

# INTERNATIONAL SOCIAL SECURITY

JEAN-MICHEL SERVAIS



Wolters Kluwer

Law & Business

# International Social Security

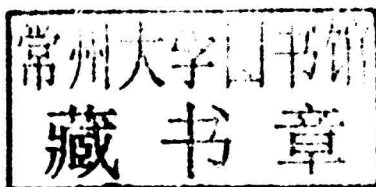
**Jean-Michel Servais**

This book was originally published as a monograph in the International  
Encyclopaedia of Laws/Social Security Law.

General Editor: Roger Blanpain

Associate General Editor: Michele Colucci

Volume Editor: Willy van Eeckhoutte



**Wolters Kluwer**  
Law & Business

*Published by:*

Kluwer Law International  
PO Box 316  
2400 AH Alphen aan den Rijn  
The Netherlands  
Website: [www.kluwerlaw.com](http://www.kluwerlaw.com)

*Sold and distributed in North, Central and South America by:*

Aspen Publishers, Inc.  
7201 McKinney Circle  
Frederick, MD 21704  
United States of America  
Email: [customer.service@aspenpublishers.com](mailto:customer.service@aspenpublishers.com)

*Sold and distributed in all other countries by:*

Turpin Distribution Services Ltd.  
Stratton Business Park  
Pegasus Drive, Biggleswade  
Bedfordshire SG18 8TQ  
United Kingdom  
Email: [kluwerlaw@turpin-distribution.com](mailto:kluwerlaw@turpin-distribution.com)

**DISCLAIMER:** The material in this volume is in the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The editor and the contributing authors expressly disclaim all liability to any person with regard to anything done or omitted to be done, and with respect to the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this volume. No reader should act or refrain from acting on the basis of any matter contained in this volume without first obtaining professional advice regarding the particular facts and circumstances at issue. Any and all opinions expressed herein are those of the particular author and are not necessarily those of the editor or publisher of this volume.

*Printed on acid-free paper.*

ISBN 978-90-411-4867-4

This title is available on [www.kluwerlawonline.com](http://www.kluwerlawonline.com)

© 2013, Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Email: [permissions@kluwerlaw.com](mailto:permissions@kluwerlaw.com)

Printed and Bound by CPI Group (UK) Ltd, Croydon, CR0 4YY.

# Table of Contents

The Author	3
List of Abbreviations	11
General Introduction	13
Part I. The Origin and the Development of the International Social Security Law	17
Chapter 1. The Origin of the Social Security Law	17
Chapter 2. The Founding Principles of the ILO Social Security Law	20
§1. THE FOUNDING PRINCIPLES OF THE ILO	20
§2. THE FIRST WORLD WAR AND THE FOUNDING OF THE ILO	23
§3. THE INTER-WAR PERIOD AND THE CONSOLIDATION OF THE SYSTEM	25
§4. THE 1939–1945 WAR AND THE NEW AGE OF SOCIAL SECURITY	26
§5. SOCIAL SECURITY STANDARDS IN THE PRESENT DAYS	29
Chapter 3. The ILO Standards Setting Activities	32
§1. THE ADOPTION OF ILO STANDARDS	32
§2. THE GENERAL SUPERVISORY PROCEDURES	33
I. The Regular Supervision	34
A. The Committee of Experts on the Application of Conventions and Recommendations	35
B. The ILC Committee on the Application of Conventions and Recommendations	36
II. The Representations and Complaints	36
	5

