THIRD ITEM ON THE AGENDA

Draft of a possible Declaration of principles concerning fundamental rights and its appropriate follow-up for consideration at the 86th Session (1998) of the International Labour Conference

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Introduction

1. At its 270th Session, the Governing Body decided to place on the agenda of the 86th Session of the International Labour Conference an additional item on the examination of a possible ILO Declaration concerning fundamental principles and rights within its mandate and an appropriate follow-up mechanism. It requested the Office to prepare relevant documents, with account being taken of all the views expressed during the debates and in close consultation with the constituents.

2. In accordance with this request, the Director-General, through the Chairperson of the Government group, arranged for a meeting to be held on 20 January 1998 of all interested governments both within and outside the Governing Body and submitted to them a non-paper concerning the Declaration and its follow-up mechanism. The purpose of this non-paper\(^{(1)}\) was to help focus the views of all the parties concerned and thus enable the Office to obtain the necessary guidelines for the preparation of the document proper.

3. The non-paper was simultaneously made available to the Employers' and the Workers' representatives, who were invited to attend a consultation with the Office on 26 January 1998.

4. The Office was subsequently invited to various governmental meetings at the regional or interregional level to reply to questions concerning the various components proposed for the text of the Declaration and to explain the structure of the proposed follow-up mechanism. It then received substantial written comments from the regional and interregional groups and also had exchanges of information with the Employers' and the Workers' representatives.

5. In general, these observations expressed approval of the method followed by the Office, with everyone considering that the non-paper constituted a useful basis for reflection. However, due to the number and diversity of these observations, the Office was faced with a difficult task.

6. The Director-General felt that, since it was impossible to retain all the ideas proposed, an attempt should be made to reflect the spirit of the different positions in order to establish a better basis for discussion, without however compromising the general coherence of the text and the viability of the implementing mechanism. These two aspects are examined below.

I. The text of the Declaration

7. The non-paper set out to provide all the elements which seemed necessary, albeit not exhaustive, to identify the legal and conceptual basis of the Declaration and to give an idea of its scope.

8. The text was first of all subject to certain observations regarding style, in particular its rather arid or legal language and the large number of negations. Without seeking to produce a literary text, the Office has endeavoured to take account of all these observations except where they are no longer relevant.
because the corresponding paragraphs have been deleted. If and when the thrust of the content is accepted, the document could, at all events, be fine-tuned before being placed before the Conference.

9. As regards the preamble, there were those who believed that in order to strengthen the solemn nature of the Declaration, it would be preferable to move away from the resolution format and purely and simply eliminate the preamble. Others, on the other hand, believed that the preamble was not sufficiently exhaustive and should in particular make more references to the Declaration of Philadelphia and, above all, to the Declaration and Programme of Action of the World Summit for Social Development (Copenhagen, March 1995). Others also felt that reference should be made to other international instruments.

10. As regards these observations, it should be recalled firstly that the preamble fulfills a necessary function. The initial idea was to emphasize that, in line with the principle of the ILO Constitution and the practice under it, member States recognize that they have certain obligations regarding fundamental rights, even where they have not ratified the corresponding Conventions. In the light of the observations, it seems appropriate to highlight more explicitly the significance of the ILO Declaration on fundamental rights in the light of recent external events, and in particular, the Declaration and Programme of Action adopted by the Social Summit in Copenhagen. Indeed, emphasis should be laid upon the indispensable role the ILO is called upon to play, by virtue of its exclusive mandate and tripartite structure, in the implementation of this objective of the Copenhagen Programme of Action.

11. A large number of observations concerned the operative part, including the existence of some overlap between the preamble and the operative part. Reorienting the preamble so as to base the operative part more specifically on the significance of the Declaration in the light of what is happening outside the ILO, should make it possible to address many of these observations.

12. The understandings at the end of the non-paper also prompted a number of observations. These understandings essentially cover elements already implicit in the text; however, it seemed appropriate to recapitulate and emphasize these in a separate section in order to allay certain fears. The preliminary draft placed before the Governing Body has attempted to resolve the problem by incorporating three of these four understandings into the text itself, in places which seem the most suitable. Each recall that the Declaration should be considered as a complement but not as an alternative to standard-setting activities as regards both the States and the Organization itself.

