



# Governing Body

343rd Session, Geneva, November 2021

## Institutional Section

INS

**Date:** 14 October 2021

**Original:** English

Sixth item on the agenda

## Proposals for including safe and healthy working conditions in the ILO's framework of fundamental principles and rights at work

### Purpose of the document

In accordance with the revised road map adopted at the 341st Session (March 2021) of the Governing Body, this document addresses process-related questions and possible forms of the decision of the International Labour Conference, including the placement of a technical item on the agenda of the 110th Session (2022) of the Conference (see draft decision in paragraph 52).

**Relevant strategic objective:** Social protection and fundamental principles and rights at work.

**Main relevant outcome:** Outcome 7: Adequate and effective protection at work for all. Output 7.2: Increased capacity of Member States to ensure safe and healthy working conditions.

**Policy implications:** Implications for the Conference agenda for 2022 or later sessions.

**Legal implications:** Proposed amendment of the 1998 ILO Declaration on Fundamental Principles and Rights at Work, or adoption of a new Conference declaration, to include safe and healthy working conditions in the ILO's framework of fundamental principles and rights at work.

**Financial implications:** None.

**Follow-up action required:** Depending on the decision and guidance of the Governing Body, preparation of an outcome document for possible adoption at the 110th Session of the Conference (2022).

**Author unit:** Departments in the Policy Portfolio and in the Field Operations and Partnerships Portfolio.

**Related documents:** [GB.337/PV](#); [GB.337/INS/3/2](#); [GB.341/PV](#); [GB.341/INS/6](#).



## ▶ Introduction

---

1. At its 108th Session (2019), the International Labour Conference adopted the Centenary Declaration for the Future of Work in which it solemnly declared among other things that “safe and healthy working conditions are fundamental to decent work”.<sup>1</sup> The Conference adopted also a resolution requesting 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”.<sup>2</sup>
2. At its 337th Session (October–November 2019), the Governing Body approved a “road map as a planning tool, which can be reviewed and modified by the Governing Body based on progress made, for the consideration of proposals for including safe and healthy working conditions in the ILO’s framework of fundamental principles and rights at work”.<sup>3</sup>
3. As a result of the cancellation of its 338th Session (March 2020) and the reduced agenda of the 340th virtual Session (October–November 2020),<sup>4</sup> the Governing Body resumed consideration of this matter at its 341st Session (March 2021), in which it approved a revised procedural road map for the consideration of including safe and healthy working conditions in the ILO’s framework of fundamental principles and rights at work, and requested the Director-General to take into account the guidance provided during the discussion in preparing the paper for the 343rd Session (November 2021).<sup>5</sup>
4. The latest Governing Body discussion revealed several points of convergence but also a few points that require further clarification. First, there seemed to be a broad agreement that the inclusion of safe and healthy working conditions in the ILO’s framework of fundamental principles and rights at work should be discussed at the 110th Session (2022) of the Conference having regard to both the Centenary Declaration and its accompanying resolution and the experience arising from the impact of the COVID-19 pandemic on the world of work. Second, discussions confirmed that, procedurally speaking, there were only two concrete options available to the Conference for the inclusion of safe and healthy working conditions into the ILO’s framework of fundamental principles and rights at work:<sup>6</sup> either an amendment to the ILO Declaration on Fundamental Principles and Rights at Work (1998 Declaration) or the adoption of a separate self-standing declaration possibly accompanied by its own follow-up mechanism. Third, the amendment of the 1998 Declaration received support from the majority of speakers.<sup>7</sup> A few speakers referred to the need to continue addressing all options<sup>8</sup> and one group asked for further details on the adoption of a separate

---

<sup>1</sup> ILO Centenary Declaration for the Future of Work, para. II.D.

<sup>2</sup> Resolution on the ILO Centenary Declaration for the Future of Work, para. 1.

<sup>3</sup> GB.337/PV, para. 116.

<sup>4</sup> Document GB.340/INS/4 was published for information only.

<sup>5</sup> GB.341/PV, para. 198.

<sup>6</sup> See statement of the representative of the Director-General, GB.341/PV, para. 191.

<sup>7</sup> GB.341/PV, paras 169, 175, 178, 180, 187, 189.

<sup>8</sup> GB.341/PV, paras 177, 188, 190.

