

16 An International Governance System for Digital Work in the Planetary Market

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“The failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries.” This statement from the preamble to the constitution of the International Labour Organization (ILO) reflects concerns shared by delegates at the founding of the ILO in 1919 over the potential for countries to gain an unfair advantage in international trade based on poor working conditions. Founding members of the ILO expressed their concern that without a commitment by countries to respect working conditions, social justice—and the peace that it ensures—would forever be wanting.

Thus, the ILO was conceived as a system of international labor regulation that would guide and prompt member States to uphold labor rights. Each year, the ILO’s International Labour Conference, comprising government, worker, and employer representatives from the organization’s 187 member States, meets to discuss key social and labor questions of concern. In most years, the conference also establishes and adopts international labor standards—conventions, which are binding on member States when ratified, and recommendations—that member States should implement, covering most areas of labor law and a vast array of supportive labor market policies. By encouraging member States to incorporate these standards into national laws and policies, the organization seeks to realize its mission of promoting greater justice and fairer international trade.

The establishment of the ILO, at the end of the First World War, followed the first period of globalization, dating from roughly 1870 until 1914. During this period, the steamship and railroad led to an unprecedented economic integration, based primarily on the trading of raw materials, but also on that of finished goods. Following the First World War, global trade declined and remained stagnant until after the Second World War, when it resumed slowly, as countries upheld trade barriers in an effort to protect their infant industries. It was not until the 1980s and 1990s that trade barriers

throughout the world were dismantled. In 1989, world trade accounted for 14 percent of world GDP, the same level as 1914, but then climbed, steadily and swiftly, to reach 60 percent of world GDP by 2018.

As in the first globalization period, important technological developments propelled much of this expansion, particularly the introduction of container shipping but also breakthroughs in information and communication technologies (ICTs). Political shifts supported globalization, as witnessed by the establishment of the World Trade Organization (WTO) in 1995 as well as the signing of numerous national and regional trade agreements throughout the world.

But trade in this current age is vastly different from that in the past. To begin with, today's trade is of intermediate goods, with workers from around the world contributing to the production of components that are part of complex global supply chains. Countries no longer trade wine for cloth, as elucidated in David Ricardo's (1817) treatise on political economy, but rather produce parts for the Barbie doll, the iPhone, and most other consumer products (Tempest 1996; Barboza 2010). Global trade is also increasingly in services. Advances in ICTs have led to a similar slicing of service production, with the offshoring of customer service and back office jobs to lower-cost locations throughout the world. Sometimes the offshoring is to the subsidiaries of lead firms in lower-cost countries, but as in manufacturing, it is more often to independent suppliers competing for the contract from different sides of the planet.

Among Organisation for Economic Co-operation and Development (OECD) countries, trade in intermediate goods and services made up more than half of overall goods trade and nearly three-quarters of trade in services in 2005 (Miroudot, Lanz, and Ragoussis 2009). Because procurement drives the decision of where and whom to source from, intermediate goods and services trade is highly price sensitive in comparison with final goods trade, which is about access to markets. Suppliers are highly dependent on lead firms, sometimes accepting orders at or below costs in an attempt to secure future work.¹

Digital platform work is the latest manifestation in the outsourcing of production across the planet. Since its advent in the early years of the twenty-first century, digital labor platforms offer lead firms the possibility of outsourcing directly to individuals located anywhere in the world. Individuals who have signed up to work on digital labor platforms compete for tasks posted and, if they are lucky enough to be assigned the task, then complete and deliver the service from their home in exchange for remuneration. These digital supply chains can involve short "microtasks" that are essential for the smooth operation of e-commerce or the training of AI systems, or they can involve "macrotasks" performed on freelancing platforms. On these platforms,

individual workers offer their services as programmers, graphic designers, statisticians, and translators, among other professions, with platforms matching freelancers with clients for a fee.

An International Labor Governance System That Has Not Kept Up

The labor governance model put in place at the ILO's founding was designed for the first wave of globalization, when countries exchanged raw materials and finished goods. National labor legislation was meant to mirror the principles and guidance embodied in ILO standards so as to avoid unfair advantages from child labor, low minimum wages, lack of worker voice, or lax health and safety standards. At least that was the founding vision. But in a globalized world organized around multinational firms outsourcing different parts of production, whether in manufacturing or digital services, to low-cost labor spread across the world, the motivation among nations to protect against unfair advantage in global trade is diminished. While it would be unfair to dismiss the ILO's work—its guidance on the design and application of labor laws has been instrumental in upgrading working conditions for workers throughout the world—it is clear that restricting labor governance to the nation-state has reached its limits. A new form of labor governance is needed—one that can tackle the challenges of a planetary labor market.

