

# The future of Labour Law in a globalised or regionalised world

Dr Paul Smit

University of Pretoria

## **1. Introduction**

Globalisation and the increasing movement of capital and labour across international borders, with the exception of migrant workers who are facing major obstacles by immigration laws, are creating a situation where laws in general and labour laws in particular are obtaining an international character. Internationally the problem of movement of labour is the asymmetric structure between capital and labour in reference to the freedom of movement. In view of increasing globalisation and regional economic agreements or regional integration schemes the Conventions of the International Labour Organization (hereafter the ILO) have assumed greater prominence in recent years. Internationalisation and globalisation have had a growing impact in many areas especially on legal and economic relations.

Regional formations are very often the result of political struggle and negotiations over the content and direction of a social policy that reflects the traditions, interests and needs of member countries and their populations. Most regional formations reflect the present preoccupation with narrow commercial objectives over broad social developmental needs. Phrases like “inclusion”, “democracy” and “development” can be found in some regional formations’ social policy objectives. Regional formations are an important manifestation of state strategies and integral to any analysis of the ways in which collective action is being recast at a transnational level. The almost exclusive preoccupation of these formations with economic issues has led to a reaction from international civil society organizations, which increasingly demand that social issues be addressed as well. Yet civil society demands are being articulated through the shadow summits and social forums that now regularly accompany intergovernmental meetings. This is laying the groundwork for the development of an inclusive, democratic and developmental social policy at regional level which can include transnational labour law, regional labour standards and this directly has an impact on trade unions, employers association and labour lawyers.

## 2. TRANSNATIONAL LAW

To understand a general structure of the world's industrial relations system, the role of regional powers and transnational actors should be explained in order to perceive the influences of global challenges<sup>1</sup>.

One can therefore rightly ask: *What is "transnational?"* The term would indicate that it is beyond what is considered to be national, in other words, across national borders. *Transnational law* is the term commonly used for referring to laws that govern the conduct of independent nations in their relationships with one another. It differs from other legal systems in that it primarily concerns states, rather than private citizens. In other words, it is that body of law that is composed of the greater part of the principles and rules of conduct which states feel themselves bound to observe and, therefore, do commonly observe in their relations with each other. These include:

- (a) The rules of law relating to the function of international institutions or organisations, their relations with each other, and their relations with states and individuals; and
- (b) Certain rules of law relating to individuals and non-state entities, so far as the rights and duties of such individuals and non-state entities are the concern of the international community.<sup>2</sup>

Transnational law can be equated with a *Transnational Legal Process* (TLP) which provides the key to understand the issue of compliance with international law. This view immediately raises the following question; why do nation-states and other transnational actors obey international law, and why do they sometimes disobey it?<sup>3</sup> In order to answer this very important question three very obvious questions come to light, namely; what is a transnational legal process, where did it come from and how does it assist in explaining why nations obey?

*Koh* see the transnational legal process as the manner in which theory and practice of public and private actors, nation-states, international organisations, multinational enterprises, NGO's and private individuals interact in a variety of private and public,

---

<sup>1</sup> Aliu "European industrial relations: transnational relations and global challenges" (2012)

<sup>2</sup> <http://encyclopedia.thefreedictionary.com>. Accessed on 20 November 2013.

<sup>3</sup> Koh, HH "Transnational Legal Process" (1996) 75 Nebraska Law Review 183.

international and domestic spheres and also how they interpret, enforce and then ultimately internalise the rules of international law. A TLP has four very distinctive features:

- i. It is non-traditional.
- ii. It is non – statist as it also includes non-state actors.
- iii. It is very dynamic and not static.
- iv. It is normative as it not only describes a process but also the normativity of that process.<sup>4</sup>

## **2.1 Compliance with International Law**

It would appear that democracies are more likely to comply with international legal obligations, as they share an affinity with international legal processes and institutions. Countries with independent judiciaries are more likely to trust and respect international judicial processes and political leaders that are accustomed to constitutional constraints on their power in a domestic context are more likely to accept principled legal limits on their international behaviour.<sup>5</sup> A transnational labour relations "regime" would be a set of structures and norms operating across national borders to buttress national law and practices by either reinforcing national norms or superseding them<sup>6</sup>. Chayes and Chayes contend that states enter into international agreements and that they will to a certain degree comply with those agreements on three propositions:

- i. The propensity to comply is more plausible and useful than the assumption that states will violate treaties whenever it is in their interest to do so;
- ii. Very often compliance problems do not reflect a deliberate decision to violate international agreements; and

---

<sup>4</sup> Koh(1996) 184.

