wide dismantling of employment protections for workers, lower pay and reduction in access to trade unions (Coe et al., 2010; Vosko, 2000). Over the same time period, primarily in Asia, a growing volume of cross-border recruiters have assumed a more integrated role in brokering temporary labour migration, fuelled in part by governments' increased outsourcing of migration management (Xiang and Lindquist, 2018), and in part, insatiable employer demand for cheap labour (Jones, 2021). Recruiters have become the global engine servicing the neoliberal paradigms of flexible labour markets and development framed in terms of optimising the benefits of migration and cheap labour (Likic-Brboric, 2019). Cross-border recruitment – as an expression of outsourced migration management – ensures a continual supply of cheap labour to firms and is consequently deeply implicated in deregulation, liberalisation and flexibilisation (Schierup et al., 2015). Despite their similarities, until the FRI, both types of recruiters – employment agencies and cross-border recruiters – were differentiated within the ILO standards.

Until 1997, the ILO's main convention on recruitment required states to progressively *abolish* fee-charging recruitment agencies (C96 Fee-Charging Employment Agencies, Revised, 1949). C96 derived from the premise that mediated labour in which recruiters, in effect 'sell' workers' labour to employers, commodified workers and was therefore inconsistent with the ILO Constitution (Vosko, 2000). However, this Convention made no mention of migrants. It addressed employment agencies *within* national labour markets. However, in a major inconsistency in the international labour standards framework, cross-border recruitment (of migrants) is addressed in the Annex to one of the migration Conventions, C97 Migration for Employment (Revised), 1949. Adopted in the immediate post-second world war reconstruction period when large-scale facilitation of migrant labour was favourably regarded by European and North American states, this Annex requires states to *regulate* – rather than abolish – cross-border recruiters. However, the drafters failed to provide any substantial protections to migrants who were recruited. This consequently left recruited migrants protected by, in effect, a lesser standard (ILO, 2014a).

For the following three decades, the ILO's Employers' Group lobbied and mounted successive legal actions to overturn C96 based on the ILO's inconsistent approach towards recruitment (Vosko, 2000). The Group's interest and that of its affiliate, CIETT,¹ the Confederation of Private Employment Agency's, interest lay not in growing the cross-border recruitment industry, but in expanding the employment agency sector which is what most of its members' profits derived from (Coe et al., 2010). By the 1990s, the leverage of the Employers' Group had reached such a point (Baccaro and Mele, 2012) that they were able to push through an agreement to overturn C96 and negotiate a new Convention which would legalise – and therefore regulate – recruitment. In a major volte-face for the ILO, C181 Private Employment Agencies, 1997 affirmed recruiters and

employment agencies to be ‘legitimate’ actors, and the flexibility they offered to be an ‘important contribution to the functioning of labour markets’ (C181, Preamble).

C181 did include some worker-protective clauses. It requires states to prohibit up-front recruitment fees charged to workers, and to support non-discrimination and freedom of association for recruited workers. Accompanying non-binding R188 Private Employment Agencies Recommendation, 1997 further requires states to ensure the elimination of ‘unethical recruitment practices’, although the drafters left these undefined. Nevertheless, C181 was perceived by the industry as ‘business-friendly’ (Vosko, 2000). In contrast to the Employers’ Group’s usual approach to new conventions, they and their affiliate CIETT regarded C181 as a major ‘win’. For the first time, the fee-charging recruitment industry could operate legally (Vosko, 2000) and employers could embark on cost-saving strategies through outsourcing labour (Coe et al., 2010). After 1997, CIETT even lobbied states for C181’s ratification with the aim of opening markets (for agency work) in the few remaining countries in which their members were prohibited from operating (CIETT, 2010). In the subsequent decade, the global employment agency industry trebled in size, with its growth attributed to C181 and the ILO’s legitimisation of the industry (Vosko, 2000).

