

Report VII

- ▶ **Inclusion of safe and healthy working conditions in the ILO's framework of fundamental principles and rights at work**

Seventh item on the agenda

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► Introduction

1. This report outlines the origins and main stages of the process that has led to the submission to the International Labour Conference of a draft resolution on the inclusion of safe and healthy working conditions/a safe and healthy working environment in the framework of fundamental principles and rights at work of the International Labour Organization (ILO). It also describes the scope and significance of the proposed amendment to the ILO Declaration on Fundamental Principles and Rights at Work, 1998 ("the 1998 Declaration"), and provides an overview of key aspects of the draft resolution, the text of which is appended.

► Looking back: Core labour rights at the forefront

The ILO Declaration on Fundamental Principles and Rights at Work

2. At its 86th Session (1998), the International Labour Conference adopted the Declaration on Fundamental Principles and Rights at Work, a landmark political statement affirming the obligations and commitments that are inherent in membership of the ILO and relate to four core constitutional principles: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced labour or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation. The Declaration was hailed as "the foundation stone that will allow the ILO its full place in the global economy of the twenty-first century" and "the most forward-looking, positive and comprehensive response to the social dimension of trade liberalization".¹
3. The initiative for developing a formal and solemn instrument reaffirming the Organization's founding principles took shape as a response to the challenges of post-Cold War globalization and the need to reinvigorate the ILO's body of labour standards to be able to provide a social framework for trade liberalization.² The 1998 Declaration was prepared during a three-year process that was initiated at the 81st Session of the Conference (1994) celebrating the 75th anniversary of the ILO, which included a Conference resolution that noted the particular importance of six Conventions covering fundamental rights. This was followed by the World Summit for Social Development held in Copenhagen in 1995, a ratification campaign for Conventions on basic rights at work, and two sessions of the Governing Body in November 1997 and March 1998 that forged tripartite consensus ahead of the 86th Session of the Conference.³
4. Ten years later, the status of fundamental principles and rights at work was consolidated further as one of the four strategic objectives set forth in the ILO Declaration on Social Justice for a Fair Globalization, 2008 ("Social Justice Declaration"). Together, the two Declarations have come to symbolize the ILO's mission and objectives, better known as the Decent Work Agenda. Through its promotional follow-up, the 1998 Declaration has given significant impetus to the effort to

¹ ILO, *Record of Proceedings*, International Labour Conference, 86th Session, 1998, 22/23 and 22/25.

² Kari Tapiola, *The Teeth of the ILO: The Impact of the 1998 ILO Declaration on Fundamental Principles and Rights at Work* (ILO, 2018).

³ See the *Minutes of the 270th Session*, GB.270/PV(Rev.), November 1997, and the *Minutes of the 271st Session*, GB.271/PV/Rev., March 1998.

achieve universal ratification of the eight fundamental Conventions.⁴ The 1998 Declaration is now included in the United Nations *Guiding Principles on Business and Human Rights* and is expressly referred to in 70 bilateral or plurilateral free trade and economic partnership agreements.⁵

Origins of the current proposal

5. Although at the time of the adoption of the 1998 Declaration, views were already expressed that occupational safety and health was as fundamental as the other principles and rights and should therefore have been included in the Declaration, the formal recognition of occupational safety and health as a fundamental principle was first proposed in 2017 during the recurrent discussion on fundamental principles and rights at work. On that occasion, the representative of the European Union and its Member States put forward the view that “the ILO should explore the feasibility to include occupational safety and health into [fundamental principles and rights at work] for three major reasons. First, this was an issue clearly referring to the life, health and dignity of workers, so it would be completely in line with the spirit of the Declaration. Second, it was already part of many other international human rights instruments. Third, the celebration of 20 years of the Declaration [the following] year would provide the ILO with an appropriate opportunity to initiate the process for reflection.”⁶
6. The representative of the European Union and its Member States therefore proposed an amendment to clause 7(k) of the draft Conclusions concerning the second recurrent discussion on fundamental principles and rights at work, to include, after the call to the ILO to explore the relationship between fundamental principles and rights at work and occupational safety and health, the words “including the suitability and feasibility of integrating the right to safe and healthy working conditions into the fundamental principles and rights at work”. In the event, the amendment was withdrawn and clause 7(k) remained as originally drafted.⁷ No further action was taken by the Governing Body in its consideration at its 331st Session (October–November 2017) of the follow-up to the resolution concerning the second recurrent discussion on fundamental principles and rights at work.
7. The matter resurfaced in the context of the preparations for the celebration of the ILO's Centenary in 2019. At its 108th Session (2019), the International Labour Conference had before it an outcome document which, it was hoped, might lead to the adoption of a solemn document such as a Centenary Declaration, comparable to similar documents adopted on other historic occasions. Following the recommendation of the Global Commission on the Future of Work in its report earlier that year that “it is time for safety and health at work to be recognized as a fundamental