13. There is still, however, the issue of the most sensitive understanding, according to which the Declaration may not be used for protectionist purposes or call into question the comparative advantage of countries with less developed wage levels and social protection. There are those who believe that such clarification is neither necessary nor desirable but others consider it so important that it should appear in the operative part. A few words of explanation about its purpose and meaning could perhaps facilitate a decision on whether it should be retained and its possible place in the text.

14. The proposed understanding, although it echoes the substance of paragraph 4 of the Singapore
Ministerial Declaration, must be set in a different perspective for the simple reason that the ILO is not competent in trade matters and it is not for the Organization to engage directly in a substantive discussion on removing barriers to the liberalization of trade. However, the ILO, as part of the multilateral system and as a body with specific competence to pronounce on matters of fundamental social rights, is perfectly entitled to proclaim that the Declaration -- just as it is not intended to modify the domestic legal obligations of Members -- should not serve as a basis or pretext to anyone to fail to comply with obligations by which they are bound under the multilateral trade system. If this approach is accepted, it should be relatively easy to incorporate it in the appropriate place in the operative part.

15. In the light of the above and subject to the follow-up mechanism examined below, the Governing Body will no doubt wish to review the preliminary draft of the Declaration (Appendix I) and, as the case may be, authorize the Director-General to place it before the Conference, together with any amendments that may appear necessary.

II. The follow-up mechanism of the Declaration

16. This part prompted many observations during the informal consultations and is mentioned in a large number of the observations communicated to the Office. In general, the comments express a desire for greater clarity concerning the major guidelines of the mechanism and a reduction in the number of alternatives.

17. A preliminary observation must be made in this respect. Although the objectives and nature of the follow up must be clearly defined, a presentation of all the technical details is not necessary, and would not indeed be possible for two reasons: firstly, some of these details fall within the competence of the Governing Body and do not have to be approved by the Conference (for example, the exact content of reports which might be requested at close intervals of time on the basis of article 19); secondly, the details must be adapted to actual conditions, some of which cannot be foreseen at the outset (for example, the number and size of the reports to be received from countries which have not ratified the Conventions). That being said, it would clearly not be correct for the Governing Body to be given carte blanche to finalize the follow-up mechanism. The principles and objectives as well as the broad lines for the mechanism envisaged should, after appropriate consultations, have been developed more completely by the time of the adoption of the Declaration. These aspects will be dealt with in more detail below in connection with the two elements which it now seems agreed should be part of the follow-up mechanism.

1. The follow-up mechanism as regards non-ratifying countries

18. This is the essential component which led to the draft Declaration. Its objective would be for States which have not ratified the relevant Conventions to regularly submit reports on the situation and their efforts with respect to the principles and objectives of the said Conventions. A request to this effect would be based on article 19.5(e)(2) of the Constitution which, irrespective of the Declaration, enables the Governing Body to request reports on non-ratified Conventions. However, detailed reports would not need to be requested each time, as provided for by this article, on obstacles to ratification resulting from
national law and practice as regards the specific provisions of the relevant Conventions. It would simply imply, in line with the principle of the Declaration, that the Member concerned would be asked to provide general information on any changes which may have been made since its first full report in its law and practice with a view to meeting the above-mentioned objectives in accordance with the first part of the provision; this stipulates that the Member should report on "the position of its law and practice, in regard to the matters dealt with in the Convention". Since national law and practice in most cases remain the same from one year to the next, the Member would merely be asked to indicate any possible changes that have occurred in this respect since the previous report. The information provided by governments would be communicated to employers' and workers' organizations in accordance with article 23.2 of the Constitution. (3)

19. The information collected on the basis of these reports from governments and any observations made, in accordance with the practice governing the examination of reports under article 19, from employers' and workers' organizations concerned, could be dealt with in two main ways -- without excluding the possibility of intermediate solutions, suggested during the consultations, in particular the idea of combining a preliminary examination of the reports of the Committee of Experts on the Application of Conventions and Recommendations with consideration by the Governing Body.

