



Transnational regulation of temporary agency work compromised partnership between Private Employment Agencies and Global Union Federations

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Abstract

This article critically assesses the potential for the international regulation of temporary agency work (TAW) through building partnership between the Global Union Federations (GUFs) and major Private Employment Agencies (PrEAs). Given the limits of existing national and international regulation of TAW, particularly in developing countries, and the current deadlock in dialogue through the International Labour Organization, the argument of this article is that Transnational Private Labour Regulation (TPLR) offers a unique opportunity to establish a basis for minimum standards for temporary agency workers. This article goes on to propose three potential TPLR frameworks that, although compromised, are transparent, fair and sufficiently elastic to accommodate the distributive and political risks associated with partnership. They also offer important gains, namely increasing the competitive advantage of the PrEAs involved, minimum standards for agency workers and ‘field enlarging’ strategies for the GUFs and their affiliates.

Keywords

Global Union Federations, private employment agencies, temporary agency work, transnational regulation

Introduction

Temporary agency work (TAW) is a large and relatively distinct category of externalized labour (Theron, 2005) signifying a triangulation of the employment relationship with the

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introduction of a third party (ILO, 2009b). There are an estimated 46 million temporary agency workers working for over 176,000 Private Employment Agencies (PrEAs), with 30 per cent of the €259 billion global annual sales revenue concentrated in 10 multinational companies (MNCs) (CIETT, 2013).

A central strategic objective of PrEAs is to build TAW as a sector, and secure competitive advantage with user enterprises, predominantly MNCs (Mitlacher and Burgess, 2007), and in new markets in Eastern Europe, Asia, Africa and Latin America, by establishing a minimum set of industry standards. PrEAs are therefore highly active, principally through their professional associations – the International Confederation of Private Employment Agencies (CIETT) and EuroCIETT – in attempting to establish minimum industry standards for TAW.

In the main, trade unions regard the growth of externalized labour as directly responsible for the erosion of permanent jobs and decent work (Fashoyin, 2010; Forde and Slater, 2005; ILO, 2009a). However, the use of contract and agency labour is widespread across sectors and many unions prioritize organizing temporary agency workers as a matter of organizational survival (Cotton, 2013; ICEM, 2004). Trade unions, principally through the coordination of their international bodies, the Global Union Federations (GUFs), have since the late 1990s been active on the issue of ‘precarious work’ which is considered an important ‘field-enlarging’ strategy (Wever, 1998: 392) for building and reviving trade union organization. The work of the GUFs utilizes a broad range of strategies, including the use of Transnational Private Labour Regulation (TPLR) mechanisms to secure international agreement with MNCs including International Framework Agreements (IFAs) and industry standards (Croucher and Cotton, 2008; Müller and Rüb, 2005). TPLR takes advantage of the GUFs’ ‘institutional foundation’ (Anner et al., 2006) located within their powerful affiliates from Western Europe with leverage with key MNCs (Cotton and Gumbrell-McCormick, 2012).

Despite mutual interest in building international partnerships, dialogue between the major PrEAs and the GUFs has resulted in a regulatory deadlock arising from their failure to manage the inevitable political and distributive risks involved (ACTRAV, 2011) and subsequent failure to establish a model of partnership that provides sufficient elasticity to tolerate their diverse attitudes towards TAW.

One of the key obstacles to partnership relates to the mutuality of business interests where trade unions often have a clear preference for permanent and direct employment and do not support the growth of PrEAs. Given this fundamental difference of position, this article argues that only limited partnership between the PrEAs and GUFs can realistically be established. This article proposes two potential models for limited partnership between the GUFs and PrEAs using Martinez Lucio and Stuart’s (2005) ‘transitional’ and ‘coerced’ models of partnership which focus on specific risks and challenges rather than the broader management or employment relations systems in place. In the case of coerced partnership, collaboration comes about at a critical point when a strategic alliance is required by both parties. Both models, although compromised, offer a highly elastic model of partnership that does not require any substantial political agreement.

Further, this article argues that existing TPLR mechanisms provide an efficient basis for partnership because they are established, transparent and regarded as credible (Cooke, 1990). The article proposes three potential frameworks for partnership: International

Framework Agreements (IFAs); an 'industry' standard; and international dialogue through the Council of Global Unions. These three approaches are not mutually exclusive or alternatives to stronger labour protections (Trubek and Trubek, 2007). Rather, they offer viable entry points for building partnership between key international employers and trade unions and unique opportunities to break the current regulatory deadlock.

