

INTRODUCTORY NOTE TO 2022 AMENDMENTS TO THE ILO DECLARATION ON FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK

BY ANNE TREBILCOCK*

[June 10, 2022]

On June 10, 2022, by consensus, the International Labour Conference (ILC) adopted a resolution amending the Declaration on Fundamental Principles and Rights at Work to encompass “a safe and healthy working environment.”¹ Under this Declaration, adopted in 1998,² all 187 member states of the International Labour Organization (ILO) have an obligation, arising from their membership, “to respect, promote and realize . . . the principles concerning the fundamental rights”³ that are the subject of ILO Conventions recognized as fundamental. The other four fundamental categories are freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labor, the effective abolition of child labor, and the elimination of discrimination in respect of employment and occupation.

At the same time, the Declaration provides that the Organization has an obligation to assist ILO members in attaining the objectives of the Declaration.⁴ Taking member states’ needs into account, this may take the form of offering technical cooperation and advisory services to promote ratification and to implement the fundamental Conventions, to assist those not yet in a position to ratify to realize the principles and rights concerned, and to help them in their efforts to create a climate for economic and social development.⁵ Towards this end, cooperation with other institutions is encouraged.⁶

The deep roots of the 2022 resolution trace back to the preamble to the ILO Constitution, adopted in 1919, which expresses concern for protecting workers against sickness, disease, and injury arising out of their employment. The proximate genesis of adding the new category of fundamental principles and rights lay in recommendations made by the Global Commission on the Future of Work, whose report⁷ came out a few months before the adoption of the Centenary Declaration by the International Labour Conference on June 21, 2019. While the Centenary Declaration itself did not pick up on this proposal, the delegates agreed that the issue of recognition of occupational safety and health (OSH) as a fundamental right would be taken up as a matter of priority. As noted in the Preamble to the 2022 resolution, the COVID-19 pandemic gave a compelling demonstration of the vital importance of OSH. Subsequent consultations on procedure and substance led to the consensus reached by government, employer, and worker delegates to the ILC in June 2022.⁸

The principles and rights enshrined in the Declaration, as adopted in 1998, have been widely embedded in other hard and soft law instruments.⁹ They are cross-referenced in a multitude of instruments, ranging from the United Nations Guiding Principles on Business and Human Rights to free trade agreements and corporate codes of conduct, and form part of labor safeguards in multilateral development bank governance.¹⁰ Some member states sought reassurances that led to the adoption of the phrase that nothing in the amendment “shall be construed as affecting in any unintended manner the rights and obligations of a Member arising from existing trade and investment agreements between States,”¹¹ although this was not legally necessary.¹²

A further impact of the 1998 Declaration has been the dramatic rise in the number of ratifications of the fundamental Conventions.¹³ Whether this will also occur for the two Conventions newly designated as fundamental (the Occupational Safety and Health Convention, 1981 (No. 155) and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)), remains to be seen. By January 31, 2023, a total of seventy-five member states had ratified Convention No. 155, and fifty-nine had ratified No. 187.¹⁴ This leaves a large number, including the United States, which will need to supply annual reports under the Declaration Follow-up, on efforts made in accordance with the Declaration and on changes in their law and practice.¹⁵ Reflecting the tripartite nature of the ILO, employers’ and workers’ organizations can also submit comments in relation to government reports.¹⁶ In addition, under the Follow-up, the ILO Director-General periodically prepares a Global Report on fundamental principles and rights at work, drawing on the experiences of all member states and relevant ILO action.¹⁷

*Anne Trebilcock is former Legal Adviser/Director of Legal Services of the International Labour Organization, now associated with the University of Göttingen, Institute for Labour Law, Germany.