⁴ Since the adoption of the 1998 Declaration, a total of 586 ratifications of the eight fundamental Conventions and the Protocol to the Forced Labour Convention have been registered: 34 ratifications of the Forced Labour Convention, 1930 (No. 29); 36 ratifications of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); 31 ratifications of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98); 37 ratifications of the Equal Remuneration Convention, 1951 (No. 100); 46 ratifications of the Abolition of Forced Labour Convention, 1957 (No. 105); 46 ratifications of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111); 110 ratifications of the Minimum Age Convention, 1973 (No. 138); 187 ratifications of the Worst Forms of Child Labour Convention, 1999 (No. 182); and 59 ratifications of the Protocol of 2014 to the Forced Labour Convention, 1930.

⁵ For more information, see the ILO [Labour Provisions in Trade Agreements Hub](#).

⁶ ILO, *Reports of the Committee for Fundamental Principles and Rights at Work*, Summary of Proceedings, Provisional Record 11-2(Rev.), International Labour Conference, 106th Session, 2017, para. 331.

⁷ ILO, *Resolution and conclusions concerning the second recurrent discussion on fundamental principles and rights at work*, International Labour Conference, 106th Session, 2017. Clause 7(k) reads as follows: “The ILO should, consistent with the knowledge strategy of the organization ... explore the relationship between the fundamental principles and rights at work as defined in the 1998 Declaration and safe and healthy working conditions.”

principle and right at work”,⁸ Part II, Section C, of the draft declaration for the consideration of the Conference indicated that occupational safety and health is a fundamental principle and right at work in addition to those specified in the 1998 Declaration on Fundamental Principles and Rights at Work.⁹

8. The Conference Committee that was appointed to consider the document examined options for the possible recognition of occupational safety and health as an additional category of fundamental principles and rights at work but concluded that more thorough consideration should be given in particular to the process of amendment of the 1998 Declaration, the identification of the relevant instruments that would be recognized as fundamental, and the possible effects on trade agreements.¹⁰
9. Ultimately, consensus was reached on a compromise text, as reflected in the ILO Centenary Declaration for the Future of Work, that provided that “safe and healthy working conditions are fundamental to decent work”, while in the accompanying resolution, the Conference requested the Governing Body “to consider, as soon as possible, proposals for including safe and healthy working conditions in the ILO’s framework of fundamental principles and rights at work”.¹¹

Progress to date

10. In response to the request of the Conference for the prompt consideration of proposals, the Governing Body held four discussions, from November 2019 to March 2022, to examine options and define the most efficient way forward. The Governing Body’s in-depth discussions, which are summarized below, have paved the way for the amendment to the 1998 Declaration that is now before the Conference for possible adoption. Notably, they have permitted consensus to be reached on the scope and form of the amendment, brought clarity to sensitive issues related to effects on trade agreements, and led to a progressive convergence of views concerning the selection of the occupational safety and health Convention or Conventions that might be recognized as fundamental within the meaning of the 1998 Declaration.
11. At its 337th Session (October–November 2019), the Governing Body approved a procedural road map as a planning tool, which could be reviewed and modified by the Governing Body based on progress made. It outlined a staged approach to the consideration of proposals for including safe and healthy working conditions in the ILO’s framework of fundamental principles and rights. At the same, it was understood that several legal and practical issues required further consideration, including: the terminology to be used to formulate the fundamental principle relating to occupational safety and health; the question of whether the inclusion of this new principle and right should be achieved through the revision of the 1998 Declaration or through a separate outcome document; the identification of the corresponding fundamental Convention or Conventions; and the impact within and outside the ILO, including on trade agreements, of the

⁸ ILO, Global Commission on the Future of Work, *Work for a Brighter Future*, 2019, 39.

⁹ ILO, *ILO Centenary Outcome Document*, ILC.108/IV, 2019.

