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**An old but gold challenge for international labour law:** rethinking the personal scope of ILO standards

**Um desafio antigo, mas valioso, para o direito internacional do trabalho:** repensando o âmbito pessoal das normas da OIT

Olívia de Quintana Figueiredo Pasqualeto

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# **An old but gold challenge for international labour law:** rethinking the personal scope of ILO standards*

# **Um desafio antigo, mas valioso, para o direito internacional do trabalho:** repensando o âmbito pessoal das normas da OIT

Olívia de Quintana Figueiredo Pasqualeto**

## Abstract

Who are the workers for the International Labour Organization (ILO)? Who do the ILO standards apply to? These are old questions, but to this day they still spark divergences in the literature on the personal scope of international labour law. Based on bibliographic and documentary research, this text aims to examine what is the personal scope effectively adopted by the ILO and analyze whether its expansion is necessary, reflecting on why we should consider the rationality of ILO Convention No. 190 as a starting point for such enlargement. The research showed that, despite the exceptions, the ILO standards are predominantly focused on the standard employment relationship. However, in a scenario of vertical disintegration and workplace fissuring, this becomes problematic, as it leaves many workers outside its protective umbrella. To face this old but gold challenge, I advocate expanding their personal scope inspired by the logic underlying Convention No. 190: express adoption of a broad personal scope, regardless of the contractual form; regulation of situations; and concern with current working conditions. Replicating this rationality in future standards can help international labour law deal with the organizational transformations in the world of work.

**Keywords:** personal scope; standard employment relationship; International Labour Organization; ILO Convention No. 190.

## Resumo

Quem são as trabalhadoras e os trabalhadores para a Organização Internacional do Trabalho (OIT)? A quem se aplicam as normas da OIT? Essas são questões antigas, mas que, até os dias atuais, continuam a suscitar divergências na literatura acerca do alcance subjetivo do direito internacional do trabalho. Com base em pesquisa bibliográfica e documental, este texto tem como objetivo examinar qual é o âmbito pessoal efetivamente adotado pela OIT e analisar se a sua ampliação é necessária, refletindo sobre por que devemos considerar a racionalidade da Convenção nº 190 da OIT como ponto de partida para tal ampliação. A pesquisa revelou que, apesar das exceções, as

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normas da OIT concentram-se predominantemente na relação de emprego padrão. Contudo, em um cenário de desintegração vertical e de fragmentação dos locais de trabalho, tal enfoque se torna problemático, pois deixa muitas trabalhadoras e trabalhadores fora de seu guarda-chuva protetivo. Para enfrentar esse desafio antigo, porém valioso, defendo a ampliação do âmbito pessoal dessas normas, inspirando-me na lógica subjacente à Convenção nº 190: adoção expressa de um amplo escopo pessoal, independentemente da forma contratual; regulamentação de situações; e preocupação com as condições de trabalho atuais. Replicar essa racionalidade em futuras normas pode auxiliar o direito internacional do trabalho a lidar com as transformações organizacionais no mundo do trabalho.

**Palavras-chave:** alcance pessoal; relação de emprego padrão; Organização Internacional do Trabalho; Convenção nº 190 da OIT.

## 1 Introduction

In everyday language, the terms 'worker' (and 'work') and 'employee' (and 'employment') are often used as synonyms. However, they have – or may have – distinct legal connotations. Although there is no single definition, Davidov, Freedland and Kountouris[1] point out that most jurisdictions consider the terms employee/employment to be related to a specific type of work relationship: the standard employment relationship (SER).

SER is typically a full-time and year-round relationship for an indefinite duration (usually with a single employer) and responsible for being a springboard for entitlements, such as pensions and unemployment insurance[2]. Each jurisdiction defines who is an employee (or who is under a standard employment relationship) with more or less detail. Nevertheless, according to Davidov, Freedland and Kountouris[3], despite minor differences, there is a common characteristic across the laws of different countries: the SER is based on the employer's control over the employee, who does not act independently[4]. The SER reflects the subordination and dependence of the employee in relation to the employer. Therefore, employees are individuals who work under an employment relationship, while those engaged in other types of work relationships are considered workers. Thus, it can be stated that 'employee' and 'employment' represent a specific form of 'worker' and 'work'.

In this sense, non-standard forms of employment relationship (non-SER) or diverse forms of work refer to different work formats that deviate from standard employment, such as casual work and self-employment. According to the International Labour Organization (ILO)[5], they have been growing over the last few decades, spreading across the labour market in both developed and developing countries.

For Vosko[6], although we attribute the label of standard to the employment relationship, it has never been a reality for many workers. According to the author, this is a problem because the SER paradigm was the main pillar on which international labour standards (ILS) were built. For this reason, ILS were never truly universal, leaving other relationships outside the ILS framework and its protection system.

This concern about the marginalization of non-SER has a long story[7], but it has been revived with the current popularization of gig economy and the misclassification of platform workers[8]. It is a kind of old but gold

[1] DAVIDOV, Guy; FREEDLAND, Mark; KOUNTOURIS, Nicola. The subjects of labor law: 'employees' and other workers. *In*: FINKIN, M. W.; MUNDLAK, G. (ed.). *Comparative labor law*. Tallinn: Edward Elgar Publishing, 2015. p. 115-131.

[2] FUDGE, Judy. Precarious migrant status and precarious employment: the paradox of international rights for migrant workers. *Comp. Lab. L. & Pol'y J.*, v. 34, p. 95, 2012.

[3] DAVIDOV, Guy; FREEDLAND, Mark; KOUNTOURIS, Nicola. The subjects of labor law: 'employees' and other workers. *In*: FINKIN, M. W.; MUNDLAK, G. (ed.). *Comparative labor law*. Tallinn: Edward Elgar Publishing, 2015. p. 115-131.

[4] DAVIDOV, Guy; FREEDLAND, Mark; KOUNTOURIS, Nicola. The subjects of labor law: 'employees' and other workers. *In*: FINKIN, M. W.; MUNDLAK, G. (ed.). *Comparative labor law*. Tallinn: Edward Elgar Publishing, 2015. p. 115-131.

[5] ILO. *Non-standard employment around the world*: understanding challenges, shaping prospects. Geneva: International Labour Office, 2016.

[6] VOSKO, Leah F. *Managing the margins*: gender, citizenship, and the international regulation of precarious employment. Oxford: OUP, 2011.

[7] DAVIDOV, Guy; FREEDLAND, Mark; KOUNTOURIS, Nicola. The subjects of labor law: 'employees' and other workers. *In*: FINKIN, M. W.; MUNDLAK, G. (ed.). *Comparative labor law*. Tallinn: Edward Elgar Publishing, 2015. p. 115-131.