Unsurprisingly, the ILO and Workers’ Group regarded C181 as leaving a substantial gap in protecting subcontracted workers in global supply chains, including of international migrants (ILO, 2014a). C181 only required states to ‘provide adequate protection for and prevent abuses of migrant workers recruited or placed in its territory by private employment agencies’ (Art. 8). A further convention was planned specifically to protect (sub)contracted workers, including migrants; the Workers’ Group had agreed to C181 contingent only on the Employers’ Group proceeding with this (Vosko, 2000). However, the Employers’ Group failed to adhere to this agreement, correctly perceiving little fallout from their unwillingness to do so (Standing, 2008). To mitigate this gap, during the 2000s the ILO sought to include provisions from C181 on recruitment into new conventions relevant to migrants. Thus, as with their approach to migration detailed above, the ILO included provisions on licensing recruiters and prohibition of fees (as per C181) in sector-based conventions which predominantly relied on migrant labour: the Maritime Labour Convention, 2006, C188 Work in Fishing (2007), C189 Domestic Workers (2011). Nevertheless, the ILO increasingly emphasised the gap in standards addressing cross-border recruitment. The following section outlines the research design, including research methods and a brief description of the case-study.

Research design

This article poses the question of how the ILO has developed the concept of ‘fair recruitment’ as a mode of coordinated governance of international migration with knowledge production as its core. It draws on 15 qualitative semi-structured interviews with ILO staff (current and prior) based at ILO headquarters in Geneva and in ILO national and regional offices (8), representatives of ILO social partners (4) and ILO external stakeholders (3). Interviews were supplemented with a group discussion with ILO staff about the genesis of the FRI. All participants had current or past engagement with the ILO’s work on recruitment. To respect anonymity, interviewees’ job titles and units are not

identified in the article where quotes are used. The article also draws on an extensive textual analysis of ILO documents relating to recruitment, including research studies, International Labour Conference reports and stakeholder meeting minutes. In addition, analysis derives from the author's long-standing engagement with the ILO and other international organisations on the topic of recruitment, including as a research consultant and participant in stakeholder meetings and convenings from 2013 onwards. The article is not intended as a critique of ILO or its staff; it is a study of how the ILO constructed the concept of fair recruitment of governance of migration.

The FRI was launched as part of the ILO's Director General's call for a Fair Migration Agenda (ILO, 2014a). A collaboration between ILO's Fundamental Principles and Rights at Work Branch and the Labour Migration Branch (MIGRANT), the ILO also partnered with the International Trade Union Confederation and the International Organisation of Employers, and their affiliates, Migrant Forum Asia and CIETT. Funded by the Swiss, UK and US governments and the EU, the FRI expressly aimed to prevent human trafficking; to protect the rights of workers, in particular migrant workers, from abusive and fraudulent practices during the recruitment process; and, to reduce the costs of labour migration and enhance development outcomes for migrant workers and their families, as well as for countries of origin and destination (ILO, 2014a). Specific regions of interest included South and Southeast Asia, North Africa, Middle East and Central America. FRI activities were varied, ranging from technical assistance programmes, to research, promotional tools, guidance, training and a Better Work-style pilot (ILO, 2021). The article turns next to analyse the FRI as a significant example of the ILO's coordinated governance approach (Posthuma and Rossi, 2017). This includes a discussion of how the ILO utilised these governance tools, including knowledge production, to apply their normative and legal frameworks to address the gaps in coverage of cross-border recruitment in the conventions.

Coordinated governance on recruitment

To illustrate the article's main argument about coordinated governance and knowledge production, the article focuses on three components of the FRI: (1) the ILO's role in raising awareness of recruitment and exploitation, (2) the Guidelines as an example of a soft law instrument and (3) the fair recruitment pilot between Nepal and Jordan. These are described in the three sections which follow prior to the discussion section. The first of these includes analysis of a longer period of ILO activities on recruitment prior to 2014 which fed into the establishment of the FRI.