(a) Examination by the Committee of Experts on the Application of Conventions and Recommendations and by the Conference Committee on the Application of Standards

20. This is the procedure normally followed for general surveys carried out under article 19, in accordance with long-standing established practice and the Standing Orders of the Conference, as well as for the new special studies introduced as from 1995 regarding fundamental rights. The general surveys of the Committee of Experts, which are based on drafts prepared by the Office, are communicated to the Conference Committee on the Application of Standards. This solution, if adopted, would obviously have the advantage of conforming to an already existing schema and would not require any procedural amendments. Some objections were however made that it would be out of line with the specific nature of the objective in question, which is not to examine obstacles to ratification which may result from specific aspects of national law or practice, but to promote the principle of the Convention by providing, where applicable, operational and technical assistance. Some doubts were also expressed about the practical possibility of the Committee of Experts and the Conference Committee being able to devote the necessary time and attention to the examination of the reports, bearing in mind the increasing volume of reports and documents which they have to examine.

(b) Examination by the Governing Body

21. This second method would consist of entrusting examination of these reports to the Governing Body. The constitutional prerogatives of the Governing Body -- and here it must be remembered that the latter is formally entitled to pronounce on matters concerning the application of Conventions -- enable it in
principle to carry out this mission. The Governing Body, with account being taken of the reforms made to its functioning and the new role assigned to its committees, should have the necessary time to examine the reports in question. However, to ensure that this examination is carried out with the guarantees of objectivity necessary for adversarial proceedings, the procedure would have to be adapted to enable States which are not members of the Governing Body and whose reports are being discussed to be given a hearing.

22. This solution, however, raised two sorts of questions; first, the way in which the Governing Body might examine the reports submitted by Members (as well as any possible observations by employers' and workers' organizations); and, second, the manner and appropriateness of placing a report before the Conference.

23. As regards procedures of examination, the Director-General believes that these are aspects which can only be dealt with as they arise having regard to all the particular circumstances of the case and that it would be fruitless to attempt establishing a definite solution in advance since the scope of the task is difficult to determine at this stage. He therefore suggests providing for a four-year trial period following the full follow-up cycle dealt with below. At the end of this period, the Conference would, upon the proposal of the Governing Body, be called upon to confirm the mechanism with any necessary changes. The normal application of the Standing Orders of the Governing Body should, in the intervening period, suffice. Some examples are given below of three issues raised during the discussions:

- **the need for filtering**: the volume of reports and comments received, collected and regrouped by category by the Office will not necessarily require a large degree of selectivity; even if this were the case, it would naturally be for the Chairperson, in consultation with the Vice-Chairpersons, to organize the debates in an appropriate manner and to select those aspects or situations which seem to require priority analysis. Furthermore, each member of the Governing Body or any group would remain free to table a motion to modify the sequence of the discussion;
- **referral to a committee**: the Governing Body would be free to set up a tripartite committee to examine reports, by following the example of what was done to examine and evaluate the reports received on the follow up to the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. Alternatively, as mentioned above, the Governing Body could opt to refer this examination to the Committee of Experts);
- **public or private nature of the debates**: this point could very easily be settled in accordance with article 8 of the Standing Orders of the Governing Body.

24. As noted above, the current text of the Standing Orders of the Governing Body concerning the representation in debates of States which are not members of the Governing Body is not sufficient to cover the case under consideration. This problem could easily be resolved by an amendment to article 5bis of the Standing Orders of the Governing Body.\(^{(4)}\)

25. As regards the possible submission of a Governing Body report to the Conference: as noted earlier, the Governing Body has all the constitutional prerogatives required to conduct and conclude a debate of
this kind. It should nevertheless be recalled that in accordance with article 7 of the Standing Orders of
the Conference, the "information and reports ... communicated by Members in accordance with article
19 of the Constitution" are to be examined by the Conference Committee on the Application of
Standards. This provision specifically focuses on "information ... concerning Conventions and
Recommendations", whilst follow-up reports to the Declaration will deal not with the content of
Conventions but with the constitutional principles and objectives to which the instruments are seeking to
give effect. If, however, it is decided that these reports should not be referred to the Conference
Committee on the Application of Standards, it might be preferable to introduce an appropriate
amendment to clear up any ambiguity.