<sup>5</sup> Simmons (1998) 83 – 84.

<sup>6</sup> Trubek, Mosher and Rothstein "Transnationalism in the Regulation of Labor Relations: International Regimes and Transnational Advocacy Networks" (2002) *Law & Social Inquiry* 25(4) 1194.

- iii. Complete or strict compliance of treaties is unnecessary and all that is required is an acceptable level of overall compliance to safeguard the interest of the treaty.<sup>7</sup>

Efficiency, interests and norms all favour treaty compliance. This is mainly because decisions are not free, there is a continuous recalculation of costs vs benefits and also international treaties are related to states interests as international law cannot bind states except with their own consent. As national positions and interests evolve it will help to induce compliance. The fundamental norm of international law is *pacta sunt servanda* – treaties are to be obeyed, the compliance with international treaties and law is therefor also a very important normative process.

## **2.2 Non-compliance with International Law**

Non complying behaviour can be attributed to the following factors:

- i. Ambiguity and indeterminacy of treaty language as treaty language varies in its determinacy.
- ii. Limitations on the capacity of parties to carry out their undertakings. Apart from a political will to comply, the choices that must be made domestically requires scientific and technical judgment which states, especially developing countries, may be lacking.
- iii. All treaties require a period of transitions before mandated changes can be accomplished. Changing conditions and underlying circumstances require a shifting mix of regulatory instruments to which state behaviour cannot instantly respond. Treaties are not just “aspirational”, the ultimate goal is to start a process that will over time bring states into greater congruence with treaty ideals.<sup>8</sup>

The traditional model of industrial relations that are limited to the borders of nation states is increasingly becoming problematic, with the opening of and merging of labour markets, of which the European integration process is a very good example.<sup>9</sup>

---

<sup>7</sup> Chayes and Chayes *On Compliance* (1993) “International Organization” 47(2) 175-205

<sup>8</sup> Chayes and Chayes (1993) 175 – 205.

<sup>9</sup> Seifert, A. *Transnational collective abrogating: The case of the European Union* (2012) “Labour Law into the Future” 77.

The market freedoms enshrined in the TFEU have contributed to build up an internal market on European scale. Transnational enterprises can easily relocate their activities from subsidiaries in one country to those located to another country.<sup>10</sup> Transnational collective bargaining in European-scale companies has gained increasing relevance over the last years due to the increasing number of European works councils (EWS's) that have been established. Jeremy Waddington describes EWC's as a Transnational Industrial Relations Institution in the making.<sup>11</sup> European trade unions are also trying to undertake transnational collective bargaining with European-wide companies with European Framework Agreements (EFA's).<sup>12</sup> EWC's and EFA's have given labour relations in the EU a transnational character.

There seems to be an increasing support for the establishment of a legal framework for transnational collective bargaining within the EU. The use of international labour standards in domestic law must be based on the legal materials available to states under its domestic laws. These materials include, international customary law, the manner in which a state's constitution articulates with international law. International labour standards provide a rich and authoritative source for the development of labour law and national level that can ensure consistency between the different systems of law and at the same time ensuring state compliance with international obligations.<sup>13</sup>

### **3. TRANSNATIONAL LABOUR RELATIONS AND REGIONAL LABOUR STANDARDS**

Hyman defined labour relations as the regulation of work and employment and it involves different forms of collective regulation which refract and transform the merely monetary dynamics of the employment relationship.<sup>14</sup> The living and

---

<sup>10</sup> Seifert (2012) 78.