[8] STEFANO, Valerio De *et al*. Introduction to a research agenda for the gig economy and society. *In*: STEFANO, Valerio De *et al*. (org). *A research agenda for the gig economy and society*. [*S.l.*]: ElgarOnline, 2022. p. 1-12. Available at: https://www.elgaronline.com/edcollchap/book/9781800883512/book-part-9781800883512-8.xml. Access

challenge for international labour law, which remains unresolved and resurfaces from time to time: how to encompass different forms of work under its umbrella of social justice? For some more optimistic views, ILS would not be so far from involving non-SER. According to De Stefano[9], although some ILS apply exclusively to the employment relationship, there are ILS that apply to diverse forms of work.

Considering the friction between a more optimistic view of ILS scope and a view according to which standards are SER-centered, this study aims to examine what is the personal scope effectively adopted by the ILO and analyze whether its expansion is necessary, reflecting on why we should consider the rationality of ILO Convention No. 190 as a starting point to such enlargement. I therefore intend to identify if the ILO is reviewing the postulate on which its standards were created, expanding its normative beyond the employment relationship. This analysis of the personal scope focuses on the worker's pole. The central hypothesis is that although there are some exceptions, the personal scope is still quite restricted to the standard employment relationship (in other words, to employees).

The research methodology is based on bibliographic and documentary research. Regarding the documentary research, I used the content analysis technique supported by Atlas.ti software. Initially, I read all the Declarations, Conventions, Protocols and Recommendations published in the ILO Normlex database. The analysis was carried out in two stages. First, based on a more literal approach (grounded[10] in the data), I selected the standards that expressly mention the worker's definition and the personal scope, define to whom they apply or do not apply, considering the legal classification criteria[11] and excluding other criteria, such as age or nationality[12]. Standards that do not present definitions or do not determine their applicability were not considered[13]. Second, I categorized the standards considering the subjects covered by their scope and classified them into five categories: (i) express application only to employees; (ii) implied application only to employees; (iii) possibility or recommendation of expansion to non-employees; (iv) express application to non-employees; (v) application to any person, whether a worker or not. These categories are further detailed in item 3. Finally, comments[14] from supervisory bodies[15] on articles related to personal scope were mapped[16], seeking to assess whether supervisory bodies expand the ILS personal scope.

This paper presents the results of our investigation and is structured into three main parts: first, the article addresses the theoretical debate on the ILS personal scope; second, the text presents empirical evidence on the personal scope of ILO standards and supervisory bodies; third, I reflect on why we should take up the 'old but gold' challenge of rethinking the personal scope of ILO standards with ILO Convention 190 as a starting point. At the end, I present some final remarks.

## 2 The controversy over the ILS personal scope

The controversy over the ILS personal scope is not new. The fundamental question surrounding this "long story"[17] is: who are the workers covered by the ILO standards? This is a sub-question of an even broader one: who are the subjects of labour law? This is a critical question with major normative consequences, because it

on: 23 June 2024.

[9] STEFANO, Valerio De. Not as simple as it seems: the ILO and the personal scope of international labour standards. *International Labour Review*, v. 160, n. 3, p. 387-406, 2021.

[10] STRAUSS, A. L; CORBIN. *Grounded theory in practice*. London: Sage Publications, 1997.

[11] For example, ILO Convention No. 155 defines workers as "all employed persons, including public employees" (Article 3) and mentions that it applies "to all workers in the branches of economic activity covered" (Article 2). In this Convention, there is a well-defined definition and scope, based on a legal criterion (be an employee).

[12] For example, the scope of ILO Convention No. 60 is related to the age of workers. The Convention states that it applies "to any employment not dealt with in the Convention concerning the age for the admission of children to employment in agriculture (Geneva, 1921), the Minimum Age (Sea) Convention (Revised), 1936, or the Minimum Age (Industry) Convention (Revised), 1937".

[13] ILO Convention No. 105, for example, does not provide definitions or scope of applicability. Therefore, it was not considered in the analysis.

[14] Comments from ILO supervisory bodies are available in the Normlex database only since 1967. Previous years are not available in the database and, therefore, were not considered in this study.

[15] Committee on the Application of Standards (CAS) and Committee of Experts on the Application of Conventions and Recommendations (CEACR).

[16] To find the comments, I used the article numbers of each analyzed Convention as the search term.

[17] DAVIDOV, Guy; FREEDLAND, Mark; KOUNTOURIS, Nicola. The subjects of labor law: 'employees' and other workers. *In*: FINKIN, M. W.; MUNDLAK, G. (ed.). *Comparative labor law*. Tallinn: Edward Elgar Publishing, 2015. p. 115-131.

> determines if one is entitled to a significant package of rights or to no protection at all. It establishes a line between a group of workers who enjoy substantial regulatory support, and a group who just accept the dictates of market forces[18].

Different authors, on different occasions, have already reflected on the personal scope of labour law. When analyzing the need for regulatory reforms due to changes in the production structure, Collins[19], Fudge[20] and Regalia[21] found that the labour law personal scope is strongly limited to employment relationship. This narrow scope has become a problem because it leaves many workers outside the labour law framework, especially in the context of workplace fissuring[22].

In the same sense, the main guideline of the renowned report "Beyond employment: changes in work and the future of labour law in Europe" prepared in 1999 for the European Commission, under the direction of Alain Supiot – and therefore popularly known as the "Supiot Report" – was the need to broaden the social law scope of application to cover all forms of labour contracts, with the application of labour law (or at least some of its aspects) also to workers who are not employees in the strict sense[23]. Even though it is a recommendation of the report (or a "prospective wish"[24]), it was not yet (and still is not) a reality. Broadly speaking, labour law is still not widely applied to workers who do not fit into typical employment relationships. On the contrary, one of the concerns of the committee that prepared the report is the prevalence of the element of "subordination" – in a Fordist sense – to characterize the employment relationship and, therefore, to characterize who will be under or outside the protective umbrella of labour law.

In a comparative study, Davidov, Freedland and Kountouris[25] analyze who is considered an employee in different jurisdictions. According to the authors, understanding who is an employee means understanding the personal scope of labour law. This task has often been left to the courts, considering the existence of few normative definitions for employee. Despite the difference between the countries analyzed, the authors describe an important similarity between them: "the stronger the signs of control/subordination/integration, the more one is likely to be considered an employee [...] The stronger the signs of independence, the less likely is one to fall within the coverage of labor law"[26]. In this sense, the personal scope of labour law is linked to workers in a standard employment relationship, that is, to employees.

Freedland and Kountouris, in the seminal work on the legal construction of personal work relations, propose moving away from the contract of employment and moving towards the idea of relations of personal work (relations, in a broad sense, in which work is carried out personally), which should be the subject of concern for labour law. According to the authors, this approach is radical because

> confirms the inclusion of 'personal work' rather than 'employment' within the framing concept […] straddling the binary divide between those two spheres, only the first of which has traditionally or classically been regarded as the proper sphere of employment law[27].