26. There remains, however, the question of whether such a report should be placed before the
Conference itself. The reply to this question might once again be found in the normal application of the
Standing Orders. The latter, in fact, stipulate that the Governing Body gives a report on its work to the
Conference through its Chairperson. It would therefore be the responsibility of the latter, in consultation
with the Officers of the Governing Body, to include in the said report due mention of the Governing
Body's deliberations on this new activity. Although this part of the report might be the subject of
comments in the plenary, it could not, having regard to the Standing Orders, result in any conclusions.

27. The Governing Body is therefore invited to take a decision on the above-mentioned alternative. If
it chooses the first option (paragraph 20), no amendment to the Standing Orders would be necessary.
The duration of meetings and procedure of the Committee of Experts and of the Conference Committee
would however need to be reviewed. If the second option (paragraphs 21-26) is chosen, the only
indispensable amendment to the Standing Orders of the Governing Body would concern the right of
States concerned to be heard. This amendment could be introduced in the Governing Body once the
Declaration was adopted.

2. The global follow-up report

28. The idea of a global report by the Director-General giving an overall view of progress achieved both
in States which have ratified the Conventions concerning fundamental rights and non-ratifying States
was raised in November 1997 when the Governing Body discussed the possibility of placing an item
concerning the Declaration on the agenda of the 86th Session of the Conference.

29. A question which soon arose during consultations concerned the role of this new component in the
general follow-up mechanism. Should it complement the mechanism mentioned above with respect to
countries which have not ratified the fundamental Conventions or should it replace it? As the Director-
General stated when he presented the non-paper, the former option would seem to be preferable. Indeed,
it is difficult to conceive of an autonomous global report or one which is intended to replace the other
procedures. The substance of the global report must necessarily be taken from information
systematically collected and verified under the relevant procedures for each of the categories of
countries concerned, i.e., according to the procedure under article 22 (or the representation or
complaints procedures when they have been invoked) for ratifying countries, and according to the
procedure based on article 19, as described above, for the others. The purpose of this global report
would therefore be to enable the information gathered to be seen in perspective so as to obtain a more
balanced and objective overview of the positive and negative developments. The constituents would not
have to bear any additional administrative burden. This report would help identify more precisely the
nature of the persistent and major difficulties as well as the reasons for success achieved, thereby
enabling adjustments to be made in the Organization's assistance or new kinds of assistance to be
introduced.

30. In order for this global report to attract the attention it deserves, it would be very useful for each
category of fundamental principles to be covered one after the other in a four-year cycle which should be
synchronized with the existing cycle of reports due under article 22 on the application of Conventions
covering fundamental rights. There is the further question of how this report should be established and
discussed.

31. The objective of the general report, as described above, would be completely different from that of a
traditional general survey. The latter consists of an analysis of the legal difficulties or obstacles to
ratification resulting from divergence between national law and practice and the specific provisions of
the Convention concerned, together with the problems that ratifying countries have in implementing
them. The purpose of the global report would be to assess the development of the situation in member
States as a whole, having regard to the general objectives of the Conventions in question. This could
imply two possibilities. Firstly, this task of placing the information collected in perspective should be
entrusted to the Director-General, as in fact has already been envisaged, since the intention is merely to
provide a framework for discussion on the basis of information already gathered; secondly, the objective
would be to present to the general public an overall picture of this situation, and, on a more practical
level, to assess what needs to be done within the Organization. Consequently, it would be more
appropriate to have a tripartite framework for the review rather than a body of a legal nature. If this
decision is upheld, the next question would be whether this tripartite discussion should be held in the
Governing Body or in the Conference. The advantage of the Conference would be that it would provide
the opportunity for a universal and more in-depth discussion because it has more time. There might
however be a danger that the new procedure would be confused with the existing one and it would
therefore have to be made clear that it should in no way replace the established ones or reflect on their
results.