Declaration.<sup>9</sup> Fourth, from a substantive point of view, the discussions suggested that the recognition of safe and healthy working conditions as a fundamental principle should reflect both the “protection” dimension set forth in the ILO Constitution and the “prevention” dimension set forth in relevant occupational safety and health (OSH) instruments. Fifth, there seemed to exist broad agreement that the possible amendment of the 1998 Declaration or the adoption of a separate declaration should proceed independently from the process of identifying the OSH Convention or Conventions which could be considered part of the ILO’s core or fundamental Conventions. Finally, there was strong support for the view that the inclusion of safe and healthy working conditions into the ILO’s framework on fundamental principles and rights at work should enhance the ability of the ILO to address the needs of Member States for technical assistance.

5. Notwithstanding these points of convergence, one constituent group considered that the formulation of a possible category of fundamental principles and right at work on safe and healthy working conditions was premature and that alternative proposals should be developed for the consideration of OSH in the framework of fundamental principles and rights at work.<sup>10</sup> The same group expressed the view that the fundamental principles and rights at work differed from OSH; the former had to be addressed via legislation by States and guaranteed by employers whereas the latter was a joint responsibility between all the constituents and depended to a large extent on action taken on the ground.<sup>11</sup> Therefore, Conventions on OSH could possibly be recognized as priority Conventions.
6. In accordance with the revised procedural road map, this paper addresses process-related questions and possible forms of the decision of the Conference, including the placement of a technical item on the agenda of the 110th Session (2022) of the Conference.

## ► Possible forms of Conference decision

---

### Amending the 1998 Declaration or adopting a self-standing declaration

7. As previously explained,<sup>12</sup> the Conference decision on the inclusion of safe and healthy working conditions in the ILO’s framework of fundamental principles and rights should necessarily take the form of a resolution which may amend the 1998 Declaration or take the form of a separate declaration (a term generally used in order to make a formal and authoritative statement and reaffirm the importance which the constituents attach to certain principles and values). However, the format and scope of that Conference resolution may vary. More concretely, depending on the exact wording of the item placed on its agenda by the Governing Body, the Conference may either limit itself to amending paragraph 2 of the 1998 Declaration by introducing an additional fundamental right or, alternatively, adopt a new self-standing declaration which addresses exclusively the safe and healthy working conditions as a fundamental workers’

---

<sup>9</sup> GB.341/PV, para. 183.

<sup>10</sup> GB.341/PV, paras 167–168.

<sup>11</sup> GB.341/PV, para. 196.

<sup>12</sup> GB.341/INS/6, paras 17–20.

right. In deciding which of the two avenues the Conference should be called upon to follow, the Governing Body may wish to take note of the following considerations.

8. As regards the possible amendment of the landmark 1998 Declaration, it is recalled that the purpose of adopting that Declaration was to express, through a solemn statement of the International Labour Conference, the commitment of all ILO Members to the fundamental principles and rights at work embodied in the Constitution and their universal application as well as the explicit recognition of the consensus which the international community had reached regarding the special significance of a number of fundamental workers' rights in the context of globalization.
9. In this regard, the adoption of an amendment to the 1998 Declaration with a view to introducing the protection of safe and healthy working conditions as a fifth category of fundamental principles and rights at work would serve the same purpose, namely to recognize that all Member States have an obligation by virtue of their membership in the Organization to respect, promote and realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental right that is the subject of Conventions relating to OSH.
10. The inclusion of safe and healthy working conditions together with other fundamental workers' rights would share the same constitutional logic with that of the four existing categories of fundamental principles and rights; the proposed amendment to the 1998 Declaration would limit itself to crystallizing yet another core commitment and value that is already expressly reflected in the Preamble of the ILO Constitution. In other words, the protection of workers' safety and health has a clear and solid constitutional basis (since both the preamble of the Constitution and the Declaration of Philadelphia contain express references to protection against disease and injury and adequate protection for the life and health of workers) so that Members have an obligation arising from the very fact of their membership to respect the principles concerning the fundamental right which is the subject of the Convention or Conventions that will eventually be recognized as fundamental in the area of OSH.
11. In this sense, the amendment would only be declaratory, and not constitutive, in nature. As was underlined at the time of adoption of the 1998 Declaration, "fundamental rights are not fundamental because the Declaration says so; the Declaration says that they are fundamental because they are".<sup>13</sup>
12. Moreover, by direct analogy to the legal implications of the 1998 Declaration as regards the current fundamental principles and rights at work, the reaffirmation of an obligation inherent in ILO membership to respect, promote and realize safe and healthy working conditions would include two inseparable aspects: on the one hand, the commitment of all Members – irrespective of the ratification of any relevant OSH Convention or Conventions – to promote respect for the principle of safe and healthy working conditions and, on the other, the responsibility of the Organization to help Members through its various means of action, including technical cooperation.<sup>14</sup>
13. In sum, the proposed amendment would be fully aligned with the approach and rationale underlying the 1998 Declaration; it would not alter or otherwise modify the