A safe and healthy working environment does not, of course, fall solely within the purview of the ILO. A long-standing cooperation agreement with the World Health Organization has led to many activities in the area of occupational safety and health.¹⁸ Less harmonious has been the interaction between the ILO and the International Organization for Standardization (ISO), a non-governmental organization of standards bodies; in 2018, the two broke off attempts to arrive at industry standards on occupational safety and health management systems that were originally intended to ensure respect for international labor standards.¹⁹ Beyond voluntary efforts, a robust legal framework, supported by an adequately equipped labor inspectorate, forms an essential part of improving occupational health and safety.²⁰

An area to watch will be the interplay between the amended ILO Declaration and the resolution of the United Nations General Assembly on the human right to a clean, healthy, and sustainable environment, adopted on July 26, 2022.²¹ The UNGA resolution notes that this right “is related to other rights and existing international law,”²² thus encompassing the 1998 ILO Declaration as amended in 2022. The inextricable link between what occurs in the environment of the workplace and the external environment points to synergies for reducing the toll of work on health and life (almost two million people lose their lives at work every year).²³ The recognition that a safe and healthy working environment is among the fundamental principles and rights at work offers a new tool for human rights, sustainable development, and a just transition in addressing climate change.²⁴

ENDNOTES

- 1 International Labour Organization (ILO), International Labour Conference Resolution on the inclusion of a safe and healthy working environment in the ILO’s framework of fundamental principles and rights at work, International Labour Conference, 110th session, ILC.110/Resolution 1 (June 10, 2022) [hereinafter Resolution]. The text of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, as amended, appears at https://www.ilo.org/wcmsp5/groups/public/—ed_norm/—declaration/documents/normativeinstrument/wcms_716594.pdf
- 2 See Lee Swepston, *Introductory Note, International Labour Conference: ILO Declaration on Fundamental Principles and Rights at Work and Annex*, 37 I.L.M. 1233 (1998) and Anne Trebilcock, *The ILO Declaration on Fundamental Principles and Rights at Work*, in *THE ILO AND THE SOCIAL CHALLENGES OF THE 21ST CENTURY: THE GENEVA LECTURES 105–116* (Roger Blanpain and Chris Engel eds., 2001).
- 3 Declaration, *id.* ¶¶ 1(b) and 2.
- 4 *Id.* ¶ 3, read together with ¶ 1(a).
- 5 *Id.* ¶ 3.
- 6 *Id.*
- 7 Global Commission on the Future of Work, *WORK FOR A BRIGHTER FUTURE* (ILO, 2019), https://www.ilo.org/wcmsp5/groups/public/—dgreports/—cabinet/documents/publication/wcms_662410.pdf
- 8 For details, see George Politakis, *The Recognition of Occupational Safety and Health as a Fundamental Principle and Right at Work*, 72 INT’L & COMP. L.Q. 213, 221–226 (2023).
- 9 See Kari Tapiola, *THE TEETH OF THE ILO: THE IMPACT OF THE ILO DECLARATION ON FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK* (ILO, 2018), https://www.ilo.org/wcmsp5/groups/public/—ed_norm/—ipecc/documents/publication/wcms_632348.pdf.
- 10 For an illustrative list of these and other examples, see Politakis, *supra* note 8, 3–4.
- 11 Resolution, ¶ 5.
- 12 Politakis, *supra* note 8.
- 13 Emmanuel Reynaud, *THE INTERNATIONAL LABOUR ORGANIZATION AND GLOBALIZATION: FUNDAMENTAL RIGHTS, DECENT WORK AND SOCIAL JUSTICE*, ILO Research Paper No. 21 (Oct. 2018), https://www.ilo.org/wcmsp5/groups/public/—dgreports/—inst/documents/publication/wcms_648620.pdf.
- 14 For ratification information, see, e.g., for C. 155, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312300.
- 15 Annex (Revised) Follow-up to the Declaration, ¶ I.A. The constitutional basis for such reporting is art. 19, ¶ 5(e) of the ILO Constitution.
- 16 The source of this, referred to in ¶ II(B)(1) of the Annex, is art. 23 of the ILO Constitution.
- 17 Annex to the Declaration, ¶ III. The ILO adopted a revised text of the Annex in 2010, in relation to preparation of the Global Report.
- 18 Agreement between the International Labour Organization and the World Health Organization, entry into force July 10, 1948, 19 U.N.T.S. 269; WHO/ILO, *JOINT ESTIMATE OF THE WORK-RELATED BURDEN OF DISEASE AND INJURY, 2000–2016* (2021).
- 19 See Isabelle Daugareilh, *The Future of Health and Safety at Work as a Fundamental Principle and Right—Will It Meet ISO and UN Challenges?*, in *SOCIAL JUSTICE AND THE WORLD OF WORK: POSSIBLE GLOBAL FUTURES 293–300* (Brian Langille and Anne Trebilcock eds., 2023).
- 20 See generally ILO Committee of Experts on the Application of Conventions and Recommendations, *GENERAL SURVEY ON OSH INSTRUMENTS*, International Labour Conference, 98th Session, Report III (Part 1B) (2009), https://www.ilo.org/wcmsp5/groups/public/—ed_norm/—relconf/documents/meetingdocument/wcms_103485.pdf.