<sup>11</sup> Waddington, J. *European Works Councils: A Transnational Industrial Relations Institution in the Making*(2012) 232.

<sup>12</sup> Seifert (2012) 86.

<sup>13</sup> Cheadle, H. *Reception of international labour standards in common-law legal systems* (2012) "Reinventing Labour law" 348-364.

<sup>14</sup> Hyman, R. (2001). The Europeanisation—or the erosion—of industrial relations? *Industrial Relations Journal*, 32(4), 280-294.

working conditions of most working people and thus of society as a whole are determined by the nature and quality of labour relations.<sup>15</sup>

The development of a proficient labour relations system is as much an intrinsic part of a system change as it is a requirement for successful transformation seeing that they are primary components of civil society and can provide indispensable guidance for the resolution of social conflict, forming harmonies, economic modernisation and the stabilisation of social equality.

Initially labour relations emerged on a confined or sectoral basis, but it became consolidated within a national institutional structure.<sup>16</sup> It is important that national labour relations systems must not be understood in isolation, but within a framework or structure to understand a global labour relations framework that is growing and developing.<sup>17</sup>

Transnationalism can be viewed as the shared, educational, political and economic associations and interactions that take place between people and institutions. Labour markets on the other side become transnational if they involve activities and occupations that require regular and sustained social contacts over time across national borders for their implementation.<sup>18</sup> Transnationalism can also be seen as an escalating, deepening process in which innovative social practices, systems of symbols and objects come about through increasing international movement of goods, information and people. New transnational forces of capital and labour have surfaced as important actors as a result of the transnationalisation of production and funding in times of global restructuring.<sup>19</sup>

---

<sup>15</sup> Kohl, H., & Platzer, H. W. (2003). Labour relations in central and eastern Europe and the European social model. *Transfer: European Review of Labour and Research*, 9(1), 11-30.

<sup>16</sup> Hyman, R. (2001) 284.

<sup>17</sup> Lillie, N., & Lucio, M. M. (2012). Rollerball and the spirit of capitalism: Competitive dynamics within the global context, the challenge to labour transnationalism, and the emergence of ironic outcomes. *Critical perspectives on international business*. 8(1), 74-92.

<sup>18</sup> Horvath, K. (2012). National numbers for transnational relations? Challenges of integrating quantitative methods into research on transnational labour market relations. *Ethnic and Racial studies*. 35(10), 1741-1757.

<sup>19</sup> Bieler, A. (2005). European Integration and the Transnational Restructuring of Social Relations: The Emergence of Labour as a Regional Actor? *Journal of Common Market Studies*, 43(3), 461-484.

Transnationalism and all its different facets have a major influence on all the different role players in Transnational Companies (TNC's) and especially the employment relationship. Not only does a TNC need to integrate various human resource principles and policies to create cohesion<sup>20</sup> but also have to implement transnational human resource management (THRM) practices.<sup>21</sup>

It becomes problematic where employment or labour decisions that are taken in one area of the world have an effect on employment relations somewhere else in the world. It is apparent that transnational relationships of actors have become so intertwined that it is almost impossible to understand the strategies of actors within one country without referring to the events and strategies of actors in other countries.<sup>22</sup> It would seem as if transnational capital plays national environments of against each other but at the same time attempts to create a genuinely global business environment.<sup>23</sup> The globalisation of markets and firms has had a profound impact on labour relations.<sup>24</sup> Labour transnationalism can be defined as:

“The spatial extension of trade unionism through the intensification of co-operation between trade unionists across countries using transnational tools and structures”.<sup>25</sup>

Research on labour transnationalism is becoming more important due to the rapid growth in TNC's. Political entrepreneurs can play a vital role in the development of labour transnationalism. Political entrepreneurs should have the vision to look at transnational strategies and the leadership skills to impact on their own constituencies. International (or global) framework agreement (IFA) which is an instrument negotiated between a multinational enterprise and a Global Union

---

<sup>20</sup> Dickmann, M., Müller-Camen, M., & Kelliher, C. (2008). Exploring standardisation and knowledge networking processes in transnational human resource management. *Personnel Review*, 38(1), 5-25.

