

**THE VIABILITY OF COLLECTIVE BARGAINING ON A
TRANSNATIONAL LEVEL**

by

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DECLARATION OF ORIGINALITY

DECLARATION

I, Laura Salmon, declare that the viability of collective on a transnational level is my own unaided work both in content and execution. All the resources I used in this study are cited and referred to in the reference list by means of a comprehensive referencing system. Apart from the normal guidance from my study leaders, I have received no assistance, except as stated in the acknowledgements.

I declare that the content of this thesis has never been used before for any qualification at any tertiary institution.

I, Laura Salmon, declare that the language in this thesis was edited by Teresa Kapp.

Laura Salmon

Date: _____

Signature

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ABSTRACT

THE VIABILITY OF COLLECTIVE BARGAINING ON A TRANSNATIONAL LEVEL

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In the study, the researcher conducted a qualitative systematic literature review and a document analysis of secondary data, to determine the viability of collective bargaining on a transnational level. This was achieved by conceptualising collective bargaining, the fundamental International Labour Organisation (ILO) conventions on freedom of association and collective bargaining, transnational labour relations, and transnational collective bargaining in the European Union (EU), in order to obtain an in-depth understanding of the new phenomenon that is transnational collective bargaining. Globalisation and powerful transnational corporations have caused employees and their representatives to lose power. This has led to transnational labour relations, a new form of labour law which is still in the developing stage. Collective bargaining is acknowledged as a basic human right, and has improved the working and living standards of employees. The ILO has been a significant actor in the promotion of collective bargaining on a national level. The EU is seen as the pioneer of transnational collective bargaining on company level, and established European Work Councils (EWCs) that have conducted transnational collective bargaining effectively.

The researcher firstly discussed the parties, rules, and environmental context of the voluntary collective bargaining process. This was followed with the analysis of Conventions 87 and 98 of the ILO granting the right of freedom of association and collective bargaining. The study discusses the principles countries should implement in order to ensure that these rights are enforced, compliance with these rights, the ILO's credibility and legal capacity. Thereafter, the terms *transnational* and *transnationalism* were defined. Furthermore, current transnational labour methods were described, such as the international framework agreements concluded by transnational union networks and transnational corporations. Global union federations, European trade union federations, non-governmental organisations, and EWCs were

identified as the main transnational collective bargaining parties forming transnational networks.

Transnational collective bargaining in the EU was investigated by identifying the EU strategies that have been put in place for the implementation of transnational collective bargaining, together with reasons why a voluntary collective bargaining framework has not been implemented in the EU. The researcher's conclusion was that collective bargaining could be viable on a transnational level, but that it is hampered by various factors.

Key Words: Collective Bargaining, Transnational Labour Relations, International Labour Organisation, Trade Unions, European Work Councils and Transnational Corporations

LIST OF ABBREVIATIONS

Abbreviation	Meaning
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CFA	Committee on Freedom of Association
EMF	European Metalworkers' Federation
EMU	European Monetary Union
ETUCs	European trade union confederations
ETUFs	European trade union federations
EU	European Union
EWCs	European work councils
FDI	foreign direct investment
GFAs	global framework agreements
GPNS	global production networks
GUFs	global union federations
IALPW	International Association of Legal Protection of Workers
IFAs	international framework agreements
IFTU	International Federation of Trade Unions
ILO	International Labour Organisation
IMF	International Monetary Fund
NGO	non-governmental organisation

SADC	Southern African Development Community
SDCs	Social Dialogue Committees
TCB	transnational collective bargaining
TANs	transnational advocacy networks
TLL	transnational labour law
TLP	transnational legal processes
TNCs	transnational corporations
TUNs	transnational union networks
UN	United Nations
USA	United States of America
WTO	World Trade Organisation

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CHAPTER 1: INTRODUCTION

1.1 Introduction and background

In this study, a qualitative, systematic literature review and a document analysis were employed to explore the viability of collective bargaining on a transnational level. Transnational collective bargaining (TCB) is a new phenomenon, and is seen as a learning experience by all parties involved (Glassner & Pochet, 2011; Schömann, Jagodziński, Boni, Clauwaert, Glassner, & Jaspers, 2012). TCB is defined as the negotiating process between employers or employer representatives and employee representatives, with the goal of reaching a mutual agreement on terms and conditions of employment that are applied on a transnational level (Eichhorst, Kendzia, & Vandeweghe, 2011).

The purpose of the study was achieved by critically reviewing the following concepts: collective bargaining, International Labour Organisation (ILO) Conventions 87 and 98 that promote freedom of association and collective bargaining, transnational labour relations, and lastly TCB in the European Union (EU). Each concept is explained below.

Collective bargaining is internationally seen as a basic human right (Bensusan, 2016). Collective bargaining is a voluntary negotiating process between employers or employer representatives and employee representatives, with the objective of reaching an agreement on terms and conditions of employment (Grogan, 2010). Collective bargaining is shaped by three elements, namely parties, rules, and the environmental context (Maree, 2011). The parties are employees and employers, and/or their representatives who negotiate agreements (Maree, 2011). The rules govern the negotiating relationship between the bargaining parties. The environmental context encompasses the industry, budget constraints, and power (Maree, 2011).

The ILO has always perceived collective bargaining as an important instrument for employees or employee representatives and employers or employer organisations to reach agreement on issues related to employment, as well as for the building of trust between the bargaining parties (International Labour Organisation [ILO], 2011, 2012). The ILO's Conventions 87 and 98 are guidelines utilised by governments for the promoting of collective bargaining, the right to organise, and freedom of association on a national level. Conventions 87 and 98 are included in the ILO's 1998 Declaration of Fundamental Principles and Rights at Work, adopted in 1998, which has changed labour law internationally (Hughes, 2005). Conventions 87 and 98 and their associated supervisory mechanisms have gained acceptance in the international

community, which makes these of the most respected international instruments in the field of human rights (Budeli, 2009). Nelson Mandela stated that, because of the challenges presented by the globalised economy, greater attention should be focused on the elaboration of core standards like those contained in Conventions 87 and 98, which are fundamental and universal (Curtis, 2004).

Transnational is a concept, theory, and experience in social science (The New School for Social Research, 2010). It is the “literal and epistemological crossing of national borders” (Mitchell, 1997, p.101). Borders are usually associated with power relations, and borders are meant to keep power relations in or out (Mitchell, 1997). *Transnational* does not imply the disappearance of national states, but rather that a state is a type of actor amongst others (Djelic & Sahlin-Anderson, 2008). Transnationalism is the exchange and connecting of practices across national borders (International Organisation for Migration [IOM], 2010). Furthermore, transnationalism is the interacting of individuals, groups, institutions, and states with one another in a new global space, where cultural and political characteristics of national societies are combined with emerging multi-level and multi-national activities (IOM, 2010).

Labour transnationalism was the result of geographical fragmentation of manufacturers, producing transnational production chains that required intensive labour (Djelic & Sahlin-Anderson, 2008). Transnationalism is considered a result of globalisation, which has caused inequalities, insecurities, loss of democratic control over the economy, and growing of capital at the expense of labour. On the other hand, it has also given employees and trade unions the opportunity to organise and act transnationally, to create a more equitable world (Keune & Schmidt, 2009). *Transnational labour relations* therefore means the rules and principles that govern employees across national borders.

Article (156) of the EU Treaty, which deals with social rights, stipulates that employees have a fundamental right to bargain collectively (Eichhorst et al., 2011). The EU has the most structured manner of convening TCB (Kaminska & Visser, 2011). One of the reasons for this is the governance of the EU, which consists of the European Parliament and Commission, the Council of European Unions, and the European Court of Justice. Trade unions in the EU have achieved the highest degree of transnational social regulations, more than any other transnational trade union agreement (Kaminska & Visser, 2011). The most significant contribution to TCB in the EU has been the implementation of European Work Councils (EWCs) (Marginson, 2008). EWCs give transnational support on a company level to assist with the relationship between management and employees (Pulignano, 2010). There are two main types of EWCs. The first type includes employer representatives, and the second type does not have any representatives from the employer side (Eichhorst et al., 2011). EWCs

were originally elected to be informed and consulted, not to bargain; however, they have developed as transnational negotiating parties (Eichhorst et al., 2011). This is shown by EWCs signing International Framework Agreements (IFAs) on a transnational level (Eichhorst et al., 2011). The next section of this chapter provides a discussion of the research problem, the research questions, and the research purpose.

1.2 Problem statement

According to Leedy and Ormond (2014), a problem statement of a study states explicitly what the research intends to achieve. The present research study was initiated by a clear and unambiguous problem statement and research questions (Leedy & Ormond, 2014; Saunders, Lewis, & Thornhill, 2012). The research questions relate directly to the purpose statement (Maree, 2012). This chapter will follow with the explanation of the research problem, the research questions, and the research purpose.

TCB has not been intensively researched, and knowledge of the subject is lacking. The concept of national labour relations is well defined; however, transnational labour relations is still a vague concept. Collective bargaining needs to be understood in order to assist in implementation on a national level and explore the barriers in this regard. Only once these have been identified will it be possible to apply the concept transnationally. As the ILO has implemented conventions to promote collective bargaining, the implementation of and compliance with these conventions will be explored. To grasp TCB, transnational labour relations will have to be defined. Globalisation has changed the world of work, and resulted in transnational labour relations. This study will investigate whether countries, regional integration regimes, trade unions and transnational corporations (TNCs) should employ TCB strategies to assist with the globalisation challenges faced by employees.

The EU has a well-established TCB process. The process therefore needs to be analysed, on order to get a holistic view of TCB. Through exploring the concept of TCB, the barriers to the concept will be understood, so that it can be determined whether the basic human right of collective bargaining on a transnational level can be granted to all employees.

1.3 Research questions

1.3.1 Main research question

Is collective bargaining on a transnational level viable?

1.3.2 Secondary research questions

1. What are collective bargaining and transnational labour relations?
2. What does the right to collective bargaining as provided for in Conventions 87 and 98 entail?
3. What does transnational collective bargaining look like in the EU?

1.4 Purpose statement

The researcher will obtain an understanding of collective bargaining on a transnational level by conceptualising the following terms: collective bargaining, ILO Conventions 87 and 98 on freedom of association and collective bargaining, transnational labour relations, and transnational collective bargaining in the EU. As globalisation has caused challenges for employees and their representatives, the study will aim to determine whether these challenges could be resolved through TCB. Furthermore, the ILO's instruments, namely Conventions 87 and 98, will be explored, to detect whether these conventions will assist with the implementation of collective bargaining on a transnational level. This will be achieved by observing the manner in which the Conventions have been used on a national level, as well as by TNCs.

The TCB process of the EU will be investigated, in order to understand the successes, failures, and complexities of TCB in the EU. The foundations of TCB are found in the EU, and the founding of EWCs has shown that the EU is on the way of establishing a transnational labour relations regime. The core purpose of this paper will be to determine the viability of transnational collective bargaining globally.

1.5 Academic value and contribution of the Study

This section of the study explains the significant contributions that the researcher intends to make to the existing body of knowledge on transnational labour relations. There is little literature on the phenomenon of TCB; thus, by conceptualising transnational collective bargaining, value will be added to the body of knowledge on labour relations (Keune & Schmidt, 2009). The study will make a theoretical contribution by improving academic understanding of the concepts *collective bargaining*, *the rights contained in Conventions 87 and 98 of the ILO*, *transnational labour relations*, and *TCB in the EU*.

The information obtained may be helpful to countries when adapting their collective bargaining frameworks. Furthermore, the research could be utilised as learning material for trade unions, businesses, and employer organisations globally. As social responsibility and corporate

governance are very important, the facts presented in this study could be beneficial to TNCs. In many developing countries, poverty is a considerable problem; the results of this research could improve the educational and living circumstances of employed and unemployed citizens by creating awareness of effective TCB mechanisms. The research on TCB in the EU may lead to other regional integration regimes that mobilise the information presented in this research, by, for example, the Southern African Development Community (SADC).

1.6 Delimitations

Delimitations are the characteristics that define the boundaries and limitations of the scope of a study (Leedy & Ormond, 2014). Delimitations are formulated according to the purpose and research questions of a study (Leedy & Ormond, 2014). This means that delimitations help the researcher to utilise only the most relevant information to achieve the purpose of the study and answer the research questions (Leedy & Ormond, 2014).

The delimitations of the proposed study are:

- Only collective bargaining will be analysed. No other labour relations practices will be analysed.
- All the information concerning collective bargaining according to the ILO will be included, particularly for the conceptualisation of terms.
- The area of focus will be the TCB labour relations practices in the EU. No other labour relation practices in the EU will be evaluated.
- Only documents will be utilised for the data analysis, which means no participants will be involved.
- The language of the publications will be English. Any other languages will be excluded.
- The publication period considered will be from 1996 to 2017.

The next chapter will describe the research paradigm and methodology employed in the study.

CHAPTER 2: RESEARCH PARADIGM AND METHODOLOGY

2.1 Introduction

Research is a systematic process that involves the collecting, analysing, and interpreting of data, to obtain a better understanding of a phenomenon (Leedy & Ormond, 2014). Before conducting the research, the actions that were taken by the researcher were: an initial literature review, identifying the research problem, formulating the research questions and purpose, choosing the research approach and methodology, and, lastly, obtaining ethical clearance from the University of Pretoria. In this chapter, the researcher outlines the following: research approach or paradigm, the design employed within the research approach, and, lastly, the methods utilised to collect and analyse the data and ensure quality of the research.

2.2 Research paradigm

2.2.1 Defining research paradigms

The word *paradigm* means approach or design (Atieno, 2009). A paradigm can be defined as a set of interrelated assumptions or beliefs about the social world, which provides a philosophical and conceptual framework for the study (Maree, 2012; Ponterotto, 2005; Schurink, 2003). The paradigm guides the researcher in making philosophical assumptions, assisted by the selection of tools, instruments, documents, and methods used in a study (Bunniss & Kelly, 2010; Ponterotto, 2005). The research approach or paradigm is the plan that the researcher implements in order to answer the research questions (Leedy & Ormond, 2014; Saunders, Lewis, & Thornhill, 2012). There are three research approaches, namely quantitative, qualitative, and mixed methods (combining quantitative and qualitative methods) (Creswell, 2014; Leedy & Ormond, 2014; Maree, 2012).

Quantitative research is empirical, and is known as the *scientific research paradigm* (Atieno, 2009). Qualitative research is known as the *socio-anthropological research paradigm*, which is ethnographic and interpretative in nature (Atieno, 2009; Creswell, 2014; Maree, 2012; Schurink, 2003).

The main difference between a quantitative and a qualitative approach is that qualitative research uses non-numeric data, whereas quantitative research utilises numeric data or ordinal values (Creswell, 2014; Marshall & Rossman, 2010). The purpose of qualitative research is to “describe, explain, explore and interpret data to build theory,” whereas the aim

in quantitative research is to “explain, predict and confirm to test theory” (Leedy & Ormond, 2014, p. 98).

2.2.2 Research paradigm selected

The qualitative research paradigm was applied in the present study. According to Maree (2012) and Schurink (2003), the most common explanation of qualitative research is that the approach concentrates on interpreting and understanding human behaviour in different contexts. Leedy and Ormond (2014) pointed out that, a research approach should be selected according to the research problem and the skills of the researcher. Creswell (2014) stated that a research approach is based on the research problem and questions, the researcher’s experience, and the audience. The reasons for employing a qualitative research approach in the present study are listed below.

When evaluating the research problem, the qualitative research approach was considered the most appropriate approach to obtain an in-depth, descriptive, interpretive, and holistic understanding of collective bargaining in a transnational context (Creswell, 2014; Maree, 2012). Creswell (2014) stated that the qualitative research approach is the most appropriate method if a concept needs to be explored and understood. This made the qualitative approach suitable, as the concept *transnational collective bargaining (TCB)* is a vague concept that needed to be explored in order to answer the research questions. Qualitative research analyses cannot be reduced to numerical values, and generates words or images, rather than numbers (Patton & Cochran, 2002). Therefore, the qualitative approach was applied in the present study. The researcher in the study focused on understanding other authors’ interpretations of TCB. The final reason for employing the qualitative paradigm based on the research problem of the study, is that it allowed the researcher to answer the research questions by revealing multiple perspectives, opinions, and beliefs related to the concept of collective bargaining on a transnational level (Bunniss & Kelly, 2010; Leedy & Ormond, 2014; Schurink, 2003).

The researcher in this study has received training in both quantitative and qualitative research approaches. After the researcher reflected on her own research skills and experiences, she decided that the qualitative research approach was the most suitable, as her desire for structure was low, she has well-developed inductive reasoning skills, and her narrative writing skills are well developed. Creswell (2014) recommended that students should consider the approaches typically supported and used by their supervisors. The researcher’s supervisor was familiar with qualitative research, and encouraged her to utilise this method.

2.3 Qualitative research methodology

A qualitative research design or methodology is a plan or strategy that moves from the underlying philosophical assumption to specifying the sampling, data gathering, and analysis techniques (Creswell, 2014; Leedy & Ormond, 2014; Maree, 2012). The research methodology has two core objectives: to indicate and control the collection of data and to extract meaning from data through analysis (Leedy & Ormond, 2014).

In understanding the topic of this study, the research design had to entail subjective and systematic approaches. There are many research designs within qualitative research to analyse text, such as ethnography, grounded theory, phenomenology, document analysis, literature review, and historical research (Creswell, 2014; Hsieh & Shannon, 2005). In the present study, the qualitative research designs employed were a systematic literature review and a document analysis, otherwise known as content analysis, as answering of the research questions required a critical analysis of relevant literature. Both designs were implemented, as one design would not have provided the output the study required (Myers & Barnes, 2005). A systematic literature review and a document analysis are both non-interactive designs (Myers & Barnes, 2005). Through these methods, the researcher could identify the concepts that described and explained the viability of collective bargaining on a transnational level.

2.3.1 Systematic literature review and document analysis

According to Saunders et al. (2012), the fields of business and management often make use of literature reviews. Literature reviews give an overview of the trends, debates, and past and current research on a research topic (Maree, 2012; Myers & Barnes, 2005).

There are different types of literature reviews, namely traditional, meta-analysis, meta-synthesis, and a systematic literature review (Cronin, Ryan, & Coughlan, 2008). For the purpose of the present study, a systematic literature review was used to produce exhaustive summaries of high-quality literature. Systematic literature reviews use formal, explicit, and rigorous criteria to identify, critically evaluate, describe, and synthesize all the literature on a particular topic (Cronin et al., 2008; Creswell, 2014; Evidence for Policy and Practice Information and Co-ordinating Centre [EEPI-Centre], 2007). The systematic literature yielded different perspectives on collective bargaining, Conventions 87 and 98 of the ILO, transnational labour relations, and TCB in the EU. A holistic picture could therefore be drawn of the viability of the concept of TCB.

The systematic literature review enabled the researcher to analyse the process of TCB in the EU, which was essential for the purpose of this study. This method yielded evidence on how

certain aspects of TCB came into existence, their rationale, and the anticipated outputs and outcomes. A systematic literature review uses a rigid system (Welman, Kruger, & Mitchell, 2005), which resulted in the present study being transparent and objective.

Seventy years have passed since the first recorded use of the document analysis research design (Franzosi, 2008). According to Leedy and Ormond (2014), document analyses are applied in a wide variety of fields, including psychology, history, business, education, journalism, law, and political science. Franzosi (2008) stated that document analyses are used in the following disciplines: communication, marketing, psychology, education, and political science. Wach, Ward, and Jacimovic (2013) and Wesley (2010) noted that document analyses are used in political science. Even though the labour relations field was not mentioned, labour relations relates to business, law, history, and politics.

A document analysis is a detailed and systematic examination of documents, both printed and electronic, to identify patterns, themes, and biases within the data (Bowen, 2009; Leedy & Ormond, 2014; Wach et al., 2013). Both the qualitative and the quantitative research paradigm use document analysis as a research design. A document analysis is applied in qualitative research through documents that are interpreted subjectively, in order to give a topic a voice and meaning (Bowen, 2009; Hsieh & Shannon, 2005). According to Hsieh and Shannon (2005), researchers who use qualitative document analysis focus on content and contextual meaning of text by paying attention to the characteristics of the language. Qualitative document analysis deals with complex realities (Bowen, 2009). Bowen (2009) and Hsieh and Shannon (2005) stated that there has been an increase in articles and reports that acknowledge document analysis as a methodology. There is still not a lot of detail concerning the procedure of qualitative document analysis, and there are experienced researchers who do not use it (Bowen, 2009; Wesley, 2010). With a qualitative document analysis, the reader needs to trust the researcher's judgement and interpretation.

According to Hsieh and Shannon (2005), there are three document analysis methods, namely conventional, directed, and summative. The present study made use of conventional methods, as the coding categories were derived from the text. As stated by Hsieh and Shannon (2005), conventional document analysis is mostly employed when the aim of the study is to describe a phenomenon. For the purpose of the present study, a document analysis was appropriate, because the researcher could subjectively interpret the complexities of the content of text data through the systematic process of coding and identifying themes (Hsieh & Shannon, 2005).

The following section describes the systematic literature and document analysis, sampling, data collection and data analysis methods, limitations of the methodology, and quality strategies implemented.

2.3.2 Sampling strategy

Sampling techniques allow the researcher to reduce the amount of data by only considering a portion of the population of the study (Leedy & Ormond, 2014; Maree, 2012; Saunders et al., 2012). The choice of the sampling technique is dependent on the feasibility and sensibility of the data required to answer the research questions (Saunders et al., 2012). According to Maree (2012), sampling in qualitative research is flexible, and often continues until no new themes emerge from the data collection process. The sampling strategy utilised for the purpose of this study was non-probability or purposive sampling, which means the sample was selected according to an explicit inclusion and exclusion criteria, so that the researcher could only interpret the most relevant data on the topic (Cronin et al., 2008). The inclusion and exclusion criteria were formulated according to the research questions, the research problem, and the purpose of the study (Cronin et al., 2008).

An audit trail was created to keep track of the documents included and excluded, to ensure trustworthiness. The sampling was purposive, as only documents that gave the most information were selected (Leedy & Ormond, 2014). The advantages of the non-probability sampling technique were that it was less time-consuming, as the researcher did not have to construct a sampling framework, and it yielded rich information (Patton, 2002; Saunders et al., 2012).

2.3.3 Data collection

According to Leedy and Ormond (2014), research is only possible when there are data to support the research. This was achieved through collecting rich descriptive data to understand TCB (Maree, 2012). Qualitative research data is expressed through words and images, and collected through emerging methods such as in-depth interviews (using open-ended questions), transcribed or printed documents, observations, electronic entities, and focus groups (Creswell, 2014; Leedy & Ormond, 2014; Maree, 2012; Marshall & Rossman, 2010; Patton, 2005). Qualitative research requires robust data collection techniques and recording of the research procedure (Bowen, 2009). In the present study, documents were collected through a systematic literature review and document analysis. The systematic literature review is a robust method; however, document analysis is not. The researcher determined

the relevance of documentation by formulating the inclusion and exclusion criteria in alignment with the problem and purpose of the study (Bowen, 2009).

Secondary sources were utilised during the systematic literature review and document analysis. Secondary data are not derived from the truth, but from primary data, which means it is research that other researchers have conducted and published (Cronin et al., 2008; Maree, 2012). The secondary sources utilised in the present study were scholarly journals, scholarly books, reference books such as dictionaries, dissertations, previously conducted literature reviews, government reports, and policy papers. Journals and books were mostly made use of in this study. These secondary sources assisted with the clarifying of ideas, flaws, and opportunities relating to the research questions, purpose, and research problem (Myers & Barnes, 2005).

A measurement instrument of data provides the basis of a research study (Leedy & Ormond, 2014, p. 83). Measurement is the “limiting of any phenomenon, substantial or insubstantial,” so that the data may be interpreted and compared to a particular qualitative or quantitative standard (Leedy & Ormond, 2014, p. 84). Substantial measurement is the measuring of a physical substance. Insubstantial measurement exist only as concepts, ideas, opinions, feelings, or other intangible entities, which was the nature of the data collected in the present study. The researcher was the measurement instrument, as she collected the documents. Types of measurement scales are nominal, ordinal, interval, or ratio. For the purpose of this research, the nominal scale was utilised to allocate themes to data.

Steps in data collection:

Step 1: Identification of topic, research question, and objectives

Firstly, the researcher identified the research topic and problem with assistance from her research supervisor and by pre-reading on labour relations issues. Thereafter, clearly defined research questions and objectives were formulated, which, according Cronin et al. (2008), EEPI-Centre (2007), Leedy and Ormond (2014) and Saunders et al. (2012) is the most important stage, as it provides the framework or guideline for the stages to follow.

Step 2: Establishing of the exclusion and inclusion criteria

An explicit inclusion and exclusion criteria were established through the research questions and purpose of the study (EEPI-Centre, 2007; Saunders et al., 2012). The inclusion and exclusion criteria consisted of the language of publication, subject area, business sector, geographical sector, and literature type (Saunders et al., 2012). Having an inclusion and

exclusion criteria to evaluate the documents against made the process more efficient, and assisted with avoiding bias selection, by having clear rules about which studies would be used to answer the research questions (EEPI-Centre, 2007). Furthermore, the explicit criteria made the recommendations for development transparent (EEPI-Centre, 2007; Kings College London, 2008).

Inclusion and exclusion criteria for the present study:

- The language of the publications had to be English. Any other languages were excluded.
- Publications had to focus on the EU geographical area, as most examples of TCB have appeared in the EU.
- The publication period was 1996 to 2017; however, the researcher focused on the last ten years' publications.
- All information concerning collective bargaining labour relations was included.
- All data discussing Conventions 87 and 98 of the ILO were included.
- The researcher endeavoured to include peer-reviewed journals and articles, because these report more significant results than less formally published studies.
- All the literature had to have a title, author, and purpose.
- Regarding theoretical literature, only that which focused on the nature of the concepts, frameworks, and models of TCB was included.

Step 3: Searching of key terms

Key search terms were utilised to identify the literature, defined as basic terms that describe the research question and objectives and summarises the research topic (Cronin et al., 2008; Leedy & Ormond, 2014; Saunders et al., 2012). The search terms were created through discussions with peers, assistance from the researcher's supervisor, initial readings, and 'brainstorming' (Creswell, 2014; Maree, 2012; Saunders et al., 2012). The American and British language differences were taken into consideration with the generation of key words (EEPI-Centre, 2007).

In research, it is important for the researcher to plan the search carefully and to obtain relevant and up-to-date literature (Cronin et al., 2008; Saunders et al., 2012). The planning of the search was achieved in Step 1 to Step 3 for the collecting and documenting of data.

Step 4: Searching for data

As stated by Cronin et al. (2008), a good literature review entails the gathering of information about a particular subject from many sources. In the present study, the literature was mostly gathered from the University of Pretoria's online library databases, from search engines, and from professional societies. Other approaches of gathering data used were gathering opinions of experts in the field of TCB, such as Dr Smit, the researcher's supervisor, hard copies, textbooks, library visits, and reference lists of relevant literature (Maree, 2012).

Computer databases offer access to large quantities of information such as books, chapters in books, articles, dissertations, government documents, technical reports, and newspapers, making the search easier and quicker than a manual search (Cronin et al., 2008). The researcher knew which databases to search through the researcher's initial literature review, before conducting the study. The databases used were: Business Source Premier, World Bank, Wiley online, Taylor and Francis, JSTOR, and SABINET. Additionally, the search engines Google and Google Scholar were accessed. Limited searches were conducted on Google, as Google Scholar has more reliable sources. With Google Scholar, the researcher searched broadly, including literature across many disciplines and sources (Creswell, 2014; Leedy & Ormond, 2014). There is a function on databases and Google Scholar that assists with limiting the search results. This enabled the researcher to specify the period of publication, language, and that the literature should be peer-reviewed (Leedy & Ormond, 2014). The ILO's webpage provides valuable data on labour relations, which the researcher accessed through the Internet (Leedy & Ormond, 2014).

The following techniques were used when searching with key words:

- placing key words in double inverted commas, for example, "transnational labour law";
- combining key words with Boolean operators "and", "or", and "not" (Leedy & Ormond, 2014); and
- using synonym terms for the key words; for example, another word for *transnational* is *across national borders*.

Step 5: Data management

Data management is the keeping of a record of where each article was found and used, found but not used, or not found, which is essential in a systematic literature review (Leedy & Ormond, 2014). An audit trail and computer folders were created for data management purposes.

After each search, when the references appeared, the researcher recorded the source, number of 'hits', and viewed their abstracts (Leedy & Ormond, 2014; Wesley, 2010). When a useful source was identified, it was saved in an appropriate folder according to the key words utilised (Creswell, 2014; Leedy & Ormond, 2014). Each document was then compared against the inclusion and exclusion criteria by previewing, questioning, reading, and summarising the documents, which kept the researcher focused and consistent (Creswell, 2014; Cronin et al., 2008; EEPI-Centre, 2007; Kings College London, 2008; Saunders et al., 2012). This resulted in the most relevant articles being selected. All the relevant articles were then read, to get a sense of what they were about (Cronin et al., 2008). Thereafter, the articles were summarised by extracting the following information: title, author, purpose, and outcomes (Cronin et al., 2008; Saunders et al., 2012). The aim of summarising the information was to obtain useful data for the analysis of this study. Step 5 was followed by the analysis.

2.3.4 Data analysis

The procedure of analysing data should show the following characteristics: the interrelated nature of data collection and analysis, categorising of data, recognition of relationships, development of analytical categories and concepts, and development of testable propositions to build or test theories (Saunders et al., 2012). The main disadvantage of qualitative analysis methods is that the findings cannot be generalised to wider populations with the same degree of certainty offered by quantitative analyses methods, as the findings of the research are not tested to discover whether these are statistically significant or due to chance (Atieno, 2009). According to Atieno (2009) and Maree (2012), the purpose of a qualitative analysis is to gain a complete and detailed description of a phenomenon. Qualitative analysis is utilised to examine latent or inferred meanings of communication, which leads to concepts based on the researcher's knowledge and evidence of the study (Kondracki, Wellman, & Amundson, 2002).

