



# ▶ Record of Proceedings

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**International Labour Conference – 110th Session, 2022**

Date: 17 June 2022

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## Third report of the General Affairs Committee

Summary of proceedings concerning the draft resolution to amend the ILO Declaration on Fundamental Principles and Rights at Work, 1998

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## Introduction

1. At its opening sitting, on 27 May 2022, the International Labour Conference established the General Affairs Committee to consider the seventh item on the Conference agenda, "Inclusion of safe and healthy working conditions in the ILO's framework of fundamental principles and rights at work through an amendment to paragraph 2 of the ILO Declaration on Fundamental Principles and Rights at Work, 1998". The Committee had before it Report VII, entitled *Inclusion of safe and healthy working conditions in the ILO's framework of fundamental principles and rights*, which included a draft resolution amending the 1998 Declaration.
2. In accordance with article 7, paragraph 1 of the Standing Orders, the Committee was composed of 56 members (28 members nominated by the Government group, 14 members nominated by the Employers' group and 14 members nominated by the Workers' group).
3. The General Affairs Committee elected its Officers and a Reporter, as follows:

**Chairperson:** H.E. Mr Salomon Eheth (Government member, Cameroon)

**Vice-Chairpersons:** Ms Renate Hornung-Draus (Employer member, Germany)  
Ms Catelene Passchier (Worker member, Netherlands)

**Reporter:** Mr Amos Hosea Kuje (Government member, Nigeria)

4. The Committee appointed a Drafting Committee composed of the following members:

**Government members:** Mr Karim Cissé (Senegal)  
Ms Mercedes Tejedor Aibar (Spain)  
Ms Nara Masista Rakhmatia (Indonesia)

**Employer members:** Mr John Beckett (Canada)  
Mr Pablo Dragun (Argentina)  
Ms Anne Vauchez (France)

**Worker members:** Mr Modi Guiro (Senegal)  
Ms Liliana Ocmin (Italy)  
Ms Catelene Passchier (Netherlands)

5. The Committee held seven sittings.

## General discussion <sup>1</sup>

6. The President of the 110th International Labour Conference addressed the Committee. He underlined that OSH was fundamental for workers and the community as a whole. Healthy and safe working environments allowed workers to develop their skills and increase productivity. He was cognizant that the Conference was faced with a historic challenge to amend and expand the landmark 1998 Declaration and extended his warmest wishes for constructive and fruitful deliberations.

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<sup>1</sup> Unless otherwise specified, all statements made by Government members on behalf of regional groups or intergovernmental organizations are reported as having been made on behalf of all Government members of the group or organization in question who are Members of the ILO and are attending the Conference.

7. The representative of the Secretary-General (Deputy Director-General for Policy) highlighted three points raised in the Office report. The first point was the urgency of delivering action following the request of the International Labour Conference at its 108th Session (2019) to consider the inclusion of safe and healthy working conditions in the ILO's framework of fundamental principles and rights at work as soon as possible. Due to the disruption caused by the COVID-19 pandemic, the question had not come back to the Conference for decision in 2021 as originally expected. The second point was the constitutional basis of this exercise, which would reaffirm an existing constitutional principle and place it alongside the principles already designated as fundamental in the ILO Declaration on Fundamental Principles and Rights at Work, 1998 ("the 1998 Declaration"). The third point was the procedural simplicity of the proposed amendment that called for the inclusion of a new subparagraph 2(e) in the 1998 Declaration. Given those three points, she noted that the Office was confident that the Committee would reach a consensual decision that would give fresh momentum to the 1998 Declaration for a better and universal impact on the ground.
8. The Chairperson noted the significance of the Committee's work to examine a fifth category of fundamental principles and rights at work through an amendment to paragraph 2 of the 1998 Declaration. The main challenge of the Committee was to propose the exact wording to be included in the draft resolution to amend the 1998 Declaration. He explained that based on the discussions in the Governing Body and informal tripartite consultations, three possible formulations had been included in the draft resolution. By including safe and healthy working conditions in the 1998 Declaration, occupational safety and health (OSH) would be placed at the same level as the other four fundamental principles and 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. The Committee also had the essential task of recommending to the Conference one or more ILO Conventions to be recognized as fundamental. The two other outstanding issues were the complementary responsibilities of governments, employers and workers in the field of OSH; and the inclusion in the draft resolution of a saving clause concerning existing trade agreements. The COVID-19 pandemic had demonstrated that the absence of strong and resilient OSH systems could have disastrous consequences for human well-being and economies. He pledged to facilitate a constructive and fruitful discussion that would allow the International Labour Conference to mark a page in history with the adoption of a fifth fundamental principle at its 110th Session (2022).
9. The Employer Vice-Chairperson noted that the inclusion of OSH in the ILO framework of fundamental principles and rights at work would be a landmark decision with far-reaching implications. The recognition of an OSH Convention as fundamental would place increased scrutiny on governments that had ratified it to implement it effectively in law and practice. They would be required to report more frequently to the Committee of Experts on the Application of Conventions and Recommendations ("Committee of Experts") and reply to the comments of the Committee. In addition, governments that had not yet ratified OSH Conventions would have a constitutional obligation "to respect, to promote and to realize, in good faith" the new fundamental OSH principle. The impact outside the ILO would be significant as major trading states, regional groups and international banks would likely increase pressure on countries to ratify OSH Conventions by including that requirement in trade and investment agreements and similar schemes. For her group, it was crucial to remain faithful to the original aims and objectives of the 1998 Declaration by focusing on what was truly fundamental and avoiding unnecessary distortions. She noted that following the Governing Body discussions and tripartite consultations, a consensus remained pending on four main questions.

10. First, the exact wording for OSH as a “shared responsibility” needed to be defined and should not be formulated as the equal responsibility of the tripartite constituents. Instead, governments, employers and workers had complementary rights, responsibilities and duties in the area of OSH. The preambular paragraph should clearly reflect that.
11. Second, regarding the terminology for the new fundamental principle to be included in the draft resolution, her group suggested the wording “protection of a safe and healthy working environment”.
12. Third, the Employers’ group believed that the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), was the only suitable OSH Convention to be recognized as fundamental. The key objectives of that Convention were to develop a preventive OSH culture and apply a systems approach to managing OSH at the national level. Despite the Convention’s comprehensive character, it provided ratifying Member States with the necessary flexibility to implement its provisions regardless of their economic development. Convention No. 187 was the most modern OSH Convention and had received the highest number of ratifications in the past five years. The Committee of Experts had noted that Convention No. 187, “with its focus on social dialogue, had great potential to contribute to the effective promotion of occupational safety and health”. Furthermore, Convention No. 187 had been recognized in the 2008 Seoul Declaration on Safety and Health at Work and the 2011 Istanbul Declaration on Safety and Health at Work. The Occupational Safety and Health Convention, 1981 (No. 155), was not suitable to be recognized as a fundamental Convention as it did not address the right of workers to a safe and healthy working environment, whereas Convention No. 187 did address that right. In addition, governments had highlighted obstacles regarding full compliance with Convention No. 155. She stated that there was no obligation to recognize two or more OSH Conventions as fundamental and recalled that only one Convention on child labour had been recognized as fundamental when the 1998 Declaration was first adopted. However, if and when a second Convention with the characteristics of a fundamental Convention was adopted, the Employers’ group would be open to recognizing that also as fundamental.
13. Fourth, it was crucial to include a saving clause in the draft resolution to address the direct and indirect legal and trade implications that could arise from the designation of OSH as a fundamental principle. In addition to what had been included in the proposal, the saving clause should also cover investment and economic partnership agreements and unilateral incentive arrangements.
14. In conclusion, she suggested adopting an open and constructive approach in order to arrive at a result that would be impactful and remain faithful to the original aims and objectives of the 1998 Declaration, based on the ILO Centenary Declaration for the Future of Work, 2019.
15. The Worker Vice-Chairperson recalled that the COVID-19 crisis had demonstrated the key importance of workers’ safety and health at work. The protection of the life and health of workers had been included in the ILO Constitution since 1919. Over the last 100 years, the ILO had developed an impressive body of standards on OSH. She noted that the Committee had to address the four pending issues.
16. First, her group could not support the concept of “shared responsibility” for OSH as it gave the erroneous impression of equal responsibility among governments, employers and workers, which was not in line with ILO standards on OSH. To be protected against safety and health risks at work was a worker’s right, as explicitly recognized in Convention No. 187. Governments and employers had correlating duties and responsibilities to provide for the necessary prevention, protection and remedies. The OSH Conventions identified very different, but

complementary roles, duties and responsibilities, as well as the “shared commitment” of governments, employers and workers to a safe and healthy working environment. In Convention No. 155, workers were only called upon to participate, cooperate and report at the level of the undertaking, while governments and employers had the primary responsibility for health and safety, including expenditures. That reflected the difference in power relationships, with workers having little to no real power to influence their working environment. Regarding the options presented in the fifth preambular paragraph of the draft resolution, the Workers’ group supported the second bracketed option, which read “[Noting that safe and healthy working [conditions/environment], requires the active participation of governments, employers and workers through a system of defined rights and responsibilities, and duties as well as through social dialogue and cooperation]”.

17. Second, concerning the terminology for the new fundamental principle, she noted that in the Governing Body and the tripartite informal consultations, the majority was in favour of using the term “a safe and healthy working environment” as it ensured consistency with Convention No. 155, the Occupational Health Services Convention, 1985 (No. 161), Convention No. 187 and target 8.8 of the Sustainable Development Goals. That formulation would better reflect the different interactions in the workplace that impacted safety and health at work and that needed to be taken into account for “the protection of the worker against sickness, disease and injury arising out of ... employment” as stated in the ILO Constitution. The term “safe and healthy working conditions” was a narrower concept.
18. Third, concerning the instruments to be declared as fundamental, she stated that Convention No. 155 clearly outlined the responsibilities of governments, the duties of employers and the rights of workers and their representatives regarding health and safety. Furthermore, it reflected the protection dimension included in the ILO Constitution and was centred on the principle of preventing occupational accidents, diseases and deaths. Convention No. 155 also included specific requirements regarding the rights, duties and responsibilities of employers, workers and their representatives at the level of the undertaking, including the right of workers to remove themselves from a dangerous work situation without undue consequences. She recalled the context of recent major accidents in textile factories such as Rana Plaza in Bangladesh and Tazreen in Pakistan. Finally, Convention No. 155 was widely recognized in the health and safety field and among OSH professionals as the primary international instrument addressing the organization of health and safety at work. including risk assessment, the role of governments and employers, consultation with and rights for workers.
19. She made a strong plea for the inclusion of Convention No. 161 as a fundamental Convention. It was closely linked to Convention No. 155, given the close relationship between national OSH policy and occupational health services. Effective health services enabled employers to retain valuable, trained staff through preventive approaches and granted significant savings to governments, employers and the wider economy. A total of 3 million work-related deaths annually had been identified by the ILO and the World Health Organization, more than 80 per cent of them the result of occupational diseases. The COVID-19 crisis had reinforced the need for proper health services. Convention No. 155 referred to occupational health services but did not regulate them. Convention No. 161 would be an important and logical complement to Convention No. 155.
20. Convention No. 187, which was supported by the Employers’ group, mainly provided guidance to governments on how to develop a national policy on a safe and healthy working environment and how to implement the obligations contained in the Convention. It did not mention employers’ responsibilities and duties, nor did it mention the rights, responsibilities,

obligations and protections set out in Convention No. 155. However, the Workers' group could consider Convention No. 187 as complementary to other fundamental Conventions.