The next section introduces the debates and literature relating to the regulation of TAW. The following section briefly describes the research methods and is followed by a case study about trade union responses to TAW. The article concludes with a discussion about the potential for building partnership between PrEAs and the GUFs using TPLR frameworks.

International regulation of temporary agency work (TAW)

Externalization (Theron, 2005) is the trend of obtaining labour from outside of a corporation's boundaries, linked to the strategies of outsourcing and contracting out, signalling a change in the employment relationship with the introduction of a third party (ILO, 2009b). Although data continue to be imprecise about the scale and nature of changes in the employment relationship (European Foundation for the Improvement of Living and Working Conditions (Eurofound), 2008), over the last 30 years externalized labour has expanded dramatically in regions such as Asia, Latin America and Central Europe (ICEM, 2004; IMF, 2007; Woolfson, 2007). This development is, in part, driven by the demand for flexible labour (Gumbrell-McCormick and Hyman, 2013) and the 'staggeringly uniform' (Rubiano, 2013) ways in which MNCs have organized international business operations leading to indirect and precarious employment relations systems (De Vos, 2009; Evans and Gibb, 2009; ILO, 2009a, 2009b).

The growth of externalized labour is associated with a 'decoupling' (Hayter and Ebisui, 2013) of work from employment, leading to an absence of labour protections (Aviles, 2009; Bentein and Guerrero, 2008; Bercusson and Estlund, 2008; Bronstein, 2009; Gallagher and Sverke, 2005) such as unfair dismissal, Freedom of Association and the right to bargain collectively (ILO, 2009a; Rubiano, 2013) and by precarity and insecurity (Doogan, 2009).

Transnational Private Labour Regulation (TPLR) has grown in response to three regulatory deficits that underpin externalized employment in developing countries. First, there is a lack of enforced employment legislation in these countries (Kolben, 2011; Trubek and Trubek, 2007); second, MNCs have found it difficult to manage their global supply chains in developing and transition economies (Fichter and Sydow, 2002); third, multilateral organizations such as the International Labour Organization (ILO) do not have the capacity to implement and monitor international standards in developing and transition economies (Blanpain and Colucci, 2004). These deficits have triggered a growth of global governance mechanisms and regulatory initiatives from international non-state and private sectors (Bercusson and Estlund, 2008; Ruggie, 2008) including trade unions and their international organizations, the GUFs.

TPLR is regulation that is supplementary to existing national legislation (Lobel, 2004; Trubek et al., 2000), 'governance without government' (Stoker, 1998: 19) involving private companies, employers associations, unions and non-governmental organizations

(NGOs). Its growth has closely tracked the increase in the global activities of MNCs and the broad failure of domestic labour legislation, particularly in developing countries, in adapting to them (Kolben, 2011).

A regulatory approach to externalized labour has inherent weaknesses (Aviles, 2009; Gallagher and Sverke, 2005) because much existing national labour legislation is 'left without an object' (Tsogas, 2009: 87). In many national contexts, externalized labour is set up precisely to avoid labour protections (McCann, 2008) by placing the employment relationship outside the scope of existing labour law, leaving temporary agency workers vulnerable to exploitation (ILO, 2009a). Regulations affecting TAW can be usefully divided into three main groups (Demaret, 2013): restriction of short-term contracts; restriction of the reasons for employing people on temporary contracts; and minimizing the economic savings for employers. This third category includes legislation that promotes equal pay for temporary workers as well as increasing the operational costs for PrEAs (Keune, 2013).

There exists an understandable preference among trade unions for national legislative responses to TAW. However, the weakness of national institutions, particularly in developing countries, has led to an emphasis on international regulation at the level of the European Union (EU) and the ILO. This preoccupation with precarious work is reflected in the United Nation's recent prioritization of enforcing the Ruggie Principles (Ruggie, 2008) and 'due diligence' in global supply chains. One of the most important regulations to date is the European Temporary and Agency Workers Directive (2008), which broadly introduces the principle of equal treatment for temporary agency workers into European and national legislation (Gumbrell-McCormick and Hyman, 2013; Mitlacher and Burgess, 2007). Different institutional contexts have led to diverse impact, with the key criticism of the Directive concerning the exploitation of permitted derogations from the principle of equality of treatment (Keune, 2013) leading to a rapid increase in new unions and collective agreements and large-scale negotiations of permanent contracts for temporary workers on lower rates of pay in companies such as Tesco, DHL, Carlsberg and Morrisons (Rossman, 2013).