In the present study, the qualitative content analysis method was utilised. Qualitative content analysis is a systematic classification process designed to condense data by coding and identifying categories or themes, based on subjective interpretations (Kondracki et al., 2002; Zhang & Wildemuth, 2009). This means that the outcomes of a content analysis are concepts describing the phenomenon (Elo & Kyngäs, 2008; Kondracki et al., 2002).

According to Prasad (2001), there are three basic principles to be adhered to in content analysis:

Objectivity: The analysis is based on explicit rules, which enable different researchers to obtain the same results from the same documents.

Systematic: The inclusion or exclusion of content is achieved through consistently applied rules.

Generalisation: The results obtained by the researcher can be applied to other, similar situations.

The forms of human communication that are analysed by a content analysis are: books, newspapers, personal journals, legal documents, transcripts, advertisements, agendas, attendance registers, minutes of meetings, background papers, newspapers, and organisational or institutional reports (Bowen, 2009; Leedy & Ormond, 2014; Maree, 2012; Myers & Barnes, 2005; Patton, 2005).

The content analysis of the present study provided knowledge, new insights, representation of facts, and a practical guide to acquire a better understanding of collective bargaining on a transnational level. By evaluating the characteristics of content analysis, it was identified as the most appropriate method for the researcher to identify the concepts that describe and explain the viability of collective bargaining on a transnational level.

Steps in the content analysis:

The systematic steps the researcher took in analysing the data collected were derived from various papers on content analysis procedures. The researcher describes the analysis process and the results in detail, so that readers can obtain an understanding of how the analysis was conducted, together with this methods strengths and limitations (Elo & Kyngäs, 2008; Franzosi, 2008).

Step 1: Preparation for analysis

The preparation for analysis was explained in detail in the data collection section. This step entailed three phases. Firstly, the research problem and purpose were identified, which gave direction to the data analysis (Prasad, 2001). Secondly, the explicit inclusion and exclusion criteria were defined through the research questions and objectives (Wach et al., 2013; Zhang & Wildemuth, 2009). Thirdly, the most relevant literature was selected, which is the unit of analysis in a content analysis (Zhang & Wildemuth, 2009). Depending on the research question, the unit analysis can be a single word, letter, symbol, theme, news story, short story, or character, or an entire article or framework (Prasad, 2001; Zhang & Wildemuth, 2009). According to Elo and Kyngäs (2008) and Zhang and Wildemuth (2009) defining the coding unit is one of a researcher's most fundamental and important decisions.

Step 2: Coding the data

The researcher coded the information to make the data more manageable and meaningful. The coding process involved reading through data and dividing it onto meaningful themes (Maree, 2012). The purpose of creating the themes was to provide a means of describing the phenomenon, to increase understanding and to generate knowledge (Elo & Kyngäs, 2008). The themes were formulated using inductive content analysis. This was achieved by the researcher reaching a decision, through her own interpretation, regarding what would be included in a theme (Elo & Kyngäs, 2008).

Firstly, the researcher familiarised herself with the most relevant documents by summarising each article in her own words (Elo & Kyngäs, 2008; Saunders et al., 2009). Thereafter, the researcher started open coding only a few of the documents, by grouping common information in categories. Then the researcher listed the categories in alphabetical order (Elo & Kyngäs, 2008). The researcher then conducted abstraction. This involved the grouping of categories into general themes by evaluating the similarities or contradictions in categories. Each theme was then named using “content characteristic words” that described the theme in the best manner (Elo & Kyngäs, 2008, p. 111). Sub-themes with similarities were then grouped together as themes, where after some themes emerged as main themes (Elo & Kyngäs, 2008).

Step 3: Testing the coded themes and coding all the data

The themes were then tested and revised in order to validate the coding process (Maree, 2012; Myers & Barnes, 2005; Zhang & Wildemuth, 2009). This was essential, as humans are likely to make mistakes, and the researcher’s understanding of the categories and coding rules might have changed, which may have caused inconsistencies. All the remaining data were then coded using the validated themes.

Step 4: Writing a code book

A code book was written by the researcher, specifying the properties and dimensions of themes, identifying relations between themes, and, lastly, uncovering patterns to be interpreted (Zhang & Wildemuth, 2009).

Step 5: Reporting on decisions and practices

The researcher, as required in qualitative research, reported on the decisions and practice of the coding process, as well as the methods used to ensure trustworthiness (Zhang & Wildemuth, 2009).

Step 6: Interpretation of research findings

The final step was the interpretation of the research findings in a clear and unbiased manner while avoiding plagiarism (Creswell, 2014; Cronin et al., 2008; EEPI-Centre, 2007; Kings College London, 2008; Maree, 2012).

These six steps generated theories, concepts, and categories to describe the phenomenon (Elo & Kyngäs, 2008; Prasad, 2001). This process enabled the researcher to return to the data and obtain missing data when necessary information was missing or coded wrongly (Prasad, 2001). The analysis process required minimal capital investment, as there was no need to acquire computer programs (Bowen, 2009; Kondracki et al., 2002; Prasad, 2001).

2.3.5 Limitations of the methodology

The qualitative research design was time-consuming and labour intensive, because a vast number of documents and literature was analysed and reviewed more than once (Kondracki et al., 2002; Maree, 2012; Prasad, 2001). According to Bowen (2009), secondary literature has the limitation of being less current than primary data.

As most of the literature analysed in the present study was produced for research, it did not give enough detail. The researcher tried to obtain a complete collection of documentation, but, in a document analysis or systematic literature review, selection bias is always present (Bowen, 2009).

The interpretations of the document analysis and systematic literature review can only be generalised to the data included. This is a limitation of the present study (Elo & Kyngäs, 2008; Kondracki et al., 2002; Prasad, 2001).

There is no assurance that the authors of the literature that was used shared the meaning attributed to the literature by the researcher. This is a major limitation of a document analysis (Elo & Kyngäs, 2008; Prasad, 2001; Saunders et al., 2012).

As cited by Prasad (2001), Krippendorff 1980 stated that, when conducting document analysis, it is difficult for the researcher to ensure rigour and quality, as the validity and reliability measures are ill-defined. The present researcher was also unable to explain relationships between variables and why there were changes (Kondracki et al., 2002; Prasad, 2001).

Document analysis is simple, with no guidelines, which makes the presenting of research findings challenging (Elo & Kyngäs, 2008). However, Elo and Kyngäs (2008) stated that any method can be seen as simple when the correct analysis method is not used. In conducting

a qualitative document analysis, the reader has to trust the researcher's interpretation of the data, which makes it difficult for the reader to determine the trustworthiness of the study. The researcher in the study had preconceived ideas of the elements of transnational collective bargaining, because of the initial literature review, before conducting the study.

Another major limitation is that the present researcher is an inexperienced researcher. As cited in Saunders et al. (2012), Yin 2009 stated that an inductive analysis is difficult, and may not lead to success for an inexperienced researcher. Lastly, there might be interpretation errors, because the present researcher's mother tongue is not English.

2.3.6 Strengths of the methodology

As this was a qualitative study, the systematic literature review and document analysis allowed the researcher to understand the in-depth complexities of TCB in a subjective, but scientific manner (Zhang & Wildemuth, 2009). A systematic procedure, proposed for both, methods was followed, which increased the trustworthiness and validity of the study (Hsieh & Shannon, 2005). The data collection was cost effective, and the data were very accessible, as the information was freely available on the University of Pretoria's website and on the EU and ILO websites (Bowen, 2009). On a practical level, both the systematic literature review and document analysis were suitable. It would have been difficult and expensive to collect data across the EU borders via surveys and interviews. A clear and consistent picture of the research was given, instead of a number of smaller studies, which may yield contradictory answers to the same question.

The methodology enabled the researcher to exclude poor-quality documents from the analysis. Documents utilised in the present study were suitable for repeated review, since the researcher did not make changes to the documents (Bowen, 2009). The methodology procedures have been documented clearly, which means other researchers could conduct the same research. The changes and trends in TCB over a long period were detected, which assisted with the answering of the research questions (Bowen, 2009; Kondracki et al., 2002).

Systematic literature review and document analysis processes lack obtrusiveness and reactivity, which means they are "unaffected by the research process and eliminated unwanted interaction effects between subjects and researcher" (Bowen, 2009, p. 31). This ensured that the results were less biased (Bowen, 2009; Kim & Kuljis, 2010; Kondracki et al., 2002; Prasad, 2001). The researcher could validate results with large amounts of written communication and various sources (Elo & Kyngäs, 2008; Prasad, 2001).

The analysis process was context-sensitive, which is beneficial in a qualitative study (Elo & Kyngäs, 2008; Prasad, 2001). Through the research design deployed, the researcher discovered that other researchers had also invested time, effort, and resources in studying this topic, which was encouraging (Leedy & Ormond, 2014). The findings generated through the systematic literature review and document analysis are useful, as these highlight the need for more research and drew attention to the shortcomings of available research on the topic.

2.4 Quality of research

According to Wesley (2010), qualitative research must establish the quality of the research, to ensure trustworthiness. Patton (2002) stated that reliability and validity are two factors that qualitative researchers should consider while designing a study, analysing results, and judging the quality of a study. Furthermore, Patton (2002) stipulated that reliability and validity of a qualitative research study determine the quality and rigour of the study. The reliability of qualitative research is the consistency of the researcher's approach. Validity in qualitative research can be described as the researcher using different techniques and procedures to ensure that the findings are correct (Leedy & Ormond, 2014). According to Zhang and Wildemuth (2009), the quality of a qualitative document analysis is measured by the validity, reliability, and objectiveness of the study. Prasad (2001) recommended that a document analysis should adhere to the following three principles: objectivity, being systematic, and generalisability. For the reliability and validity of systematic literature- and document analysis, the researcher presented the explicit criteria used to formulate the research questions, set inclusion or exclusion criteria, select and access the literature, assess the quality of the literature included in the review, and then synthesise and disseminate the findings (Cronin et al., 2008).

The criteria for reliability and validity of qualitative research are different to those for quantitative research (Golafshani, 2003). As cited by Myers and Barnes (2005) and Zhang and Wildemuth (2009) Lincoln and Guba 1985 formulated alternative criteria for evaluating the quality of research by substituting *reliability* with *dependability*, *internal validity* with *credibility*, *external validity* with *transferability*, and *objectivity* with *confirmability*. Below is an explanation of the reliability, validity, and objectivity of the present study in terms of dependability, credibility, transferability, and confirmability.

2.4.1 Dependability

Dependability has been achieved if a study can be repeated by other researchers (Golafshani, 2003). Dependability relies on research having been conducted in a transparent manner

(Wesley, 2010). According to Wach et al. (2013), a document analysis is considered dependable if equivalent results would be obtained by another researcher if given the opportunity to analyse the same set of documents. The research process should be documented and recorded, to improve dependability for future researchers and readers (Saunders et al., 2012; Wach et al., 2013).

The strategies utilised to ensure dependability in the study:

- The researcher documented all research decisions, methodologies, and processes utilised in the study.
- The researcher used reliable sources that had been published and peer reviewed (Elo & Kyngäs, 2008).
- During the coding stage of the analysis, the researcher recoded a subset of the data sample, to ensure reliability (Creswell, 2014; Kondracki et al., 2002).
- A code book was written, containing all the codes and their definitions, which assisted the researcher to use the codes consistently (Creswell, 2014).

2.4.2 Credibility and transferability

Credibility

Credibility is achieved by giving the readers a true representation of the phenomenon (Golafshani, 2003). Zhang and Wildemuth (2009, p. 312) explained credibility as the “most appropriate representation of the constructions of the social work under study.” Credibility of research findings refers to how well the categories cover the data (Elo & Kyngäs, 2008). According to Zhang and Wildemuth (2009), the coder’s knowledge and experience have a significant impact on the credibility of research results. The researcher’s credibility and trustworthiness are essential when he or she is the research instrument (Maree, 2012).

As cited by Zhang and Wildemuth (2009), Lincoln and Guba 1985 stated that the following are techniques that researchers could utilise to obtain credibility: prolonged engagement in the field, persistent observation, triangulating, negative case analyses, member checking, peer debriefing, and checking interpretations against raw data. As cited by Maree (2012), Merriam 1998 formulated four strategies to ensure credibility, namely (1) crystallisation using several sources and methods, (2) member checks, where the data and findings are verified by respondents other than those originally involved, (3) long-term observation by gathering data over an extended period (in order to increase validity), and (4) peer examination.

Transferability

Researchers achieve transferability by explaining the research context, so that readers can draw their own conclusions (Golafshani, 2003). Transferability is the extent to which the research findings can be applied to another context (Zhang & Wildemuth, 2009). The present researcher endeavoured to provide sufficient descriptions, so that other researchers would be able to make judgements about the findings' transferability (Zhang & Wildemuth, 2009). Transferability entails a clear description of the research context, data selection, data characteristics, and the process of analysis (Elo & Kyngäs, 2008; Golafshani, 2003).

The strategies utilised to ensure credibility and transferability in the study:

- Triangulation was considered a critical strategy, as it increases credibility and transferability. Triangulation means that the researcher utilises multiple data-collection methods to justify the findings, thus reducing potential bias and increasing the generalisability of the findings (Bowen, 2009; Leedy & Ormond, 2014; Saunders et al., 2012). The present researcher collected data from different sources and made use of multiple research designs.
- The researcher gave a clear description of the context, selection, and characteristics of documents, and the process of analysis (Elo & Kyngäs, 2008; Golafshani, 2003).
- The researcher asked the opinions of colleagues and her supervisor regarding whether they agreed with the study's results (Leedy & Ormond, 2014).
- The researcher was audited by her supervisor, Dr Paul Smit, who is familiar with the study, and who assessed the findings of the study. The researcher will also be audited by an external party, who will be unfamiliar with the study, which means the study's process and findings will be assessed objectively.
- According to Onwuegbuzie, Leech and Collins (2012), reflection is an essential part of qualitative research. The present researcher reflected on her own past experiences, biases, and prejudices in this paper, to give the readers a clear indication of how this could have impacted the study.
- The quality and relevance of the data were measured against the explicit criteria discussed earlier, to exclude data that were not aligned with the research questions and objectives (Elo & Kyngäs, 2008; Wasch & Ward, 2013).
- The researcher analysed and simplified the data by forming categories that reflected the topic of the study (Bowen, 2009).

- Following a systematic procedure when conducting a document analysis increased trustworthiness and validity of the study (Hsieh & Shannon, 2005).
- The researcher used vivid descriptions to convey the findings, and offered many perspectives on the themes, which made the study transparent (Creswell, 2014; Leedy & Ormond, 2014).

2.4.3 Confirmability

Confirmability is achieved by indicating that the findings were formulated utilising the data, and not the researcher's own opinions (Golafshani, 2003). The results of a qualitative data analysis are confirmability if the findings are traceable to data contained in the documents, and are not based on the researcher's biases or predispositions (Wesley, 2010; Zhang & Wildemuth, 2009). The reader can evaluate the confirmability by checking the internal consistency of the findings, interpretations, and recommendations (Zhang & Wildemuth, 2009). To increase the confirmability of a study, it is essential that the researcher demonstrate a link between the results and the data (Elo & Kyngäs, 2008).

The strategies utilised to ensure confirmability in the study:

- The researcher described the analysis process in great detail when reporting the results.
- All the documents were documented and referenced in an audit trail. This was done to demonstrate links between the data and the results.

2.5 The ethical measures taken in this study

Research ethics, according to Saunders et al. (2012), is relevant during the design of a study, seeking access to data, collecting data, analysing data, and reporting the results. Research ethics is a critical part of the research design (Saunders et al., 2012). Saunders et al. (2012) notes that, qualitative research is more likely to have greater ethical concerns than quantitative research. Ethical issues were anticipated by making use of the University of Pretoria's Code of Ethics and various sources that elucidate ethical concerns (Creswell, 2014; Saunders et al., 2012).

The researcher firstly identified a research problem that was beneficial to countries, labour unions, and employees, and then developed the purpose and research questions for the study (Creswell, 2014). As stated by Creswell (2014), an ethically sound research study involves identifying a research problem that is beneficial to others and is clear. The present researcher

then obtained approval from the University of Pretoria to conduct the research (Creswell, 2014).

The biggest ethical issue identified by the researcher was plagiarism, as the present study was based on literature produced by other authors. According to Leedy and Ormond (2014) and Saunders et al. (2012), plagiarism has become a major issue in academic institutions, especially because of the availability of information on the Internet. Park (2003, cited in Saunders et al., 2012), listed four common forms of plagiarism in universities, which the researcher avoided: stealing material from another source and presenting it as your own work, submitting a study written by others, copying a section of text from other sources, leaving out quotation marks but referencing the source, and, lastly, paraphrasing work by others without referencing.

Creswell (2014) points out that that all raw data should be kept, and that the researcher should share the data with others, so that the readers can determine the credibility themselves. The raw data in the present study were kept in folders on the researcher's computer. By referencing all the sources used in the study, the researcher shared the sources of data with the readers. The researcher took the following measures when reporting the results: using language and words in an unbiased manner; utilising all the data, even if it proved or disproved her personal hypotheses; reporting on all the results, including the results that may be contrary to the themes; providing an account of information (through the validation strategies mentioned above); and, lastly, not suppressing or falsifying events or findings to meet the researcher's or the audience's needs (Creswell, 2014).

2.6 Concluding remarks

The research process was achieved by formulating the research problem, purpose, and questions. This was followed by the selection of the research methodology according to the research problem and questions, the researcher's experience, and advice from the researcher's supervisor. Thereafter, the secondary data were collected by means of two qualitative research designs: a systematic literature review and a document analysis. Lastly, the data were analysed through the researcher's own interpretation of the data, in order to draw meaningful conclusions. A qualitative research paradigm was utilised, as it enabled the researcher to explore and understand the viability of collective bargaining on a transnational level. With the two research designs, an explicit criteria were employed to collect the most relevant data from various sources through online databases, search engines, and professional societies. The data collected were analysed through inductive content analysis, as the researcher had to generate themes in order to answer the research questions. The

dependability, credibility, transferability, confirmability, and ethical considerations were also explained. The next chapter provides an explanation of the concept collective bargaining.

CHAPTER 3: PRINCIPLES OF COLLECTIVE BARGAINING

3.1 Introduction

In this chapter, a comprehensive analysis of collective bargaining will be done. Firstly, the purpose of collective bargaining will be explained, followed by a short description of what collective labour law entails. Then the collective bargaining process, measures of collective bargaining, parties involved in collective bargaining, typical collective bargaining subjects, and collective bargaining industrial action will be described. Lastly, the benefits of collective bargaining and the reasons for the decline in collective bargaining will be explained.

3.2 Purpose of collective bargaining

According to Bendix (2015), Eichhorst et al. (2011), Grogan (2010), ILO, 2015a and Steenkamp, Stelzner, and Badenhorst (2004), collective bargaining can be defined as a dynamic and voluntary process, whereby employers or employer organisations bargain with employee representatives, with the aim of reaching an agreement on terms and conditions of employment and resolving disputes. Power can be described as a driving force of collective bargaining, as employees can generally only challenge the power of employers by acting collectively (Creamer, DiGerlando, Glickman, & Petersen, 2006; Godfrey, Maree, Du Toit, & Theron, 2015; Grogan, 2010). This means that collective bargaining allows workers to have a more balanced relationship with employers (Grogan, 2010; Van Niekerk, Christianson, McGregor, Smit, & Van Eck, 2012).

Collective bargaining is successful when parties treat one another in a fair and respectful manner, while working towards reaching an agreement; however, this does not mean that the agreement will please both parties equally (Anstey, Grogan, & Ngcukaitobi, 2011; ILO, 2015a). Collective bargaining is a basic and enabling right of employees (Hyman, 1999; ILO, 2015a). It is understood as the foundation of democratic labour relations, and is a universally recognised human right (Bensusan, 2016; Cahuc & Zylberberg, 2003; Godfrey et al., 2015; Maree, 2011; Martinez-Pecino, Munduate, Medina, & Euwema, 2008).

Collective bargaining is an instrument utilised by employees to assure that they receive fair return for their labour according to the financial position of the organisation or public service in which they are employed, whereas employers' objective is to increase competitiveness (Anstey et al., 2011; Van Niekerk et al., 2011). Companies want flexibility, and employees

want job security (Bensusan, 2016; Marginson, 2015). Furthermore, good relationships between trade unions and companies decrease unemployment (Godfrey et al., 2015).

Social dialogue includes all types of consultations, negotiations, and exchange of information between or among employers and employees and representatives of government, with the aim of resolving common issues. Collective bargaining is therefore a form of social dialogue (ILO, 2015e; Van Niekerk et al., 2011).

The result of collective bargaining is a collective bargaining agreement, which is the content of an individual's contract of employment and the structure of employer–employee relationships (Eichhorst et al., 2011; ILO, 2015d; Maree, 2011; The New School for Social Research, 2010). A collective bargaining agreement is recorded in a written document that stipulates the date of the agreement and the terms and conditions of employment that will apply to a defined group of workers. The agreement is formally agreed upon by the employer and the trade union (Cahuc & Zylberberg, 2003; ILO, 2015d; Schnabel, Zagelmeyer, & Kohaut, 2006). Collective bargaining agreements bind signatories and those on whose behalf they are concluded (ILO, 2015d). The agreement is accepted by both parties, and an external authority prescribes how it should be concluded (Anstey et al., 2011). Collective bargaining agreements are more inclusive than individual agreements (ILO, 2015d).

In some countries, collective bargaining agreements are legally binding (ILO, 2015d). Depending on the country's legal system, it can be subject to civil law or common law. Collective agreements may be for a fixed term or a specified duration pending renewal (ILO, 2015d). Countries make provisions for agreements when a company is sold, transferred, or merges with other companies (ILO, 2015d). Mostly, the new employers need to honour the collective agreement entered into by the previous employer (ILO, 2015d).

Some countries require registration of collective agreements (ILO, 2015d). This is to monitor collective agreements, to assure that the collective bargaining guidelines are followed (ILO, 2015d). Another way in which governments promote observance of collective agreements is through public procurement policies (ILO, 2015d).

Many of these agreements specify conditions of employment and the procedures for disciplinary action, grievances, and retrenchment (Grogan, 2010). Collective agreements on wages mostly have pay scales to distinguish between job levels and categories in an industry or enterprise (Besamusca & Tjens, 2015).

3.3 Collective labour law

According to Gernigon, Otero and Guido (2000), labour laws have decreased, and other laws, such as civil and commercial laws, have increased. Collective labour law historically developed through employees standing together to advance their rights. They initially formed craft guilds, whereas now they form trade unions (Anstey et al., 2011). Collective labour law contains the rules and principles that control the relationship between employers and employees (Anstey et al., 2011). Collective labour law is described as a secondary force or sub-system in labour relations, which means the law cannot equalise the imbalance between employers and employees (Godfrey et al., 2015; Maree, 2011; Venn, 2009). Collective labour law is unique, in that the rules of collective labour law leave the parties to determine the outcomes (Anstey et al., 2011; Godfrey et al., 2015). The courts only intervene when the laws are broken, but do not have a prominent role in the collective bargaining process (Anstey et al., 2011; Godfrey et al., 2015).

Collective bargaining rights remain elusive for most employees (Bensusan, 2016; Blackett & Sheppard, 2003). The unequal access to collective bargaining indicates how far dominant paradigms of collective bargaining have failed to reflect “plural structures of work” (Blackett & Sheppard, 2003, p. 420). The ILO plays a fundamental role in regulating collective labour law, which will be explained in Chapter 4 (Blackett & Sheppard, 2003).

3.4 The Collective bargaining process

3.4.1 Characteristics of the collective bargaining process

- Bendix (2015) stated the following concerning the collective bargaining process: Collective bargaining is a process of negotiation that occupies a central position in the labour relationship. The collective bargaining process has an interactive, voluntary, and inconsistent nature. When conducting collective bargaining, conflict cannot not be avoided, but co-operation is promoted through the process.
- The collective bargaining process involves negotiating on a group level, not an individual level (Anstey et al., 2011). Employees are mostly represented by other parties, such as trade unions, whereas employers are not always represented by employer representatives (Bendix, 2015; Grogan, 2010).
- The process involves joint responsibility, decision-making, and problem-solving (Aidt & Tzannatos, 2008).

- Collective bargaining is not only a regulating process, it also promotes collective bargaining through freedom of association and collective organisational rights (ILO, 2015e).
- The collective bargaining process is initiated by a mandate issued by the representatives of employers and employees, where after both parties meet to negotiate (ILO, 2015e).
- Collective bargaining is an argumentative process that entails negotiation between parties regarding scarcity of resources, different needs, goals, interests, attitudes, values, and perceptions, role conflict, communication, and inadequate structures (Bendix, 2015; Glassner & Keune, 2010; Godfrey et al., 2015; Grogan, 2010). This process is driven by the power relationship of the parties, which is influenced by the socioeconomic situation, political developments, technological innovation, and demographic changes in the country, sector, or enterprise (Bendix, 2015; Glassner & Keune, 2010; Grogan, 2010; Maree, 2011). The different power types utilised are (Grogan, 2010): *Employer versus employee*: The employer's power is based on providing the employee the opportunity to work, while the employee has the power to withdraw his work. *Coercive power*: Coercive power is utilised when negotiations do not succeed, and takes the form of strikes or lock-outs. *Other types of power are*: when employers form alliances with other employers and/or government. Employers may use economic situations against a union, while unions might gain sympathy from other employees or employers. Trade unions may further attempt to gain political power.
- Usually, parties start the negotiation process from very different positions (ILO, 2015e).
- The process generally entails the justification of demands and positions taken, the sharing of information, debates, and trade-offs to reach a collective agreement (ILO, 2015e).
- During the negotiations, parties should treat one another equally, and should compromise when needed (Grogan, 2010).
- If the process does not result in an agreement, industrial action could be taken by the parties (Anstey et al., 2011).

3.4.2 Steps in the collective bargaining process

The four steps of the collective bargaining process are described below (Creamer et al., 2006; De Silva, 1996; ILO, 2015e).

Step 1: Preparation for collective bargaining

The first step is preparation by the collective, which involves gathering information on the current employee contract, assigning roles to the bargaining team, determining the location of the bargaining, and when negotiations will start.

In the preparation step, it is essential that the employer recognises a trade union as the collective bargaining agent for its employees, which is recorded in a recognition agreement (Bendix, 2015). The recognition agreement normally includes the structure of the collective bargaining, the level of bargaining, the parties' rights, and procedures for dispute resolution (Grogan, 2010). Recognition of representative parties for the purpose of collective bargaining is important, as employers need to acknowledge and accept a trade union as the employees' representative (ILO, 2015b).

Parties may either seek recognition by voluntary or statutory means (ILO, 2015b). Countries generally implement statutory procedures for recognition, as it is difficult to obtain recognition of the bargaining representatives on a purely voluntary basis, for example, competing trade unions may oppose each other in negotiations (ILO, 2015b; De Silva, 1996).

The labour legislation of countries should have pre-determined, objective criteria to determine when and how a union should be recognised for collective bargaining purposes (De Silva, 1996). The most utilised principle in this decision is recognising the most representative union, but this differs from country to country (De Silva, 1996). This system requires a union to have a specified minimum percentage of employees in the enterprise and category as members. An outside, certified authority, such as the local labour department, can also issue a referendum to decide on the trade unions that will represent employees (De Silva, 1996).

There are countries where only one trade union may be recognised as the representative of workers in a particular industry, enterprise, or category, which is called *the exclusive bargaining agent model* (Grogan, 2010; ILO, 2015b). A trade union that is an exclusive bargaining agent bargains on behalf of all employees (Grogan, 2010; ILO, 2015b). In situations where there is no such exclusive trade union, the ILO stipulates that all trade unions in that unit have the right to collective bargaining (Grogan, 2010; ILO, 2015b).

There are many countries in which two or more trade unions are recognized in an industry (Grogan, 2010; ILO, 2015b). In this instance, employers can negotiate separately with each union, with the agreements reached only applying to the members of that union (Grogan, 2010; ILO, 2015b). Employers can, alternatively, bargain at a single table, which means employee representatives co-ordinate their bargaining, and a single collective agreement is agreed upon and signed (Grogan, 2010; ILO, 2015b).

Step 2: Negotiating

There are no rules to opening negotiations. The negotiating process normally starts off with procedural issues (Grogan, 2010). During the negotiations, the considering of claims and counterclaims regarding new or revised terms and conditions takes place (ILO, 2015e). Trade unions should justify why the negotiations were initiated. The employer should stipulate that agreement on any particular issue is subject to an overall settlement, including their expectations of trade unions. The employer should outline the following during the meeting: the context of the collective bargaining and the basis on which the employer is prepared to negotiate. During the negotiations, minutes should be taken of the negotiations and each party should have the right to refuse a proposal.

Walton and Mckersie (1965, cited in Anstey et al., 2011), identified four negotiation approaches utilised by parties. These are listed below.

- *Distributive or competitive bargaining*: This approach entails each party trying its best to reach an agreement that would favour its side, because of a lack of resources and competing interests.
- *Integrative bargaining*: Integrative bargaining occurs when parties solve common issues through co-operation.
- *Attitude-restructuring bargaining*: The attitude-restructuring bargaining approach is used when negotiating parties want to influence one another's attitudes and adjust the relationship between them.
- *Intra-organisational bargaining*: This approach is evident when both parties strive to research an agreement.

Step 3: Concluding the collective bargaining agreement

An agreement letter is sent to the union and, upon agreement by the union, the agreement draft is prepared. The content of the agreement usually includes the date of the commenced agreement, its duration, and rules regarding how and when it may be terminated. Such an

agreement should also provide definitions of terms that are ambiguous, procedures for settling disputes, and consequences of breach of the agreement.

Step 4: Implementation of the collective bargaining agreement

The agreement is implemented by all the parties.

3.5 Measures of collective bargaining

3.5.1 Defining collective bargaining measures

There are three measures of collective bargaining, according to Aidt and Tzannatos (2008): trade union density, collective bargaining coverage, and co-ordination of collective bargaining. According to Cahuc and Zylberberg (2003), union density and collective bargaining coverage are the most essential measures of collective bargaining.

