

# THIRD MEETING OF THE SRM TRIPARTITE WORKING GROUP

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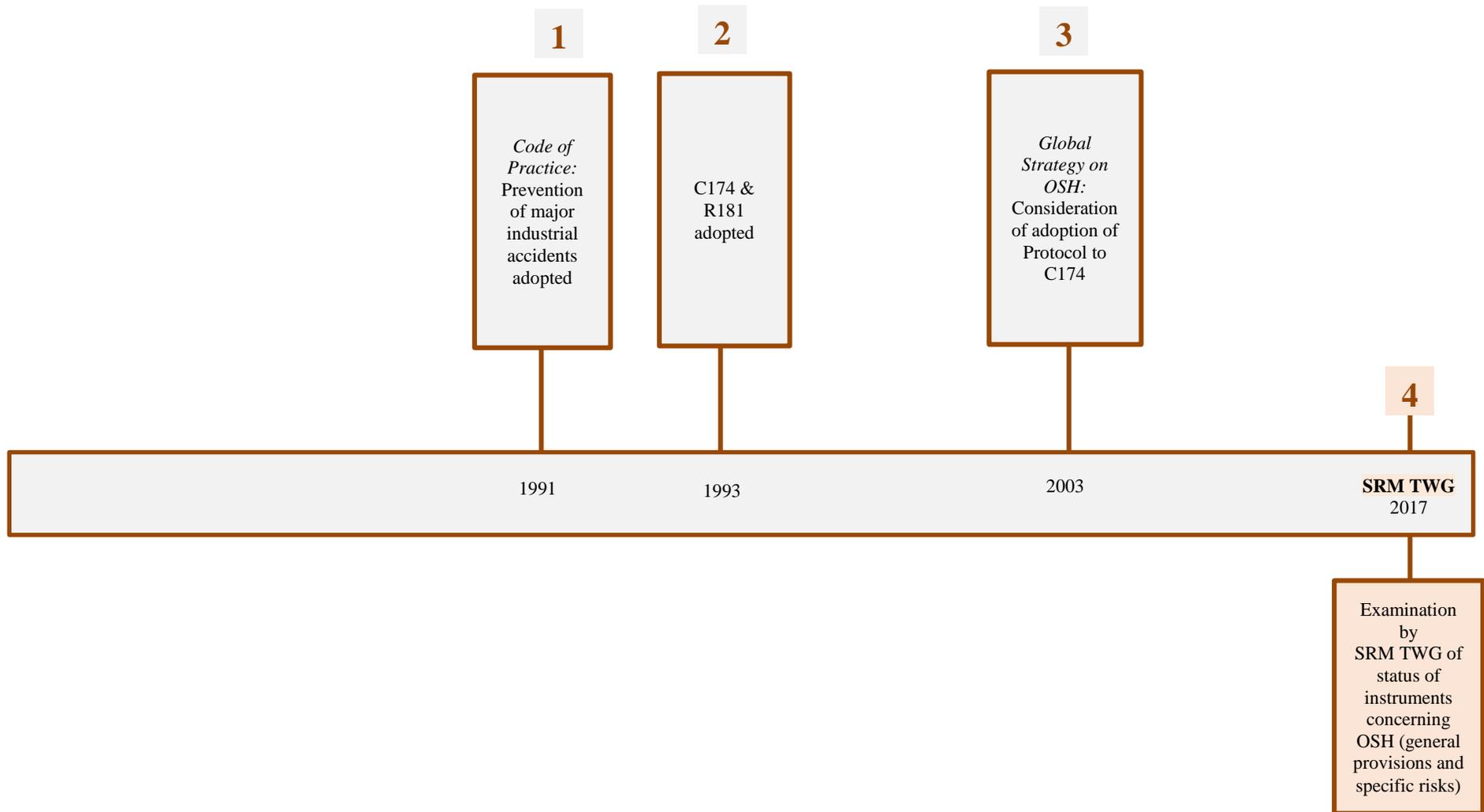
## EXAMINATION OF INSTRUMENTS CONCERNING OCCUPATIONAL SAFETY AND HEALTH (GENERAL PROVISIONS AND SPECIFIC RISKS)