32. Finally, should this report, like the present Director-General's Report and its annexes, be dealt with
within the framework of the general discussion? This however would limit the opportunity for a genuine
discussion. Or should it be a kind of standing item on the agenda which could be assigned to an existing
or a new committee? An intermediate solution, such as that adopted for the examination of the report on
the follow-up to the Declaration concerning apartheid (which was dealt with by a committee with a
restricted membership) might be considered.

33. In the light of the above, the Governing Body is invited to state whether it would like a global
report, as described above, to be prepared by the Director-General and, if so, whether it should be
discussed:
(i) by the Governing Body;

(ii) by the Conference (in the manner outlined above: plenary, existing or new technical committee, committee with a restricted membership);

(iii) by a combination of both (the Governing Body would communicate the report of the Director-General and its own observations to the Conference for examination by the latter).

III. Conclusions

34. Neither the considerations put forward in this paper nor the preliminary draft below purport to be a finished product. Their aim is simply to assist the process which should lead to the placing of formal proposals before the Conference of the text of a Declaration and its follow-up mechanism. Two clarifications need to be made in this respect.

35. First, it seemed preferable, at this stage, not to go into certain aspects which might be more usefully discussed once the Governing Body has given guidance on the two components of the follow-up mechanism. The impact that the follow-up mechanism, as eventually defined, may have on existing procedures, is a question which has therefore been left in abeyance. One of the parameters set at the beginning of this exercise was that the burden of work of Members and the Office should not be made appreciably heavier; this obviously presupposes a degree of rationalization. For example, an adjustment might be made to the system of four-year reports on the fundamental Conventions, which was introduced in 1995 on the basis of article 19 and concerns non-ratifying States.

36. Second, it is up to the Director-General, in accordance with the relevant provisions of the Constitution and Standing Orders, to present the report containing proposals for a possible Declaration and its follow-up mechanism to the Conference. As the deadlines set for preparing standard-setting instruments do not apply in this particular case, the Director-General only has to ensure that his report reaches Members "in time to permit adequate consideration", in accordance with article 15 of the Constitution. In view of the fact that all the regional groups have made considerable efforts to involve Members who are not represented on the Governing Body in their consultations, this report could be sent to all Members towards the middle of May. This would leave enough time -- until the end of April -- to finalize it. With the Governing Body's agreement, the Director-General therefore proposes to use the time available to continue consultations on the matter, if need be, and, in the light of the discussions in the Governing Body and such additional consultations, to review the preliminary draft of the Declaration and to specify the characteristics of the follow-up mechanism in the annex referred to in the draft. He therefore hopes that the report he will be called upon to prepare on this important item on the Conference agenda will be able to provide the Conference -- and the committee which will no doubt be set up to examine it -- a basis for discussion leading to a decision which will be as comprehensive and widely acceptable as possible.

Points for decision:

Paragraph 15;
Paragraph 27;
Paragraph 33;
Paragraph 36.

Appendix I

Preliminary draft of the text of the Declaration

Whereas the ILO was founded as a permanent organization in the conviction that the conditions for a lasting and universal peace depended upon the combined efforts of the new organization and all States choosing to join it, in a continual pursuit of the objectives of social justice and the promotion of the physical, moral and intellectual well-being of workers;

Whereas the appreciable decline of "injustice, hardship and privation" from degrading conditions of work, which has been achieved in particular through the ILO's standard-setting action and technical assistance, can nevertheless not obscure the fact that an increasing number of persons excluded from work continue to undergo these afflictions and that there are more than one billion people who, according to the World Summit for Social Development (1995), still "live in abject poverty";

Whereas this situation now more than ever requires the ILO to draw upon the whole of its constitutional and operational resources to implement, side by side with the other organizations concerned, a global strategy for social development [as agreed at Copenhagen] and to make effective the fundamental objectives and rights comprised in this strategy;

Whereas the ILO has a particular responsibility, in line with its specific mandate and the expectations that the international community has expressed on many occasions, for ensuring the protection and promotion on a universal basis of the fundamental rights of workers which are recognized and defined under this strategy and are the direct expression of the values and principles set out in the ILO Constitution; and

