HAL
open science

Forced Labour

Anne-Charlotte Martineau

To cite this version:

Anne-Charlotte Martineau. Forced Labour. Matthew Craven; Sundhya Pahuja; Gerry Simpson. International Law and the Cold War, Cambridge University Press, pp.271-286, 2019, 9781108499187. 10.1017/9781108615525.013 . hal-01677417

HAL Id: hal-01677417

https://hal.science/hal-01677417v1

Submitted on 30 Aug 2021

HAL is a multi-disciplinary open access archive for the deposit and dissemination of scientific research documents, whether they are published or not. The documents may come from teaching and research institutions in France or abroad, or from public or private research centers.

L'archive ouverte pluridisciplinaire **HAL**, est destinée au dépôt et à la diffusion de documents scientifiques de niveau recherche, publiés ou non, émanant des établissements d'enseignement et de recherche français ou étrangers, des laboratoires publics ou privés.

13

Forced Labour

ANNE-CHARLOTTE MARTINEAU*

I Introduction

In the early years of the Cold War, important debates took place on the nature and scope of both slavery and forced labour. The adoption of the Supplementary Convention on the Abolition of Slavery in 1956 and the vote on the Convention on the Abolition of Forced Labour in 1957 were preceded by long and heated discussions within key international bodies such as the United Nations Social and Economic Council ('ECOSOC') and the International Labour Organization ('ILO'). Yet, conventional legal histories tend to minimise these debates on the ground that they relate to the 'political context' of the Cold War.[1] What is more, they tend to present the adoption of the two conventions as building blocks of the abolitionary project pursued by modern international law.[2] My aim in this chapter is to destabilise such linear narratives. Focusing on the issue of forced labour, I will make five points. First, I will explain how the dividing lines between

* Email: martineauac@hotmail.com.

[1] Jean Allain is undoubtedly the leading international legal scholar on slavery; he has done an outstanding job at going through the UN archives and explaining how newly independent states used slavery in the 1960s–1980s as a platform to criticise colonialism and to challenge apartheid. But his narrative is hampered by the fact that he is critical of such 'political misuse' of the 'legal concept' of slavery (as if there was such an ontological concept). See his 'The International Legal Regime of Slavery and Human Exploitation and Its Obfuscation by the Term of Art: "Slavery-like Practice"' (2012) 10 *Centre de recherche sur les droits fondamentaux* 27.

[2] The entries on 'Slavery' and 'Forced Labour/Slave Labour' found in the *Max Planck Encyclopedia of Public International Law* are emblematic examples: David Weissbrodt, 'Slavery' (March 2014) in Rudiger Wolfrum et al. (eds.), *Max Planck Encyclopedia of Public International Law* (Oxford University Press); Santiago M. Villalpando, 'Forced Labour/Slave Labour' (April 2007) in Rudiger Wolfrum et al. (eds.), *Max Planck Encyclopedia of Public International Law* (Oxford University Press).

'civilised' and 'uncivilised' were redrawn as the issue of forced labour came to the fore after the Second World War. Second, I will sketch how 'labour' as an institutional and expert field became organised in the late 1940s and early 1950s. In that process, Cold War international law will appear as a way of arranging and disciplining social life and knowledge. Third, I will explore the possibilities opened by the fact that both sides regarded the other's industrial regime as resting on forced labour. If we understand this reversibility as part of Cold War international legal argumentation, we might want to examine what it drew out. What did Cold War international legal argumentation bring to the foreground? But also: what did it render invisible? Fourth, I will bring colonisation (and decolonisation) back into the picture, in order to complicate the narrative beyond just that of abolition. Finally, I will suggest that the discourse on forced labour was heavily loaded on both sides of the Iron Curtain, but that the ideological line was not set in stone. In that sense, Cold War international law is the fruit of a series of alliances and alignments that cut across the usual bipolar image.

II Redrawing the Lines between 'Civilised' and 'Uncivilised'

Cold War debates on slavery and forced labour both followed and departed from the ones that took place during the League of Nations. During the inter-war period, these two issues were closely linked to the colonial policies of European Powers: how should they condemn slavery – this, after all, had been one of the justifications for colonising Africa in the first place – without jeopardising the need for a slavery-like labour force in the colonies?[3] This intricate balance was achieved by separating the issue of slavery from that of forced labour, and by defining both concepts narrowly. Drafters of the 1926 Slavery Convention agreed upon a formal definition of slavery as 'the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised'.[4] This definition enabled colonial authorities to conveniently

[3] Michel Erpelding, 'L'esclavage en droit international: aux origines de la relecture actuelle de la définition conventionnelle de 1926' (2015) 17 *Journal of the History of International Law* 170; Joel Quirk, 'The Anti-Slavery Project: Linking the Historical and the Contemporary' (2005) 28 *Human Rights Quarterly* 656.