---

<sup>13</sup> 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, 10.

<sup>14</sup> GB.270/3/1, para. 11.

nature of that instrument but simply supplement its content in a very circumscribed and specific manner.

14. There seems to be general acceptance that adopting a limited amendment to the 1998 Declaration would be the simplest and less intrusive way to include safe and healthy working conditions in the ILO's framework of fundamental principles and rights at work. This would entail minimal changes to the current text of the 1998 Declaration and its Follow-up, namely the inclusion of safe and healthy working conditions as a new subparagraph (e) to paragraph 2 of the 1998 Declaration and two consequential amendments to the Follow-up to replace the word "four" by the word "five" in the two references (II.A.2 and III.A.1) to the categories of fundamental principles and rights at work.
15. All fundamental principles and rights at work would be incorporated in a single instrument thus preserving the unity, authoritativeness and resonance of the 1998 Declaration, as amended. This would also enhance legal certainty and coherence among the fundamental principles and rights at work which should enjoy the same status and visibility both inside and outside the ILO. It would highlight a strong link between safe and healthy working conditions and the current fundamental principles and rights at work. The fifth fundamental principle and right at work would also have the weight and influence of the 1998 Declaration behind it. Most significantly, the fifth category would be subject to the same promotional follow-up mechanism currently applicable to the existing four categories.
16. A draft resolution amending the 1998 Declaration is found in the appendix. This gives concrete expression to the type of decision the Conference might take if this option were to be retained and is, of course, without prejudice to the consideration of the elements for a draft document that should be examined by the Governing Body in March 2022.
17. If the Conference were to be entrusted with the responsibility to prepare and adopt a self-standing declaration, its nature, scope and objective would have to be clarified. A new declaration could be of the same, similar or different content from that of the declaration amending the current 1998 Declaration. This would depend on the preferences and guidance of the Governing Body in the current session and the drafting outcome at the Conference deliberations. The same applies to the follow-up mechanism; the drafters may decide that the existing mechanism under the 1998 Declaration should apply *mutatis mutandis* but they may also opt for entirely different monitoring or reporting arrangements.
18. Drawing up a new declaration focusing exclusively on safe and healthy working conditions would be appropriate if the drafters' intention were to keep OSH distinct from the existing fundamental principles and rights without necessarily differentiating between them with respect to their status. In this case, a separate instrument could bring out the rationale and objectives of elevating safe and healthy working conditions to a fundamental principle and right at work without subsuming them in the 1998 Declaration. It could also allow the development of a "customized" follow-up mechanism adapted to Members' specific needs in relation to both the protective and preventative measures and the continuous improvement required to safeguard safe and healthy working conditions. A self-standing declaration could arguably give more visibility to safe and healthy working conditions than simply adding those words in a subparagraph of the 1998 Declaration.
19. Ultimately, the Governing Body needs to decide whether a separate declaration that inevitably draws a distinction between the current fundamental principles and rights on

the one hand, and safe and healthy working conditions on the other, would promote or disrupt the systemic clarity and integrity of the ILO's framework of fundamental principles and rights at work as is known today both inside and outside the Organization.