There are a number of international recommendations and conventions established through the ILO that have been used to support labour rights of temporary agency workers. These include the ILO's Recommendation 198 on the employment relationship, an important articulation of the changes taking place in employment relations and the duties of states to establish the legal responsibilities of employers. The ILO's Private Employment Agencies Convention 181 and Recommendation 188 require governments to create legal and other protections for agency workers, establish mechanisms for agencies to be officially registered and protect freedom of association and collective bargaining. Additionally the GUFs have made use of the ILO's Committee on Freedom of Association to secure rulings on behalf of contract and agency workers, most recently in Colombia and South Korea (Cotton and Royle, 2014; Holdcroft, 2013).

In addition to international regulation through intergovernmental organizations, TPLR mechanisms are increasingly used by the social partners, stimulated by the increase in the global activities of MNCs and the broad failure of domestic labour legislation in adapting to them (Kolben, 2011). TPLR operates through MNCs and other transnational non-state actors, including the GUFs, using their different motivations (Hassel, 2008).

The 'institutional foundation' (Anner et al., 2006) of these agreements, and much of the GUFs' work, is located within their powerful affiliates from Western Europe. It is on the basis of this institutional framing that leverage with MNCs exists and it is how international agreements can be negotiated and secured (Cotton and Gumbrell-McCormick, 2012). International partnership through the GUFs offers the potential for establishing stable dialogue with employers on both fundamental principles, namely the ILO's Core Labour Conventions, and more substantive issues (Hammer, 2005) such as the treatment of contract and agency staff.

TPLR mechanisms include International Framework Agreements (IFAs); signed agreements between GUFs and multinational employers that have been adopted as a major part of the industrial GUFs' strategies (Croucher and Cotton, 2008; Müller and Rüb, 2005). Importantly for TAW, contained within some IFAs there is express agreement that the use of permanent direct employment is preferred, including Norske Skog, Aker, Vallourec, GDF Suez and GEA AG. For some of the GUFs, principally Industriall, there is a strategic intention to strengthen this language for suppliers and subcontractors within the IFAs.

A new TPLR agreement is the Temporary Work Charter signed between the Volkswagen Group and Industriall in December 2012, which establishes principles for the use of temporary work. The agreement commits Volkswagen to limit the use of temporary work to a maximum of 5 per cent of the workforce, along with the principle of equal pay and access to training, representing a significant development for trade unions and their capacity to act on the issue of TAW. It remains to be seen if the Charter can be negotiated with other MNCs, particularly those headquartered outside of Germany, but because of the importance of contract and agency labour to the GUFs' key affiliates these kinds of initiatives are likely to be a priority for the foreseeable future (Hayter and Ebisui, 2013).

TPLR has well-understood limitations both in terms of legitimacy and enforcement (Braithwaite, 2006; Stoker, 1998), particularly where local trade unions lack sufficient leverage with employers to influence their implementation (Hale, 2008). The implementation of these agreements varies greatly and the evidence in developing countries is not strong (Thorpe and Mather, 2005). However, where the GUFs invest in solidarity and education activities to build the capacity of affiliates in developing countries we see higher levels of implementation (Croucher and Cotton, 2008). For example, some IFAs involve systems of joint monitoring such as the IKEA agreement signed with the International Federation of Building and Wood Workers (IFBWW) that has led to a notably high level of corrective actions in developing countries (Eurofound, 2008; IFBWW, 2004). A further generic criticism of TPLR mechanisms is that they are inherently weak in terms of content, establishing only minimum standards and excluding probably the most important protections needed by temporary agency workers such as protection from unfair dismissal. Although these criticisms are valid, the argument of this article is that TPLR, when used by unions that are involved in capacity building activities, offers a unique opportunity to establish a basis for dialogue between trade unions and major PrEAs.