Raising awareness on cross-border recruitment

At the outset, knowledge production on recruitment was one of the key pillars of the FRI (ILO, 2014a) as it had been with migration (Merry, 2016). In 2021, the ILO formalised this through the launch of the FRI Knowledge Hub, an online platform to facilitate the sharing of resources, research on recruitment, hosting of thematic discussion forums and networking between experts and practitioners (ILO, 2021). However, research on cross-border recruitment pre-dates the establishment of the FRI, especially in the Asia-Pacific region. A

decade prior to the FRI's establishment, the ILO explicitly identified that research could be utilised to address the gaps in standards regarding cross-border recruitment (ILO, 2004). Research was duly commissioned to document the responsibility of cross-border recruiters for exploitation (ILO, 2004). This responded to a growing cacophony after 1997 from civil society activists, journalists and officials, primarily in the Asia-Pacific region (Amnesty, 2013; Human Rights Watch, 2014):

Two decades ago, we knew very little about recruitment. C181 was more focused on agency work in Europe yet there were all these problems emerging out of the Asia-Pacific in relation to exploitation and migrant workers. We needed to know more. We also needed to collate this knowledge in a more systematic way and to link this to the standards. (ILO representative, July 2020)

In the Resolution concerning a Fair Deal for Migrant Workers (2004), the ILO began to refer to what it described as *unethical* practices of recruitment agencies. Drawing on civil society and media reports as well as its own research, the ILO defined these as the 'sale' of non-existent jobs to migrants, high recruitment fees charged to workers, false information about jobs, and links between recruitment with smuggling and trafficking. Subsequently, and between 2005 and the launch of the FRI in 2014, the ILO published multiple studies on recruitment-related exploitation (e.g. ILO, 2006a, 2008a, 2009b, 2009c). These studies predominantly explored cross-border recruitment in South and Southeast Asia and to the Middle East. Increasingly, ILO research identified recruitment as a key component in human trafficking, forced labour and what later came to be known as 'modern slavery' (ILO, 2009a, 2015). Specific recruitment practices, such as deceiving migrants and charging recruitment fees, therefore came to symbolise specific 'entry points' to forced labour and human trafficking (ILO, 2008b). This drew on the UN Trafficking (Palermo) Protocol, 2000, which defines 'recruitment' as a primary means by which people enter human trafficking. It also reflected the ILO's leadership role of the Special Action Programme to Combat Forced Labour (SAP-FL), established in 2002 to advance the forced labour component to the 1998 Declaration on Fundamental Rights & Principles at Work, in driving the recruitment agenda (Drubel, 2019):

The genesis of the FRI stems from the more action-oriented branch of the ILO, development aid and technical assistance to governments, unions and business. Historically, this was a follow-up to the 1998 Declaration, a follow up to already conceived ideas about forced labour, recruitment fees and vulnerability of migrant workers especially within SAP-FL. (ILO social partner, August 2020)

In particular, the ILO (2006b, 2015) argued that paying recruitment fees led migrants to be in situations of 'debt bondage', a form of forced labour, when migrants could not afford to pay back the loans given to them to pay the fees. Later research was utilised by the ILO to elaborate and define 'recruitment fees' because as this was left undefined in C181 (ILO, 2020a). In addition to defining recruitment-related exploitation – unethical recruitment – the ILO sought to quantify migrants' experience of this. This was consistent with the ILO's approach towards quantifying forced labour as a means of heightening

its visibility (Drubel, 2019). In the Cost of Coercion (ILO, 2009a: 32), the ILO identified a figure of ‘US\$1.4 billion’ on ‘illegal’ fees charged by recruiters, although the methodology utilised to calculate this was not clear. In future years and after the establishment of the FRI, the ILO partnered with the World Bank to develop a methodology for quantifying recruitment fees paid by migrants via an annual survey (World Bank, 2017b) the results of which would be utilised to measure the progress of the Sustainable Development Goals (Target 10.7 Facilitate orderly, safe and regular migration).

The ILO also embarked on other ways to promote the visibility of recruitment-related exploitation. After 2014, the ILO produced multi-media resources to explain how recruiters engaged in abuse of migrants, launching video animations with titles such as ‘Lured by a Job’ (ILO, 2014b). In addition, the ILO brokered new partnerships and audiences through convening conferences (Vosko, 2002), including the annual Global Forum on Recruitment, with which the ILO partners with the International Organisation for Migration (IOM). These activities have facilitated wider ILO stakeholder networks of civil society organisations including those working on business and human rights, recruiters and global corporations (Piper et al., 2019). The ILO has also engaged in new media partnerships, producing guidance for journalists wishing to write about the topic. These focused on key aspects of recruitment-related exploitation (ILO, 2020c).

