CHAPTER 13

What is Wrong with International Standards on Social Protection?

Frans Pennings

1 Introduction

One of the major concerns of Fred Soons has been to identify what is wrong with international law. International law is a very broad term and covers many areas, including human rights, war and public security, territorial issues, but also social issues, like the right to health care, the right to food and the right to social protection. The different domains of international law are each characterized by, inter alia, specific sensitivities, balances of power, ideals and initiatives (or lack thereof). International social protection standards are an area of international law of their own.

One of the specific dimensions of social protection standards is that they require activities by the State (e.g. to reduce poverty or to establish a social security scheme for unemployment). In case of the more “classic” human rights, which prohibit certain activities, e.g. forced labour or child labour, it is easier to find consensus that such activities have to be forbidden. This may still leave the problem how to enforce such standards in all contracting parties, but in any case there is consensus that it has to be enforced. However, a standard like “everyone should be free from poverty” is much more difficult to impose, since poverty is a relative phenomenon, and the possibilities to fight poverty depend on the national context (traditions, infrastructure, structure of the economy) and the resources of the state. Since countries generally insist on remaining autonomous in organizing their social security system, there is not much support for imposing strict uniform standards.

However, despite this special character of social standards, it is essential that such standards also be adopted, developed and supervised, since, whereas constitutions and other basic documents of large international organizations, including UN and ILO, mention the fight against poverty or the right to social security as a fundamental or human right, a very large part of the world’s population is still living in poverty. Moreover, other important international issues, in particular prevention of war and restoring peace are closely linked to
matters of social rest and unrest.1 This understanding was a major reason for establishing the International Labour Organization (ILO) directly after the First World War, i.e. to promote social peace, which was seen as essential to maintain peace in the world.

In this contribution I will investigate whether something is wrong with international social standards and if so, what exactly is wrong, and what are the best ways to remedy the defects. I will do so with respect to the social standards developed by global international organisations, i.e. the United Nations and the International Labour Organization.2

2 The International Labour Organization

2.1 Standard-Setting by the ILO

The ILO was established after the First World War with the aims of promoting social peace and preventing new wars. All bodies of the ILO are designed on a tripartite basis, i.e. of representatives of governments, employers and employees and all three groups are involved in developing ILO policies and standards.

From 1919 onwards, the ILO started to adopt conventions and recommendations, containing standards on many areas of labour and social security. By now, more than 200 conventions have been adopted. The standards give minimum requirements on the contents of a particular protection scheme, for instance for old-age or unemployment, including the persons to be protected, the content and level of benefits, conditions for entitlement to benefit, and the administration of the scheme.

Some of these conventions are now already decades old and are criticized for not meeting current needs anymore and for having old-fashioned terms and concepts. However, it has been extensively argued, in particular by the ILO office,3 that the provisions setting forth the standards express important principles. Thus, the conventions are not merely relevant to social security as it

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1 It has been often remarked that several conflict areas in the world would look different if unemployment rates (of youths) in these regions were not so high.

2 There are other standard-setting organizations at the regional level, such as the Council of Europe, but in view of the limited room granted for the contributions in this book I will focus on the global organizations; see, for a discussion of these regional organizations, also U. Becker, F. Pennings and T. Dijkhoff (eds), International Standard-Setting and Innovations in Social Security (Alphen a/d Rijn: Kluwer Law International, 2013).