## Table of Contents

§3. PUTTING THE SUPERVISORY MECHANISMS IN PERSPECTIVE	38
§4. PROMOTION AND COOPERATION	42
Part II. The ILO Standards on Social Security	45
Chapter 1. Common Principles	46
§1. SOCIAL SECURITY AS A HUMAN RIGHT	46
§2. OBLIGATION OF SOLIDARITY	47
§3. FLEXIBILITY TOWARDS UNIVERSALITY	48
§4. FINANCING: CONTRIBUTORY AND NON-CONTRIBUTORY SYSTEMS	50
§5. ORGANIZATION AND ADMINISTRATION: PUBLIC OR PRIVATE MANAGEMENT?	51
§6. ENTITLEMENTS	54
I. Method for Calculating Cash Benefits	54
II. Suspension, Refusal, Withdrawal of Benefits	55
III. The Beneficiaries' Right of Appeal	56
Chapter 2. Employment Injury	58
§1. PREVENTION: OCCUPATIONAL SECURITY	58
§2. INDEMNITIES: THE PROVISIONS OF THE RELEVANT INSTRUMENTS	60
I. Definition of the Contingency	60
II. Beneficiaries	61
III. Benefits	61
IV. Conditions of Allocation	63
Chapter 3. Medical Care	64
§1. ENABLING ACCESS TO HEALTH CARE	64
§2. THE PROVISIONS OF THE RELEVANT INSTRUMENTS	65
I. Definition of the Contingency	65
II. Beneficiaries	65
III. Benefits	66
IV. Conditions of Allocation	66
Chapter 4. Sickness Benefits	68

## Table of Contents

§1. DEPENDENCY	68
§2. THE PROVISIONS OF THE RELEVANT INSTRUMENTS	68
I. Definition of the Contingency	68
II. Beneficiaries	68
III. Benefits	69
IV. Conditions of Allocation	69
 Chapter 5. Invalidity Benefits	 70
§1. THE REINTEGRATION OF DISABLED PERSONS	70
§2. THE PROVISIONS OF THE RELEVANT INSTRUMENTS	71
I. Definition of the Contingency	71
II. Beneficiaries	72
III. Benefits	72
IV. Conditions of Allocation	73
 Chapter 6. Survivors' Benefits	 74
§1. A STRONG GENDER DIMENSION	74
§2. THE PROVISIONS OF THE RELEVANT INSTRUMENTS	75
I. Definition of the Contingency	75
II. Beneficiaries	75
III. Benefits	76
IV. Conditions of Allocation	76
 Chapter 7. Old-Age Benefits	 77
§1. OLDER WORKERS	77
§2. THE PROVISIONS OF THE RELEVANT SOCIAL SECURITY INSTRUMENTS	79
I. Definition of the Contingency	79
II. Beneficiaries	81
III. Benefits	82
IV. Conditions of Allocation	82
 Chapter 8. Maternity Benefits	 83
§1. WOMEN WORKERS	83
§2. THE SOCIAL SECURITY PROVISIONS OF THE RELEVANT INSTRUMENTS	86
I. Definition of the Contingency	86
II. Beneficiaries	86

## Table of Contents

III. Benefits	87
IV. Conditions of Allocation	87
<b>Chapter 9. Family Benefits</b>	<b>89</b>
§1. THE PROHIBITION OF CHILD LABOUR	89
§2. THE PROVISIONS OF THE RELEVANT INSTRUMENT	90
I. Definition of the Contingency	91
II. Beneficiaries	91
III. Benefits	91
IV. Conditions of Allocation	91
<b>Chapter 10. Unemployment Benefits</b>	<b>92</b>
§1. UNEMPLOYMENT BENEFITS AND EMPLOYMENT	92
§2. THE PROVISIONS OF THE RELEVANT SOCIAL SECURITY INSTRUMENTS	95
I. Definition of the Contingency	95
II. Beneficiaries	95
III. Benefits	96
IV. Conditions of Allocation	96
<b>Chapter 11. Minimum Income Security</b>	<b>99</b>
§1. DEFINITION OF THE CONTINGENCY	99
§2. BENEFICIARIES	100
§3. BENEFITS	101
§4. CONDITIONS OF ALLOCATION	102
<b>Part III. The ILO Social Security Standards for Special Categories of Workers</b>	<b>103</b>
<b>Chapter 1. The Social Security of Migrant Workers</b>	<b>103</b>
§1. FOREIGN WORKERS	103
§2. THE PROVISIONS OF THE RELEVANT MIGRANT WORKERS INSTRUMENTS	105
I. Equality of Treatment	106
II. Maintenance of Acquired Rights and Provision of Benefits Abroad	107