Furthermore, they emphasize that the relational approach is broader than the contractual one: personal work relations go beyond the contract and involve non-contractual relationships as well, such as the work relations of public office-holding in some jurisdictions. According to this approach, non-SERs (such as self-employed, volunteers, temporary workers, etc.) would

[18] DAVIDOV, Guy; FREEDLAND, Mark; KOUNTOURIS, Nicola. The subjects of labor law: 'employees' and other workers. *In*: FINKIN, M. W.; MUNDLAK, G. (ed.). *Comparative labor law*. Tallinn: Edward Elgar Publishing, 2015. p. 115-131. p. 115.

[19] COLLINS, Hugh. Independent contractors and the challenge of vertical disintegration to employment protection laws. *Oxford Journal of Legal Studies*, v. 10, n. 3, p. 353-380, 1990.

[20] FUDGE, Judy. Fragmenting work and fragmenting organizations: the contract of employment and the scope of labour regulation. *Osgoode Hall Law Journal,* v. 44, p. 609-648, 2006.

[21] REGALIA, Ida. New forms of employment and new problems of regulation. *In*: REGALIA, Ida (org.). *Regulating new forms of employment*. New York: Routledge, 2006. p. 4-22.

[22] WEIL, David. *The fissured workplace*: why work became so bad for so many and what can be done to improve it. Cambridge: Harvard University Press, 2014.

[23] SUPIOT, Alain *et al. Au-delà de l'emploi*: les voies d'une vraie reforme du droit du travail. Paris: Flammarion, 2016. p. 516.

[24] SUPIOT, Alain *et al. Au-delà de l'emploi*: les voies d'une vraie reforme du droit du travail. Paris: Flammarion, 2016. p. 515.

[25] DAVIDOV, Guy; FREEDLAND, Mark; KOUNTOURIS, Nicola. The subjects of labor law: 'employees' and other workers. *In*: FINKIN, M. W.; MUNDLAK, G. (ed.). *Comparative labor law*. Tallinn: Edward Elgar Publishing, 2015. p. 115-131.

[26] DAVIDOV, Guy; FREEDLAND, Mark; KOUNTOURIS, Nicola. The subjects of labor law: 'employees' and other workers. *In*: FINKIN, M. W.; MUNDLAK, G. (ed.). *Comparative labor law*. Tallinn: Edward Elgar Publishing, 2015. p. 115-131. p. 119.

[27] FREEDLAND, Mark Robert; KOUNTOURIS, Nicola. *The legal construction of personal work relations*. Oxford: Oxford University Press, 2011. p. 434.

be covered by labour law, as Freedland suggested in a previous paper[28]. The need to expand the personal scope recognized by the authors highlights the centrality of the SER to labour law.

Although this debate has been much more developed in relation to labour law in a broad sense and sometimes regarding to domestic sphere of each country[29], I would like to highlight the controversy over the ILS personal scope based on the following theoretical contributions around international labour law specifically, considering the object of this study.

According to Vosko, the SER was the epicenter of the legal architecture from which the ILS emerged, based on the paradigm of employee status, standardized working time and continuous employment. "Through these pillars, the SER came to serve as a baseline for the extension of labour protections and social benefits, sufficient wages, and a social wage designed to support adult male citizens and their dependants"[30]. For the author, these pillars became unbalanced from the 1950s onwards, with the breakdown of the gender contract and the expansion of women's participation in the labour market. Since then, some international labour standards have been adjusted to reflect this new reality. However, these settings were made considering the SER paradigm, as if this were the only logical solution: "at the same time, despite the embrace of mechanisms fostering formal equality, there remained regulations preserving sex-specific measures and continued exclusions from the SER's central pillars" [31].

In turn, De Stefano argues that the "twentieth century aura surrounding the ILO"[32], its tripartite structure and the industrial work focus when adopting many ILS "could give the impression that the international labour standards only concern subordinate or "wage" work, especially in large vertical firms in the manufacturing sector. If this were true, the ILO standards would risk appearing increasingly obsolescent in those "industrialized" countries where the vertical firm has long been subject to "fissuring" trend" [33]. According to the author, the meaning of employee and employment relationship varies according to the ILS analyzed, involving other types of workers and relationships. Therefore, to understand the personal scope of the ILS, it would be necessary to analyze the situation on a case-by-case basis and consult the preparatory work and comments from the ILO supervisory bodies (that could adopt an expansive interpretation for the personal scope). For him, although some ILS apply exclusively to the employment relationship, there are ILS that apply to other relationships, such as self-employment.

In line with Stefano, in a more optimistic view, Creighton and Mccrystal argue that while some ILS apply only to the employment relationship, others have a broad scope and we could not reduce their application only to SER. For them, "it is clear that the eight core Conventions that constitute the basis of the 1998 Declaration are intended to apply to all persons who, as the Shorter Oxford English Dictionary has it, "make, produce or contrive" goods or services"[34]. According to the authors, the only exclusions are related to the armed forces and public servants, as they are expressly mentioned in Conventions No. 87 and 98. For them,

> there is nothing in the other core Conventions to suggest that their sphere of operation is intended to be any narrower than that of Conventions Nos. 87 and 98, and indeed it is probably wider in that none of them contains any express exclusions[35].

As seen above, there seems to be a certain consensus on the personal scope of labour law in a broad sense: it is closely linked to the standard employment relationship. However, in relation to international labour standards, there are divergences. On the one hand, there is a perspective aligned with that presented regarding labour law in a broad sense: ILS were built on the logic of SER and have employees as almost exclusive pro-

[28] FREEDLAND, Mark. Application of labour and employment law beyond the contract of employment. *International Labour Review*, v. 146, n. 1-2, p. 3-20, 2007.

[29] CREIGHTON, Breen; MCCRYSTAL, Shae. Who is a worker in international law. *Comparative Labor Law and Policy Journal*, v. 37, n. 3, p. 691-725, 2015.

[30] VOSKO, Leah F. *Managing the margins*: gender, citizenship, and the international regulation of precarious employment. Oxford: OUP, 2011. p. 52.

[31] VOSKO, Leah F. *Managing the margins*: gender, citizenship, and the international regulation of precarious employment. Oxford: OUP, 2011. p. 51-52.

[32] STEFANO, Valerio De. Not as simple as it seems: the ILO and the personal scope of international labour standards. *International Labour Review*, v. 160, n. 3, p. 387-406, 2021. p. 388.

[33] STEFANO, Valerio De. Not as simple as it seems: the ILO and the personal scope of international labour standards. *International Labour Review*, v. 160, n. 3, p. 387-406, 2021. p. 389.

[34] CREIGHTON, Breen; MCCRYSTAL, Shae. Who is a worker in international law. *Comparative Labor Law and Policy Journal*, v. 37, n. 3, p. 691-725, 2015. p. 722.

[35] CREIGHTON, Breen; MCCRYSTAL, Shae. Who is a worker in international law. *Comparative Labor Law and Policy Journal*, v. 37, n. 3, p. 691-725, 2015. p. 723.

tagonists of their personal scope. On the other hand, there are more optimistic views that foresee the application of many ILS to workers in general and not just to employees. This friction in the literature led to the idea of mapping the ILS personal scope, as detailed in the next item.