<sup>21</sup> Gennard, J. (2008). Negotiations at multinational company level? *Employee Relations*, 30(2), 100-103.

<sup>22</sup> Lillie, N., & Greer, I. (2007). Industrial Relations, Migration, and Neoliberal Politics: The Case of the European Construction Sector. *Politics & Society*, 35(4), 551-581.

<sup>23</sup> Lillie, N., & Lucio, M. M. (2012). Rollerball and the spirit of capitalism: Competitive dynamics within the global context, the challenge to labour transnationalism, and the emergence of ironic outcomes. *Critical perspectives on international business*, 8(1), 74-92.

<sup>24</sup> Greer, I. and Hauptmeier, M. (2008), Political Entrepreneurs and Co-Managers: Labour Transnationalism at Four Multinational Auto Companies. *British Journal of Industrial Relations*, 46: 76–97

<sup>25</sup> Greer and Hauptmeier. (2008) 77.

Federation (GUF) in order to establish an on-going relationship between the parties and ensure that the company respects the same standards in all the countries where it operates also impacted on the research on labour transnationalism.

*Helfen and Fichter* is of the opinion that:

“academic research is only beginning to deal with what we would define as an emerging arena of transnational labour relations.”<sup>26</sup>

The rise and growth of the EU are landmarks of a development process that involved the globalisation of capital and trade that resulted in the establishment of a new transnational regulations system as well as the reformation of general economies and welfare states. It is on this basis that different forms of transnational labour relations and or regional labour standards have emerged.<sup>27</sup>

It would appear that transnational labour relations are still in an emerging, formative phase considering institutionalisation, projecting a very fragmented, diverse and mixed picture of development even though certain processes and institutions. European Works Councils have emerged within the EU that strongly suggests that the EU is on the way to the establishment of a EU transnational labour relations regime or regional labour standards. *Lillie and Lucio* have identified that there are two dominant trends in transnational labour relations research; namely the optimists who show how it can work in specific situations, and then there are pessimists who stress labour’s vulnerability against management-devised competitive frameworks.<sup>28</sup>

The expansion of transnational labour relations and the establishment of regional labour standards would require trade unions to reassert their main objectives in a contemporary language so that they can effectively function in flexible labour

---

<sup>26</sup> Helfen, M. and Fichter, M. (2013), Building Transnational Union Networks across Global Production Networks: Conceptualising a New Arena of Labour–Management Relations. *British Journal of Industrial Relations*.

<sup>27</sup> Horvath, K. (2012). National numbers for transnational relations? Challenges of integrating quantitative methods into research on transnational labour market relations. *Ethnic and Racial studies*. 35(10), 1741-1757.

<sup>28</sup> Lillie, N., & Lucio, M. M. (2012).88.



markets and different workplaces.<sup>29</sup> There are obvious obstacles that stand in the way of the development of a realistic and permanent transnational labour relations system as transnational trade union federations must decide on strategies to confront the countless challenges from increasing globalisation. The development of transnational labour relations and regional labour standards are of great importance as it can assist organised labour to mobilise and enhance its power through international agreements across national borders.

#### **4. Regional integration v Regional globalisation**

Is Regionalism just a different form of globalisation, or are these two terms or ideas compatible? Globalisation can be defined as a process by which the economies of the world become increasingly integrated leading to a global economy with global economic policy making, through such international agencies as the World Trade Organization (WTO). Globalisation is also viewed by many as a “global culture” in which the world population consumes similar goods and services across countries and use a common business language, English. This has led to an increase in the openness of economies to international trade, financial flows and direct foreign investment. Globalisation can lead to an increase in the mobility of factors of production mainly capital and labour.<sup>30</sup> Many people view globalisation as Americanisation.

Economic integration occurs whenever a group of nations in the same region join together to form an economic union or regional trading bloc by raising a common tariff wall against the products of non-member countries while freeing internal trade among members. Integration provides the opportunity for industries to take advantage of economies of large scale production made possible by the expanded markets.