Whereas it is urgent, as the century draws to a close, the century of the Organization's creation and of a growing economic interdependence giving rise to new hopes and to new constraints, to reaffirm the immutable nature of the values and principles upon which the Organization is based and to specify the pre-eminence to be given to the ensuing fundamental rights and objectives in the Organization's priorities and those of its Members.
The International Labour Conference

States its conviction that:

(i) economic development, through the wealth it creates, is one of the prerequisites for social progress and is an achievement to which all the activities of the Organization should be designed to contribute, with particular attention being paid to the countries that are most in need of it;

(ii) the promises of economic development for social progress cannot however be fulfilled on a lasting basis unless, over and above the efforts of governments, the persons directly concerned obtain, through the recognition of the above fundamental rights, the guarantee to be able to claim freely and on the basis of equality of opportunity their fair share of the increase in wealth to which they have been called upon to contribute;

(iii) with the dissemination of increasingly complex technologies, accompanying the progress of economic interdependence, the development of the human potential is now an essential factor for economic efficiency, and that potential cannot be realized for so long as the individual and collective freedom of workers and their equality of opportunity and their dignity are not properly ensured.

Recalls that:

(i) in joining the ILO, all its Members have freely accepted the values of individual and collective freedom, equality of opportunity, dignity and solidarity as set out in the Preamble to the Constitution and in the Declaration of Philadelphia and have undertaken to work towards attaining the specific objectives that flow from them; and

(ii) these values and principles have been spelled out in the form of specific rights and obligations in a number of Conventions which have been recognized as fundamental, in the ILO and outside, and which Members should endeavour to accept, as soon as the necessary conditions are present, so that the Conventions can be fully applied.

Declares that each Member -- even where it is not yet in a position to accept those Conventions -- is nevertheless bound, irrespective of its level of development, through its voluntary act of acceptance of the Constitution with its values and principles, to strive in good faith and to the best of the means at its disposal, towards the progressive realization of the fundamental principles and objectives that flow from the Constitution:

(i) by ensuring the promotion of freedom of association and the effective recognition of the right to collective bargaining;

(ii) by constantly seeking to suppress all forms of forced or compulsory labour, exacted under the
menace of any penalty and for which workers have not offered themselves voluntarily;

(iii) by pursuing its efforts towards the effective abolition of child labour, progressively raising the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons; and

(iv) by bringing about the conditions for true equality of opportunity among all workers, especially male and female workers, through the elimination of discrimination in respect of employment and occupation, in all its forms.

Recognizes the concomitant obligation on the Organization to draw upon the whole of its constitutional and operational resources to support the efforts of its Members to attain these objectives:

(i) by consolidating its programmes, particularly assistance and advisory programmes that may promote the ratification and implementation of the fundamental Conventions and help to create a climate for economic and social development;

(ii) by appealing to the solidarity of its most developed Members for their voluntary assistance in creating conditions that will facilitate the effective implementation of the fundamental rights and objectives by the less developed Members and in taking similar action in the multilateral fora where they are represented;

(iii) by guiding the said efforts and making them known.

Decides that, to give full effect to the above objectives, there shall be an appropriate follow-up mechanism for this Declaration which, as specified in the annex hereto, shall supplement the procedures that already exist under the Constitution or in the Organization's practice, without in any way being a substitute for them or entailing any significant additional burden; it shall have the following components:

(i) an objective annual survey of the efforts of Members which have not yet ratified the relevant Conventions to apply to the best of their means the fundamental principles or objectives that those Conventions seek to realize; this review shall be based on summary reports under article 19 of the Constitution, in which such Members would be invited to point out any amendments to their law and practice in relation to the above principles and objectives, on the understanding that the protection of freedom of association shall continue to be governed by its own specific mechanism; and

(ii) an annual global report by the Director-General which shall deal, in turn, with each of the four categories of principles and rights mentioned above and take stock of the significant trends and progress made during the four previous years for Members as a whole; this report shall be based on the findings of the aforementioned survey, in the case of countries that have not ratified the Conventions concerned, and on those of the established procedures, in the case of the other countries. The discussion of the report should enable the assistance provided by the Organization to be adjusted by reference to the
difficulties encountered and the successes achieved.

