should be noted that what causes disquiet is not necessarily just the possession of cyberweapons but rather their use and, more specifically, actual deployment techniques.

All of these developments mean that the ethical as well as the political debates surrounding cyberwar and cyber operations need to intensify in conjunction with the relevant legal debates. *Cyberwar: Law and Ethics for Virtual Conflicts* provides a rich and insightful discussion of these issues, even if in certain places the links could have been more pronounced. The blending of different views is not only enriching but also mirrors the normative plasticity of the cyber domain and the diverse legal, political, and ethical forces that vie to shape it.

NICHOLAS TSAGOURIAS
University of Sheffield

The Future of the International Labour Organization in the Global Economy. By Francis Maupain. Oxford, Portland OR: Hart Publishing, 2013. Pp. xix, 300. Index. $91, £53.

The establishment of the International Labour Organization (ILO) in 1919 merited due attention in this *Journal*.[1] With states meeting annually to craft new labor law treaties, the ILO set the stage for a twentieth-century functional international agency. Reaching deeply into the domestic realm, the ILO experiment opened new pathways in international law, made even more interesting by the fact that the ILO representatives from each state included not only two government delegates, but also two "non-Government delegates."[2] The ILO Constitution provided for two instruments to formulate labor standards: conventions (i.e., treaties) and recommendations. Multilateral conventions were well known by 1919, but the recommendations were novel tools that showed the possibilities of new forms of soft law in succeeding decades. Writing in 1934 about the decision by the U.S. government to join the ILO, Manley O. Hudson called the work of the ILO "one of the most significant of the modern developments of international law."[3]

In the run-up to the ILO's second century, the Organization itself and its stakeholders have an opportunity to consider ways to improve the ILO.[4] Although a few international organizations still exist that predate 1919, the ILO is only survivor of the original League of Nations. The continuity in the international labor regime is especially remarkable when one compares it to the institutional tumult in other regimes, such as public health, refugees, intellectual property, and trade, during the past nine decades.

Is the ILO still relevant today? Certainly, the key problems that the ILO was set up to solve—such as achieving an adequate living wage, protecting children, respecting freedom of association, and promoting social justice—remain as salient as they were in 1919. Indeed, they may be more salient in a globalized economy. Yet even the defenders of the ILO, myself included,[5] are quick to admit that the ILO performs below its potential. In other words, are the constitutional methods of the ILO suited to contemporary challenges?

A recent book by Francis Maupain, *The Future of the International Labour Organization in the Global Economy*, offers a comprehensive overview and analysis of the structure, role, contributions,

[1] Charles Noble Gregory, *The International Labor Organization of the League of Nations*, 15 AJIL 42 (1921); Manley O. Hudson, *The First Year of the Permanent Court of International Justice*, 17 AJIL 15, 18–23 (1923) (reporting on three advisory proceedings interpreting the ILO Constitution).

[2] Constitution of the International Labour Organization, Art. 3(5), Treaty of Peace with Germany (Treaty of Versailles), pt. XIII, June 28, 1919, 49 Stat. 2712, 2 Bevans 43; *see also* Francis G. Wilson, *The Preparation of International Labor Conventions*, 28 AJIL 506, 506 (1934) (indicating that "the problem of negotiation between groups is of infinitely greater importance than in a conference of government representatives alone"). Documents of the International Labour Organization (ILO) cited herein are available online at www.ilo.org.

[3] Manley O. Hudson, *The Membership of the United States in the International Labor Organization*, 28 AJIL 669, 669 (1934).

[4] *See* DIRECTOR-GENERAL OF THE INT'L LABOUR CONFERENCE, TOWARDS THE ILO CENTENARY: REALITIES, RENEWAL AND TRIPARTITE COMMITMENT 27–28 (2013) (noting ILO centenary initiatives).