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- 21 G.A. Res. A/76/L.75 [hereinafter UNGA resolution]. It built upon a similar text adopted on October 8, 2021, by the Human Rights Council, U.N. Doc. A/HRC/RES/48/13.
- 22 G.A. Res. A/76/L.75, ¶ 2.
- 23 Press Release, ILO, WHO/ILO: Almost 2 million people die from work-related causes each year (Sept. 17, 2021), https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_819705/lang-en/index.htm.
- 24 See ILO, ILO GUIDELINES FOR A JUST TRANSITION TOWARDS ENVIRONMENTALLY SUSTAINABLE ECONOMIES AND SOCIETIES FOR ALL, (2015), https://www.ilo.org/wcmsp5/groups/public/@ed_emp/@emp_ent/documents/publication/wcms_432859.pdf.

2022 AMENDMENTS TO THE ILO DECLARATION ON FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK*

[June 10, 2022]

► ILO Declaration on Fundamental Principles and Rights at Work

Whereas the ILO was founded in the conviction that social justice is essential to universal and lasting peace;

Whereas economic growth is essential but not sufficient to ensure equity, social progress and the eradication of poverty, confirming the need for the ILO to promote strong social policies, justice and democratic institutions;

Whereas the ILO should, now more than ever, draw upon all its standard-setting, technical cooperation and research resources in all its areas of competence, in particular employment, vocational training and working conditions, to ensure that, in the context of a global strategy for economic and social development, economic and social policies are mutually reinforcing components in order to create broad-based sustainable development;

Whereas the ILO should give special attention to the problems of persons with special social needs, particularly the unemployed and migrant workers, and mobilize and encourage international, regional and national efforts aimed at resolving their problems, and promote effective policies aimed at job creation;

Whereas, in seeking to maintain the link between social progress and economic growth, the guarantee of fundamental principles and rights at work is of particular significance in that it enables the persons concerned to claim freely and on the basis of equality of opportunity their fair share of the wealth which they have helped to generate, and to achieve fully their human potential;

Whereas the ILO is the constitutionally mandated international organization and the competent body to set and deal with international labour standards, and enjoys universal support and acknowledgement in promoting fundamental rights at work as the expression of its constitutional principles;

Whereas it is urgent, in a situation of growing economic interdependence, to reaffirm the immutable nature of the fundamental principles and rights embodied in the Constitution of the Organization and to promote their universal application;

The International Labour Conference,

1. Recalls:

- (a) that in freely joining the ILO, all Members have endorsed the principles and rights set out in its Constitution and in the Declaration of Philadelphia, and have undertaken to work towards attaining the overall objectives of the Organization to the best of their resources and fully in line with their specific circumstances;
- (b) that these principles and rights have been expressed and developed in the form of specific rights and obligations in Conventions recognized as fundamental both inside and outside the Organization.

2. Declares that all Members, even if they have not ratified the Conventions in question, have an obligation, arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely:

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labour;

*This text was reproduced and reformatted from the text available at the International Labour Organization website (visited February 1, 2023), https://www.ilo.org/wcmsp5/groups/public/—ed_norm/—declaration/documents/normativeinstrument/wcms_716594.pdf.

- (c) the effective abolition of child labour;
- (d) the elimination of discrimination in respect of employment and occupation; and
- (e) a safe and healthy working environment.

3. Recognizes the obligation on the Organization to assist its Members, in response to their established and expressed needs, in order to attain these objectives by making full use of its constitutional, operational and budgetary resources, including by the mobilization of external resources and support, as well as by encouraging other international organizations with which the ILO has established relations, pursuant to article 12 of its Constitution, to support these efforts:

- (a) by offering technical cooperation and advisory services to promote the ratification and implementation of the fundamental Conventions;
- (b) by assisting those Members not yet in a position to ratify some or all of these Conventions in their efforts to respect, to promote and to realize the principles concerning fundamental rights which are the subject of those Conventions; and
- (c) by helping the Members in their efforts to create a climate for economic and social development.