3.5.2 Trade union density

Trade union density is the total number of salary and wage employees that belong to trade unions, divided by the total number of wage and salary employees (Organisation for Economic Co-operation and Development [OECD], 2016). According to Bensusan (2016), union density has an effect on inequality, wage dispersion, and collective bargaining. Hayter, Fashoyin, and Kochan (2011) provided evidence that, union density had declined in the countries in which they had gathered data.

3.5.3 Collective bargaining coverage

Collective bargaining coverage is defined as the number of workers, unionised or non-unionised, whose compensation and employment conditions are covered by a collective bargaining agreement (Aidt & Tzannatos, 2008; Hayter et al., 2011).

According to Hayter et al. (2011), bargaining coverage remained the same in the countries in which they had gathered data. In some countries in which there was a decline in collective bargaining coverage, government support was weakened or removed and labour was deregulated. This occurred, for example, in the UK (Hayter et al., 2011). The highest decline in bargaining coverage was in the European countries that experienced extreme economic problems during the economic crisis (Visser, Hayter, & Gammarano, 2015). This decline was not because of employer resistance to collective bargaining or a decline in union membership, but rather the policy changes regarding job-saving agreements (Visser et al., 2015). Countries in which collective bargaining coverage was constant or had increased during the economic

crisis are those that supported collective bargaining through a variety of policy measures (Visser et al., 2015).

The above history indicates that collective bargaining coverage will stay constant or increase when governments support bargaining through the following measures (Visser et al., 2015):

- an enabling legal framework that ensures respect for organisational rights and facilitates the effective recognition of trade unions and employers for the purposes of collective bargaining;
- appropriate measures and policies are adapted to promote collective bargaining;
- public policies that include equality and the demand for social justice; and
- the reinforcement of strong and representative trade unions and employer organisations.

3.5.4 Co-ordination of collective bargaining

Co-ordination has three aspects: structure of the collective bargaining, informal co-ordination and corporatism (Aidt & Tzannatos, 2008; Cahuc & Zylberberg, 2003). Bargaining co-ordination matters most during rapid economic and social change (Aidt & Tzannatos, 2008; Cahuc & Zylberberg, 2003). Calmfors and Driffill (2001, cited in Godfrey et al., 2015), confirmed that high collective bargaining co-ordination leads to lower unemployment.

Structure of collective bargaining:

The bargaining structure determines which employees would be covered, who will receive protection, the influence of the union, how much power the employer and employee have, and at what levels the employees can make decisions (Godfrey et al., 2015; Grogan, 2010). Structures of collective bargaining have an effect on the macro-economic performance of a country (Godfrey et al., 2015).

Bargaining structures include bargaining units and bargaining levels (Grogan, 2010). The bargaining units are the employees who are covered by the agreements (Aidt & Tzannatos, 2008; Anstey et al., 2011; Cahuc & Zylberberg, 2003; Grogan, 2010; ILO, 2015e). The bargaining levels are the following: workplace, establishment or plant, enterprise, industry, sector or branch of activity, regional or municipal, occupational or inter-professional, and national (which includes a combination of all levels) (Aidt & Tzannatos, 2008; Anstey et al., 2011; Cahuc & Zylberberg, 2003; ILO, 2015e). Pattern bargaining occurs when an agreement in a dominant sector is mimicked by other sectors (Aidt & Tzannatos, 2008).

There are two collective bargaining structures utilised by employers: single-employer and multi-employer structures. At the enterprise, plant, or establishment level, collective bargaining can take place with a single employer (ILO, 2015e). Marginson (2015) points out that, collective bargaining is currently taking place at the single-employer level more often than on a multi-employer level. Collective bargaining at single-employer level does not contribute to higher wage inequality (Dell'Aringa & Pagani, 2005).

At the industry, regional, or centralised inter-professional level, collective bargaining can take place in a multi-employer setting (ILO, 2015e). Multi-employer bargaining occurs when employers come together in associations with a mandate to bargain (Visser et al., 2015). With strong trade unions, employers may want to improve their bargaining power by forming alliances. It may also be a manner of obtaining industrial peace and bringing stability to an industry (Visser et al., 2015). In some countries, multi-employer bargaining during the economic crisis sector and inter-sector agreements provided substantive and procedural certainty for parties at company level, which encouraged negotiation at company level (Glassner, Keune, & Marginson, 2011).

There are two types of collective bargaining structures utilised by employee- or employer representatives: centralised and decentralised (Dell'Aringa & Pagani, 2005; Grogan, 2010). Dell'Aringa and Pagani (2005) is of the opinion that, it is not easy to combine centralised and decentralised collective bargaining.

A centralised collective bargaining structure is evident when the wage levels and patterns across the economy can be controlled and influenced by the national union confederation and the national employer organisation (Aidt & Tzannatos, 2008; Dell'Aringa & Pagani, 2005; Grogan, 2010; Zambarloukou, 2006). *Centralised* means the represented group is defined by sector or industry (Anstey et al., 2011; Bensusan, 2016; Grogan, 2010).

One of the advantages of centralised bargaining is that the economies in which it is used have significantly less earnings inequality, compared to those where decentralised bargaining is practised (Dell'Aringa & Pagani, 2005). In the EU, collective bargaining has a greater effect on wage increases when it is centralised (Bensusan, 2016). It is easier to negotiate centralised pacts than tripartite pacts (Zambarloukou, 2006). According to Grogan (2010), the following are advantages of centralised bargaining: The process is cost effective, employees receive good employee benefits, large-scale of employees are trained, and fewer strikes. The organisation's power is limited, bargaining is done in a professional manner, and clear long-term objectives are set. Centralised bargaining provides for overall constant standards and minimum safeguards throughout an industry or sector

Disadvantages of the centralised collective bargaining structure are that small and medium firms complain that they cannot match the wages that were negotiated by the national trade union, which has been the case in South Africa (Maree, 2011). According to Grogan (2010), the disadvantages of centralised bargaining are: labour action takes place on a wider scale, it does not minimize conflict in the workplace, there exist high levels of intra-organisational conflict, and there is a decrease in the possibility of democratic decision-making by trade unions and employer organisations. With diverse interests, there is a high level of inflexibility of all parties in negotiations and with regard to decision-making power. Smaller trade unions and employers lose power as they no longer provide input.

Decentralised collective bargaining is a neo-liberal approach (Maree, 2011). A decentralised collective bargaining structure entails collective bargaining moving from the macro-level (industry-wide or multi-employer bargaining) to micro-level enterprise- or workplace bargaining (Glassner & Keune, 2010; Grogan, 2010; Maree, 2011; Marginson, 2015). Disorganised decentralisation has occurred, leading to local wage bargaining lacking the framework of national and sectoral bargaining (Glassner & Keune, 2010; Marginson, 2015). In the EU, there has been an increase in disorganised decentralisation in collective bargaining (Bensusan, 2016; Glassner & Keune, 2010; Marginson, 2015). The EU Central Bank and the Economic and Financial Affairs Council of EU stated that decentralised and individualism in collective bargaining is needed for economic growth and sustainability in Europe (Glassner & Pochet, 2011).

Advantages of a decentralised bargaining structure are explained below. Visser et al. (2015) provides evidence that, the implementation of organised decentralisation has increased collective bargaining in some countries. According to Grogan (2010), the advantages of decentralised collective bargaining are: wages are appropriate for the particular organisation, benefits and training are tailor-made for the particular company, there is a decrease in workplace conflict, intra-organisational conflict is minimised, the power of workplace trade unions and employer organisations is increased, there is an increase in the possibility of democratic decision-making by trade unions and employer organisations, and individual organisations have more flexibility, allowing employers and trade unions to pursue their particular interests.

Disadvantages of a decentralised collective bargaining structure are explained below. Controlled or organised decentralisation provokes a greater depression of wage structures and a decline in unionisation rates (Bensusan, 2016). Grogan (2010) points out that, the disadvantages of a decentralised collective bargaining structure are: employers are afraid of whipsawing, employers are less competitive, low levels of employee benefits are provided,

the organisation is less likely to offer large-scale training, spontaneous strikes increase, workplace representatives become too independent of trade unions, negotiators may lack experience, and objectives may be short-term, which may lead to employer payoffs and wage inflation.

Informal co-ordination:

Informal co-ordination is described as informal consultations at the industry, regional, or national level among trade unions and firms (Aidt & Tzannatos, 2008).

Corporatism:

Corporatism is based on the social partnership between the interests of capital and labour, involving collective bargaining between representatives of employers and employees mediated by the government (Aidt & Tzannatos, 2008). Corporatism is characterised by high union density and bargaining coverage, a high degree of union and employer centralisation and concentration, as well as social partnerships between national workers, employer organisations, and government (Aidt & Tzannatos, 2008).

3.6 Collective bargaining parties

3.6.1 Background on collective bargaining parties

If parties did not have to work together to produce goods or services, collective bargaining would not have occurred (Cahuc & Zylberberg, 2003; Grogan, 2010). There are two types of negotiations in collective bargaining: bipartite — between workers and organisations, and tripartite — between workers, organisations, and government (Gernigon et al., 2000; ILO, 2015e; Van Niekerk et al., 2011). Collective bargaining should be carried out by knowledgeable and skilled negotiators (ILO, 2015e). The parties involved in negotiations should be familiar with subjects on the agenda and processes, possess negotiation skills, and understand the framework within which collective bargaining takes place (ILO, 2015e).

Collective bargaining parties are independent, and have a common interest (Bendix, 2015; Grogan, 2010). Parties are required to share information between one another, to aid negotiation (ILO, 2015e).

The aspects that negotiation parties should be trained in are (ILO, 2015e):

- the content of collective bargaining;
- the collective bargaining legal and intuitional framework of a country;

- negotiation skills;
- what parties are expected to do during negotiations;
- being punctual and participating in meetings;
- bargaining in good faith (a belief in the value of compromising through dialogue) (De Silva, 1996);
- proposals made by representatives of other parties should be taken seriously;
- responding timeously to proposals by other parties; and
- making an effort to reach a collective bargaining agreement.

The collective bargaining parties that will be discussed in this chapter are: governments, trade unions, employer organisations, bargaining councils, statutory councils, and workplace forums.

3.6.2 Governments

According to the ILO (2015e), governments have the responsibility to guarantee freedom of association, effectively recognise the right to collective bargaining, and promote collective bargaining by respecting the autonomy of parties and the voluntary nature of the process.

In some countries, governments have implemented co-ordinated bargaining systems that specify the way in which employees are represented and how combined decision-making and problem-solving should be achieved (Aidt & Tzannatos, 2008; ILO, 2015e). In other countries, workers and employers use almost entirely their own discretion (Aidt & Tzannatos, 2008; ILO, 2015e). Countries with co-ordinated bargaining systems have better economic outcomes and more flexible labour markets (Aidt & Tzannatos, 2008; ILO, 2015e). Procedures of collective bargaining in countries differ in cost and effectiveness (Aidt & Tzannatos, 2008; ILO, 2015e; Venn, 2009).

According to Bensusan (2016), governments should reinforce collective bargaining structures through their policies. These collective bargaining policies should ensure that employees in the new world of work can be heard, and that vulnerable workers are protected (Bensusan, 2016). The monetary policy regime of a country determines the consequences of labour co-ordination or the absence thereof (Aidt & Tzannatos, 2008).

When governments formulate policies and strategies to foster collective bargaining, they have to keep in mind their functions, according to ILO standards (ILO, 2015e), by:

- encouraging the full use and development of procedures and machinery for collective bargaining;
- promoting meaningful, informed, and constructive negotiations;

- implementing regulations to prevent and resolve labour disputes;
- enabling collective bargaining agreements; and
- assisting employers and trade unions to negotiate effectively.

Governments should implement the following:

- collective bargaining frameworks;
- alignment of the industrial relations frameworks with ILO standards;
- strengthening of existing mechanisms for collective bargaining; and
- addressing specific issues, such as wage inequality.

Governments determine issues and solutions related to collective bargaining by the following methods (ILO, 2015e):

- *Diagnostic approach*: This is when interviews, focus groups, and surveys on government, trade unions, and employers are conducted to determine the perceptions, concerns, and experiences regarding collective bargaining;
- *Studying international comparative practices*: Learning lessons and solutions from other countries;
- *Evaluation of policy impacts and interactions*: for example, the interaction between statutory minimum wage and collective bargaining; and
- *Involvement of social partners*: such as trade unions, by economic and social councils.

A minority of countries enjoy stable labour relations, where collective bargaining is essential (Bensusan, 2016). The low importance of collective bargaining in countries is due to: structural power determined by labour markets; a high percentage of workers who are from the informal sector or not protected by labour laws; the pressure of low productivity; conflict over freedom of association and collective bargaining; weak administration and pluralism of trade unions and policy; and physical persecution of trade union leaders (Bensusan, 2016).

Governments currently do not promote collective bargaining in the public sector, which leads to less collective bargaining in the private sector (Marginson, 2015). The failure of the Soviet Union showed the dominance of a neoliberal agenda in countries around the world (Godfrey et al., 2015).

The role of governments in transnational collective bargaining will be further discussed in Chapter 5.

3.6.3 Trade unions

Collective bargaining was established by trade unions formed by skilled minorities. When less skilled employees formed trade unions, trade unions became socially important, which led to unions playing a political role to achieve social justice and, later, playing an economic role (Godfrey et al., 2015; Grogan, 2010). The trade union system is a fundamental aspect of collective bargaining (The New School for Social Research, 2010).

Hicks (1932, cited in Cahuc & Zylberberg, 2003), stated that trade unions demand fair wages. Dunlop (1944, cited in Cahuc & Zylberberg, 2003), developed an economic theory with the view that trade unions' aim is to maximize total wages. Freeman and Medoff (1984, cited in Besamusca & Tijdens, 2015), noted that trade unions negotiate for higher wages, equal pay, and fair working conditions. Further, Besamusca and Tijdens (2015), Cahuc and Zylberberg (2003), and Visser et al. (2015), detected that collective bargaining regarding wages and working conditions is the key function of trade unions. Trade unions' purpose is to facilitate procedural arrangements and regulate relations between employees and employers and employer representatives, and to avoid conflict (Aidt & Tzannatos, 2002; Grogan, 2010). Trade unions communicate the interests of their members directly to management, and assist with the establishment of rules (Aidt & Tzannatos, 2002). Trade unions' duties also comprise of the sharing of information with other parties, information such as financial records, lists of members, minutes of meetings, and results of ballots (Aidt & Tzannatos, 2002; Grogan, 2010). A very innovative and creative role of trade unions is assisting with the changing of work methods and adapting to a more flexible approach (Aidt & Tzannatos, 2002; Cooke, 2005). Trade unions enter collective bargaining independently. They should therefore not be under the control of employers or employer organisations or public authorities, which is stipulated in ILO Convention 98, Articles 2 and 3 (ILO, 2015e).

Ross (1948, cited in Cahuc & Zylberberg, 2003), emphasised the importance of analysing the relationship between the union's preferences and those of its members. The preferences of the workers and unions are dependent on the trading off between employment and wages (Cahuc & Zylberberg, 2003). The homogeneity or heterogeneity of the individuals that a union comprises is representative of its preferences (Cahuc & Zylberberg, 2003). When a union consists of similar members, it makes their democratic voting more rational (Cahuc & Zylberberg, 2003). When the leadership of trade unions have discretionary power, their objectives are not always aligned with their members' objectives (Cahuc & Zylberberg, 2003). The goals of the unions depend, not only on the members' needs, but also the structure of the union (Cahuc & Zylberberg, 2003). Unions' power varies according to which variables are bargained over. Unions and companies negotiate over wages within a predetermined period

(Cahuc & Zylberberg, 2003). With new company investments, trade unions have a tendency to push for new wage negotiations (Cahuc & Zylberberg, 2003). Unions and firms negotiate a reduction in the number of hours if the income of the workers is low, productivity is high, and unions have power (Cahuc & Zylberberg, 2003). A very dominant trade union will most probably maximise the size of the organisation by increasing employment, but will not increase wages (Cahuc & Zylberberg, 2003).

In the United States of America (USA), trade unions have an economic function, whereas, in the EU, trade unions are called *social partners*, which means the trade unions have an influence on policy-making structures (Cahuc & Zylberberg, 2003). Smiley (2015) indicated that, in the USA, employees, especially disproportionately exploited black and immigrant employees in low-wage sectors, are not waiting for union recognition, they are acting like a union. They have made use of the power of other worker organisations, and demonstrated the necessity of new institutions and laws to support them. In many EU countries, unions have become concerned with conditions of workers in casual, temporary, and part-time work (Cahuc & Zylberberg, 2003; Xhafa, 2015; Zambarloukou, 2006). The concern is to protect vulnerable workers, as well as the rise of non-standard employment that will most likely undermine the existing wage- and working hour standards (Cahuc & Zylberberg, 2003; Xhafa, 2015).

According to Marginson (2015), the decline in trade union membership is widely recognised. The challenge trade unions have been faced with since their existence is redressing the imbalance of power between labour and capital (Faro, 2012). Long-term socio-economic changes and the global political climate and not shortcomings in labour legislation have made collective bargaining difficult for trade unions (Cahuc & Zylberberg, 2003; Ebbinghaus, 2004; Godfrey & Maree, 2015). The reasons for the decline in trade union membership are: deindustrialisation, the growth of the private sector, an increase in the number of white-collar workers, part-time employment, ageing of members, no support from young members, and a change from collectivism to individualism (Cahuc & Zylberberg, 2003; Ebbinghaus, 2004; Godfrey et al., 2015). According to a recent study by Marginson (2015), employers have become less prone to engaging in collective bargaining, and unions are less able to apply pressure on employers. Keune (2015, cited in Bensusan, 2015), stated that the role of trade unions has been reduced because they lack capability. Cahuc and Zylberberg (2003) provides evidence that, unionism results in lower employment, as it discourages employers from hiring employees.

3.6.4 Employer organisations

Employer organisations' purpose is to regulate the relationship between employers and employees or trade unions (Grogan, 2010). Aidt and Tzannatos (2002) point out that, employer organisations have two main functions: improving bargaining positions and preventing of wage increases. Employers currently conduct collective bargaining on a firm-by-firm basis, and not through employer organisations (Marginson, 2015).

3.6.5 Bargaining councils

Bargaining councils are voluntary bodies that consist of trade unions and employer organisations that serve as a forum for negotiating terms and conditions of employment (Van Niekerk et al., 2011). Where there are bargaining statutory structures in a government, the trade union may demand formalising a statutory bargaining body such as a bargaining council (Bendix, 2015; Grogan, 2010). Bargaining councils are utilised in centralised bargaining, which, according to the ILO, introduces bureaucratisation to the industrial relations scenario (Anstey et al., 2011; Grogan, 2010; Van Niekerk et al., 2011). However, with bargaining councils, the issue is that competitiveness and flexibility interests are not well attended to at enterprise level (Van Niekerk et al., 2011). According to Visser et al. (2015, cited in Bensusan, 2016), bargaining councils are effective in educating employees on their rights.

3.6.6 Workplace forums

Workplace forums are in-house institutions in a particular organisation or division (Grogan, 2010). The forums' aim is to promote the interests of all employees, enhance efficiency, and consult the employer to make joint decisions (Grogan, 2010). Members of workplace forums should not consist of senior managers (Grogan, 2010).

3.6.7 Statutory councils

Statutory councils can be established where union representation is relatively low, and where there is no bargaining council (Van Niekerk et al., 2011). Statutory councils do not have much power (Van Niekerk et al., 2011). Statutory councils are involved with concluding agreements on the following aspects: dispute resolution, education, promotion, and social security schemes (Grogan, 2010).

3.7 Typical collective bargaining subjects

In collective bargaining, employers and employee representatives negotiate with the aim of reaching agreement on two subjects, namely terms and conditions of employment, and the

rules for resolving workplace issues and disputes between the two parties (Bensusan, 2016; Besamusca & Tijdens, 2015; ILO, 2015b). Trade unions may address issues such as grievances and disciplinary and retrenchment procedures (Grogan, 2010). Management may address issues such as training, productivity, salary, and wage structure (Grogan, 2010).

3.7.1 Terms and conditions of employment

The terms and conditions of employment are a summary of what the employee and employer can expect to gain from the employment relationship and what they contribute to it (ILO, 2015c). Terms and conditions include the following subjects: wages, annual leave, entitlement to sick- and parental leave, hours of work, bonuses, job definitions and job classification, entitlement to training, conditions for promotion, transfer, retirement and restructuring, the provision of company housing, and the provision of health care (Eichhorst et al., 2011; ILO, 2015c). Wages and working hours are probably the most important subjects (Bensusan, 2016; Besamusca & Tijdens, 2015; Eichhorst et al., 2011; ILO, 2015c). In some labour relations systems, negotiations between trade unions and employers do not qualify as collective bargaining if these do not include wages and working hours (ILO, 2015c). Below follows an explanation of the bargaining subjects' wages and working hours.

Bargaining about wages: Wage bargaining entails the basic rates of pay, as well as the pay increases for different groups of workers (ILO, 2015c). Wage bargaining is mostly the pay rates that apply above statutory minimum wage, even though the legal minimum wage may be set by collective bargaining. Wage bargaining also includes the wage payment system, wage structure, and wage composition. The agenda of collective bargaining is moving away from managerial relations negotiations to wage negotiations (Bensusan, 2016). Wage bargaining has more or less disappeared in the countries that were the most affected by the recession and those who underwent the largest regulatory changes (Visser, 2016).

Working hours: Employment contracts specify when and how long the employee should work (ILO, 2015c). The bargaining comprises the overall length of the working day or week, as well as topics like rest periods, shift patterns, paid vacation time, overtime rates, and extra pay for working at night and over weekends or on public holidays, and flexible working arrangements (ILO, 2015c). Most countries have basic regulations on working hours for employees, which should be respected in the agreements (ILO, 2015c).

Bargaining beyond conditions of employment: In many instances, collective bargaining includes subjects that are not conventionally understood as conditions of employment such as family responsibility, vocational training, disability, and work–life balance (ILO, 2015c).

3.7.2 Rules for resolving workplace issues and disputes between the two parties

This comprises the procedures for dealing with matters affecting individual workers, like grievance claims or disciplinary action, as well as rules for the conduct of the collective bargaining relationship, rights and responsibilities of worker representatives, resolution of collective disputes, consultation, co-operation, information-sharing, and other, similar issues (Eichhorst et al., 2011; ILO, 2015c).

3.8 Strikes and lockouts

When both parties do not agree on a solution, it leads to strikes and lockouts. A strike is employees employing their collective right to withdraw labour during a labour dispute (Grogan, 2010). Many countries provide for the right to strike (ILO, 2015e; Martinez-Pecino et al., 2008). Strikes can be protected or unprotected (Grogan, 2010). During a protected strike, employees cannot be dismissed for striking. The opposite applies for unprotected strikes (Grogan, 2010). A lockout occurs when employers temporarily close the organisation or do not allow employees to come to work during disputes. Lockouts can be offensive or defensive. In an offensive lockout, an employer takes the initiative by excluding employees while they are employed (Grogan, 2010). In a defence lockout, the employer states that employees may perform their work only if they relinquish their demands (Grogan, 2010). Lockouts and strikes are two mechanisms that management and trade unions use to gain power (Anstey et al., 2011; Cooke, 2005). The right to strike will be further discussed in Chapter 4.

3.9 Benefits and decline in collective bargaining

3.9.1 Benefits of collective bargaining

- Collective bargaining assists in correcting the power imbalance between employees and employers (Grogan, 2010; Hayter et al., 2011; Visser et al., 2015).
- It can be a tool for aligning wages and productivity (ILO, 2015e).
- Collective bargaining has a positive effect on wages, while reducing their dispersion (Cahuc & Zylberberg, 2003; Visser et al., 2011).
- According to De Silva (1996), collective bargaining addresses the following issues for employers: productivity, criteria for wage increases, levels of bargaining, recognition criteria, extension of agreements, and disputes arising out of agreements.
- Collective bargaining increases wages, but decreases employment Calmfors and Driffill, (1988, cited in Godfrey et al., 2015).

- Collective bargaining allows bargaining regarding working hours, including flexible time, to enhance the work–life balance of employees (ILO, 2015e).
- Collective bargaining can improve access to social insurance, and can facilitate job security and employment protection (ILO, 2015e).
- It gives employees a voice in the workplace, which improves employee wellbeing (Hyman, 1999; ILO, 2015e).
- It can encourage parity between workers in regular and non-standard forms of employment working in the same company (ILO, 2015e; Xhafa, 2015).
- It can enhance access to on-going training and tailored training being offered according to employee-, company-, and sector requirements (ILO, 2015e).
- Collective bargaining increases worker commitment, and enhances the sharing of information (e.g., on work processes) (ILO, 2015e).
- Collective bargaining has a positive effect on productivity and a negative effect on profits, the number of hours worked, and investment (Cahuc & Zylberberg, 2003).
- It enhances the positive effects of workplace and technological changes on enterprise performance (ILO, 2015e).
- It facilitates adjustment to economic shocks (ILO, 2015e).
- During the economic crisis, collective bargaining saved jobs through work-sharing arrangements, which was also supported by public measures such as subsidies (ILO, 2015e).

3.9.2 Decline in collective bargaining

Cahuc and Zylberberg (2003) indicate that, the decline in collective bargaining is due to collective bargaining resulting in economic and political distortions that are not conducive to democracy and efficiency. The decline in collective bargaining globally is caused by the decline in the manufacturing industry, the integration of global markets, the reduction of workplaces, structural changes, an increase in white-collar employees, an increase in part-time employment, competition for work, globalisation, new technology, and states no longer promoting collective bargaining (Brown, Bryson, & Forth, 2008; Godfrey et al., 2015; Marginson, 2015; Visser et al., 2015). The lack of rights of workers in developing countries to organise and to engage in collective bargaining keeps wages low (Singh & Zammit, 2000).

3.10 Concluding remarks

Collective bargaining is a negotiation process between employee representatives and employers or employer representatives on substantive or procedural issues, with the aim of reaching an agreement (Bendix, 2015; Grogan, 2010; Eichhorst et al., 2011; ILO, 2015a;

Steenkamp et al., 2004). A collective agreement is more inclusive than an individual employee contract (ILO, 2015d). Since collective bargaining is a negotiation process, it is seen as a form of social dialogue (ILO, 2015e; Van Niekerk et al., 2011).

Collective bargaining labour law stipulates rules and principles that control the relationship between negotiating parties (Anstey et al., 2011). Collective labour law has a flexible and voluntary nature, which means the process and outcomes of negotiations are determined by the parties involved (Godfrey et al., 2015). Collective bargaining is considered a basic human right universally, and is a fundamental aspect of labour relations; however, most employees are still not granted the right to collective bargaining (Bensusan, 2016; Blackett & Sheppard, 2003).

There has always been a power imbalance between employers and employees, to the detriment of employees (Bensusan, 2016; Blackett & Sheppard, 2003). Collective bargaining was established through employees who formed alliances in order to have a more equal relationship with employers (Bendix, 2015; Glassner & Keune, 2010; Grogan, 2010; Maree, 2011). The power relationship is influenced by socioeconomic, political, technological, and demographic changes in the country, sector, and company (Cahuc & Zylberberg, 2003; Ebbinghaus, 2004; Godfrey et al., 2015). The employees' objective is to ensure that they receive fair return for their labour, according to the financial position of their employer. The employer's objective is to increase its competitiveness (Anstey et al., 2011; Van Niekerk et al., 2011). Successful collective bargaining does not mean that both parties will be satisfied with the agreement, but rather that the process followed was conducted in a fair and co-operative manner (ILO, 2015a).

The collective bargaining process can be described as a voluntary, co-operative, compromising, information-sharing, and argumentative process (Bendix, 2015). The collective bargaining process involves joint responsibility, decision-making, and problem-solving (Grogan, 2010). Parties negotiate over scarce resources, different needs, goals, interests, attitudes, values and perceptions, role conflict, communication, and inadequate structures (Bendix, 2015; Glassner & Keune, 2010; Godfrey et al., 2015; Grogan, 2010). The collective bargaining process is usually initiated by a party issuing a mandate (Bendix, 2015; Glassner & Keune, 2010; Godfrey et al., 2015; Grogan, 2010). The parties involved are independent, and should be familiar with the subjects on the agenda and the processes, and they should possess negotiation skills and understand the framework within which collective bargaining takes place (ILO, 2015e). Collective bargaining can either take place between workers and organisations (bipartite) or between employees, organisations, and government (tripartite) (Gernigon et al., 2000; ILO, 2015e; Van Niekerk et al., 2011).

The main parties involved in collective bargaining are the governments, employee representatives, employer representatives, and employers.

Governments are responsible for formulating structures that recognise and promote the right to collective bargaining (Aidt & Tzannatos, 2008; ILO, 2015e). Governments' labour relations structures differ from country to country (ILO, 2015e). Some governments have co-ordinated collective bargaining legislation, while others do not (ILO, 2015e).

Trade unions are the most prominent representatives of employees during collective bargaining (Godfrey et al., 2015; Grogan, 2010). The main purpose of trade unions has always been the redressing of the imbalance of power between labour and capital (Faro, 2012). Trade unions build relationships between employers and employees, improve the bargaining position of employees concerning increased wages, share information, assist with the formulating of rules, and resolve conflicts in the workplace (Aidt & Tzannatos, 2002; Grogan, 2010). The goals of a union depends on the union's needs and structure (Cahuc & Zylberberg, 2003). Trade unions have different functions in different regions of the world. In the EU, they have a social role, while in the USA they play an economic role (Cahuc & Zylberberg, 2003). Trade unions should be recognised as a negotiating party before negotiations takes place, by either voluntary or statutory means (ILO, 2015b). The ILO recommends that countries have predetermined criteria for the recognition of bargaining parties (ILO, 2015b). There is a decline in union membership, because of social and economic changes, the global political climate, employers' low engagement in collective bargaining, and trade unions' incapacity (Bensusan, 2016).

Employer organisations are the representatives of employers during collective bargaining (Grogan, 2010). Their purpose is to regulate the relationship between employers and employees or trade unions, to improve the bargaining position of employers and prevent wage increases (Aidt & Tzannatos, 2002). Employers currently conduct collective bargaining on a firm-by-firm basis, and not through employer organisations (Marginson, 2015).

