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(RE)THINKING THE INTERNATIONAL LABOUR LAW: INTERNATIONAL LABOUR STANDARDS, REGULATORY STRATEGY AND UNIVERSALITY

Abstract

In 2020, for the first time in the history of the International Labour Organization (ILO), we sighted the universal ratification of a Convention, that is, the ratification by all 187 Member States of the Organization. The C182—Convention of Worst Forms of Child Labour (1999) is identified as a fundamental Convention because it refers to one of the fundamental labour rights identified at ILO *Declaration on Fundamental Principles and Rights at Work* (1998). This Declaration, despite having been immersed in intense debates on the regulatory option adopted by the ILO (soft law), spelled out a list of fundamental rights and principles at work, approaching to the grammar of human rights. In this sense, it is possible to understand that Convention No. 182, since it is fundamental, already had a prominent role. However, universal ratification presents itself as opportune and strategic, especially when it formalizes the commitment of States to the observance of the parameters presented in the respective international labour standard. Thus, using the deductive method (Lakatos, Marconi 2003) and the bibliographic and the documentary research techniques, the study is going to analyse the importance of universalizing international labour standards for International Labour Law.

Słowa kluczowe: Międzynarodowa Organizacja Pracy, międzynarodowe standardy prawa pracy, strategie regulacyjne, powszechność

Keywords: International Labour Organization, international labour standards, regulatory strategy, universality

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Introduction

The year 2020 marked a historic moment in more than 100 years of the International Labour Organization (ILO): in August 2020, the C182—Convention on the Worst Forms of Child Labour (1999) reached universal ratification, being the only normative instrument of the ILO ratified by the 187 Member States of the Organization.

This Convention is one of the eight conventions considered fundamental, since it deals with the elimination of the worst forms of child labour, one of the themes included in the core labour rights. In this sense, it is a sign of commitment by all Member States of the Organization to promote one of the fundamental rights and principles at work, as set out in the ILO *Declaration on Fundamental Principles and Rights at Work* (1998).

In this scenario, considering the symbol that this universal ratification can work in International Labour Law, this research aims to analyse the importance of universalizing international labour standards for International Labour Law. Therefore, starting from the deductive method (Lakatos, Marconi 2003, p. 91) and using bibliographic and documentary research techniques, it will be investigated: (i) the number of ratifications of ILO conventions and protocols; (ii) whether there is and, if so, what would be the common denominator among the instruments most ratified by the Member States; and (iii) the repercussion of universalization at the international level for International Labour Law.

In order to share the main results of the research, this text was organized into three main parts: the first, analyses the role of the international labour standards and their relationship with the promotion of fundamental principles and rights at work and decent work; the second presents an overview of ratifications of international labour standards; and the third is dedicated to reflecting on the repercussions of the universal ratification of ILO Convention No. 182. At the end, the conclusions of this study are presented.

International labour standards, fundamental principles and rights at work and decent work

The idea of international labour regulation takes up the celebration of the Treaty of Versailles of 28 June 1919 that culminated in the creation of the International Labour Organization in 1919. It is observed that, in the period prior to the ILO, it was already possible to identify movements that inspired the international regulation of labour and led to the creation of the International Association for Labour Legislation (IALL), in 1900 (Maul 2019, pp. 17–19).

In the context of World War I (1914–1918), the international trade union movement for the design of an international social policy contributed to the creation of the International Labour Organization through the celebration of the Treaty of Versailles, in the scope of the Society of Nations (Maul 2019, p. 20).

According to Anthony Alcock (1971, p. 36), the Treaty of Versailles foresaw the prosperity of all classes in all nations and social justice rather than the triumph of one class, which reverberated in a message of “class cooperation.” This “cooperation” is related to the ILO’s

tripartite structure, in which different social actors are involved in the process of drafting and adopting international labour standards.

The instruments adopted by the ILO are mainly in the form of conventions and recommendations. Popularly known as international labour standards (ILS), the conventions and recommendations differ in their structure: on the one hand, the conventions have the legal nature of international hard law treaties and are intended to create international obligations for Member States (Valticos 1982, p. 50); on the other hand, the recommendations have a legal nature of soft law that do not admit the figure of ratification and can be understood as “non-binding guidelines” (ILO 2019a, p. 20).

Beyond the 1970s, the International Labour Organization began to suffer critics related, for example, to the high number of instruments, the rigidity of conventions and the lack of consideration of the economic effects of ratified conventions (Fonseca 2017, p. 9). In this sense, during the 1990s, an “anti-regulatory climate” prevailed, with a reduction in the rates of ratification of conventions by States and the distancing of employers from attempts at normative standardization (Maul 2019, pp. 249–250).