[4] *Slavery Convention*, opened for signature 25 September 1926, 60 LNTS 255 (entered into force 9 March 1927) Art. 1(1). From that moment onwards, the powers attached to the individual right of ownership as attributed by law became the *sine qua non* of slavery. At the same time, however, this concerted effort to restrict the definition of slavery did not apply in case a non-European government was the subject of inquiry (such as Liberia). See

close their eyes to African mores such as domestic serfdom and servile marriage; these practices were considered either as 'soft or benevolent slavery'[5] or as falling outside the formal definition.[6] At the same time, all major colonial Powers opposed the inclusion of forced or compulsory labour in the Slavery Convention in the name of national sovereignty.[7] This led to the transfer of that 'specific' problem to the ILO, where a committee composed mainly of colonial experts drafted a separate treaty. What did signatories to the 1930 Forced Labour Convention (No. 29) agree to? Well, they agreed to progressively abolish 'all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily'.[8] But the convention did not abolish forced labour for public purposes: it only restricted forced labour to a limited range of public works.[9] That the authorities could coerce labour was not incidental: 'native labour' was deemed necessary to colonial Powers so that they could develop 'in the interests of humanity, the riches and resources of those African countries placed under their sovereignty'.[10]

What I want to highlight is that these two codifications supported and solidified one of the governing assumptions of international law during the inter-war period, namely, the division of the world between civilised/advanced/developed zones of free labour, on the one hand, and backward/indigenous/under-developed areas of servile relations and coerced

'The 1930 Enquiry Commission to Liberia' (1931) 30 *Journal of the Royal African Society* 277.

[5] Henri Queuneuil, 'Conférence anti-esclavagiste de Bruxelles. Acte général du 2 juillet 1890: Application et résultats' (1908) 15 *Revue générale de droit international public* 127, 136.

[6] See, e.g., Fritz Weidner, *Die Haussklaverei in Ostafrica: Geschichtlich und Politisch Dargestellt* (Gustav Fischer, 1915).

[7] Suzanne Miers, *Slavery in the Twentieth Century: The Evolution of a Global Problem* (Altamira Press, 2003) 121–30.

[8] *Forced Labour Convention* (No. 29), opened for signature 28 June 1930, entered into force 1 May 1932, Art. 2(1).

[9] Compulsory military service, normal civil obligations, convict labour, work in emergencies and communal services were not deemed to be 'forced labour'. As a result, the French, for instance, maintained forced labour for public works (*prestations en nature*) in their colonies until 1946: Jean Frimigacci, 'L'Etat colonial français, du discours mythique aux réalités (1880–1940)' (1993) 32 *Matériaux pour l'histoire de notre temps* 27.

[10] League of Nations, *Note Submitted to the First Sub-Committee of the Six Committee by the Portuguese Delegate, General Freire d'Andrade*, LN Doc AVI/S.C.1/2.1925 (11 September 1925), quoted in Jean Allain, 'The Legal Definition of Slavery into the 21st Century' in Jean Allain (ed.), *The Legal Understanding of Slavery: From the Historical to the Contemporary* (Oxford University Press, 2012) 202.

labour, on the other hand.[11] This assumption is precisely what would be (partly) challenged later on, by Cold War international law. It became (partly) challenged by the realisation that forced labour also existed in the 'Global North'. Let me explain this. Historians such as Suzanne Miers have shown that slavery was 'the last thing on the minds of politicians'[12] after the Second World War. The 1926 Slavery Convention was not even among the treaties the United Nations took over from the League of Nations. By contrast, the issue of forced labour was prominent; deportation, enslavement and the use of forced labour in Nazi camps had just been qualified as a crime against humanity by the Nuremberg tribunals.[13] This condemnation, however, did not lead Europeans to abolish regimes of compulsory labour in their colonies. What became condemned in the late 1940s, as I will now explain, was the massive use of forced labour in the Global North for the sake of political repression.