The collective bargaining process steps identified in this study were: preparing, negotiating, concluding the collective bargaining agreement, and implementing the agreement. Different negotiation approaches are used by parties, depending on the situation. Parties not reaching agreement could lead to industrial action. The industrial action taken by employees are strikes, and the industrial action taken by employers are lockouts. Lockouts and strikes are both utilised to gain power (Anstey et al., 2011; Cooke, 2005).

Three measures of collective bargaining were defined and explained: trade union density, collective bargaining coverage, and bargaining co-ordination (Aidt & Tzannatos, 2008). Trade union density is the relationship between the number of employees belong to a trade union and those who do not belonging to a trade union (Aidt & Tzannatos, 2008; OECD, 2016). Bargaining coverage is the number of employees covered by a collective bargaining agreement (Aidt & Tzannatos, 2008; Hayter et al., 2011). The degree of collective bargaining co-ordination is defined as the structure of collective bargaining, informal co-ordination, and corporatism (Aidt & Tzannatos, 2008; Cahuc & Zylberberg, 2003).

Bargaining structures include bargaining units and bargaining levels (Grogan, 2010). Bargaining units are the employees who are covered by the agreements (Aidt & Tzannatos, 2008; Anstey et al., 2011; Cahuc & Zylberberg, 2003; Grogan, 2010). Collective bargaining take place at the following levels: workplace, establishment or plant, enterprise, industry, sector or branch of activity, regional or municipal, occupational or inter-professional, or national, with the latter including a combination of all levels. There are two collective bargaining structures used by employers: single-employer- and multi-employer settings. A single-employer setting is where only one employer negotiates with employee representatives; in a multi-employer setting, a few employers form alliances to negotiate with the employee representatives. The single-employer setting is more common, and does not contribute to higher wage inequality (Dell'Aringa & Pagani, 2005). Multi-employer bargaining, however, assisted during the economic crisis in EU, as it provided substantive and procedural certainty for parties at company level (Glassner et al., 2011).

Two types of collective bargaining structures are utilised by employee- or employer representatives: centralised and decentralised (Grogan, 2010; Dell'Aringa & Pagani, 2005). Centralised collective bargaining means negotiations are conducted on the sector- or industry level, which means the wage levels and patterns across the economy can be controlled and influenced by the national union confederation and the national employers' organisation (Aidt & Tzannatos, 2008; Dell'Aringa & Pagani, 2005; Grogan, 2010; Zambarloukou, 2006). Decentralised collective bargaining takes place on enterprise- or workplace level. Decentralised is currently more often utilised (Glassner & Keune, 2010; Grogan, 2010; Maree, 2011; Marginson, 2015). There is also the occurrence of disorganised decentralised collective bargaining, which is when local wage bargaining lacks the framework of national and sectoral bargaining (Glassner & Keune, 2010; Marginson, 2015). Both centralised and decentralised collective bargaining have benefits and disadvantages. Informal co-ordination refers to informal consultations at the industry-, regional-, or national level between parties (Aidt & Tzannatos, 2008). Corporatism is related to a high union density and bargaining coverage, a

high degree of union- and employer centralisation and concentration, as well as social partnerships between national workers, employer organisations, and government (Aidt & Tzannatos, 2008).

Collective bargaining subjects have increased from terms and conditions of employment and procedures for resolving of disputes to issues such as family responsibility, vocational training, disability, and a work–life balance. Wages and working hours are still the most frequently negotiated subjects (Bensusan, 2016; Besamusca & Tijdens, 2015; Hayter et al., 2011; Visser et al., 2015).

Collective bargaining can lead to various benefits for both employees and employers. A decline in collective bargaining was caused by the decline in the manufacturing industry, the integration of global markets, reductions of workplaces, structural changes, an increase in white-collar employees, an increase in part-time employment, competition in the workplace, globalisation, new technology, and governments no longer promoting collective bargaining (Brown et al., 2008; Godfrey et al., 2015; Marginson, 2015; Visser et al., 2015). To conclude, collective bargaining has certainly improved the living and working conditions of employees. The next chapter discusses the ILO conventions on freedom of association and collective bargaining.

CHAPTER 4: ILO CONVENTIONS ON FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

4.1 Introduction

In this chapter, a comprehensive analysis will be provided of the ILO's Conventions 87 and 98, which promote the right to collective bargaining. Firstly, the ILO's purpose and the history of the ILO's instruments promoting freedom of association, the right to organise, and collective bargaining will be described. This is followed by an overview of Conventions 87 and 98. Lastly, the key characteristics of Convention 87 and 98 are summarized.

4.2 The role of the ILO

The ILO is a United Nations agency, formed in 1919 as part of the Treaty of Versailles, which ended World War 1 (Arnold, Tailbart, Wind, Winzer, Sanchez, & Anzorreguy, 2015; Demaret, 2013; Dunning, 1998; ILO, 2017; Romeyn, 2007; Swepston, 1998). According to Blackett and Sheppard (2003), ILO (2017) and Romeyn (2007), the purpose of the ILO is to bring together the governments, employers, employer representatives, employees, and employee representatives of 187 member states in promoting decent work for all women and men. This is achieved by setting labour standards, developing policies, and implementing programmes. The ILO supports four core labour objectives, namely (Weissbrodt & Mason, 2014):

1. essential principles of rights at work;
2. more opportunities for employment with the essential rights at work;
3. improved collective bargaining coverage; and
4. and effectiveness of social protection and tripartism between governments, employers, and employees, and effective social dialogue.

The ILO meets these objectives through its Constitutions associated with the: Declaration of Philadelphia, 189 Labour Conventions, 202 Recommendations, the 1998 Declaration of Fundamental Principles and Rights at work, and mechanisms for member states reporting on and monitoring compliance with conventions (Weissbrodt & Mason, 2014). The ILO provides training and other methods of technical assistance, which means the ILO has a normative role (Blackett & Sheppard, 2003; Hassel & Helmerich, 2016; ILO, 2012; Trubek, Mosher, & Rothstein, 2000). The ILO holds parties liable to the standards of the ILO, which assists with the globalisation challenges faced by employees (Blackett & Sheppard, 2003). Arnold et al.

(2015) are of the opinion that the ILO standards system has not yet shown whether it is effective in the changed world of work.

For the last 80 years, the ILO, an intergovernmental body, has been setting various standards that promote social justice (Arnold et al., 2015; Blackett & Sheppard, 2003; Gernigon et al., 2000; Romeyn, 2007). Larion (2016) stipulates, the ILO's activities are based on international labour standards. The international standards are stipulated in Conventions and Recommendations adopted by the International Labour Conference (Chau & Kanbur, 2001; Demaret, 2013; Hassel, 2008; Hoffman & Schuster, 2016; ILO, 2017). Conventions are international treaties, and are binding upon ratifying members of the ILO (Chau & Kanbur, 2001; Demaret, 2013; Hassel, 2008; Hoffman & Schuster, 2016). Each member state has the decision whether it wants to ratify the Conventions (Chau & Kanbur, 2001). The evaluation of the effectiveness of Conventions has been one of the ILOs objectives since its inception (Blackett & Sheppard, 2003; Dunning, 1998; Swepston, 1998). Each member state needs to submit an annual report to the ILO on the measures taken to enforce the Conventions in an effective manner (ILO, 2012).

The ILO plays a fundamental role in promoting and implementing collective bargaining, which makes the ILO relevant to the present study (Blackett & Sheppard, 2003; Hyman, 1999). A major principle of the ILO is freedom of association and the right of employees to bargain freely to address employee working conditions (Weissbrodt & Mason, 2014).

4.3 The ILO's instruments to promote freedom of association, the right to organise, and collective bargaining

4.3.1 What is freedom of association?

Freedom of association is one of the key elements of every constitution and democratic order (Budeli, 2009; Curtis, 2004; Dunning, 1998; ILO, 2003; Larion, 2016). Freedom of association is also the foundation of labour law (Larion, 2016). According to Larion (2016) and Rossman (2013), freedom of association is important to bring a balance in power between employees and employers. Freedom of association started when employees demanded the freedom to join alliances for their own protection. Some authors have mentioned examples from ancient Greece and even earlier (Dunning, 1998; Larion, 2016). Collective bargaining requires the right to organise. This means collective bargaining cannot be meaningful without freedom of association (De Silva, 1996).

4.3.2 Methods utilised before Conventions 87 and 98

From the 1750s, employees started to come together in organised groups (Dunning, 1998; Godfrey et al., 2015; Grogan, 2010). In this period, governments and employers put laws and regulations in place to prohibit these organised groups, who protected employees' rights (Dunning, 1998). In 1891, the Pope declared the right of workers and employers to form and join associations for mutual help, without interference by the state, in the *Rerum Novarum* (Dunning, 1998).

In the early 1900s, at the International Congress on Labour, the International Association of Legal Protection of Workers (IALPW) was established (Dunning, 1998). The IALPW's purpose was to collect information concerning labour problems (Dunning, 1998). By 1913, a new organisation, the International Federation of Trade Unions (IFTU) was formed (Dunning, 1998). The IFTU and the IALPW played an active role in the establishment of the only tripartite UN agency the ILO in 1919 (Dunning, 1998).

In 1919, the ILO documented the standard of Freedom of Association in Part xii (Labour) of the Treaty of Versailles (Dunning, 1998). The first ILO convention on freedom of association was the Association Agriculture Convention of 1921 (Dunning, 1998; ILO, 2012; Swepston, 1998). In 1944, the Declaration of Philadelphia, which is part of the ILO's Constitution, stated that the ILO, together with governments, have the responsibility to implement relevant programmes that will assist with recognising the right to collective bargaining (Curtis, 2004; Gernigon et al., 2000).

4.3.3 Adoption of Conventions 87 and 98

At the 30th ILO conference, in 1947, the issues of freedom of association and protecting the right to organise were highlighted (Dunning, 1998; Larion, 2016; Swepston, 1998). After the 31st General Conference of the ILO, held in 1948, the revolutionary Freedom of Association and Protection of the right to Organise Convention, 1948 (No. 87), was adopted by the governing body of the ILO (Charnovitz, 2008; ILO, 2003). Ishola (2013) notes that, Convention 87 was the first major ILO instrument protecting freedom of association.

According to Swepston (1998), there were two prominent developments in international human rights. These were Convention 87 and the Universal Declaration of Human Rights of the United Nations. At the 32nd ILO conference, the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), was passed (Charnovitz, 2008; ILO, 2003).

4.3.4 Freedom of association, the right to freely organise, and collective bargaining instruments that followed Convention 98

After the adoption of Convention 98, the following conventions followed (ILO, 2015e, 2017; Visser et al., 2015):

- Collective Bargaining Recommendations, 1951 (No. 91), a guideline on the effects of collective agreements and on disputes that arise from the application of collective agreements.
- Workers' Representatives Convention, 1971 (No. 135).
- Rural Workers' Organisations Convention, 1975 (No. 14).
- Labour Relations (Public Service) Convention, 1978 (No. 151), which promotes collective bargaining for public employees.
- Promoting Collective Bargaining Convention, 1981 (No. 154). This convention determines the terms of employment, working conditions, and regulates relations between employers or employer organisations and trade unions (ILO, 2012, 2015d).

4.3.5 The applicability of the ILO Declaration on Fundamental Principles and Rights at Work

In 1998, the ILO adopted the Declaration on Fundamental Principles and Rights at Work, stressing the core labour principles of the international community (Chau & Kanbur, 2001; Coxson, 1999; Gernigon et al., 2000; ILO, 2003, 2012). The ILO core labour standards are integrated in the framework of private standards, national laws, and practices in transnational economic activities (Hassel & Helmerich, 2016).

The declaration discussed above covers the following four main areas (Coxson, 1999; Gernigon et al., 2000; ILO, 2003):

- freedom of association and the effective recognition of the right to collective bargaining;
- the elimination of all forms of forced or compulsory labour;
- the abolition of child labour; and
- the elimination of discrimination in employment and occupations.

The fundamental principles and rights of the ILO mentioned above have been expressed in eight ILO conventions, listed below (Coxson, 1999; ILO, 2003):

- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87);

- Right to Organise and Collective Bargaining Convention, 1949 (No. 98);
- Forced Labour Convention, 1930 (No. 29);
- Abolition of Forced Labour Convention, 1957 (No. 105);
- Minimum Age Convention, 1973 (No. 138);
- Worst Forms of Child Labour Convention, 1999 (No. 182);
- Equal Remuneration Convention, 1951 (No. 100); and
- Discrimination Convention, 1958 (No. 111).

Freedom of Association and the effective recognition of the right to collective bargaining is seen as a core labour standard by the ILO (Budeli, 2009). All member states of the ILO, even if they have not ratified these conventions, are required to respect, promote, and implement these eight conventions (Gernigon et al., 2000). The ILO (2011) stated that, all employees would benefit from the worldwide ratification and implementation of the ILO core conventions. For the purpose of this study, the fundamental conventions that will be discussed are: Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

4.4 The two main supervisory bodies of the ILO

The two main supervisory mechanisms of the ILO are the Committee of Experts on the Applications of Conventions and Recommendations (CEACR) and the Committee on Freedom of Association (CFA) (Gopalakrishnan, 2007; ILO, 2011; Swepston, 1998). Both supervisory bodies report on ILO member states' application and processes with regard to Conventions 87 and 98. The CEACR and the CFA do not have legal authority (Regenbogen, 2005).

The CEACR comprises individuals with in-depth knowledge and experience of the laws of member states, who are selected by the ILO governing body (ILO, 2011). The CEACR submits reports on member states' compliance with conventions they have ratified, as well as observations of employer and employee organisations (ILO, 2011).

CFA is a tripartite body that consist of nine members from representatives of government, employers, workers, and employers (ILO, 2011). The CFA examines complaints regarding freedom of association (Charnovitz, 2008; ILO, 2011). The CFA has three meetings per year, in which violations of freedom of association are discussed (ILO, 2011). The committee receives complaints from both members who have ratified the conventions and those who have not (ILO, 2011, 2012).

When reviewing the reports of ILO supervisory bodies, it is clear that member states that have ratified the ILO conventions on freedom of association and the right to collective bargaining often fail to put these into practice (ILO, 2012; Tatulashvili, 2011). According to Rossman (2013) and Tatulashvili (2011) violations of the rights guaranteed by these Conventions are still occurring, even in countries where there is a relatively strong rule of law. Ishola (2013) indicates that, full empowerment of the ILO supervisory bodies is needed to ensure that the ILO conventions ratified by member states are enforced. Arnold et al. (2015) stated that the ILO supervisory bodies have been inconsistent in the legal guidance they have given, which has led to them losing credibility.

4.5 Overview of Freedom of Association and Protection of the Right to Organise Convention 87

Convention 87 has been ratified by 154 countries (ILO, 2017). ILO Convention 87 of 1948 establishes general standards for freedom of association and the right to organise (Budeli, 2009; Coxson, 1999; Dunning, 1998; Ishola, 2013). This Convention is the cornerstone of collective labour rights, which, according to the ILO, should enable both employers and employees to exercise their right to organise freely (Budeli, 2009; Ishola, 2013). The Convention comprises the aspects of freedom of association, the right to organise, trade union independence, and non-interference by the state (Dunning, 1998; Larion, 2016). The aim of this Convention is to enable parties to reach a collective bargaining agreement by bargaining in good faith (ILO, 2003). Good faith refers to attitudes such as a belief and faith in the value of compromising through dialogue between employers, employees, and their organisations (De Silva, 1996). In Convention 87, it is emphasized that collective bargaining should be a voluntary process between parties, which means parties discuss and negotiate their own relations (Budeli, 2009; Coxson, 1999; ILO, 2003).

Convention 87 formulates the principle of freedom of association and protection of the right to organise into specific legal rights that are applicable in practice (Dunning, 1998). The articles of Convention 87 are concise, clear, unambiguous, and free of legal jargon, which makes the convention easily understandable for all (Dunning, 1998; Larion, 2016). Each Article contains clear requirements and has a convincing character (Larion, 2016).

There are four main parts in this convention: freedom of association, protection of the right to organise, various methods of the implementation of the Convention in non-metropolitan territories, and, lastly, provisions of member states ratification of the Convention. (Larion, 2016). The Convention consists of 21 articles.

The importance of Convention 87 is emphasized in two UN conventions: the International Covenant on Economic and Social and Cultural Right and the International Covenant on Civil and Political Rights (Arnold et al., 2015; Budeli, 2009). According to Dunning (1998), most trade unions see Convention 87 as very important. Civil and political rights are protected by this Convention (Dunning, 1998). According to Swepston (1989), Convention 87 remains valid for the changing world.

The following Convention 87 articles are most often discussed in literature:

Article 2 states that employees and employers, without distinction or discrimination of any kind as to occupation, sex, colour, creed, race, nationality and political opinion shall have the right to establish and join an organisation of their own choice without previous authorization (Budeli, 2009; Coxson, 1999; Gopalakrishnan, 2007; Larion, 2016; Swepston, 1998; Tatulashvili, 2011). The right to freely establish and join organisations is one of the most important aspects for the ILO concerning freedom of association (Swepston, 1998). However, the Convention does not mention the right of workers *not* to form or join an organisation (Budeli, 2009; Swepston, 1998). The purpose of Article 2 is two-fold: firstly, to protect employees against employers, and, secondly, to protect employees from state authorities that prevent them from organising (Budeli, 2009; Tatulashvili, 2011).

Article 3 emphasises non-interference by governmental authorities in the internal affairs of labour organisations (Budeli, 2009; Coxson, 1999). This means that employer and employee representatives have the right to draw up their own constitutions and rules, elect their own representatives, organise their administration and activities, and trade union leaders have access to the workplace and the freedom to formulate their own programmes (Budeli, 2009; Coxson, 1999; Gopalakrishnan, 2007; ILO, 2011; Swepston, 1998; Tatulashvili, 2011). Convention 87 in Article 3 emphasises that, for employer- and employee organisations to achieve the aim of furthering and defending the interests of workers or employers through collective bargaining, they have to be independent, and must be able to organise their activities without interference by governmental authorities (Gernigon et al., 2000). Governments that restrict the freedom of employer- and employee representatives to administrate and use their funds for normal organisational purposes are not aligned with this article (Swepston, 1998).

The free election of representatives of employers and worker organisations mentioned in Article 3 has caused problems, as it is ambiguous (Swepston, 1998). These problems are related to: procedures for trade union elections, eligibility conditions, and re-elections and dismissal of leaders (Swepston, 1998). Article 3 states that employees and employer

organisations are allowed to participate in political activities and publicly voice their opinions on government's economic and social policy (Swepston, 1998; Tatulashvili, 2011). The political activities mentioned above are another concern regarding Article 3, since these are not made clear in the Convention (Swepston, 1998). With reference to the latter, the CEACR stated that, if a country's legislation promotes close relationships between trade unions and political parties, it is contradicting the convention (Swepston, 1998). Trade unions can only demand that there be no interference in their activities if they do not take a clear political approach (Swepston, 1998).

Article 4 of the Convention states that employee- and employer organisations cannot be dissolved or suspended by an administrative authority (Budeli, 2009; Gopalakrishnan, 2007; Tatulashvili, 2011). The ILO supervisory bodies mentioned that suspension or dissolution does not resolve problems, and if there are social and economic problems, these are better resolved through the development of free and independent trade unions (Tatulashvili, 2011).

Convention 87, in Articles 2, 3, and 4, states that the conditions for the acquiring of legal personality by employer and employee organisations should not restrict the rights guaranteed by the Convention (Gopalakrishnan, 2007).

Article 5 of the Convention deals with the right of workers and employers to establish and join federations and confederations. Employers and workers' organisations have the right to join and establish federations and confederations, as well as to affiliate with international organisations (Budeli, 2009; Gopalakrishnan, 2007; ILO, 2011; Tatulashvili, 2011). This assists employer or employee organisations in protecting their members (Swepston, 1998; Tatulashvili, 2011). It is up to trade unions to decide to join confederations and federations, and it is up to confederations and federations to decide whether to accept a trade union (Tatulashvili, 2011). The problems encountered in confederations and federations mostly concern their constitution and activities (Swepston, 1998).

Article 6 states that Articles 2, 3, and 4 apply to confederations and federations (Tatulashvili, 2011).

Article 9 of Convention 87 stipulates that it is up to the state to determine the extent to which Convention 87 shall apply to armed forces and the police (Budeli, 2009; ILO, 2011; Tatulashvili, 2011). The exception was justified by a consideration of internal and external security issues of individual states (Tatulashvili, 2011).

Article 10 recognises the right to organise of both employees and employers, without any distinction (Budeli, 2009; Swepston, 1998). This means that the Convention aims to give all

employers and employees, including public officials, the right to organise, without distinction on the basis of sex, race, religion, nationality, social opinion, or political opinion (Budeli, 2009).

4.6 Overview of the Right to Organise and Collective Bargaining Convention 98

Convention 98 has been ratified by 164 member states (ILO, 2017). The CEACR stated that the large majority of governments who have ratified this convention apply it adequately (Gernigon et al., 2000). Convention 98 specifically deals with the right to organise and bargain collectively. It also provides protection for employees, employers, and employee- or employer organisations against interference by each other, each other's representatives, and government in their establishment, functioning, and administration (Budeli, 2009; Gopalakrishnan, 2007; Ishola, 2013).

Furthermore, it includes safety measures regarding the right to organise, and makes provision for the development of the machinery of collective bargaining (Budeli, 2009). Convention 98 protects the rights of employees and employer organisations with reference to anti-union discrimination in the workplace, and ensures promotion of collective bargaining through autonomy of the parties and voluntary character of negotiations (Coxson, 1999; Gopalakrishnan, 2007; ILO, 2011; Ishola, 2013; Larion, 2016; Tatulashvili, 2011). Convention 98 is short, with only six major items (Larion, 2016).

This Convention focuses on the rights of employees (Budeli, 2009). It was created to protect trade unions and their organisations against possible pressures by employers and their organisations (Budeli, 2009). Convention 98 does not define collective agreement or collective bargaining, only their objectives (Larion, 2016). It is important to note that the right to organise and the right to bargain collectively are recognized as two separate issues (Tatulashvili, 2011). It is possible to apply certain collective bargaining restrictions where it is forbidden to limit the right to organise (Tatulashvili, 2011).

Convention 98, like Convention 87, gives the state the opportunity to decide the extent to which the standards apply to armed forces and the police (Gernigon et al., 2000; Gopalakrishnan, 2007; Tatulashvili, 2011). Unlike Convention 87, Convention 98 excludes some categories of public servants, namely those engaged in the administration of the state (Gernigon et al., 2000; Tatulashvili, 2011). Public authorities can intervene if the collective bargaining takes place in the public or semi-public sector, but they should still leave enough space for collective bargaining to take place. Convention 98 states that governments do not have a duty to make collective bargaining compulsory (Gernigon et al., 2000).

The following Convention 98 articles are most often discussed in literature:

Article 1 of the Convention protects employees against acts of discrimination and victimisation by their employers because of their trade union membership or activity (Budeli, 2009; ILO, 2011; Tatulashvili, 2011). This means the conditions of employment should not lead to the employees feeling threatened when joining trade unions or participating in trade union activities (Budeli, 2009; Tatulashvili, 2011). Anti-union dismissal must be treated differently from other types of dismissals, since it might result in denial of the rights mentioned in Convention 87. According to Article 1, employees should have protection against measures of anti-union discrimination at the time of taking up employment, during employment, and during termination of employment. For this article to be implemented, certain machinery for protection need to be enforced in governments (Tatulashvili, 2011). The legislation should provide effective processes for dismissal, to get compensation, and to be reinstated (Tatulashvili, 2011).

Article 2 of the Convention states that workers and employer organisations shall enjoy adequate protection against any acts of interference by each other (Budeli, 2009; ILO, 2011; Tatulashvili, 2011).

Article 3 deals with the establishment of machinery suitable for national conditions to ensure respect for the right to organise (Budeli, 2009; Gopalakrishnan, 2007; Tatulashvili, 2011).

Article 4 consists of two essential elements: action by public authorities to promote collective bargaining and the voluntary nature of the negotiations, which means the autonomy of the parties (Gernigon et al., 2000; Gopalakrishnan, 2007; ILO, 2011; Tatulashvili, 2011). Convention 98 does not define a collective agreement, but contains fundamental aspects of collective agreements in Article 4 (Gernigon et al., 2000; Larion, 2016). This Article states that direct settlements signed between employers and a group of non-unionised employees, even when a union exists during the negotiations, does not promote collective bargaining (Gernigon et al., 2000).

Articles 4 to 6 of Convention 98 establish the relationship between collective bargaining parties and deal with the conclusion of collective agreements (Gernigon et al., 2000; Gopalakrishnan, 2007).

Article 6 of the Convention clarifies that it does not deal with public employees engaged in the administration of a government (Gernigon et al., 2000; Gopalakrishnan, 2007).

4.7 The right to strike is debatable in Conventions 87 and 98

The right to strike is not explicitly guaranteed by these Conventions, but the right to strike is an intrinsic result of the right to organise, which means the strike action cannot be seen in isolation from labour relations as a whole (Gopalakrishnan, 2007; ILO, 2011; Larion, 2016; Swepston, 1998). Arrests and dismissals due to strikes lead to serious abuse by freedom of association being put in danger (Swepston, 1998). The ILO has stated that the right to strike is an essential aspect, and it may be restricted by law where public safety is concerned, as long as there are alternatives provided, such as mediation, arbitration, or conciliation (Budeli, 2009). Convention 87 deals with the right to freedom of association, but does not specifically address the right to strike (Ewing, 2015). Articles 3, 8, and 10 of Convention 87 have been interpreted as being inclusive of the right to strike (Gopalakrishnan, 2007; ILO, 2011; Larion, 2016). The reason for strikes not explicitly mentioned in Convention 87 and 98 is that the ILO does not want to restrict the freedom of relations between employer organisations and employee organisations (Coxson, 1999; Servais, 2009).

The CEACR has, on numerous occasions, stated that the right to strike is a fundamental right of workers (Gernigon et al., 1998). The CEACR considers the legislation governing strikes as satisfactory, as a clear majority of member states have ratified Convention 87 (Gernigon et al., 1998). In 1959, in the ILO General Survey on Conventions 87 and 98, the right to strike was mentioned in the context of freedom of association (Regenbogen, 2005). In the 1973 ILO General Survey, the CEACR expanded its view on the right to strike (Regenbogen, 2005). In the 1994 ILO General Survey, the CEACR's views on the right to strike were included in a separate chapter (Regenbogen, 2005). The CEACR stated that the right to strike is one of the most essential ways to further and defend occupational interests (Servais, 2009).

The CFA has, on numerous occasions, stated that the right of employees to strike is an essential element of freedom of association (Budeli, 2009). The CFA has recognised the right of trade unions as organisations of workers to further and defend their occupational interests, to formulate programmes, and organise their activities (Servais, 2009). This means that unions may negotiate with employers and express their views on economic and social issues (Servais, 2009).

Gernigon, Odero and Guido (1998) emphasised that Conventions 87 and 98 do not contain specific provisions regarding the right to strike. Arnold et al. (2015) is of the opinion that, Convention 87 does not include the right to strike. There was no consensus within the ILO until 2015 on whether the right to strike is protected by Convention 87 (Hofmann & Schuster, 2016; Regenbogen, 2005). The ILO formulated a joint statement in 2015, wherein they

acknowledged that the right to take industrial action by employees and employers is recognized by the ILO (Hofmann & Schuster, 2016). Ales and Dufresne (2012) point out that, effective transnational collective bargaining (TCB) requires the recognition of rights such as the right of association and the right to strike.

4.8 Characteristics of Conventions 87 and 98

4.8.1 Conventions 87 and 98 complement each other

There is a relationship between the International Covenant on Economic, Social and Cultural Rights of the UN and ILO conventions. Phrases in Article 8 of the Covenant were taken directly from Convention 87 and Convention 98 (Sibbel, 2001).

Conventions 87 and 98 complement each other; Convention 87 guarantees the right of freedom of association, which is needed in collective bargaining, and Convention 98 guarantees the right to collective bargaining. This means the two conventions are normally integrated in interpretations (Dunning, 1998). When both conventions are integrated, they ensure that employees can join and form trade unions freely, as well as partake in voluntary collective bargaining with the purpose of reaching an agreement (Hughes, 2005). The importance of the interplay between freedom of association, freedom of collective bargaining, and proper functioning of dispute resolution is stressed in both Conventions (Servais, 2009). The use of the term *worker* in these two Conventions is clearly broad, and includes the self-employed and those seeking employment (Budeli, 2009).

In the Conventions, governments are given a framework with legal methods, practices, and institutions to ensure that the rights are guaranteed without any discrimination (Hughes, 2005). Both Conventions leave it to governments to achieve compliance. It proposes two implementation methods for governments to achieve compliance (Larion, 2016). First, appropriate bodies should be set up to ensure implementation (Larion, 2016). Secondly, appropriate measures must be taken to encourage and promote the full development and use of procedures (Larion, 2016).

Conventions 87 and 98 include flexibility clauses, because different countries have different cultural and historical backgrounds, legal systems, and levels of economic development (Tatulashvili, 2011). Therefore, standards must be flexible enough to be translated into national law and practice (Tatulashvili, 2011).

4.8.2 The conducive and enabling environment needed for the implementation of Convention 87 and 98

Exercising the rights contained in Conventions 87 and 98 requires a helpful and supporting environment with the following main elements (ILO, 2012; Tatulashvili, 2011):

- The labour relations framework of governments should enforce these rights.
- Collective bargaining should be enabled through an institutional framework that is tripartite, or between employers and workers' organisations.
- Individuals who wish to exercise their rights should under no circumstances be discriminated against.
- Employers and employee organisations should accept that they are negotiating partners with the aim of resolving shared issues and dealing with mutual challenges.
- There should be efficient labour administration and strong worker- and employer organisations.

4.8.3 Benefits of ratifying Conventions 87 and 98

Below is a summary of the study done by the ILO in 2011 on the benefits that Conventions 87 and 98 will have for India.