## Consequential amendments

20. Irrespective of the option the Governing Body may retain, the inclusion of safe and healthy working conditions in the ILO's framework of fundamental principles and rights at work would require certain consequential amendments to the 2008 ILO Declaration on Social Justice for a Fair Globalization (Social Justice Declaration) and the 2009 Global Jobs Pact. These amendments would simply aim at updating any reference to the 1998 Declaration, to reflect the recognition of the new fifth category of fundamental principles and rights at work, and would not impact the substantive content of the two instruments. Parenthetically, the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, adopted by the Governing Body in 1977, would also call for similar amendments.
21. The consequential amendments could be incorporated in the Conference resolution amending paragraph 2 of the 1998 Declaration, or alternatively, be set out in a separate resolution accompanying the new self-standing declaration on safe and healthy working conditions.
22. As for the references to the four categories of fundamental principles and rights contained in international labour Conventions (for instance in Article 5 of the Violence and Harassment Convention, 2019 (No. 190), in Article 3 of the Domestic Workers Convention, 2011 (No. 189) or Article III of the Maritime Labour Convention, 2006 (as amended)), these would necessitate the formal partial revision of the instruments concerned through the adoption of a specific Convention to this effect similar to the Final Articles Revision Convention, 1946 (No. 80) or the Final Articles Revision Convention, 1961 (No. 116). Once this "revising" Convention will have entered into force, Member States which ratify any of the Conventions concerned will be bound by that Convention as revised. Moreover, a ratification of the revising Convention will imply a recognition that the original list of fundamental principles and rights at work has been expanded since the entry into force of the revising Convention.
23. The Conference resolution could accordingly invite the Governing Body and the Director-General to take appropriate action so that the inclusion of safe and healthy working conditions in the ILO's framework of fundamental principles and rights be properly reflected in those Conventions and Recommendations adopted so far which expressly refer to the current four fundamental principles and rights at work.

## Legal effect of Conference decision on free trade agreements

24. Questions are often raised with respect to the legal effects of a possible Conference decision on instruments adopted outside the Organization, and in particular the possible impact of a revised 1998 Declaration or of a self-standing one on the labour provisions included in bilateral or multilateral trade liberalization agreements, known as free trade agreements (FTAs).<sup>15</sup>

---

<sup>15</sup> The term "labour provisions" in FTAs is generally understood to cover any reference to labour standards that address labour rights or minimum working conditions and to mechanisms to promote compliance with those standards, including consultative bodies or frameworks for cooperative activities.

25. Approximately 65 per cent of FTAs expressly refer to the 1998 Declaration, 9 per cent refer to the ILO fundamental Conventions while others contain references to other ILO Conventions, the Decent Work Agenda, the Social Justice Declaration, or specific human rights instruments. The normative content of labour provisions varies from binding legal obligations to aspirational political commitments. Most frequently, States parties to FTAs: undertake to adopt laws, regulations and labour standards or to ensure their effective implementation; reaffirm their obligations arising from ILO membership; commit to promoting public awareness of labour laws, transparency and communication to the public; vow to provide access to tribunals or other procedural guarantees in order to uphold labour laws and standards.<sup>16</sup>
26. The question of the legal effect of the 1998 Declaration was lengthily debated during the Conference discussions that led to its adoption. As stated at the time, “just as it does not create any new constitutional obligations for Member States, [the Declaration] does not release them from any legal obligations they may have under international law. This applies particularly to obligations arising from other multilateral treaties to which ILO Members may be party and which they can only renounce in accordance with the conditions provided in those treaties or constituent charters, or in accordance with the general conditions provided in the Vienna Convention on the Law of Treaties (Article 41). It is clear that the Declaration, given that it is not even a treaty, would not provide any legal basis for derogations from these treaties inter se. Neither would it allow the ILO to issue any sort of instructions on a matter that does not fall within its competence.”<sup>17</sup>
27. Labour provisions in FTAs usually take one of the following three forms. First, there are labour provisions which refer to the 1998 Declaration and enumerate the four categories of fundamental rights.<sup>18</sup> Second, in some cases, FTAs contain provisions which make general reference to core labour standards without expressly referring to the 1998 Declaration.<sup>19</sup> Third, in other cases, FTAs contain provisions expressly referring to OSH as an internationally recognized labour right.<sup>20</sup>

---

<sup>16</sup> For more, see ILO, *Handbook on Assessment of Labour Provisions in Trade and Investment Arrangements*, 2017 and *Labour Provisions in G7 Trade Agreements: A Comparative Perspective*, 2019.

<sup>17</sup> ILO, *Consideration of a possible Declaration of principles of the International Labour Organization concerning fundamental rights*, 20.