A regional economic bloc should therefore be conceptualized as an entity encompassing and transcending nation-states. The economic aspect of these may be described as, in the first instance, the efforts to form free-trade zones through the creation of common markets, and secondly, the co-ordination of economic policies

---

<sup>29</sup> Taylor, R. (1999). *Trade unions and transnational industrial relations*. Labour and Society Programme.

<sup>30</sup> Stanley Kamau (2013) on [www.stanka.hubpages.com](http://www.stanka.hubpages.com) accessed on 12 March 2014

and the implementation of joint economic policies to form even larger economic zones. Regionalism has had enormous impact on the environment of nation-states. It has, for instance, had a regulating impact on MNCs through measures such as corporate laws, competition policies, and labour policies. The very essence for the creation of the regional economic organization is to give them greater ability to protect regional and national interest in relation to other countries, transnational companies and international economic organizations. This contradicts globalization.<sup>31</sup>

Regional formations are an important manifestation of state strategies and integral to any analysis of the ways in which collective action is being recast at a transnational level. The main of most regional formations are economic by nature. The almost exclusive preoccupation of these formations with economic issues has led to a reaction from international civil society organizations, which increasingly demand that social issues be addressed as well. Yet civil society demands are being articulated through the shadow summits and social forums that now regularly accompany intergovernmental meetings. This is laying the groundwork for the development of an inclusive, democratic and developmental social policy at regional level; in this regard the SADC Charter is a very good example.

Social welfare, social institutions and social relations have become entangled in material processes that extend beyond national borders and their transformation now has a regional character.<sup>32</sup> These transnational elements and the dynamics that come with it must begin with an appreciation of the contemporary pluralistic global social governance structure which is “multi-tiered”, “multi-sphered” and “multi-actored”.

Regional formations are an integral part of any critical assessment of the possibilities for transformative political agency in a globalization context. Regional formations are very often the result of political struggle and negotiations over the content and direction of a social policy that reflects the traditions, interests and needs of member countries and their populations.

---

<sup>31</sup> Nicola Yeates (2005) “Globalization” and Social Policy in a Development Context. Regional Responses.

<sup>32</sup> Kamau (2013) 2.

Regional agreements in actual fact discriminate against third countries outside the region and become protectionist blocs with their own sets of trade rules. Politically, regional formations can offer member countries a number of advantages. They facilitate governments in the achievement of their foreign policy objectives. Regional formations can also act as a mechanism and a selective approach to the construction of political collaboration. Since regional formations often entail groups of countries with similar cultural, legal and political characteristics, agreement on the scope and nature of transnational collaboration is more feasible and progress can potentially proceed more quickly than multilateral negotiations.

The proliferation of regional formations indicates a willingness on the part of governments to commit themselves to collaboration around trade issues, but these commitments have (so far) only in a limited capacity extended to collaboration around social welfare or developmental needs for the particular region. Most regional formations reflect the present preoccupation with narrow commercial objectives over broad social developmental needs. Phrases like “inclusion”, “democracy” and “development” can be found in some regional formations’ social policy objectives.

The formulation of policies that encourage intra-regional trade and offer barriers to external trade, as founded in most regional formations contradicts the view of the proponents of globalization which are geared towards free movement of the factors of production on a global scale not limited to regions. Regional formations can reduce global trade and obviously reduce efficiency in the market with trade tariffs and is seen by many to reduce competitiveness and renders market forces almost irrelevant which eventually lead to gross market inefficiencies.<sup>33</sup>

Regional integration restricts sovereignty of member states in economic policy formulation to a certain degree but has a number of advantages which include increased specialization and realization of economies of scale through the pooling of resources and markets, increased choice through access to wider range of markets and increased competitiveness of goods and services in global markets following the development of intra-regional competition. Regionalization can also lead to better opportunities for scientific and engineering exchange and joining efforts to develop

---

<sup>33</sup> Yeats (2005) 18.

science and technology as well as the creation of better infrastructure in transport, finance and communications.<sup>34</sup>

It is clear that there are certain similarities but also differences between globalization and regionalization. These two concepts are not completely compatible but neither are they totally incompatible. The apparent incompatibility of regionalism and globalization withstanding, it is impossible to see a globally integrated system with the ever increasing and stronger regional trading blocs, many with conflicting objectives, approaches and even mechanisms.