21. Fourth, concerning the inclusion of a saving clause in the draft resolution, her group did not see the need for such clause. In their view, the impact on free trade agreements of an amended 1998 Declaration would be up to the parties of those agreements to decide. However, if a saving clause was needed to achieve consensus, the Workers' group supported the formulation proposed in paragraph 5 of the draft resolution, which read: "Declares that nothing in this resolution shall be construed as affecting in any manner the rights and obligations of a Member arising from existing trade, agreements, to which it is a party."
22. In conclusion, she noted that it would be welcomed worldwide if, two years into the devastating COVID-19 pandemic, the ILO were to declare OSH as a fundamental principle and right at work and to step up its work to respect, promote and realize the fundamental right to a safe and healthy working environment for all workers.
23. The Government member of Senegal, speaking on behalf of the Africa group, noted that safety and health at work was a sine qua non for achieving decent work. The Africa group therefore reaffirmed its support for its recognition as a fundamental principle and right at work, through an amendment to paragraph 2 of the 1998 Declaration.
24. Regarding terminology, the Africa group favoured the term "a safe and healthy working environment", which was broader than the term "safe and healthy working conditions". The term "working environment" encompassed all the potential risk factors that might affect the physical and mental health and safety of workers.
25. Regarding the Conventions that should be regarded as fundamental, the Africa group favoured the inclusion of Conventions Nos 155 and 187.
26. In respect of the possible effect of the amended 1998 Declaration on trade agreements, the Africa group supported the proposed inclusion of a saving clause to reassure States parties to existing trade agreements.
27. Finally, the Africa group reaffirmed its commitment to tripartite social dialogue on that important issue and its readiness to reach conclusions based on consensus.
28. The Government member of France spoke on behalf of the European Union (EU) and its Member States. The candidate countries North Macedonia, Montenegro and Albania, and the European Free Trade Association countries Iceland and Norway, members of the European Economic Area, as well as Georgia, aligned themselves with the statement. She noted that the EU and its Member States had long advocated for the inclusion of safe and healthy working conditions as fundamental to decent work, which ILO constituents had also recognized in the Centenary Declaration. She expressed her delight that the international community now stood ready to include safe and healthy working conditions in the ILO's framework of fundamental principles and rights at work.
29. She noted that nearly 3 million people died from work-related causes every year and that the loss of production due to lost working days amounted to almost 4 per cent of annual global gross domestic product (GDP). The COVID-19 pandemic had further underscored the importance of OSH for workers' well-being. She added that for the EU and its Member States, safe and healthy working conditions represented an essential building block of a human-centred response and an integral component of any long-term recovery plan.

30. Regarding terminology, she indicated that there seemed to be convergence on using the term “working environment” rather than “working conditions”, which the EU and its Member States could support.
31. Regarding the choice of instruments, she noted that Conventions Nos 155 and 187 were complementary and fulfilled the constitutional requirement for the recognition of fundamental principles and rights at work. The Committee of Experts had reached the same conclusion. Both Conventions should therefore be recognized as fundamental.
32. Regarding the proposed inclusion of a saving clause in paragraph 5 of the draft resolution, the EU and its Member States were willing to consider the inclusion of such a clause in order to assuage concerns that an amendment of the 1998 Declaration might impact on existing trade agreements.
33. Finally, concerning the preambular paragraph on shared responsibilities, she emphasized the importance of distinguishing among the different responsibilities of governments, employers and workers. While the EU and its Member States preferred the language inspired by Convention No. 187, they remained open to any consensually agreed language.
34. The Government member of Colombia noted that the protection of the safety and health of workers as a fundamental principle and right at work was a milestone for the ILO.
35. In Colombia, the Ministry of Labour, through its public policy on occupational risks, aimed to promote a culture of prevention, expand coverage and ensure that more workers had access to the benefits granted by the general system of occupational risks. In the context of the COVID-19 pandemic, the Government had issued guidelines (Circular No. 64 of 2020) related to the evaluation of psychosocial risk factors and the promotion of mental health and had developed an occupational risk information system to improve data collection on occupational accidents and diseases.
36. She indicated that the Government of Colombia had supported the recognition of Convention No. 187 as a fundamental Convention that stressed the importance of the creation of a national culture of prevention and aimed to strengthen the national institutional framework through the involvement of the tripartite constituents and other stakeholders.
37. The Government member of the United States of America noted that one day after taking office, President Biden had issued an executive order on protecting workers' health and safety, which emphasized that “[e]nsuring the health and safety of workers is a national priority and a moral imperative”. He noted that this imperative had become even more urgent and challenging, both in the United States and around the world.
38. He noted that the ongoing global pandemic had impacted the lives and livelihoods of workers in virtually every workplace, putting those responding most directly to the COVID-19 pandemic at particular risk. The pandemic had highlighted the urgency for ILO constituents to recognize OSH in the framework of the ILO’s fundamental principles and rights at work.
39. The United States believed that the ILO needed to be at the centre of global efforts to protect health and safety at work and remained committed to finding solutions that could garner tripartite consensus on the four outstanding issues.
40. Regarding the roles of employers, workers and governments, he favoured the use of the second proposal contained in the draft resolution: “Noting that safe and healthy working [conditions/environment], requires the active participation of governments, employers and workers through a system of defined rights and responsibilities, and duties as well as through social dialogue and cooperation.”

41. With respect to the designation of fundamental Conventions, he noted that Conventions Nos 155 and 187 had both established rights and principles that were fundamental for safety and health at work. They provided the necessary frameworks for the protection of those rights, as well as for the application of other more general, hazard- or sector-specific OSH instruments. Those frameworks were complementary. Convention No. 187 made specific reference to Convention No. 155 and could not be understood without reference to the latter Convention. He urged the members of the Committee to support the inclusion of both Conventions in the framework of fundamental principles and rights at work.
42. Regarding terminology, in the United States the purpose of the Occupational Safety and Health Act was to assure “safe and healthy working conditions”. The term “working conditions” therefore tracked more closely the language used in the United States and was therefore the preferred option. Nevertheless, there seemed to be a convergence in the Committee around “working environment” and he noted that the United States was open to other solutions that might garner tripartite consensus.
43. Finally, the United States supported the proposed inclusion of a saving clause since it confirmed that the parties to a trade agreement were obligated to comply with the terms of the agreement as understood upon entry into force, and that those obligations would change only if the parties to those agreements decided to alter their provisions.
44. The Government member of Indonesia noted that OSH had been recognized as a human right in the Universal Declaration of Human Rights. For more than 50 years, Indonesia had recognized the importance of protecting OSH through its national legislation, and it therefore strongly supported the inclusion of safety and health in the ILO’s framework of fundamental principles and rights at work.
45. Regarding the notion of “shared responsibility”, she favoured the inclusion of the language of Article 1 of Convention No. 187, which referred to the active participation of governments, employers and workers through a system of defined rights, responsibilities and duties. Similarly, she also supported the use of the term “working environment” rather than the term “working conditions” since that was the terminology used in Convention No. 187.
46. She supported the designation of Convention No. 187 as a fundamental Convention in the framework of the 1998 Declaration since it had established a framework for implementing OSH that included the development of national policies, national systems and national programmes. Regarding the inclusion of a saving clause in the draft resolution, she suggested that reference should be made not only to trade agreements but also to investment and economic partnership agreements.
47. The Government member of Japan expressed support for the inclusion of OSH in the framework of the fundamental principles and rights at work of the ILO. The Declaration of Philadelphia had recognized the achievement of workers’ safety and health through national programmes, which was why he considered Convention No. 187, which placed an emphasis on the establishment of national programmes, to be the more fundamental of the Conventions under discussion. Convention No. 155 was too prescriptive to be recognized as a fundamental Convention.
48. He indicated that either the term "working conditions" or the term "working environment" was acceptable but stressed that further adjustment was required to the saving clause proposed for inclusion in the draft resolution in order to ensure that it covered both trade agreements and incentive arrangements.



49. The Government member of the United Kingdom of Great Britain and Northern Ireland indicated that his country had a long and proud record of taking action to protect workers from risks to their health and safety, dating from more than two centuries earlier with the adoption of the Health and Morals of Apprentices Act of 1802, followed by the adoption in the nineteenth and twentieth centuries of various factory laws that regulated conditions of work. The process had culminated in the current system of regulation, which was governed by the Health and Safety at Work etc. Act of 1974 and related regulations. The overriding principle of the United Kingdom system was that those who created a risk were responsible for managing that risk and it therefore placed the onus on employers to protect the health and safety of employees and others affected by work activities. That had resulted in a marked reduction in fatal accidents experienced by workers in the United Kingdom.
50. He expressed support for the inclusion of safe and healthy working conditions in the list of fundamental principles and rights at work. He noted that nearly one quarter of a century had passed since the adoption of the 1998 Declaration, and that it was an important moment to afford safe and healthy working conditions the same status as the other fundamental principles and rights at work. The COVID-19 pandemic had reinforced that point. The impact of the pandemic, together with the moral, legal and ethical arguments for ensuring that the health and safety of workers were not put at risk by work activities, had provided further impetus for considering the matter currently before the Committee.
51. The Government member of Brazil noted that the Centenary Declaration had considered OSH to be fundamental to decent work. Therefore, the promotion and observance of working conditions aligned with that principle would require the strong commitment of all ILO constituents as a corollary of their ILO membership.
52. The Office report had highlighted that the inclusion of OSH in the framework of the 1998 Declaration would be declaratory rather than constitutive in nature and as such would not create new obligations. However, it would reinforce the constitutional pact between the ILO and its Member States and would result in an enhanced OSH promotional framework and the provision of technical assistance to ILO constituents.
53. The Government member of Bangladesh noted that safety and health at work was central to the promotion of decent work. However, he pointed out that its promotion should not place an undue burden on Member States, particularly on developing countries. Bangladesh had ratified all eight fundamental Conventions, which demonstrated its commitment to ILO standards. Nevertheless, as a developing country it faced certain challenges and limitations that had to be considered when including safety and health in the ILO's fundamental principles and rights at work. He therefore proposed that only Convention No. 187 be declared a fundamental Convention.
54. He favoured the use of the term "working environment" rather than the term "working conditions" and supported the inclusion of a saving clause in the draft resolution even if the adoption of the resolution would not have any legal impact on existing trade agreements.
55. The Government member of Canada noted that Canada had always been supportive of including safety and health in the ILO's framework of fundamental principles and rights at work. Recognizing the critical importance of safety and health in the world of work was long overdue and was especially timely in the context of the COVID-19 pandemic.
56. She favoured the use of the term "a safe and healthy working environment". The reference to "environment" provided for a broader scope and was more inclusive since it encompassed the prevention of both physical and psychological hazards within the workplace. Nevertheless, she

indicated that her Government could also support the use of the term “working conditions” if that was the consensus of the Committee.

57. Regarding Conventions to be identified as fundamental, they should be general in scope and spell out basic principles, rights and obligations for ensuring the prevention of occupational injuries and diseases. She therefore supported the recognition of Convention No. 187 as fundamental since it met those criteria. However, she indicated that she could also support including Convention No. 155 and was open to further discussion on that issue.
58. With respect to the inclusion of a saving clause in the draft resolution, she preferred limiting the scope of such a clause to trade agreements.
59. Finally, regarding “shared responsibility”, her Government favoured the terminology used in Article 1 of Convention No. 187, which referred to a system of defined rights, responsibilities and duties and the continued improvement of the working environment and preventive measures at all levels.
60. The Government member of Namibia aligned herself with the statement made by the Government member of Senegal on behalf of the Africa group. She noted that Namibia was progressively improving its OSH system. It had prepared a national OSH profile, launched and published a national OSH policy and conducted a gap analysis of alignment of national legislation with ILO Conventions with a view to ratifying Conventions Nos 155 and 187. The inclusion of safe and healthy working conditions in the ILO’s framework of fundamental principles and rights at work was therefore of crucial importance to Namibia.
61. She supported the designation of Conventions Nos 155, 161 and 187 as fundamental Conventions. Convention No. 155 set out the responsibilities of governments, the duties of employers and the rights of workers, including the right of workers to remove themselves from unsafe working environments. In addition to the prevention of occupational accidents and diseases, Convention No. 155 also provided for the establishment of procedures for the reporting and notification of occupational accidents, injuries and diseases. Convention No. 161 addressed occupational hygiene, risk assessment, environmental agent analysis and the diagnosis of occupational diseases, among others.
62. She did not support the reference to safety and health as a “shared responsibility” since workers’ responsibilities for cooperation and participation could not be equivalent to the responsibilities of governments and employers as reflected in Convention No. 155. Finally, she supported the use of the term “a safe and healthy working environment”.
63. The Government member of Belgium aligned himself with the statement made by France on behalf of the EU and its Member States.
64. He noted that there were no rights more fundamental than the right to health and the right to life. Every year, millions of workers became ill due to their work. Similarly, every year, millions of workers lost their lives at work. Occupational diseases and deaths had a direct impact on national economies. In other words, whether in human or economic terms the issue at hand was fundamental. Health and safety directly affected the dignity and integrity of all workers and there was a responsibility to make those issues fundamental to the future and credibility of the ILO.
65. He supported the view of the EU and its Member States that because of the unequal relationship between employers and workers, safety and health could not be considered a shared responsibility.