¹⁰ ILO, *Report of the Committee of the Whole: Summary of Proceedings*, Provisional Record No. 6B(Rev.), International Labour Conference, 108th Session, 2019

¹¹ ILO Centenary Declaration for the Future of Work, 2019, Part II, Section D; *Resolution on the ILO Centenary Declaration for the Future of Work*, para. 1.

possible inclusion of safe and healthy working conditions in the ILO's framework of fundamental principles and rights at work.¹²

12. Mindful of the urgency of the matter, the Governing Body initially intended to refer the matter to the Conference at its June 2021 session. The outbreak of the COVID-19 pandemic meant that the Governing Body was unable to keep to the original time frame, but at the same time underscored most forcefully the timeliness and criticality of recognizing safe and healthy working conditions among the Organization's fundamental principles.
13. As a result of the cancellation of its 338th Session (March 2020) owing to the COVID-19 pandemic and of the reduced agenda of its 340th Session (held virtually in October–November 2020), the Governing Body resumed consideration of the matter at its 341st Session (March 2021). On the basis of the road map, the Governing Body considered a number of substantive issues, which resulted in the identification of possible building blocks for the inclusion of safe and healthy working conditions in the ILO's framework of fundamental principles and rights at work. In particular, the Governing Body debated whether safe and healthy working conditions could qualify as a fundamental right and principle, having regard to the characteristics of the four existing fundamental principles and rights at work; the advantages and disadvantages of an amendment to the 1998 Declaration or the adoption of a stand-alone declaration; the selection of standards to be designated as fundamental and the timeline for such selection; the support to be provided to Member States in respecting, promoting and realizing the new fundamental principle; the possible impact of the recognition of a fifth category of fundamental principles and rights at work on free trade agreements; and the urgency resulting from the COVID-19 pandemic. The Governing Body approved a revised procedural road map leading up to the consideration of a possible outcome document at the 110th Session (2022) of the Conference.¹³
14. At its 343rd Session (November 2021), based on the revised procedural road map, the Governing Body pursued its consideration of three issues: possible forms of a Conference outcome document; the placement of an item on the agenda of the 110th Session (2022) of the Conference; and the recognition of one or more occupational safety and health instruments as fundamental. Discussions shed light on additional issues, including certain amendments consequential to the adoption of a Conference resolution amending the 1998 Declaration and the insertion of a saving clause as a means of preventing any unintended effects of the amended Declaration on labour clauses of existing free trade agreements. The Governing Body decided to place on the agenda of the 110th Session (2022) of the Conference an item regarding the inclusion of safe and healthy working conditions in the ILO's framework of fundamental principles and rights at work through an amendment to paragraph 2 of the 1998 Declaration, and requested the Director-General to prepare, through tripartite consultations, a draft resolution and a background paper addressing the terminology to be used, the occupational safety and health instrument(s) to be recognized as fundamental, and the possible legal effects, direct and indirect, on existing trade agreements concluded by Member States.¹⁴

¹² ILO, *Follow-up to the Resolution on the ILO Centenary Declaration for the Future of Work: Proposals for Including Safe and Healthy Working Conditions in the ILO's Framework of Fundamental Principles and Rights at Work*, GB.337/INS/3/2, October–November 2019; *Minutes of the 337th Session of the Governing Body of the International Labour Office*, GB.337/PV, November 2019, paras 79–116.

¹³ ILO, *Follow-up to the Resolution on the ILO Centenary Declaration for the Future of Work: Proposals for Including Safe and Healthy Working Conditions in the ILO's Framework of Fundamental Principles and Rights at Work*, GB.341/INS/6, March 2021; *Minutes of the 341st Session of the Governing Body of the International Labour Office*, GB.341/PV, March 2021, paras 164–198.

¹⁴ ILO, *Proposals for Including Safe and Healthy Working Conditions in the ILO's Framework of Fundamental Principles and Rights at Work*, GB.343/INS/6, November 2021; *Minutes of the 343rd Session of the Governing Body of the International Labour Office*, GB.343/PV, November 2021, paras 180–220.

15. At its 344th Session (March 2022), the Governing Body considered a draft resolution in the light of detailed information regarding the terminology, the instruments concerned and the possible implications on trade. The draft resolution also included the text of a draft Convention and a draft Recommendation, to be adopted at a future session of the Conference, for the partial revision of existing international labour standards to align them with the amended Declaration. Progress was made in several respects, including on the text of the draft resolution and the practical arrangements of the Conference discussion, while further clarity was brought to the outstanding issues of the selection of the fundamental instrument or instruments and the wording of the new principle.¹⁵
16. Two rounds of informal tripartite consultations were held in April 2022 with a view to refining the text of the draft resolution that could serve as a basis for the Conference discussions and exploring options which could facilitate consensus-based solutions to pending issues. The consultations confirmed overall support for certain points of the text, such as a preambular paragraph on the COVID-19 pandemic, the title of the amended 1998 Declaration, and the operative paragraph relating to the consequential amendments and the follow-up action to be undertaken by the Governing Body in this respect. The consultations also offered an opportunity to gain further clarity on issues such as the selection of the fundamental Conventions and the content of the saving clause.