* * *

**Records its understanding** that this Declaration provides no basis for any ILO Member to ignore such multilateral obligations as it may have assumed, according to the decisions of the competent bodies, by in particular adopting trade measures that are of a protectionist nature or that call into question the comparative advantage of other countries.

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**Appendix II**

**NON-PAPER**

**Elements for a possible declaration concerning the promotion of fundamental principles and rights within the mandate of the ILO**

**I. Elements for a Preamble**

(A) **Whereas** the International Labour Organization was created as a "permanent organization" in the twofold conviction:

(i) that the promotion of the physical, moral and intellectual well-being of workers is of supreme international importance and that universal peace can be established only if it is based upon social justice; and

(ii) that, with the differences in economic opportunity and industrial development and other factors, the various aims and purposes of the Organization could not be achieved once and for all, but would require constantly renewed efforts according to the circumstances and possibilities of each country;

(B) **Whereas** these various aims and purposes nevertheless rest upon a few immutable values and principles "of special and urgent importance", in the words of article 41 of the original ILO Constitution;

(C) **Whereas** the Declaration of Philadelphia of 1944 recapitulates and complements these principles:

(i) by affirming, in particular, as "fundamental principles on which the Organization is based", that labour is not a commodity, that freedom of expression and of association are essential to sustained progress, and that poverty anywhere constitutes a danger to prosperity everywhere;
(ii) by requiring, as the fundamental objective of all national and international policies, that "all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity";

(D) Whereas the importance that attaches to safeguarding and promoting fundamental workers' rights including the prohibition of forced labour and of child labour, to freedom of association, to the right to organize and to bargain collectively and to the principle of non-discrimination, as well as to the Organization's role in this regard, has been universally recognized beyond the ILO itself [in particular at the World Summit for Social Development in Copenhagen in March 1995].

II. Elements for the operative part

The General Conference of the International Labour Organization, having been convened by the Governing Body of the International Labour Office and having met in Geneva on .. June 1998 at its 86th Session;

Conscious of the responsibility arising from the hopes and expectations placed in the International Labour Organization and convinced that the new constraints and new opportunities resulting from an increasingly interdependent global economy call for the restatement, in today's conditions, of the values and principles which the Organization was created to promote and for the reactivation of all means at its disposal to ensure their ever more effective promotion;

States its conviction:

(i) that, while economic development through the wealth which it creates provides the impetus for all social progress, only respect for the fundamental principles and rights enshrined in the ILO Constitution can make such social progress sustainable by enabling all workers to obtain freely and on a basis of equal opportunity their fair share of that wealth;

(ii) that, in a globalized economy which both draws upon complex technological developments and contributes to their rapid dissemination, the development of the human potential is more than ever essential for economic efficiency and that such development cannot be ensured on a lasting basis as long as workers are subjected to conditions of economic exploitation, deprived of individual and collective liberties and denied their dignity and equality of opportunity.

Declares solemnly that all States Members of the Organization, while in no way accountable for any legal obligations under Conventions which they have not ratified, have nevertheless, by accepting its Constitution, committed themselves, whatever their level of development, to working in good faith and unremittingly towards the elimination of all situations that are incompatible with the principles and values on which it is based and to which they have freely subscribed, and in particular:
(i) to ensuring freedom of association and the effective recognition of the right to collective bargaining;

(ii) to suppressing all forms of forced or compulsory labour, exacted under the menace of any penalty and for which workers have not offered themselves voluntarily [which thus constitutes the very denial of the dignity and equality of opportunity to which they are entitled];

(iii) to pursuing their efforts towards the effective abolition of child labour and to raising progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons;

(iv) to combating discrimination in employment and occupation in all its forms including differences in remuneration for work of equal value.

Recognizes the concomitant obligation on the Organization to guide, assist and make known the efforts of its Members to achieve these aims by mobilizing the constitutional and material means at its disposal to enhance the effectiveness of such efforts, and by developing further activities to this end.