66. Conventions Nos 155 and 187 should be considered fundamental because they emphasized the importance of dialogue between governments and the social partners to implement coherent national policies on OSH. Nevertheless, Convention No. 161 should not be excluded from consideration. He highlighted the important role that labour inspectorates played in ensuring the proper monitoring of OSH conditions in enterprises. Finally, regarding the inclusion of a saving clause in the draft resolution, he emphasized that its inclusion should not be allowed to limit the scope of application and implementation of the standards considered to be fundamental.
67. The Government member of Argentina supported the use of the term “a safe and healthy working environment” because it encompassed a broad range of workplace contingencies. Regarding the designation of fundamental Conventions, he favoured the selection of Conventions Nos 155 and 187. He concluded by indicating that in his view there was no need for the inclusion in the draft resolution of a saving clause related to trade agreements since it was clear that obligations could not be added retroactively to existing agreements.
68. The Government member of Switzerland expressed support for the draft resolution on the inclusion of safe and healthy working conditions in the framework of the fundamental principles and rights at work of the ILO, which recognized the importance of the right and principle of health and safety at work to ensure decent work for all and inclusive, people-centred economic growth.
69. She stated that Switzerland had recently ratified two ILO Conventions on the protection of workers and environment from the potential adverse effects of chemicals and the prevention of major industrial accidents.
70. Convention No. 155 should be considered a fundamental Convention. It set out comprehensively the principle of protecting safe and healthy working conditions and a systematic approach to prevention, progressive implementation and social dialogue.
71. She supported the use of the term “safe and healthy working conditions”, which encompassed all relevant elements, including work organization, instruments and methods, as well as psychosocial and environmental risks. The term “working conditions” was clearer than the term “working environment”, which in different languages could be misinterpreted as addressing ecological issues.
72. The Government member of Türkiye stated that his country had ratified nine OSH Conventions, including Conventions Nos 155, 161 and 187, and since 2015 had co-chaired the G20 Occupational Safety and Health Network. He stated that only Convention No. 187 should be considered as a fundamental Convention as it was responsive to the evolving nature of OSH and in a short period had been widely ratified.
73. The Government member of Mexico stated that her Government favoured the second option for the proposed text of the fifth preambular paragraph of the draft resolution, which read: “Noting that safe and healthy working [conditions/environment], requires the active participation of governments, employers and workers through a system of defined rights and responsibilities, and duties as well as through social dialogue and cooperation”. She favoured the use of the term “conditions” rather than the term “environment” and stated that Convention No. 155 should be considered as fundamental. She favoured retaining a saving clause in the draft resolution referring to trade agreements, although it should not be overly prescriptive.

74. The Government member of Qatar stated that Conventions Nos 155 and 187 should be considered as fundamental Conventions. He noted that Qatar had introduced extensive labour market reforms and would take steps to ratify Convention No. 155.
75. The Government member of Barbados spoke in favour of the inclusion of OSH in the framework of the fundamental principles and rights at work. She considered that particularly important for small island states such as Barbados. The COVID-19 pandemic had brought into sharp focus the issues of health and well-being at work and the changing nature of OSH risks.
76. The Employer Vice-Chairperson welcomed the broad agreement of the Committee on the inclusion of OSH in the ILO's framework of fundamental principles and rights at work. She noted that the proposal to include a saving clause in the draft resolution had received wide support, although there might be a need to expand it. She further welcomed the emergence of an agreement in the Committee on the terminology of the new fundamental principle.
77. At the same time, she noted that there were diverging views regarding which Convention or Conventions on OSH should be designated as fundamental. She encouraged the Committee to agree to select the Convention that would be acceptable to all, which she noted was Convention No. 187.
78. The Worker Vice-Chairperson recognized that there was a convergence of views on some key points but not all. She recalled that every year, on 28 April, a world day on safety and health at work was observed to raise awareness about the millions of workers who had died at work. Further discussion was needed in order to achieve an outcome that would make a difference and be meaningful to the world of work. She indicated that the proposal of the Employers' group was certainly not acceptable to the Workers' group, as they had clearly indicated Convention No. 187 was not appropriate to fulfil the important role of a core Convention establishing and underpinning a fundamental right to a safe and healthy working environment, and was only acceptable to workers as a complementary Convention to at least Convention No. 155, therefore a continued discussion was needed.
79. The representative of the International Commission on Occupational Health recalled that in 2017, a total of 2.8 million people had died from work-related illnesses and injuries and that the incidence of work-related diseases was increasing. He stated that some 60,000 work-related deaths attributable to COVID-19 had occurred in 2020, a number that was expected to have tripled in 2021, while 20 per cent of all reported COVID-19 infections had been work-related. The economic burden of inadequate OSH practices had risen to 5.4 per cent of GDP globally. He welcomed the proposed inclusion of Conventions Nos 155 and 187 as fundamental, while strongly advising that Convention No. 161 also be considered as fundamental, and stated that all ILO Conventions concerning OSH should be widely promoted.

## Consideration of amendments

80. The Chairperson noted that only 19 amendments had been submitted and welcomed the fact that they all related to the four pending issues.
81. The Worker Vice-Chairperson stated that the Workers' group had intended to propose an amendment to the annex concerning consequential amendments and requested clarification as to when and how the Workers' group could submit such an amendment.
82. The representative of the Secretary-General indicated that the secretariat would be prepared to receive amendments to the annex of the draft resolution at any time deemed suitable by the Committee.

## Title

83. The Chairperson noted that the discussion on the Title had been postponed until all other matters had been resolved. Two amendments had been submitted – one by the Employers' group and one by the Workers' group. Both amendments proposed to remove the words "safe and healthy working conditions" from the title of the draft resolution. That was in line with the consensus reached when discussing the use of the term "a safe and healthy working environment" in the fifth preambular paragraph and in paragraph 1 (see paragraphs 88–142 below). He suggested that it should be left to the Drafting Committee to ensure the consistent use of the term "a safe and healthy working environment" throughout the text of the draft resolution.
84. The Worker Vice-Chairperson confirmed that the two proposed amendments were the same and agreed that it should be left to the Drafting Committee to ensure the consistent use of agreed terminology.
85. The Employer Vice-Chairperson indicated that since agreement had been reached on the use of the term "a safe and healthy working environment", her group could agree with the proposal to request the Drafting Committee to ensure the consistent use of the term throughout the draft resolution.
86. The Chairperson noted that there was consensus on amending the title of the draft resolution to read "Draft resolution on the inclusion of a safe and healthy working environment in the ILO's framework of fundamental principles and rights at work". As a result, the amendment submitted by the Government member of Costa Rica to refer to "safe and healthy working conditions" in the sixth preambular paragraph fell.
87. The Committee adopted the title as amended.

## Fifth preambular paragraph

88. The Chairperson noted that seven proposed amendments had been submitted to the fifth preambular paragraph on "shared responsibility", five of which were very similar, while two amendments – one submitted by the Employers' group and one by the Workers' group – were identical.
89. The Employer Vice-Chairperson indicated that the Employers' group favoured the second bracketed option that used the term "working environment", while noting that that term could be misinterpreted as referring to nature and ecology in certain languages, such as Portuguese.
90. She also introduced two amendments to replace the word "participation" with the word "cooperation" and to add, after the word "defined", the words "and complementary". That would be consistent with similar amendments that had been proposed by the EU and its Member States, the Workers' group and Costa Rica, but would include additional elements. The Employers' group did not support the amendment proposed by Costa Rica to delete the word "environment" and retain the word "conditions" for both bracketed options.
91. The Worker Vice-Chairperson introduced her group's proposed amendment by indicating that the fifth preambular paragraph should retain the second bracketed option proposed by the Office that used the term "working environment".
92. She welcomed the convergence of views on terminology. The word "environment" was used in Conventions Nos 155, 161 and 187 and was a broader concept than the term "conditions". The Workers' group was strongly in favour of remaining consistent with the wording of Article 1(d) of Convention No. 187, which referred to "a national preventative safety and health culture in

which the right to a safe and healthy working environment is respected at all levels, where government, employers and workers actively participate in securing a safe and healthy working environment through a system of defined rights, responsibilities and duties, and where the principle of prevention is accorded the highest priority".

93. The Workers' group did not support replacing the word "participation" with the word "cooperation" for the same reason, as Convention No. 187 was speaking about "participation". Neither was the insertion of the word "complementary" acceptable.
94. The Government member of France, speaking on behalf of the EU and its Member States, supported the proposed amendments to use the second bracketed option that used the word "environment".
95. She did not support the amendment to replace the word "participation" with the word "cooperation", noting the differentiated roles played by governments, employers and workers, nor did she support the proposed amendment to add the word "complementary".
96. The Government member of Senegal, speaking on behalf of the Africa group, supported the second bracketed option that used the word "environment". He did not support the amendment to replace the word "participation" with the word "cooperation".
97. The Government member of Mexico asked whether the amendment proposed by Costa Rica to adopt the first bracketed option that used the word "conditions" rather than the word "environment", which her Government supported, should be discussed.
98. The Government member of Costa Rica explained that she favoured the use of the word "conditions" rather than the word "environment", which was more ambiguous and could lead to misinterpretation.
99. The Worker Vice-Chairperson stated that in her opinion there was strong convergence around the use of the word "environment". In that context, she requested the Office to provide information on how all three Conventions under discussion had used the word "environment", yet had been widely ratified and translated into other languages, including Spanish.
100. The Employer Vice-Chairperson stated that the wording of the preambular paragraph under consideration should not necessarily be taken from a Convention. It was important to distinguish clearly what was being discussed – namely, a fundamental principle – from any single Convention. She did not accept the arguments that had been made against the use of the words "cooperation" and "complementary".
101. She stated that the word "environment" seemed to be the approved term. She would only advise that special care be taken when that term was translated into Portuguese in order to avoid misinterpretation.
102. The Chairperson recalled that the Government member of Costa Rica had introduced an amendment to delete the word "environment" and retain the word "conditions" in the fifth preambular paragraph. However, the amendment had received support only from the Government members of Mexico and Brazil. Similarly, there was little support for the amendments introduced by the Employer Vice-Chairperson to replace the word "participation" with the word "cooperation" and to add the words "and complementary" before the words "rights and responsibilities".
103. The Government member of Brazil explained that the words "conditions" and "environment" could be translated and understood differently in other languages, such as Portuguese. Depending on the language, the word "conditions" might be too restrictive. The word "environment" in Portuguese could be misunderstood as it referred to nature, or ecological

environment. Therefore, he suggested that neither word should be used and introduced a subamendment to replace the words “that safe and healthy working [conditions/environment]” with the words “the effective protection of occupational safety and health”.

