

Commentary



Recognition of a Safe and Healthy Working Environment as a Fundamental Principle at Work

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Introduction

The “Resolution on the inclusion of a safe and healthy working environment in the ILO framework of fundamental principles and rights at work,”¹ adopted by the International Labour Conference on 10 June 2022, complements the four categories of fundamental principles at work already proclaimed with a fifth category: a safe and healthy working environment.² The resolution amends accordingly the 1998 Declaration on Fundamental Principles and Rights at Work and adds two other instruments to the ILO conventions already referred to in the Declaration: the Occupational Health and Safety Convention, 1981 (no. 155)³ and the Promotional Framework Convention for Occupational Safety and Health, 2006 (no. 187).⁴

A safe and healthy working environment is therefore declared as a fundamental principle at work, as enshrined in the provisions of the two conventions

- 1 International Labour Conference, 110th Session, 2022, “Resolution on the inclusion of a safe and healthy working environment in the ILO’s framework of fundamental principles and rights at work.”
- 2 The other categories are freedom of association and effective recognition of the right to collective bargaining, elimination of all forms of forced or compulsory labor, abolition of child labor, elimination of discrimination in respect of employment and occupation.
- 3 Convention concerning Occupational Safety and Health and the Working Environment (seventy-six ratifications; in force since 11 August 1983).
- 4 Convention concerning the Promotional Framework for Occupational Safety and Health (fifty-seven ratifications; in force since 20 February 2009).

mentioned; as a result, the two instruments must be considered binding for all Member States of the ILO, regardless of whether they have ratified them. In fact, as the Declaration states in Article 1, the rules contained therein protect fundamental principles, expression and development of those embodied in the ILO Constitution and in the 1944 Declaration of Philadelphia. Accordingly, even if the resolution (like the 1998 Declaration) is a nonbinding instrument, it solemnly recalls principles and rights recognized in the ILO founding charters and endorsed by all 187 Member States freely joining the Organization.⁵

As well known, the 1998 Declaration reaffirms the ILO's mission and objectives, specifically as a response to the challenges of globalization and for providing a social framework for trade liberalization; together with the 2008 ILO Declaration on Social Justice for a Fair Globalization, it forms the basis of the Decent Work Agenda.⁶ The inclusion of health and safety at work in this context must be saluted as a milestone.⁷

Analysis

Occupational health and safety aim at protecting workers from sickness and injuries associated with the working environment.⁸ At least 1.9 million people are estimated to die every year and many millions of workers suffer from

5 As a follow-up to the 1998 Declaration, and despite the link between the fundamental principles and the constitutional obligations of the Member States, the ILO has promoted the ratification of the fundamental conventions by all its Member States, with significant results. This achievement not only further promotes the relevance of the instruments, but also permits the functioning of the compliance mechanisms set up within the Organization and specifically the supervisory system.

6 See Francis Maupain, "New Foundation or New Façade? The ILO and the 2008 Declaration on Social Justice for a Fair Globalization," *European Journal of International Law* 20, no. 3 (2009): 823–52; Velebore Jakovleski, Scott Jerbi, and Thomas Biersteker, "The ILO's Role in Global Governance: Limits and Potential," in *The ILO @ 100. Addressing the Past and Future of Work and Social Protection*, edited by Christophe Gironde and Gilles Carbonnier (Leiden: Brill, 2019), 82–108.

7 According to the Institution of Occupational Safety and Health (IOSH), the recognition of a safe and healthy work environment as a fundamental principle and right at work is the "biggest moment for workers' rights around the world in a quarter of a century" ("IOSH celebrates 'biggest moment for workers' rights in quarter of a century,'" 10 June 2022, <https://iosh.com/news/osh-human-rights/>). See also the statement by the European Agency for Safety and Health at Work, 13 June 2022, which qualifies the Conference decision as a "landmark" (<https://osha.europa.eu/en/oshnews/occupational-safety-and-health-becomes-one-ilos-fundamental-principles-and-rights-work>).

8 See Robert H. Friis, *Occupational Health and Safety for the 21st Century* (Burlington, VT: Jones & Bartlett, 2021).

work-related accidents and diseases.⁹ The central importance of occupational safety and health has been emphasized by the COVID-19 pandemic, which has underscored the interdependence of all members of society in all countries.