► Looking ahead: Aim and scope of the proposed amendment to the 1998 Declaration

17. The solemn affirmation of the ILO's founding principles is a rare institutional occurrence. It has occurred at three defining moments: in 1919, upon the adoption of the Constitution; in 1944, upon the adoption of the Declaration concerning the aims and purposes of the International Labour Organisation ("Declaration of Philadelphia"); and in 1998, upon the adoption of the ILO Declaration on Fundamental Principles and Rights at Work. All three exercises applied the same constitutional logic: singling out rights and principles of lasting importance, formulated with sufficient generality to transcend time and space.
18. Through its follow-up mechanism, the 1998 Declaration brought into focus the practical consequences of reaffirming constitutional principles. It sought to ensure the universal promotion and safeguarding of fundamental principles and rights at work, regardless of whether the corresponding Conventions had been ratified, to link economic growth and social progress and to establish the conditions likely to enable the persons concerned to enjoy or claim an equitable share of the benefits of globalization.¹⁶
19. The recognition of the protection of the workers' health and safety as a fundamental principle follows the same logic, as it features prominently among the constitutional objectives of the ILO that were set out at the time of its establishment. The Preamble to the Constitution notes that "the protection of the worker against sickness, disease and injury arising out of his employment" is among the improvements that are "urgently required", while the Declaration of Philadelphia

¹⁵ ILO, *Issues Relating to the Inclusion of Safe and Healthy Working Conditions in the ILO's Framework of Fundamental Principles and Rights at Work: Draft Resolution*, GB.344/INS/6, March 2022, *Addendum: Background Document*, GB.344/INS/6/(Add.1), and *related decision*.

¹⁶ ILO, *Fundamental Principles and Rights at Work: From Commitment to Action*, ILC.101/VI, 2012, para. 13.

identifies a “solemn obligation” of the Organization to further programmes that will achieve “adequate protection for the life and health of workers in all occupations”.¹⁷ The proposed amendment to paragraph 2 of the 1998 Declaration would constitute a further solemn reaffirmation of an existing principle to which Members commit by adhering to the ILO Constitution.

20. This reaffirmation is timely, not only in a context of increased numbers of accidents and ill health related to work,¹⁸ but also given the attention being paid to mental health and combating violence and harassment in the world of work. Further, the central importance of occupational safety and health was brought to the fore by the outbreak of the COVID-19 pandemic, which has had a profound impact on humanity, underscoring the interdependence of all members of society and all countries.¹⁹
21. At the international level, the importance of occupational safety and health is also firmly established in contemporary human rights law. In addition to being recognized in several regional instruments,²⁰ it is enshrined in a number of universal instruments, in particular the International Covenant on Economic, Social and Cultural Rights of 1966, article 7(b) of which recognizes a right to “[s]afe and healthy working conditions”.²¹ More broadly, article 3 of the Universal Declaration of Human Rights of 1948 refers to a right to “life, liberty and security of person”, while the Constitution of the World Health Organization recognizes in its third preambular paragraph that “[t]he enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being”. Also of note are the 2008 Seoul Declaration on Safety and Health at Work and the 2011 Istanbul Declaration on Safety and Health at Work, which recalls that “promoting the rights of workers to a safe and healthy working environment should be recognized as a fundamental human right”. Furthermore, at the national level, around two thirds of constitutions explicitly recognize the right to health or to healthcare for everyone.²²
22. Another important dimension of the proposed amendment to paragraph 2 of the 1998 Declaration is that it would make occupational safety and health an integral part of the “constitutional pact” between the ILO and its Members: that is, the commitment made by Members to constitutional objectives gives rise to a corollary obligation on the Organization to assist its Members in their efforts to achieve those objectives by making full use of its constitutional, operational and budgetary resources. The recognition of occupational safety and health as a fifth category of fundamental principles and rights at work would refresh and reinforce this pact by adding the important element of safety and health. It would give expression, on the

¹⁷ [Preamble to the Constitution](#); Declaration of Philadelphia, para. III(g).

¹⁸ It is estimated that at least 1.9 million people die and 90 million healthy life years are lost every year because of exposure to 19 major occupational risk factors; see WHO and ILO, [WHO/ILO Joint Estimates of the Work-related Burden of Disease and Injury, 2000–2016](#), 2021. In addition, the ILO estimated that over 360 million people suffered non-fatal accidents related to work in 2016; see [“Technical note of clarification regarding joint WHO/ILO Joint Estimates of the Work-related Burden of Disease and Injury”](#).