<sup>18</sup> For instance, art. 17.2.1 of the [US–Peru Trade Promotion Agreement](#) which entered into force on 1 February 2009, provides that “Each Party shall adopt and maintain in its statutes and regulations, and practices thereunder, the following rights, as stated in the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998) (ILO Declaration): (a) freedom of association; (b) the effective recognition of the right to collective bargaining; (c) the elimination of all forms of compulsory or forced labour; (d) the effective abolition of child labour and, for purposes of this Agreement, a prohibition on the worst forms of child labour; and (e) the elimination of discrimination in respect of employment and occupation.” See also art. 16.3.2 of the [Japan–UK Comprehensive Economic Partnership Agreement](#) which entered into force on 1 January 2021, and art. 13.4.3 of the [EU–Republic of Korea FTA](#) which entered into force on 1 July 2011.

<sup>19</sup> For instance, art. 50 of the [ACP–EC–Partnership Agreement \(Cotonou Agreement\)](#) of 2000 provides that “the Parties reaffirm their commitment to the internationally recognised core labour standards, as defined by the relevant International Labour Organisation (ILO) Conventions.” See also art. 13 of Annex VII of the [UK, SACU and Mozambique Economic Partnership Agreement](#) of 2019. A somewhat similar reference is made in the preamble of the [US–Ghana Trade and Investment Framework Agreement](#) of 1999.

<sup>20</sup> For instance, art. 16.1 of the [the US–Oman FTA](#) that entered into force on 1 January 2009, provides that “the Parties reaffirm their ... commitments under the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998)*” and that “each Party shall strive to ensure that ... the internationally recognized labor rights set forth in art. 16.7 are recognized and protected by its law.” Pursuant to art. 16.7, these internationally recognized labour rights include, among others, “acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.” See also art. 23.3.2 of the [the US–Mexico–Canada FTA](#) which entered into force on 1 July 2020.

28. As a non-binding Conference resolution, an amended 1998 Declaration or a self-standing Declaration would not give rise to new legal obligations – directly or indirectly – for States parties to FTAs. This is simply because a Conference resolution as such cannot affect the scope or content of trade agreements – or other international treaties – negotiated and concluded by Member States outside the Organization. The reference to the 1998 Declaration or to other ILO instruments in labour provisions of trade agreements is the result of free decisions of the signatories to these agreements. It follows that a revised or self-standing declaration that could include safe and healthy working conditions as a new category of fundamental principles and rights at work cannot be incorporated into existing trade agreements unless the States parties to those agreements so decide. Consistent with well-recognized principles of international treaty law, the interpretation and application of trade agreements is a matter, in the first instance, for the States parties concerned and, in some cases, for those dispute-settlement bodies which may be specifically empowered to this effect under the terms of the trade agreements in question.
29. Further, the fact that an ILO Member State may have supported the adoption of a Conference resolution recognizing the protection of safe and healthy working conditions as a fundamental principle does not in itself create a legal obligation for that Member State to revise a free trade agreement to which it is a party. This may be likened to the manner in which voting in favour of the adoption of a new international labour Convention does not create a legal obligation to ratify that Convention.
30. Moreover, even if the Conference resolution were to call upon Member States to amend the FTAs to which they are parties to incorporate OSH alongside the four other categories of fundamental principles and rights at work, this would be, legally speaking, no more than an invitation without binding effect.
31. In sum, it will be ultimately for the States parties to FTAs to decide if, when and how they wish to take steps to align the relevant labour provisions, if any, with the possible Conference resolution recognizing safe and healthy working conditions as a fundamental principle and right at work. Just as the adoption of the Declaration on Fundamental Principles and Rights at Work in 1998 did not create a legal obligation for Member States to include labour clauses in the FTAs that either existed at that time or were concluded in the following years, its revision will not create a legal obligation – directly or indirectly – to amend any such labour clauses in order to include safe and healthy working conditions as a fifth category of fundamental principles.