Despite the interests of both GUFs and PrEAs to secure minimum standards, the problem remains for the PrEAs of how to secure dialogue with the GUFs in such a way as to 'eventually reform relations into a more open system of negotiations' (Martinez Lucio and Stuart, 2005: 809). One of the key obstacles to partnership relates to the mutuality of

business interests where trade unions often have a clear preference for permanent and direct employment and do not support the growth of PrEAs. Given this fundamental difference of position, the argument of this article is that only limited partnership between the PrEAs and GUFs can realistically be established. Two models for limited partnership are Martinez Lucio and Stuart's (2005) 'transitional' and 'coerced' partnerships, what they call 'marriages of convenience' and 'shotgun weddings'. Transitional partnerships focus on specific risks and challenges, are reciprocal but temporary, and do not attempt to change the management or employment relations systems in place. Coerced partnerships are collaborations that happen at a critical point when a strategic alliance is required by both parties. These partnerships are characterized as being leadership driven and 'elite-based' and clearly compromised, but are partnerships that can be adopted where there are no alternative ways of establishing specific outcomes.

TPLR offers a similarly limited 'dialogic' framework (Braithwaite, 2006), allowing MNCs to engage with trade unions on the basis of a shared acceptance of minimum standards. This makes TPLR frameworks both limited in depth but also highly elastic in relation to the different attitudes and motivations of potential 'accountability actors' (Lansbury, 2009). It means that TPLR frameworks have therefore potential for both transitional and coerced partnerships between PrEAs and GUFs. Additionally TPLR addresses the 'temporal asymmetry' (Benner et al., 2004) that exists between the rate of growth of TAW and the length of time needed to secure new international regulation and an 'opportunity to overcome regulatory deadlocks' (Hassel, 2008: 232).

The mutual interest of PrEAs and GUFs to establish minimum standards for TAW represents a critical point such that TPLR frameworks offer ways to establish partnerships on a transitional and coercive basis. Based on the experience of the GUFs, TPLR offers a way of opening up negotiations with employers, both user enterprises and PrEAs, in countries and workplaces where local trade union capacity and leverage is weak. Furthermore these TPLR mechanisms provide a realistic basis for partnership because they offer gains for both sides and processes that are regarded as fair and efficient (Cooke, 1990). TPLR is however a 'compromised outcome' (Bartley, 2007: 297) for trade unions because it does not address the basis of the employment relationship directly and therefore leaves the political disagreements about TAW between trade unions and PrEAs unresolved.

Research methods

The prevailing data collection technique used in this article is participant observation by the author (Myers, 1999). This provides an insider's viewpoint of the work of the GUFs as well as an insight into contemporary events and the attitudes of the actors and organizations involved (Iacono et al., 2009).

The research is based on the author's experience as Head of Education for the International Federation of Chemical, Energy, Mine and General Workers' Unions (ICEM) during the period 1999–2007. The author was directly responsible for developing and commissioning the first global union project on contract and agency labour in 2003, funded by the Swedish LO TCO and Dutch FNV Mondiaal, which continues to the present involving unions in Africa, Latin America, Western Europe, North America,

Eastern and Central Europe, Transcaucasia and Central Asia and Asia. Part of this project was to set up the first database of union responses to contract and agency labour and the commissioning of the first GUF research on the situation of contract and agency workers in the energy, chemical and extractive industries (ICEM, 2004). Additionally the author was responsible for creating the first multi-GUF coordinating group on the issue of precarious work in 2005 and commissioning research to assess the potential for developing a multi-GUF platform for action and negotiations with key multinational companies, both user enterprises and PrEAs (Martin, 2006).

The participant observations (Darke et al., 1998) are supplemented by public and official documents and archival records, GUF project and activity reports, online publications, presentations at seminars and conferences and ILO conference reports. Particular use has been made of the Bureau for Workers' Activities (ACTRAV) reports and their analysis of the regulatory deadlock.

The ideas contained in this article have their genesis in an iterative process with practitioners at two seminars that were held at Middlesex University in January 2010 and September 2012 that focused on precarious work and regulation. Representatives from the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF), ICEM and the International Metal Workers' Federation (IMF) (now Industrial), Trade Union Advisory Committee (TUAC) to the OECD and CIETT actively participated in these seminars. The author was also invited to present the emerging ideas contained in this article to Randstad's Public Relations board, Euro-CIETT and CIETT leadership in Nice in July 2011. Each of these three events were followed up with e-mail correspondence and telephone conversations with CIETT's general secretary, representatives of the IUF, ICEM and IMF and trade unions in South Korea, Thailand and Colombia.

This position of 'industry practitioner' (Iacono et al., 2009) provides unique access to data and insight into the current regulatory deadlock that is not currently available through academic research, and therefore offers a small contribution for both practitioners and academics involved in this important area of work.