[5] Steve Charnovitz, *The International Labour Organization in Its Second Century*, *in* 4 THE MAX PLANCK YEARBOOK OF UNITED NATIONS LAW 147 (J. A. Frowein & R. Wolfrum eds., 2000).

and pathologies of the ILO. This study is just one scholarly fruit of Maupain's many decades of service to the ILO, most importantly as the legal adviser at the ILO and then as the special adviser for Myanmar. Last year, the *International Labour Review* sponsored a symposium on Maupain's book,[6] and his work continues to be debated in the ILO's corridors in Geneva. Maupain calls for significant improvements in ILO instruments and practices, but he does not see a need for major constitutional change.

Maupain begins his analysis by setting out the key functions of the ILO: first, promoting a model of social progress that gains its legitimacy from the balancing of worker and employer interests under the careful mediation of governments; second, fulfilling a normative function of writing labor rules for adoption by governments; and third, ensuring that international labor standards are actually translated into national legislation and practice. The book then considers whether the contemporary ILO has the capacity to achieve these functions. Maupain explains how the ILO overcame the threat to tripartism (i.e., the joint participation of employers, workers, and governments) from authoritarian goverments during the twentieth century and how the ILO gained the competence in the early twentieth century to interpret its normative function broadly. The problem that he currently sees is whether "the gamble on persuasion" (p. 14)—what he calls the ILO's "voluntarist" appoach (p. 16)—provides a sufficient means for the ILO to implement its standards in a competitive world economy. By persuasion, Maupain means not only the ILO's efforts to persuade governments to ratify and implement ILO conventions but also the ILO's capacity to persuade other international organizations as to the suitability of ILO standards. By the "voluntarist" approach of the ILO Constitution (*id.*), Maupain means that ILO member governments are not obliged to ratify ILO conventions on specific labor issues (e.g., the Maternity Protection Convention of 1952[7]) because ratification is "voluntary" (p. 46).

Maupain supports fully deploying the ILO's normative tools, particularly conventions and the supervisory process overseeing their implementation. He criticizes the ILO's failure in recent years to write new conventions (e.g., the most recent new convention, enacted in 2011, addressed domestic workers[8]), noting that there is no shortage of topics touching the heart of the ILO's mandate, such as a convention on the development of independent domestic labor courts. He also criticizes the ILO's recent "decent work" strategy for its conceptual "malleability" (p. 54), while acknowledging the benefit of the "decent work" theme of providing "a kind of global, synthetic vision to ILO objectives" (p. 98). By contrast, Maupain points approvingly to the ILO's achievement in the late 1990s of a new instrument, a declaration specifying a floor for global worker rights drawn from fundamental ILO conventions.[9] The norms in this ILO declaration are deemed to be an obligation of all ILO members.[10] Maupain did some of the heavy lifting in the legal work underlying the nonobvious proposition that the principles in key ILO conventions could be obligations even for states that had withheld ratification of those conventions. That conclusion was hardly accepted wisdom about the ILO a decade earlier. The declaration was remarkably agreed to by all ILO member governments and by worker and employer delegates and drew no votes in opposition.[11]

Of course, writing conventions has always been only one part of the ILO agenda. Equally important have been supervising the implementation of conventions and rendering assistance to governments in meeting ILO standards. Maupain takes note of the ILO's new initiatives in providing guidance to governments and in capacity building, but he believes that much more can be done.

[6] *Book Review Symposium: The Future of the International Labour Organization in the Global Economy, by Francis Maupain*, 154 INT'L LAB. REV. 67–114 (2015).

[7] ILO, Maternity Protection Convention (No. 103) (June 28, 1952).

[8] ILO, Domestic Workers Convention (No. 189) (June 16, 2011). In June 2016, the ILO Conference will consider amendments to two maritime conventions.

[9] ILO, Declaration on Fundamental Principles and Rights at Work (June 18, 1998).

[10] *Id.*, Art. 2.