## 3 Who are the workers? Empirical evidence on the personal scope of ILO standards and supervisory bodies

The different points of view discussed here led me to map the ILS personal scope and the definition of worker in the ILO standards – ILO Declarations, ILO Conventions, ILO Protocols and ILO Recommendations – and in the ILO supervisory bodies' comments. In this section, I describe the results I found in this mapping, carried out according to the methodology presented in the introduction.

### 3.1 Declarations

Firstly, I analyzed the Declarations. These instruments do not present definitions. They use the expression 'worker' (and not employee), suggesting their application to any worker and not just those engaged in an employment relationship. I emphasize, however, that although the Declarations do not use the expression 'employee', they frequently adopt the terms 'employer' and 'employment' throughout their texts. Thus, a first question arises about the personal scope of the Declarations: is the term 'worker' used as a synonym for employee or does it intentionally carry a broad meaning, potentially making it applicable to workers in general, irrespective of legal status?

### 3.2 Conventions and Recommendations

Subsequently, I analyzed the Conventions (C) and Recommendations (R). These instruments employ a variety of terms - such as 'work', 'employ' and 'engage' (and their derivatives, such as 'worker', 'employees', etc.) – sometimes as synonyms, sometimes with distinct meanings, and at times without clarity regarding their significance. There is no common terminology or single personal scope for all of them. Consequently, the meaning of 'worker' in one Convention may differ from its meaning in another Convention, as also described by Creighton and Mccrystal,

> in some instances, ILS appear to use "worker" as a generic term that would encompass both employees and independent contractors (and perhaps other categories of persons who perform work), whilst in others it seems clear from the text or the context that the instrument is intended to cover only those whom the common law would recognize as standing in the relationship of employer and employee. There are also some international standard-setting instruments where it is not entirely clear to what categories of worker they are meant to apply[36].

Although I have identified that a few instruments make explicit reference to others (such as the mention made by C162 to C135), such cross-referencing is not common. There appears to be, in this regard, a certain lack of precision in the terms used in international standards. For instance, C84 regulates that the "rights of employers and employed alike to associate for all lawful purposes shall be guaranteed by appropriate measures" (Article 2) using the term 'employed alike', while the rest of the Convention uses the term 'workers'. The Article 6.1 – "Employers and workers shall be encouraged to avoid disputes, and if they arise to reach fair settlements by means of conciliation" – exemplifies this inconsistency. The Convention uses the terms interchangeably, as if they were synonymous. Conversely, other instruments employ the terms as if they were distinct, although they do not define what is meant by each. For instance, C77 emphasizes that the convention applies to children and young persons employed or working in, or in connection with, industrial undertakings, whether public or private (Article 1). The adoption of different terms - with apparently distinct meanings - also occurs in other instruments, such as C111 (which frequently uses 'employment' and 'occupation', although it does not explicitly explain the meaning of each term) and R206 (which uses 'labour' and 'employment', again without explicit definitions). This sense of imprecision is not exclusive to this topic. As already pointed out by Beltramelli Neto and Voltani[37] regarding the notion of

[36] CREIGHTON, Breen; MCCRYSTAL, Shae. Who is a worker in international law. *Comparative Labor Law and Policy Journal*, v. 37, n. 3, p. 691-725, 2015. p. 692.

[37] BELTRAMELLI NETO, Silvio; VOLTANI, Julia de Carvalho. Historical research of the decent work content in ILO ambit and an analysis of its justiciability. *Brazilizan Journal of International Law*, v. 16, n. 1, p. 166-185, 2019.

decent work, the ILO is not precise in many definitions and this can be seen here as well.

The table below systematizes the definitions of 'worker' found in the Conventions and Recommendations.

**Table 1 -** Definitions of 'worker'

| DEFINITION: WORKER | NUMBER OF INSTRUMENTS |
|---|---|
| **No definition** | **339** |
| **Definition** | **66** |
| Employed | 27 |
| Employed or engaged or in service or occupied | 14 |
| Broad | 12 |
| Employed related | 4 |
| Engaged | 4 |
| Employed or self-employed | 2 |
| Members of co-operatives | 2 |
| Jobseekers | 1 |

Source: Elaborated by the author.

As shown above, 339 ILS don't present any definition of 'worker'. Of the 66 ILS that present a definition, 27 relate it directly to the employment relationship and 4 make this reference throughout the text; 14 instruments use 'employed' in the definition and alternatively include another status, such as 'employed or occupied', without explaining if there is and what is the difference between the terms; 12 ILS has a broad definition, without indicating any restriction (normally using the expression 'any person'); 4 ILS define worker as someone engaged in something; 2 ILS define worker as somebody employed or self-employed; 2 ILS define worker as a member of co-operative and 1 defines workers as jobseekers. As we can see, half of the definitions (in grey) are exclusively associated with the employment relationship. The others also apply to typical employees and some other workers.

From this observation, the following questions arise: Is there internal coherence within the ILO normative system? Is it possible and desirable for one ILS to be interpreted in accordance with another? Do they necessarily relate to each other? Is there interdependence? Is it possible for this interdependence to exist considering that they are independent, and countries can ratify one instrument and not the other? These questions will be the subject of future studies.

The instruments also exhibit different structures concerning their drafting: in some cases, the instruments provide definitions and subsequently use them throughout the normative text (for example, they define the term 'worker' and the norm proceeds to establish rights for workers), as in C181. In other cases, the instrument does not provide definitions but specifies to whom the provisions apply through a list of persons encompassed by the norm, as in C190. In yet other cases, there are neither definitions nor a list of encompassed persons, as exemplified by C174.

The analysis revealed the existence of various personal scopes in the Conventions and Recommendations: (i) express application only to employees; (ii) implied application only to employees; (iii) possibility or recommendation of expansion to workers who are not employees; (iv) express application to non-employees; (v) application to any person, whether a worker or not. The table below systematizes the applicability of the instruments, highlighting the prevalence of categories (i) and (ii), both strictly related to the standard employment relationship (in grey). In category (iii), employees are also protagonists of the personal scope, but the instrument suggests expansion. Finally, in the last two categories, the employee is also present, but shares space with other types of workers or even non-work people.

**Table 2 -** Applicability

| APPLICABILITY | NUMBER OF INSTRUMENTS |
|---|---|
| **No mention** | **289** |
| **Mentions the applicability** | **116** |
| Express application only to employees | 46 |
| Implied application only to employees | 11 |
| Possibility/recommendation of expansion to non-employees | 10 |
| Express application to non-employees | 28 |
| Application to any person, whether a worker or not | 21 |

Source: Elaborated by the author.