4. Decides that, to give full effect to this Declaration, a promotional follow-up, which is meaningful and effective, shall be implemented in accordance with the measures specified in the annex hereto, which shall be considered as an integral part of this Declaration.

5. Stresses that labour standards should not be used for protectionist trade purposes, and that nothing in this Declaration and its follow-up shall be invoked or otherwise used for such purposes; in addition, the comparative advantage of any country should in no way be called into question by this Declaration and its follow-up.

► **Annex (Revised)** **Follow-up to the Declaration¹**

I. Overall purpose

1. The aim of the follow-up described below is to encourage the efforts made by the Members of the Organization to promote the fundamental principles and rights enshrined in the Constitution of the ILO and the Declaration of Philadelphia and reaffirmed in this Declaration.

2. In line with this objective, which is of a strictly promotional nature, this follow-up will allow the identification of areas in which the assistance of the Organization through its technical cooperation activities may prove useful to its Members to help them implement these fundamental principles and rights. It is not a substitute for the established supervisory mechanisms, nor shall it impede their functioning; consequently, specific situations within the purview of those mechanisms shall not be examined or re-examined within the framework of this follow-up.

3. The two aspects of this follow-up, described below, are based on existing procedures: the annual follow-up concerning non-ratified fundamental Conventions will entail merely some adaptation of the present modalities of application of article 19, paragraph 5(e), of the Constitution; and the Global Report on the effect given to the promotion of the fundamental principles and rights at work that will serve to inform the recurrent discussion at the Conference on the needs of the Members, the ILO action undertaken, and the results achieved in the promotion of the fundamental principles and rights at work.

II. Annual follow-up concerning non-ratified fundamental Conventions

A. PURPOSE AND SCOPE

1. The purpose is to provide an opportunity to review each year, by means of simplified procedures, the efforts made in accordance with the Declaration by Members which have not yet ratified all the fundamental Conventions.

2. The follow-up will cover the five categories of fundamental principles and rights specified in the Declaration.

B. MODALITIES

1. The follow-up will be based on reports requested from Members under article 19, paragraph 5(e), of the Constitution. The report forms will be drawn up so as to obtain information from governments which have not ratified one or more of the fundamental Conventions, on any changes which may have taken place in their law and practice, taking due account of article 23 of the Constitution and established practice.

2. These reports, as compiled by the Office, will be reviewed by the Governing Body.

3. Adjustments to the Governing Body's existing procedures should be examined to allow Members which are not represented on the Governing Body to provide, in the most appropriate way, clarifications which might prove necessary or useful during Governing Body discussions to supplement the information contained in their reports.

III. Global Report on fundamental principles and rights at work

A. PURPOSE AND SCOPE

1. The purpose of the Global Report is to provide a dynamic global picture relating to the five categories of fundamental principles and rights at work noted during the preceding period, and to serve as a basis for assessing the effectiveness of the assistance provided by the Organization, and for determining priorities for the following period, including in the form of action plans for technical cooperation designed in particular to mobilize the internal and external resources necessary to carry them out.

B. MODALITIES

1. The report will be drawn up under the responsibility of the Director-General on the basis of official information, or information gathered and assessed in accordance with established procedures. In the case of States which have not ratified the fundamental Conventions, it will be based in particular on the findings of the aforementioned annual follow-up. In the case of Members which have ratified the Conventions concerned, the report will be based in particular on reports as dealt with pursuant to article 22 of the Constitution. It will also refer to the experience gained from technical cooperation and other relevant activities of the ILO.

2. This report will be submitted to the Conference for a recurrent discussion on the strategic objective of fundamental principles and rights at work based on the modalities agreed by the Governing Body. It will then be for the Conference to draw conclusions from this discussion on all available ILO means of action, including the priorities and plans of action for technical cooperation to be implemented for the following period, and to guide the Governing Body and the Office in their responsibilities.

IV. IT IS UNDERSTOOD THAT:

1. The Conference shall, in due course, review the operation of this follow-up in the light of the experience acquired to assess whether it has adequately fulfilled the overall purpose articulated in Part I.

ENDNOTE

1 Ed. note: The original text of the Follow-up to the Declaration, as established by the International Labour Conference in 1998,

was superseded by the revised text of the annex adopted by the International Labour Conference in 2010.