## **5. Role of trade union movement in the era of globalisation**

In a globalised world, trade union movements are facing new challenges and must operate in other scopes, no longer only those applicable at local or national level.<sup>35</sup>

In the era of globalisation and regional economic treaties it would seem that trade unions in general have not involved in a significant debate about what can be done to react. Most trade unions still follow their own historical approach and strategies.<sup>36</sup>

Trade Unions would have to go beyond their national borders with a strong modification of their traditional or national approach, if employers can circulate and operate freely across national borders by means of MNC's the trade unions can't just operate or function within their own national jurisdiction. A new collective interest would be the necessary starting point for a transnational role of trade unions.<sup>37</sup>

Globalisation, regionalism and regional trade agreements have altered the balance of power between capital and labour to the disadvantage of labour.<sup>38</sup> The trade union movement within SADC is used as an example below.

*Ntawala Mwilima* of the University of Kwazulu – Natal is of the opinion that the trade union movement in Southern Africa, in order to deal with globalisation, must come up

---

<sup>34</sup> Yeats (2005) 22.

<sup>35</sup> Ruppert, C.S. (2007) *How do trade unions respond to and act in regional integration processes? A comparison between CUT in MERCOSUR and COSATU in SADC*. Paper delivered at International workshop of the Global Labour University at the University of Witwatersrand, Johannesburg, April 2007.

<sup>36</sup> Lasandri, A. (2014) *Trade Unions, globalization and transnational collective interests*. Paper delivered at the "Social Justice in the Next Century" conference held at the London School of Economics 1- 3 August 2014.

<sup>37</sup> Lasandri, A (2014) 8

<sup>38</sup> Amyemedu, K. (2000) *Trade Union responses to Globalization: A case study on Ghana*. International Institute of Labour Studies. Geneva Switzerland.

with strategic responses and initiatives which can counter act against the process of globalisation, by strengthening their own capacity. These initiatives should include influencing policies which is geared towards deregulation of the economy and the labour market. Trade union movements should thus embark on an educational campaign to raise awareness of workers on issues that affect them, there should be a shift from their organisational focus by extending their horizons to attract new members especially from the informal sector of the economy. One of the most effective ways organised labour can respond towards globalisation is by forming alliances and affiliations with other trade unions.<sup>39</sup> *Tim Harcourt* of the Australian Council of Trade Unions have identified four strategies that must be adopted by trade unions to effectively respond to globalisation, namely;

- i. Insist on the incorporation of a “social clause” and labour standards in all international trade agreements;
- ii. Implement domestic industrial campaigns on globalisation to make workers aware of the impact thereof;
- iii. Domestic labour markets should respond timeously on globalisation’ and
- iv. International labour co-operation.<sup>40</sup>

One of the original aims of SADC was economic integration. This economic integration process were driven by transnational capital’s campaign to open up the markets within the SADC region.<sup>41</sup> Member states must be active to build regional structures and trade unions can struggle for it, but the States are the actors who have the power to construct them and develop them.<sup>42</sup> SATUCC seems to be hampered by independent dynamism and effective leadership, which also reflects on the weaknesses of some national trade unions within SADC.

---

<sup>39</sup> Mwilima, N (not dated) *Role of Labour Movement under present conditions of globalization*. [ccs.ukzn.ac.za/files/mwilima%20role%20of620/labour.pdf](https://ccs.ukzn.ac.za/files/mwilima%20role%20of620/labour.pdf). Down loaded 18 may 2015.

<sup>40</sup> Harcourt, T. (1999) *Last line of resistance or a golden opportunity: Australian Trade Union responses to Gblalization*. Paper presented at meeting of the Australian Council of Trade Unions. Sydney.