III Institutional Fragmentation and the Politics of Expertise

In November 1947, during an ECOSOC session, the American Federation of Labor ('AFL') denounced the existence of labour camps in the Soviet Union and in the Eastern bloc.[14] By calling upon the Council to put the question of forced labour on its agenda, the AFL was 'attempting to counteract a strategy of the Soviet representation to use the council as a tribune for promoting their economic and social model'.[15] These allegations were supported by delegates from the United States and the United Kingdom, who presented testimonies of refugees from corrective labour camps in communist countries and citations from the Corrective Labour Codex of the Union of Soviet Socialist Republics ('USSR'). The Soviet bloc responded by attacking the motives of those who had introduced and sponsored the item. It also brought counter-charges of peonage in the United States and discriminatory labour practices in colonial possessions, and stressed

[11] Seymour Drescher, 'Reviews of Books: *Slavery in the Twentieth Century: The Evolution of a Global Problem*, Suzanne Miers' (2004) 109 *American Historical Review* 869, 870.
[12] Miers, above n. 7, 319.
[13] See Telford Taylor, 'Les procès de Nuremberg : synthèse et vue d'avenir' (1949) 14 *Politique étrangère* 207.
[14] UN Doc. E/596 (29 November 1947).
[15] Sandrine Kott, 'The Forced Labor Issue between Human and Social Rights, 1947–1957' (2012) 3 *Humanity* 321, 325.

the plight of unemployed and low-paid workers in capitalist countries.[16]

The debate gradually took on an institutional character and discussions revolved around the setting up of an investigatory commission. Who should carry out the investigation, and on which terms? In February 1949, the US delegation to the ECOSOC proposed the establishment of a commission to do spot visits anywhere in the world where there were complaints of forced labour. In reply, the Soviet Union said that it also favoured an investigation as long as the commission would be composed of trade union representatives exclusively.[17] As for the British, they wanted the newly established ad hoc committee on slavery to expose and attack the 'new slavery'[18] found in the labour camps of the communist bloc. At one point, the US delegation urged the Council to refer the item back to the ILO so that the latter would be the one to establish a special commission. Resorting to the ILO meant profiting from its expertise in the domain of forced labour. But it also meant sidelining the USSR (who had withdrawn from the ILO) and inscribing the discussion even more clearly in the logic of the Cold War.[19] It was only in 1954 that the Soviet Union rejoined the ILO, and this was seen as a sharp reversal of its policy: 'The Soviet Union had boycotted ILO since 1937 . . . and during much of this time it conducted a bitter attack against the agency'.[20]

[16] Harold Karan Jacobson, 'Labor, the UN and the Cold War' (1957) 11 *International Organization* 55. See also 'Economic and Social Council' (1949) 3 *International Organization* 307, 312.

[17] The USSR called for the establishment of an international commission composed of over one hundred trade union representatives chosen on the basis of one representative per million trade unionists. The commission would among other things, study unemployment in all countries where unemployment had not been eliminated, and investigate working conditions in colonies and dependent territories. These proposals were unacceptable to the West: the commission's composition meant that it would be communist-dominated and its activities would not extend to the Soviet Union and Eastern Europe by definition. The Soviet proposals were thus rejected: Antony Evelyn Alcock, *History of the International Labour Organisation* (MacMillan, 1971) 270.

[18] See Miers, above n. 7, 320. The British also wanted to include other forms of exploitation in the terms of reference of the slavery committee, such as peonage and *mui tsai*. 'They hoped this would divert attention from the chattel slavery in their Persian Gulf satellites and the Aden Protectorate': at 320.

[19] That the ILO was founded in 1919 as a counter to the Russian revolutionary model is well explained by Kott, above n. 15, 325.

[20] Harold Karan Jacobson, 'The USSR and ILO' (1960) 14 *International Organization* 402, 402. The USSR seemed to regard the agency as a 'capitalist plot to dupe the workers and blunt their class consciousness': at 404.

In March 1951, the ECOSOC finally voted for the establishment of an ad hoc committee on forced labour in conjunction with the ILO. Only the Soviet bloc voted against it. Even though they did not oppose it, colonial Powers such as the United Kingdom, France and Belgium were also wary, as they feared that such a joint international inquiry would only encourage the existing agitation in their colonies.[21] They were thus keen to set the confines of the committee's mandate as precisely as possible, and to target exclusively what they assumed was going on in the Eastern bloc. The resolution called upon the committee 'to study the nature and extent of the problem raised by the existence in the world of systems of forced or "corrective" labour, which are employed as a means of political coercion or punishment for holding or expressing political views, and which are on such a scale as to constitute an important element in the economy of a given country'.[22] Three 'distinguished persons'[23] were rapidly appointed to form the committee: Paal Berg, former president of the Norwegian supreme court; Enrique García Sayán, Peruvian politician and member of the UN Human Rights Commission; and Sir Arcot Ramasamy Mudaliar, the chairman, who had presided over the two British war cabinets and had seen through India's recognition by the UN (hence the committee's short title, 'Mudaliar committee').