During this period, the discussions and results of the World Conference on Social Development in Denmark (1995) and the Singapore Ministerial Conference of the World Trade Organization (1996) boosted the commitment of States to the protection of (minimum) labour rights, which made possible the adoption of the ILO *Declaration on Fundamental Principles and Rights at Work* (1998) (Fonseca 2017, pp. 9–10).

The Declaration recognized as fundamental rights at work:¹ (i) freedom of association and the effective recognition of the right to collective bargaining; (ii) the elimination of all forms of forced and compulsory labour; (iii) the effective abolition of child labour; and (iv) the elimination of discrimination in terms of employment and occupation.

Also, in the following year, a new mark of action was defined for the ILO. Presented by the report of the Director General Juan Somavía in 1999 (ILO), the notion of “decent work” does not have a precise conceptualization and is based on strategic axes, namely: (i) promotion of (principles and) fundamental rights at work; (ii) (work and) employment; (iii) social protection; and (iv) social dialogue.

The (i) promotion of (principles and) fundamental rights at work refers to the “ethical and legal foundation of labour standards” of the International Labour Organization (Fonseca 2017, p. 18), in relation with the *Declaration of Philadelphia* (1944) and the *Declaration on Fundamental Principles and Rights at Work* (1998).

The (ii) (work and) employment refers to formal and informal occupations, carried out by men and women, in houses, factories and/or on the streets, manifested through productive work opportunities and in suitable conditions (Rodgers 2002, p. 14).

¹ The Fundamental Conventions are: C029—Forced Labor Convention (1930); C087—Freedom of Association and Protection of the Right to Organize Convention (1948); C098—Right to Organize and Collective Bargaining Convention (1949); C100—Equal Remuneration Convention (1951); C105—Abolition of Forced Labor Convention (1957); C111—Discrimination (Employment and Occupation) Convention (1958); C138—Minimum Age Convention (1973); and C182—Worst Forms of Child Labor Convention (1999).

The (iii) social protection aims to guarantee security to workers, considering the range of “unsafe” situations, such as illness and unemployment (Rodgers 2002, pp. 14–16).

Finally, the (iv) social dialogue is related to the participation of different social actors—members of the government and entities representing employers and employees—in the democratic construction of decisions, strengthening participation and cooperation.

These strategic axes propose to enable the promotion of decent work to all workers, dialoguing with different themes regulated by the International Labour Organization. In this sense, the understanding of the ratification and internationalization of international labour standards enables reflections related to the feasibility of promoting decent work.

Overview of ratifications of international labour standards

Currently (November 2021), the International Labour Organization has already adopted 190 conventions, 203 recommendations and 6 protocols,² of which the up-to-date instruments are 73 conventions, 82 recommendations and all protocols.

The research proposed, as a specific objective, to investigate the number of ratifications of ILO conventions and protocols and whether there is and, if so, what would be the common denominator among the instruments most ratified by the Member States.

Thus, the most ratified and least ratified instruments of the ILO were systematized in table 1 and table 2, respectively. Furthermore, the following colours were used: red, to indicate fundamental conventions; green to indicate governance conventions;³ and white to indicate technical conventions and protocols.

Table 1. Overview of ratification of the most ratified ILO conventions and protocols

Up-to-date instruments	Year	Ratifications	Denunciations
C182—Worst Forms of Child Labour Convention	1999	187	0
C029—Forced Labour Convention	1930	179	0
C105—Abolition of Forced Labour Convention	1957	176	2

² Protocols can be ratified and serve to gather proposals adopted on a given topic, to update provisions and/or to fill gaps.

³ The Governance Conventions (Priority Conventions) are: C081—Labour Inspection Convention (1947); C122—Employment Policy Convention (1964); C129—Labour Inspection (Agriculture) Convention (1969); C144—Tripartite Consultation (International Labour Standards) Convention (1976).

Up-to-date instruments	Year	Ratifications	Denunciations
C111—Discrimination (Employment and Occupation) Convention	1958	175	0
C100—Equal Remuneration Convention	1951	173	0
C138—Minimum Age Convention	1973	173	0
C098—Right to Organise and Collective Bargaining Convention	1949	168	0
C087—Freedom of Association and Protection of the Right to Organise Convention	1948	157	0
C144—Tripartite Consultation (International Labour Standards) Convention	1976	156	0
C081—Labour Inspection Convention	1947	148	0

Source: Own elaboration based on data from the NORMLEX platform (ILO [n.d]).