¹⁹ ILO, [Global call to action for a human-centred recovery from the COVID-19 crisis that is inclusive, sustainable and resilient](#), 2021, para. 1.

²⁰ For example, Article 15 of the African Charter on Human and Peoples' Rights; Article 7 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador); Article 3 of the European Social Charter; and Article 31 of the Charter of Fundamental Rights of the European Union.

²¹ In its [General Comment No. 23 \(2016\) on article 7](#), the Committee on Economic, Social and Cultural Rights stated that preventing occupational accidents and disease is a fundamental aspect of the right to just and favourable conditions of work and that States parties have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of the right to just and favourable conditions of work, which requires States parties to adopt and implement a comprehensive national policy on occupational safety and health, among other measures.

²² Office of the United Nations High Commissioner for Human Rights and WHO, [“The Right to Health”](#), Fact Sheet No. 31, 10.

one hand, to Members' resolve to promote workers' safety and health, and on the other, to the Organization's responsibility to assist them in building capacity and addressing challenges in this respect.

23. Through its inclusion in the ILO's framework of fundamental principles and rights at work, occupational safety and health would also be acknowledged as contributing to the implementation of the vision expressed in the Preamble to the Declaration. It would consolidate the Declaration as an instrument of lasting importance to express the ILO's vision of social justice – a vision whereby economic growth, although a prerequisite for social progress, is not in itself enough to guarantee that progress. Economic growth must be accompanied by a number of ground rules founded on common social values. This vision is well encapsulated in the last preambular paragraph of the Declaration, which states that “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”.
24. By approving the amendment to paragraph 2 of the 1998 Declaration, the Conference would express its determination that health and safety at the workplace offers significant human and economic benefits and goes hand in hand with inclusive economic growth, thus emphasizing the human-centred element of economic and social policies. Twenty-four years after the adoption of the 1998 Declaration and 14 years after the adoption of the Social Justice Declaration, this discussion will give the ILO's unique tripartite constituency an opportunity to reaffirm the continued relevance of the vision of social justice that the Constitution has imparted for more than a century.

► Draft Conference resolution: Selected aspects and outstanding issues

25. The draft resolution appended to this report builds on two earlier drafts prepared for the discussions of the Governing Body at its 343rd and 344th Sessions and on the guidance provided by tripartite constituents in a series of informal consultations. In examining the draft resolution, the Conference may wish to take note of the following observations regarding certain aspects and pending issues.

Occupational safety and health as a “shared responsibility”

26. Certain constituent groups indicated that a preambular paragraph of the draft resolution should appropriately reflect the fact that ensuring safety and health at the workplace involves different yet complementary responsibilities of governments, employers and workers. Despite extensive discussions, no proposal has received general support and therefore two alternative texts are included in the resolution appended to this report, one based on Article 6 of the Occupational Safety and Health Convention, 1981 (No. 155), and another drawing upon Article 1 of the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187).

Terminology for the new fundamental principle

27. As proposed during the preparation of the 1998 Declaration, an additional fundamental principle and right at work could be worded in the same manner as it appears in the Constitution or the

Declaration of Philadelphia.²³ Such is the case, for instance, for freedom of association and the effective recognition of the right to collective bargaining. Alternatively, the wording could draw upon, or be inspired by, terminology used in relevant standards or prevailing contemporary usage. For example, neither the principle relating to the elimination of all forms of forced or compulsory labour nor the term “child labour” appears expressly in the Constitution; however, at the time of the adoption of the 1998 Declaration, the term “child labour” was incorporated in the Preamble and Article 1 of the Minimum Age Convention, 1973 (No. 138).

- 28.** Tripartite discussions and consultations prior to the 110th Session of the International Labour Conference were not conclusive on the exact wording of the new subparagraph 2(e) to be included in the amended 1998 Declaration. Accordingly, in the draft resolution appended to this report, the three alternatives, “effective protection of safe and healthy working conditions”, “effective protection of a safe and healthy working environment”, and “adequate protection of the life and health of workers in all occupations” are left in brackets; this does not, of course, prevent the Conference from considering other options.