I find these institutional moves highly instructive for at least two reasons. First, they come in as an early reminder that functional differentiation – that is to say, the splitting up of international law into specialised and technocratic fields with their own rules and institutions – is not a natural phenomenon. If ECOSOC gradually handed over the issue of forced labour to the ILO, it is not because such an issue naturally fell within a predetermined function of that organisation. Needless to say, the ILO already had considerable experience with respect to forced labour; the Committee of Experts on Social Policy in Non-Metropolitan Territories was already in charge of supervising the implementation of the Native Labour Code that incorporated the 1930 Forced Labour Convention.[24] But ECOSOC could well have taken the lead if its

[21] Daniel Roger Maul, 'The International Labour Organization and the Struggle against Forced Labour from 1919 to the Present' (2007) 48 *Labor History* 477, 485.

[22] See ESC Res 350 (XII) (19 March 1951) Art. 1(a). The Resolution was voted 15 to 3, with only the Soviet bloc opposed.

[23] James Frederick Green, *The United Nations and Human Rights* (Brookings Institution, 1956) 772.

[24] On this Committee, see Daniel Maul, *Human Rights, Development and Decolonization: The International Labour Organization, 1940–70* (Palgrave Macmillan, 2012) 173–9.

members had wanted to. Why did they not want to? At the time, almost all (if not all) of the agenda items the USSR proposed at ECOSOC were designed to highlight flaws in capitalism and provide bases for propaganda attacks on the west. 'That the Soviet Union did not completely achieve this goal is evident', observed Harold Jacobson. 'Many of its propagandistic proposals were removed from the UN arena by the device of referring the question to the ILO'.[25]

Second, these institutional moves show that it is not only functional and technical co-operation that was understood as political, but also expertise itself. Responding to a US proposal to establish a team of experts to perform on-the-spot investigations on forced labour wherever it may exist and report back to the ILO, the Russian delegate objected that it would be impossible to get 'a fair and impartial group to do the investigating'.[26] Experts necessarily came with competing visions of labour and views on the best socio-economic organisation, so that there was no 'view from nowhere', no 'end of ideology' ideology.[27] In other words, the politics of expertise was very much part of Cold War international law. Could it be that the difficulty in thinking of experts in political terms today, especially in the socio-economic field, has something to do with the disappearance of 'communist internationalism' as an alternative to its nemesis, 'liberal internationalism'?[28]

IV Questioning the Meaning of Freedom and Coercion

In October 1951, five months after the resolution was adopted, the Mudaliar committee handed in its first report to the ILO and ECOSOC. The way in which the committee interpreted its terms of reference is illustrative of its willingness to scrutinise a wider range of practices, and thus of countries and territories. Systems of forced labour, explained the committee, could take one of two forms: political or economic. 'The first form [is] forced labour for corrective purposes, [that is,] in order to correct the political opinions of those who differed

[25] Jacobson, above n. 16, 66. He adds that the Soviet Union's re-entry into that organisation in 1954 should be interpreted in this context: at 67.

[26] George Lodge, 'The 1956 Session to the International Labor Conference' (1956) 79 *Monthly Labor Review* 1047, 1050.

[27] On the 'end of ideology' ideology, see Susan Marks, *The Riddle of All Constitutions: International Law, Democracy, and the Critique of Ideology* (Oxford University Press, 2000) 15–18.

[28] These terms belong to Sandrine Kott, 'Cold War Internationalism' in Glenda Sluga and Patricia Clavin (eds.), *Internationalisms: A Twentieth-Century History* (Cambridge University Press, 2016) 340, 342.

from the ideology of the Government of the State for the time being . . . The second form of forced labour [is] when persons [are] obliged involuntarily to work for the fulfilment of the economic plans of a State, their work being of such a nature as to lend a large degree of economic assistance to the State in the carrying of such economic plans'.[29] The committee also explained its plan of action: it would send a survey to all governments and make arrangements to receive information from NGOs and individuals.[30] A wide range of American actors became involved.[31] Not only US government officials but also research institutions and associations were very active in giving information. They documented for the committee the laws, regulations and practices found in Eastern countries whereby the authorities could compel someone to perform certain labour for corrective or educational purposes. The communist bloc did not stand still. While refusing to respond to the questionnaire sent to all governments, the Soviet Union and its satellites provided information on the ways in which the status of the working masses in capitalist countries – and especially that of women, migrants and minorities – was no better than that of wage slaves. They gave particularly detailed information on the legal framework pertaining to forced labour in colonies or dependent territories of Western European countries. They were supported in this by representatives of recently decolonised countries such as India, as well as by the Anti-Slavery Society and representatives of certain Western federations of workers.[32]

[29] International Labour Organization, *First Progress Report of the Ad Hoc Committee on Forced Labour to the Economic and Social Council and to the Governing Body of the International Labour Office*, UN Docs. E/2153 and E/AC.36/10 (30 October 1951) para. 11. According to Daniel Maul, this broad interpretation is the result of the influence of the International Labour Office and especially of its Director-General, David Morse: Maul, 'The ILO and the Struggle against Forced Labour', above n. 21, 485.