It is noticed that the most ratified instruments comprise 8 fundamental conventions and 2 governance conventions. Still, the most ratified instrument and the most recent in table 1 is the Worst Forms of Child Labour Convention (C182) (1999), which was the first international labour standard to achieve universal ratification.

Most of the presented instruments were adopted in the 1940s, 1950s and 1970s. Furthermore, the Member States that have not ratified the instruments are located, especially, in Asia and Oceania.

With regard to the theme, it was found that 4 instruments address the “worst forms of labour,” that is, forced labour and child labour; 3 instruments are directly related to social dialogue and, above all, to consultation and collective bargaining; and 2 instruments cover aspects related to gender vulnerability.

In the list of the 10 least ratified instruments, 7 are conventions and 3 are protocols, of which it was possible to identify a protocol to a priority convention. The majority of Member States have not ratified any of these instruments and, in the case of Member States which have ratified, they are located, mainly, in Europe and America.

These instruments were adopted, above all, in the 1980s and 1990s, which dialogues with the “anti-regulatory climate” experienced in the period by the ILO. Also, in the list of these instruments, the C190—Violence and Harassment Convention was identified, which is the most recent instrument of the ILO and was adopted in 2019. Nevertheless, the C190 is not the instrument with the lowest number of ratifications.

Table 2. Overview of ratification of the least ratified ILO conventions and protocols

Up-to-date instruments	Year	Ratifications	Denunciations
P110—Protocol of 1982 to the Plantations Convention	1958	2	0
C165—Social Security (Seafarers) Convention (Revised)	1987	3	3
C157—Maintenance of Social Security Rights Convention	1982	4	0
P089—Protocol of 1990 to the Night Work (Women) Convention (Revised)	1990	5	2
C190—Violence and Harassment Convention	2019	7	0
C168—Employment Promotion and Protection against Unemployment Convention	1988	8	0
C177—Home Work Convention	1996	11	0
P081—Protocol of 1995 to the Labour Inspection Convention	1947	12	0
C110—Plantations Convention	1958	12	2
C178—Labour Inspection (Seafarers) Convention	1996	15	14

Source: Own elaboration based on data from the NORMLEX platform (ILO [n.d]).

About the theme of the 10 least ratified instruments, it was possible to identify that 2 instruments are about labour inspection, of which only one is related to a priority convention (C81, which is one of the ten most ratified instruments); 2 instruments are about rights related to social protection and, above all, social security; and 2 instruments are aimed at seafarers, who concentrate the largest number of complaints.

Finally, the tabulation of data related to the 79 updated instruments made it possible to identify the averages of general ratification and general denunciation, as well as the averages of the ten most ratified instruments and the ten least ratified instruments.

It should be noted that the investigation pertaining to ratification does not allow for conclusions related to the effective internalization of the instrument by the Member States. However, it leads to reflections of the movement of Member States towards international labour standards and the role of the International Labour Organization in the establishment and maintenance of an “international labour code.”

Table 3. Ratification and denunciation averages

Up-to-date instruments	Ratifications	Denunciations
General	56.8	1.5
The most ratified	169.2	0.2
The least ratified	7.9	2.1

Source: Own elaboration based on data from the NORMLEX platform (ILO [n.d]).

Reflections on international labour standards and universality

International Labour Standards are central instruments of the actions of the International Labour Organization, functioning as rules of the globalized game, “in order to ensure that globalization would give everyone the same opportunity to achieve prosperity” (ILO 2019a). These rules of the game were and continue to be essential tools for economic growth to be accompanied by sustainable development and social justice.

In the *Centenary Declaration for the Future of Work* (2019b), the ILO acknowledged that “the experience of the past century has confirmed that the continuous and concerted action of governments and representatives of employers and workers is essential to the achievement of social justice, democracy and the promotion of universal and lasting peace” and such “action has brought historic advances in economic and social progress that have resulted in more humane conditions of work,” although poverty, inequalities, injustices and conflicts persist in many parts of the world.

For this reason, the commitments made in 1919 were renewed, the other declarations were reaffirmed and it was reinforced that “setting, promotion, ratification and supervision of international labour standards is of fundamental importance to the ILO” (ILO 2019b).

According to Juan Somavía:

standards are the history of the ILO... By offering paradigms, the ILO gives tangible content to the notion of social justice that it consistently defends and strives to promote. Standards encapsulate components of human dignity and security which should be enjoyed by everyone in the world of work. They offer the necessary yardstick of fairness to measure progress, but also to reveal backwardness (Somavía 2004, p. ix).