(i) Many of the Conventions and Recommendations explicitly apply only to workers engaged in an employment relationship (that is, to employees), as exemplified by Conventions 151 and 155. C151 applies "to all persons employed by public authorities" (Article 1). C155

establishes that the "term workers covers all employed persons, including public employees" (Article 3) and that it "applies to all workers in the branches of economic activity covered" (Article 2). It should be noted that this definition of 'worker' as employed person – in other words, the definition of worker as an employee – is common in ILS.

Many of these Conventions that apply to employees allow the ratifying state to exclude certain sectors of economic activity or categories of employees, as exemplified by C171, which permits the exclusion of "wholly or partly from its scope limited categories of workers when the application of the Convention to them would raise special problems of a substantial nature" (Article 2). This type of exclusion falls under what Hilgert[38] calls flexibility clauses, which do not establish objective criteria for determining what constitutes a substantial problem or a peculiar problem, thus leaving an open path for non-compliance with the convention.

In addition to flexibility clauses, some of these Conventions that explicitly apply only to employees also have explicit exclusion clauses. There are clauses that exclude from the application of the norm certain types of employees, both in cases where there is a specific Convention on the subject (such as C132, which excludes seafarers and public employees, as there is a specific convention for these categories), and in cases where there is none (such as C31, which excluded employees with managerial powers from its application). There are clauses that exclude workers in non-standard employment relationships from the application of the norm, such as C130, which "excludes from the application of this Convention: (a) persons whose employment is of a casual nature" (Article 5).

(ii) Many Conventions and Recommendations use the term 'worker' generically, without presenting a definition tied to an employment relationship. However, throughout the normative text, there are several references to an employment relationship, as exemplified by C139, according to which "Each Member which ratifies this Convention shall take measures to ensure that workers are provided with such medical examinations or biological or other tests or investigations during the period of employment […]" (Article 5). In this same implicit model of restricted application to employees, there are Conventions that exclude other workers from their application, leaving only employees as the personal scope, as exemplified by C109, which excludes from its application "persons working exclusively on their own account or remunerated exclusively by a share of profits or earnings" (Article 3), among other workers.

(iii) There are Conventions and Recommendations that have employees as their main personal scope but allow or recommend expansion to other workers, as exemplified by the Article 7 of C150, according to which

> each Member which ratifies this Convention shall **promote the extension**, by gradual stages if necessary, of the functions of the system of labour administration to include activities, to be carried out in co-operation with other competent bodies, **relating to the conditions of work and working life of appropriate categories of workers who are not, in law, employed persons**, such as:
>
> (a) tenants who do not engage outside help, sharecroppers and similar categories of agricultural workers;
>
> (b) self-employed workers who do not engage outside help, occupied in the informal sector as understood in national practice;
>
> (c) members of co-operatives and worker-managed undertakings;
>
> (d) persons working under systems established by communal customs or traditions. (emphasis added)

This possibility of expansion appears more frequently in Recommendations, as exemplified by instruments R43, R134, R156, R164, R171 and R177. The main hypothesis for the prevalence of expansive clauses in Recommendations is linked to the fact that Conventions are binding, while Recommendations, although monitored, constitute soft law. The greater presence of this expansion in Recommendations may indicate that the SER-centrism mentioned by Vokso[39] still permeates the system of labour standards, given that employees' rights are present in binding norms, while rights of other workers are the subject of Recommendations.

(iv) There are Conventions and Recommendations that expressly apply to other types of workers (non-employees, in non-SER), either to specific categories or broadly to various workers. Some of them also apply to employees.

[38] HILGERT, Jeffrey. *Hazard or hardship*: crafting global norms on the right to refuse unsafe work. Ithaca: Cornell University Press, 2013.

[39] VOSKO, Leah F. *Managing the margins*: gender, citizenship, and the international regulation of precarious employment. Oxford: OUP, 2011.

There are norms specifically intended for certain categories of workers, such as R193 aimed at promoting cooperatives and R132 concerning tenants and share-croppers in agricultural work. R132, in fact, expressly excludes from its application "employment relationships in which work is remunerated by a fixed wage" (item I.2).

On the other hand, there are norms that apply to various categories of workers, such as self-employed workers and workers in atypical forms of dependent work. Examples of these instruments are C141, C167, C183, C190, R200 and R204. Among them, I highlight C190, whose "personal scope is deliberately broad"[40]. C190 is expressly not restricted to standard employment relationship, encompassing workers and other persons in the world of work more broadly, regardless of the legal nature of their contracts, even in the informal economy. According to its Article 2:

> 1. This Convention protects workers and other persons in the world of work, including employees as defined by national law and practice, as well as **persons working irrespective of their contractual status**, persons in training, including interns and apprentices, workers whose employment has been terminated, volunteers, jobseekers and job applicants, and individuals exercising the authority, duties or responsibilities of an employer. 2. This Convention applies to all sectors, whether private or public, both in the formal and informal economy, and whether in urban or rural areas. (emphasis added)

Regarding the ILS with a broader personal scope, I attempted to identify if there was any common issue surrounding them, but I did not identify a prevailing topic. My hypothesis is that topics related to a specific human right, such as freedom of association, could lead to a personal scope beyond the employment relationship. That would be exactly Atkinson's proposal: "where employment legislation functions to protect human rights the scope of these statutes should, at the level of normative principle, be constructed inclusively with any exclusions needing to be justified"[41]. Nevertheless, it was not possible to confirm my hypothesis, as the topics are diversified: workers' association, health, maternity protection, harassment.

Creighton and Mccrystal suggest that ILS linked to the theme of freedom of organization (and other fundamental conventions, which establish principles and fundamental rights) have a broad scope and apply indistinctly to all workers. While I agree with the authors on Convention No. 87, unfortunately this cannot be said for all the fundamental conventions. For example, Conventions No. 98 and No. 100 use 'workers' but refer to 'employment' throughout their text. In this sense, as much as I defend that non-employees have the right to organize and bargain collectively, the Convention No. 98 is not express in this sense (unlike others) and makes references to the notion of employment. For me, this example reinforces Vosko's argument that ILS still have SER as a paradigm.

(v) Other Conventions and Recommendations, especially those linked to the promotion of social security, apply to any person (worker or not) within a society, as exemplified by R202, which recommends to 'implement social protection floors within strategies for the extension of social security that progressively ensure higher levels of social security to as many people as possible" (item I.1). This type of International Labour Standard (ILS) is much less common than others. The notion of social rights linked to worker status (especially employee status) is still very prevalent.

Finally, I tried to identify whether there was any gradual expansion of the ILS personnel scope over the years. Indeed, there are more recent ILS that have a broad scope, such as C190 (the broadest). However, this expansion has not been linear or even cumulative, as older standards, such as C141, already had a slightly broader scope (and after it, we also had employee-oriented standards).

### 3.3 ILO supervisory bodies comments

In general, the analysis of supervising bodies' comments does not specifically indicate a trend towards expanding the personal scope of Conventions and Recommendations, except for the case of C189, as will be discussed below.