## ▶ Placing an item on the agenda of the 110th Session (2022) of the Conference

---

32. Procedurally speaking, the Governing Body is expected to place a specific item on the agenda of the 2022 Conference, in a manner similar to that followed for the consideration of the 1998 and 2008 Declarations, or the 2010 review of the follow-up to the 1998 Declaration.<sup>21</sup> The Governing Body would need to therefore decide at its present session to place a fourth technical item on the agenda of the 110th Session

---

<sup>21</sup> GB.270/PV(Rev.), IV/1; GB.300/PV, para. 18.

(2022), bearing in mind that there is no legal limitation with regard to the number of technical items which can be placed on the agenda of the Conference.<sup>22</sup>

33. It is noted that in the three above-mentioned precedents, the Conference set up specific technical committees to consider the draft instruments thus ensuring a fully participatory process of elaboration and adoption.
34. Should the Governing Body decide to propose the adoption of a new self-standing declaration accompanied by its own follow-up mechanism, the matter should be referred to an ad hoc technical committee.
35. It is less clear whether setting up a fully fledged technical committee would be necessary in the case of a limited amendment to paragraph 2 of the 1998 Declaration as the proposed amendment would be unlikely to elicit lengthy, substantive negotiations. In this case, the matter could possibly be referred in the first instance to the General Affairs Committee (previously known as the Selection Committee whose composition traditionally mirrors that of the Governing Body). In view of logistical implications, especially in the event of a Conference in a virtual format, it would be highly preferable for the Governing Body to provide concrete guidance in this respect at the current session.
36. Should the Governing Body decide to include safe and healthy working conditions into the current 1998 Declaration and its follow-up, the title of the possible agenda item could be drafted as follows:

Inclusion of safe and healthy working conditions in the ILO's framework of fundamental principles and rights at work: amendment to paragraph 2 of the ILO Declaration on Fundamental Principles and Rights at Work and consequential amendments to its follow-up, the ILO Declaration on Social Justice for a Fair Globalization and the Global Jobs Pact.

37. Should the Governing Body decide that the Conference should be tasked to draw up a self-standing declaration on safe and healthy working conditions as fundamental principles and rights at work, the title of the possible agenda item could read as follows:

Inclusion of safe and healthy working conditions in the ILO's framework of fundamental principles and rights at work: consideration and adoption of an ILO Declaration and its follow-up and consequential amendments to the ILO Declaration on Social Justice for a Fair Globalization and the Global Jobs Pact.

## ▶ Recognizing one or more occupational safety and health Conventions as fundamental Convention(s)

---

38. As indicated in earlier discussions, the inclusion of safe and healthy working conditions in the framework of fundamental principles and rights at work should be accompanied by a formal determination that one or more OSH Conventions should henceforth be considered as fundamental within the meaning of the 1998 Declaration and that their ratification should be promoted as such.

---

<sup>22</sup> It is recalled that at its 341st Session (March 2021), the Governing Body decided to place a third technical item on the Conference agenda of 2022 related to decent work and the social and solidarity economy (general discussion) (GB.341/PV, para. 50).

39. Legally speaking, this authoritative determination may be made by the Conference or the Governing Body at any time they may deem appropriate. It would appear that the Conference could so decide, at the earliest, at its 110th Session (2022) in the context of the consideration of a possible agenda item on the inclusion of safe and healthy working conditions in the ILO's framework of fundamental principles and rights, which would also help clarify the scope of any follow-up mechanism addressing the actions of Members which may not have ratified the Convention(s) concerned. In the case of the Governing Body, this determination could be made at the earliest at the 346th Session (October–November 2022) as a follow-up to the decision taken by the Conference and taking due account of any specific guidance or views expressed during the Conference discussion.
40. As to the instruments concerned, previous discussions at the Conference and the Governing Body referred to the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) and the Occupational Safety and Health Convention, 1981 (No. 155) and its 2002 Protocol as instruments to be recognized as fundamental within the meaning of an amended 1998 Declaration that would include safe and healthy working conditions among the ILO's fundamental principles and rights at work. On occasions, reference was also made to the Occupational Health Services Convention, 1985 (No. 161). In addition to the elements presented at the 341st Session (March 2021) of the Governing Body,<sup>23</sup> the following considerations might be useful and could help the Governing Body's further reflection on how best to align references to a safe and healthy environment with constitutional principles and the objectives of key ILO Conventions in the area of OSH.
41. It is recalled that under the 1998 Declaration, the eight fundamental Conventions and the 2014 Protocol are those which give expression and refine the core values into specific rights and obligations and which have been recognized as fundamental both inside and outside the Organization.
42. In the 2009 General Survey on Convention No. 155, the Committee of Experts on the Application of Conventions and Recommendations concluded that Convention No. 187 reaffirmed the policy, principles and processes defined in Convention No. 155 and provided further guidance on how to develop the national policy envisaged in Article 4 of the latter instrument. Both Conventions underline the importance of applying a systems approach to the management of OSH and progressively establishing and maintaining the long-term goal of a preventative safety and health culture through awareness-raising, training, education and information. The Committee of Experts also called for the promotion of ratification of Convention No. 155 together with Convention No. 187 given the continued relevance of Convention No. 155 as a blueprint for mapping the various building blocks of national OSH systems.<sup>24</sup>
43. In the 2017 General Survey on Convention No. 187, the Committee of Experts on the Application of Conventions and Recommendations recognized that the promotion of OSH and the prevention of accidents and diseases at work was a core element of the ILO's founding mission and of the Decent Work Agenda. It concluded that Convention No. 155 and Convention No. 187 were fully complementary, together constituting an important blueprint for progressive and sustained improvements towards the provision