In this sense, it is possible to say that they have a certain universalizing vocation, as the ILO’s intention is to obtain the greatest number of ratifications in relation to the conventions, as well as complying with the guidelines of the recommendations and promoting the rights provided for in its declarations.

Although it is difficult—or virtually impossible, according to Jonathan I. Charney (1993)—that in the international community, with more than two hundred countries and, even within the scope of the ILO, with 187 Member States, there is consensus among all on a certain normative instrument, especially on those involving costs or changes in behaviour (Charney 1993), a treaty is ideally expected to have a large number of ratifications.

Thus, the entire ILO control system is oriented towards monitoring the application of the conventions by the Member States that have ratified them, as well as collecting information on non-ratified conventions, in addition to mapping the intention of countries to apply or intend to apply provisions of the recommendations, indicating the extent to which they are in harmony with these guidelines.

In this context, the ratification of C182 of the ILO by all Member States of the Organization, that is, the universal ratification of this international treaty, represents the effort of 187 countries to implement one of the fundamental rights and principles at work (that is, the elimination of worst forms of child labour), being a historic moment, according to Guy Ryder, ILO Director-General.

As Sharan Burrow, Secretary-General of the International Trade Union Confederation, emphasizes, the “universal ratification of Convention 182 is a potent and timely reminder of the importance of ILO standards and the need for multilateral solutions to global problems” (ILO 2020). This reflection on solving global problems from global solutions gains even more relevance in a globalized context, in which there are international production chains, which involve a segmented and dispersed production process between different countries, many of which make use of child labour (ILO, OECD, IOM, UNICEF 2019).

For Ryder, universal ratification:

reflects a global commitment that the worst forms of child labour, such as slavery, sexual exploitation, the use of children in armed conflict or other illegal or hazardous work compromise that children’s health, morals or psychological wellbeing, have no place in our society... means that all children now have legal protection against the worst forms of child labour (ILO 2020).

Furthermore, according to Isidro Maya Jariego, although the network of multilateral institutions seems to be under pressure in the current political situation:

This is good news insofar as a large part of the achievements in the fight against child labour have been based precisely on international collaboration, within the framework of multilateral organizations (2021, p. 143).

In this context, the universal ratification of the ILO C182 has two major repercussions: one related to the reinforcement of the importance of labour standards—and, consequently, of international regulations and the International Labour Organization itself—as an instrument that contributes to the promotion of social justice, functioning as a social rule for the globalized world and appearing as a starting point for the conformation of global governance in relation to the world of work; and a second one linked to the theme contemplated in

C182—elimination of the worst forms of child labour—highlighting the centrality of the theme for the promotion of fundamental rights and principles, as well as the reinforcement of the recognition of children as subjects of law in international law.

Thus, the universal ratification of the Convention as a symbol of the potential of the international labour standards as an instrument to promote social justice, as well as the urgent need to eliminate the worst forms of child labour. It is noteworthy, however, that although universal ratification is an important step in the process of promoting fundamental rights and principles at work, it is not enough, and continuous monitoring is needed to verify its implementation by Member States.

Conclusion

Since its creation, the International Labour Organization has had as one of its objectives the creation of international labour standards—identified as a legal response to global challenges—which are elaborated in a tripartite manner by States, workers' representatives and employers' representatives, with the purpose of establishing labour standards based on social dialogue.

In 2019, the centrality of labour standards was again highlighted in the Centenary Declaration, showing that even in a context of profound transformations—such as the outbreak of a pandemic, the attenuation of geographic barriers, the accentuation of climate change and environmental disasters, the increase in migratory flows, technological advances and the development of artificial intelligence, among others – the international labour standards continue to be important instruments for achieving sustainable development and providing social justice.

In this sense, the universal ratification of the C182 represents the recognition, by the ILO Member States, that the ILO regulations are a strategic multilateral instrument for the solution of a global problem (child labour), bringing the discussion on the possibility of global governance regarding the world of work. Furthermore, in addition to this normative and institutional repercussion, universal ratification also becomes a symbol of the recognition of children as subject of international law.

Finally, it is worth noting that although the relevance of this historic moment is recognized, universal ratification does not necessarily mean taking concrete actions to protect children and eliminate the worst forms of child labour, requiring continuous monitoring of actions undertaken by the countries for its implementation, especially at a time of intense transformations, aggravated by the COVID-19 pandemic.

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