When Conventions and Recommendations allow for the exclusion of categories of workers from their application (flexibility clauses), supervising bodies analyze the exclusion and request explanations for the reasons for that, as well as issue recommendations for inclusion.

[40] TREBILCOCK, Anne. What the new Convention on violence and harassment tells us about human rights and the ILO. *In*: POLITAKIS, G. P. (ed.). *ILO 100 Law for Social Justice*. Geneva: International Labour Office, 2019. p. 1031-1058.

[41] ATKINSON, Joe. Employment status and human rights: an emerging approach. *The Modern Law Review*, v. 86, n. 5, p. 1166-1196, 2023.

An example is the Observation (CEACR) adopted in 2023 regarding the application of C52 in Paraguay:

> In response to the Committee's previous comment concerning the exclusion of homeworkers from the provisions on paid annual leave, the Government indicates that under article 61 of the Labour Code, duties and obligations may also be set out in the contract of employment. While noting, once again, the lack of legislative provisions in this regard, **the Committee requests the Government to take the necessary measures to guarantee homeworkers' right to paid annual leave**. (emphasis added)

When Conventions and Recommendations recommend expanding the personal scope to include other workers, comments request information about the evolution of this expansion. An example is the Direct Request (CEACR) adopted in 2022 regarding the expansion of labour inspection to self-employed workers in Denmark, as envisaged in C150:

> Article 7(b) of the Convention. Extension of the functions of the system of labour administration to self-employed persons and workers in the informal economy. The **Committee had previously requested the Government to provide information on measures taken or envisaged for the extension of labour administration activities to self-employed workers and workers in the informal economy**. The Committee notes that the Government reiterates that self-employed persons are, to a large extent, subject to the same health and safety rules as employees, including with regard to rules on performance of the work, technical equipment, substances and materials. The Government also reiterates that it has introduced a maternity equalization scheme for self-employed persons to provide these workers with improved income compensation during maternity and parental leave. Noting the absence of information regarding its previous request, the **Committee once again requests the Government to provide information on measures taken or envisaged for the extension of labour administration activities to workers in the informal economy**. (emphasis added)

In this case, in addition to the expansion of labour inspection, the comment also requests information about the informal economy more broadly.

In cases where Conventions and Recommendations expressly apply to workers in non-SER, comments reinforce the application of the standard not only to employees but also to these other workers. An example is the Direct Request (CEACR) adopted in 1993 regarding the application of C141 in Malta:

> The Committee also requests the Government to provide more information on the measures taken to facilitate the establishment, on a voluntary basis, of strong and independent organizations of rural workers, regardless of whether the workers are wage-earners or self-employed.

In the same vein, the Direct Request (CEACR) adopted in 2022 regarding the application of C190 in Uruguay, requesting clarifications on measures taken to ensure that the Convention is applied to all workers mentioned in its Article 2:

> The Government indicates that Acts 19.580 and 18.561 "protect all workers without exclusions and with no categories of workers being excluded", and that the General Inspectorate of Labour and Social Security (IGTSS) oversees their implementation, protecting all workers on an equal footing. It also indicates that these Acts do not distinguish between the public or private sector, the formal or informal economy, or urban and rural areas. The Committee notes in particular that Act 18.561: (1) refers to labour relations and to harassment that is detrimental to the work situation, the work environment or people's current or future situation (sections 1, 2 and 3); and (2) covers agency workers, pursuant to Decree No. 256/017 regulating the above Act (section 10). **The Committee requests the Government to provide information on the application in practice of Act 18.561 with respect to the protection of the persons mentioned in Article 2, taking into account that the Act refers to labour relations and the work situation**. (emphasis added)

The examples above shows that the ILO supervising bodies seem to reinforce the provisions of Conventions and Recommendations without innovating regarding the personal scope, except for the case of C189.

C189 applies to domestic workers, defined by the Convention as "any person engaged in domestic work within an employment relationship" (Article 1, b). In addition to this definition, according to C189, "a person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker" (Article 1, c). C189 associates the concept of domestic worker with a person in an employment relationship (which, by default, is continuous) and expressly excludes those who perform domestic work non-professionally. However, it does not specifically address occasional domestic work performed on an occupational basis, leaving these occasional domestic workers in a kind of limbo.

Regarding this limbo, CEACR's position is to request clarification on what countries are doing to inclu-

de occasional domestic workers who work professionally, suggesting that these workers should be covered by the Convention. The CEACR bases its comment on Convention's preparatory work, when it was agreed to adopt the wording of Article 1, c precisely to include occasional domestic workers. An example is the Direct Request (CEACR) adopted in 2022 regarding the application of C189 in Ireland:

> Article 1 of the Convention. Definition of domestic work and domestic worker. The Government reiterates that Irish employment law does not treat domestic workers as a separate category of worker and that employment rights legislation in Ireland applies to all workers who are working under a contract of employment (written or verbal), on a full--time or part-time basis, including legally employed domestic workers. The Government reiterates that domestic workers are covered by the Code of Practice for Protecting Persons Employed in Other People's Homes (hereinafter the Code of Practice). Pursuant to the Code of Practice, an "employee" means a person who is employed in the home of another person, in accordance with the provisions of the Code of Practice for Determining Employment or Self-Employment Status of Individuals. Moreover, the Committee observes that, in defining the term "domestic worker", the booklet published by the Workplace Relations Commission (WRC) on the employment rights of domestic workers in Ireland refers to the definition of worker in the national legislation as well as to the definition of domestic work and domestic worker established in Article 1(a) and (b) of the Convention. The Committee nevertheless notes that the Government once again provides no information on the manner in which it is ensured that persons who perform domestic work occasionally or sporadically, but do so on an occupational basis, are covered by the guarantees established in the Convention. In this respect, the **Committee recalls that the definition of a domestic worker established in Article 1 of the Convention only excludes sporadic workers when they do not perform domestic work on an occupational basis**. The Committee draws the Government's attention to the preparatory work for the Convention, which indicates that this the wording of Article 1(c) was included in this provision for the purpose of ensuring that day labourers and similar precarious workers would be covered by the definition of domestic worker (see Report IV (1), International Labour Conference, 100th Session, 2011, page 5). **The Committee therefore reiterates its request that the Government indicate in what manner it ensures that persons who perform domestic work occasionally or sporadically, but do so on an occupational basis, are covered by the guarantees established in the Convention**. (emphasis added)

Regarding C189, CEACR comments contributed to some form of innovation or at least a clarification aimed at a broader personal scope. As proposed by De Stefano, at least in relation to C189, the preparatory work is considered by the CEACR and underpins the expansion of the personal scope of the Convention.