---

<sup>23</sup> GB.341/INS/6, paras 26–30.

<sup>24</sup> ILO, *ILO standards on occupational safety and health: Promoting a safe and healthy working environment*, ILC.98/III(1B), 2009, paras 294–295.

of safe and secure working environments.<sup>25</sup> When the General Survey was examined by the Conference Committee on the Application of Standards, the latter recalled that the promotion of a safe and healthy working environment was a core element of the founding mission of the ILO and considered that the Office should undertake a campaign for the ratification and implementation of Convention No. 187.<sup>26</sup>

44. The significance of Conventions Nos 155 and 187 is recognized outside the ILO. Notably, the pre-eminence of OSH has found expression in Article 7 of the International Covenant on Economic, Social and Cultural Rights and Article 3 of the European Social Charter. Reference may also be made to the 2008 Seoul Declaration on Safety and Health at Work reaffirmed by the 2011 Istanbul Declaration on Safety and Health at Work which recalled that promoting the rights of workers to a safe and healthy working environment should be recognized as a fundamental human right and explicitly referred to promoting a systems approach taking into consideration the principles of Convention No. 155 while calling for the ratification of Convention No. 187 as a priority.
45. Apart from the question of which OSH Conventions may be considered fundamental within the meaning of the 1998 Declaration, it would be important to consider whether the amended Declaration should refer to the "right to safe and healthy working conditions" or to the "right to a safe and healthy working environment". In this respect, it is proposed that the latter expression be retained based on definitions set forth in normative OSH standards.
46. First, the notion of "safe and healthy working environment" appears to be broader than that of "safe and healthy working conditions", as it addresses not only the workers' working conditions but all policy areas identified by Articles 8 to 15 of Convention No. 155 that enable safe and healthy working conditions and require a systems' approach going beyond the workplace, such as the obligation of Member States to regulate the safe design, manufacturing, import and transfer of machinery, equipment or substances for occupational use. Article 1 of Convention No. 161 refers to the requirements for establishing and maintaining a safe and healthy working environment, which in turn will facilitate optimal physical and mental health in relation to work (Article 1(a)(i)).
47. Secondly, a "safe and healthy working environment" draws upon the development of a "national safety and health culture". Convention No. 187 explicitly affirms the right to a safe and healthy working environment (Article 3(2)), which is the foundation for a "national preventative safety and health culture". As highlighted in the preparatory work for Convention No. 187, this safety culture is the product of a working environment, which includes individual and group values, attitudes, perceptions, competencies and behaviours that contribute to health and safety management, and its development is a dynamic and progressive process. Moreover, Article 1 of Convention No. 187 highlights that this culture is one in which government, employers and workers actively participate in securing "a safe and healthy working environment through a system of defined rights, responsibilities and duties" – which in themselves make up conditions that are contained within the working environment. The concept of "safety culture" came into international usage in the 1980s and has since been applied to preventative approaches to OSH and to human and behavioural aspects of effective OSH management in the working environment.

---

<sup>25</sup> ILO, *Working together to promote a safe and healthy working environment*, ILC.106/III/1B, 2017, paras 573, 579–580.