## Table of Contents

III. Maintenance of Rights in Course of Acquisition	107
IV. Applicable Legislation	108
V. Mutual Administrative Assistance and Assistance to Persons	109
 Chapter 2. Seafarers	 110
§1. A GENERAL OUTLOOK AT THE ILO RULES ON SEAFARERS	110
§2. THE RELEVANT SOCIAL SECURITY PROVISIONS	113
§3. SEA FISHERS	115
 Part IV. The ILO Social Security Standards and the Globalization Process	 117
 Chapter 1. Social Security and Precarious Workers	 118
§1. VULNERABLE WORKERS	118
§2. PARTICULAR PROVISIONS	120
I. Independent Workers	120
II. Family Workers	122
III. Apprentices	123
IV. Home Workers	123
V. Part-Time Workers	124
VI. Domestic Workers	125
 Chapter 2. Extending to the Poorest	 126
§1. THE SEARCH FOR NEW SOLUTIONS	126
§2. STRIKING A BALANCE: THE ILO APPROACH	128
I. The Weight of the ILO Standards on Social Security	128
II. Social Security in a Broader Context	130
III. Social Security in the ILO Decent Work Agenda	131
 Chapter 3. Social Security in Europe	 138
§1. A HISTORICAL PERSPECTIVE	138
I. Enlightened Despotism	138
II. Laissez-Faire	139
III. Social State	140
§2. SOCIAL POLICY AND GLOBALIZATION	141



**Table of Contents**

Selected Bibliography	147
Index	155

# **International Social Security**

**Jean-Michel Servais**

This book was originally published as a monograph in the International  
Encyclopaedia of Laws/Social Security Law.

General Editor: Roger Blanpain

Associate General Editor: Michele Colucci

Volume Editor: Willy van Eeckhoutte



**Wolters Kluwer**

Law & Business

*Published by:*

Kluwer Law International  
PO Box 316  
2400 AH Alphen aan den Rijn  
The Netherlands  
Website: [www.kluwerlaw.com](http://www.kluwerlaw.com)

*Sold and distributed in North, Central and South America by:*

Aspen Publishers, Inc.  
7201 McKinney Circle  
Frederick, MD 21704  
United States of America  
Email: [customer.service@aspenpublishers.com](mailto:customer.service@aspenpublishers.com)

*Sold and distributed in all other countries by:*

Turpin Distribution Services Ltd.  
Stratton Business Park  
Pegasus Drive, Biggleswade  
Bedfordshire SG18 8TQ  
United Kingdom  
Email: [kluwerlaw@turpin-distribution.com](mailto:kluwerlaw@turpin-distribution.com)

**DISCLAIMER:** The material in this volume is in the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The editor and the contributing authors expressly disclaim all liability to any person with regard to anything done or omitted to be done, and with respect to the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this volume. No reader should act or refrain from acting on the basis of any matter contained in this volume without first obtaining professional advice regarding the particular facts and circumstances at issue. Any and all opinions expressed herein are those of the particular author and are not necessarily those of the editor or publisher of this volume.

*Printed on acid-free paper.*

ISBN 978-90-411-4867-4

This title is available on [www.kluwerlawonline.com](http://www.kluwerlawonline.com)

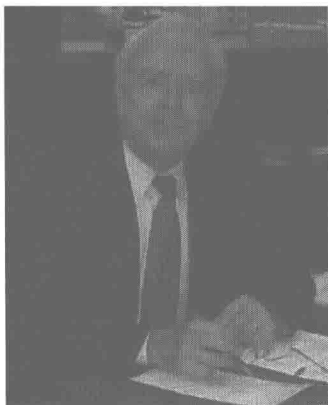
© 2013, Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Email: [permissions@kluwerlaw.com](mailto:permissions@kluwerlaw.com)

Printed and Bound by CPI Group (UK) Ltd, Croydon, CR0 4YY.