Temporary agency work (TAW) case study

Trade unions do not regard the growth of TAW as a positive development. Rather, they see it as increasing the trend towards the 'Hindustanization' of employment relations (Greenfield, 2009) and directly responsible for the erosion of permanent jobs and decent work (Fashoyin, 2010; Forde and Slater, 2005; ILO, 2009a). Trade unions, therefore, face a dilemma about whether to focus strategies on protecting agency workers and precarious workers more broadly, or to adopt strategies that protect workers from precarious work forms (Demaret, 2013). This dilemma is felt acutely by unions attempting to organize young workers, migrant workers and women, who represent the majority of those working in precarious conditions (Gumbrell-McCormick and Hyman, 2013).

Trade unions face difficult choices about how to respond to the increase in TAW between protecting temporary agency workers or protecting workers from precarious work forms (Demaret, 2013). Across different institutional contexts there has been a growing acceptance that unions have to adapt to changes in the employment relationship

in order to sustain memberships and structures, often involving shifts in union constitutions and ideologies. As a result protective strategies towards traditional union membership as historically seen in the industrial unions of Continental Europe and the public sectors are often combined with unions protecting temporary agency workers through inclusion in collective bargaining and creating separate union structures (Heery, 2004). Union adaptation to the reality of TAW has involved major campaigns and educational activities to encourage traditional memberships to support these changes, often appealing to principles of solidarity and protection of vulnerable workers (Cotton and Royle, 2014; Hayter and Ebisui, 2013; ICEM, 2004; IMF, 2007).

Due to the importance of multinational companies in driving the growth of TAW and the relative lack of union capacity to address it, much of the work of trade unions, particularly those in developing and transition economies, has been driven by their international organizations, the GUFs. The political orientations of the GUFs towards MNCs vary, from 'cooperative engagement' exhibited by UNI, to 'militant opposition' (Bacon and Blyton, 2004) often exhibited by the IUF. There continues to be clear political and organizational differences between GUF affiliates about how to position themselves in relation to TAW such that there is no unified international trade union strategy on TAW. However, although their attitudes towards PrEAs vary, their commitment to securing minimum standards for workers does not and all of the GUFs pursue engagement with MNCs in order to fulfil their basic functions.

For example, good use of the Organization for Economic Co-operation and Development (OECD) guidelines has been made in the case of contract and agency workers by the IUF, with the GUF representing workers in the food, agriculture and tourism sectors. In 2009, the IUF made a complaint against Unilever to the OECD UK National Contact Point on behalf of contract and agency workers in two Pakistani plants: Khanewal and RakhimYar Khan. The IUF, since 2008, had run an international 'Casual Tea' campaign and coordinated solidarity action with affiliates in Pakistan, Australia, Russia, the Netherlands, Hungary, the Philippines, Australia, Uruguay, South Africa and the Dominican Republic (Rossman, 2013). The OECD set up negotiations between the IUF and Unilever over claims that they had breached worker rights on pay and freedom of association, settling the disputes by creating over 200 permanent positions for the contract and agency workers and establishing for the first time international dialogue between Unilever and trade unions. The IUF had carried out many years of capacity building projects for affiliates in Pakistan, which allowed for a close working relationship between them as well as a capacity for dialogue with Unilever management. This case also highlights the important role of the solidaristic and educational work of the GUFs in building union capacity in developing countries to make use of international regulation.

As well as the GUFs' TPLR activities, an important part of their TAW work involves research, campaigning and educational projects aimed at exchanging experience between unions often funded by Dutch, Nordic and German trade unions (Croucher and Cotton, 2008). Examples include Industrial's Stop Precarious Work Now campaign and the research work of UNI's TAW Unit. Most of the GUFs coordinate large-scale capacity building programmes focused on transferring knowledge and experience between unions about how to respond to TAW as well as international solidarity action including long-term campaigns in Thailand and South Korea (Holdcroft, 2013).

The importance of the GUFs' capacity building activities for implementing international regulation is worth exploring here. One example is the work of Industriall (formerly the ICEM, IMF and the International Textile, Garment and Leather Workers' Federation (ITGLWF)), the GUF representing workers in the mining, energy, metals and chemicals sectors. The initial aim of Industriall's Contract and Agency Labour (CAL) project, started in 2003, was to build union capacity to respond to the growth of contract and agency labour at a time where there was a widespread belief among affiliates that atypical workers could not be organized. Over time, the project attempted to secure dialogue with multinational employers on their use of contract and agency labour and facilitate exchange between affiliates organizing in the same MNCs. The project involved research (ICEM, 2004) on the use of contract and agency labour in Industriall sectors, in response to the information deficit that existed at that time.