Selection of the occupational safety and health instrument(s) considered as fundamental within the meaning of the ILO Declaration on Fundamental Principles and Rights at Work

- 29.** The other major task left by the Governing Body for the Conference to decide is the identification of the fundamental Convention or Conventions on occupational safety and health that would be added to the eight existing fundamental Conventions.²⁴ No procedure or criteria have ever been developed to identify fundamental Conventions;²⁵ rather, this is a matter to be decided on a tripartite basis, which goes hand in hand with elevating the status of a principle to a fundamental principle. Fundamental Conventions are the Conventions that express and develop fundamental rights and principles in the form of specific rights and obligations. Thus, fundamental Conventions related to occupational safety and health would be those that express and develop the constitutional principle of the protection of safe and healthy working conditions/a safe and healthy working environment in the form of specific rights.
- 30.** The Convention or Conventions so identified would be designated as fundamental through what currently appears as the third operative paragraph of the draft resolution. Without prejudice to the Conference discussions, two Conventions would appear to have gained support from constituents with a view to being recognized as fundamental – either separately or together: the Occupational Safety and Health Convention, 1981 (No. 155), and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187).

Saving clause

- 31.** The possible effects of the amended 1998 Declaration on trade agreements that contain labour clauses were discussed at length. The draft resolution therefore contains a saving clause that

²³ ILO, *Follow-up on the Discussion of the Report of the Director-General to the 85th Session (1997) of the International Labour Conference: Inclusion on the Agenda of the 86th Session (1998) of the International Labour Conference of an Item Concerning a Declaration on Workers' Fundamental Rights*, GB.270/3/1, para. 22.

²⁴ The Conference identified the first six fundamental Conventions in 1994.

²⁵ For the explanations provided by the Office to the Governing Body in November 1999 when Convention No. 182 was included in the promotional campaign for the ratification of fundamental Conventions, see ILO, *Report of the Committee on Legal Issues and International Labour Standards: Second Report – International Labour Standards and Human Rights*, GB.276/10/2, November 1999, para. 30.

seeks to allay concerns that the additional fundamental principle could somehow be automatically introduced into existing trade agreements without the consent of the States parties to those agreements.

32. As explained throughout the preparatory work, saving clauses are unusual in non-binding instruments such as the draft Conference resolution. From a legal point of view, a saving clause is not strictly necessary, since a “soft law” instrument such as the draft resolution cannot have the effect of modifying international treaties formally negotiated and concluded by Member States outside the Organization.
33. However, discussions showed that this matter is politically sensitive and that many constituents consider it important to include an unambiguous understanding that the amended Declaration cannot alter the rights and obligations of States parties arising from existing trade agreements unless and until those States freely decide to modify the agreements concerned to bring them into line with the amended Declaration. In a similar vein, discussions on a safeguard clause on trade, which ultimately became paragraph 5 of the 1998 Declaration, proved particularly difficult and resulted in the adoption of the 1998 Declaration being put to a vote rather than being approved by consensus.²⁶
34. For some constituents, beyond free trade agreements the draft resolution might also have indirect effects as regards other agreements and schemes that establish a linkage between respect for core labour rights and trade facilitation, such as investment agreements and unilateral incentive arrangements, and therefore the scope of the saving clause should be expanded. Tripartite consultations held so far did not arrive at a convergence of views for an agreed wording on this point.

Title of the amended Declaration

35. The scope of the item placed on the agenda of the Conference by the Governing Body is limited to amending paragraph 2 of the 1998 Declaration to include the additional fundamental principle on safety and health. Accordingly, the draft resolution specifies that the amended 1998 Declaration would retain its original title with the sole addition of the qualifying words “as amended” at the end. This is not only in line with ILO practice when international labour standards are revised but, more importantly, it also reflects the main rationale underlying the proposed limited amendment to paragraph 2 of the 1998 Declaration, which is to preserve the structural and theoretical unity, authoritativeness and coherence of the text of the 1998 Declaration.

Consequential amendments

36. The draft resolution makes reference to two sets of amendments that would need to be adopted, in the interests of clarity and consistency, as a consequence of the amendment of the 1998 Declaration. Some of those amendments may be adopted directly, alongside the recognition of safety and health as an additional fundamental principle, as they do not require the application of separate procedures. Other consequential amendments will require specific follow-up action to be undertaken by the Governing Body, such as the partial revision of international labour standards adopted after 1998 that make reference to the 1998 Declaration and the existing four categories of fundamental principles and rights.

²⁶ ILO, *Record of Proceedings*, International Labour Conference, 86th Session, 1998, 20/70–20/111; see also ILO, *Consideration of a Possible Declaration of Principles of the International Labour Organization concerning Fundamental Rights and its Appropriate Follow-up Mechanism*, Report VII, International Labour Conference, 86th Session, 1998, 20.