## 4 Facing the 'old but gold' challenge of rethinking the ILO standards personal scope: starting with ILO Convention 190

The mapping presented in the previous item reinforces Vosko's interpretation, according to whom international labour law has not advanced substantially beyond the SER, even though it has undergone changes. The results also confirm my initial hypothesis that although there are some exceptions, the personal scope is still quite restricted to the standard employment relationship. Despite the existence of standards with a broad personal scope and the expanded interpretation of the CEACR regarding the convention on domestic work, there is still a prevalence of standards linked to the standard employment relationship, both expressly and implicitly. Even though the optimistic views of De Stefano and Creighton and Mccrystal are confirmed in some aspects, such as the expansive interpretation of the CEACR for C189 and the broad scope of C87, ILS continue to be based on the SER paradigm (SER-centrism).

The SER-centrism of ILS has always been an issue to be overcome because it has historically left out of its umbrella many workers, because even at its peak, SER was not accessible to all workers[42]. Today, the challenge remains and have become even greater, considering the intensification of vertical disintegration, fragmenting organizations and the fissured workplace. Labour law was forged from the bilateral relationship between employee and employer. Organizational changes, however, challenge and undermine this formule. According to Fudge, there is a conceptual and normative crisis in labour law that occurs on two fronts: first, there is difficulty in identifying who is an employee and who is the respective

[42] VOSKO, Leah F. *Managing the margins*: gender, citizenship, and the international regulation of precarious employment. Oxford: OUP, 2011. p. 1.

employer; second, there are problems in assigning responsibility for the costs and risks of utilizing labour[43]. This article is dealing with the first front discussed by Fudge. As the author warns, the issue lies in the fact that the employment contract was born in circumstances in which there was a thriving welfare state, strong industrial-based unions and vertically integrated firms. These circumstances, however, are crumbling. Therefore, "limiting the scope of labour law to employees can only be understood as the outcome of a historical process that was contingent and contested, and not as an inevitable feature of a natural legal order" [44].

According to Collins, there is a trend towards vertical disintegration of production, mainly explained by employers' efforts to reduce labour costs (avoiding some fixed costs associated with employment, such as training; taking advantage of lower wages outside the firm; reducing concerns about compliance with labour laws; mitigating relational costs with long-term contract employees), in addition to enabling the transfer of production to networks of smaller businesses geared to rapid response to changes in consumer taste.

Despite the advantages for the employer, this trend is producing[45] diverse forms of work that differ from the SER. With the vertical disintegration, firms are fragmenting and moving away from workers: the workforce has been hired through a variety of contractual arrangements, such as subcontracting, franchising, outsourcing, self-employment, etc. Non-SERs are growing around the world, both in developed and developing countries[46]. The bilateral employee-employer relationship, previously direct, rigid and close, is loosening, disintegrating and gaining intermediary actors. This is placing many workers outside the paradigm of standard employment relationship and "therefore beyond the range of employment protection laws"[47].

This context of fissuring workplace is becoming even more complex due to technological developments, which "increasingly allow businesses to focus on core competencies while shedding activities not central to the firm's operation"[48]. In addition to reducing coordination costs, technological advance added two new elements to this scenario: it allowed more precise and remote control, erasing national boundaries: a great sneakers company based in United States can accurately monitor the production of sneaker insoles in Bangladesh in real time, for example; it enabled the emergence of contractual arrangements designed to deviate from SER through technology, creating an "organizational form in which firms have an ondemand workforce"[49], like those in the gig economy.

The intricate combination of vertical disintegration, workplace fissuring, technological advances and multiplication of non-SER require us to rethink the personal scope of (international) labour law and there is a "wide agreement over the need to reform"[50] it. As the results of the mapping of ILO standards have shown, ILS were designed based on the standard employment relationship and, in general, remain based on this logic. It is necessary to rethink them so that they can respond to the disintegrated organizational model of current firms.

To contribute to the difficult task of rethinking the personal scope of ILS, I want to reflect on ILO Convention No. 190, whose personal scope is the broadest among the ILO standards. C190 deals with violence and harassment in the world of work, with a gender perspective, recognizing that violence and harassment in the world of work are human rights violations that disproportionately affect women. The Convention adopts an expanded conception[51] of the work environment, covering everything in the course of, linked with or arising out of work. In addition, the C190 substantially advance regarding the personal scope: it expressly mentions

[43] FUDGE, Judy. Fragmenting work and fragmenting organizations: the contract of employment and the scope of labour regulation. *Osgoode Hall Law Journal,* v. 44, p. 609-648, 2006.

[44] FUDGE, Judy. Fragmenting work and fragmenting organizations: the contract of employment and the scope of labour regulation. *Osgoode Hall Law Journal,* v. 44, p. 609-648, 2006. p. 647.

[45] DICKENS, Linda. Problems of fit: changing employment and labour regulation. *British Journal of Industrial Relations*, v. 42, n. 4, p. 595-616, 2004.

[46] ILO. *Non-standard employment around the world*: understanding challenges, shaping prospects. Geneva: International Labour Office, 2016.

[47] COLLINS, Hugh. Independent contractors and the challenge of vertical disintegration to employment protection laws. *Oxford Journal of Legal Studies*, v. 10, n. 3, p. 353-380, 1990.

[48] WEIL, David. *The fissured workplace*: why work became so bad for so many and what can be done to improve it. Cambridge: Harvard University Press, 2014. p. 10.

[49] WOODCOCK, Jamie; GRAHAM, Mark. *The gig economy*: a critical introduction. Cambridge: Polity Press, 2020.

[50] MARSHALL, Shelley. How does institutional change occur? Two strategies for reforming the scope of labour law. *Industrial Law Journal*, v. 43, n. 3, p. 286-318, 2014.

[51] LEROUGE, Loïc. *The ratification of the ILO Convention n. 190*: an opportunity to tackle psychosocial risks. 2022. Available at: https://halshs.archives-ouvertes.fr/halshs-03697423.

the application to persons working irrespective of their contractual status.

My proposal is to take the rationality of C190 as a starting point for expanding the ILO personal scope, because of threefold elements: mention of a broad personal scope, regardless of the contractual form; regulation of situations; and concern with current working conditions.

The first important element of C190 is, of course, the express mention of a broad personal scope in Article 2. It protects "workers and other persons in the world of work […] as well as persons working irrespective of their contractual status". The Convention applies to people who work, regardless of the contractual arrangement. Therefore, C190 does not enter into the treacherous discussion of who is or is not an employee or worker[52]. The dichotomy between standard and non-standard employment is getting more and more blurred[53]. "This problem will not be solved either by devising better tests to distinguish between subordinated labour and independent contracting, or by developing the concept of dependent contractor or worker"[54]. Relying on this differentiation or leaving it to the courts is perpetuating the problem, which tends not to be resolved. Overcoming this differentiation, C190 adopts a human rights approach stating that any person involved in the world of work will be under its scope and application. This approach can also make it easier for labour rights to be treated as human rights and to be more strongly considered in emerging reporting on business and human rights and due diligence legal requirements[55].