- 104.** The Worker Vice-Chairperson noted that the word “environment” had been included in the OSH Conventions proposed for designation as fundamental Conventions and had been ratified by countries that used languages other than official ILO working languages. She requested the Office to provide clarification on the linguistic issues raised.
- 105.** The Employer Vice-Chairperson noted that the linguistic issues had yet to be agreed. In the spirit of compromise and inclusivity, it was important for the Committee to consider the subamendment proposed by the Government member of Brazil. In addition, she underlined that the Committee’s discussion concerned the proposed amendment to the 1998 Declaration and not the existing language of the three OSH Conventions proposed to be designated as fundamental Conventions. The wording proposed by the Government member of Brazil was closer to the ILO constitutional language and was more universal. The Employers’ group could therefore support the subamendment proposed by the Government member of Brazil.
- 106.** The Government member of Mexico favoured the use of the word “conditions”, and also supported the subamendment introduced by the Government member of Brazil.
- 107.** The Worker Vice-Chairperson noted that the word “environment” was used in Convention No. 155, which had been ratified by 74 Member States, including Brazil and other Portuguese-speaking countries. She requested the Office to clarify whether any representation had been made concerning the use of that word. She noted that a majority of the Committee favoured using the word “environment”.
- 108.** A member of the secretariat confirmed that the Preamble and Article 4 of Convention No. 155, Article 3(2) of Conventions Nos 187 and 161 all used the term “working environment”.
- 109.** The Worker Vice-Chairperson reiterated her request for the Office to inform the Committee whether there had been any issues raised by ratifying Member States concerning the use of the word “environment” in their reports on the application of the relevant Conventions.
- 110.** The Government member of Brazil, in response to the comments made by the Worker Vice-Chairperson, noted that his country had ratified Convention No. 155. However, ratifying an OSH Convention differed from designating OSH as a fundamental principle and right, which meant that all ILO Member States had an obligation to respect and promote the fundamental principles and rights, independent of ratification.
- 111.** The Government member of France, speaking on behalf of the EU and its Member States, recalled that the Office had carried out an extensive study of the terminology. She expressed her support for the use of the word “environment” and saw no need to introduce an alternative term to the two terms under consideration.
- 112.** The Government member of Saudi Arabia supported the use of the word “working environment”. The word “environment” was a broader term whereas the word “conditions” was a more restrictive term. He also noted that Conventions Nos 155 and 187 used the word “environment”.
- 113.** The Government member of Australia, the Government member of Senegal (speaking on behalf of the Africa group) and the Government member of Norway supported the use of the word “environment”.

114. The Government member of Costa Rica supported the subamendment introduced by the Government member of Brazil. She underlined the importance of referring to a fundamental right with unambiguous terminology.
115. The representative of the Secretary-General, in response to the request of the Worker Vice-Chairperson, confirmed that the use of the word “environment” had not given rise to any issues in the reports submitted on the application of Conventions Nos 155 and 187.
116. The Government member of the Niger did not object to the use of either the word “conditions” or the word “environment” and would support the inclusion of either term.
117. The Government member of Mali supported the use of the word “environment” as it was used in several provisions of Convention No. 155.
118. The Government member of Canada supported the use of the word “environment” as it was well established in the ILO context.
119. The Government member of Bangladesh favoured the use of the word “environment”. However, he requested the Office to provide a legal written explanation on the difference between the two terms under consideration.
120. The Government member of China favoured the use of the word “conditions” as it had a more concrete meaning from a legal perspective. In the spirit of compromise, it was important for all views to be heard and fairly discussed.
121. The Government member of Colombia favoured the use of the word “conditions”. She could support the subamendment introduced by the Government member of Brazil but requested clarifications.
122. The Government member of Zimbabwe supported the statement made by the Government member of Senegal on behalf the Africa group. The word “environment” was broader than the word “conditions” as it referred to the areas surrounding workers. He stated that he could accept the use of the word “conditions”, although that term could be misinterpreted.
123. The Government member of Switzerland supported the use of the word “conditions” but indicated that she could also support the use of the word “environment”.
124. The representative of the Secretary-General, in response to the request made by the Government member of Bangladesh, recalled that examples of the use of the terms “working environment” and “working conditions” in national legislation had been provided in the background document entitled “Issues relating to the inclusion of safe and healthy working conditions in the ILO’s framework of fundamental principles and rights at work”, which had been prepared for the 344th (March 2022) Session of the Governing Body.<sup>2</sup>
125. The Worker Vice-Chairperson stated that the discussion included linguistic as well as substantive issues. As indicated by the Government member of Zimbabwe, the term “environment” was a broader concept than the term “conditions” and had been used based on the understanding reached in the ILO and by Members that had ratified the relevant OSH Conventions. She emphasized that there would be no fundamental right without one or more core Conventions connected to it – hence the relevance of ensuring the consistency of the language of the draft resolution to that of the relevant Conventions.

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<sup>2</sup> GB.344/INS/6(Add.1).



126. The Chairperson noted that there appeared to be consensus on the use of the term “working environment”. He indicated that the issue in dispute seemed to be linguistic rather than substantive.
127. The Government member of Brazil noted that while the majority of delegates supported the use of the term “working environment”, consensus had not yet been achieved. He therefore suggested that the relevant text should be bracketed for discussion at a later stage.
128. The Worker Vice-Chairperson noted that consensus did not mean unanimity but merely that a large majority favoured a specific proposal. She urged the Government member of Brazil to acknowledge the clear preference of the majority of members and said that the Workers' group could not support the proposal to bracket the relevant text.
129. The Employer Vice-Chairperson supported the proposal by the Government member of Brazil to bracket the relevant text until a later stage. She said that this should not preclude discussion of the remaining text in the draft resolution.
130. She also announced that the Employers' group had withdrawn two of its proposed amendments to the fifth preambular paragraph. The first amendment had proposed to replace the word “participation” with the word “cooperation”, while the second amendment had proposed to add the words “and complementary” before the words “rights and responsibilities and duties”.
131. The Government member of Algeria stated that too much time had already been spent on the issue of terminology and the fifth preambular paragraph, which in his view was not that important.
132. The Government member of Mali agreed with the Government member of Algeria and noted that consensus did not mean that 100 per cent of members had to agree with a proposal. If that were the case, no progress would be made.
133. The Government member of Senegal, speaking on behalf of the Africa group, said that it was not necessary to bracket the relevant text since there was consensus on the use of the term “working environment”. He pointed out that all the arguments in favour of the term “working environment” were based on technical rather than linguistic considerations. He confirmed that the Africa group favoured the use of the term “working environment”.
134. The Government member of the Dominican Republic aligned himself with the position of the Africa group as stated by the Government member of Senegal and urged the Chairperson to allow the discussion to proceed to more substantive issues.
135. The Government member of Costa Rica said that it was clear that consensus was emerging on the use of the term “working environment”. As a result and in the spirit of compromise, she had withdrawn the amendment to propose the use of the term “working conditions”.
136. The Government member of Brazil indicated that in the light of the consensus that had emerged on use of the term “working environment” instead of the term “working conditions”, he had withdrawn the proposal to bracket the relevant text. He nevertheless clarified that the current interpretation of the term “working environment” in Brazil, as mentioned by Convention No. 155 and translated into Portuguese as “*ambiente de trabalho*” in that context, encompassed issues referring to the workplace or the place where work was carried out in the event that the work was external to the company's premises. The term covered the assessment and management of occupational hazards and risks, aiming at the prevention of occupational accidents and illnesses. It should not be connected in any way to circumstances that were not related to work, such as environmental issues. His Government's understanding was that the

use of the term “working environment”, in the context of declaring OSH as a fundamental principle and right at work, was due to the need to ensure consistency with the terms of ILO Conventions, as well as the fact that the term “working conditions” could be misleading in some languages because it could be interpreted as relating only to contractual obligations. In his view, the decision to use the term “working environment” in the amended 1998 Declaration could not affect each country’s own interpretation of that term, according to national law and regulations, or of any ILO Conventions that they might have ratified.

137. The Chairperson noted that there was consensus in the Committee to retain the second bracketed option that used the words “working environment” in the fifth preambular paragraph.
138. He confirmed that three amendments had been withdrawn: two amendments proposed by the Employers’ group and one amendment proposed by the Government member of Costa Rica.
139. The Worker Vice-Chairperson thanked the members of the Committee for their flexibility. She asked for guidance on whether the agreement on the use of the term “working environment” applied to all references to the term throughout the text of the draft resolution, or whether it only applied to the use of the term in its preambular paragraphs.
140. The Employer Vice-Chairperson stated that each proposed amendment should be considered and discussed, even if it contained a reference to the term “working conditions”. In other words, the agreement reached on the use of the term “working environment” in the fifth preambular paragraph did not preclude further discussion of the terms contained in the remaining amendments submitted to the Committee.
141. The Chairperson confirmed that all remaining amendments, including those affected by the Committee’s decision on the fifth preambular paragraph, would be duly considered and decided upon.
142. The Committee adopted the fifth preambular paragraph as amended.

## Paragraph 1

143. The Chairperson indicated that three amendments had been submitted to paragraph 1, concerning the wording to be used for an additional fundamental principle on OSH to be included in paragraph 2 of the 1998 Declaration.
144. He noted that two identical amendments had been submitted by the Employers’ and the Workers’ groups, both of which proposed the use of the term “a safe and healthy working environment”. A third amendment had been submitted by the Government member of Costa Rica to retain the term “safe and healthy working conditions”. He suggested that the Government member of Costa Rica might wish to reconsider the proposed amendment in view of the decision taken by the Committee to approve the use of the term “a safe and healthy working environment” in the fifth preambular paragraph.
145. The Worker Vice-Chairperson stated that the amendment of the Employers went in the same direction as the amendment tabled by her group, so in order to simplify the process her group could withdraw its amendment and support the amendment proposed by the Employers’ group to modify paragraph 1 by deleting the first and third bracketed options, while retaining the second option. However, her group would propose to delete the words “effective protection”, so that the amended text would read “and (e) a safe and healthy working environment”.

146. First of all, she explained that the words “the protection of” before the words “a safe and healthy working environment”, should be deleted, since protection applied to workers and not to “a safe and healthy working environment”. This was in line with the formulation that had been adopted by the Committee with respect to the fifth preambular paragraph.
147. Secondly, she recalled that the 1998 Declaration required Member States to respect, promote and realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights that were the subject of those Conventions. The Committee should follow the logic also in the linguistic sense of the 1998 Declaration in order to find the best way to express the fifth fundamental right. The 1998 Declaration had identified the “abolition of child labour” and the “elimination of forced labour” as fundamental principles, which had necessarily been formulated as “negative principles”. The freedom of association and the effective recognition of the right to collective bargaining, on the other hand, were “positive principles” to be respected, promoted and realized in a positive manner. The same logic should apply to the fifth fundamental principle on OSH; it should be promoted and realized and should therefore be worded using a positive formulation of the aim to be achieved, which was “a safe and healthy working environment”
148. The Worker Vice-Chairperson proposed a further subamendment to the amendment proposed by the Employers’ group to add the words “for all workers” after the words “working environment”. The rationale was that, in practice, many groups of workers were excluded from OSH protection. However, ILO standards and OSH rights covered everyone, including domestic and temporary workers. The term “worker” was a broad concept in the ILO and therefore a reference to workers was important.
149. She also noted that given the importance of preventing and promoting OSH, a formulation that referred to protecting, respecting and promoting the right to a safe and healthy working environment would be appropriate.
150. The Employer Vice-Chairperson noted the importance of adhering to the logic of the wording of the 1998 Declaration. She agreed with the subamendment proposed by the Worker Vice-Chairperson to delete the words “the protection of” and noted that the proposed amendment of the Employers’ group had already sought to delete the word “effective”. She did not support the subamendment proposed by the Worker Vice-Chairperson to add the words “for all workers” after the words “a safe and healthy working environment” because the entire 1998 Declaration and the existing four principles applied to all workers. Adding the words “for all workers” would not be coherent with the rest of the text. Furthermore, such an addition could incur a legal debate about who could be considered to be a worker. Generic language was more appropriate for a fundamental declaration.
151. The Government member of France, speaking on behalf of the EU and its Member States, supported the proposed amendment to delete the word “effective” from the definition of an additional fundamental principle on OSH and the subamendment to also delete the words “the protection of”. She noted that the 1998 Declaration did not in any way qualify those who were covered by it and that the subamendment to add to the definition the words “for all workers” after the words “a safe and healthy working environment” would in any case not cover all stakeholders in the world of work. There was no need to specify who was covered as everyone must be covered. She therefore did not support the subamendment of the Workers’ group.
152. The Government member of Senegal, speaking on behalf of the Africa group, supported the proposed amendment of the Employer Vice-Chairperson to delete the word “effective” and also supported the proposed subamendment of the Worker Vice-Chairperson to delete the words “the protection of”. However, he did not support the subamendment of the Worker Vice-

Chairperson to add to the definition the words “for all workers” after the words “a safe and healthy working environment”. He introduced a subamendment to add to the definition the words “the guarantee of” before the words “a safe and healthy working environment”.

