

Compte rendu

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Recensions

Book Reviews

The Code of International Labour Law,

edited by Neville RUBIN, Cambridge: Cambridge University Press, 2005, 846 pp., ISBN-10: 0521847400 and ISBN-13: 9780521847407.

International labour law is a body of rules and principles regarding issues such as freedom of association as it manifests itself in the labour sector as the right to organize and bargain collectively, equality of employment, child and forced labour, occupational health and safety, wages and benefits and labour administration. Its primary source is the International Labour Organization (ILO), a U.N. agency composed not only of states but also trade union and employer organization representatives. In 1939, and again in 1952, the ILO secretariat assembled a volume intended to bring together the diverse elements of international labour law in a single publication entitled *The International Labour Code*. The *Code of International Labour Law* is not an update of those earlier efforts by ILO officials. Instead, it is a massive independent effort by Neville Rubin, a law professor (now emeritus) from the University of Cape Town, South Africa in association with professors Evance Kalula, also of Cape Town and Bob Hepple, Professor of Law Emeritus, Cambridge University.

Rubin's rationale for undertaking this vast project was to make the entire corpus of law more accessible, an important objective, he suggests, given the growing importance of this body of law in the context of globalization. There is a strengthening international consensus that, if globalization is to win general support, its benefits must

be broadly distributed. It is for that reason that the ILO's International Labour Conference adopted a Declaration of Fundamental Principles and Rights of Labour in 1998, and the U.N. included ILO-developed international labour standards as part of its Global Compact with multinational enterprise.

The publication comes in three volumes. Volume one, entitled "Essentials of International Labour Law", has two parts. Part one, entitled "The Nature of International Labour Law", reviews the ILO Instruments (constitution, conventions, recommendations, declarations, resolutions and decision), institutions, processes whereby international labour law comes into being, and also supervisory procedures. The second part of Volume one focuses on core standards, those considered to be fundamental human rights. These include: freedom of association and its associated right to organize and bargain collectively, equality of rights and of treatment, and freedom from forced and child labour. Volume II, which is divided into two books, reviews the vast landscape of topics that the ILO has addressed over the years including, for example, aspects of employment such as employment of young people, women, older workers, benefits and conditions of work, occupational health and safety, labour administration and regulations with respect to certain branches of work

such as hotels and restaurants, nursing, seafaring, plantations, etc.

Anyone who knows a bit about the ILO will know that its principal instrument for creating "law" is the Convention. Once a new Convention is approved by the annual International Labour Conference (which acts as a sort of world parliament for the development of labour law), each member state is required to consider the Convention with a view towards ratifying it, and thereby making it domestic law. But the ILO has other instruments that are also important in fashioning international law. All member states, for example, are bound as a condition of membership, to conform to the Constitution. All of the core labour rights considered to be fundamental human rights are mentioned in the Constitution, thereby binding member states to abide by them. What conformance with those rights and principles means in terms of daily conduct is the province of two ILO committees: The Committee on Freedom of Association that hears complaints alleging infringement of that basic freedom in particular circumstances and the Committee on the Application of Conventions and Recommendations that is charged with overseeing the implementation of Conventions and Recommendations. Together, the two committees have compiled a huge body of jurisprudence that fleshes out the bare bones of the requirements in the Constitution.

Rubin suggests that these interlocking aspects of ILO process produce a coherent body of law that is universally applicable. Thus, even if a given state has not ratified the relevant conventions on freedom of association and the right to organize and bargain collectively, nevertheless, it is still bound constitutionally to respect those rights as they are interpreted by the relevant committees. Since, in arriving at their decisions, the committees commonly

review relevant conventions, recommendations and decisions of their sister committee, there is a consistency to the entire body of law. An instrument entitled a Recommendation may give the impression that it is a non-binding suggestion, but given the inter-workings of the ILO institutions, Recommendations filter through the committee decisions to become legal obligations.

While the writing in this book is generally legalistic and somewhat difficult to penetrate, I found the sections on instruments and institutions to be quite useful. The one on supervision was, however, disappointing. It simply describes point by point the procedures that are to be followed in varying circumstances with little commentary.

The ILO is frequently criticized for being a toothless tiger with little capacity to impose sanctions on states that simply ignore the pronouncements of its supervisory committees. Contrarily, other commentators claim it to be one of, if not the, most effective agency in the U.N. system. Article 26 of the ILO convention gives the organization the right to impose sanctions if directives and diplomatic pressure fail to produce results. But the ILO's reticence to impose sanctions is strongly embedded in its normative culture. Rubin's commentary on this controversy would have been valuable, but he does not take it on.

Another drawback is that the book is not as user friendly as it might be. For instance, I tried to look up collective bargaining in the index, but there was no listing under C. There was a sub-listing under Industrial Relations but it pointed the reader to Volume II whereas the most detailed discussion of Collective Bargaining appears in Volume I. The inadequacy of the index is made up to an extent by a detailed table of contents but at £450 for the three-volume set, purchasers would be justified to expect better. Grammatical errors also appear

with greater frequency than one would expect in a reference publication of this sort.

Despite its failings, this volume is especially welcome in Canada where the Supreme Court is leaning more heavily on international law in interpreting the federal constitution. In its *Dunmore vs. Ontario* decision, the Court referred repeatedly to Canada's obligations as a member of the ILO and relied heavily on ILO jurisprudence to interpret the meaning of Freedom of Association. In addition, two major Canadian unions, The United Food and Commercial Workers, and the National Union of Public and General Employees recently kicked off a campaign to promote worker rights as human rights with the publication of a book (*Collective Bargaining in Canada, Human Right or Canadian Illusion?* by Derek Fudge and John Brewin, 2005), documenting Canada's failure to abide by international labour law despite its solemn promise to do so. Those two unions have recently been joined by the National Teachers' Federation and the Canadian Professional Police Association.

As they have historically been taught in Canada, labour law and industrial relations have all but ignored international law. The result is that graduates from relevant labour programmes frequently know little or nothing about the extent to which Canadian law and practice conform to or offend international norms. Our peculiar set of conventions and legal arrangements has a logic that appears reasonable in isolation. Only by examining them in reference to the logic embedded in international labour law, may their strengths and weaknesses be more clearly made apparent.

In many respects, our practices do not comply with the letter and spirit of the international labour code. For instance, our practice of certification of bargaining units by majority support is permitted by international law, but in its absence, any group of employees

has a right to organize themselves, select leaders, formulate programmes of action and make representations to employers. In such circumstances, employers have a responsibility to recognize and deal in good faith with such employee organizations with a view towards arriving at mutually acceptable solutions to issues raised. Should the discussions prove unsuccessful, the employees have the right to strike. This course of events is rare in Canada, most likely because few workers realize they have such rights, and few employers realize they have such duties. International labour law imposes upon governments a responsibility to promote knowledge of these alternatives, to encourage workers to make use of their rights to forward and to defend their employment interests in whatever legal format they find to be convenient, and to ensure that employers respect their employees' labour rights to the same extent that they respect their other human rights. But instead of promoting understanding and respect for these rights, Canadian governments have adopted a hands off, neutral stance that leaves workers and employers in the dark about their international rights and duties.

International labour law also insists that governments as employers have a duty to negotiate conditions with unions of their own employees. They offend the law when they unilaterally impose conditions and when they legislate workers on legal strike back to work. With regard to these issues, our governments have frequently been found by ILO committees to be in violations of the international norms they have promised to abide by and promote.

Our national dialogue on labour issues takes place in a bubble that separates it from the reality of global currents and international law. This book may help to change that situation.

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