The second element derives from the first. As it is not restricted to a type of worker or a type of contract (and applies to anyone who works), C190 does not regulate a specific bilateral relationship. The Convention regulates occasions in which people are subject to harassment and violence, amplifying the notion of the work environment, which also reinforces its broader scope. Regulating situations rather than specific contracts is a useful tool for expanding the personal scope of ILS, because different people (regardless of contractual status) are exposed to the same situations, the same facts and actions. As an example, let's imagine a work environment where employees, interns and freelancers coexist. If management encourages a toxic atmosphere, with abusive and ultra-competitive goals, all these workers will be exposed. If there were only protection for the employee (due to contract of employment), the others would be unprotected, in a clear scenario of inequality. In turn, regulating situations (creating rules on productivity, for example) would encompass all these people who work there, especially when these situations are created or are under the responsibility or control of the same service purchaser.

The third element concerns the non-SER-centered character of C190. Vosko identified that many ILS are SER-centered, take SER as the only solution and are structurally shaped according to the SER paradigm. In my view, C190 is different because it seeks to eradicate harassment and violence at work for all people who work, including in the informal economy. C190 does not wait for the transition to the formal economy for these people to be protected. On the contrary, it applies even while people are in the informal economy or in a non-standard employment relationship.

My proposal certainly faces challenges to be implemented. I highlight two main points to be considered: heterogeneity of non-SER and resistance to expanding the scope of labour law.

Firstly, I highlight the heterogeneity of the "non-SER". Within this broad category, there is a huge variety of workers and legal relationships, both formal and informal. There are particularities of each segment that need to be observed. For example, considering that in the informal economy there may be different types of work – such as recyclable material pickers, app drivers, street vendors and sex workers, among others – it is necessary to bear in mind that the transition to the formal economy and/or the promotion of better working conditions in the informal economy may involve different measures[56]. As an example, the guarantee of rights

[52] FUDGE, Judy. Fragmenting work and fragmenting organizations: the contract of employment and the scope of labour regulation. *Osgoode Hall Law Journal,* v. 44, p. 609-648, 2006.

[53] FUDGE, Judy; TUCKER, Eric; VOSKO, Leah F. Changing boundaries in employment: developing a new platform for labour law. *Canadian Lab. & Emp. LJ*, v. 10, p. 329, 2003.

[54] FUDGE, Judy. Fragmenting work and fragmenting organizations: the contract of employment and the scope of labour regulation. *Osgoode Hall Law Journal,* v. 44, p. 609-648, 2006. p. 611.

[55] NOLAN, Justine. Hardening soft law: are the emerging corporate social disclosure laws capable of generating substantive compliance with human rights? *Brazilizan Journal of International Law*, v. 15, n. 2, p. 65-83, 2018.

[56] BENJAMIN, Nancy *et al*. Informal economy and the World Bank.

to recyclable material pickers can be easily accepted in many societies, considering that such workers help in recycling and reducing environmental damage. However, the same ease may not be found when it comes to sex workers, since in many societies there is great prejudice and taboo around the subject.

Secondly, I emphasize the need to break with the legal tradition in many jurisdictions with regard to labour law. It is necessary to expand its scope to encompass different forms of work (and not just SER). This is not simple because overcoming this tradition depends, above all, on legislative changes. Legislative changes of this nature may encounter resistance, particularly due to companies' fear of incurring higher costs. This kind of legislative change may be even more complex in a scenario of increasing business decentralization[57] and flexibility in labour regulation[58].

Being aware of these (and others) difficulties, I reinforce that the C190 can be an inspiration, a starting point. By considering C190 as a starting point I mean that the logic that permeates the Convention can serve as a tool for structuring future Conventions and Recommendations. It is a starting point because it helps to address the first front of the conceptual and normative crisis of labour law pointed out by Fudge. As the Convention adopts a human rights approach (considering that it applies to anyone in the world of work, does not restrict its personal scope to employees, does not define who workers are, and does not attempt to differentiate between employees and self-employed workers), C190 dispels any doubt about its personal scope.

## 5 Conclusion

This paper deals with an old but gold challenge for (international) labour law: rethinking the personal scope of ILO standards. In the literature, the debate on this topic has mainly focused on labour law in a broad sense. To get closer to my research question, I analyzed the contrast between two views on international labour standards: on the one hand, the perception that ILS are SER-centered and, on the other, a more optimistic view that ILS (or part of them) can apply beyond the employment relationship. Given this divergence, I mapped the ILO standards to find out whether they are SER-centered.

The results showed that the ILO standards adopt different meanings for the same terms, demonstrating conceptual multiplicity and some imprecision. There is no single meaning of worker for the ILO, although we can say that this expression tends to be frequently associated with the employment relationship. In this sense, ILS are indeed more focused on the standard employment relationship. In different instruments, however, ILO flirts with the idea that it is important to include other types of workers. There are standards that expressly include workers outside the SER, and there are standards that recommend applying the personal scope to different categories of workers. However, this expansion of the personal scope is not linear and does not occur in all ILS. The comments of supervising bodies, which could be a path for this expansion or even updating of the interpretation of the standards, did not substantially innovate compared to the ILS, except for C189. The mapping confirmed the hypothesis we initially raised: despite the exceptions, the standards are SER-centered.

The main problem with this SER-centric aura is that it leaves many workers outside the protective umbrella of international labour law. As analyzed above, this becomes even more problematic given the vertical disintegration of firms and workplace fissuring. This scenario of fragmentation, intensified by technological advances, highlights the pressing need to rethink the ILS personal scope, otherwise they will become useless or applicable to few workers.

To this end, I suggest that the rationale of ILO Convention No. 190 be used as a starting point for this change, seeking to contribute to the first front of the crisis that labour law is going through (identifying who is an employee) pointed by Fudge. The logic behind C190 would contribute to the reform of the personal scope because: expressly adopts a broad personal scope, applying to any person who is involved in the world of work, regardless of contractual status; regulates situa-

*World Bank Policy Research Working Paper*, n. 6888, p. 2-34, May 2014.

[57] VILLASMIL PRIETO, Humberto. Pasado y presente del derecho laboral latinoamericano y las vicisitudes de la relación de trabajo (segunda parte). *Revista latinoamericana de derecho social*, n. 22, p. 1-27, 2016.

[58] MURILLO, M. Victoria; SCHRANK, Andrew. With a little help from my friends: partisan politics, transnational alliances, and labor rights in Latin America. *Comparative Political Studies*, v. 38, n. 8, p. 971-999, 2005.

tions and not specific contracts, ensuring the right to equality; concern with current working conditions, that is, it does not wait for the transition to employment or the formal economy, and can be applied immediately to any sector, worker and dimension of the economy.

I know this starting point is not enough to overcome the whole challenge. It is necessary to go further to face the second front of the crisis pointed by Fudge (how to assign responsibility for the costs and risks of utilizing labour). However, the adoption of C190 rationality by future ILO standards could inaugurate a new ILS pattern: broader, inclusive and (more) suitable to respond to the organizational transformations that the world of work is undergoing.

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