[30] After a preliminary examination of the information received, the committee decided to confine its study to twenty-four countries or territories under their administration, against which allegations had been made: Eastern bloc countries, nine Latin American countries, European colonial powers, South Africa, Spain and the United States. See International Labour Office, *Report of the Ad Hoc Committee on Forced Labour*, UN Doc. E/2431 (1953) para. 48.

[31] Some have called this an 'American crusade': Kott, above n. 15, 326. American efforts were not only deployed in relation to forced labour. For the exportation of US models of social and economic organisation through the ILO to Latin America during the Cold War, see Jason Guthrie, 'The ILO and the Social Politics of Development, 1938–1969', PhD thesis, University of Maryland (2015).

[32] The Workers Defense League, for instance, gathered a huge amount of documentation on peonage (that is, forced labour to pay off debt) as practice in Latin America and in the American South: Kott, above n. 15, 328.

The final report, published in 1953, is a 621-page long document in which the Mudaliar committee tried to establish 'what level of coercion was usual or tolerable in modern states, and to use this as a standard against which deviations could be judged'.[33] The committee found that systems of forced labour existed all over the Eastern bloc, stating that all communist countries used forced labour as a means of political coercion, as a means of economic development, and as a means of labour discipline. The committee's most sweeping condemnation concerned the USSR: its legislation placed restrictions on the freedom of employment in the interests of national economy at such a large scale that it amounted to a 'system of forced or corrective labour'.[34] American scholars applauded these findings, rushing to say that the Soviet system was 'more vicious than the remnants of slavery that still remain[ed] in the more backward areas of the world'.[35] Notwithstanding, the committee also identified 'practices resembling forced labour'[36] in the United States, in connection with illegal Mexican immigrants and instances of peonage in southern plantations, though it refused to go a step further and condemn them. The committee argued somewhat laconically that the phenomenon of using forced labour as a means to an end (that is to say, for economic development) was part of a general tendency of the age and one that was present in all political systems.[37]

It was not until the spring of 1954 that ECOSOC acknowledged the report and, having 'no desire to deal with the matter [that is, forced labour]',[38] invited its partner institution to continue working on its own.[39] After some debate, the Governing Body of the ILO gave the go-ahead for the drafting of a new convention, and a new committee was set up to prepare the content. Paul Ruegger, the Swiss President of the International Committee of the Red Cross, was chosen to head it. In its

[33] Maul, *Human Rights, Development and Decolonization*, above n. 24, 207.

[34] International Labour Office, *Report of the Ad Hoc Committee on Forced Labour*, UN Doc. E/2431 (1953) para. 441.

[35] Green, above n. 23, 775.

[36] International Labour Office, *Report of the Ad Hoc Committee on Forced Labour*, UN Doc. E/2431 (1953) para. 546. The committee also pointed at Spain and some Latin American countries.

[37] The report included varieties of forced labour resulting from social and economic conditions. The committee mentioned, for instance, the imposition of forced labour on vagabonds and beggars in the Finnish Civil Code – the legacy of a practice widespread in the nineteenth century industrial countries: ibid., 166.

[38] Alcock, above n. 17, 274.

[39] ESC Res 524 (XVII) (27 April 1954).

provisional report presented in March 1956, the committee noted with frustration that it would have liked to 'study the situation throughout the world'[40] but that it was limited by its terms of reference to analysing material submitted to the ILO. This material related only to ten communist countries (including the Chinese People's Republic and the German Democratic Republic), Portuguese overseas territories and South Africa. 'On all the main issues', reviewed Daniel Maul, 'the Ruegger Committee followed the line taken by its predecessor, as the Western nations in particular, supported by a large proportion of the Workers' group under the leadership of the AFL, worked hard to ensure'.[41]