The benefits are (ILO, 2011):

- It will indicate their commitment to internationally recognised core labour standards and increase its influence and enhance its standing in the international arena.
- This will result in economic benefits.
- It will be beneficial for employees.
- It will reduce costly labour management conflicts and promote industrial harmony and social stability.
- Studies on trade unions and productivity have indicated that trade unions can enhance productivity and efficiency, and that unionised workers are more likely to increase productivity and innovation relating to technological change, changing the product mix, and reorganising work.

The study indicated that the ratification of the Conventions would be beneficial to the country's workers and employers, as well as economy (ILO, 2011).

4.8.4 The role of Conventions 87 and 98 in Transnational Corporations

Conventions 87 and 98 have been referenced in international framework agreements (IFAs), as well as in codes of conduct of transnational corporations (TNCs) (Arnold et al., 2015; Bourque, 2008; Hayter et al., 2015; Rissgaard, 2005; Schömann et al., 2012). The objectives of IFAs and codes of conduct are to ensure compliance with core labour standards and to encourage social dialogue (Gallin, 2008; Hammer, 2005, 2008; Niforou, 2012). Arnold et al. (2015) point out that, IFAs that refer to Conventions 87 and 98 will not always lead to legal consequences for TNCs, as both conventions are very broad. TNCs are not always aware of the effects that IFAs that refer to Conventions 87 and 98 could have on their business strategy and goals (Arnold et al., 2015). According to Glassner (2012) and Schömann et al. (2012) Conventions 87 and 98 grant the right to collective bargaining on a national level, but not a transnational level. IFAs will be discussed in more detail in Chapter 5; however, codes of conduct were not highlighted in the literature analysed.

4.9 Concluding remarks

The ILO plays a fundamental role in promoting and implementing freedom of association and the right of employees to organise and bargain freely (Blackett & Sheppard, 2003; Hyman, 1999). Prior to Conventions 87 and 98, the following mechanisms were utilised to promote freedom of association, the right to organise, and collective bargaining (Dunning, 1998): *Rerum Novarum*, implemented by the Pope in 1891; ILO Treaty of Versailles in 1919, documenting the standard Freedom of Association; ILO Association Agriculture Convention, 1921; and the Declaration of Philadelphia in 1944, which stated that the ILO and governments have the responsibility to implement relevant programmes that will assist with recognising the right to collective bargaining (Curtis, 2004; Gernigon et al., 2000).

The ILO governing body adopted Convention 87 on freedom of association and protection of the right to organise in 1948, and Convention 98 on the right to organise and collective bargaining in 1949 (Charnovitz, 2008; ILO, 2003). Conventions 87 and 98 form part of the ILO Declaration on Fundamental Principles and Rights at Work, adopted in 1998 (Chau & Kanbur, 2001; Coxson, 1999; Gernigon et al., 2000; ILO, 2003, 2012).

The basic aspects of Convention 87 are as follows (Dunning, 1998; Larion, 2016). Employees and employers, without distinction or discrimination of any kind, have the right to freely establish and join organisations (trade unions, federations, confederations, and employer organisations) of their choice (Larion, 2016). Trade unions can draw up their own constitutions and rules, elect their own representatives, and manage their own administration and activities,

and trade union leaders can access the workplace (Budeli, 2009). Parties should discuss and negotiate their own relations, without interference from government (Budeli, 2009; Coxson, 1999; ILO, 2003).

Convention 87 was a momentous development in international human rights, and is a cornerstone of collective labour rights (Swepston, 1998). Trade unions see Convention 87 as very important, and it is still considered valid in the changing world (Dunning, 1998).

Convention 98 was created to protect trade unions from employers and their organisations (Budeli, 2009). Convention 98 emphasises that parties should be protected from interference and discrimination from each other, each other's representatives, and government, to ensure voluntary and fair collective bargaining (Budeli, 2009; Gopalakrishnan, 2007; Ishola, 2013). There are possible methods proposed in the Convention to ensure the right to organise and collective bargaining (Budeli, 2009). The voluntary nature of the collective bargaining process, the aspects of collective bargaining agreements, and parties' involvement in negotiations are emphasised in Convention 98. Convention 98 only defines the objectives of collective bargaining (Larion, 2016).

According to De Silva (1996), collective bargaining cannot be meaningful without freedom of association. Freedom of association is the cornerstone of labour law, and has been promoted by employees for many years, with the aim of balancing the relationship with employers (Larion, 2016). Conventions 87 and 98 complement one another, as they ensure that employees can join and form trade unions freely and participate in voluntary collective bargaining, which is needed to reach a collective bargaining agreement (Hughes, 2005). Both Conventions leave it to governments to achieve compliance, and flexibility clauses ensure that countries can adapt labour legislation according to their cultural and historical backgrounds, legal systems, and level of economic development (Tatulashvili, 2011). Governments can also determine the extent to which the Conventions apply to armed forces and the police. Convention 98 excludes some categories of public servants (Gernigon et al., 2000; Tatulashvili, 2011). The right to strike is implicit, and not explicit, in both Conventions 87 and 98; however, in 2015, the ILO determined that workers should have the right to strike (Hofmann & Schuster, 2016). According to Ales and Dufresne (2012), effective TCB requires the right of freedom of association and the right to strike.

The two main supervisory bodies of the ILO are the CEACR and the CFA. They report on member states' application of the processes of Conventions 87 and 98. The ILO's supervisory bodies' reports have indicated that countries that have ratified these ILO Conventions do not enforce these rights properly (Rossman, 2013; Tatulashvili, 2011). To ensure enforcement of

these conventions, Ishola (2013) suggested that the ILO supervisory bodies should get full legal empowerment. The ILO supervisory bodies have been inconsistent in the legal guidance they have given, which has led to them losing credibility (Arnold et al., 2015).

Conventions 87 and 98 have been used in IFAs and codes of conduct of TNCs (Arnold et al., 2015; Bourque, 2008; Hayter et al., 2015; Rissgaard, 2005; Schömann et al., 2012). Conventions 87 and 98 are very broad, which has resulted in IFAs lacking legal consequences. When TNCs refer to Conventions 87 and 98 in their IFAs, they are sometimes oblivious to how it can affect their business strategy and goals (Arnold et al., 2015). The ratification of the Conventions can be beneficial to a country's workers, employers and economy (ILO, 2011). Conventions 87 and 98 grant the right to collective bargaining on a national level, but not a transnational level, which is problematic during TCB (Schömann et al., 2012).

According to Blackett and Sheppard (2003) and Curtis (2004) both Convention 87 and 98 can assist with the globalisation challenges faced by employees. The implementation of Conventions 87 and 98 requires governments, employers, and trade unions to work together. In conclusion, ILO Conventions 87 and 98 have been important in the development and promoting of freedom of association, the right to organise, and collective bargaining, by providing a guideline of the legal practices that could be put in place to ensure that these rights are enforced without discrimination, and by clarifying the parties' involvement. The next chapter involves the explanation of transnational, transnationalism, transnational labour relations and the TCB in the EU.

CHAPTER 5: TRANSNATIONAL LABOUR RELATIONS

5.1 Introduction

The aim of this chapter is to provide an in-depth understanding of transnational collective bargaining (TCB). First, the concepts *transnational* and *transnationalism* will be defined. This is followed by an explanation of the causes of transnational labour issues. A detailed description will then be given of transnational labour law (TLL). Lastly TCB in the EU will be analysed.

5.2 Transnational

Transnational is “beyond what is considered national, in other words across national borders” (Smit, 2014, p. 2). Hyman (1999) stated that transnational means the movement of individuals, technologies, ideas, and institutions across national boundaries. According to Risse (2012), transnational relations is the regular interaction across national boundaries, with at least one non-state actor. Transnational activities are described by Snel, Engbersen, and Leerkes (2006) as economic, political, social, or cultural relations across national borders. Transnational activities are structured in networks, especially with regional integration (Golden, 2014). These networks are important for dialogue and exchanging experiences and services (Golden, 2014).

Transnational processes involve capital flow, labour mobility, technology diffusion, international subcontracting chains, information networks, and just-in-time production (Blackett & Trebilcock, 2016). These processes involve thorough reconfiguration of time and space (Blackett & Trebilcock, 2016; Ngai & Smith, 2007). Transnational actors either operate in a global area or in specific regions (Risse, 2012). According to Risse (2012), the transnational actors differ in the following ways:

- Some actors can be formal organisations, and others can be networks that comprise any collection of actors, without a central authority.
- There are some actors who are motivated by self-interest in promoting the well-being of the organisation. Other actors’ purpose is to motivate what is good.

Labour markets are transnational when there is regular and considerable social interaction between employees across national borders (Smit, 2016). Transnational labour strategies are created through trade unions’ dependence on national regulation, globalisation, and production (Lillie & Lucio, 2012).

Schömann et al. (2012) stated that support from labour movements, employers, and political role players, as well as a rigorous and maintainable transnational labour relations framework, is essential for transnationality. Kivisto (2001) explored a few theories of transnationality, and came to a conclusion that the Thomas Faist theory of transnational social spaces was the most efficient. Faist's theory indicates that a transnational community is viable when there is a continuous pattern of involvement by both government and civic institutions (Kivisto, 2001). An example of cross-border solidarity occurred in 1986, when unions, churches, civil rights organisations, and social justice non-governmental organisations (NGOs) from around the world joined alliances in a global campaign against South Africa's apartheid system (Bronfenbrenner, 2007).

5.3 Transnationalism

International economists originally described transnationalism as the flows of labour and capital across national borders, but, currently, the concept is applied more broadly (Lee, 2011). Transnationalism is described as the multiple ties and interactions linking people or institutions across national borders (Al-Ali, Black, & Koser, 2001; Tornimbeni, 2005; Vertovec, 1999). Smit (2016) defined transnationalism as the associations and interactions of education, politics, economics, and sharing of information between people and institutions. Rathzel (2012) stipulated that, transnationalism is when actors internationally work together on issues, by sharing values and exchanging information and services.

Transnationalism has often been utilised to describe the new phenomenon of transboundary networks (Tornimbeni, 2005). The changing global capitalism and relationship between capital and labour gives one a better understanding of transnationalism (Horvath, 2012; Tornimbeni, 2005). Transnationalism has two dimensions, namely forming new transnational structures and standards affecting workers' rights, and then activating transnational networks (Trubek et al., 2000). Tornimbeni (2005) notes that, transnationalism has never been given an adequate theoretical framework. Labour transnationalism, according to Greer and Hauptmeier (2008, cited in Smit, 2016), can be defined as trade unions using transnational tools and structures. McCallum (2011) is of the opinion that, labour transnationalism can inspire local union renewal.

5.4 Causes of transnational labour issues

Global changes have resulted in employers, employer representatives, employee representatives, governments, and NGOs reassessing the regulation of labour (Blackett & Trebilcock, 2016; Telljohann, Costa, Müller, Rehfeldt, & Zimmer, 2009). According to

Schömann et al. (2012), economic changes such as increased globalisation and the EU's single market have an effect on labour regulation. The post-industrial society, transnational politics, economic integration, labour-market integration, political changes, and deregulation of international capital have changed labour (Blackett & Trebilcock, 2016; Hammer, 2005; Pulignano, 2005, 2010; Schömann et al., 2012; Smit, 2014). According to Hayter et al. (2011), Pulignano (2010), and Schömann et al. (2012), global economic integration and globalisation have resulted in employers having greater bargaining power. The ILO came to the conclusion that globalisation has changed the bargaining power of governments and employees (Godfrey et al., 2015). TNCs, the World Bank, the International Monetary Fund (IMF), and the World Trade Organisation (WTO) have great power and resources, whereas employees and social activists have little power in the global economy (Armbruster-Sandoval, 2003; Blackett & Trebilcock, 2016; Telljohann et al., 2009).

Cameron and Palan (2004, cited in Lillie & Lucio, 2012 & Hyman, 1999), stated that globalisation is both a myth and a reality. The myth guides action, which creates reality. The process of globalisation has caused the reduction of barriers of the flow of goods, services, capital, and labour across borders (Bieler, 2005; Da Costa & Rehfeldt, 2008; Eichhorst et al., 2011; Pulignano, 2005). Hyman (1999) provides evidence that, globalisation of production chains, product markets, corporate structures, and financial flows has resulted in national boundaries becoming irrelevant. The process of globalisation has also made labour mobile across national borders (Bjelić, 2013). Globalisation has three main factors: internationalisation of financial markets; trade liberations and the shift of low-skill manufacturing industries from developed to developing countries; and companies pursuing 'exit options' that threaten national systems of employment regulation (Bieler, 2005; Bjelić, 2013; Hyman, 1999; Keune & Schmidt, 2009; Puligano, 2005; Rathzel, 2012).

The flexible forms of transnational production and processes of economic globalisation are increasingly challenging the traditional capacity of domestic labour law in the world of work (Macklem, 2002; Rathzel, 2012; Smit, 2016). Bieler (2005) pointed out that, the role of labour is overlooked in globalisation and production changes. Keune and Schmidt (2009) stated that globalisation has had many negative social consequences, such as growing inequalities and insecurity, loss of democratic control over the economy, and the growing power of capital.

Globalisation has caused new actors and fresh opportunities to establish labour standards (Rissgaard, 2005; Trubek et al., 2000). Globalisation affects all workers in different ways. As cited in Armbruster-Sandoval (2003), Herold 2001 mentioned that globalisation is a ruthless process that workers cannot effectively challenge (Armbruster-Sandoval, 2003; Rathzel, 2012; Trubek et al., 2000). Neo-liberal globalisation is driven by powerful transnational corporations

(TNCs), otherwise known as *multinational companies* (Pulignano, 2005; Rathzel, 2012; Schömann et al., 2012).

The social and industrial relations consequences, such as social dumping and labour market segmentation of globalisation, create a need for transnationally co-ordinated methods by trade unions and other employee representatives on all the different collective bargaining levels (Golden, 2014; Schömann et al., 2012). The goal of transnational unions is to halt or slow down globalisation and to gain leverage on national and international levels (Trubek et al., 2000). Globalisation and the growth of TNCs have resulted in trade unions changing (Rathzel, 2012). A number of scholars believe that globalisation has resulted in trade unions becoming obsolete (Rathzel, 2012). There is a lack of institutions, instruments, and initiatives allowing employees to pursue transnational strategies matching the globalisation approaches of management (Pulignano, 2010). New international labour movements and their mobilisation for migrants' rights at a national and transnational level have brought hope for global countermovement (Rathzel, 2012). According to Golden (2014), if transnational labour action is not taken soon, there might be little left to settle on.

5.5 Transnational labour law

5.5.1 Defining transnational labour law

Labour laws determine the rights and obligations in the relationships between parties (Hepple, 2005). Labour law has changed in the following ways (Egels-Zanden, 2008; Hassel & Helmerich, 2016; Macklem, 2002; Smit, 2014):

- The ILO's traditional hard law approach has not kept up with global production changes.
- The ILO established the 1998 Declaration on Fundamental Principles and Rights at Work in the context of activities of trade unions, NGOs, and firms.
- The perspective of soft law has changed, which includes non-states actors and new modes of soft regulation. The latter has led to debates about the future of the roles of traditional forms of global regulations and new methods of establishing labour regulations.
- Numerous institutions and actors are linking international labour rights with trade liberalisation initiatives.
- Labour laws have changed because of transnational labour relations competing with the present national labour relations.

Furthermore, labour laws have the moral function of upholding human dignity and assuring that employees are not seen as products or objects of business (Hepple, 2005). TLL has similar economic and moral grounds. However, TLL at supranational level may sometimes have adverse consequences that may not be seen in national labour laws (Hepple, 2005). TLL emerged through pressure from NGOs and changes brought about by globalisation, such as global interdependence, technological innovation, labour migration, poverty, and discrimination (Al-Ali et al., 2001; Blackett & Trebilcock, 2016; Vertovec, 1999). Helfen and Fichter (2011, 2013) and Smit (2016) stated that TLL is in a formative stage, which means it is still emerging and growing. According to Hepple (2005), during the last two centuries, the need for TLL has been challenged.

TLL is the regulation of work in the transnational domain and across authorities (Kolben, 2011). Smit (2016) defined TLL as the laws that regulate the relationships between self-governing governments. TLL is a strategy and an experimental effort to equalise, empower, or to remedy (Blackett & Trebilcock, 2016).

TLL deals with complexity, diversity, and asymmetry across time and space, as well as economic interdependence challenges (Blackett & Trebilcock, 2016). Labour law or international law is not reclassified as TLL (Blackett & Trebilcock, 2016). TLL can have a set of rules, guidelines, and principles that are observed by various states (Smit, 2014). Kolben (2011) described TLL as a spider's web or a mosaic, because of normative heterogeneity. Abbott and Snidal (2009, cited in Hassel & Helmerich, 2016) stated that, the new transnational governance includes private actors and decentralised decision-making. TLL is the system of relationships based on labour aspects of production between employees, trade unions, employers, employer representatives, governments, and international bodies (Fetzer, 2012; Smit, 2014; Trubek et al., 2000). The arena of labour relations has been broadened by new actors becoming involved, mainly in the form of NGOs entering TLL (Bieler, 2005; Egels-Zanden, 2008).

TLL takes place on multiple levels, i.e. on an international, regional, national, and shop level, and through voluntary and binding standards (Blackett & Trebilcock, 2016; Egels-Zanden, 2008; Faro, 2012; Hassel & Helmerich, 2016). This means the laws may be (Hepple, 2005; Marginson, 2008):

- (1) unilateral, applied by one country to another country, without agreement;
- (2) bilateral, through a treaty between two countries;
- (3) regional, by a treaty between a number of states in a particular region of the world; or

(4) multilateral

Transnational labour regulation can be either diffused or enhanced by multilevel and multi-actor interdependence (Hassel & Helmerich, 2016). Taylor (1999) mentioned that most countries encourage TLL, but many still restrict or prevent its development.

5.5.2 Transnational legal processes

Transnational legal processes (TLP) entails an understanding of compliance with international law (Smit, 2014). As cited by Smit (2014, 2016) Koh 1996 stated that TLP is based on the theory and practices of all transnational actors in the interactions of public, private, non-state, and international organisations, TNCs, NGOs, and private individuals in a variety of private public, domestic, and international arenas, as well as their interpretations, enforcement, and internalising of international law. According to Smit (2016), TLP has four core characteristics: it is non-traditional, as it includes non-state actors, it is non-statist, it is very dynamic, and normative.

5.5.3 Transnational labour law methods

The methods that are implemented in TLL are diverse. These include soft, hard, domestic, international, public, and private law (Hepple, 2005; Kolben, 2011; Smit, 2016). The methods of TLL have multiplied in response to globalisation (Hepple, 2005; Kolben, 2011). The methods of TLL should be utilised to spread best practices of TNCs, and promote sustainable development based on striving for social justice (Blackett & Trebilcock, 2016; Hepple, 2005). The methods of implementing TLL are: corporate codes and labels of conduct, IFAs, NGO initiatives, government legislation, guidelines of the ILO, government agencies from different countries consulting each other, unilateral social clauses, social clauses of the WTO, new forms of global unionism such as EWCs, bilateral agreements and regional agreements such as the European Union Social Charter and the North American Agreement on Labour Cooperation (Hepple, 2005; Egels-Zanden, 2008; Smit, 2014, 2016; Trubek et al., 2000). As stated by Dumas (2016, cited in Blackett & Trebilcock, 2016), collective representatives represent the core method of TLL

The methods most often identified in the present research were: IFAs, NGO initiatives, government legislation, guidelines of the ILO, social clauses of the WTO, EWCs as a new form of global unionism, and the EU Social Charter. These methods are explained below. The EU Social Charter is described in the EU TCB section.

International Framework Agreements

IFAs are agreements that transcend national boundaries (Telljohann et al., 2009). According to Helfen and Fichter (2013), the development of transnational arenas of labour relations is dependent on the organisation and governance of IFAs that are related to transnational union networks (TUNs). IFAs are instruments negotiated by TNCs and global union federations (GUFs); these have a global scope, and are utilised to establish an ongoing relationship between transnational parties and ensure that the same standards of employment are implemented in all countries in which the company operates (Da Costa & Rehfeldt, 2008; Keune & Schmidt, 2009; Schömann et al., 2012; Smit, 2016).

There are currently many IFAs in force (Bensusan, 2016). Most of these were signed by EU TNCs (Hennebert, 2014; Keune & Schmidt, 2009). An IFA is one of the most innovative ways of dealing with HR problems on a transnational level (Eichhorst et al., 2011; Telljohann et al., 2009)

IFAs give GUFs, European trade union federations (EUFs), and EWCs an acknowledged place in global social regulation, and there have been cases where they have been successfully used (Armbruster-Sandoval, 2003; Even, 2008; Faro, 2012; Jagodziński, 2011; Smit, 2014; Telljohann et al., 2009). Certain GUFs and EUFs have developed model agreements to support the negotiating, signing, and implementing of their IFAs (Schömann et al., 2012). These model IFAs provide a working structure and guidance based on existing IFA practices (Schömann et al., 2012).

In some cases, there are three parties representing employees in IFAs, namely EWCs, GUFs, and national trade unions (Ales et al., 2006; Jagodziński, 2011). EWCs are currently the main actors in the negotiation of IFAs (Gennard, 2009; Glassner & Pochet, 2011). IFAs are mostly concluded by TNCs that are producer-driven rather than buyer-driven (Bourque, 2008; Keune & Schmidt, 2009).

IFAs are mainly based on ILO core labour standards dealing with freedom of association, the right to organise, and the right to collective bargaining as specified in Conventions 87 and 98 (Arnold et al., 2015; Bourque, 2008; Hayter et al., 2015; Lillie, 2008; Schömann et al., 2012). The following topics have been covered in IFAs: corporate social responsibility, transnational guidelines for the company's personnel and HR management policies, restructuring, health and safety, wages, working hours, working environment issues, employee training, and equal treatment (Ales, Engblom, Jasper, Laulom, Sciarra, Sobczak, Valdes, & 2006; Ales &

Dufresne, 2012; Da Costa, Pulignano, Rehfeldt, & Telljohann, 2012; Glassner & Pochet, 2011; Glassner & Schömann, 2008; Keune & Schmidt, 2009).

The topics of social responsibility and restructuring are major considerations for TNCs (Even, 2008; Jagodziński, 2012). According to Ales et al. (2006), agreements on restructuring have been reactive rather than proactive. On the transnational level, only a few IFAs address cross-border restructuring decisions (Marginson & Meardi, 2009). The restructuring cases that achieved transnational solidarity avoided protectionism and company sites being pitted against each other (Da Costa et al., 2012).

According to Telljohann et al. (2009), the prospects of IFAs seem to be limited, because, at global level, there is no mechanism for worker representatives such as EWCs to co-ordinate and support the strategy of GUFs. The usefulness of IFAs is challenged in production sites in countries where there is no freedom of association, or where there are only weak trade unions present (Keune & Schmidt, 2009). Companies often use IFAs purely for public relations campaigns. This has resulted in trade unions being more cautious about IFAs (Keune & Schmidt, 2009).

Costa and Rehfeldt (2007) stated that there are two main issues with IFAs: the legal status of these agreements and the legitimacy of the worker representatives signing the agreements. IFAs currently depend on national legislation, which means that IFAs need to be co-signed by national trade unions or replicated by a series of identical agreements to have a legally binding effect (Costa & Rehfeldt, 2007; Faro, 2012; Telljohann et al., 2009). IFAs entail difficulties regarding implementation and compliance, as they cannot be brought before national courts (Arnold et al., 2015; Papadakis, 2008; Pochet, 2007; Schömann et al., 2012; Sherrer & Weinert, 2007).

Faro (2012) posited that the main problem in effective implementation of transnational agreements lies more with employers than employees. Lower levels of management often take advantage of the absence of any legal responsibility (Faro, 2012). There is a substantial amount of companies that view IFAs as either not valuable or not the correct choice for transnational negotiations (Schömann et al., 2012). There have been no examples of IFAs that have been successfully enforced by a Court. Management mostly determines how and when to implement IFAs, as GUFs have limited resources and poor access to employees (McCallum, 2011). IFAs are a momentous development in TLL, but they are not yet fully established (Hammer, 2005; Telljohann et al., 2009).

According to Da Costa et al. (2012), in the metal industry, there are positive cases that indicate the potential of IFAs to deal with sensitive transnational issues, which presents innovation at the TNC level. Advantages of IFAs, according to Eichhorst et al. (2011), Gennard (2009), Glassner (2012), Schömann et al. (2012), Stevis (2010) and Thomas (2011), are as follows. They play an important role in ensuring minimum working conditions, adherence to national labour regulations, and successful collective bargaining. They improve the value of labour relations by providing employees with a contractual framework that promotes core labour standards and social dialogue. IFAs offer procedural outlines for trade unions and employers to improve, apply, and monitor procedures. There are some instances where IFAs assist with compliance with international labour standards and foster transnational networking. It is a management tool that is good for the social responsibility profile of TNCs, since it reaches every plant.

A well-known example of an IFA is the Ford Motor Company's Europe-wide agreement, concluded in 2008, on product development (Arrowsmith & Marginson, 2006; Costa & Rehfeldt, 2007; Gennard, 2009; Glassner & Pochet, 2011; Keller, 2007; Müller et al., 2011).

Non-governmental organisation initiatives

Governments that want to regulate international labour law have created governance gaps for NGOs (Egels-Zanden, 2008). Since NGOs have moved from government to corporate counterparts, they have developed as representatives of employees (Egels-Zanden, 2008).

Domestic non-state actors establish ties with NGOs beyond their borders, forming transnational advocacy networks (TANs) (Armbruster-Sandoval, 2003). The purpose of TANs is to influence governments or other powerful agents to change or enforce their collective bargaining laws or policies (Armbruster-Sandoval, 2003). TANs achieve these goals by engaging in four types of politics: information, symbolic, leverage, and accountability. Information politics involves publicising and disseminating facts, such as human rights violations (Armbruster-Sandoval, 2003). Symbolic politics refers to framing and explaining complex issues or events through signs, such as posters (Armbruster-Sandoval, 2003). Leverage politics seeks to limit the strength of powerful targets through moral or material means (Armbruster-Sandoval, 2003). Accountability politics highlights the contradiction between targeted actors' words and deeds, often using codes of conduct (Armbruster-Sandoval, 2003).

As the scope of IFAs or other types of transnational agreements can be limited, especially on wages, TANs and trade unions have been using transnational campaigns to promote wage

bargaining and wage improvements in countries, sectors, or TNCs (Keune & Schmidt, 2009). However, Schömann et al. (2012) stated that IFAs have a broad scope. Campaigns have a variation of aims, which are (Keune & Schmidt, 2009):

- better access to essential bargaining information, such as company profitability; and
- encouraging unions to engage in natural tripartite bargaining to determine a living wage, which can be utilised in a negotiating process to show the degree to which wages paid actually allow for a decent living. This approach is used in Asia.

Government legislation

National governments remain the main actors in labour relations (Lillie & Greer, 2007; Trubek et al., 2000). National governments assist international bodies such as the International Monetary Fund (IMF) and the WTO to gain power and authority to establish policies affecting labour (Trubek et al., 2000). National systems should not be ended, but governments should support transnational labour movements (Trubek et al., 2000).

According to Smit (2016), it is important that countries understand events and strategies of other countries, as transnational relationships have become intertwined.

International Labour Organisation guidelines

It was only very recently that transnational labour relations gained more attention from the ILO (Hassel & Helmerich, 2016; Telljohann, et al., 2009). The ILO could provide transnational networks with normative guidance to enforce treaties on a transnational level (Hassel & Helmerich, 2016; Trubek et al., 2000). The core labour standards of the ILO, discussed in Chapter 4, provide a foundation for new transnational labour relations (Hassel & Helmerich, 2016). The institutions of transnational labour relations are not based on the core ILO standards, and are still in the development stage (Helfen & Fichter, 2013). Even though the ILO has limitations, it can play a significant role in TLL (Hassel & Helmerich, 2016).

World Trade Organisation social clauses

Anner (2011, cited in Gumbrell-McCormick, 2004 & Helfen & Fichter, 2013), mentioned that the initiatives utilised by political institutions, such as the WTO's social clauses in the 1990s to address the imbalance of power between labour and capital, were unsuccessful. Even though the WTO's social clauses failed, this remains an arena with potential (Jagodziński, 2011; Trubek et al., 2000). Governments, with support from American unions and many NGOs, want the multilateral WTO trading system to link internationally recognised workers' rights to free trade (Hepple, 2005).

European Work Councils

EWCs are voluntary councils for unions, management, and employees across national borders (Contrepois & Jefferys, 2010; Marginson, 2008). EWCs are explained by Pulignano (2010) as a networking support mechanism in transnational regulation between management and employees on company level. There are two types of EWCs in the EU (Eichhorst et al., 2011). The first type consists of employer and employee representatives. The second type only consists of employee representatives. According to Contrepois and Jefferys (2010) Gennard (2009), and Jagodziński (2011), EWCs play a decisive and increasing role in transnational negotiations. Under the Directive on European Works Councils, EWCs only have information- and consultation rights, but they recently participated in the negotiations of IFAs, and have signed the majority of these agreements (Ales & Dufresne, 2012; Contrepois & Jefferys, 2010; Glassner & Pochet, 2011; Jagodziński, 2011; Keune & Schmidt, 2009; Marginson, 2008; Müller et al., 2009; Telljohann et al., 2009). The Directive on European Works Councils does not predict the involvement of EWCs in TCB, which questions the legal capacity of EWCs to negotiate transnationally (Ales & Dufresne, 2012; Jagodziński, 2011; Schömann et al., 2012). They are transnational actors, as they comprise at least two EU member states, and are organised in multinational groups or companies (Ales & Dufresne, 2012; Glassner & Pochet, 2011; Jagodziński, 2011; Telljohann et al., 2009). Even if EWCs do not sign the agreements of the negotiations, the negotiations often still take place within EWCs (Ales et al., 2006). There are significant differences between EWCs' and national work councils' functions in the EU (Glassner & Pochet, 2011). Even though EWCs have the structures to co-ordinate collective bargaining between sites located in different EU countries, they have not been used for this purpose by national trade unions (Glassner & Pochet, 2011).