Recognizing the importance of global supply chains, a few countries and regional bodies have passed legislation with a view to holding lead firms operating in their jurisdictions accountable for activities in their supply chains, even if occurring extra-territorially. With few exceptions, these initiatives have been limited to human trafficking, corruption, or trading in minerals originating from conflict zones.² For the most part, the laws require disclosure and due diligence on the part of the lead firm, though the requirements are typically limited to company subsidiaries or first-tier suppliers. Furthermore, the legislation that concerns labor issues is usually limited to the most egregious labor violation—human trafficking—as opposed to less nefarious but nonetheless critical issues such as lack of compliance with minimum wages, unpaid overtime, anti-union practices, and unsafe working conditions.

Although these supply chain regulations are an advance in that they recognize and attempt to address the responsibility of multinational firms in fragmented, global production, they are not designed for the planetary digital labor market that is the subject of this book. With digital labor markets, businesses can bypass suppliers and engage workers directly at the click of a button. The relationship may be mediated by a platform, or a platform may serve as a conduit for identifying suitable workers, but the

work is performed as a bilateral, cross-border, virtual working arrangement, in some instances akin to that of a regular employee who would be teleworking. Except these relationships are not classified as an employment relationship, and as they span multiple jurisdictions, the worker is left unprotected should matters go awry.

In an ILO study of 1,000 platform workers in Ukraine, one-third of respondents reported that they had worked directly with a client, bypassing the platform through which an initial contract was established. Focus groups with platform workers in Ukraine also revealed the incidence of what they describe as “closed” platforms that could only be accessed by invitation and following several interview stages. Once admitted, workers would receive a steady stream of work and be requested to be available for work at regular times, in exchange for biweekly transfers to their bank account or payments via a third-party payment system (Aleksynska, Bastrakova, and Kharchenko 2018). In another ILO study, of 300 online, home-based workers in the Philippines, 14 percent reported working directly for clients, often as virtual assistants. Most of these virtual assistants had signed written agreements with their clients, with provisions pertaining to the worker’s tasks and payment terms (pay rate, frequency, and manner of payment), followed by the number of working hours and a specification that the worker is an independent contractor. Fifteen percent of the workers reported that their clients used only verbal agreements (King-Dejardin, 2021). Workers in both countries reported their clients’ practice of requesting that they download specialized software that would track their working hours and online activity, record keystrokes, and take random screenshots of their computer screen—in essence, an employment relationship in which the bosses exercise their managerial prerogative, but the workers do not benefit from the rights that would normally be accorded to them in such a relationship.

International Labor Governance for the Digital Age: Possible Ways Forward

The technological advances that allow a company to use a virtual assistant in the Philippines, a programmer in Ukraine, a graphic designer in Italy, and a copywriter in India—within the course of the same day and perhaps for the production of a single project—reveal the limits of geographically based labor regulation.

In 2019, to mark its centenary, the ILO convened an independent Global Commission on the Future of Work to produce a report on how to achieve a future of work that provides decent and sustainable work opportunities for all. The commission recognized that the rise of cross-border digital work had resulted in regulatory gaps that required specific interventions at the global level. It recommended the “development of an international governance system for digital labor platforms that sets and requires platforms

(and their clients) to respect certain minimum rights and protections” (ILO 2019, 44). It noted furthermore that the ILO’s Maritime Labour Convention, 2006 (MLC) was an important precedent of supranational regulation, as the MLC establishes and applies a global labor code for seafarers. Like work on digital platforms, the maritime industry involves multiple parties operating across different jurisdictions.

In maritime employment, the workers—along with the goods or passengers being transported—move from one country to another, often passing through other nations’ waters. The first attempts at regulating the maritime industry date to 1897, when the International Maritime Committee began advocating for greater unification of maritime law and adopted regulations and protocols to further harmonization.³ Prior to this, the dominant international law regulating the seas was the centuries-old concept of freedom of the seas—*mare liberum*. But in the nineteenth century, a seafarer’s life was a difficult one, with few if any safeguards against wage theft, safety hazards, or poor working conditions. In extreme situations, workers could find themselves abandoned at foreign ports with wages unpaid, no passage to return home, and no legal recourse in the foreign country’s courts (Link 2015).

While digital platform workers do not fear being abandoned at port, many of the other risks associated with seafaring are present in contemporary platform work. Unpaid wages are common, and legal recourse is difficult, as the client and the platform are often located in different jurisdictions. Another concern is that, over time, nations will likely begin passing regulations on the platform economy, but because these regulations will not be harmonized, parties will choose to file a legal action in the jurisdiction where the laws are most favorable to them (e.g., the country where the worker resides or works, the country where the platform has its headquarters, or the country where the client is located). Platforms will likely include choice of law or choice of forum clauses in their online terms of service—what in legal circles is known as “forum shopping” thereby heightening the risk of involving inconsistent and sometimes conflicting frameworks that create additional problems for all parties (Berg, Cherry, and Rani 2019). In addition, regulations protecting workers pertain primarily to employment contracts and may fall short of protecting workers who have been classified as self-employed by the platform.