153. The Worker Vice-Chairperson considered that the inclusion of the words “an obligation ... to realize” in paragraph 2 of the 1998 Declaration made the addition of the words “the guarantee of” unnecessary. She stated that her group had decided to withdraw its subamendment to add the words “for all workers” after the words “a safe and healthy working environment”. She indicated that her group could accept the wording to be included in paragraph 1 as “and (e) a safe and healthy working environment”, which reflected the wording of the amendment proposed by the Employers’ group as subamended by the Workers’ group.
154. The Government member of Barbados proposed a subamendment to add the words “the provision of” before the words “a safe and healthy working environment” in order to be consistent with the way the other four fundamental principles were worded.
155. The Government member of Senegal, speaking on behalf of the Africa group, stated that he did not support the subamendment to add the words “the provision of” before the words “a safe and healthy working environment” and that he had withdrawn the subamendment to add the words “the guarantee of” before the words “a safe and healthy working environment”.
156. The Employer Vice-Chairperson noted the lack of support for the subamendments to add either the words “the provision of” or “the guarantee of” before the words “a safe and healthy working environment”.
157. The Chairperson noted that there was consensus on the wording of the amendment proposed by the Employers’ group as subamended by the Workers’ group, and that as a result, the amendment submitted by the Government member of Costa Rica would fall. Therefore, the new subparagraph 2(e) of the 1998 Declaration would read: “and (e) a safe and healthy working environment”.
158. The Committee adopted paragraph 1 as amended.

### Paragraph 3

159. The Chairperson noted that four amendments had been submitted to paragraph 3, concerning the selection of an additional Convention or Conventions to be designated as fundamental within the meaning of the 1998 Declaration, and that Conventions Nos 187, 155 and 161 were the Conventions under consideration.
160. The Employer Vice-Chairperson introduced the amendment submitted by her group to select only Convention No. 187 as a fundamental Convention, stating that Convention No. 187 was best suited for inclusion in the 1998 Declaration as it could be universally applied, which was a key criterion for a Convention to become fundamental. The other Conventions under consideration were too detailed, especially Convention No. 155, which had been adopted in 1981 and was more than 40 years old. Furthermore, governments had reported serious obstacles to applying that Convention, which interfered with national systems. She noted that it had not been ratified by any of the G7 countries and expressed surprise that the EU and several industrialized market economy countries had supported the designation of Convention No. 155 as fundamental although they had not ratified it.
161. She also noted that the rationale for the adoption of Convention No. 187 was to respond to the need for a more general, promotional framework and to avoid the shortcomings of Convention No. 155. There was no need to designate two OSH Conventions as fundamental Conventions.

She reiterated, in that respect, that the 1998 Declaration had been adopted with only one Convention on child labour selected as a fundamental Convention, and that a second Convention had been added only well after the adoption of the Declaration. Currently, only Convention No. 187 was universally applicable. She reiterated that the Employers' group would be ready to consider future OSH Conventions to be selected as fundamental Conventions if they were suitable, which Convention No. 155 was not.

- 162.** In introducing the amendment proposed by her group to select Conventions Nos 155 and 161 as fundamental Conventions, the Worker Vice-Chairperson stated that while Convention No. 187 made reference to the right of workers to a safe and healthy working environment, the Convention did not contain any clauses regarding how that right should be addressed in law or in practice. She recalled that Convention No. 187 made clear in its title that it was only providing for a promotional framework. Furthermore, it was only directed towards governments. She questioned why the Employers' group would promote a Convention that was not directed towards employers, whereas it was clear that employers had important duties and obligations to ensure a safe and healthy working environment.
- 163.** She further recalled that in 2017, in the context of the ILO's standards review mechanism, Conventions Nos 155, 161 and 187 had been considered to be up to date and indeed a promotional campaign for all three instruments had been recommended. Contrary to what had been said, Convention No. 155 was not too detailed. She drew attention to a number of flexibility clauses in that Convention.
- 164.** Importantly, it addressed rights and responsibilities and the establishment of a national policy, as well as issues that such a policy should address, including the prevention of accidents and injury, the elimination of hazards and the right of workers to remove themselves from a situation of imminent danger without retaliation. She noted that Convention No. 155 stated that until remedial action was taken, an employer could not require a worker to return to a hazardous situation. She recalled that the denial of such rights had led to the disaster of Rana Plaza, which had resulted in thousands of deaths.
- 165.** She stated that Convention No. 161 promoted the establishment of efficient labour inspectorates, which was a precondition for effective OSH systems. In addition, Convention No. 155 was the most important and relevant OSH Convention, as it clearly established the responsibilities and duties of governments and employers, with the participation of workers.
- 166.** She concluded by stating that recognizing only Convention No. 187 as a fundamental Convention was not acceptable to her group. Without the inclusion of Convention No. 155, the Committee would not have identified a credible fundamental right. A culture of respect for OSH did not in itself protect workers from the collapse of mines or other workplace dangers. At the same time, she noted that specific requirements of Convention No. 155 directed towards employers could well be complemented by the promotional framework Convention No. 187. Therefore, her group could support the selection of Conventions Nos 187, 155 and 161 as fundamental Conventions.
- 167.** The Government member of France, speaking on behalf of the EU and its Member States, introduced an amendment to select both Conventions Nos 155 and 187 as fundamental Conventions. Both Conventions were up to date and were complementary to each other. Both Conventions qualified to be designated as fundamental Conventions.
- 168.** The Government member of Japan clarified that the proposed amendment to delete Convention No. 155 from paragraph 3 and retain only Convention No. 187 to be designated as a fundamental Convention had been submitted only by his Government, although the

Government member of Colombia had indicated her support for it. Although Convention No. 155 was important, it was too prescriptive to be considered as a fundamental Convention. He noted that the other four categories of the fundamental principles and rights at work were both permanent and of an evolutionary nature. Concerning OSH, achieving safety and health for workers was a permanent concern. However, OSH measures needed to be improved over time, especially in the context of technological and climate change.

- 169.** The Government member of Colombia supported the amendment introduced by the Government member of Japan to delete Convention No. 155 from paragraph 3 and retain only Convention No. 187 to be designated as a fundamental Convention. While Convention No. 155 was important, Convention No. 187 was a modern Convention that was consistent with the 1998 Declaration. In Latin America, the informality rate was very high. It was important to strengthen national OSH systems so they could protect all workers, including those in the informal sector.
- 170.** The Government member of Bangladesh supported the proposed amendment to designate only Convention No. 187 as a fundamental Convention in paragraph 3. He noted that his country was undergoing an era of transformation and industrialization and was faced with many challenges and limitations. Such countries should be given the opportunity and adequate time to address those challenges and to improve the national OSH infrastructure.
- 171.** The Government member of Argentina noted that Conventions Nos 155 and 187 were complementary and provided adequate protection and synergies between the 1998 Declaration and existing instruments.
- 172.** The Government member of China noted that Conventions Nos 155 and 187 had different technical provisions concerning labour protection. While he could support the selection of either of the Conventions as a fundamental Convention, he favoured the selection of Convention No. 187.
- 173.** The Government member of the United States supported the designation of Conventions Nos 187 and 155 as fundamental Conventions. Together, they provided a set of principles and rights that stakeholders could look to. It would be inconsistent to include a fifth pillar in the 1998 Declaration without providing suitable mechanisms for realizing it. Convention No. 155 would provide practical guidance as it included a provision on the main spheres of action related to training, communication, the reporting of occupational accidents and diseases, and workers' active participation in those processes.
- 174.** The Government member of Senegal, speaking on behalf of the Africa group, supported the designation of Conventions Nos 155 and 187 as fundamental Conventions. Convention No. 155 referred to the definition, development and periodic review of national policy and legal obligations of governments, employers and workers. Convention No. 187 defined a systems approach to strengthening national OSH systems.
- 175.** The Government member of the Niger noted that Convention No. 155 needed to be read together with its Protocol of 2002. Conventions Nos 155 and 187 were the most recent OSH Conventions and complemented each other. Therefore, he supported the position of the Africa group to designate Conventions Nos 155 and 187 as fundamental Conventions.
- 176.** The Government member of Mali noted that Convention No. 155 provided the practical basis for the protection of workers, which was the main objective of the exercise.

177. The Government member of Sweden, speaking on behalf of the Nordic countries, supported the designation as fundamental Conventions of Conventions Nos 155 and 187, which were complementary and provided a framework for national policies and systems.
178. The Government member of Switzerland supported the proposal by the Workers' group to recognize Convention No. 155 as a fundamental Convention. That Convention was vital to ensure the adequate protection of workers. However, he did not support the designation of Convention No. 161.
179. The Government member of the United Kingdom supported the designation of Convention No. 187 as a fundamental Convention and was flexible on the designation of Convention No. 155 as well. However, he did not support the designation of Convention No. 161.
180. The Government member of India supported the designation of Convention No. 187 as a fundamental Convention. OSH and decent work were of primary importance for India. That Convention provided ample space for sovereign countries to formulate their own national policy and laws, in accordance with national circumstance and levels of development.
181. The Government member of Trinidad and Tobago aligned herself with the position of Senegal, the United States and Mali and supported the selection of Conventions Nos 155 and 187 as fundamental.
182. The Government member of Saudi Arabia noted that Conventions Nos 155 and 187 were uniquely interconnected and could not be implemented separately.
183. The Government member of Indonesia supported the amendment proposed by the Employers' group to recognize only Convention No. 187 as a fundamental Convention as it allowed Member States enough space to develop their own policy and laws.
184. The Government member of Barbados supported the views of the Government members of Trinidad and Tobago and Senegal on behalf of the Africa group, in favour of the recognition of Conventions Nos 187 and 155 as fundamental Conventions.
185. The Government member of Zimbabwe supported the designation of Conventions Nos 155 and 187 as they were complementary.
186. The Government member of Costa Rica identified Conventions Nos 155 and 187 as fundamental as they were crucial for the effective protection of the health and safety of workers. She referred to specific provisions in those Conventions that concerned the engagement of the social partners and the responsibilities of governments. Provisions allowing workers to remove themselves from dangerous work situations were also of particular importance.
187. The Government member of the Republic of Türkiye supported the designation of only Convention No. 187 as a fundamental Convention.
188. The Government member of the Philippines supported the position of the Government members of China, Japan, India and Indonesia in favouring the designation as a fundamental Convention of only Convention No. 187, which allowed the Philippines to promote safety and health in the framework of its own policies and programmes. She noted that the provision of Convention No. 155 that allowed workers to refuse hazardous work was also included in the national programmes of the Philippines.
189. The Government member of Namibia aligned herself with the position of the Africa group in supporting the designation of Conventions Nos 187 and 155 as fundamental Conventions. Convention No. 155 stipulated clearly the responsibilities and duties of governments,

employers and workers and provided guidance for workers to remove themselves from hazardous work environments. Convention No. 187 was promotional in a way that would complement Convention No. 155.