The proposal to declare a safe and healthy working environment as a fundamental principle was put forward by the representatives of the European Union and its Member States in 2017¹⁰ and was reiterated in 2019 in the context of the preparations for the celebration of the ILO's Centenary. It was in that occasion underlined that the relevance of occupational safety and health is also firmly rooted in contemporary human rights law: Article 7 of the 1966 Covenant on economic, social and cultural rights states specifically the right to "just and favourable conditions of work" that must ensure, in particular, "safe and healthy working conditions." The Seoul Declaration of 2008 on safety and health at work¹¹ and the Istanbul Declaration of 2011 on safety and health at work¹² both recall that the right "to a safe and healthy working environment should be recognized as a fundamental human right." The right to health is recognized in the 1948 Universal Declaration of Human Rights, as well as in various regional instruments (such as the African Charter, the American Charter, the European Social Charter and the EU Charter of Fundamental Rights) and, at the national level, in about two-thirds of national constitutions.

9 See WHO/ILO *Joint Estimates of the Work-related Burden of Disease and Injury, 2000–2016: Global Monitoring Report*, 2021. The WHO and ILO estimate that more than 360 million people suffer every year from nonfatal accidents related to work.

10 The year 2017 marks an important achievement in EU social policy: the time chosen for advancing the mentioned proposal is probably not a simple coincidence. The EU Parliament, the Council and the Commission proclaimed in that year the European Pillar of Social Rights (complemented by an Action Plan formulated by the Commission), whose Principle 10 affirms: "Workers have the right to a high level of protection of their health and safety at work". See Frank Hendrickx, "The European Social Pillar: A First Evaluation," *European Labour Law Journal* 9, no. 1 (2018): 3–6.

11 The Seoul Declaration on Safety and Health at Work was adopted by a Safety and Health Summit on June 2008 on the occasion of the XVIII World Congress on Safety and Health at Work organized by ILO, International Social Security Association (ISSA) and Korea Occupational Safety and Health Agency (KOSHA). For a short commentary, see Seong-Kyu Kang, "Editorial. Seoul Declaration on Safety and Health at Work," *Industrial Health* 47, no. 1 (2009): 1–3.

12 The Istanbul Declaration was adopted on the occasion of the Summit of the Ministers of Labour for a Preventative Culture, held on the 11 of September 2011 in Istanbul prior to the opening of the XIX World Congress on Safety and Health at Work. See Jeffrey Hilgert, "The Future of Workplace. Safety and Health as a Fundamental Human Right," *Comparative Labor Law and Policy Journal* 34 (2013): 715–36.

At the request of the Conference, the Governing Body considered the matter and proposed revising the 1998 Declaration.¹³ It identified the corresponding fundamental conventions, i.e. the 1981 Occupational Health and Safety Convention and the 2006 Promotional Framework Convention for Occupational Safety and Health. The first provides for the adoption of a national occupational safety and health policy, as well as action to be taken by governments and within enterprises to promote occupational safety and health. The second requires Member States to formulate, with reference to occupational health and safety, a national policy, and, in consultation with the most representative organizations of employers and workers, to establish and develop a national system and a national program on occupational safety and health.

The resolution recalls that ensuring safety and health at work is a shared responsibility of governments, employers, and workers.

A politically sensitive issue was the possible effects of the revised Declaration on trade agreements and investment treaties including labor clauses, because the Declaration is expressly referred to in more than seventy free trade and economic partnership agreements. Fears were that the additional fundamental principle might be automatically introduced into existing agreements without the consent of States parties. It was thus decided to include a safeguard clause in § 5 of the resolution 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.”

The resolution, following the modification of the 1998 Declaration, amends some connected instruments; other amendments will require action by the Governing Body.

Conclusion

The solemn affirmation of the founding principles of the ILO is a rare institutional event: it occurred in 1919, when the Constitution was approved; in 1944, with the Declaration of Philadelphia; in 1998, through the adoption of the ILO Declaration on Fundamental Principles and Rights at Work. The constitutional methodology consists in identifying rights and principles of lasting

13 For an account of the issues examined by the Governing Body, see ILO, *Inclusion of safe and healthy working conditions in the ILO's framework of fundamental principles and rights at work*, ILC.110/VII, 2022, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_844349.pdf.

importance, formulated with sufficient generality to transcend time and space. The recognition of the protection of health and safety at work as a fundamental principle follows the same logic, as it occupies a prominent place among the constitutional objectives of the ILO that were defined at the time of its establishment. The Preamble of the Constitution notes that “the protection of the worker against diseases, illnesses and accidents deriving from his employment” is among the “urgent” improvements. The amendment to paragraph 2 of the 1998 Declaration therefore constitutes the solemn reaffirmation of an existing principle to which Member States have committed themselves by adhering to the ILO Constitution.

This reaffirmation will hopefully contribute to calling attention to the tragedy of work-related injuries and illnesses, including those connected with mental health and with violence and harassment in the working environment,¹⁴ and to promoting effective action accordingly.

¹⁴ It is worth mentioning that the most recent binding instrument adopted by ILO is precisely the Violence and Harassment Convention, 2019 (No. 190).