### Technical Note 6: Instruments concerning the prevention of major industrial accidents

- The sub-topic of the *prevention of major industrial accidents* includes: the **Prevention of Major Industrial Accidents Convention, 1993 (No. 174)** and the **Prevention of Major Industrial Accidents Recommendation, 1993 (No. 181)**
- *Current status of instruments:* up-to-date (upon recommendation of Cartier Working Group)
- *Possible action to be considered:* classification as *instruments requiring further action*; consideration within any revision process on OSH

18 August 2017

# ILO regulation of prevention of major industrial accidents: Chronology of developments



## ILO regulatory approach to the prevention of industrial accidents

The increasing risk of major industrial accidents with the growing production, storage and use of hazardous substances has accentuated the need for a clearly defined and systematic approach to their control in order to protect workers, the public and the environment.<sup>1</sup> These concerns were addressed by the adoption of a Code of practice on prevention of major industrial accidents in 1991, followed two years later by the adoption of the **Prevention of Major Industrial Accidents Convention, 1993 (No. 174)** and its accompanying **Recommendation (No. 181)**, which provide for precautionary measures to avoid or minimize the consequences of industrial disasters.

The instruments belong to the group of instruments dealing with specific risks. In line with the more modern approach, Convention No. 174 and Recommendation No. 181 provide for the formulation of a national policy and acknowledge the role of employers and workers in managing OSH systems in the enterprise.

### Chronology: Convention No. 174 and Recommendation No. 181 at a glance

#### 1. 1991: Meeting of experts adopted Code of practice on prevention of major industrial accidents

The Code of practice provides guidance in the setting up of administrative, legal and technical systems for the control of major hazard installations with the aim of protecting workers, the public and the environment.

See: [Code of practice on prevention of major industrial accidents](#)

#### 2. 1993: ILC adopted Convention No. 174 and Recommendation No. 181

The purpose of Convention No. 174 is twofold: the prevention of major accidents involving hazardous substances, and the limitation of the consequences of such accidents. The Convention provides for the development of a “coherent national policy concerning the protection of workers, the public and the environment” and measures involving central and local government, employers and workers and bodies such as police, fire and medical authorities concerned with emergency planning. Recommendation No. 181 supplements the provisions of Convention No 174 including the international exchange of information.

See: [Prevention of Major Industrial Accidents Convention, 1993 \(No.174\)](#) and [Prevention of Major Industrial Accidents Recommendation, 1993 \(No.181\)](#)

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<sup>1</sup> [ILO: Prevention of major industrial accidents, Code of practice, Geneva, 1991](#), page V.

### 3. 2003: ILC adopted Global Strategy on OSH

At its 91st Session, the ILC considered the implementation of an integrated approach to ILO standards-related activities in the area of OSH. The resulting Global Strategy on OSH included priorities for revising existing, and developing new, instruments. With regard to chemicals, consideration was given to the adoption of a Protocol to the Chemicals Convention, 1990 (No. 170) (and possibly also to the Prevention of Major Industrial Accidents Convention, 1993 (No. 174)) concerning the means and measures through which an exporting State carries out its responsibility of transferring information to an importing State, which appeared to be an obstacle in practice to the application of these Conventions.<sup>2</sup>

See: [2003 Global strategy on Occupational Safety and Health; Report VI: ILC, 91<sup>st</sup> Session, 2003, Geneva](#), paras. 165-166, 179

## The instruments in 2017: developments since the instruments were adopted

### A Policy context

A number of major accidents during the 1980s with a high number of fatalities and injuries of workers and people living in the neighbouring community to plants brought a high level of international concern.<sup>3</sup> These incidents involved a variety of chemicals and also caused extensive property and environmental damage (such as damage to agricultural produce, plants and animals and contamination of land, water or air).