The CAL project allowed Industriall to carry out important union building activities in developing and transition economies, including Colombia (Cotton and Royle, 2014), a country with high political significance for the GUFs. Industriall has strong solidaristic links with its affiliates in Colombia built since the mid-1990s through trade union education programmes funded by the Swedish trade unions. These educational projects had allowed ICEM affiliates in Colombia to create awareness within their memberships about the moral and strategic importance of taking a 'field enlarging' (Wever, 1998) attitude towards organizing contract and agency workers. Led by the mining union Sintracarbon, despite operating in a hostile union environment affiliates adopted a policy of organizing contract and agency workers and establishing dialogue with key multinational user enterprises.

The exchange of experience and strategies between Industriall affiliates was significant in providing viable strategies to do this, in particular the successful organizing experience of the Peruvian mining union, the Federation of Mining, Metal, Iron and Steel Workers of Peru (FNTMMSP). As a result, Sintracarbon has been able to organize contract and agency workers in six companies operating in the Cerrejón mine, something that would not have been possible without this articulation between international and national unions. This example highlights the important capacity building work that is needed to make use of international regulation by unions in developing countries and the unique role of the GUFs in facilitating this.

Turning to the PrEAs, the drive for international regulation is primarily market-led (Bartley, 2007). PrEAs have, understandably, been active in building a corporate social responsibility (CSR) agenda to promote a distinction between their operations and the worst forms of exploitation of agency workers (ILO, 2009c). The major user enterprises of agency labour are also MNCs, themselves keen to raise their capacities to manage often complex global supply chains involving large-scale use of TAW (Mitlacher and Burgess, 2007). Although the social impact of the growth in TAW is contested (Doogan, 2001; Standing, 2011) social attitudes towards PrEAs are a growing area of concern for user enterprises. As the major PrEAs look to expand their markets into Eastern Europe, Latin America and Asia, they are keen to establish friendly relations with national and international trade unions that are well represented in these countries in a way that they currently are not (Randstad, 2010a, 2010b). A big part of the PrEAs' CSR agenda has been the relaunch and development of the international and European employers'

associations, CIETT and EuroCIETT, and their own codes of conduct over the last eight years. The PrEAs have also actively participated in dialogue within the ILO, attending events and campaigning for the ratification of C181 as well as securing a Memorandum of Understanding (MoU) with Union Network International (UNI), the GUF representing unions in the service sectors (ILO, 2009c).

It is important to note here that Randstad, the Dutch MNC and the second largest PrEA in the world, is a major driving force in the development of both EuroCIETT and CIETT, particularly the work of Annemarie Muntz, Director of Group Public Affairs of Randstad and President of EuroCIETT and Fred Van Haasteren, CIETT President and Executive Vice President of Social and General Affairs of Randstad. This may in part reflect the Dutch employment relations culture (De Jong et al., 2007) facilitating a relative openness to international standards and dialogue with the GUFs.

Despite their CSR activities, the problem remains for the PrEAs of how to secure dialogue with the GUFs. This problem relates to two critical events, the first involving the signing of an MoU between CIETT and UNI in 2008. Despite inclusion of the core labour standards and a commitment to promote international negotiations, quite unexpectedly for an agreement signed by a GUF it commits the signatories to remove legal and administrative barriers to TAW. Additionally the MoU represents a strategic error because temporary agency workers operate across all sectors such that the exclusion of all the other GUFs radically undermines both the regulatory scope and implementation of the agreement (Hale, 2008; Stoker, 1998). In addition, the MoU has created a degree of embarrassment and bad feeling within the GUFs, working both as a block to securing broader international agreement, and raising doubts as to the real commitment of CIETT corporate members to engage with the GUFs (Rossman, 2013).