[11] *See* ILO, Report of the Committee on the Declaration of Principles: Submission, Discussion and Adoption (June 1998), *at* http://www.ilo.org/public/english/standards/relm/ilc/ilc86/com-decd.htm.

With a thoughtful analysis, he calls for (1) preparing a new ILO recommendation on "coherence" of trade, social, and economic policies at the national level, backed up by a "reciprocal peer review mechanism" (p. 110); (2) seeking an agreement among international organizations to "refrain from deliberately inducing members to violate commitments made to sister organizations" (p. 112 n.26);[12] (3) inserting a "commercial clause" into ILO conventions that would authorize parties to impose a "trade embargo" against any product that is a danger to health (p. 157) or that has "been manufactured contrary to substantial obligations under the Convention" (p. 166); and (4) offering multinational enterprises a voluntary audit under the ILO's Declaration of Principles Concerning Multinational Enterprises and Social Policy.[13] On the topic of trade, the book contains a good synopsis both of efforts to discuss worker rights in the World Trade Organization (WTO) and of the applicability of WTO rules to labor-related trade measures.

Other chapters in the book examine international labor developments occurring parallel to the ILO, such as the incorporation of worker rights into regional trade agreements. Maupain views these regional developments as "perfectly consistent with the logic according to which these rights are the 'rules of the game' that should allow the workers concerned to get their fair share of the benefits accrued to the country" under the trade agreement (p. 188). Yet he is hesitant to credit them as being "a net benefit" for worker rights before more research findings are obtained regarding their implementation (p. 205). Indeed, Maupain suggests that regional trade agreements may be "as much of a mixed blessing for the ILO as it has been described to be for the WTO" (*id.*).

On the topic of research, Maupain calls for a more extensive ILO role, and he offers numerous research suggestions for labor scholars and for the ILO itself. In an aside, he notes that "almost no original ideas regarding economic regulation have come out of the ILO since the era of 'basic needs'" of the early 1970s (p. 122 n.69). Here, I agree with Maupain that stronger in-house data and analytical efforts could make the ILO more effective in its work and strengthen the ILO's voice in world affairs.

Although much of the book focuses on the tension between labor law regulation and economic competition, Maupain also examines alternatives to regulation and devotes two chapters to leveraging change through an improved "market for social justice" (p. 212 (capitalization adjusted)). Taking note of ongoing private initiatives in corporate social responsibility and ethical labeling, he suggests that the ILO could take on a role in promoting a new "decent work" label indicating whether goods have been produced under conditions specified in national laws implementing fundamental ILO standards. In such a scheme, the exporting country could be responsible for judging the eligibility of products for the label, subject to outside inspection and an impartial verification system.

Maupain seems worried that the initiatives of the past decade that the ILO touts the most—the Decent Work strategy[14] and the Global Jobs Pact[15]—are transforming the ILO into a United Nations social development agency and are losing the uniqueness of the ILO brand. To be sure, the ILO no longer has ownership of employment issues at the international level the way that it had when the ILO wrote the Employment Policy Convention back in 1964.[16] Today, job creation is being addressed in the UN General Assembly, the WTO, the World Bank, the Group of 20 (G-20), and many other fora. But if the ILO is to provide leadership on difficult global issues, such as domestic job loss from technology, trade, and

[12] Maupain suggests that such an obligation might already inure for organizations attached to the United Nations (p. 112 n.26).

[13] ILO, Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, Nov. 16, 1977, 17 ILM 422, para. 6 (1978) (as amended by the ILO Governing Body in 2000 and 2006).

[14] DIRECTOR-GENERAL OF THE INT'L LABOUR CONFERENCE, TACKLING THE GLOBAL JOBS CRISIS: RECOVERY THROUGH DECENT WORK POLICIES (2009).

[15] INT'L LABOUR CONFERENCE, RECOVERING FROM THE CRISIS: A GLOBAL JOB PACT (2009).