Major industrial accidents usually involve the sudden massive escape of a chemical (flammable, explosive or toxic substance) from containment, followed, in the case of volatile chemicals, by vaporisation and dispersion. Such escapes arise from abnormal operating conditions, such as excess pressures or temperatures or deviations from normal procedures caused by mistakes on the part of management or operators, by plant malfunction or by acts of sabotage or mischief. Natural causes such as floods or earthquakes or high ambient temperatures may also play a role. The number of casualties will depend not only on weather conditions such as wind speed and direction but also on population density and on the effectiveness of arrangements for evacuation. The industrial installations which can give rise to major accidents have come to be described widely as major hazard installations and increasing attention has been given to the development of systems to exercise effective control over them.<sup>4</sup>

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<sup>2</sup> See *Technical note 4 on chemicals*. Article 22 of the Prevention of Major Industrial Accidents Convention, 1993 (No. 174), provides that “when, in an exporting member State, the use of hazardous substances, technologies or processes is prohibited as a potential source of a major accident, the information on this prohibition and the reasons for it shall be made available by the exporting member State to any importing country”.

<sup>3</sup> [ILO: Prevention of industrial disasters, Report V\(1\), International Labour Conference, 79<sup>th</sup> Session, Geneva, 1992](#), pp. 4-6.

<sup>4</sup> *Ibid.*

The development of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade contains more specific requirements of exporting states. The basis of the Convention used the ILO's Chemical Convention and The Prevention of Major Industrial Accidents Convention as the main starting text. Its objectives are:

- to promote shared responsibility and cooperative efforts among Parties in the international trade of certain hazardous chemicals in order to protect human health and the environment from potential harm;
- to contribute to the environmentally sound use of those hazardous chemicals, by facilitating information exchange about their characteristics, by providing for a national decision-making process on their import and export and by disseminating these decisions to Parties.

## B International labour standards context

### (1) Information relating to the ratification of Convention No. 174

Convention No. 174 has received a low-moderate number of ratifications. It has a lower number of ratifications than the other instruments in the group of OSH Conventions concerning the protection against specific risks. Convention No. 174 and the Safety in the Use of Chemicals Convention, 1990 (No. 170), which both relate to hazardous chemicals, have received a similar number of ratifications.

Convention	Effective ratifications:	Further information
Convention No.174	18 effective ratifications <sup>5</sup> (0 denunciations)	<ul style="list-style-type: none"> <li>• <u>Last ratification</u>: 2013 (<i>Finland</i>)</li> <li>• <u>Ratification by dates</u>: 1993-2013: 18 ratifications; 1993-2002: 7 ratifications; 2003-2013: 11 ratifications</li> <li>• <u>Ratification by region</u>: Europe and Central Asia: 12 ratifications;<sup>6</sup> Americas: 2 ratifications;<sup>7</sup> Arab States: 2 ratifications;<sup>8</sup> Africa: 1 ratification;<sup>9</sup> Asia and the Pacific: 1 ratification.<sup>10</sup></li> </ul>

<sup>5</sup> Albania, Armenia, Belgium, Bosnia and Herzegovina, Brazil, Colombia, Estonia, Finland, India, Lebanon, Luxembourg, Netherlands, Russian Federation, Saudi Arabia, Slovenia, Sweden, Ukraine, and Zimbabwe.

<sup>6</sup> Albania, Armenia, Belgium, Bosnia and Herzegovina, Estonia, Finland, Luxembourg, Netherlands, Russian Federation, Slovenia, Sweden, and Ukraine.

<sup>7</sup> Brazil and Colombia.

<sup>8</sup> Lebanon and Saudi Arabia.

<sup>9</sup> Zimbabwe.

<sup>10</sup> India.