The two reports and the debates surrounding their adoption are fascinating in that they handle the meaning of freedom and coercion in a way that is no longer thinkable. Whereas post–Cold War international lawyers see forced labour as something abnormal or different from 'regular labour', the Cold War was a moment when each side could regard the other's labour as forced, in general: as 'Mass Capitalism' on one side, and 'Soviet Workers' on the other. Even though members of both committees were confident in the superiority of liberal economic and political models, they conveyed both worldviews. Commenting on the International Labour Conference held in June 1956, which led to the adoption of a new convention a year later, George Lodge from the US Department of Labour wrote that 'a theme emerged in the form of a question: What do we mean by the words freedom and democracy, force and compulsion, slavery and degradation? The world, at least as of last June, had no clear, single answer.'[42] The difficulty of agreeing upon a definition of forced labour or, to be more precise, of fixing the limits between free and coerced labour, was due to a fundamental disagreement on a wider set of socio-economic ideas. These ideas fed the legal and political imagination of the time. There were, of course, blindspots: Cold War international law may have condemned labour camps and capitalist exploitation, but it rendered invisible – and thus left untouched – prostitution and 'private' practices such as child domestic workers. Nonetheless, the fact that both sides in the Cold War regarded the other's industrial practices as being founded on forced labour shows us how contested legal norms might be in circumstances of ideological struggle,

[40] ILO Annual Conference, 1956, *Report VI (ii), Forced Labour, Supplement: Report of the ILO Committee on Forced Labour* (12–17 March 1956) para. 10.
[41] Maul, *Human Rights, Development and Decolonization*, above n. 24, 208.
[42] Lodge, above n. 26, 1047.

and also how deeply malign labour practices might now run free in the absence of such contestation.

V What about Forced Labour in the Colonies?

During these years, forced labour was a particularly delicate issue for colonial Powers insofar as 'it was inextricably connected with the image of the pre-war colonialism that the metropoles in their social policy discourse were proclaiming to have overcome'.[43] In fact, it is arguably more in relation to colonial practices than in relation to 'corrective labour camps' that the ambivalence of Cold War international law – and, in the end, its apologetic tone – is most visible.

In 1953, the Mudaliar committee condemned Portugal, Belgium and South Africa for having established systems of forced labour, while leaving two other colonial Powers – Britain and France, no less – off the hook. In so doing, the committee endorsed the colonial discourse of the time according to which forced labour was acceptable in the colonies as long as it was an exceptional or transitional measure foreseen by law and as long as it was made for developmental purposes.[44] Indeed, the committee stressed that there was no problem with France given that it had just abolished forced labour in all of its colonies (leaving out of sight the continuation of such practices de facto). As for Britain, the committee found that the law did provide for forced or compulsory labour in Kenya, Malaya and Tanganyika. However, these measures were deemed acceptable because they were apparently not an important element in the economy of the territories and because they were meant to be progressively abolished.[45] If Belgium and Portugal stood out among colonial Powers, thus, it was seemingly due to their large-scale and systematic use of forced labour in their colonies, and to the brutality of the methods involved.[46] The case of South Africa is even more paradigmatic: what

[43] Maul, *Human Rights, Development and Decolonization*, above n. 24, 202.

[44] To give one example: Belgium refused in 1950 to get rid of forced labour in Ruanda-Urundi for 'agriculturally educative purposes' until 'habits of industry ha[d] been inculcated'. See UN Trusteeship Council, Division of Social Affairs, *Application of International Labour Conventions and Recommendations to Trust Territories*, UN Doc. UNA-RAG 320-02: Forced Labour (12 October 1950), cited in Maul, 'The ILO and the Struggle against Forced Labour', above n. 21, 496.

[45] International Labour Office, *Report of the Ad Hoc Committee on Forced Labour*, UN Doc. E/2431 (1953), para. 485.

[46] For a critique of the narrative prevailing at the time that French and British colonial administrations were most committed to improving the living conditions of the African

made South Africa so different and so problematic, in the committee's view, was the fact that 'its African population had no choice other than to provide labour to implement the economic policy devised by the (white) government, meaning that the coercive element was more a consequence of apartheid than any direct measures of duress'.[47] For the committee, the real problem was that the (white) South African Government did not justify the use of coercion by making reference either to their position of advanced knowledge in comparison to the indigenous population, or to the necessity of coercion for development purposes.

The Mudaliar committee appeared more critical of the colonial discourse towards the end of its report. Why this change of tone? Was it to show that the committee was not oblivious to the fallacies of colonial practices and justifications?[48] The committee also invited colonial Powers that had not yet ratified the 1930 Forced Labour Convention (that is to say, Portugal) to do so as early as possible, and all the others to end such practices as early as possible.[49] But that was practically all. When the committee pleaded for the drafting of a new convention or for amending existing conventions, its reasoning had little to do with colonial practices or with the need to alleviate the life of 'indigenous workers'. The point was to address and remedy 'forced labour conditions found to exist among the workers of fully self-governing countries'.[50] This left the colonies outside the normative framework: imperial subjects remained exempt from any new normative measure intended to improve their conditions and abolish forced labour.

citizens (or imperial subjects), which in the end spurred decolonisation, see Alexander Keese, 'Slow Abolition within the Colonial Mind: British and French Debates about "Vagrancy", "African Laziness", and Forced Labour in West Central and South Central Africa, 1945–1965' (2014) 59 *International Review of Social History* 377.