There also exists a regulatory deadlock at the level of the ILO due to the breakdown of dialogue between the GUFs and the PrEAs through the Tripartite Global Dialogue Forum on the Role of Private Employment Agencies in Promoting Decent Work and Improving the Functioning of Labour Markets in Private Services. Despite initial participation in the forum, set up by the ILO in 2009 to promote international dialogue and regulation of TAW, the most recent forum held in October 2011 did not reach any points of consensus or future action. This is in part explained by the forum's attempts to secure political agreement about the role of TAW in economic development and create a sectoral approach to TAW, thus creating a 'sectoral straitjacket' for dialogue. Adopting a sectoral approach to TAW is one that CIETT is keen to maintain as it provides members with a sectoral identity that, they believe, offers some degree of competitive advantage with user enterprises and the ILO. However, this sectoral approach has, like the CIETT/UNI MoU, effectively restricted partnership to a small number of organizations resulting in limited regulatory scope.

This has left the PrEAs and the GUFs with both political and strategic problems of how to get out of this deadlock and initiate meaningful international partnership.

Discussion

Partnership between the GUFs and PrEAs threatens significant distributive and political risks to both sides (Martinez Lucio and Stuart, 2005). Distributive risks include material

and environmental costs such as the impact of increased flexibility on work intensification and conditions. Political risks include organizational practices and legitimacy, particularly heightened in the case of the GUFs with diverse memberships. However, increased occupational and societal precarity has become a factor in shaping our attitudes and expectations of work security (Doogan, 2009) such that the risks for trade unions not addressing the working conditions of temporary agency workers potentially become greater than the risks of adaptation including partnership with PrEAs.

One of the key obstacles to partnership relates to the mutuality of business interests where trade unions often have a clear preference for permanent and direct employment and do not support the growth of PrEAs. Given this fundamental difference of position, only limited partnership between the PrEAs and GUFs can realistically be established. Two proposed models for partnership are 'transitional' and 'coerced' partnerships (Martinez Lucio and Stuart, 2005) which focus on specific risks and challenges rather than address underlying or political differences. These models offer pragmatic and important mutual gains but leave the political conflict between GUFs and PrEAs intact. These partnerships are characterized as being leadership driven in that they may attempt to control dissent rather than offer a fully dialogic model and therefore a compromised model of partnership.

The argument of this article is that TPLR mechanisms offer a way for GUFs to establish such partnerships with PrEAs on either a transitional or coercive basis. TPLR offers a way of opening up negotiations with multinational employers in developing countries where local trade union capacity and leverage does not exist. Furthermore these mechanisms provide a realistic basis for partnership because they offer gains for both sides and processes that are regarded as fair and pragmatic (Cooke, 1990).

The first model of TPLR that we can draw on is International Framework Agreements (IFAs). With over 80 signed IFAs to date they offer an established and therefore transparent way for PrEAs and GUFs to structure their partnerships. Their content can be considered 'fair' by both sides as it is based on accepted minimum standards that the PrEAs and the GUFs have individually signed up to through their existing activities. This means that the principles included in IFAs do not pose any political risk to the PrEAs or the GUFs.

A key advantage of an IFA is that it offers an efficient way for PrEAs to reach agreement with a number of GUFs. Co-signed IFAs exist – GDF Suez, UMICORE, Lafarge and EDF – which raises the possibility of securing an IFA across a wider group of GUFs, something required to overcome the current 'sectoral straitjacket'. This again increases the benefits of using an IFA because it allows individual PrEAs to secure partnership with a wider number of GUFs than has so far been possible thus increasing legitimacy. The mutual gains of an IFA are that PrEAs can boast an inclusive model of partnership with their international counterparts and for GUFs the first signed agreement on minimum standards and trade union rights for TAW.

A second, more involved model of TPLR is an industry-level agreement, certification and inspection system administered by the International Transport Workers' Federation (ITF) in the shipping sector. This system, in partnership with the international sectoral employers' organizations, the International Maritime Employers' Committee (IMEC) and the International Shipping Federation (ISF), sets both wages and conditions for seafarers making it the only genuinely international collective

bargaining agreement in existence (Koch-Baumgarten, 1998). The system is well funded by ship owners who join the scheme, providing one of the few examples of adequately resourced monitoring of an international agreement. This agreement came about because ITF affiliates delegated responsibility for negotiating with employers to the ITF, because of low density in labour providing countries (Anner et al., 2006). The shipping sector has specific characteristics, but ones that it shares with TAW in that both have workers that are largely unorganized and work in locations not managed by their employers. This means that there is a similar regulatory deficit at the level of the workplace that could, potentially, be addressed through a derogation of organizing and bargaining power to the international level.