## (2) Information concerning the implementation of Convention No. 174

Currently, there are 18 pending comments by the Committee of Experts in relation to the application of Convention No. 174, concerning 17 of the 18 ratifying member States.<sup>11</sup>

The following main themes recur with regard to the implementation of Convention No. 174:

- Insufficient information on compliance with the obligation of exporting states to provide information to importing states on the prohibition of the use of hazardous substances, technologies or processes as a potential source of a major accident (*Article 22*);<sup>12</sup>
- National policy, including its formulation, implementation and periodic review (*Article 4*);<sup>13</sup>
- System for the identification of major hazard installations (*Article 5*);<sup>14</sup>
- Protection of confidential information (*Article 6*);<sup>15</sup>
- Responsibilities of employers in relation to a documented system of major hazard control (*Article 9*);<sup>16</sup> the provision of safety reports (*Articles 10 and 11*);<sup>17</sup> and notification of major installations;<sup>18</sup>
- Responsibilities of competent authorities in relation to off-site emergency preparedness (*Articles 15 and 16*)<sup>19</sup> and siting policies (*Article 17*);<sup>20</sup>

<sup>11</sup> *Finland* is the only ratifying State for which no comment is pending.

<sup>12</sup> *Belgium*, direct request published in 2011; *India*, direct request published in 2016; *Russian Federation*, direct request published in 2016; *Saudi Arabia*, direct request published in 2015; *Ukraine*, direct request published in 2016; and *Zimbabwe*, direct request published in 2015.

<sup>13</sup> *Albania*, direct request published in 2016; *Bosnia and Herzegovina*, direct request published in 2013; *Brazil* direct request published in 2016; *Colombia*, observation and direct request published in 2014; *India*, direct request published in 2016; *Netherlands*, direct request published in 2015; *Saudi Arabia*, direct request published in 2015; *Slovenia*, direct request published in 2015; *Ukraine*, direct request published in 2016.

<sup>14</sup> *Brazil*, direct request published in 2016; *Colombia*, observation and direct request published in 2014; *Estonia*, direct request published in 2011; *Russian Federation*, direct request published in 2016; *Saudi Arabia*, direct request published in 2015; *Ukraine*, direct request published in 2016; *Zimbabwe*, direct request published in 2015.

<sup>15</sup> *Brazil*, direct request published in 2016; *Colombia*, observation and direct request published in 2014; *Estonia*, direct request published in 2011; *Saudi Arabia*, direct request published in 2015; *Ukraine*, direct request published in 2016.

<sup>16</sup> *Armenia*, direct request published in 2014; *Brazil*, direct request published in 2016; *Colombia*, observation and direct request published in 2014; *Russian Federation*, direct request published in 2016; *Ukraine*, direct request published in 2016; *Zimbabwe*, direct request published in 2015.

<sup>17</sup> *Armenia*, direct request published in 2014; *Colombia*, observation and direct request published in 2014; *Saudi Arabia*, direct request published in 2015; *Slovenia*, direct request published in 2015; *Ukraine*, direct request published in 2016; *Zimbabwe*, direct request published in 2015.

<sup>18</sup> *Colombia*, observation and direct request published in 2014; *Russian Federation*, direct request published in 2016; *Saudi Arabia*, direct request published in 2015; *Zimbabwe*, direct request published in 2015.

<sup>19</sup> *Armenia*, direct request published in 2014; *Netherlands*, direct request published in 2015; *Russian Federation*, direct request published in 2016; *Saudi Arabia*, direct request published in 2015; *Zimbabwe*, direct request published in 2015.

<sup>20</sup> *Brazil*, direct request published in 2016; *Colombia*, observation and direct request published in 2014; *Netherlands*, direct request published in 2015; *Russian Federation*, direct request published in 2016; *Zimbabwe*, direct request published in 2015.