The general principles and operational guidelines on recruitment (‘the Guidelines’)

Through research, the ILO defined what was ‘unfair’ about cross-border recruitment for migrants. Through the FRI, the ILO sought to define ‘fair recruitment’ including through the development of ‘guidance to promote recruitment practices that respect the principles enshrined in international labour standards, including the Private Employment Agencies Convention, 1997 (No. 181)’ (ILO, 2014b). This included defining and devising a fair recruitment strategy:

For a long time, we’d commissioned research and offered technical assistance. But in 2014 we needed a strategy to speak to which needed to be aligned with ILO objectives. The U.S. State Department gave us a small amount of funding for a very small project, aimed at creating a community, gathering partners. During 2014 and 2015 we convened tripartite meetings, consulted and created a strategy on fair recruitment. (ILO interviewee, August 2020)

Two years of multi-stakeholder consultations (in which the author participated) fed into a tripartite meeting to negotiate and draft provisions of the Guidelines, adopted by the 2016 ILO International Labour Conference. Its purpose was to address gaps in C181 through harnessing related and relevant instruments to cross-border recruitment. As such the ILO hoped to strengthen the protection for migrants through bringing coherence to families of instruments (Maupain, 2013). In addition, their purpose was to ‘inform the current and future work of the ILO and of other organizations, national legislatures, and the social partners on promoting and ensuring fair recruitment’ (ILO, 2016; 2). With a specific reference to the ILO’s core conventions and the 1998 Declaration principles, the Guidelines restated C181 provisions, also incorporating provisions from ILO standards

on labour inspection, freedom of association, collective bargaining and equal remuneration. Principle 1 set out the ILO's new definition of 'fair recruitment':

Recruitment should take place in a way that respects, protects and fulfils internationally recognized human rights, including those expressed in international labour standards, and in particular the right to freedom of association and collective bargaining, and prevention and elimination of forced labour, child labour and discrimination in respect of employment and occupation. (Principle 1, Guidelines)

While retaining exceptions to prohibited costs contingent on social dialogue (as had been set out in C181), the Guidelines also, for the first time, defined 'bribes, tributes, extortion or kickback payments, bonds, illicit cost-recovery fees and collaterals required by any actor in the recruitment chain' as illegitimate costs and therefore which should be prohibited by states. Ultimately, the Guidelines provided a mandate for the ILO, trade unions and civil societies to utilise a broader set of standards, including those relating to employment rather than only recruitment, in support of protection of migrant workers (Maupain, 2013):

Key for the FRI to be able to fly in the ILO beyond forced labour was to link it to employment. This was done with the Operational Guidelines. This brought about a common understanding of what fair recruitment means. It provided a mandate for ILO and other parties to work in this area and takes a very comprehensive approach to fair recruitment. Earlier efforts focused on only fees which was not good enough. The Guidelines bring it more into the continuum of exploitation and decent work agenda. It gave the ILO a push in terms of its position on this. The definitions of fair recruitment and of fees contribute to how migrant workers can be protected as well as to how well international migration is regulated. (ILO social partner representative, August 2020)

In drafting the Guidelines, the ILO drew on a methodology developed in the preparation for the Multilateral Framework on Labour Migration (2006). The drafting team consulted other sources and good practices, which included UN instruments, the IOM's Recruitment Standards (IOM, 2016), CIETT's Code of Conduct (Revised) (CIETT, 2015) and non-governmental organization (NGO) guidance on recruitment and migration (Institute for Human Rights and Business [IHRB], 2012; Verite, 2012). These were deployed to support the standards and aimed at brokering a consensus around the concept of fair recruitment (ILO, 2016).