Advantages of EWCs according to various authors:

- EWCs have the potential to support and promote TCB (Pulignano, 2010).
- Some EWCs have become equal partners in management, able to contribute constructively to managerial decisions and obtain respect for employees' interests (Jagodziński, 2011). These EWCs are effective channels for voicing employees' views to both trade unions and company management (Jagodziński, 2011).
- The success of EWCs can be attributed to the fact that only a single centralised body has to be consulted, and employees' views can be easily gathered (Jagodziński, 2011).
- EWCs are dynamic and constantly developing (Jagodziński, 2011).
- EWCs have had a positive effect on other employee representative instruments in the EU (Jagodziński, 2011).

- The strengthening of co-operation with EWCs is beneficial for trade (Jagodziński, 2011).
- When there are no representatives of a transnational trade union, EWCs can be seen by management as natural bargaining partners (Ales & Dufresne, 2012).
- In the metal trade industry, EWCs' agreements are coming closer to TCB agreements, with employers demanding restructuring and employees requesting equal rights and training (Gennard, 2009).

Challenges related to EWCs according to various authors:

- Employees' challenges regarding EWCs': infrequency of meetings, a lack of meetings, a lack of resources, and management's failure to respect information and consultation provisions, particularly during restructuring (Jagodziński, 2011).
- Employers' challenges regarding EWCs: the processes of EWCs are time-consuming and costly (Jagodziński, 2011).
- There could be a risk of TNCs preferring negotiations with weak EWCs, because of the presence of strong trade unions in a relevant sector (Ales & Dufresne, 2012).
- Limited access to comparative information on labour costs and productivity at different locations is one of the obstacles faced by EWCs (Glassner & Pochet, 2011).
- At transnational level, only a few EWCs participate in local negotiations at TNCs (Glassner & Pochet, 2011). EWCs have been effective in the car manufacturing sector, but ineffective in national negotiations (Arrowsmith & Marginson, 2006; Glassner & Pochet, 2011; Keller, 2007; Müller et al., 2011).
- Some trade unions in the EU prefer that only trade unions negotiate transnational collective agreements, not EWCs (Gennard, 2009).

5.6 Transnational collective bargaining

TCB is voluntary and anonymous, and occurs on a transnational level, between trade unions and TNCs (Faro, 2012; Müller et al., 2011). Below is an explanation of TUNs (transnational union networks) and TNCs.

5.6.1 Transnational union networks

Transnational trade union co-operation in the collective bargaining field dates back to the 1970s, when trade unions from the metal sector first established informal transnational initiatives for the exchange of information and policy co-ordination (Glassner & Pochet, 2011; Glassner & Schömann, 2008; Schömann et al., 2012; Telljohann et al., 2009). The need for

co-operation between trade unions across borders is great, and is growing (Glassner & Pochet, 2011). Gaining control over labour markets requires a structured and systematic union organisation transnationally (Lillie & Lucio, 2012).

TUNs are a network that comprises of at least three actors: EWCs, non-union support, and national affiliations of GUFs (Helfen & Fichter, 2013). TUNs are organised and governed by the contingencies of Global Production Networks (GPNs), dynamic power relationships with collective bargaining actors, and relationships with management, in the context of IFAs (Helfen & Fichter, 2013). This indicates that TUNs are very important in managing transnational relationships (Helfen & Fichter, 2013). Selecting adequate modes of TUN governance can assist in dealing with globalisation challenges and labour governance (Helfen & Fichter, 2013).

The international trade secretariats called GUFs encourage the creation of networks and councils within TNCs, for the exchange of information and engagement in TCB (Da Costa & Rehfeldt, 2008; Telljohann et al., 2009). GUFs focus on their own policy and organisational activity by building TUNs around the GPNs (Helfen & Fichter, 2011, 2013). GUFs' governance needs to meet the challenges of cross-border co-ordination and collaboration (Helfen & Fichter, 2013). GUFs can now play a more meaningful role in transnational labour activism than before (McCallum, 2011). Effective recognition of collective bargaining in the Middle East is still limited; however, the transportation sector is an exception, as the GUFs have been crucial in co-ordinating and supporting efforts of domestic trade unions in transportation industries (Hayter et al., 2015).

Trade unions are pursuing a more proactive approach to TCB (Glassner & Schömann, 2008). The success and effectiveness of transnational trade unions' initiatives is dependent on the institutional labour relations and relationships with government (Glassner & Pochet, 2011). As there is no legal framework for TCB, trade unions should build stronger TUNs, based on new international solidarities, if they wish to balance the power with TNCs and address processes of collective bargaining, without being disadvantaged (Gordon & Turner, 2000; Hennebert, 2014). By creating transnational inter-union partnerships between trade unions from the same TNC, the creation of common goals between unions and forming of new TCB approaches can be facilitated (Cooke, 2005; Hennebert, 2014; Schömann et al., 2012). Successful transnational inter-union partnerships for collective bargaining entail the following: all relevant unions are brought into a partnership; all non-union operations are organised, or their advantages are minimised; the partnership gains influence over foreign direct investment (FDI) and transnational movement decisions; each union gains more than it would when acting alone; added gains are shared equally; and all differences of unions are accommodated (Da Costa & Rehfeldt, 2008).

Trade unions encounter these challenges when engaging in TCB:

- In many countries, unions are exposed to political, economic, social, and legal obstacles that restrict their ability to participate in TCB (Glassner & Pochet, 2011; Keune & Schmidt, 2009).
- Employees and trade unions rarely express their fundamental interests and bargaining tactics in transnational terms, instead using national and local terms (Bieler, 2005; Keune & Schmidt, 2009; Lillie & Greer, 2007).
- TCB is inadequate for trade unions, as there is no legal framework to regulate such bargaining, making agreements unenforceable (Keune & Schmidt, 2009).
- The barriers to successful alliances between trade unions in different countries are based on: differences in union structures, practices, and ideology, cultural resistance to national trade unions, conflicting interests, and differences in levels of economies' development (Faro, 2012; Glassner & Pochet, 2011; Pulignano, 2005; Schömann et al., 2012).
- Trade unions experience contextual and structural problems. Contextual problems are the conflicts between unions caused by securing international investments and jobs purely for self-interest. Structural conflict arise when unions have different agreements and commitments towards initiatives in various countries (Aidt & Tzannatos, 2002; Cooke, 2005; Eichhorst et al., 2011).
- According to Schömann et al. (2012), the core problem is that trade unions are sceptical about TCB.
- Trade unions and EWCs lack the transnational competence to bargain effectively with highly educated international managers (Schömann et al., 2012).
- Trade unions face economic pressures and budgetary demands (Schömann et al., 2012).
- Some national trade unions have a very low awareness of TCB and transnational agreements, and lack the tools needed for TCB (Schömann et al., 2012).
- Unions have not yet extended their collective bargaining structures beyond national boundaries (Schömann et al., 2012).
- Trade unions fear developing to a transnational level, as this threatens their traditional bargaining power (Schömann et al., 2012).
- The core problem of all trade union initiatives for TCB is that they are purely voluntary (Schulten, 2002).
- According to Keller (2007), national and EU trade unions will be weakened by TCB.

Even though there are challenges, TCB, as explained above, has been moving higher on the trade union agenda (Keune & Schmidt, 2009).

5.6.2 Transnational corporations

Changes in production have resulted in an increase in TNCs. TNCs are economic entities functioning in more than one country, or a cluster of economic entities operating in two or more countries (Arnold, 2010). TNCs have been the dynamic force in technological innovation, communications, information, and transport (Hepple, 2005). Furthermore, TNCs have been responsible for new forms of investment and businesses that have changed the world of work. Governments and supra-governmental institutions such as the EU and the WTO have strong relations with the largest TNCs (Bronfenbrenner, 2007).

TNCs have the power of wealth and technology in the world economy. Governments have lost power, whereas TNCs have gained power (Egels-Zanden, 2008). TNCs control production; they transform control into power, which leads to employees living and producing according to transnational norms (Armbruster-Sandoval, 2003; Blackett & Trebilcock, 2016; Glassner, 2012). There is a considerable imbalance between the power of TNCs and nationally rooted trade union structures and strategies (Schömann et al., 2012). This power and integration in processes globally has resulted in high levels of pressure on trade unions to negotiate across national borders (Rathzel, 2012). TNCs enjoy a bargaining advantage, in that they can threaten to relocate their production to another country, irrespective of whether this threat will be carried out (Glassner, 2012; Glassner & Pochet, 2011; Telljohann et al., 2009).

TNCs are a force for decentralised and flexible collective bargaining (Glassner, 2012; Marginson & Meardi, 2009). This means that national labour laws have to take in account that TNCs are decentralised and specialised, and depend on complex, interlocking, cross-border networks (Hepple, 2005). Marginson and Meardi (2009) came to a two-fold conclusion in this regard. Firstly, national collective bargaining structures seem to be robust and flexible enough to accommodate TNCs, without major disruption. However, particularly in internationalised product markets, there are tensions between the international scope of TNCs' business operations (and therefore management decisions) and the capacity of national collective bargaining agreements to regulate them (Marginson & Meardi, 2009).

Different national governments and international-level regulation regimes have been put in place to restrict TNCs from taking advantage of employees, for example, the Guidelines for Multinational Enterprises of the Organisation for Economic Co-operation and Development,

the Tripartite Declaration of Principles concerning TNCs, the Social Policy of the ILO, the European Vredeling Directive, and the Directive on European Work Councils, adopted in 1994 and revised in 2009 (Telljohann et al., 2009)

TCB, according to Schömann et al. (2012), is a natural consequence of corporate strategies moving from national to international level. This means that, as TNCs globalise, they assist with the establishing of transnational labour standards, which they apply to their own operations and contractors (Trubek et al., 2000). Developments in social responsibility, co-ordinated HR practices at group level, and transnational restructuring have resulted in TCB in TNCs (Schömann et al., 2012; Telljohann et al., 2009). The transnational aspect of collective bargaining is developing through the use of cross-border comparisons, often in the manufacturing industry, but mostly in the automotive industry (Da Costa & Rehfeldt, 2008; Marginson & Meardi, 2009). Transnational co-ordination of HR management in TNCs is well established, and comprises HR functions collecting data on labour-related issues (Schömann et al., 2012). According to Marginson (2008), TNCs are representative of how collective bargaining across national borders can take place; however, Faro (2012) stated that TCB is ineffective in TNCs. Armbruster-Sandoval (2003) notes that, labour unions and NGOs should continue to build TUNs that encourage collective bargaining with TNCs, to improve working conditions of employees on a transnational level. In this section, the increase in TCB in TNCs has shown the need for transnational labour regulation and need for research in labour transnationalism (Hayter et al., 2011; Müller et al., 2011; Smit, 2016).

5.7 Transnational collective bargaining in the EU

5.7.1 History

In the EU, TCB has been debated over for the last 15 years (Schömann et al., 2012). The foundations of TCB are found in Europe (Da Costa & Rehfeldt, 2008; Glassner & Pochet, 2011; Schömann et al., 2012). Researchers is of the opinion that, TCB emerged through the political debate on the EU Social Charter of the EU Commission and the Social Dialogue Val Duchesse process, and was further reinforced by the Social Protocol of the Maastricht Treaty (Ales et al., 2006; Schömann et al., 2012). According to numerous papers, TCB in the EU resulted from the Economic and Monetary Union (EMU), and was put in place to avoid a race to the bottom wage costs of different national trade unions in an attempt to increase international competitiveness (Eichhorst et al., 2011; Hayter et al., 2011; Keller, 2007; Marginson, 2008). The following developments have contributed to TCB in the EU (Hayter et al., 2011):

- There has been growth in transnational comparison of labour costs and performance of TNCs. This is utilised by management in national bargaining to present cost-saving and flexibility-enhancing measures in IFAs.
- There has been an increase in the development of TCB strategies by trade unions in particular sectors, such as the metal industry, with the most developed TCB procedure established by the EMF.
- The IFAs concluded between TNCs and European Trade Union Federations (ETUFs) or EWCs have address subjects such as restructuring, social dialogue, HR, management policies, and health and safety.

The Europeanisation of collective bargaining can be conceived as a multidimensional process that is determined by developments at the national and EU level (Glassner & Pochet, 2011).

5.7.2 Transnational labour law in the EU

The EU Social Charter is a Council of the Europe treaty that, promotes and regulates collective bargaining on a national and transnational level in the EU (Ales & Dufresne, 2012; Eichhorst et al., 2011; Maginson, 2008). The EU Social Charter states that transnational action needs to meet the collective bargaining conditions of member states during TCB to be lawful (Ales & Dufresne, 2012; Eichhorst et al., 2011; Maginson, 2008). This means that IFAs cannot be enforced by the EU parliament. According to the Treaty on the functioning of the EU, the social partners can obtain information and guidance on TCB from the EU Commission (Eichhorst et al., 2011).

In 2004, the EU Commission carried out a study, and said they would consult the social partners on the optional framework that they developed for TCB, based on a clear set of rules for the benefit of both employers and employees (Gennard, 2009; Schömann, 2006; Schömann et al., 2012; Telljohann et al., 2009). The objective of the proposal was to assist companies and sectors with an innovative tool to adjust to change and provide cost-effective transnational responses (Gennard, 2009). This would also assist with determining working conditions and training (Gennard, 2009).

Ales et al. (2006) compiled a report on the viability of the optional framework of the EU Commission in 2006, which led to many other papers debating its viability. The report stated that they were in favour of an optional legal framework adopted by the EU that gives social partners and GUFs legal certainty, with the main aim of ensuring application of and compliance with ILO standards in all TNC locations (Ales & Dufresne, 2012; Gennard 2009; Schömann et al., 2012).

According to Ales et al. (2006), TCB needs an optional legal framework in order to clarify procedure, negotiating agents, and criteria for binding agents concluding agreements. A comprehensive and specific legal framework of reference could be important, not only for TCB, but also social integration and the development of an EU social model (Keller, 2007). European trade union confederations (ETUCs) expressed their conditional support, whereas trade unions and employers' representatives opposed it (Telljohann et al., 2009). Employers have claimed that there is no need for an additional layer of EU collective bargaining over and above national, sectoral, and company level (Faro, 2012). Ales et al. (2006) opine that the legal framework of TCB should include autonomy for social partners and avoid undesired counter-effects, to ensure legal certainty regarding the outcomes of the bargaining process. Faro (2012) was not convinced such a legislative mechanism existed.

According to Schömann et al. (2012), certain authors view the emergence of TLL for collective bargaining as unlikely, because of the weakness of trade unions in transnational activities. Even though transnational mobilisation and co-ordination by trade unions and EWCs have increased, a fully integrated EU industrial system has not yet emerged (Ales & Dufresne, 2012; Glassner & Pochet, 2011).

5.7.3 Levels of transnational collective bargaining in the EU

The EU adopted a multilevel approach that means that TCB takes place at company, sector, and cross-sectoral level, which will be explained below (Ales, 2009; Gennard, 2009; Glassner & Pochet, 2011; Keller, 2007; Schömann et al., 2012).

Company level: The EWCs are the main social partners on the company level; they operate EU-wide (Gennard, 2009). Negotiations have increasingly been taking place on the company level in the EU (Ales & Dufresne, 2012; Gennard, 2009; Hayter et al., 2011).

Sector level: The social partners on the sectoral level are GUFs, European sectoral federations/confederations, social dialogue committees (SDCs), national trade unions, and EWCs (Gennard, 2009). The effectiveness of inter-sectoral and sectoral-level instruments in the regulation of wages and working conditions has been limited on a transnational level (Glassner & Pochet, 2011)

Cross-sectoral: The social partners in the cross-sectoral bargaining are Business Europe, the European Centre of Employers, the European Association of Craft, Small, and Medium-sized Enterprises, and the ETUCs on the employees' side (Gennard, 2009). The process utilised is the European Commission consulting the social partners on the general direction of social

policy and proposed measurements (Gennard, 2009). Cross-industry bargaining is not common in the EU (Gennard, 2009; Glassner & Pochet, 2011).

5.7.4 Transnational collective bargaining initiatives in the EU

The TCB initiatives in the EU identified in the present study are: social dialogue committees, the Doorn initiative, European federations, and EWCs. Below is an explanation of social dialogue committees, the Doorn initiative, and European federations. EWCs were described in previous sections of this paper.

Social Dialogue Committees:

In 1996, the EU Commission stressed the importance of EU social dialogue, not only at interpersonal level, but also sectoral level, which followed with the Commission establishing nine sectoral social dialogue committees (Ales et al., 2006). Social partners supported this decision, but employers were unwilling to give so much power to these committees (Ales et al., 2006; Eichhorst et al., 2011). Social dialogue committees (SDCs) focus on issues such as forced labour, child labour, and health and safety (Eichhorst et al., 2011). The growing interest in collective bargaining in the sectoral level contributed to the committees shifting from a consulting to a negotiating role (Clauwaert, 2012). Even though the committees have not established transnational agreements, they operate as consulting bodies (Schömann et al., 2012).

Doorn initiative:

The first and most prominent initiative for cross-border trade union co-ordination of collective bargaining is the Doorn initiative, established by the Benelux countries and Germany (Eichhorst et al., 2011; Schulten, 2002). The Doorn initiative includes all main EUCs from Belgium, Germany, Luxemburg, and the Netherlands, as well as affiliated industry federations (Eichhorst et al., 2011; Schulten, 2002). The Doorn initiative's aim is to prevent the downward competition of wages and other labour issues (Eichhorst et al., 2011; Schulten, 2002). The Doorn initiative has played an important role in transnational co-ordination (Eichhorst et al., 2011; Schulten, 2002).

European federations:

Since the 1990s, the ETUFs have created bargaining strategies aimed at the conclusion of transnational sectoral agreements (Ales & Dufresne, 2012; Glassner & Pochet, 2011). A few ETUFs have implemented guidelines for transnational company bargaining as a way of clarifying procedures, including mandates for negotiations between EWCs and management

(Schömann et al., 2012). In the EU, it is evident that ETUFs can add value by providing effective procedures for the conclusion of IFAs (Eichhorst et al., 2011; Gennard, 2009).

The European Metalworkers' Federation (EMF) functions in one of the most transnational sectors in Europe (Bieler, 2005; Glassner & Pochet, 2011). TCB networks of the EMF were established with the aim of promoting institutional information exchange and co-operation in collective bargaining between unions from neighbouring countries (Glassner & Pochet, 2011; Sherrer & Weinert, 2007). The EMF has established a mandating procedure that, so far, is the most effective, credible, and workable attempt by trade unions to maintain or gain control over negotiation activities at European transnational company level (Gennard, 2009; Hayter et al., 2011; Müller et al., 2011). The EMF model contains a follow-up procedure through a joint committee that consists of equal numbers of management- and union representatives, which provides arbitration (Da Costa & Rehfeldt, 2008; Müller et al., 2011). An important characteristic of the procedure is that national agreements are superior to IFAs (Gennard, 2009). According to Sherrer and Weinert (2007), the EMF struggles to conclude IFAs with TNCs.

5.7.5 Advantages and disadvantages of transnational collective bargaining in the EU

Advantages of transnational collective bargaining in the EU:

Evan (2008) stated that the advantages of TCB in the EU outweigh the disadvantages. TCB in the EU has the following advantages (Evan, 2008; Glassner & Schömann, 2008; Keune & Schmidt, 2009):

- is useful when national collective bargaining institutions are unable to make decisions;
- an important tool for proper EU governance;
- is a good response to Europeanisation and internationalisation of markets and cross-border labour;
- enables the EU social states to compete in the international economy;
- prevents social dumping by the improving of the social responsibility strategy of TNCs;
- has social responsibility benefits for TNCs;
- assists in coping with EMU consequences;
- assists in balancing the power between employers and employees;

- reduces wage competition across borders and contributes to wage improvements and higher wage equality; and
- provides an opportunity for development of high-trust relations between labour and management.

Challenges of transnational collective bargaining in the EU:

The core challenges of TCB in the EU are (Eichhorst et al., 2011; Even, 2008; Glassner, 2009):

- absence of a TCB institutional framework in the EU;
- weak legal status of participants in TCB;
- lack of a normative effect of IFAs;
- insufficient TCB rules in the EU treaties defining requirements that the social partners have to meet;
- a decline in collective bargaining representatives of social partners;
- differences in the organisation, ideology, and interests of EU national trade unions;
- differences in legal systems of countries;
- the limitations of international solidarity of workers when strikes are needed;
- trade unions are weak in establishing a national system;
- trade unions could hinder economic development and increase unemployment;
- lack of interest in TCB by employers and employees; and
- many employers are not willing to participate in TCB.

5.8 Transnational labour regimes

Smit (2016) defined labour regimes as a set of structures and norms enforced across national borders, which either reinforces or suspends national laws. As stated by Lillie and Lucio (2012, cited in Smit, 2016), optimists have shown how transnational labour relations regimes could work, and pessimists emphasize the vulnerability of labour due to TNCs having neglected TCB to remain competitive. Transnational labour relations regimes can only work when a variety of public and private normative sources are combined at different levels (Trubek et al., 2000). Claussen (2016, cited in Blackett & Trebilcock, 2016), stated that parallel mechanisms for trans-border labour regimes strategies are weak compared to other regimes, such as investor- and investor state arbitration. EWCs have indicated that the EU is on the way to establishing an EU transnational labour relations regime (Jagodziński, 2011; Pulignano, 2005; Smit, 2016). EWCs have developed from just exchanging views to signing

IFAs, which some view as the emerging of TCB in the EU (Glassner & Pochet, 2011; Jagodziński, 2011; Telljohann et al., 2009).

5.9 Concluding remarks

Transnational is “beyond what is considered national” that means across national boundaries (Smit, 2014, p. 2). This means the movement of individuals, technologies, ideas, and institutions across national boundaries (Hyman, 1999; Faro, 2012; Smit, 2014, 2016). Transnational activities are economic, political, social, or cultural relations moving across national borders (Snel et al., 2006). Labour markets are transnational when employees regularly interact with one another across national borders (Smit, 2016). Transnationalism has been described as the new phenomenon of transboundary networks (Tornimbeni, 2005).

The growth in TNCs has created the need to research labour transnationalism (Hayter et al., 2011; Smit, 2016). Trubek et al., 2000 and Greer & Hauptmeier, (2008, cited in Smit, 2016) defined labour transnationalism as trade unions forming new transnational structures and standards, and then activating transnational networks. According to Tornimbeni (2005), transnationalism does not have an adequate theoretical framework. Schömann et al. (2012) pointed out that, transnationality requires supportive labour movements, employers, and governments, as well as a structured framework.

TLL is the regulation of work in a transnational domain and across authorities (Kolben, 2011). TLL has a set of rules, guidelines, and principles that are observed by various governments (Smit, 2014, 2016). TLL emerged through the flexible globalisation processes, pressure from social groups, and transnational production driven by transnational co-operation (Al-Ali et al., 2001; Blackett & Trebilcock, 2016; Vertovec, 1999). TLL is still developing, and researchers are only beginning to deal with this in context (Helfen & Fichter, 2013). TLL takes place on an international, regional, national, and shop level, and through voluntary and binding standards (Blackett & Trebilcock, 2016; Egels-Zanden, 2008; Faro, 2012; Hassel & Helmerich, 2016). According to Smit (2016), the TLP has four core characteristics: non-traditional (which includes non-state actors), non-statist, very dynamic, and normative.

The methods and avenues of implementation of TLL are:

- corporate codes and labels of conduct;
- IFAs;
- NGO initiatives;
- government legislation;
- guidelines of the ILO;

- government agencies from different countries consulting each other;
- unilateral social clauses;
- social clauses of the WTO;
- new forms of global unionism such as EWCs;
- bilateral agreements; and
- regional agreements such as the EU Social Charter and the North American Agreement on Labour Cooperation.

IFAs are agreements concluded by TNCs based on the standards in Conventions 87 and 98 (Telljohann et al., 2009). A substantial number of IFAs have been concluded, most of which were signed by EU TNCs (Bensusan, 2016). IFAs are one of the most innovative ways of dealing with HR problems on a transnational level (Eichhorst et al., 2011; Telljohann et al., 2009). The main issues concerning IFAs are the implementation and legal status of these agreements and the legitimacy of the worker representatives signing the agreements (Costa & Rehfeldt, 2007).

National governments remain the main actors in labour relations (Lillie & Greer, 2007; Trubek et al., 2000). National labour relations systems should not be dissolved; however, there is a need for governments to support transnational labour relations (Trubek et al., 2000). Transnational relationships between national governments have become intertwined; therefore, they need to understand each other's events and strategies (Smit, 2016). National labour laws should take into consideration that TNCs are decentralised and specialised, and depend on complex, interlocking cross-border networks (Hepple, 2005).

NGOs are no longer governmental counterparts; they have become TNCs' counterparts. They are representatives of employees, with the purpose of forming TANs (Egels-Zanden, 2008). TANs are established when NGOs form relations with other domestic non-state actors, such as civic groups, beyond their borders, to promote and enforce policies and laws (Armbruster-Sandoval, 2003). Transnational campaigns have been utilised by TANs and trade unions to promote wage bargaining and wage improvements in countries, sectors, and TNCs (Keune & Schmidt, 2009).

The institutions of transnational labour relations are not based on the core ILO standards, and are still in the development stage (Helfen & Fichter, 2013). Even though the ILO has limitations, it can play a significant role in TLL (Hassel & Helmerich, 2016).

The initiatives utilised by political institutions, such as the WTO's social clauses, in the 1990s, to address the imbalance of power between labour and capital across borders were

unsuccessful. Even though the WTO's social clauses failed, these still have the potential of being a TCB instrument (Jagodziński, 2011; Trubek et al., 2000).

EWCs' inform and consult employees and management at a transnational level (Eichhorst et al., 2011). EWCs have created bargaining strategies to conclude IFAs, which has added value to TCB in the EU (Ales & Dufresne, 2012; Glassner & Pochet, 2011). The main challenge concerning EWCs is that they do not have any legal capacity.

Faro (2012) and Müller et al. (2011), defined TCB as collective bargaining between trade unions and TNCs on a transnational level. According to Marginson (2008), the TCB process utilised by TNCs is a good example of how transnational collective bargaining should take place. However, Faro (2012) stated that TCB has been ineffective in TNCs. There is a need for trade unions and NGOs to build stronger TUNs on all collective bargaining levels, to prevent social dumping and labour market segmentation of globalisation, as well as balance the power of TNCs (Arnold, 2010; Golden, 2014; Schömann et al., 2012). The major imbalance of power between TNCs and nationally rooted trade union structures and strategies has contributed to the establishment of transnational labour movements (Schömann et al., 2012). TUNs are very important in managing transnational relationships (Helfen & Fichter, 2011, 2013). TUNs consist of at least three actors: EWCs, non-union supporters, and national affiliations of GUFs (Helfen & Fichter, 2013). GUFs encourage the creation of networks and councils within TNCs, for the exchange of information and engagement in TCB (Telljohann et al., 2009; Da Costa & Rehfeldt, 2008). GUFs can play a more significant role in transnational labour activism (McCallum, 2011). Transnational inter-union partnerships between trade unions from the same TNCs can result in new TCB strategies (Hennebert, 2014). The core problem with trade unions concerning TCB is that they are sceptical about TCB (Schömann et al., 2012). However, TCB is becoming more significant on trade unions' agenda (Keune & Schmidt, 2009).

The foundations of TCB are found in Europe (Da Costa & Rehfeldt, 2008; Glassner & Pochet, 2011; Schömann et al., 2012). TCB in the EU emerged through the EMU, and was put in place to equalise wage costs of different national trade unions, in an attempt to increase international competitiveness (Eichhorst et al., 2011; Keller, 2007; Marginson, 2008). In the EU, there was an increase in TNCs comparing transnational of labour costs and performance, because of the potential to relocate. Collective bargaining in the EU is determined by economic and political developments nationally, transnationally, and globally. The EU has a multidimensional collective bargaining process (Glassner & Pochet, 2011).

According to the EU Social Charter, the national member states' regulations on collective bargaining should be adhered to during TCB (Ales & Dufresne, 2012; Eichhorst et al., 2011; Maginson, 2008). The EU Commission proposed an optional TCB legal framework for the EU, so that social partners and GUFs could have legal certainty. The aim was to ensure application of and compliance with ILO standards in all TNCs' locations (Ales & Dufresne, 2012; Gennard, 2009; Schömann et al., 2012). EUCs expressed their conditional support. Trade unions and employers' representatives opposed it (Telljohann et al., 2009).

The inter-sectoral and sectoral-level transnational instruments used by the EU have been ineffective. At company level, the EWCs have been effective (Glassner & Pochet, 2011). The EMF has the most effective, credible, and workable procedure for maintaining or gaining control over negotiations in one of the most transnational sectors in Europe (Bieler, 2005; Gennard, 2009; Glassner & Pochet, 2011; Müller et al., 2011). Evan (2008) stated that the advantages of TCB in the EU outweigh the disadvantages.

Labour regimes are rules, principles, and practices implemented across national borders that reinforce or suspend national laws (Smit, 2016). According to Trubek et al. (2000), combining a variety of public and private normative sources at different levels could lead to a feasible transnational labour regime. The EWCs are seen as the first development of the EU collective bargaining transnational labour relations regime (Pulignano, 2005; Schömann et al., 2011; Smit, 2016).

The results of the present study have shown that transnational labour strategies are created through national regulation, globalisation, and production (Lillie & Lucio, 2012). Currently, there is a lack of transnational employee institutions, instruments, and initiatives to bargain effectively with powerful TNCs (Pulignano, 2010; Schömann et al., 2012). Golden (2014) argued that, if transnational labour action is not taken soon, trade unions may lose their bargaining power. In conclusion, TCB entails TNCs negotiating with EWCs, national trade unions, NGOs, or GUFs, with the objective of concluding IFAs based on the rights in Conventions 87 and 98 of the ILO to improve employees' working conditions on a transnational level. The next chapter discusses the findings, recommendations and conclusion of the paper.

CHAPTER 6: FINDINGS AND RECOMMENDATIONS

6.1 Introduction

This chapter concludes the study by discussing the main findings of the study, followed by recommendations for further research on TCB. In conclusion, a summary of the study is provided.

6.2 Findings

In order to answer the main research question — *Is collective bargaining on a transnational level viable?* — the researcher conceptualised and discussed collective bargaining, Conventions 87 and 98, transnational labour relations, and TCB in the EU.