[16] ILO, Employment Policy Convention (No. 122) (July 9, 1964).

immigration, then the ILO will need to better use its comparative advantage of having worker and employer organizations as full participants in the ILO Governing Body and in ILO committees. Throughout the book, Maupain points to ways to improve ILO monitoring and peer-review mechanisms. Peer review is an important feature in many other regimes, such as the WTO and some multilateral environmental agreements, but none of those other regimes is as progressive as the ILO in providing an equal role for nonstate actors as for government officials. For example, in the WTO, the Trade Policy Review Mechanism subjects a government's trade policy to periodic review by the WTO Secretariat and other governments, but, in contrast to the ILO, the economic actors in the market, like exporters and importers, are not invited into the room when the review happens.

The advent of the ILO's one-hundredth anniversary, Maupain says, provides "an exceptional opportunity for the ILO to achieve a more imaginative deployment of its persuasion capacities" (p. 245). With its "ingenious constitutional framework, [the ILO] . . . has the capacity to reinvent itself from the inside to meet the expectations of its founders and become a more effective social regulator of the global economy" (p. 243). Pointing to the ILO's unique status in being a public international organization in which the chief executive is chosen not only by governments but also by workers and employers, Maupain argues that the ILO's director-general—currently Guy Ryder from the United Kingdom—is best positioned to initiate change. I agree with that suggestion and note that there is still time before 2019 to launch a consensus-building process with broad participation. A centennial is a terrible thing to waste. Yet the path of least resistance will be to celebrate the ILO's achievements and leave institutional reform to another day. For policymakers who would take advantage of the centennial moment, Maupain's book offers a fine roadmap for upgrading the ILO's effectiveness in pursuit of social justice.

STEVE CHARNOVITZ
George Washington University

International Environmental Law and the Global South. Edited by Shawkat Alam, Sumudu Atapattu, Carmen G. Gonzalez, and Jona Razzaque. Cambridge, New York: Cambridge University Press, 2015. Pp. xxiv, 631. Index. $155.

Is international environmental law (IEL) even considered "law"?[1] This question has beset the field since the early 1970s when momentum started to build for international mechanisms for environmental protection.[2] Without the traditional legislative, executive, or judicial bodies and in light of its seemingly broad principles, IEL has lacked the accepted characteristics of what constituted law.[3] Courts in the United States have indicated that "references to the Stockholm Principles or to the principles of international environmental law (the Polluter Pays Principle, the Precautionary Principle, and the Proximity Principle) did not set forth specific proscriptions or enjoy consensus among the international community."[4] These courts have rejected the expansive notion of a general environmental law of nations, described as "a law of nations based on a vague international sense of responsibility toward the environment."[5] At the intersection between what constitutes IEL and how IEL can create effective legal mechanisms for environmental justice in the global South is the book's entry into the academic discussion.

Incidentally, this collection is not merely a book; much more, it represents a movement stemming from Third World Approaches to International Law (TWAIL), which has operated on the

[1] Carl Bruch, *Is International Environmental Law Really "Law"?: An Analysis of Application in Domestic Courts*, 23 PACE ENVTL. L. REV. 423 (2006); Anthony D'Amato, *Is International Law Really "Law"?*, 79 NW. U. L. REV. 1293 (1985).

[2] *See* Stockholm Declaration on the Human Environment, June 16, 1972, UN Doc. A/CONF.48/14 & Corr. 1 (1972), 11 ILM 1416 (1972) [hereinafter Stockholm Declaration].

[3] Bruch, *supra* note 1, at 424.

[4] Raechel Anglin, *International Environmental Law Gets Its Sea Legs: Hazardous Waste Dumping Claims Under the ATCA*, 26 YALE L. & POL'Y REV. 231, 237 (2007) (footnote omitted); *see also* Amlon Metals, Inc. v. FMC Corp., 775 F.Supp. 668, 671 (S.D.N.Y. 1991).

[5] Anglin, *supra* note 4, at 237.