- Rights and duties of workers and their representatives (*Articles 20 and 21*).<sup>21</sup>

## Key considerations in determining the status of Convention No. 174 and Recommendation No. 181

In examining Convention No. 174 and Recommendation No. 181 for the purposes of determining their status, the following considerations are particularly relevant:

- Convention No. 174 has received a low-moderate number of ratifications. It has a lower number of ratifications than the other instruments concerning protection against specific risks related to OSH and a similar number of ratifications to Convention No. 170. It has been ratified by few member States from Africa, the Americas, Arab States, Asia and the Pacific regions.
- The instruments are part of the group of instruments taking a more modern regulatory approach, involving a national policy, flexibility in application, and acknowledgement of the role of employers and workers at the level of the undertaking. As a result, the instruments are responsive to scientific developments and changes in the world of work.<sup>22</sup>
- One of the most prevalent themes raised by the Committee of Experts in relation to the application of the Convention concerns the responsibility of exporting States to communicate information to importing States on whether chemicals are prohibited in the country of origin. In the context of the 2003 Global Strategy, many member States indicated that this obligation created difficulties in practice, as responsibility fell on the State rather than the exporting enterprise. Consequently, a proposal was made to examine ways to fulfill this obligation in practice and to consider a partial revision of the Convention in relation to this particular issue to remove obstacles to ratification and application in practice.<sup>23</sup>
- The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, 1998 contains more far-reaching information and other requirements of exporting states in relation to hazardous chemicals and pesticides (such as labelling), and requires the designation of national authorities to act on the behalf of Governments in the performance of the administrative functions required by the Convention.<sup>24</sup>
- Conventions Nos 174 and 170 both deal with chemicals, requiring a certain amount of consistency between the instruments.

<sup>21</sup> *Colombia*, observation and direct request published in 2014; *Estonia*, direct request published in 2011; *India*, direct request published in 2016; *Russian Federation*, direct request published in 2016; *Saudi Arabia*, direct request published in 2015; *Ukraine*, direct request published in 2016; *Zimbabwe*, direct request published in 2015.

<sup>22</sup> For example, Article 11 requires employers to review, update and amend safety reports concerning the control of major hazards, “when developments in technical knowledge or in the assessment of hazards make this appropriate.”

<sup>23</sup> [ILO: ILO standards-related activities in the area of OSH: An in-depth study for discussion, Report VI, International Labour Conference, 91<sup>st</sup> Session, Geneva, 2003](#), paras. 39, 158, 167 and 168.

<sup>24</sup> [The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, 1998 \(entered into force in 2004, last revised in 2015\)](#).

## Possible action to be considered in relation to Convention No. 174 and Recommendation No. 181

Convention No. 174 and Recommendation No. 181 reflect the modern policy-oriented and risk-assessment approach to OSH, recognising the role of employers and workers in managing OSH systems in the enterprise,<sup>25</sup> and first established by Convention No. 155 in 1981 and reaffirmed more recently with the adoption of Convention No 187. There is nothing to suggest that the instruments have lost their purpose, although guidance may be needed on how the provisions regarding information-sharing by exporting member States may be fulfilled in practice.

Taking into account the continuing relevance both of the purpose and approach of the instruments, the SRM TWG may wish to consider whether Convention No. 174 and Recommendation No. 181 are in need of partial revision. If it concludes, following its examination, that these instruments are in need of revision, the SRM TWG may wish to consider:

1. Determining that, as Convention No. 174 and Recommendation No. 181 require partial revision, they should be classified as *instruments requiring further action* within their current legal status as active instruments, accordingly necessitating practical and time-bound follow-up action.
2. Proposing practical and time-bound follow-up action in relation to Convention No. 174 and Recommendation No. 181 through a revision process on OSH that particularly takes into account the discussions of the SRM TWG in this regard.
3. Deciding that it will monitor the Organization's implementation of the proposed follow-up and, at an appropriate time, reconsider changing the legal status of the instruments to recognise developments.
4. Making any resulting recommendations to the Governing Body.

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<sup>25</sup> Ibid., paras 47 and 48.