- 190.** The Chairperson noted that a majority of the members of the Committee supported the designation of both Conventions Nos 155 and 187 as fundamental Conventions.
- 191.** The Employer Vice-Chairperson noted that the proposal of the Workers' group to include Convention No. 161 as a fundamental Convention had received no support. Convention No. 155 was considered by several Government members from developing countries to be too detailed and likely to interfere with national systems. Convention No. 187 only made reference to the principles of Convention No. 155 as it was intended to be flexible. Since its adoption, Convention No. 187 had received more ratifications than Convention No. 155.
- 192.** The Worker Vice-Chairperson regretted that the importance of Convention No. 161 had not been recognized, especially by the Employers' group. Effective health services enabled employers to retain valuable, trained staff and granted significant savings to employers. She nonetheless wished to highlight its importance. She noted that designating a Convention as a fundamental Convention did not mean that it needed to be immediately ratified but that Member States willing to improve OSH could receive technical assistance. She was disappointed to hear that the designation of Convention No. 161 was not supported by the majority of Government members, especially those from Asia, where major challenges to protect workers in textile factories persisted. The Committee had the responsibility to ensure increased protection that led to lower numbers of work-related deaths and occupational-related diseases. She reaffirmed the fundamental nature of Convention No. 155 and the complementary nature of Convention No. 187, which did not impose any significant responsibilities on governments, and did not address the obligations and duties of employers; therefore, it would not be possible to ensure adequate protection without recourse to Convention No. 155. Noting that there was no support in the Committee for Convention No. 161, she indicated that her group would withdraw its proposal to designate Convention No. 161 as a fundamental Convention in paragraph 3.
- 193.** The Employer Vice-Chairperson noted that a consensus had been reached on the designation of Convention No. 187 as a fundamental Convention. On the other hand, several governments had expressed their reservations about designating Convention No. 155.
- 194.** The Worker Vice-Chairperson reiterated that her group could not accept Convention No. 187 as a stand-alone fundamental Convention and would only support the designation of Convention No. 187 together with Convention No. 155. She did not agree with the statement made by the Employer Vice-Chairperson that Convention No. 155 posed challenges for developing countries. She pointed out that a large number of African countries and other developing countries had ratified Convention No. 155. While national circumstances were considered in fundamental Conventions, the goal should be the same for all countries. She welcomed the efforts of the Government of Qatar to ratify Convention No. 155, recalling that it supported the inclusion of both Conventions Nos 155 and 187 as fundamental Conventions.
- 195.** After reconvening the Committee following an adjournment, the Chairperson noted that the Committee had to decide between two options: to designate Convention No. 187 alone as a fundamental Convention or to designate both Conventions Nos 187 and 155 as fundamental Conventions.
- 196.** The Employer Vice-Chairperson recalled that her group supported the inclusion of the new fundamental principle and right at work as a fifth pillar on OSH in the 1998 Declaration, and



recalled that many companies invested billions of dollars every year in ensuring the safety and health of workers. Convention No. 155 did not reflect the diverse industrial relations and labour law systems of countries, contained several barriers and interfered with national systems. She reiterated that Convention No. 155 had been ratified by 74 Member States, while the number of ratifications of each of the eight existing fundamental Conventions exceeded 150. Given that most Government members, including those that had not yet ratified Convention No. 155, supported the inclusion of the Convention, her group could support the consensus.

- 197.** The Worker Vice-Chairperson clarified that the number of ratifications of the eight fundamental Conventions had increased significantly after the adoption of the 1998 Declaration. Designating OSH as a fifth fundamental principle would guarantee the further promotion of the ratification of the corresponding fundamental Conventions. She acknowledged that some governments were reluctant to designate Convention No. 155 as a fundamental Convention. She recalled that under the 1998 Declaration, the ILO had an obligation to support constituents by providing guidance on both promoting the ratification and implementation of the fundamental Conventions and undertaking efforts to realize the fundamental principles and rights at work in the event that the ratification of those Conventions was not yet possible.
- 198.** The Government member of the United Kingdom reiterated his support for the selection of Convention No. 187 as a fundamental Convention and was flexible on the selection of Convention No. 155.
- 199.** The Government member of Switzerland noted that she was flexible on the selection of Conventions Nos 155 and 187 as fundamental Conventions.
- 200.** The Government member of Brazil supported the selection of Convention No. 155 as a fundamental Convention and, in the spirit of consensus, was flexible on the selection of Convention No. 187 as well.
- 201.** The Government member of Australia noted that an appropriate framework was needed to ensure the safety and health of all workers, which Convention No. 155 provided, while Convention No. 187 had a complementary role. She supported the emerging consensus on the selection of Conventions Nos 155 and 187 as fundamental Conventions.
- 202.** The Government member of Canada supported the selection of Convention No. 187 as a fundamental Convention and was flexible on the selection of Convention No. 155 as well.
- 203.** The Government member of the Dominican Republic supported the selection of Conventions Nos 155 and 187 as fundamental Conventions.
- 204.** The Government members of Mexico and Japan supported the selection of Conventions Nos 155 and 187 as fundamental Conventions.
- 205.** The Chairperson noted that there was a clear consensus to select Conventions Nos 155 and 187 as fundamental Conventions within the meaning of the 1998 Declaration.
- 206.** The Committee adopted paragraph 3 as amended.

## Paragraph 4

- 207.** Paragraph 4 was slightly amended as a result of the consideration of an amendment to the annex (see paras 249 to 271 below).

## Paragraph 5

- 208.** The Chairperson noted that two amendments had been submitted by the Employers' group to paragraph 5, concerning the inclusion of a saving clause to address the rights and obligations of Member States arising from existing trade agreements.
- 209.** In introducing the amendments submitted by her group, the Employer Vice-Chairperson stated that in addition to trade agreements, there were many other types of agreements that included references to the 1998 Declaration, including investment agreements, economic partnership agreements and unilateral incentive agreements to which Member States were parties or beneficiaries. Adding those agreements and arrangements to paragraph 5 would provide additional legal clarity and promote broader acceptance of a saving clause.
- 210.** The Worker Vice-Chairperson pointed out that the Workers' group had never seen the need for the insertion of a saving clause because it was clear from a legal perspective that the resolution amending the 1998 Declaration could not and would not modify existing treaties without the consent of the States parties. In a spirit of compromise, the Workers' group had agreed to the inclusion of a saving clause but only if it was limited to the simple and straightforward language proposed by the Office. It could therefore not support any proposal to insert additional language in the text. It was also not clear what was covered by the terms "investment agreements" and "economic partnership agreements". In addition, "incentive arrangements" were unilateral schemes and not at all inter-State negotiated agreements. The Workers' group was therefore even less inclined to support the inclusion of "incentive arrangements" in the text. She made a request for clarification from the Employers' group, which was supported by the Government members of Algeria, France (on behalf of the EU and its Member States) and Canada.
- 211.** The Employer Vice-Chairperson responded that trade agreements were no longer as simple and common as they had once been and were being replaced by investment agreements that covered both trade and investment. Economic partnership agreements were even broader and often covered technical cooperation. However, what all those agreements had in common was that they referred to the 1998 Declaration, which is why they should be included in the saving clause.
- 212.** The Government member of France, speaking on behalf of the EU and its Member States, indicated that there was no need for a saving clause since there was no risk of any direct or indirect effect of the draft resolution as regards existing trade agreements to which EU Member States were a party. However, she supported the insertion of a saving clause in a spirit of compromise. On the other hand, the amendments proposed by the Employers' group would increase legal uncertainty and she could not support them.
- 213.** The Government member of Mexico stated that a saving clause was important because it alleviated uncertainty and provided reassurance that the addition of OSH as a fundamental principle and right at work would not affect existing trade agreements. She supported the adoption of the existing text of paragraph 5, without the amendments proposed by the Employers' group.
- 214.** The Government member of Argentina stated that a saving clause was not strictly necessary since it was clear that the reference to the 1998 Declaration in current trade agreements only referred to the existing four categories of fundamental principles and rights at work.
- 215.** The Government member of the United States noted that a saving clause was not necessary but acknowledged that it would provide certainty and assurance and therefore supported its inclusion. He indicated that he could support the addition of the words "investment

agreements” but not of the words “incentive arrangements” or the words “economic partnership agreements”. He therefore proposed a subamendment to replace the words “trade agreements” with the words “trade and investment agreements”.

- 216.** The Government member of Canada did not support the amendments proposed by the Employers' group and supported the original text of paragraph 5, which referred only to trade agreements.
- 217.** The Government member of Brazil supported the inclusion of a saving clause. He noted that he could support the amendments proposed by the Employers' group but indicated an openness to alternative proposals, such as the subamendment proposed by the United States.
- 218.** The Government member of China expressed support for the subamendment proposed by the United States to replace the words “trade agreements” with the words “trade and investment agreements” after the words “trade agreements”. He also indicated flexibility regarding the addition of the words “economic partnership agreements” or the words “incentive arrangements”.
- 219.** The Government member of Australia supported the inclusion of a saving clause but only the version proposed by the Office as already contained in paragraph 5.
- 220.** The Government member of Bangladesh recognized that a saving clause would provide legal clarity and assurance and supported the original text of paragraph 5 proposed by the Office, with the replacement of the words “trade agreements” with the words “trade and investment agreements”, as suggested in the subamendment proposed by the United States.
- 221.** The Government member of Colombia did not support the amendment proposed by the Employers' group. However, she noted that she was flexible and would support any consensus position that emerged.
- 222.** The Government member of India supported the amendments proposed by the Employers' group.
- 223.** The Government member of Indonesia expressed support for the amendments proposed by the Employers' group but noted that she could also support the subamendment proposed by the United States if that would facilitate consensus.
- 224.** In the spirit of compromise, the Employer Vice-Chairperson supported the subamendment proposed by the United States and agreed to withdraw the proposed amendments to add the words “economic partnership agreements” and the words “incentive arrangements” to the text of paragraph 5. However, she wished to place on record the view of her group that those types of arrangements would also be affected since they often made reference to the 1998 Declaration and to the issue of labour rights.
- 225.** The Worker Vice-Chairperson indicated that the term, “investment agreements” was too broad a category of agreements since it potentially also included agreements between a company and its shareholders. She could therefore not support the replacement of the words “trade agreements” with the words “trade and investment agreements”, as suggested in the subamendment proposed by the United States, without further clarification and legal advice.
- 226.** The Chairperson noted that the situation was as follows. The Employer members had moved an amendment to expand the scope of paragraph 5 so that it would refer to “trade, investment or economic partnership agreements”. The Government member of the United States had indicated that he supported the inclusion of the words “investment agreements” but not the inclusion of the words “economic partnership agreements”, and he had therefore proposed a subamendment to replace the words “trade agreements” with the words “trade and

investment agreements". The Employer members had subsequently agreed to support the subamendment presented by the Government member of the United States and to withdraw their proposal to add the words "economic partnership agreements".

