



# Governing Body

344th Session, Geneva, March 2022

Institutional Section

INS

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Sixth item on the agenda

## Issues relating to the inclusion of safe and healthy working conditions in the ILO's framework of fundamental principles and rights at work

Draft resolution

### Purpose of the document

In accordance with the decision of the Governing Body at its 343rd Session (November 2021), this document proposes a draft resolution amending the 1998 ILO Declaration on Fundamental Principles and Rights at Work to include safe and healthy working conditions in the ILO's framework of fundamental principles and rights at work for consideration at the 110th Session (2022) of the Conference (see draft decision in paragraph 37).

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

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

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

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

**Financial implications:** None.

**Follow-up action required:** Depending on the decision and guidance of the Governing Body, preparation of a report and draft resolution to be submitted at the 110th Session of the Conference (2022).

**Author unit:** Office of the Legal Adviser (JUR).

**Related documents:** [GB.337/PV](#); [GB.337/INS/3/2](#); [GB.341/PV](#); [GB.341/INS/6](#); [GB.343/INS/6](#); [GB.343/INS/PV](#).

## ▶ Introduction

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1. In accordance with the terms of the revised procedural road map for the consideration of including safe and healthy working conditions in the ILO's framework of fundamental principles and rights at work,<sup>1</sup> the Governing Body considered at its 343rd Session (November 2021) a document on process-related questions and possible forms of the decision of the International Labour Conference, including the placement of a technical item on the agenda of the 110th Session (2022) of the Conference. The Governing Body discussion addressed among other matters the occupational safety and health Convention(s) to be recognized as fundamental, the exact wording to be used to define the additional fundamental principle, and the possible legal effects of a revised 1998 Declaration on bilateral or plurilateral trade agreements.
2. The Governing Body decided to:
  - (a) place on the agenda of the 110th Session (2022) of the International Labour Conference an item regarding the 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;
  - (b) request the Director-General to prepare for the 344th Session (March 2022) of the Governing Body a draft resolution for consideration at the 110th Session (2022) of the Conference based on the guidance and views expressed during the discussion of GB.343/INS/6;
  - (c) request the Office to prepare for its 344th Session (March 2022) a background paper to address the issues raised in the discussion, including:
    - (i) the terminology to be used taking into account the views expressed by the Governing Body;
    - (ii) the occupational safety and health instrument(s) to be recognized as fundamental, with a view to preparing proposals for decision at the 110th Session (2022) of the Conference; and
    - (iii) the possible legal effects, direct and indirect, on existing trade agreements concluded by Member States; and
  - (d) request the Office to organize informal consultations on the above issues prior to the 344th Session (March 2022).
3. The views expressed during the Governing Body deliberations may be summarized around the following points. First, there was unanimity on the need to make progress and advance by means of timely and informed decisions with a view to including safe and healthy working conditions in the ILO's framework of fundamental principles and rights at work. Consensus was reached on the form of the Conference decision which should introduce a specific amendment to paragraph 2 of the ILO Declaration on Fundamental Principles and Rights at

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<sup>1</sup> GB.341/INS/6 and decision.

Work (1998 Declaration) as the most efficient way to recognize occupational safety and health as an additional category of fundamental principles and right at work.

4. Consensus was also reached on placing an item on the agenda of the 110th Session of the Conference concerning an amendment to paragraph 2 of the 1998 Declaration. It was noted that incorporating all fundamental principles and rights at work into a single instrument would preserve the unity, authoritativeness and coherence of the 1998 Declaration, would afford occupational safety and health the same level of respect, prominence and promotion as the other four categories and would also allow the consistent application of the existing promotional follow-up mechanism.<sup>2</sup> It was observed, however, that it would be important for the revised Declaration to be given a title that would permit the two instruments to be clearly distinguished.<sup>3</sup>
5. Second, as regards the occupational safety and health Conventions to be recognized as fundamental, one group noted that while the importance of the Occupational Safety and Health Convention, 1981 (No. 155), and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) was widely recognized, there were another 30 up-to-date instruments on the topic. It was also indicated that the process of selecting the relevant instrument(s) should begin promptly so as to afford constituents the opportunity to analyse their content before making a decision.<sup>4</sup>
6. Another group indicated its preference for Convention No. 155 and the Occupational Health Services Convention, 1985 (No. 161), since they codified several key principles and provided clear guidance on the respective rights and duties of governments, employers and workers. It was further specified that the relevant Conventions could be determined by the Governing Body at its November 2022 session.<sup>5</sup> A number of governments were also of the view that this decision could be made after a wider discussion had taken place at the International Labour Conference, whereas others considered that an agreement on the instruments should, in principle, be reached at the March 2022 Governing Body session or, at the latest, at the June 2022 Conference when considering the amendment to the 1998 Declaration. It was generally acknowledged that the identification of the relevant Conventions needed careful consideration, and to this effect, detailed background information should be made available by the Office.<sup>6</sup>
7. Third, with respect to the term to be used for the designation of the new fundamental principle, one group recalled that the expression “safe and healthy working conditions” had been included in the resolution on the Centenary Declaration and international human rights instruments, while another group indicated that the expression “safe and healthy working environment” was consistent with modern ILO instruments on occupational safety and health.<sup>7</sup> Governments expressed different views on this matter but generally agreed that an in-depth discussion was needed and that the Office should further clarify the exact meaning and scope of the two expressions that had been put forward.<sup>8</sup>

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<sup>2</sup> GB.343/INS/PV, paras 185, 189, 190–192, 196 and 199.