## The Author



Jean-Michel Servais<sup>1</sup> (born in Liège on 23 June 1945) studied at the University of Liege (Belgium). He obtained a first Degree in philosophy and literature in 1965, and a Doctorate of Law in 1968. The same year, he was appointed Barrister-at-Law in Liege and also Research Assistant at the Faculty of Law of the University of Liege. He was awarded Doctor *honoris causa* from the University Attila József (Szeged, Hungary) in 1997.

He was a former Director of the International Labour Office (ILO). He joined the Organization in Geneva on an external competition in 1972. He was, in particular, Deputy Regional Director at the ILO Office for Asia and the Pacific in Bangkok (Thailand), Director of Operations at the ILO Office for Arab States in Beirut (Lebanon), Research Coordinator at the ILO International Institute for Labour Studies and Special Advisor to the Director-General before leaving the Organization in 2005. He has a fluent command of English, French (mother tongue) and Spanish, and a passive knowledge of Catalan, Dutch, Italian and Portuguese.

He was elected Secretary-General (1988–2001) and later Honorary President of the International Society for Labour Law and Social Security. He is Visiting Professor at the Faculties of Law of the Universities of Liège (Belgium) and Gerona (Spain) and an Associate Member of COMPTRASEC (Centre of Comparative Labour and Social Security Law, University Montesquieu Bordeaux IV). He is a member of various academic associations and of the scientific committee of several reviews. He has given courses and lectures in many universities and other institutions in various European and non-European countries. He is the author of numerous books and articles in the field of international and comparative labour law and industrial relations. They have been published in French, English, Spanish, Bulgarian, German, Portuguese, Japanese, Russian and Greek. They include:

---

1. The author wishes to thank Profesor Bernd von Maydell for his very useful comments on a previous version of this monograph.

## The Author

- ‘The International Labour Organization’, in R. Blanpain (ed.): *International Encyclopaedia of Laws* (The Hague), Kluwer (third edition), 2011.
- *Droits en synergie sur le travail. Eléments de droits international et comparé du travail* (Brussels), Bruylant, 1997. Portuguese translation: *Elementos de Direito Internacional e Comparado do Trabalho* (São Paulo), LTr, 2001.
- *International Labour Law* (The Hague), Kluwer, third revised edition, 2011 (French version has been published by Librairie Générale Droit et Jurisprudence (LGDJ), Paris, in 2004, Spanish edition, by Heliasta, Buenos Aires, 2011).
- *Droit social de l'Union européenne* (Brussels), second edition, Bruylant, 2011.

# Table of Contents

The Author	3
List of Abbreviations	11
General Introduction	13
Part I. The Origin and the Development of the International Social Security Law	17
Chapter 1. The Origin of the Social Security Law	17
Chapter 2. The Founding Principles of the ILO Social Security Law	20
§1. THE FOUNDING PRINCIPLES OF THE ILO	20
§2. THE FIRST WORLD WAR AND THE FOUNDING OF THE ILO	23
§3. THE INTER-WAR PERIOD AND THE CONSOLIDATION OF THE SYSTEM	25
§4. THE 1939–1945 WAR AND THE NEW AGE OF SOCIAL SECURITY	26
§5. SOCIAL SECURITY STANDARDS IN THE PRESENT DAYS	29
Chapter 3. The ILO Standards Setting Activities	32
§1. THE ADOPTION OF ILO STANDARDS	32
§2. THE GENERAL SUPERVISORY PROCEDURES	33
I. The Regular Supervision	34
A. The Committee of Experts on the Application of Conventions and Recommendations	35
B. The ILC Committee on the Application of Conventions and Recommendations	36
II. The Representations and Complaints	36
	5