<sup>41</sup> Robinson, W.I.(2002) *Global Capitalism and the hegemony of the transnational elite: theoretical notes and empirical evidence*. [unknown]

<sup>42</sup> Rupert (2007) 8.

The SADC region has one of the highest levels of inequalities in the world and the statistics about per capita incomes hide the poverty of the majority behind the wealth of a small elite.<sup>43</sup>

The strongest trade union federation in SADC is COSATU but COSATU does not participate directly in any institutional body of SADC, even though another perspective might be that COSATU is represented in the institutional bodies of SADC through SATUCC.<sup>44</sup> Former secretary-general of COSATU, Zwelinzima Vavi, in a speech at a COSATU meeting on globalisation in 2001 stated:

“Collective bargaining, a unified worker’s movement and the international cooperation is needed to implement labour rights in neighbouring countries. We can not win if unions within the SADC region remains weak. At the centre of a successful collective bargaining strategy is international worker solidarity and the need to build a new world where there is decent employment opportunities for all”<sup>45</sup>

SATUCC and COSATU should make efforts to have a greater participation in the SADC structures and shape it according to the interests of Southern African workers. Neither SATUCC or COSATU organized mobilizing actions regarding the regional integration process. It is imperative that trade unions have to dialogue with the blocs if they are in favour of the regional integration process.<sup>46</sup> It would appear that the trade union movements within SADC are to pre-occupied with their own national interests and on obtaining membership fees from members to be able to play a significant role in the establishment of regional labour standards for SADC.

The new Employment and Labour Protocol of SADC requires State Parties to submit bi-annual reports to the Council in terms of progress made as far application and implementation of the requirements of the protocol.<sup>47</sup> Article 27 of the protocol stipulates that where disputes arise regarding the application, interpretation and implementation of the protocol, State Parties must endeavour to resolve these

---

<sup>43</sup> Jauch, H. (2003) *Trade Unions in Southern Africa*. Paper presented at the ‘Futures of Southern Africa’ symposium in Namibia September 2003.

<sup>44</sup> Ruppert, (2007) 13.

<sup>45</sup> Vavi, Z. (2001) *South African Trade Unions face globalisation*. Speech at COSATU meeting. Johannesburg. [www.afrol.co./news2001/sa019\\_globalisation\\_lab.htm](http://www.afrol.co./news2001/sa019_globalisation_lab.htm). Downloaded 18 May 2015.

<sup>46</sup> Ruppert, (2007) 12-13.

<sup>47</sup> SADC (2014) Employment and Labour Protocol. Article 25 (5).

disputes themselves and any dispute that cannot be resolved may be referred to the SADC Tribunal in terms of Article 16 of the Treaty. The protocol however fails to spell out if the trade union movement, as one of the social partners, can play any role in this dispute settlement process.

## **6. Conclusion**

It is clear that in the era of globalisation and or regionalisation that the normal scope of law and especially labour law is attaining an international character. Transnational organisations like the UN, ILO, EU, ECJ, ICC and also the numerous regional organisations or formations have lead to a situation where countries are faced with decisions taken on an international level which directly influence their own national legal processes. The recent Omar al-Bashir incident in South Africa is a perfect example.

For any country to be part of the International Community and to be a member of Transnational organisations in reality means the willingness to “give up” some part of your independence and sovereignty as that country now becomes “subject” to a Transnational Legal Process.

International principles and standards like the decent work agenda of the ILO and the core conventions of the ILO will ever increasingly become minimum international standards. The interpretation and application of these international principles, standards and core conventions will also increasingly be decided by Transnational Organisations. The uniqueness and distinctiveness of any country’s labour legislation or labour relations system will not disappear in totality but it will more and more be subjected to the scrutiny of international bodies and transnational organisations. As globalisation and regionalisation increase the importance of the Transnational Legal Process will become more evident.

National governments, employers’ associations, business associations, trade unions, multinational companies and all actors will have to pay more attention to international standards as well as international law. The legal fraternity in the field of labour law will have to spread their wings across the national borders of their own respective countries in order to be able to meet the challenges of transnational labour law.

Dr Paul Smit

University of Pretoria

1 July 2015.