[47] Maul, *Human Rights, Development and Decolonization*, above n. 24, 206.

[48] One can read that for nearly twenty-five years, the ILO 'has been striving to bring about the abolition of such practices [that is, practices of forced labour against indigenous populations] and to improve the situation of indigenous workers': International Labour Office, *Report of the Ad Hoc Committee on Forced Labour*, UN Doc. E/2431 (1953), para. 555.

[49] The justifications put forth by Britain also seemed tainted by the following statement: 'Bearing in mind that a considerable time has elapsed since the exemptions and limitations were allowed . . . and noting further that many of the States ratifying the Conventions have in fact done so, the Committee feels that it may now be possible to implement fully these Conventions without limitations or temporary exemptions': ibid., para. 556.

[50] Ibid., para. 560.

The Ruegger committee report that was released in 1956 is equally disappointing. In fact, and given the committee's very limited terms of reference, it diverted attention even further away from colonial issues. This point was explicitly made when the Governing Body discussed the question of whether the provisional report should be submitted to the Annual Conference in June 1956. The Indian and Pakistani Workers' representatives complained that colonial territories had been largely excluded from the investigations, such as Rhodesia and Kenya, where methods of coercion continued to be used on a large scale.[51] They also argued that forced labour was a problem inherent to the colonial system so that any new convention would need to address it – a post-Bandung statement showing that tensions between Western colonial states and newly independent states (supported by the socialist bloc) were growing. Their argument was not heard, though: the adoption of the Abolition of Forced Labour Convention (No. 105) a year later did not do much for the abolition of forced labour in the colonies.

The debate was revived at the beginning of the 1960s against the background of continuing decolonisation in Africa and Asia. The historian Daniel Maul has shown that many of the newly independent states were showing a mixed attitude towards Convention No. 105. On the one hand, the commitment to ILO's norms was highly symbolic for the new nations, a gesture expressing a break with the colonial past. This was particularly true for freedom from forced labour, the classic 'colonial crime'. On the other hand, leaders of the new nations perceived their economies as emergency situations for which a strict application of Convention No. 105 was incompatible with the goal of mobilising all available forces for the development effort. The newly established post-colonial governments described themselves as 'emergency regimes overseeing their countries' fight for (economic) emancipation and independence, which was now no more taking place on the national level, but within the international order'.[52] This, they argued, justified subjecting the population to extraordinary measures of coercion, and suspending the application of ILO norms for a transitional period.

Their demand was rejected on the ground that it contradicted 'both the spirit of the forced labour conventions and the postulates of the International Labour Office, in whose integrated approach to development the realisation of ILO human rights norms was the first step in the

[51] Maul, *Human Rights, Development and Decolonization*, above n. 24, 209.
[52] Maul, 'The ILO and the Struggle against Forced Labour', above n. 21, 489.

modernisation process'.[53] To paraphrase Daniel Morse, the then-Director-General of the ILO, the issue of forced labour had become one of the problems that most clearly illustrated the growing conflict between 'economic development' and the preservation and guarantee of 'human rights'.[54] This way of framing the issue came with an obvious cost. For the human rights language placed the modes of economic production outside of the definition of forced labour: instead of envisaging forced labour as part of a larger socio-economic regime, the challenge was now to reconcile the respect for human rights with economic and political imperatives.[55] In an ironic twist, while colonial Powers had been allowed to maintain forced or compulsory labour for 'development purposes', the new nations were now forbidden to do so in the name of human rights. Unfortunately for them, the short window during which one could speak of and challenge capitalist modes of production and work conditions was now closed.

[53] Ibid., 489.

[54] See David Morse, *The ILO and Human Rights: Report of the Director-General (Part 1) to the International Labour Conference*, 52nd session (La tribune de Genève, 1968), www.ilo.org/legacy/english/lib/century/sources/sources1968.htm.