37. Importantly, should the proposed resolution be adopted, it would have an immediate impact on the 2008 Social Justice Declaration, as safe and healthy working conditions would be moved from the strategic objective of social protection to that of fundamental principles and rights and work, in line with the objectives of rationalizing and increasing the visibility of the ILO mandate underpinning the four strategic objectives in the 2008 Declaration.²⁷
38. In contrast, revising seven Conventions, one Protocol and seven Recommendations to align them with the amended 1998 Declaration would require the Governing Body to place an item on the agenda of a future session of the Conference with a view to adopting a revising Convention and a revising Recommendation drafted to this effect. This appears to be a simple and uncontroversial process to ensure consistency in references to fundamental principles and rights at work.

► Final remarks

39. In examining the proposed amendment to the 1998 Declaration, the Conference may wish to bear in mind the following considerations.
40. There is an element of *urgency* in bringing this proposal to fruition at the 110th Session of the Conference. Indeed, the preparatory work for the inclusion of safe and healthy working conditions in the ILO's framework of fundamental principles and rights at work has been guided by the Conference's clear instruction that this matter should be successfully completed as soon as possible.
41. There is also an element of *continuity* in this amendment process. Should the Conference decide to adopt the proposed amendment to the 1998 Declaration, it would not be exercising legislative powers and would not be creating new legal obligations. The 1998 Declaration is declaratory rather than constitutive in nature and would remain so after amendment. As was noted prior to its adoption, "fundamental rights are not fundamental because the Declaration says so; the Declaration says that they are fundamental because they are".²⁸ The inclusion of safe and healthy working conditions in the ILO's framework of fundamental principles and rights at work is no more and no less than the recognition of the prominence of an existing constitutional principle in the furtherance of the Organization's mandate.
42. Moreover, there is *institutional symmetry* between the original 1998 text and the current proposed amendment; in both instances, the Conference limited itself to singling out core commitments that are already expressly reflected in the ILO Constitution. It is precisely this symmetry that explains the procedural simplicity of the proposed amendment: the Conference is not called upon to design a new framework or follow-up mechanism, but merely to insert an additional element into an existing and well-functioning institutional arrangement.
43. At the same time, the proposal before the Conference reflects a *dynamic vision*. Should the Conference adopt the proposed amendment to the 1998 Declaration, it would confirm that the ILO's framework of fundamental principles and rights at work should be understood as a vehicle

²⁷ ILO, *Strengthening the ILO's Capacity to Assist its Members' Efforts to Reach its Objectives in the Context of Globalization: Continuation of the Discussion on Strengthening the ILO's Capacity and Possible Consideration of an Authoritative Document, Possibly in the Form of a Declaration or Any Other Suitable Instrument, Together with Any Appropriate Follow-up, and the Form They May Take*, Report VI, International Labour Conference, 97th Session, 2008, paras 14 and 27.

²⁸ *Consideration of a Possible Declaration of Principles of the International Labour Organization concerning Fundamental Rights and its Appropriate Follow-up Mechanism*, Report VII, 1998, 10.

to reflect, within the strict parameters of the ILO Constitution, the Organization's determination to maintain its relevance in a rapidly changing world.

44. The discussions of the Conference on the proposed amendment to the 1998 Declaration may prove to be a further demonstration of the unique comparative advantage that the ILO derives from its tripartite structure and its founding values and principles. As the Organization's first Director, Albert Thomas, stated at the Third Session of the Conference: "What constitutes the certainty of our Organization and what provides its force for the future is that all those who are part of an assembly such as ours – be they the workers bringing the aspirations of the masses standing behind them, the employers who care about social progress or the government delegates representing the collective interests – are concerned with pursuing, in the spirit of the Treaty of Peace ..., the thought of justice which must drive each one of us."²⁹

²⁹ ILO, [International Labour Conference](#), Third Session, 1921, 239.

► Draft resolution on the inclusion of [safe and healthy working conditions/a safe and healthy working environment] in the ILO's framework of fundamental principles and rights at work

The General Conference of the International Labour Organization, meeting at its 110th Session, 2022,

Recalling the adoption at its 86th Session (1998) of the ILO Declaration on Fundamental Principles and Rights at Work, which marked a defining moment for the realization of the Organization's objectives,

Recalling the ILO Centenary Declaration for the Future of Work, adopted in 2019 with a view to promoting a human-centred approach to the future of work and shaping a future of work that realizes the Organization's founding vision, in which the Conference declared that safe and healthy working conditions are fundamental to decent work,

Mindful of the vital importance of occupational safety and health, as compellingly demonstrated by the COVID-19 pandemic and its profound and transformative impact on the world of work,