As with IFAs, because of the credibility of this partnership model it scores highly on transparency and efficiency. The gains for PrEAs relate to an industry standard's ability to secure clear market differentiation between those companies with a commitment to minimum standards, something that poses a distributive risk to PrEAs in the current economic climate. For GUFs the gains could be the establishment of a resourced system of inspection and monitoring of working conditions of temporary agency workers, something that has never been achieved outside of Western Europe. One question about this model of partnership is whether a sufficient number of PrEAs, CIETT and the GUFs would agree to participate. Some of the other GUFs have experience of industry initiatives and agreements, including mining, chemicals, tobacco and cocoa, however these have previously been single GUF initiatives. Additionally, the buy-in of the PrEAs would be influenced by the willingness of CIETT and its corporate members to engage in an initiative that was not restricted to partnership with service sector unions, something which they have to date been reluctant to do (ACTRAV, 2011).

A third and final entry point into partnership could be to establish dialogue between PrEAs, CIETT and the global unions through the Council of Global Unions. The GUFs have a long history of cooperation and relationships are generally solidaristic but with institutional coordination through the International Trade Union Confederation (ITUC) being difficult (Gumbrell-McCormick, 2000). In response to this problem of coordination, in 2006 the Council of Global Unions was formed, with an experienced international trade unionist, Jim Baker, as Coordinator. This represented an attempt to find a practical way for the GUFs to coordinate their work without having continually to address the thorny question of the ITUC's role vis-à-vis the GUFs. The Council is not a structure as such and is not heavily resourced, but it has coordinated an agreement on the Global Union Principles on Temporary Work Agencies (2010), the first joint GUF position on TAW. In the first section there is a political statement that the primary form of employment should be permanent, open-ended and direct, and more substantive principles including the right to have a written contract of employment, state regulation of PrEAs and protections for migrant workers. The principles include an important articulation of the ILO's core conventions of freedom of association and right to collective bargaining that require agency workers should have the right both to join a union and also be part of the same bargaining unit as the direct employees of the user enterprise where they are working. This is an insistence on the right to collective bargaining with the user enterprise,

rather than just the agency that employs them. This is the key issue of tension concerning the principles between CIETT and the GUFs. However, there remains significant consensus on the main body of the principles and therefore some potential for common ground (Demaret, 2013).

The advantage of PrEAs entering into dialogue with the GUFs through their own principles and the Council of Global Unions is that it is a pragmatic response to a highly complex institutional context. The GUFs have struggled to reach consensus on the issue of TAW and the principles are the most advanced formulation of common ground so far. Much of the difficult work of establishing a basis for dialogue between the GUFs has now been done through the Council, offering PrEAs a potentially efficient way to initiate partnership with all of the GUFs.

Conclusion

This article has attempted to address the regulatory deficit of TAW and the current deadlock in international negotiations between the PrEAs and the GUFs. Using Martinez Lucio and Stuart's 'transitional' and 'coerced' partnerships it has been argued that a limited model of partnership could offer important gains to both sides while at the same time managing the political and distributive risks involved. Furthermore, partnership could be structured using established TPLR mechanisms already used by the GUFs. This article has presented three possible entry points for partnership between PrEAs and the GUFs. These are to secure a multi-GUF IFA, establishing an industry standard co-administered with the GUFs and a less structured option of entering into dialogue with the GUFs through the Council of Global Unions and the Global Union Principles on Temporary Work Agencies.

Owing to the minimum human rights basis of these mechanisms, they also provide a TPLR framework for partnership with sufficient elasticity to allow for global unions and employers to enter into partnership without having to secure political agreement. As a result, the political risks to partnership are reduced, offering a pragmatic although compromised model of partnership. Additionally it has been argued that partnership offers concrete gains to both parties; namely the potential for PrEAs to secure competitive advantage through minimum standards for temporary agency workers, principally in developing countries where their markets are growing. For the GUFs and their affiliates partnership could secure minimum standards for temporary agency workers as well as 'field enlarging' strategies for trade union organizations.

The proposals are made in part because they are mechanisms that already exist, providing some established TPLR frameworks within which international dialogue between unions and employers could take place. This could not only break the current regulatory deadlock but potentially secure minimum standards within a relatively short time frame, thus addressing the 'temporal asymmetry' of the slow process of international regulation of a fast developing form of externalized labour. These three approaches are not mutually exclusive, nor do they offer a comprehensive solution to the political and operational problems of international regulation. Rather, the aim has been to offer entry points for partnership between PrEAs and the GUFs.

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