[55] The idea of forced labour as a breach of human rights is still the one that prevails today. My point here is that it makes it more difficult to think about the actual conditions of work and their socio-economic underpinnings. This reasoning transpires in the 1962 *Annual Report of the Permanent Committee of Experts on the Application of Conventions and Recommendations*, which contains a general survey of the situation on the ground for the first time since Convention No. 105 came into force. The Committee worried that forced labour had become even more usual in some parts of the world, especially in Africa where newly independent states had set up new forms of forced labour, such as compulsory labour service for young people. See *Report of the Committee of Experts on the Application of Conventions and Recommendations*, International Labour Conference, 46th sess (Geneva, 1962). The accused states reacted fiercely to the findings of the committee. Developing countries, they said, were involved in a battle for economic independence that was just as important as any military struggle. To make it worse, these accusations came at the exact same time as the announcement that Portugal, who had been investigated by the ILO on the basis of a breach of the Forced Labour Convention brought by the government of the now independent African state, Ghana, was acquitted. The sense of a double standard magnified as Liberia was also investigated, following a complaint by Portugal, and blamed. See *Report of the Commission Appointed under Article 26 of the Constitution of the International Labour Organization to Examine the Complaint Filed by the Government of Ghana concerning the Observance by the Government of Portugal of the Abolition of Forced Labour Convention, 1957* (No. 105) (1962) 45 *Official Bulletin*, No 2, Supp II; cf. *Report of Commission Appointed under Article 26 of the Constitution of the International Labour Organization to Examine the Complaint Filed by the Government of Portugal concerning the Observance by the Government of Liberia of the Forced Labour Convention, 1930* (No. 29) (1963) 46 *Official Bulletin*, No. 2, Supp II.

VI Shifting Alliances and Alignments

So far, I have tried to show that Cold War debates on forced labour are instructive in understanding the possibilities and limits of a 'Cold War international law'. As a concluding remark, I would like to suggest that international organisations such as the ILO were a space where the opposition between the two conceptions of labour was formed and delineated. This implies a change in focus, in the sense that the question is no longer 'what is the opposition between the two conceptions of labour?' but rather 'how has this opposition been constructed?'. Sandrine Kott is among the historians who have looked at the flow of expertise and knowledge taking place between the East and the West at the ILO during the Cold War. The ILO, she argues, was not a venue in which exchange of information and expertise was unilateral or flowing from the West to the East; instead, the ILO was a place where the dominant Western model was contested. 'At least up to the early 1970s, socialist solutions and models did pose a challenge and even served as inspiration for some Western European technocrats . . . '[56]

We find an illustration of this at the International Labour Conference in 1956, which took place 'in the context of de-Stalinization and a phased and limited closing of the labor camps, on the one hand, and a resumption of the dialogue between communist and reformist labor unions, on the other'.[57] A number of members of Western labour unions aligned themselves with members of the Soviet trade union federation to express concerns that the scope of the Ruegger committee's report was too narrow. Given that it limited the question of forced labour to the dimension of political coercion, they said, the report forgot the need to protect all workers that were economically dependent on their employers. Accordingly, during the discussions at the 1956 annual conference that led to the adoption of Convention No. 105, a temporary alliance was formed that cut across Cold War ideologies: all labour representatives, including members of the American Federation of Labour, voted for an amendment proposed by the Eastern bloc which sought to introduce a clause protecting workers against forced labour imposed by employers.

[56] Sandrine Kott, 'Global Labor and the ILO (1947–1973): A Post-Cold War Perspective' (unpublished paper), http://graduateinstitute.ch/files/live/sites/iheid/files/sites/international_history_politics/shared/seminars/geneva_history_seminar/KottGlobalLabor2012.pdf. See also Sandrine Kott, 'Par-delà la guerre froide : Les organisations internationals et les circulations Est–Ouest (1947–1973)' (2011) 1 *Vingtième Siècle* 288.

[57] Kott, 'The Forced Labor Issue' above n. 15, 329.

This (short) moment of unity among trade unions made it possible for the scope of the new convention to be broadened.[58]

What I want to highlight with this example is that the opposition between the two conceptions of labour was fluid and changing over time. Nothing was set in stone; unexpected alliances took place in institutional settings that defied structural biases. This comes as a helpful reminder for international lawyers not to be corrupted by Cold War ideologies when studying Cold War international law.

[58] Even though the clause protecting workers against forced labour imposed by employers was not retained in the final text, it was the object of a separate resolution concerning the modes of payment of salary. Otherwise, Article 1 of the 1957 Convention bans forced labour (a) as a means of political coercion or education; (b) as a method of mobilising and using labour for purposes of economic development; and (c) as a means of labour discipline. On the initiative of the workers' group, the scope of the convention was extended to include two additional reasons for banning forced labour: (d) as a punishment for having participated in strikes; and (e) as a means of racial, social, national or religious discrimination.