Collective bargaining is a basic human right that is still not enjoyed by most employees (Blackett & Sheppard, 2003). The purpose of collective bargaining is to redress the imbalance of power between labour and capital (Bendix, 2015; Glassner & Keune, 2010; Grogan, 2010; Maree, 2011). Collective bargaining is a voluntary, co-operative, problem-solving, compromising, information-sharing, and argumentative negotiation process between parties on conditions of employment, with the aim of reaching a mutual agreement (Bendix, 2015; Eichhorst et al., 2011; Grogan, 2010; ILO, 2015a; Steenkamp et al., 2004).

Collective bargaining law is based on the ILO collective bargaining conventions and recommendations, and is utilised to govern the relationship between the bargaining parties (Anstey et al., 2011). The main collective bargaining parties are: governments, employee representatives (mostly trade unions), employer representatives, and employers. The role of employee and employer representatives is to share information, build relationships, resolve disputes, and improve the bargaining position of the employer or employees (Aidt & Tzannatos, 2002). Collective bargaining occurs either between employees and organisations (bipartite), or between employees, organisations, and government (tripartite) (Gernigon et al., 2000; ILO, 2015e; Van Niekerk et al., 2011). Collective bargaining is mostly decentralised, taking place on a workplace level (Dell’Aringa & Pagani, 2005).

The parties involved are independent, and should be familiar with the subjects on the agenda and the processes. They should possess negotiating skills and an understanding of the framework within which collective bargaining takes place (ILO, 2015e). Wages and working hours are the most frequent subjects on negotiation agendas (ILO, 2015c). The collective bargaining process steps are: preparation for collective bargaining, negotiating, concluding

the collective bargaining agreement, and implementation of the agreement (Creamer et al., 2006; De Silva, 1996; ILO, 2015e). The outcomes of the process are determined by the parties, not government institutions (Anstey et al., 2011; Godfrey et al., 2015). During the negotiations, the parties should treat one another as equals (ILO, 2015e). If the process does not lead to an agreement, it could lead to a strike or lockout. Employees and employers use strikes or lockouts to gain power during disputes (Anstey et al., 2011; Cooke, 2005).

Employees and employers could benefit from the negotiation process by employees receiving a fair return for their labour. Increased productivity will lead to a better financial position for the employer, increasing its competitiveness (Anstey et al., 2011; Van Niekerk et al., 2011). The analysis indicated that there is a decline in collective bargaining. This is mostly caused by the effects of globalisation (Marginson, 2015). There is a need for governments to play a more significant role in the implementation and promotion of collective bargaining. Furthermore, trade unions should equip themselves with better collective bargaining skills for the new global market (Bensusan, 2016).

The ILO is a UN agency that has been promoting social justice for the last 80 years (Arnold et al., 2015; Blackett & Sheppard, 2003; Gernigon et al., 2000; Romeyn, 2007). The ILO established Conventions 87 and 98 to regulate and promote freedom of association, the right to organise, and the right to collective bargaining (Blackett & Sheppard, 2003; Hyman, 1999). In 1998, the ILO established the Declaration on Fundamental Principles and Rights at Work. This included Conventions 87 and 98, which have changed labour law (Hassel & Helmerich, 2016).

Conventions 87 and 98 should be used in conjunction to ensure the right of freedom of association and collective bargaining (Dunning, 1998). Convention 87 guarantees that employees or employers can freely belong to or form an organisation of their choice, and Convention 98 guarantees voluntary collective bargaining with the purpose of reaching an agreement (Hughes, 2005).

The supervisory bodies of the ILO are the CEACR and the CFA. They have stated that there are ILO member states that are reluctant to promote and regulate the rights granted in Conventions 87 and 98 (Rossman, 2013; Tatulashvili, 2011). The ILO supervisory bodies have lost legal credibility, because of the inconsistent guidance they have given countries (Arnold et al., 2015).

TNCs have included Conventions 87 and 98 in IFAs and codes of conduct, which are both utilised as instruments of TLL (Arnold et al., 2015; Bourque, 2008; Hayter et al., 2015;

Rissgaard, 2005; Schömann et al., 2012). Conventions 87 and 98, however, do not grant the right to collective bargaining on a transnational level (Schömann et al., 2012).

Conventions 87 and 98 have limitations; however, they are still applicable when dealing with globalisation challenges (Budeli, 2009; Curtis, 2004). These two Conventions give governments a framework with which to formulate their own labour relations structures. This framework ensures the legal basis guaranteeing the rights contained in the Conventions, protection against discrimination when exercising these rights, clarification of accepted involvement of parties, and establishment of suitable collective bargaining machinery (Hughes, 2005).

Transnational means *across national boundaries* (Smit, 2014). Transnational labour markets occur when there are regular interactions between employees from different countries across national borders (Smit, 2016). Transnationalism has been described as the new phenomenon of transboundary networks (Tornimbeni, 2005). Greer and Hauptmeier (2008, cited in Smit, 2016 and Trubek et al. (2000) indicated that, labour transnationalism is evident when new transnational structures and standards are formed by trade unions, in order to activate transnational networks. The increase in research in labour transnationalism resulted from the growth in TNCs (Greer & Hauptmeier, 2008, cited in Smit, 2016).

Labour laws have undergone many changes due to globalisation, pressure from social groups, and transnational production driven by TNCs, which resulted in the new phenomenon of TLL (Al-Ali et al., 2001; Blackett & Trebilcock, 2016; Vertovec, 1999). TLL is defined as rules, guidelines, and principles regulating labour issues in a transnational domain and across authorities (Kolben, 2011; Smit, 2014). TLL is still in a development stage, and literature is only starting to deal with this context (Helfen & Fichter, 2011, 2013; Smit, 2016). TLL is multidimensional labour law, as it takes place on international, regional, national, and shop level, and through voluntary and binding standards (Blackett & Trebilcock, 2016; Egels-Zanden, 2008; Faro, 2012; Hassel & Helmerich, 2016). The four characteristics of a TLP are: non-traditional, non-statist, very dynamic, and normative (Smit, 2016).

The methods and channels for the implementation of TLL are: corporate codes and labels of conduct, IFAs, NGO initiatives, government legislation, guidelines of the ILO, government agencies from different countries consulting each other, unilateral social clauses, social clauses of the WTO, new forms of global unionism such as EWCs, bilateral agreements and regional agreements such as the EU Social Charter and the North American Agreement on Labour Cooperation (Egels-Zanden, 2008, Hepple, 2005; Smit, 2014, 2016; Trubek et al., 2000).

IFAs are agreements concluded across national boundaries by TNCs, based on Conventions 87 and 98, with a focus on social responsibility strategies (Telljohann et al., 2009). GUFs initiated the idea that IFAs could be used to improve working conditions and give employees a voice transnationally (Helfen & Fichter, 2013). The analysis detected an increase in IFAs concluded, most of which were signed by EU TNCs (Bensusan, 2016). The core issues pertaining to IFAs as a TLL method are the legal status of these agreements, implementation of IFAs, and the legitimacy of the worker representatives signing the agreements (Costa & Rehfeldt, 2007; Schömann et al., 2012). IFAs have assisted with compliance with international labour standards, and foster transnational networking by giving GUFs, EUFs, and EWCs an acknowledged place in global social regulation (Armbruster-Sandoval, 2003; Even, 2008; Faro, 2012; Schömann et al., 2012; Smit, 2014, 2016; Telljohann et al., 2009).

NGOs are new, significant actors in labour law, and are TNCs counterparts (Armbruster-Sandoval, 2003). NGOs form TANs with other domestic non-state actors beyond their borders, with the purpose of influencing governments or other powerful agents to change or enforce its laws or policies (Armbruster-Sandoval, 2003). NGOs and trade unions have been using transnational campaigns to promote wage bargaining and wage improvements in countries, sectors, or TNCs (Keune & Schmidt, 2009). For TLL to be implemented successfully, there is a need for NGOs to put pressure on TNCs to uphold basic human rights (Armbruster-Sandoval, 2003).

National governments should formulate labour relations systems that support TLL by taking in to consideration that TNCs are decentralised, specialised, and depend on complex, interlocking, cross-border networks and understanding events and strategies of other countries (Hepple, 2005; Smit, 2016; Trubek et al., 2000). National government support is fundamental, as governments are still the main actors in labour law (Lillie & Greer, 2007; Trubek et al., 2000).

TLL is currently not based on the core ILO standards, but Hassel and Helmerich (2016) stated that the ILO standards can become an important method in the implementation of TLL.

An EWC is a single, centralised body representing employees of a company on a transnational level by consulting and sharing information between management, national trade unions, and employees, in order to conclude an IFA (Glassner & Pochet, 2011; Jagodziński, 2011; Telljohann et al., 2009). The challenge faced by EWCs in TLL is that they do not have any legal capacity. According to Pulignano (2010), EWCs can make a significant contribution to TLL, as they have supported and promoted ETUFs and have created bargaining strategies to conclude IFAs.

TCB is defined as negotiations between TNCs and trade unions on a transnational level. TUNs are created by employee representatives in order to gain more power by forming alliances. TUNs consist of at least three actors: EWCs, non-union supporters, and national affiliations of GUFs (Helfen & Fichter, 2013). GUFs are the main actors in TUNs, and could encourage the creation of networks and councils within TNCs, for the exchange of information and engagement in transnational bargaining (Da Costa & Rehfeldt, 2008; Telljohann et al., 2009). There are many challenges confronting national trade unions forming TUNs (Keune & Schmidt, 2009). Inter-union partnership between trade unions from the same TNCs could result in new TCB strategies (Hennebert, 2014).

TCB has most often taken place in the EU (Da Costa & Rehfeldt, 2008; Glassner & Pochet, 2011; Schömann et al., 2012). The EU regional integration initiative promotes TCB in the EU Social Charter, and the EU Commission has been involved in the facilitating of TCB. TCB in the EU emerged through the regional integration of the EU with the introduction of the EMU (Eichhorst et al., 2011; Keller, 2007; Marginson, 2008). The EU Commission proposed an optional legal framework for TCB, which was opposed by trade unions and employer representatives (Ales et al., 2006). EWCs are seen as one of the most developed organisations regarding the use of TCB (Smit, 2016).

Answering the main research question:

After obtaining an in-depth understanding of the concept *transnational collective bargaining*, the results gathered in this study were that collective bargaining on a transnational level is viable, but is hindered by a number of factors.

Reasons why collective bargaining can be viable on a transnational level:

Globalisation and production processes driven by TNCs have resulted in national boundaries being irrelevant, which has weakened the bargaining position of employees (Hyman, 1999). TCB is therefore necessary to improve the power imbalance between TNCs and employees (Golden, 2014; Schömann et al., 2012). TNCs have established transnational labour standards that they apply to their own operations and contractors (Trubek et al., 2000). The increase in collective bargaining transnationally, on a company level in TNCs, has generated the need for transnational labour regulation (Müller et al., 2011). TCB could be viable if the TLL methods mentioned in this paper are applied properly and in conjunction with one another.

IFAs concluded by GUFs or EWCs and TNCs have been implemented successfully in TNCs, and have been one of the most innovative HR tools to govern social responsibly on a transnational level (Eichhorst et al., 2011; Telljohann et al., 2009). The metal industry in the

EU has shown that IFAs have the potential to deal with sensitive transnational issues (Da Costa et al., 2012). IFAs have improved labour relations by providing employees with a contractual framework that promotes core labour standards and social dialogue, which is needed for TCB (Schömann et al., 2012).

Governments in the EU have been supportive of TCB. However, there is a need for other member states of the ILO to re-evaluate their collective bargaining structures, to accommodate collective bargaining on a transnational level, which will make them more competitive actors in the global economy (Lillie & Greer, 2007; Trubek et al., 2000). NGOs have been significant role players in TLL by applying pressure on TNCs to uphold basic human rights (Armbruster-Sandoval, 2003). NGOs have been using transnational campaigns to promote wage bargaining and wage improvements in countries, sectors, and TNCs (Keune & Schmidt, 2009). NGOs should form stronger TANs with other non-domestic organisations, so that TNCs and countries are forced to adapt their collective bargaining structures transnationally (Armbruster-Sandoval, 2003).

The ILO has recognised the importance of TCB. The ILO holds parties liable to the fundamental labour standards of the ILO, which have been used to protect employees against the detrimental effects of globalisation (Blackett & Sheppard, 2003). Conventions 87 and 98 should be implemented on a transnational level, so that employees or employers can freely belong to or form an organisation of their choice and participate in voluntary collective bargaining with the purpose of reaching a TCB agreement (Hughes, 2005). Since the ILO has been very influential on a national level, it has the potential to be influential on a transnational level. As stated by Ales and Dufresne (2012), the recognition of freedom of association and the right to strike is important for TCB. As there are no frameworks to conduct TCB, the fundamental labour principles and rights of the ILO, including Conventions 87 and 98, have guided GUFs in concluding IFAs with TNCs (Hassel & Helmerich, 2016; Helfen & Fichter, 2013). The WTO is a powerful actor in the world economy, and has the potential to promote TCB through social clauses (Jagodziński, 2011; Trubek et al., 2000).

EWCs are a new form of global unionism, which is seen as the first EU transnational labour regime initiative (Jagodziński, 2011; Pulignano, 2005; Smit, 2016). EWCs are effective because they support and promote TCB through sharing information and consulting employees and management during TCB negotiations (Pulignano, 2010). They have contributed to managerial decisions and obtained respect for employees' interests (Jagodziński, 2011). EWCs have also implemented transnational strategies that have made employees' views heard by both trade unions and company management (Jagodziński, 2011).

For employee representatives to gain more power on a transnational level, they should build TUNs (Helfen & Fichter, 2011; 2013). From the analysis, it is clear that trade unions should take into consideration national regulation, globalisation, and production when formulating transnational strategies (Lillie & Lucio, 2012). GUFs have been powerful in assisting with the implementation of collective bargaining practices in regions where these rights are not recognised, and have created transnational networks for the concluding of IFAs (Hayter et al., 2015).

The EU Social Charter has promoted and regulated TCB in the EU (Ales & Dufresne, 2012; Eichhorst et al., 2011; Maginson, 2008). In the present study, the evaluation of TCB in the EU revealed that TCB can assist with enforcing the basic human right of collective bargaining according to Conventions 87 and 98 (Evan, 2008). The following developments have contributed to the success of TCB in the EU: growth in transnational comparison of labour costs and performance of TNCs, an increase in development of TCB strategies by trade unions, and the increase of IFAs between TNCs and ETUFs or EWCs to address subjects such as restructuring, social dialogue, HR, management policies, and health and safety (Hayter et al., 2011). A voluntary framework for TCB in the EU does not exist. There are contradicting opinions in the literature analysed on whether a TCB framework is necessary to enforce the voluntary nature of collective bargaining on a transnational level (Gennard, 2009; Schömann, 2006; Schömann et al., 2012; Telljohann et al., 2009).

TCB in the EU has been more beneficial than challenging (Evan, 2008). In conclusion, for TCB to be viable, a variety of public and private normative sources at different levels should be implemented, including supportive labour movements, employers, and governments, as well as a structured framework (Schömann et al., 2012).

Factors that hinder collective bargaining on a transnational level

Collective bargaining has declined globally, for various reasons related to globalisation (Brown et al., 2008; Godfrey et al., 2015; Marginson, 2015; Visser et al., 2015). Nationally, collective bargaining is not very effective. It is difficult to believe that countries and trade unions with many different convictions will be able to form alliances to enforce TCB. Governments in general have not regulated and promoted collective bargaining in an effective manner (Bensusan, 2016). Trade unions have always been a main actor, representing employees in collective bargaining. Currently, they are struggling to protect their members, because of socio-economic changes and the global political climate, which restricts their ability to participate in TCB (Cahuc & Zylberberg, 2003; Ebbinghaus, 2004; Godfrey et al., 2015). IFAs have no legal consequences, because the ILO supervisory bodies, EWCs, NGOs, and Courts

lack legal capacity to enforce core labour standards on a transnational level (Costa & Rehfeldt, 2007).

As Conventions 87 and 98 grant the right to collective bargaining on a national level, and not a transnational level, their practical use is limited in this regard (Schömann et al., 2012). A framework for TCB does not exist, which has made it difficult for transnational parties to conduct TCB (Keune & Schmidt, 2009). Even though there is some evidence that TCB has been effective on company level, the evidence is not sufficient (Lillie & Lucio, 2012). As the EU has always promoted social dialogue, and not individualism, it cannot be assumed that EWCs will be effective in other regional integration regimes (Cahuc & Zylberberg, 2003).

The TLL methods discussed are not yet fully developed (Hammer, 2005; Telljohann et al., 2009). In conclusion, collective bargaining on a transnational level is not yet fully viable, as employees do not have effective TCB institutions, instruments, and initiatives when bargaining with powerful, highly skilled TNC management. The situation is exacerbated by national governments not supporting unions in the TCB process (Pulignano, 2010; Schömann et al., 2012).

6.3 Recommendations

According to the EEPI-Centre (2007), the recommendations of a study should be clearly aligned to the findings of the synthesis. The present researcher has identified gaps in the existing literature. TLL is in a formative stage, and academic research is only beginning to deal with this context, which indicates there is a need for more research (Helfen & Fichter, 2011, 2013; Smit, 2016). TLL is not well defined; therefore, it was difficult for the researcher to determine the differences between *international labour law and transnational labour law*. This could be an area for further research. The research topic needs more exploration, as the literature does not give a holistic view of TCB. Even though various authors have conducted research on trade unions' transnational strategies, such research has not always yielded empirical evidence (Lillie & Lucion, 2012).

There is a substantial amount of research on the possibility of an optional or voluntary TCB framework for the EU; however, there exists no evidence of such a framework for all TCB parties internationally, which the researcher identified as an aspect for further investigation.

The major issue recognised was the legal capacity of parties and IFAs on a transnational level. More research should be conducted on how more power could be given to labour movements to enforce agreements transnationally, while still maintaining a voluntary TCB process. The literature was contradicting when explaining whether TNCs are implementing IFAs effectively.

Therefore, more research is required on whether TNCs are enforcing the right to collective bargaining on a transnational level.

EWCs have made a significant contribution to TCB in the EU. Research has not explored whether similar bodies would work in other regional integration regimes. While TCB clearly takes place on a company level, the literature contained little information on TCB on other levels. Codes of conduct as a TLL method were not described in detail, and the present researcher could not find information pertaining to this method specifically used for TCB. This may have been caused by selection bias, or may have been due to insufficient evidence on this topic.

While the literature highlights the influence of NGOs on labour law, there was not enough detail on NGOs' TCB practices. More evidence is needed on strategies that the ILO could use to implement TCB in member states.

There is extensive research on TCB in the EU. Future research could investigate whether TCB as it is performed in the EU could be used as an example for regional integration regimes, such as SADC. One of the barriers identified was that national labour relations and national trade unions overrule transnational labour relations and GUFs, which has caused difficulties in employing IFAs. Further research should be done on how to manage this dilemma.

The instruments that employees could employ in TCB are not well established; this offers an opportunity to research alternative methods. The researcher suggests that other researchers conduct a mixed-method approach; by collecting quantitative data on the realities of the current TCB activities in the EU by conducting questionnaire surveys and interviews on TNCs, GUFs, NGOs, and ILO advisory committee members.

6.4 Conclusion

The purpose of this study was to investigate the viability of collective bargaining on a transnational level. This was achieved by obtaining an in-depth understanding of collective bargaining, transnational labour relations, and the ILO Conventions promoting freedom of association and collective bargaining and TCB in the EU. A qualitative research approach was employed, using both a systematic literature review and a document analysis to answer the following sub-questions:

What are collective bargaining and transnational labour relations?

What does the right to collective bargaining as provided in Conventions 87 and 98 entail?

What does transnational collective bargaining look like in the EU?

Secondary data were collected by means of purposive sampling, with an explicit criteria to gather the most relevant data to answer the research questions. An inductive document analysis, with six steps, was then applied to analyse the data and interpret the findings. This was followed by the researcher stipulating the trustworthiness measures taken, ethical considerations, and the limitations of the study. The summary of the main findings follows.

The concept *transnational collective bargaining* was establishment in the EU (Da Costa & Rehfeldt, 2008; Schömann et al., 2012). The founding of EWCs has shown that the EU is in the process of established a transnational labour regime (Smit, 2016). Collective bargaining is the most important labour law tool, which has the aim of balancing the power between labour and capital (Bensusan, 2016). Collective bargaining structures or frameworks utilised in countries are based on ILO Conventions 87 and 98 (Blackett & Sheppard, 2003; Hyman, 1999). Unfortunately, collective bargaining is seldom used, and is a right which should be enjoyed by everyone (Blackett & Sheppard, 2003).

National boundaries have become irrelevant, because of globalisation (Hyman, 1999). Globalisation has changed the nature of competition in labour markets, and has resulted in several consequences for employees, one of which is trade unions losing their negotiating power (Marginson, 2015). Globalisation and the influence of TNCs have led to the development of a new labour law field — transnational labour relations — a topic on which little research has been published (Helfen & Fichter, 2013).

Big TNCs have moved production processes to countries where the right to collective bargaining is lacking; however, social responsibility has become an important aspect in many companies (Glassner & Pochet, 2011; Telljohann et al., 2009). This resulted in TNCs being required to give employees a voice on a transnational level.

In the present study, the researcher indicated how collective bargaining on a transnational level can and has been facilitated by means of IFAs between TNCs and TUNs. Even though many IFAs have been successfully implemented, it is still not a fully developed instrument (Hammer, 2005; Telljohann et al., 2009).

TUNs consist of GUFs, national trade unions, EWCs, and NGOs; however, there is a need for stronger transnational networks between employee representatives to conduct collective bargaining on a transnational level (Helfen & Fichter, 2013). Transnational trade networks have used transnational campaigns in wage bargaining in countries, sectors, and TNCs, as the scope of IFAs can be limited (Keune & Schmidt, 2009). Furthermore, the findings

highlighted that NGOs are new actors in labour relations, specifically in TLL, and have assisted with applying pressure on TNCs to protect the basic human rights of employees (Egels-Zanden, 2008; Hassel & Helmerich, 2016; Smit, 2014).

Collective bargaining has become decentralised, taking place on a company level, and not the sector- or inter-sector level (Dell'Aringa & Pagani, 2005). Many member states of the ILO have ratified Conventions 87 and 98, granting employees the freedom to join or establish an organisation of their own choice, and to partake in voluntary collective bargaining. However, they are not enforcing these rights (Bensusan, 2016; Hughes, 2005).

National labour laws are currently competing with TLL. Governments are thus required to adapt their national collective bargaining structures to accommodate transnational labour relations, as well as consult one another on TCB (Hepple, 2005; Smit, 2016; Trubek et al., 2000). Even though the ILO has no legal capacity and has limitations, its fundamental labour standards for collective bargaining have been influential, and have the potential to facilitate TCB (Hassel & Helmerich, 2016).

Currently, there is no TCB framework to assist bargaining parties with negotiations on a transnational level. In order to protect employees transnationally, it is required that other transnational labour mechanisms be developed, to activate powerful transnational networks that are able to negotiate with TNCs in an efficient and fair manner.

This study has made a contribution to the existing body of knowledge on transnational labour relations by giving a holistic view of the elements of TCB. A better theoretical understanding was obtained of collective bargaining, ILO Convention 87 and 98, TLL, and TCB in the EU. Countries could utilise the findings of the study to adapt their collective bargaining structures to accommodate TCB. TNCs could develop their social responsibility strategy based on the evidence presented in this study.

TCB actors could use the results as learning material. Other regional integration regimes, such as the SADC, might find the results helpful when developing TCB in their area of responsibility. It is hoped that this study will create an awareness in employees, TNCs, NGOs, trade unions, and countries that TCB could improve the educational, living and working circumstances of employees and the performance of organisations.

LIST OF REFERENCES

- Aidt, T. S., & Tzannatos, Z. (2008). Trade unions, collective bargaining and macroeconomic performance: A review. *Industrial Relations Journal*, 39(4), 258-295.
- Al-Ali, N., Black, R., & Koser, K. (2001). The limits to 'transnationalism': Bosnian and Eritrean refugees in Europe as emerging transnational communities. *Ethnic and Racial Studies*, 24(4), 578-600.
- Ales, E. (2009). Transnational collective bargaining in Europe: The case for legislative action at EU level. *International Labour Review*, 148(1-2), 149-162.
- Ales, E., & Dufresne, A. (2012). Transnational collective bargaining: Another (problematic) fragment of the European multi-level industrial relations system. *European Journal of Industrial Relations*, 18(2), 95-105.
- Ales, E., Engblom, S., Jaspers, T., Laulom, S., Sciarra, S., Sobczak, A., & Valdés Dal-Ré, F. (2006). *Transnational collective bargaining: Past, present and future* (Final report). Brussels: European Commission. Retrieved from http://ec.europa.eu/employment_social/labour_law/docs/transnational_agreements_ales_study_en.pdf [20 Jan. 2008].
- Anstey, M. S., Grogan, J., & Ngcukaitobi, F. (2011). *Collective bargaining in the workplace* (1st ed.). Cape Town: Juta.
- Armbruster-Sandoval, R. (2003). Globalization and transnational labor organizing: The Honduran maquiladora industry and the Kimi campaign. *Social Science History*, 27(4), 551-576.
- Arnold, C., Marculewicz, S., Tailbart, P., de Wind, E., Winzer, T., Sanchez, R., & Anzorreguy, M. (2015). *Paper on International Labour Standards in the Contemporary Global Economy*. Amsterdam: Global Employment Institute. Retrieved from <https://www.ibanet.org/Document/Default.aspx?DocumentUid=051FADEB-8CA5>.
- Arnold, D. G. (2010). Transnational corporations and the duty to respect basic human rights. *Business Ethics Quarterly*, 20(3), 371-399.
- Arrowsmith, J., & Marginson, P. (2004). *The European cross-border dimension to collective bargaining in multinational companies*, Presented at conference on Multinationals and the International Diffusion of Organisational Forms and Practices, Barcelona, 15-16 July 2004. Coventry: University of Warwick.
- Atieno, O. P. (2009). An analysis of the strengths and limitation of qualitative and quantitative research paradigms. *Problems of Education in the 21st Century*, 13(1), 13-38.
- Bendix, S. (2015). *Labour relations: A Southern African perspective* (6th ed.). Cape Town: Juta.
- Bensusan, G. (2016). Collective bargaining and beyond: Debates, problems and alternatives for worker protection. *Bulletin of Comparative Labour Relations*, 92(Special ed.), 39-71.
- Besamusca, J., & Tijdens, K. (2015). Comparing collective bargaining agreements for developing countries. *International Journal of Manpower*, 36(1), 86-102.
- Bieler, A. (2005). European integration and the transnational restructuring of social relations: The emergence of labour as a regional actor. *Journal of Common Market Studies*, 43(3), 461-484.

- Bjelić, P. (2013). New approach in international trade analysis due to international factor movements. *Proceedings of the Faculty of Economics* (pp. 17-29). Belgrade, Serbia: Serbia University.
- Blackett, A., & Sheppard, C. (2003). Collective bargaining and equality: Making connections. *International Labour Review*, 142(4), 419-457.
- Bourque, R. (2008). International framework agreements and the future of collective bargaining in multinational companies. *Just Labour*, 12(Spring ed.), 30-47.
- Bowen, G. A. (2009). Document analysis as a qualitative research method. *Qualitative Research Journal*, 9(2), 27-40.
- Bronfenbrenner, K. (2007). *Global unions: Challenging transnational capital through cross-border campaigns*. London: Cornell University Press.
- Brown, W., Bryson, A., & Forth, J. (2008). *Competition and the retreat from collective bargaining* (NIESR Discussion paper, No. 318). University of Cambridge, Cambridge: National Economic Institute. Retrived from www.niesr.ac.uk/sites/default/files/publications/210808_110817.pdf.
- Budeli, M. (2009). Workers' right to freedom of association and trade unionism in South Africa: An historical perspective. *Fundamina: A Journal of Legal History*, 15(2), 57-74.
- Bunniss, S., & Kelly, D. R. (2010). Research paradigms in medical education research. *Medical Education*, 44(4), 358-366.
- Cahuc, P., & Zylberberg, A. (2003). Chapter 7, Collective Bargaining. In (Eds.) R. N. Block & P. Berg, *Collective bargaining in context: Bargaining for competitiveness* (pp. 1-59). Kalamazoo, Michigan: W.E. Upjohn Institute for Employment Research.
- Charnovitz, S. (2008). Editorial comment: The ILO Convention on freedom of association and its future in the United States. *The American Journal of International Law*, 102(1), 90-107.
- Chau, N. H., & Kanbur, S. M. R. (2001). The adoption of international labor standards conventions: Who, when, and why? [With comments and discussion]. In *Brookings trade forum* (pp. 113-156). New York: Brookings Institution Press.
- Contrepolis, S., & Jefferys, S. (2010). European work councils in Central and Eastern Europe: Varieties of institution building among French service sector multinationals. *Industrial Relations Journal*, 41(6), 584-602.
- Cooke, W. N. (2005). Exercising power in a prisoner's dilemma: Transnational collective bargaining in an era of corporate globalisation? *Industrial Relations Journal*, 36(4), 283-302.
- Costa, I. D., & Rehfeldt, U. (2007). European work councils and transnational bargaining about restructuring in the auto industry. Transfer: *European Review of Labour and Research*, 13(2), 313-316.
- Coxson, C. R. (1999). The 1998 ILO Declaration on Fundamental Principles and Rights at Work: Promoting labour law reforms through the ILO as an alternative to imposing coercive trade sanctions. *Dickinson Journal of International Law*, 17(3), 469-504.
- Creamer, T. T., DiGerlando, R., Glickman, G., & Petersen, D. M. (2012). Collective bargaining basics. *Journal of Collective Bargaining in the Academy*, (1), 19. 1-21.