[Noting the complementary functions and responsibilities that public authorities, employers and workers have in respect of safe and healthy working conditions/environment] OR [Noting that safe and healthy working [conditions/environment], requires the active participation of governments, employers and workers through a system of defined rights and responsibilities, and duties as well as through social dialogue and cooperation],

Desirous to include [safe and healthy working conditions/a safe and healthy working environment] in the ILO's framework of fundamental principles and rights at work as a means of furthering the visibility and impact of the ILO's core values and Decent Work Agenda,

Considering that this should take the form of an amendment to the ILO Declaration on Fundamental Principles and Rights at Work,

1. Decides to amend paragraph 2 of the ILO Declaration on Fundamental Principles and Rights at Work to include, after the words "the elimination of discrimination in respect of employment and occupation", the words ["and (e) the effective protection of safe and healthy working conditions"] OR ["and (e) the effective protection of a safe and healthy working environment"] OR ["and (e) the adequate protection of the life and health of workers in all occupations"] and to make the consequential amendments to the Annex to the ILO Declaration on Fundamental Principles and Rights at Work as well as to the ILO Declaration on Social Justice for a Fair Globalization and to the Global Jobs Pact, as specified in the Annex to the present resolution;
2. Decides that the above-mentioned instruments should henceforth be referred to as "the ILO Declaration on Fundamental Principles and Rights at Work, as amended", "the ILO Declaration on Social Justice for a Fair Globalization, as amended" and "the Global Jobs Pact, as amended";
3. Declares that [the Occupational Safety and Health Convention, 1981 (No. 155), and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187),] OR [the Occupational Safety and Health Convention, 1981 (No. 155),] OR [the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187),] shall be considered as fundamental

Conventions within the meaning of the ILO Declaration on Fundamental Principles and Rights at Work, as amended;

4. Invites the Governing Body to take all appropriate action with a view to introducing certain amendments consequential upon the adoption of the present resolution to all relevant international labour standards and to the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy; and
5. Declares that nothing in this resolution shall be construed as affecting in any manner the rights and obligations of a Member arising from existing trade agreements to which it is a party.

Annex

Consequential amendments to the Annex to the ILO Declaration on Fundamental Principles and Rights at Work

Paragraph II.A.2

A. Purpose and scope

...

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

Paragraph III.A.1

A. Purpose and scope

1. The purpose of the Global Report is to provide a dynamic global picture relating to the ~~four~~ 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.

Consequential amendments to the ILO Declaration on Social Justice for a Fair Globalization

Fourth preambular paragraph

Convinced that the International Labour Organization has a key role to play in helping to promote and achieve progress and social justice in a constantly changing environment: ...

- drawing on and reaffirming the ILO Declaration on Fundamental Principles and Rights at Work ~~and its Follow-up (1998)~~, as amended, in which Members recognized, in the discharge of the Organization's mandate, the particular significance of the fundamental rights, namely: freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, ~~and~~ the elimination of discrimination in respect of employment and occupation, and the effective protection of [a] safe and healthy working [conditions/environment];

Part I.A (ii)

- the extension of social security to all, including measures to provide basic income to all in need of such protection, and adapting its scope and coverage to meet the new needs and

uncertainties generated by the rapidity of technological, societal, demographic and economic changes; and
~~healthy and safe working conditions; and~~

Consequential amendments to the Global Jobs Pact

Paragraph 9

9. Action must be guided by the Decent Work Agenda and commitments made by the ILO and its constituents in the ~~2008~~ ILO Declaration on Social Justice for a Fair Globalization, as amended. ...

Paragraph 14(1)

14. International labour standards create a basis for and support rights at work and contribute to building a culture of social dialogue particularly useful in times of crisis. In order to prevent a downward spiral in labour conditions and build the recovery, it is especially important to recognize that:

- (1) Respect for fundamental principles and rights at work is critical for human dignity. It is also critical for recovery and development. Consequently, it is necessary to increase:
 - (i) vigilance to achieve the elimination and prevention of an increase in forms of forced labour, child labour and discrimination at work as well as the effective protection of safe and healthy working [conditions/environment]; and
 - (ii) respect for freedom of association, the right to organize and the effective recognition of the right to collective bargaining as enabling mechanisms to productive social dialogue in times of increased social tension, in both the formal and informal economies.

Paragraph 28

The ILO commits to allocating the necessary human and financial resources and working with other agencies to assist constituents who request such support to utilize the Global Jobs Pact. In doing so, the ILO will be guided by the ~~2008~~ ILO Declaration on Social Justice for a Fair Globalization, as amended, and accompanying resolution.