Fair recruitment pilot

In 2017, the ILO developed a 'fair recruitment pilot', intended to demonstrate that, as well as protecting workers, businesses could continue to profit even if implementing the Guidelines (ILO, 2019):

We wanted to show that it was possible to implement labour standards on recruitment and they will still make money. This came from long-standing beliefs and discussions promoted by some that ethical recruitment, fair recruitment, would increase workers' productivity. And that this

would balance out any increased costs from doing recruitment properly. (ILO representative, July 2020)

The ILO developed the pilot within the ILO's Better Work programme in Jordan, partnering with a self-described, 'boutique' recruitment company called FSI Worldwide which recruited female workers from Nepal. The intent was to draw on the ILO Better Work Programme model introduced by the US–Cambodia textile trade agreement in 1999 and which guaranteed preferential access to the US market for Cambodian garment producers in exchange for compliance with labour standards (Rossi, 2019). Through Better Work, the ILO had adjusted its standard-setting role to monitoring and enforcement within global garment supply chains, what Bair (2017) describes as 'hybrid governance'. The theory of change driving the recruitment pilot was to utilise market incentives for fair recruitment practices in which buyers (garment retailers in the United States) would drive improvements in standards through demanding its suppliers (factories in Jordan) implement the Guidelines. As migrant workers were not allowed to join a trade union in Jordan, the unions were not part of the pilot.

The ILO developed the fair recruitment pilot in collaboration with five ILO Better Work garment factories in Jordan, with four receiving FSI-recruited workers (according to fair recruitment standards) and the fifth acting as a 'control group'. As female Nepali workers had not previously been allowed to work in Jordan, the ILO facilitated a bilateral labour agreement between the two states detailing salaries and length of contracts to support the pilot. Activities were evaluated by Tufts University, also the evaluators of the Better Work programme (ILO, 2019). Through this, the ILO aimed to demonstrate fair recruitment in practice, a further example of knowledge production: 'We hoped to use the results of the evaluation to promote the FRI and the whole entire concept of fair recruitment as well as the Guidelines' (ILO representative, July 2020). The following section discusses the above in the context of coordinated governance.

The FRI as an example of ILO coordinated governance

Analyses of soft law instruments and approaches insufficiently distinguish between varieties of governance tools (Posthuma and Rossi, 2017). Under the auspices of the FRI, the ILO has utilised multiple different tools in its governance toolbox to address gaps in standards covering the recruitment of migrant workers (ILO, 2004). Each of the three components to the FRI outlined above illustrates different types of governance tools. Through the FRI, the ILO has used its role as a supranational setter of labour standards to promote stronger forms of coordinated governance between tripartite stakeholders at both national and international levels (Posthuma and Rossi, 2017: 192). The ILO successfully brokered new coalitions of partners inside and outside the ILO tripartite structures (Piper et al., 2019). Through the FRI, the ILO has promoted 'fair recruitment' as a new norm, generating consensus from these partners, despite its absence from international legal standards and regardless of whether states have ratified C181 (Hovary, 2015). Moreover, via its coordinated governance approach, the ILO has been able to extend the normative framework of fair recruitment to workers in the informal economy in poorer

countries (Vosko, 2002). Most critically, the FRI has mitigated the leverage of the Employer's Group over its tripartite structure (Baccaro and Mele, 2012).

Knowledge production is deeply embedded in the FRI. Its knowledge production activities have established the FRI – and the ILO – as the 'go to' authority on cross-border recruitment (Korneev, 2018). Whether the ILO is described as a 'knowledge agency' (Standing, 2008) or a 'development agency' (Chen, 2021), the FRI is a hitherto under-recognised significant example of how core knowledge is to coordinated governance approaches (Beland and Orenstein, 2013; Merry, 2016; Posthuma and Rossi, 2017). ILO research on recruitment-related exploitation defined the problem to be addressed (Merry, 2016). Devising a new metric served to promote the visibility of fees to multiple new audiences including business, journalists, civil society as well as its usual tripartite partners (Drubel, 2019). Through the Guidelines, a major new soft law instrument, the ILO was able to harness families of instruments relevant to recruitment, strengthening protection of recruited migrants (Maupain, 2013). While serving to apply C181 for the first time to migrants and to cross-border recruiters, this also defined the concept of 'fair recruitment' as embedded in a wider set of standards beyond C181. In the process, the ILO transformed the definition of recruitment as something which facilitated migrants to get from A to B (as often presented in earlier research) to something which is a constituent part of outsourced employment and driven by employers' cost-saving strategies (Jones, 2021). Consequently, the Guidelines were regarded by ILO and non-ILO interviewees for this article as the FRI's biggest success:

It was a major achievement to put something together which gives meaning to different provisions scattered throughout legislation and norms. These give meaning to norms and is one of the FRI's biggest achievements. This has elevated the issue of fair recruitment at different levels. (ILO representative, August 2020)

The Principles and Guidelines are the 'north star' for us all to look towards. They are an aspirational goal which all organisations can work on. (IOM representative, August 2020)

The FRI's work on fees has marked a shift in the discourse. It is now accepted by business that recruitment fees should not be paid. ILO and the FRI helped bring that change about. (ILO stakeholder, August 2020)

Furthermore, through the vehicle of the FRI, the ILO has increased its institutional authority within the UN framework and with other actors such as the World Bank and global business networks (ILO, 2021; Korneev, 2018). In this contested supranational field in which neoliberal ideas about migration and development predominate, the ILO has often struggled to find its voice (Rosewarne, 2013).

However, the ILO has also had to compromise. Critics of soft law highlight their non-binding nature (Standing, 2008) and argue that their reliance on 'principles' rather than rights dilutes provisions (Alston, 2005). In many respects, the Guidelines diluted the legally enforceable standards through restating them as *principles* and did not include a follow-up mechanism. Although the Guidelines extended employment protections to migrants, the detailed clauses on non-discrimination which were in C181 and R188 were

omitted (Jones, 2021). Instead, non-discrimination was worded rather loosely to reflect the 1998 Declaration on Fundamental Rights & Principles at Work (Alston, 2005): This was, interviewees noted, because the issue of equal treatment was one which had been tense in the tripartite negotiations with the final vague wording a compromise. The Employers' Group and CIETT had argued firmly against linking recruitment too closely to employment conditions (ILO, 2017), emphatic that the Guidelines should not create any new norms on recruitment beyond those in C181:

Business – led initiatives [on forced labour] had gained momentum. They [brands] had been supportive since the beginning so our core pillar was to raise those voices whilst also working with trade unions. CIETT didn't have a problem with what we wanted to do. But there was a disconnect between the industry [as represented by CIETT] and the ones we wanted to target. We had to be careful. We wanted to apply pressure and be clear on who was responsible so that we did not diminish the reputation of private employment agencies overall. We had to do this really carefully. We worked with employers closely through our discussions and they are now extremely supportive of the [Fair Recruitment] Initiative. (ILO interviewee, August 2020)

In setting out to raise awareness of the links between recruitment, fees and exploitation, the FRI's focus has been almost wholly on recruitment of *migrants* rather than recruitment of workers per se. The ILO's research on recruitment-related exploitation largely identified unscrupulous recruiters, often based in Global South countries from where migrants originated and who charged fees to migrants (ILO, 2006a, 2008a, 2009b, 2009c). In this narrative, CIETT association members who were mainly based in Europe and North America and represented by corporate household names such as Adecco and Manpower Inc were not implicated in any wrongdoing. Who the ILO identified as the problem – in this case, unscrupulous cross-border recruiters – was critical to the delicate balance within its own corporate structure (Thomas and Turnbull, 2017):

ILO had to take the FRI in a different direction rather than opening up the agency work approach; we had to direct it in a different way. We were not looking at agency work, but rather at migration. We needed to tread softly in terms of our reputation with the employers. (ILO representative, July 2020)

CIETT representatives in stakeholder consultations leading up to the tripartite negotiations advocated to keep discussions focused on the role of cross-border recruiters and avoid entering any discussions about agency work from which their members primarily derived their profits (author observations). While a successful strategy on the part of the ILO to mute potential opposition from the Employers' Group, ultimately this highlights the very limits to fair recruitment as a norm: it does not fundamentally challenge the systemic precarity and inequalities associated with low-wage international migration (Likic-Brboric, 2019; Philips, 2009).