III. Elements for the follow-up

Now therefore the Conference,

Decides that there shall be an appropriate follow-up mechanism for this Declaration [on the lines set out in the appendix hereto], to be elaborated by the Governing Body [on the basis of wide consensus and] within the bounds of the following principles and aims:

(i) the promotion of freedom of association and collective bargaining must continue to be the subject of the machinery already set up for this purpose;

(ii) for Members which have not yet ratified the Conventions relating to the other fundamental principles and rights, the aim shall be to monitor and review objectively national trends with regard to the above principles and aims, on the basis of appropriate reports and not of complaints, and not to assess the legal conformity of national law and practice with the specific provisions of the Conventions concerned. The machinery should for this purpose make use, with necessary adaptations, of existing constitutional mechanisms;

(iii) the existing supervisory machinery must continue to be fully used for ensuring the effective application of ratified Conventions;

(iv) with the aim of identifying global trends for all Members, a general survey of progress or developments, based on the information gathered through the procedures mentioned under (ii)
above in the case of countries which have not ratified the relevant Conventions and, for other
countries, on the information available from the existing supervisory machinery, shall be
submitted to the Conference by the Director-General of the ILO, at appropriate intervals, for each
of the fundamental principles and rights in turn.

**Requests** the Governing Body to draw the necessary consequences from the heightened priority given to
these principles and rights in terms of programmes and technical assistance, thus enabling the
constituents and the Office to identify and undertake the activities necessary for the promotion of these
principles and values as well as the ratification and implementation of the relevant Conventions.

**IV. Understandings**

In adopting this Declaration, the Conference wishes to stress,

(i) that nothing in its terms purports to subject Members to obligations under international labour
Conventions relating to fundamental rights where they have not ratified those Conventions and
nothing accordingly dispenses them from ratifying those Conventions as soon as the necessary
conditions are present;

(ii) that it does not in any way alter the responsibility of States which have ratified those
Conventions to make every effort to ensure their effective application;

(iii) that it provides no basis for any ILO Member to ignore such multilateral obligations that it
may have assumed, in other fora as may have been determined by the competent bodies, and in
particular to adopt trade measures that are of a protectionist nature or that call into question the
comparative advantage of other countries;

(iv) that the special place it gives to fundamental rights shall not be interpreted in any way that
would lead to a relaxation of efforts for the improvement of other aspects of working conditions
and for the pursuit of the ILO's standard-setting action in all areas within its mandate.

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1. **Appendix II** to the present document.

2. Article 19.5(e): "if the Member does not obtain the consent of the authority or authorities within
whose competence the matter lies, no further obligation shall rest upon the Member except that it shall
report to the Director-General of the International Labour Office, at appropriate intervals as requested by
the Governing Body, the position of its law and practice in regard to the matters dealt with in the
Convention, showing the extent to which effect has been given, or is proposed to be given, to any of the
provisions of the Convention by legislation, administrative action, collective agreement or otherwise and
stating the difficulties which prevent or delay the ratification of such Convention."
3. Article 23.2, which states that "Each member shall communicate to the representative organizations recognized for the purpose of article 3 copies of the information and reports communicated to the Director-General in pursuance of articles 19 and 22" was introduced by the amendment to the Constitution in 1946, at the same time as several other new obligations contained in article 19. The Governing Body (104th Session, March 1948) therefore decided to add to the report form the additional question designed to identify the organizations to which the reports had been communicated.

4. Article 5bis: Representation of States which are not members of the Governing Body:

"1. When the Governing Body considers any matter arising out of the representation under article 24 or a complaint under article 26 of the Constitution, the government concerned shall, if not already represented on the Governing Body, be entitled to send a representative to take part, without the right to vote, in its proceedings while the matter is under consideration. Adequate notice of the date on which the matter will be considered shall be given to the government.

2. When the Governing Body considers a report of the Committee on Freedom of Association or of the Fact-Finding and Conciliation Commission on Freedom of Association containing conclusions on a case relating to a government which is not represented on the Governing Body, that government shall be entitled to send a representative to take part, without the right to vote, in the proceedings of the Governing Body while the conclusions on the case in question are under consideration."