<sup>26</sup> ILO, *Provisional Record No.15, Part One*, International Labour Conference, 106th Session, 2017, para. 138, subparas 2, 10.

48. Thirdly, a safe and healthy working environment presupposes the shared commitment of governments, employers and workers to give practice to the implementation of a national OSH policy, indicating “the respective functions and responsibilities in respect of occupational safety and health and the working environment of public authorities, employers, workers and others” (Convention No. 187, Articles 1(a) and 3, Convention No. 155, Articles 4–7, Convention No. 161, Article 2), a national OSH programme that includes objectives to be achieved in a predetermined time frame, priorities and means of action, and means to assess progress (Convention No. 187, Article 1(c)), and a national system for OSH or “the infrastructure which provides the main framework for implementing the national policy and national programmes on occupational safety and health” (Convention No. 187, Article 1(b)). Moreover, it is important to note that sectoral OSH Conventions, such as the Safety and Health in Agriculture Convention, 2001 (No. 184), refer to the prevention of accidents and injury to health arising out of, linked with, or occurring in the course of work, by eliminating, minimizing or controlling hazards in the agricultural working environment, a definition that includes multifarious determinants of health that are present in agricultural settings.
49. In regards to usage in national law, a number of Member States adopt the term “working environment” for OSH legislation following ILO OSH Conventions, including Australia, Denmark, Finland, Canada, Georgia, Guyana, Saint Lucia, and Gabon, among others.<sup>27</sup>
50. It should further be noted that Sustainable Development Goal target 8.8 on protecting labour rights specifies the importance of promoting safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment.

## ▶ Next preparatory stages

---

51. Pursuant to the road map approved by the Governing Body in March 2021, the Governing Body should consider at its next, 344th Session (March 2022), the elements of a possible draft resolution for consideration at the 110th Session (2022) of the Conference and arrangements for the Conference discussion. To this end, the Office is prepared to organize tripartite consultations, as necessary, with a view to refining the draft resolution based on the guidance and views expressed.

## ▶ Draft decision

---

### 52. The Governing Body:

- (a) **decided to place on the agenda of the 110th Session (2022) of the Conference the following item: “Inclusion of safe and healthy working conditions in the ILO’s framework of fundamental principles and rights at work”;**
- (b) **requested the Director-General to prepare for its next session a draft resolution for consideration at the 110th Session (2022) of the Conference based on the guidance and views expressed during the discussion of GB.343/INS/6 and to organize informal consultations to this effect.**

---

<sup>27</sup> ILO, *Promotional framework for occupational safety and health*, ILC.93/IV(1), 2005.



## ▶ Appendix

---

### **Preliminary draft resolution on the inclusion of safe and healthy working conditions in the ILO's framework of fundamental principles and rights at work**

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

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

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

Desirous to include safe and healthy working conditions 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 and its Follow-up (Revised),

Decides to amend paragraph 2 of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (Revised) to include after the words "(d) the elimination of discrimination in respect of employment and occupation.", the words "; and (e) the effective protection of a safe and healthy working environment.", and make the consequential amendments to its annex as well as to the ILO Declaration on Social Justice for a Fair Globalization and the Global Jobs Pact specified in the annex hereto.

Decides that the above-mentioned instruments should henceforth be referred to as the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (Revised), as amended; the ILO Declaration on Social Justice for a Fair Globalization, as amended; and the Global Jobs Pact, as amended.

[Declares that the ... Convention No ... and the ... Convention No ... shall be considered as fundamental Conventions within the meaning of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, as amended]

or

[Invites the Governing Body to take the necessary steps with a view to specifying at the earliest suitable opportunity the international labour Convention, or Conventions, which should be recognized as fundamental Conventions within the meaning of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, as amended]

[Invites the Governing Body to request the Director-General to take all appropriate action so that the inclusion of safe and healthy working conditions in the ILO's framework of fundamental principles and rights be properly reflected in all international labour Conventions and international labour Recommendations which expressly refer to the current four fundamental principles and rights at work].

## ▶ Annex

---

### Consequential amendments to the Annex of 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 environment;

### 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 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 environments; 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 Declaration on Social Justice for a Fair Globalization, as amended, and accompanying resolution.