Under the MLC, port authorities can check for compliance and impound cargo in the event of labor violations; with platform work, various host, server, or entry points could be monitored for compliance. Because the workers using the platforms are largely invisible, such regulatory checks might involve the sharing of data between platform operators, regulatory authorities, and the workers themselves. Giving workers access and rights to their data could also enable them to contest rankings or ratings that they

believe are erroneous, as well as give them and the labor authority a record of time worked that could facilitate compliance with a minimum wage. Workers could also transfer their worker histories and other relevant data across platforms, or to their trade union representatives. Measures such as these would substantially improve workers' rights, regardless of their place of residence.

Conclusion

Technological advances have transformed the world of work and exposed the limits of labor regulation bounded by physical jurisdictions and conceived for the production of tangible products. Jobs such as administrative assistant that were once considered “nontradable” and thus protected from global competition have now become tradable, readily available through a digital platform at a competitive price. The weakness of the state-based regulatory structure was already apparent with global supply chains, but platform work and other forms of cross-border digital employment relationships have compounded this weakness.

In the nineteenth century, maritime work seemed impossible to regulate, but such regulation was achieved. In today's increasingly digitized world, with services moving invisibly across borders, the need for such international regulation of platform work grows greater by the minute. Devising a governance system that can respond to the special characteristics and requirements of virtual, cross-border platform work is achievable, but international cooperation is needed. Such cooperation would mark an important step in ensuring that the aspirations of the ILO, as set out at the Paris Peace Conference in 1919, are achieved.

Disclaimer

The views expressed in this article are the author's own and do not necessarily represent the views of the International Labour Organization.

Notes

1. A 2016 ILO–Ethical Trading Initiative survey of nearly 1,500 suppliers, located in 87 countries and covering a range of economic sectors, found that a quarter of them depended on one firm for more than half of their production. The lower the income of the country, the greater was their degree of dependence. In addition, 39 percent of the suppliers reported having accepted orders at a price that did not allow them to cover their production costs, usually in an attempt to secure future orders (ILO 2016).

2. Examples include the California Transparency in Supply Chains Act of 2010 (slavery and human trafficking), the UK Modern Slavery Act 2015, the Australian Modern Slavery Act 2018, and the EU's so-called Conflict Minerals Regulation of 2017. The EU Non-Financial Reporting Directive 2014 is wider in scope, covering environmental protection, social responsibility and treatment of employees, respect for human rights, anti-corruption and -bribery, and diversity on company boards. However, companies only need to publish reports on the policies they implement "in the way they consider most useful," and it applies only to companies with 500 or more employees. More far-reaching is the French "loi de vigilance" (Loi no. 2017-399), which obligates French companies with more than 5,000 employees to establish, publish, comply with, and evaluate a Vigilance Plan that identifies risks so as to prevent serious violations of human rights and fundamental freedoms, human health and safety, and the environment, taking into consideration the parent company's sphere of influence, subsidiaries, and subcontractors.

3. See <https://comitemaritime.org/about-us/history/>.

References

Aleksynska, Mariya Anastasia Bastrakova, and Natalia Kharchenko. 2018. *Work on Digital Labour Platforms in Ukraine: Issues and Policy Perspectives*. Geneva: International Labour Organization.

Barboza, David. 2010. "Supply Chain for iPhone Highlights Costs in China." *New York Times*, July 5. <https://www.nytimes.com/2010/07/06/technology/06iphone.html>.

Berg, Janine, Miriam Cherry, and Uma Rani. 2019. "Digital Labour Platforms: A Need for International Regulation?" *Revista de Economía Laboral* [Spanish Journal of Labor Economics] 16 (2): 104–128.

ILO. 1919. "Constitution of the International Labour Organization." Geneva: International Labour Organization. https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO.

ILO. 2016. "Purchasing Practices and Working Conditions in Global Supply Chains: Global Survey Results." INWORK Issue Brief no. 10. Geneva: International Labour Organization.

ILO. 2019. *Work for a Brighter Future*. Geneva: International Labour Organization.

King-Dejardin, Amelita. 2021. "Homeworking in the Philippines: Bad Job? Good Job." ILO Working Paper no. 25. Geneva: International Labour Organization. https://www.ilo.org/global/publications/working-papers/WCMS_775013/lang--en/index.htm.

Link, Peter. 2015. "One Small Step for the United States, May Be One Giant Leap for Seafarer's Rights." *Hofstra Labor and Employment Law Journal* 33 (1): 167–205.

Miroudot, Sébastien, Rainer Lanz, and Alexandros Ragoussis. 2009. "Trade in Intermediate Goods and Services." OECD Trade Policy Working Papers. Paris: OECD Trade Directorate.

Ricardo, David, 1817. *On the Principles of Political Economy and Taxation*. London: John Murray.

Tempest, Rone. 1996. "Barbie and the World Economy." *Los Angeles Times*, September 22. <https://www.latimes.com/archives/la-xpm-1996-09-22-mn-46610-story.html>.