- Creswell, J. W. (2014). Research design. *Qualitative, quantitative, and mixed methods approaches* (4th ed.). Nebraska: SAGE Publications.
- Cronin, P., Ryan, F., & Coughlan, M. (2008). Undertaking a literature review: A step-by-step approach. *The British Journal of Nursing*, 17(1), 38-43.
- Curtis, K. (2004). *Democracy, freedom of association and the ILO*. Paper presented at the International Labour Conference, 92nd Session, 1-7 June 2004. Geneva: ILO Publications.
- Da Costa, I., Pulignano, V., Rehfeldt, U., & Telljohann, V. (2012). Transnational negotiations and the Europeanization of industrial relations: Potential and obstacles. *European Journal of Industrial Relations*, 18(2), 123-137.
- Da Costa, I., & Rehfeldt, U. (2008). Transnational collective bargaining at company level: Historical developments. In K. Papadakis (Ed.), *Cross-border social dialogue and agreements: An emerging global industrial relations framework ?* (pp. 43-62). Geneva: International Institute For Labour Studies.
- Dell'Aringa, C., & Pagani, L. (2005). Collective bargaining and wage dispersion in Europe. *British Journal of Industrial Relations*, 45(1), 29-54.
- Demaret, L. (2013). ILO standards and precarious work: Strengths, weaknesses and potential. *International Journal of Labour Research*, 5(1), 9.
- De Silva, S. (1996). *Collective bargaining negotiations* (pp. 1-16). Geneva: ILO Publications.
- Djelic, M., & Sahlin-Anderson, K. (2008). *Transnational governance — institutional dynamics of regulation* (pp. 1-38). Cambridge: Cambridge University Press.
- Dunning, H. (1998). The origins of Convention No. 87 on freedom of association and the right to organize. *International Labour Review*, 137(2), 149-156.
- Ebbinghaus, B. (2004). The changing union and bargaining landscape: Union concentration and collective bargaining trends. *Industrial Relations Journal*, 35(6), 574-587.
- Egels-Zandén, N. (2008). Transnational governance of workers' rights: Outlining a research agenda. *Journal of Business Ethics*, 87(2), 169-188.
- Eichhorst, W., Kendzia, M., & Vandeweghe, B. (2011). *Cross-border collective bargaining and transnational social dialogue* (pp. 1-76). Brussels: European Union Parliament. Retrieved from <http://www.europarl.europa.eu/activities/committees/studies.do?language=EN>.
- Elo, S., & Kyngäs, H. (2008). The qualitative content analysis process. *Journal of Advanced Nursing*, 62(1), 107-115.
- Evidence for Policy and Practice Information and Co-ordinating Centre. (2007). *Methods for conducting systematic literature reviews*. London: Social Science Research Unit of the University of London.
- Even, J. (2008). *Transnational collective bargaining in Europe* (Doctoral dissertation). Erasmus School of Law (ESL), Rotterdam.
- Ewing, K. (2015). The lady doth protest too much methinks — the right to strike, international standards and the Supreme Court of Canada. *Labour & Employment Law Journal*, 18(3), 518-555.

- Faro, A. L. (2012). Bargaining in the shadow of 'optional frameworks'? The rise of transnational collective agreements and EU law. *European Journal of Industrial Relations*, 18(2), 153-165.
- Fetzer, T. (2012). Industrial relations history in transnational perspective: A review Essay. *History Compass*, 10(1), 56-69.
- Franzosi, R. (2008). Content analysis: Objective, systematic and quantitative description of content (1st ed.). *SAGE benchmarks in social research methods: Content analysis*. London: Sage Publications. 2-43.
- Gallin, D. (2008). International framework agreements: A reassessment. In K. Papadakis (Ed.), *Cross-border social dialogue and agreements: An emerging global industrial relations framework?* (pp. 15-41). Geneva: International Institutue for Labour Studies.
- Gennard, J. (2009). Development of transnational collective bargaining in Europe. *Employee Relations*, 31(4), 341-346.
- Gernigon, B., Odero, A., & Guido, H. (1998). ILO principles concerning the right to strike. *International Labour Review*, 137(4), 1-64.
- Gernigon, B., Odero, A., & Guido, H. (2000). ILO principles concerning collective bargaining. *International Labour Review*, 139(1), 33-55.
- Glassner, V., & Keune, M. (2010). *Negotiating the crisis? Collective bargaining in Europe during the economic downturn* (Working paper, No. 10). Geneva: International Labour Office.
- Glassner, V., Keune, M., & Marginson, P. (2011). Collective bargaining in a time of crisis: Developments in the private sector in Europe. *Transfer: European Review of Labour and Research*, 17(3), 303-322.
- Glassner, V., & Pochet, P. (2011). *Why trade unions seek to coordinate wages and collective bargaining in the Eurozone: Past developments and future prospects* (Working paper EU trade union institute). Brussels: European Trade Union Institute.
- Glassner, V., & Schömann, I. (2008). Transnational collective bargaining in Europe: Current situation, problems, prospects. *Transfer: European Review of Labour and Research*, 14(1), 183-187.
- Godfrey, S., Maree, J., Du Toit, D., & Theron, J. (2015). *Collective bargaining in South Africa: Past, present, future* (Reprinted). Cape Town: Juta.
- Golafshani, N. (2003). Understanding reliability and validity in qualitative research. *The Qualitative Report*, 8(4), 597-606.
- Golden, D. (2014). Labour and transnational action in times of crisis: From case studies to theory. *Transfer: European Review of Labour and Research*, 20(3), 471-473.
- Gopalakrishnan, R. (2007). *Freedom of association and collective bargaining in export processing zones: Role of the ILO supervisory mechanisms* (Working paper, No. 1). Geneva: International Labour Office.
- Gordon, M., & Turner, L. (2000). Making transnational collaboration work. In M. Gordon & L. Turner (Eds.), *Transnational cooperation among labour unions*. New York: Cornell University Press.
- Grogan, J. (2010). *Collective labour law* (1st ed.). Cape Town, South Africa: Juta.
- Gumbrell-McCormick, R. (2004). *The ICFTU and the world economy: A historical perspective* (pp. 34-5). Liverpool, England: Liverpool University Press.

- Hammer, N. (2005). International framework agreements: Global industrial relations between rights and bargaining. *Transfer: European Review of Labour and Research*, 11(4), 511-530.
- Hammer, N. (2008). International framework agreements in the context of global production. In K. Papadakis (Ed.), *Cross-border social dialogue and agreements: An emerging global industrial relations framework?* (pp. 89-111). Geneva: International Institute for Labour Studies.
- Hassel, A. (2008). The evolution of a global labor governance regime. *Governance*, 21(2), 231-251.
- Hassel, A., & Helmerich, N. (2016). Global governance, democracy and international labour law. In Y. Dahan, H. Lerner & F. Milman-Sivan (Eds.), *Global justice and international labour rights* (1st ed., pp. 239-266). Cambridge: Cambridge University Press.
- Hayter, S., Fashoyin, T., & Kochan, T. A. (2011). Review essay: Collective bargaining for the 21st century. *Journal of Industrial Relations*, 53(2), 225-247.
- Helfen, M., & Fichter, M. (2011). *Global production networks and global union federations: Re-assembling transnational union networks by International Framework Agreements* (Paper submission for VII Global Labour University Conference, Johannesburg, South Africa). Berlin: Free University of Berlin.
- Helfen, M., & Fichter, M. (2013). Building transnational union networks across global production networks: Conceptualising a new arena of labour–management relations. *British Journal of Industrial Relations*, 51(3), 553-576.
- Hennebert, M. (2014). Cross-border union alliances and transnational collective bargaining: A case study in a Canadian MNCs. *Just Labour: A Canadian Journal of Work and Society*, 17 & 18, 18-33.
- Hepple, B. (2005). Does transnational labour regulation matter? In *Labour Laws and Global Trade*. Oxford: Bloomsbury Publishing.
- Hofmann, C., & Schuster, N. (2016). *It ain't over 'til it's over: The right to strike and the mandate of the ILO Committee of Experts revisited* (Global Labour University working paper, No. 40). Geneva: ILO Publications.
- Horvath, K. (2012). National numbers for transnational relations? Challenges of integrating quantitative methods into research on transnational labour market relations. *Ethnic and Racial Studies*, 35(10), 1741-1757.
- Hsieh, H. F., & Shannon, S. E. (2005). Three approaches to qualitative content analysis. *Qualitative Health Research*, 15(9), 1277-1288.
- Hughes, S. (2005). The International Labour Organisation. *New Political Economy*, 10(3), 413-425.
- Hyman, R. (1999). National industrial relations systems and transnational challenges: An essay in review. *European Journal of Industrial Relations*, 5(1), 89-110.
- International Labour Organisation (2003). *The International Labour Organisations Fundamental Conventions*. Geneva: ILO Publications.
- International Labour Organisation (2011). *Challenges, prospects and opportunities of ratifying ILO Conventions Nos. 87 and 98 in India*. New Delhi: ILO Publications.
- International Labour Organisation. (2012). *Report of the Committee of Experts on the Application of Conventions and Recommendations*. Geneva: ILO Publications.

- International Labour Organisation. (2015a). *Factsheet No. 1 Collective bargaining*. Geneva: ILO Publications.
- International Labour Organisation. (2015b). *Factsheet No. 2 Representativity and Recognition for Collective Bargaining*. Geneva: ILO Publications.
- International Labour Organisation. (2015c). *Factsheet No. 3 Subjects for Collective Bargaining*. Geneva, Switzerland: ILO Publications.
- International Labour Organisation. (2015d). *Factsheet No. 4 The application of collective agreements*. Geneva: ILO Publications.
- International Labour Organisation. (2015e). *Collective Bargaining: A policy guide*. Geneva: ILO Publications.
- International Labour Organisation. (2017). *Background on the ILO*. Geneva: ILO Publications.
- International Organisation for Migration (2010). *Migration and Transnationalism*, Geneva: IOM Publications.
- Ishola, G. K. (2013). ILO and the international labour standards setting: A case of Nigeria labour acts. *Journal of Human Resource Management*, 1(1), 15-20.
- Jagodziński, R. (2011). EWCs after 15 years — success or failure?. *Transfer: European Review of Labour and Research*, 17(2), 203-216.
- Kaminska, M. E., & Visser, J. (2011). The emergence of industrial relations in regional trade blocks — a comparative analysis. *British Journal of Industrial Relations*, 49(2), 256-281.
- Keller, B. (2007). An optional framework for Transnational Collective Bargaining: Old wine, new bottles or a major breakthrough? In O. Jacobi, M. Jepsen, B. Keller, & M. Weiss (Eds.), *Social embedding and the integration of markets: An opportunity for transnational trade union action or an impossible task?* (Hans-Böckl, pp. 135-147). Germany: Leibniz Information Centre for Economics.
- Keune, M., & Schmidt, V. (2009). Global capital strategies and trade union responses —towards transnational collective bargaining. *International Journal of Labour Research*, 1(2), 9-26.
- Kim, I., & Kuljis, J. (2010). Applying content analysis to web-based content. *Journal of Computing and Information Technology*, 18(4), 369-375.
- Kings College London. (2008). Systematic reviews. *Health Services Research*, 12(4), 454-462.
- Kivisto, P. (2001). Theorizing transnational immigration: A critical review of current efforts. *Ethnic and Racial Studies*, 24(4), 549-577.
- Kolben, K. (2011). Transnational labor regulation and the limits of governance. *Theoretical Inquiries in Law*, 12(2), 403-437.
- Kondracki, N. L., Wellman, N. S., & Amundson, D. R. (2002). Content analysis: Review of methods and their applications in nutrition education. *Journal of Nutrition Education and Behavior*, 34(4), 224-230.
- Larion, A. (2016). Freedom of association and right to collective bargaining in ILO regulations. *The USV Annals of Economics and Public Administration*, 16(23), 226-232.
- Lee, H. (2011). Rethinking transnationalism through the second generation. *The Australian Journal of Anthropology*, 22(3), 295-313.
- Leedy, P. D. & Ormond, J. E. (2014). *Practical research: Planning and design* (1st ed.). Boston: Pearson

- Lillie, N. (2008). The ILO Maritime Labour Convention, 2006: A new paradigm for global labour rights implementation. In K. Papadakis (Ed.), *Cross-border social dialogue and agreements: An emerging global industrial relations framework?* (pp. 191-215). Geneva: International Institute for Labour Studies.
- Lillie, N., & Greer, I. (2007). Industrial relations, migration, and neoliberal politics: The case of the European construction sector. *Politics & Society*, 35(4), 551-581.
- Lillie, N., & Lucio, M. (2012). Rollerball and the spirit of capitalism: Competitive dynamics within the global context, the challenge to labour transnationalism, and the emergence of ironic outcomes. *Critical Perspectives on International Business*, 8(1), 74-92.
- Macklem, P. (2002). Labour law beyond borders. *Journal of International Economic Law*, 5(3), 605-645.
- Maree, J. (2011). Trends in the South African collective bargaining system in comparative perspective. *South African Journal of Labour Relations*, 35(1), 7-37.
- Maree, K. (2012). *First steps in research* (Revised ed.). Pretoria: Van Schaik Publishers.
- Marginson, P. (2015). The changing nature of collective employment relations. *Employee Relations*, 37(6), 645-657.
- Marginson, P. (2008). The transnational dimension to collective bargaining in a European context. *International Journal of Labour Research*, 1(2), 61.
- Marginson, P., & Meardi, G. (2008). *Big players, different rules?: Multinationals and collective bargaining in Europe (Working paper)*. Warwick: Warwick University Business School.
- Marshall, C., & Rossman, G. B. (2010). *Designing qualitative research*. London: Sage Publication.
- Martinez-Pecino, R., Munduate, L., Medina, F. J., & Euwema, M. C. (2008). Effectiveness of mediation strategies in collective bargaining. *Industrial Relations: A Journal of Economy and Society*, 47(3), 480-495.
- McCallum, J. K. (2011). Trade union renewal and labour transnationalism in South Africa: The case of SATAWU. *The Journal of Labour and Society*, 14(2), 161-176.
- Mitchell, K. (1997). Transnational discourse: Bringing geography back in. *Antipode*, 29(2), 101-114.
- Müller, T., Platzer, H.-W., & Rüb, S. (2011). European collective agreements at company level and the relationship between EWCs and trade unions — lessons from the metal sector. *Transfer: European Review of Labour and Research*, 17(2), 217–228.
- Munck, R. (2010). Globalization, migration and work: Issues and perspectives. *Labour, Capital and Society*, 43(1), 155-177.
- Myers, P., & Barnes, J. (2005). *Measuring outcomes: Guidance on outcome evaluation for Sure Start local programmes*. London: University of London.
- Ngai, P., & Smith, C. (2007). Putting transnational labour process in its place: The dormitory labour regime in post-socialist China. *Work, Employment and Society*, 21(1), 27-45.
- Niforou, C. (2012). International framework agreements and industrial relations governance: Global rhetoric versus local realities. *British Journal of Industrial Relations*, 50(2), 352-373.
- Organisation for Economic Co-operation and Development. (2016). *Trade union density statistics*. Retrieved from https://stats.oecd.org/Index.aspx?DataSetCode=UN_DEN.

- Onwuegbuzie, A. J., Leech, N. L., & Collins, K. M. T. (2012). Qualitative analysis techniques for the review of the literature. *The Qualitative Report*, 17(28), 1-28.
- Papadakis, K. (2008). Introduction. In K. Papadakis (Ed.), *Cross-border social dialogue and agreements: An emerging global industrial relations framework?* (pp. 43-62). Geneva, Switzerland: International Institute for Labour Studies.
- Patton, M. Q. (2005). *Qualitative research. Encyclopedia of statistics in behavioural science*. Saint Paul: John Wiley & Sons, Ltd.
- Patton, M. Q. (2002). *Qualitative research and evaluation methods* (3rd ed.). Thousand Oaks, CA: SAGE Publications.
- Patton, M. Q., & Cochran M. (2002). *A guide to using qualitative research methodology*. London: London School of Hygiene and Tropical Medicine.
- Pochet, V. (2007). EU social dialogue: An empty shell or a tool for social embedding? In O. Jacobi, M. Jepsen, B. Keller, & M Weiss (Eds.), *Social embedding and the integration of markets: An opportunity for transnational trade union action or an impossible task?* (Hans-Böckl, pp. 135-147). Germany: Leibniz Information Centre for Economics.
- Ponterotto, J. G. (2005). Qualitative research in counseling psychology: A primer on research paradigms and philosophy of science. *Journal of Counseling Psychology*, 52(2), 126.
- Prasad, B.D. (2008). Content Analysis; A method of Social Science. In Research in Lal Das, D.K & Bhaskaran, V (Eds.), *Research methods for Social Work* (pp.173-193). New Delhi: Rawat.
- Pulignano, V. (2010). *Trade unions and the coordination of collective bargaining in Europe*. Leuven: University of Leuven.
- Rathzel, N. (2012). Globalisation and trade union internationalism. In H. Moksnes & M. Melin (Eds.), *Global civil society shifting powers in a shifting world* (pp. 195-202). Uppsala, Sweden: Uppsala University
- Regenbogen, S. (2005). The International Labour Organisation and freedom of association: Does freedom of association include the right to strike?. *Labour & Employment Law Journal*, 16(1). 385-417.
- Risse, T. (2012). Transnational actors and world politics. In W. Carlsnaes, T. Risse, & B. A. Simmons (Eds.), *Handbook of international relations: World politics* (pp. 426-449). London, England: Sage Publications.
- Risgaard, L. (2005). International framework agreements: A new model for securing workers rights? *Industrial Relations: A Journal of Economy and Society*, 44(4), 707-737.
- Romeyn, J. (2007). *The International Labour Organisation's Core Labour Standards and the Workplace Relations Act 1996*. Australia: Parliament of Australia.
- Rossmann, P. (2013). Meeting the challenge of precarious work: A workers' agenda. *International Journal of Labour Research*, 5(1), 117-131.
- Saunders, M., Lewis, P., & Thornhill, A. (2012). *Research methods for business students* (6th ed.). London: Pearson Education Limited.
- Schmidt, V. (2007). *Trade unions' response to globalisation* (pp. 170-190). Geneva: Global Union Research Network. Retrieved from http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_088078.pdf Geneva: Global Union Research Network.

- Schnabel, C., Zagelmeyer, S., & Kohaut, S. (2006). Collective bargaining structure and its determinants: An empirical analysis with British and German establishment data. *European Journal of Industrial Relations*, 12(2), 165-188.
- Schömann, I., Jagodziński, R., Boni, G., Clauwaert, S., Glassner, V., & Jaspers, T. (2012). *Transnational collective bargaining at company level: A new component of European industrial relations*. (Vol. 2). Brussels: European Trade Union Institute.
- Schulten, T. (2002). *Europeanisation of collective bargaining: An overview on trade union initiatives for a transnational coordination of collective bargaining policy* (WSI-Discussion paper No. 101). Düsseldorf: The Institute of Economic and Social Research.
- Schurink, W. J. (2003). Qualitative research in management and organisational studies with reference to recent South African research. *SA Journal of Human Resource Management*, 1(3), 2-14.
- Servais, J. M. (2009). ILO law and the right to strike. *CDN. Labour & Employment Law Journal*, 15(1), 148-163.
- Sherrer, P., & Weinert, R. (2007). Between local temptations and EU necessities: Fighting for EU framework agreements in the EU metal industry. In O. Jacobi, M. Jepsen, B. Keller, & M. Weiss (Eds.), *Social embedding and the integration of markets: An opportunity for transnational trade union action or an impossible task?* (Hans-Böckl, pp. 135-147). Germany: Leibniz Information Centre for Economics.
- Sibbel, L. (2001). ILO conventions and the covenant on economic, social and cultural rights: One goal, two systems. *Dialogue and Cooperation*, 1(2001), 51-66.
- Singh, A., & Zammit, A. (2000). The global labour standards controversy: Critical issues for developing countries. *South Centre No. South Perspectives* (30 November 2000). 1-101.
- Smiley, E. (2015). Collective bargaining 3.0. *Dissent*, 62(4), 69-72.
- Smit, P. (2014). Transnational labour relations: A dream of possibility in SADC. *African Journal of International and Comparative Law*, 22(3), 448-467.
- Smit, P. (2016). The future of labour law in a globalisation and regionalised world. *Bulletin of Comparative Labour Relations*, 92(Special ed.), 145-159.
- Snel, E., Engbersen, G., & Leerkes, A. (2006). Transnational involvement and social integration. *Global Networks*, 6(3), 285-308.
- Steenkamp, A., Stelzer, S., & Badenhorst, N. (2004). The right to bargain collectively. *Industrial Law Journal*, 9(1) 943-961.
- Stevis, D. (2010). *International framework agreements and global social dialogue: Parameters and prospects*. Geneva: ILO Publications.
- Swepston, L. (1998). Human rights law and freedom of association: Development through ILO supervision. *International Labour Review*, 2, 16-17.
- Tatulashvili, N. (2011). *Implementation of the Core ILO Standards, the right to freedom of association and the right to collective bargaining at the national level — comparative study of Poland and Georgia* (Master's thesis). Lund University, Lund.
- Taylor, R. (1999). *Trade unions and transnational industrial relations* (Discussion paper). Geneva: International Institute for Labour Studies.
- Telljohann, V., Costa, I. D., Müller, T., Rehfeldt, U., & Zimmer, R. (2009). European and international framework agreements: New tools of transnational industrial relations. *Transfer: European Review of Labour and Research*, 15(3-4), 505-525.

- The New School for Social Research. (2010). *Transnationalism*. New York. Retrieved from <http://www.newschool.edu/NSSR/courses.aspx?id=37336-495>.
<http://doi.org/10.1111/j.1468-232X.2008.00530.x>.
- Thomas, M. P. (2011). Global industrial relations? Framework agreements and the regulation of international labor standards. *Labor Studies Journal*, 36(2), 269-287.
- Tornimbeni, C. (2005). The state, labour migration and the transnational discourse — a historical perspective from Mozambique. *Vienna Journal of African Studies*, 8(Special issue), 307-328.
- Trubek, D. M., Mosher, J., & Rothstein, J. S. (2000). Transnationalism in the regulation of labor relations: International regimes and transnational advocacy networks. *Law and Social Inquiry*, 25(4), 1187-1211.
- Van Niekerk, A., Christianson, M., McGregor, M., Smit, N., & van Eck, B. (2012). *Law @ work* (2nd ed.). Cape Town: Lexis Nexis.
- Venn, D. (2009). *Legislation, collective bargaining and enforcement: Updating the OECD Employment Protection Indicators* (OECD Social, Employment and Migration Working papers). Paris: Organisation for Economic Co-operation and Development.
- Vertovec, S. (1999). Conceiving and researching transnationalism. *Ethnic and Racial Studies*, 22(2), 447-462.
- Visser, J. (2016). What happened to collective bargaining during the great recession?. *IZA Journal of Labor Policy*, 5(1), 1-35.
- Visser, J., Hayter, S., & Gammarano, R. (2015). *The coverage of collective bargaining: Stability, erosion or decline* (Labour Relations and Collective Bargaining Policy Brief, No.1). Geneva: ILO Publications.
- Wach, E., Ward, R., & Jacimovic, R. (2013). *Learning about qualitative document analysis*. Brighton: Institute of Development Studies in Brief.
- Weissbrodt, D., & Mason, M. (2014). Compliance of the United States with international labor law: Roadrunner Search Discovery Service. *Minnesota Law Review*, 98(5), 1842-1878.
- Welman, C., Kruger, F., Mitchell, B., & Huysamen, G. (2005). *Research methodology* (3rd ed.). Cape Town: Oxford University Press.
- Wesley, J. J. (2010). *Qualitative document analysis in political science (Workshop paper)*. Amsterdam: Vrije Universiteit
- Khafa, E. (2015). *Issue Brief No. 3: Labour Relations and Collective Bargaining*. Geneva: International Labour Organisation.
- Zambarloukou, S. (2006). Collective bargaining and social pacts: Greece in comparative perspective. *European Journal of Industrial Relations*, 12(2), 211-229.
- Zhang, Y., & Wildemuth, B. M. (2009). *Qualitative analysis of content*. Westport, California: Libraries Unlimited.

ANNEXES

A. Convention 87

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Convention concerning Freedom of Association and Protection of the Right to Organise (Entry into force: 04 Jul 1950. Adoption: San Francisco, 31st ILC session (09 Jul 1948) - Status: Up-to-date instrument (Fundamental Convention).

PART I. FREEDOM OF ASSOCIATION

Article 1

Each Member of the International Labour Organisation for which this Convention is in force undertakes to give effect to the following provisions.

Article 2

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

Article 3

1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.

2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

Article 4

Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority.

Article 5

Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.

Article 6

The provisions of Articles 2, 3 and 4 hereof apply to federations and confederations of workers' and employers' organisations.

Article 7

The acquisition of legal personality by workers' and employers' organisations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of Articles 2, 3 and 4 hereof.

Article 8

1. In exercising the rights provided for in this Convention workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land.

2. The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.

Article 9

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

2. In accordance with the principle set forth in paragraph 8 of Article 19 of the Constitution of the International Labour Organisation the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

Article 10

In this Convention the term *organisation* means any organisation of workers or of employers for furthering and defending the interests of workers or of employers.

PART II. PROTECTION OF THE RIGHT TO ORGANISE

Article 11

Each Member of the International Labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise.

PART III. MISCELLANEOUS PROVISIONS

Article 12

1. In respect of the territories referred to in Article 35 of the Constitution of the International Labour Organisation as amended by the Constitution of the International Labour Organisation Instrument of Amendment 1946, other than the territories referred to in paragraphs 4 and 5 of the said article as so amended, each Member of the Organisation which ratifies this Convention shall communicate to the Director-General of the International Labour Office with or as soon as possible after its ratification a declaration stating:

(a) the territories in respect of which it undertakes that the provisions of the Convention shall be applied without modification;

(b) the territories in respect of which it undertakes that the provisions of the Convention shall be applied subject to modifications, together with details of the said modifications;

(c) the territories in respect of which the Convention is inapplicable and in such cases the grounds on which it is inapplicable;

(d) the territories in respect of which it reserves its decision.

2. The undertakings referred to in subparagraphs (a) and (b) of paragraph 1 of this Article shall be deemed to be an integral part of the ratification and shall have the force of ratification.

3. Any Member may at any time by a subsequent declaration cancel in whole or in part any reservations made in its original declaration in virtue of subparagraphs (b), (c) or (d) of paragraph 1 of this Article.

4. Any Member may, at any time at which the Convention is subject to denunciation in accordance with the provisions of Article 16, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of such territories as it may specify.

Article 13

1. Where the subject-matter of this Convention is within the self-governing powers of any non-metropolitan territory, the Member responsible for the international relations of that territory may, in agreement with the government of the territory, communicate to the Director-General of the International Labour Office a declaration accepting on behalf of the territory the obligations of this Convention.

2. A declaration accepting the obligations of this Convention may be communicated to the Director-General of the International Labour Office:

(a) by two or more Members of the Organisation in respect of any territory which is under their joint authority; or

(b) by any international authority responsible for the administration of any territory, in virtue of the Charter of the United Nations or otherwise, in respect of any such territory.

3. Declarations communicated to the Director-General of the International Labour Office in accordance with the preceding paragraphs of this Article shall indicate whether the provisions of the Convention will be applied in the territory concerned without modification or subject to modifications; when the declaration indicates that the provisions of the Convention will be applied subject to modifications it shall give details of the said modifications.

4. The Member, Members or international authority concerned may at any time by a subsequent declaration renounce in whole or in part the right to have recourse to any modification indicated in any former declaration.

5. The Member, Members or international authority concerned may, at any time at which this Convention is subject to denunciation in accordance with the provisions of Article 16, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of the application of the Convention.

PART IV. FINAL PROVISIONS

Article 14

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 15

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratifications has been registered.

Article 16

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 17

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications, declarations and denunciations communicated to him by the Members of the Organisation.
2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 18

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications, declarations and acts of denunciation registered by him in accordance with the provisions of the preceding articles.

Article 19

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 20

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:

(a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 16 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 21

The English and French versions of the text of this Convention are equally authoritative

B. Convention 98

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (Entry into force: 18 Jul 1951) Adoption: Geneva, 32nd ILC session (01 Jul 1949) - Status: Up-to-date instrument (Fundamental Convention)

Article 1

1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.

2. Such protection shall apply more particularly in respect of acts calculated to--

(a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;

(b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

Article 2

1. Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.

2. In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference within the meaning of this Article.

Article 3

Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise as defined in the preceding Articles.

Article 4

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

Article 5

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

2. In accordance with the principle set forth in paragraph 8 of Article 19 of the Constitution of the International Labour Organisation the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

Article 6

This Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way.

Article 7

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 8

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 9

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraph 2 of Article 35 of the Constitution of the International Labour Organisation shall indicate --

(a) the territories in respect of which the Member concerned undertakes that the provisions of the Convention shall be applied without modification;

(b) the territories in respect of which it undertakes that the provisions of the Convention shall be applied subject to modifications, together with details of the said modifications;

(c) the territories in respect of which the Convention is inapplicable and in such cases the grounds on which it is inapplicable;

(d) the territories in respect of which it reserves its decision pending further consideration of the position.

2. The undertakings referred to in subparagraphs (a) and (b) of paragraph 1 of this Article shall be deemed to be an integral part of the ratification and shall have the force of ratification.

3. Any Member may at any time by a subsequent declaration cancel in whole or in part any reservation made in its original declaration in virtue of subparagraph (b), (c) or (d) of paragraph 1 of this Article.

4. Any Member may, at any time at which the Convention is subject to denunciation in accordance with the provisions of Article 11, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of such territories as it may specify.

Article 10

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraph 4 or 5 of Article 35 of the Constitution of the International Labour Organisation shall indicate whether the provisions of the Convention will be applied in the territory concerned without modification or subject to modifications; when the declaration indicates that the provisions of the Convention will be applied subject to modifications, it shall give details of the said modifications.

2. The Member, Members or international authority concerned may at any time by a subsequent declaration renounce in whole or in part the right to have recourse to any modification indicated in any former declaration.

3. The Member, Members or international authority concerned may, at any time at which this Convention is subject to denunciation in accordance with the provisions of Article 11, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of the application of the Convention.

Article 11

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 12

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications, declarations and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 13

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications, declarations and acts of denunciation registered by him in accordance with the provisions of the preceding articles.

Article 14

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 15

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides,

(a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 11 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 16

The English and French versions of the text of this Convention are equally authoritative.