- 227.** The Government member of the United States acknowledged that there was some ambiguity about the term "investment agreement", as it could also refer to private investment agreements. To remove that ambiguity, he therefore proposed a second subamendment, to replace the words "to which it is a party" with the words "between States".
- 228.** The Worker Vice-Chairperson recalled that the Office had provided a thorough analysis to the Governing Body at its 344th Session (March 2022) of the proposed saving clause, which aimed precisely at excluding the possible "unintended effects" of the draft resolution on existing trade agreements.<sup>3</sup> She could support the second subamendment proposed by the United States, to replace the words "to which it is a party" with the words "between States", as it would clarify that the clause was not referring to private parties. However, she proposed a further subamendment to add the word "unintended" before the word "manner", to further clarify the scope of the saving clause so that paragraph 5 would read: "Declares that nothing in this resolution shall be construed as affecting in any unintended manner the rights and obligations of a Member arising from existing trade and investment agreements between States."
- 229.** The Government member of the United States indicated that his Government had also reviewed the analysis of a saving clause prepared by the Office. He was of the view that the second subamendment that he had proposed, to replace the words "to which it is a party" with the words "between States" would indeed help clarify the saving clause.
- 230.** The Employer Vice-Chairperson indicated that the understanding of her group was that the saving clause referred only to agreements between governments. She supported the subamendment proposed by the Worker Vice-Chairperson to add the word "unintended" before the word "manner".
- 231.** The Government member of France, speaking on behalf of the EU Member States, supported the two subamendments proposed by the United States, to replace the words "trade agreements" with the words "trade and investment agreements" and to replace the words "to which it is a party" with the words "between States", as well as the subamendment proposed by the Workers' group to add the word "unintended" before the word "manner".
- 232.** The Government member of Brazil supported the subamendment proposed by the Worker Vice-Chairperson and requested clarification as to whether the words "agreements between States" included agreements with intergovernmental organizations such as the EU.
- 233.** A member of the secretariat (the Legal Adviser of the ILO) explained that the main purpose of the "saving clause" was to remove the possibility that a labour provision in an existing trade agreement could be interpreted "evolutively", that is to say as including an additional, fifth fundamental right upon the adoption of the draft resolution and without the consent of the States parties to that agreement. Such evolutive interpretation could only be undertaken by a third party (for example an arbitrator) who might be called upon to settle a dispute relating to the interpretation or application of the provisions of a free trade agreement. In this connection, the saving clause would serve to clarify that no evolutive intent whatsoever could be attributed to the parties to existing trade agreements. He reiterated that this concern was nonetheless – legally speaking – unwarranted because a "soft law" instrument such as the resolution amending the 1998 Declaration could not modify bilateral or plurilateral trade agreements

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<sup>3</sup> GB.344/INS/6(Add.1).

that had been negotiated outside the Organization. He also noted that the term “existing agreements” referred to those agreements that had been concluded prior to the eventual adoption of the draft resolution.

234. He also noted that the words “agreements between States” did not, strictly speaking, include agreements with intergovernmental organizations. However, throughout the preparatory work leading up to the Conference discussion, reference was made to the 103 free trade agreements which contained labour clauses, a large number of which were concluded by the EU. Accordingly, anyone who might wish to establish the true intention of the drafters of the resolution by consulting the *travaux préparatoires* would conclude with certainty that the reference to “trade agreements between States” comprised also those concluded by regional integration organizations such as the EU. Further, he explained that the Record of proceedings of the Committee deliberations, including the present explanations, were integral part of the *travaux préparatoires* and would suffice to dispel any doubt as to the meaning of the expression “trade agreements between States” used in the saving clause.
235. He concluded by indicating that the term “trade agreements” had been used thus far in a broad sense covering all economic cooperation agreements addressing in part labour-related matters. As trade agreements were increasingly comprehensive and often combined trade with investment, the Committee might wish to use “trade and investment agreements” for more clarity and precision.
236. The Government member of France, speaking on behalf of the EU Member States stated that all EU agreements to which the EU is a party stipulate that it is EU Member States that are parties to those agreements.
237. Speaking on behalf of the Africa group, the Government member of Senegal supported the two subamendments proposed by the United States, as well as the subamendment proposed by the Workers’ group, but requested clarification as to whether the words “existing agreements” referred to agreements that had been signed prior to the eventual date of adoption of the draft resolution.
238. The Government member of Canada supported the two subamendments proposed by the Government member of the United States and the subamendment proposed by the Workers’ group.
239. The Government member of Mexico noted the importance of the saving clause paragraph 5 and supported the two subamendments proposed by the Government member of the United States and the subamendment proposed by the Workers’ group.
240. The Worker Vice-Chairperson indicated that her group was inclined to support the adoption of paragraph 5 as subamended by the Government member of the United States and also the Workers’ group.
241. The Employer Vice-Chairperson noted the importance of adopting a clear saving clause to avoid misunderstandings and misinterpretations. She supported the subamendment proposed by the Government member of the United States and as further subamended by the Workers’ group.
242. The Government member of Brazil supported the subamendment proposed by the Government member of the United States to replace the words “to which it is a party” with the words “between States”. He noted that the Vienna Convention on the Law of Treaties referred to the word “existing”, which was a general word that could be used and translated into the three official languages of the Conference.

243. The Government member of Bangladesh reiterated his support for the subamendment proposed by the Government member of the United States to replace the words “trade agreements” with the words “trade and investment agreements”.
244. The Government member of Algeria favoured the wording “signed agreements” rather than the wording “existing agreements” as that wording was more general and easier to translate into different languages such as French and Arabic.
245. The Government member of India supported the inclusion of the words “economic partnership agreements” in paragraph 5, as proposed in the amendment submitted by the Employer members; however, that amendment had subsequently been withdrawn by the Employer Vice-Chairperson. He noted that economic partnership agreements included labour chapters that referred to fundamental principles and rights at work.
246. The Government member of Australia supported the emerging consensus on the inclusion of a saving clause as amended by the two subamendments proposed by the Government member of the United States and the subamendment proposed by the Workers’ group.
247. The Chairperson noted that there was consensus to adopt paragraph 5 as amended by the Employer members, and subamended by the Government member of the United States and the Worker members respectively.
248. The Committee adopted paragraph 5 as amended.

## Annex

249. The Chairperson noted that one amendment had been submitted to the annex by the Workers’ group.
250. The Worker Vice-Chairperson explained that her group had submitted an amendment to delete, in the annex to the draft resolution, the proposed consequential amendment suggesting the deletion of the words “healthy and safe working conditions” from Part I(A)(ii) of the ILO Declaration on Social Justice for a Fair Globalization (“Declaration on Social Justice”). The Declaration on Social Justice currently included the words “healthy and safe working conditions” under the strategic objective concerning social protection. The Office had envisaged its removal from the description of that strategic objective in order to include it instead under the strategic objective on fundamental principles and rights at work as a result of the anticipated recognition of a safe and healthy working environment as a fundamental principle and right at work.
251. She indicated that her group did not consider the Office’s proposal to be a “consequential amendment” as the deletion of any reference to OSH under the objective of social protection was not a simple editorial change but had broader implications for the recurrent discussions, in particular on the international labour standards to be examined in that context. She noted in that respect that there were currently 41 ILO instruments on OSH, which was a much higher number of standards than the standards corresponding to the four recognized fundamental principles and rights at work. Accordingly, the consequential amendment needed to be removed from the annex to the draft resolution and the matter should be referred to the Governing Body for careful consideration and possible follow-up action. She asked for clarification from the Office.
252. The representative of the Secretary-General recalled that the consequential amendment to Part IA(ii) of the Declaration on Social Justice had been explained by the Office, in particular at the 344th Session (March 2022) of the Governing Body, and at that moment had not given rise

to any discussion. She acknowledged that the recognition of “a safe and healthy working environment” as a fundamental principle and right at work would have consequences for the recurrent discussions on the strategic objectives of the Declaration on Social Justice. That was indeed a matter to be examined by the Governing Body, starting with the recurrent discussion on fundamental principles and rights at work to be held in 2024.

- 253.** A member of the secretariat (the Director of the ILO’s International Labour Standards Department) indicated that the need for an amendment to Part I(A)(ii) of the Declaration on Social Justice had been discussed extensively within the Office. In that context, the Office had taken into account the rationale of Part I(A), which was to rationalize the description of the ILO’s mandate by regrouping the constitutional objectives around four strategic objectives. To that extent, the inclusion of OSH under the strategic objective on the fundamental principles and rights at work and its removal from the strategic objective on social protection could be considered to be a consequential amendment.
- 254.** She noted that one of the consequences of the recognition of a new fundamental principle and right at work, related to the scope of the corresponding recurrent discussion, which would encompass five instead of four fundamental rights. That was a matter for further discussion by the Governing Body, as it was responsible for determining the modalities of recurrent discussions, including the standards to be examined. In that respect, she recalled that current instruments related to the four existing fundamental principles and rights at work included instruments other than the eight fundamental Conventions. For example, with respect to child labour, in addition to consideration of the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182), related international labour standards such as the Medical Examination of Young Persons Recommendation, 1946 (No. 79), and standards related to night work of children were also included. Nothing therefore would prevent the regrouping of the 41 OSH standards, including any new fundamental Convention or Conventions, under the strategic objective relating to the five fundamental principles and rights at work.
- 255.** The Employer Vice-Chairperson thanked the Office for the explanations, which she found convincing. Accordingly, in the view of her group there was no need for the amendment proposed by the Workers’ group.
- 256.** The Worker Vice-Chairperson indicated that her group was concerned that if the reference to OSH was removed from Part I(A)(ii) of the Declaration on Social Justice, the discussion of OSH, including the discussion of the related standards, would be subsumed under a general recurrent discussion of the fundamental principles and rights at work and would not be granted the prominence it deserved. She also reiterated that the body of OSH standards was impressive, and therefore the situation could not be compared to the other fundamental rights with their related standards. The consequences of the recognition of OSH for future recurrent discussions required further consideration by the Governing Body.
- 257.** The Government member of Brazil agreed with the Worker Vice-Chairperson that the issue was more complicated than it appeared at first and that it required further discussion by the Governing Body.
- 258.** The Government member of France, speaking on behalf of the EU Member States, indicated that the EU supported the proposal to refer the matter to the Governing Body for further consideration.

- 259.** The Government member of Senegal agreed that it was appropriate for the Governing Body to take up a more strategic discussion on the consequences for recurrent discussions of recognizing OSH as a fundamental principle and right at work.
- 260.** The Worker Vice-Chairperson said that there appeared to be a consensus to refer the matter to the Governing Body and suggested that in order to facilitate such a referral, changes would be required not only to the annex but also to paragraph 4 of the draft resolution, which as currently drafted invited the Governing Body to take appropriate action related only to international labour standards and the Tripartite Declaration of Principles concerning Multinationals Enterprises and Social Policy, but did not refer to the Declaration on Social Justice. She asked the Office to propose language to include a reference to the Declaration on Social Justice as well.
- 261.** The Employer Vice-Chairperson indicated that her group could support referring the matter to the Governing Body and adding a reference to the Declaration on Social Justice to paragraph 4.
- 262.** The Legal Adviser asked the Committee to clarify whether the Office would need to prepare amendments to the draft resolution that would remove all the references to the Declaration on Social Justice from paragraph 1 of the draft resolution and from the annex. He confirmed that the Office would add a reference to the Declaration on Social Justice to paragraph 4 of the draft resolution.
- 263.** The Government member of Brazil stated that the Committee could adopt the remaining proposed consequential amendments set forth in the annex to the draft resolution.
- 264.** The Worker Vice-Chairperson suggested that paragraph 4 of the draft resolution could be amended to invite the Governing Body to consider any possible further consequential amendments to the Declaration on Social Justice, while already deciding now on the other consequential amendments that were not contested.
- 265.** The Government member of France, speaking on behalf of the EU Member States, supported that suggestion of the Workers' group.
- 266.** Speaking on behalf of the Africa group, the Government member of Senegal proposed that the Committee should invite the Governing Body to consider the consequential amendments to the Declaration on Social Justice and the consequential amendments to the Global Jobs Pact. The Committee could adopt the consequential amendments to the annex to the 1998 Declaration.
- 267.** The Worker Vice-Chairperson responded by noting that the Workers' group had proposed only one amendment, which was to delete the reference to Part I(A)(ii) of the Declaration of Social Justice from the annex. The Workers' group considered the other amendments included in the annex to be consequential. Therefore, they could be adopted as such by the Committee.
- 268.** The Worker Vice-Chairperson proposed that should the amendment to the annex be adopted, paragraph 4 of the draft resolution should be consequentially amended to read as follows:
4. Invites the Governing Body to take all appropriate action with a view to introducing certain amendments consequential upon the adoption of the present resolution to all relevant international labour standards, the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, and the ILO Declaration on Social Justice for a Fair Globalization, as appropriate; and ...
- 269.** The Employer Vice-Chairperson reiterated her support for the amendments proposed by the Workers' group to delete the reference to Part I(A)(ii) of the Declaration of Social Justice from the annex and to add a reference to that Declaration to paragraph 4 of the draft resolution.