## Table of Contents

§3. PUTTING THE SUPERVISORY MECHANISMS IN PERSPECTIVE	38
§4. PROMOTION AND COOPERATION	42
Part II. The ILO Standards on Social Security	45
Chapter 1. Common Principles	46
§1. SOCIAL SECURITY AS A HUMAN RIGHT	46
§2. OBLIGATION OF SOLIDARITY	47
§3. FLEXIBILITY TOWARDS UNIVERSALITY	48
§4. FINANCING: CONTRIBUTORY AND NON-CONTRIBUTORY SYSTEMS	50
§5. ORGANIZATION AND ADMINISTRATION: PUBLIC OR PRIVATE MANAGEMENT?	51
§6. ENTITLEMENTS	54
I. Method for Calculating Cash Benefits	54
II. Suspension, Refusal, Withdrawal of Benefits	55
III. The Beneficiaries' Right of Appeal	56
Chapter 2. Employment Injury	58
§1. PREVENTION: OCCUPATIONAL SECURITY	58
§2. INDEMNITIES: THE PROVISIONS OF THE RELEVANT INSTRUMENTS	60
I. Definition of the Contingency	60
II. Beneficiaries	61
III. Benefits	61
IV. Conditions of Allocation	63
Chapter 3. Medical Care	64
§1. ENABLING ACCESS TO HEALTH CARE	64
§2. THE PROVISIONS OF THE RELEVANT INSTRUMENTS	65
I. Definition of the Contingency	65
II. Beneficiaries	65
III. Benefits	66
IV. Conditions of Allocation	66
Chapter 4. Sickness Benefits	68

## Table of Contents

§1. DEPENDENCY	68
§2. THE PROVISIONS OF THE RELEVANT INSTRUMENTS	68
I. Definition of the Contingency	68
II. Beneficiaries	68
III. Benefits	69
IV. Conditions of Allocation	69
 Chapter 5. Invalidity Benefits	 70
§1. THE REINTEGRATION OF DISABLED PERSONS	70
§2. THE PROVISIONS OF THE RELEVANT INSTRUMENTS	71
I. Definition of the Contingency	71
II. Beneficiaries	72
III. Benefits	72
IV. Conditions of Allocation	73
 Chapter 6. Survivors' Benefits	 74
§1. A STRONG GENDER DIMENSION	74
§2. THE PROVISIONS OF THE RELEVANT INSTRUMENTS	75
I. Definition of the Contingency	75
II. Beneficiaries	75
III. Benefits	76
IV. Conditions of Allocation	76
 Chapter 7. Old-Age Benefits	 77
§1. OLDER WORKERS	77
§2. THE PROVISIONS OF THE RELEVANT SOCIAL SECURITY INSTRUMENTS	79
I. Definition of the Contingency	79
II. Beneficiaries	81
III. Benefits	82
IV. Conditions of Allocation	82
 Chapter 8. Maternity Benefits	 83
§1. WOMEN WORKERS	83
§2. THE SOCIAL SECURITY PROVISIONS OF THE RELEVANT INSTRUMENTS	86
I. Definition of the Contingency	86
II. Beneficiaries	86



## Table of Contents

III. Benefits	87
IV. Conditions of Allocation	87
Chapter 9. Family Benefits	89
§1. THE PROHIBITION OF CHILD LABOUR	89
§2. THE PROVISIONS OF THE RELEVANT INSTRUMENT	90
I. Definition of the Contingency	91
II. Beneficiaries	91
III. Benefits	91
IV. Conditions of Allocation	91
Chapter 10. Unemployment Benefits	92
§1. UNEMPLOYMENT BENEFITS AND EMPLOYMENT	92
§2. THE PROVISIONS OF THE RELEVANT SOCIAL SECURITY INSTRUMENTS	95
I. Definition of the Contingency	95
II. Beneficiaries	95
III. Benefits	96
IV. Conditions of Allocation	96
Chapter 11. Minimum Income Security	99
§1. DEFINITION OF THE CONTINGENCY	99
§2. BENEFICIARIES	100
§3. BENEFITS	101
§4. CONDITIONS OF ALLOCATION	102
Part III. The ILO Social Security Standards for Special Categories of Workers	103
Chapter 1. The Social Security of Migrant Workers	103
§1. FOREIGN WORKERS	103
§2. THE PROVISIONS OF THE RELEVANT MIGRANT WORKERS INSTRUMENTS	105
I. Equality of Treatment	106
II. Maintenance of Acquired Rights and Provision of Benefits Abroad	107