These challenges were further emphasised in the evaluation of the ILO's own fair recruitment pilot (ILO, 2019). Intended to demonstrate the benefits of fair recruitment to a business audience, business performance and productivity rather than compliance with labour standards were prioritised within the pilot (ILO, 2019). Thus, the evaluation highlighted that the pilot developers had adopted a selective approach to implementing 'fair

recruitment', defined primarily in terms of prohibiting recruitment fees and ensuring the validity of information provided to migrants. The pilot did *not* address freedom of association and collective bargaining standards contained within the Guidelines. Most critically, the pilot was itself discriminatory in specifically targeting female Nepali workers for the low-wage roles in the garment factories. Even on its own selective terms, the pilot did not completely abolish recruitment fees, while those who were recruited through fair recruitment earned *less* per week (on average by US\$41) than those in the control group (recruited as usual), attributed by the evaluators to the first group working fewer overtime hours. Both groups of recruits reported being verbally abused by factory managers. As the evaluators presciently concluded, 'harsh conditions at work may erode some of the benefits from eliminating recruitment fees, providing pre-departure training, and screening by the fair recruiter' (ILO, 2019: v). Rather than demonstrating the benefits of fair recruitments, the pilot demonstrates its limits. The final section of the article concludes.

The limits to fair recruitment

Given that less than 20 years prior to the establishment of the FRI, the ILO's position was that states should abolish fee-charging recruiters (C96), the ILO has travelled some distance on recruitment. Less than a decade ago, the concept of fair recruitment was unknown, and the international legal standards framework largely omitted migrants recruited across borders (ILO, 2014b). In developing and promoting fair recruitment as a new norm and providing a vehicle for a full box of coordinated governance tools facilitating the extension of ILO normative frameworks to a hitherto unprotected group of workers (Posthuma and Rossi, 2017), the FRI could be said to be a resounding success. The compromises made have successfully muted the opposition of the powerful Employers' Group (Baccaro and Mele, 2012; Thomas and Turnbull, 2017). Furthermore, the FRI has also enabled the ILO to maintain its strategic relevance in a challenging global environment (Hughes and Haworth, 2012). In the process, the FRI has propelled fair recruitment into the global governance of migration.

Yet, the FRI has also highlighted the limits to the concept of fair recruitment. Ultimately, the FRI does not fundamentally challenge – or even identify – the systemic inequalities underpinning recruitment. To date, FRI narratives have often focused on the vulnerability of individual migrants to exploitation which can be addressed through codes of conduct, better regulation of recruitment in Global South countries and more targeted enforcement actions. Cross-border recruitment is not a service to migrants; it is a route by which employers seek out migrant labour from poorer nations as a cost-reduction strategy to maximise their profits (Jones, 2021; Likic-Brboric, 2019; Schierup et al., 2015). Rather than driving economic growth in migrants' countries of origin, recruitment is harnessed to profitability and gross domestic product (GDP) growth in countries of destination.

For now, the FRI remains a muted challenge to the neoliberal model of flexible and 'managed migration' in which organised recruitment is a fundamental part. In leaving fundamental structural inequalities associated with international labour migration

untouched, the FRI risks reproducing a hegemonic view of flexible labour migration based on temporariness, low wages and poor working conditions (Likic-Brboric, 2019).

In providing CIETT with a seat at the top table the ILO has unintentionally further legitimised the industry which began with the adoption of C181 (Vosko, 2000). Yet, any agenda for a rights-based and socially just approach to the global regulation of worker migration requires a critical rethink of how to maximise workers' mobility and dismantle the structural role of cross-border recruiters. First, research should be further utilised to draw attention to recruiters' systemic function in driving the downwards shift in workers' rights globally (Coe et al., 2010), as well as their fundamentally discriminatory function (Jones, 2021). Second, the ILO should direct more attention to the issue of recruiters' direct and indirect relationship to wage theft from migrants, an emerging campaign from civil society (Foley and Piper, 2021). Quantifying this rather than recruitment fees would transform understanding of the inequities in temporary labour migration.

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1. In 2016, CIETT changed its name to World Employment Confederation (WEC). For clarity, its former name is used here.

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