**270.** The Chairperson noted that there was a consensus to adopt the amendments proposed by the Workers' group to the annex and to paragraph 4.

**271.** The Committee adopted the annex and paragraph 4 as amended.

## Adoption of the draft resolution

**272.** The Chairperson noted that a revised version of the draft resolution, which incorporated the amendments approved at the previous sittings of the Committee, had been reviewed by the Drafting Committee in the ILO's three official languages.

**273.** The Worker Vice-Chairperson noted that a substantive issue had arisen that the Drafting Committee wished to bring before the Committee. Paragraph 2 of the draft resolution included the titles of the amended 1998 Declaration, the amended Declaration on Social Justice and the amended Global Jobs Pact. In particular, it had been proposed to refer to the 1998 Declaration as "the Declaration on Fundamental Principles and Rights at Work as amended" and that no objection had been raised to the proposed title. However, she reminded members that many constituents referred to the Declaration as "the 1998 Declaration". She added that this also applied to the Declaration on Social Justice adopted in 2008. For the sake of clarity, she proposed an amendment to add the original dates of the instruments in question in brackets after their full titles and thereafter to add the words "as amended in 2022".

**274.** The Employer Vice-Chairperson supported the amendment proposed by the Workers' group. She confirmed that she had no objection to adding the original dates of the 1998 Declaration and the 2008 Declaration on Social Justice in brackets after their full titles and thereafter to add the words "as amended in 2022".

**275.** The Government member of Senegal, speaking on behalf of the Africa group, noted that adding the original dates of the instruments in question in brackets after their full titles had significant historical value and he supported the proposed amendment.

**276.** The Chairperson noted that there was general agreement on the proposed amendment to add the original dates of the instruments in brackets after their full titles and thereafter to add the words "as amended in 2022".

**277.** The Employer Vice-Chairperson asked whether there was a need to use brackets for both the original date and the date of amendment for the sake of consistency.

**278.** The Worker Vice-Chairperson responded that in her opinion there was a need to use brackets for the original date of adoption but that the year of amendment should not be in brackets but should be drafted in the format "as amended in 2022".

**279.** The Legal Adviser indicated that there was no obligation to use brackets for both dates but indicated that in order to avoid the use of too many brackets and commas, which could lead to confusion, the full title of the amended 1998 Declaration should be referred to as "the Declaration on Fundamental Principles and Rights at Work (1998), as amended in 2022". The same formula should be applied to the Declaration on Social Justice as well to the Global Jobs Pact.

**280.** The Chairperson noted that there was consensus on the amendment proposed by the Workers' group concerning paragraph 2 of the draft resolution as regards the titles of the amended 1998 Declaration, the Social Justice Declaration and the Global Jobs Pact. He therefore invited the Committee to adopt the draft resolution as amended by parts.

**281.** He asked whether there were any objections to the proposed title of the draft resolution. Since there were none, the title as amended was adopted.

- 282.** He inquired whether there were any objections to the proposed preambular paragraphs of the draft resolution. Since there were none, the preambular paragraphs as amended were adopted.
- 283.** He inquired whether there were any objections to proposed paragraphs 1 to 5 of the draft resolution, including the amended titles inserted in paragraph 2. Since there were none, paragraphs 1 to 5 as amended were adopted.
- 284.** Finally, the Chairperson inquired whether there were any objections to the proposed annex to the draft resolution, including with the new titles. Since there were none, the annex as amended was adopted.
- 285.** The Committee adopted the draft resolution, as amended, as a whole.

## Closing remarks

- 286.** The Employer Vice-Chairperson acknowledged the adoption of the draft resolution by the Committee for submission to the International Labour Conference as a historic moment, during which the Committee had contributed to the creation of the fifth pillar of the ILO Declaration on Fundamental Principles and Rights at Work. For her group, health and safety at the workplace was a fundamental principle. Companies invested billions of dollars every year in the safety and health of their workers. The fifth pillar would strengthen the constitutional obligations of ILO Member States and its accompanying Conventions would provide practical guidance for companies and sectors of all sizes. The 1998 Declaration was an important reference point in free trade and investment agreements, economic cooperation agreements and company agreements, such as codes of corporate social responsibility and codes of conduct. It would be important to ensure the realization of the fifth fundamental principle together with the four other pillars of the 1998 Declaration. She thanked the Workers' group, in particular the Worker Vice-Chairperson, for the fruitful discussion. She thanked the Government members for their support and the Employers' group and the ILO's Bureau for Employers' Activities for their commitment. Lastly, she thanked the Chairperson for his impartial and wise guidance throughout the discussion.
- 287.** The Worker Vice-Chairperson noted that with the adoption of the draft resolution by the International Labour Conference, ILO Member States would formally recognize their obligation to respect, promote and realize the new fundamental principle and right at work, which was expressed in the fundamental OSH Conventions, regardless of whether they had ratified the Conventions in question. She noted the consensus achieved in the selection of two fundamental Conventions. She thanked the Chairperson for his leadership and the Employer Vice-Chairperson for her collegial collaboration, noting the clear value shown in this Committee of women in positions of leadership. She thanked the Government members for their active participation and solid contributions. She thanked the Workers' group for their support and hoped that they felt adequately represented by her work on their behalf. Lastly, she thanked the Office, especially the Deputy Director-General Martha Newton and the Legal Adviser, as well as her support team from ITUC and the Bureau for Workers' Activities.
- 288.** The Government member of France spoke on behalf of the EU Member States. The candidate countries North Macedonia, Montenegro and Albania, and the European Free Trade Association countries Iceland and Norway, members of the European Economic Area, aligned themselves with the statement. She acknowledged that the adoption by the Committee of the draft resolution amending the 1998 Declaration for submission to the International Labour Conference was a historical moment and the outcome of joint efforts, long discussions and a willingness to compromise. The COVID-19 pandemic had reinforced the importance of OSH.

For the EU and its Member States, a safe and healthy working environment represented an essential building block of the human-centred response to the COVID-19 pandemic, as well as an integral component of any long-term recovery plan. The EU Member States were pleased that Conventions Nos 155 and 187 had been recognized as fundamental Conventions since they described, in a complementary manner, the basic OSH rights at the national and workplace levels. Concerning the fifth preambular paragraph on shared responsibilities, she appreciated the consensual language that had been agreed and noted the importance of social dialogue for guaranteeing and strengthening OSH. She concluded by thanking the Chairperson for his leadership, the Vice-Chairpersons and Government members for their willingness to compromise, the Office for its in-depth analysis and clarifications, and the interpreters for their work.

- 289.** The Government member of Indonesia strongly supported the inclusion of OSH in the ILO's framework of fundamental principles and rights at work. The consensus that had been reached demonstrated that multilateralism remained a core mechanism for promoting global justice. She noted that when women leaders stood united, they brought productive and effective results.
- 290.** The Government member of Canada expressed her gratitude to the Chairperson, the Vice-Chairpersons, the Office and all the participants for their dedication and commitment to bringing the discussions to a successful conclusion. Her country was committed to making workplaces safer, fairer and healthier. She recalled that Canada had proudly chaired the Conference Committee on the Declaration of Principles in 1998 and had been honoured to participate in the discussions of the General Affairs Committee on the inclusion of OSH in the ILO's framework of fundamental principles and rights at work. She highlighted the need to renew and strengthen the commitment to safe and healthy workplaces by better protecting the physical and mental health of workers. The OSH fundamental principle and the other four fundamental principles and rights at work were universal and applied to all people.
- 291.** The Government member of Senegal, speaking on behalf of the Africa group, thanked the Chairperson for his outstanding leadership. He thanked the Office for the in-depth and analytical studies it had provided, the Government members for their collaboration and the interpreters for their work. He expressed his appreciation to the Vice-Chairpersons for their wisdom and collaborative spirit. To conclude, he noted that participants would thereafter face the challenge of ensuring that the fifth fundamental principle on OSH would be realized through national practice, legislation and systems.
- 292.** The Government member of Mexico noted that the draft resolution as adopted represented a historic agreement and thanked the Chairperson for his leadership, patience and commitment. She thanked the Vice-Chairpersons for their commitment and enthusiasm and noted that she supported women in leadership roles. She thanked the Office, the interpreters and the technicians for their remarkable work. She recognized the Committee members for their work and the ILO for the historic step taken, which would have a real impact on the lives and needs of all workers around the world.
- 293.** The Government member of the United States thanked the Chairperson, the social partners, the Government members and the Office. She recognized the adoption of the draft resolution for submission to the International Labour Conference as a significant occasion.
- 294.** The Government member of Argentina stated that the adoption of the draft resolution for submission to the International Labour Conference was a historic moment in which key labour rights would be recognized. The recognition of Conventions No. 155 and No. 187 as fundamental and their implementation would lead to policies that worked for individuals. He

thanked the Office, the Chairperson, the Vice-Chairpersons, the other Government members, the interpreters and the technicians for their work, which had allowed the Committee to take a historical step.

- 295.** In her concluding remarks, the representative of the Secretary-General noted that the Committee had made history. She invoked the historical context of the adoption of the draft resolution for submission to the International Labour Conference, recalling the foundation of the ILO in 1919, which had brought multilateralism to the field of labour protection and regulation of the world of work. The ILO had lived up to its promise. The Declaration of Philadelphia had responded to a new international order following the Second World War. Globalization had been the context of the World Summit for Social Development, held in Copenhagen in 1995. The Summit had underlined the importance of core labour rights and had triggered a process that resulted in the adoption of the 1998 Declaration, which was a solemn political statement by the highest organ of the ILO that the fundamental principles and rights were universal and applied to all workers and employers and indeed to all States across the world.
- 296.** She quoted from the 1998 Declaration, paragraph 2 of which provided that:
- ... all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions.
- 297.** Twenty-four years after the adoption of the 1998 Declaration, the Committee had been instrumental in adding a safe and healthy working environment to those principles and in adding Conventions No. 155 and No. 187 to the group of fundamental Conventions, thereby reaffirming the commitment of ILO constituents to strengthening the universal application of those Conventions.
- 298.** She noted that ensuring health and safety at work was a prerequisite to achieving the strategic objectives of the ILO and that the discussion would be continued at the 346th Session of the Governing Body to be held in November 2022.
- 299.** She thanked the Chairperson, the Employer Vice-Chairperson and the Worker Vice-Chairperson for their dedication, skill and commitment to achieving a successful outcome. She also thanked the President of the 110th Session of the International Labour Conference, the secretariat of the Committee and online participants. The work of the Committee would have a tangible impact on the lives of millions of workers.
- 300.** In his concluding remarks, the Chairperson recalled that the Committee had concluded one of the most important discussions held at the ILO in recent years. The participants' spirit of collaboration and determination to achieve consensus had made possible the adoption of a draft resolution for submission to the International Labour Conference with a view to elevating OSH as a fundamental right. He thanked the Employer Vice-Chairperson and the Worker Vice-Chairperson for their leadership, the Government members for their proactive and constructive contributions and the secretariat of the Committee for its support.
- 301.** He noted that social dialogue and tripartism were fundamental values of the ILO. The challenge that remained was to carry on the work started 24 years ago, in the same spirit.
- 302.** The Chairperson closed the sitting.