<sup>3</sup> GB.343/INS/PV, paras 191 and 195.

<sup>4</sup> GB.343/INS/PV, para. 182.

<sup>5</sup> GB.343/INS/PV, para. 187.

<sup>6</sup> GB.343/INS/PV, paras 189–193, 195, 199 and 200.

<sup>7</sup> GB.343/INS/PV, paras 181 and 187.

<sup>8</sup> GB.343/INS/PV, paras 191–192, 195, 199 and 200.

8. Fourth, in relation to the legal repercussions of an amended 1998 Declaration for trade relations among Member States, most Governing Body members concurred with the Office analysis that the Conference decision would not give rise to new legal obligations for States parties to free trade agreements.<sup>9</sup> Nonetheless, many governments saw merit in inserting an appropriate clause in the Conference decision in order to clarify that the amended 1998 Declaration would not affect the rights and obligations of States parties to existing trade agreements.<sup>10</sup> One group drew attention to the fact that under international law unilateral declarations of States could at times create legal obligations and stressed the need for a comprehensive analysis of the impact the recognition of an additional fundamental principle would have on trade.<sup>11</sup>
9. This document was prepared in response to the Governing Body's request for a draft resolution based on the guidance and views expressed during the discussion of GB.343/INS/6. It addresses certain key elements of the Conference resolution, namely the amendment to paragraph 2 of the 1998 Declaration, the inclusion of a saving clause, and consequential amendments to be introduced in the 2008 ILO Declaration on Social Justice for a Fair Globalization (2008 Declaration), the Global Jobs Pact and existing international labour standards. The other three matters, that is the terminology to be used, the occupational safety and health instrument(s) to be recognized as fundamental and the possible legal effects on existing trade agreements are addressed separately in the background document (GB.344/INS/6(Add.1)).
10. The text of a draft resolution is provided in Appendix I as a basis for the Governing Body's discussion accompanied by an annex comprising the aforementioned consequential amendments to the 2008 Declaration and the Global Jobs Pact. Appendix II provides the text of a draft Convention and a draft Recommendation concerning the consequential amendments to existing international labour standards, which could be considered at a subsequent session of the International Labour Conference.

## ► The draft Conference resolution

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11. In accordance with the Governing Body's decision that the inclusion of safe and healthy working conditions in the ILO's framework of fundamental principles and rights at work should take the form of a Conference resolution amending the 1998 Declaration and not that of a separate, self-standing declaration, the draft resolution proposes to introduce the additional fundamental principle of protection of safe and healthy working [conditions/environment]<sup>12</sup> in a new subparagraph (e) of paragraph 2 of the 1998 Declaration, immediately following the four fundamental principles currently listed in that paragraph.
12. As the fundamental principle in question shares the same constitutional basis as the existing ones (since the preamble of the Constitution and the Declaration of Philadelphia contain express references to protection against sickness, disease and injury arising out of employment and adequate protection for the life and health of workers in all occupations), it would be suitable to add it as a separate fifth principle in the current enumeration of

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<sup>9</sup> GB.343/INS/PV, paras 186, 191–192 and 195.

<sup>10</sup> GB.343/INS/PV, paras 190–192.

<sup>11</sup> GB.343/INS/PV, para. 183.

<sup>12</sup> For detailed analysis on the terminology to be used, see GB.344/INS/6(Add.1), Part I.

fundamental principles and rights at work. Thus, under the amended 1998 Declaration, the Conference would declare that all Member States have an obligation by virtue of their membership in the Organization to respect, promote and realize in good faith the principle of protection of safe and healthy working [conditions/environment] in the same manner and level of commitment as the remaining principles spelled out in paragraph 2 of the 1998 Declaration while recalling that the protection of safety and health in employment and occupation is a shared responsibility of governments and employers' and workers' organizations. The wording used to give expression to the additional fundamental principle should remain anchored in the provisions of the ILO Constitution while taking account of contemporary usage as reflected in relevant recent international labour standards.

13. The proposed amendment to paragraph 2 of the 1998 Declaration would not result in any other modifications in the text of the Declaration with the exception of the word "four" (that is the number of categories of fundamental principles and rights specified in the Declaration) which would be replaced by the word "five" in paragraphs II.A.2 and III.A.1 of the annex.
14. In addition, consequential amendments should be introduced in the 2008 Declaration and the Global Jobs Pact; those amendments are detailed in the annex to the draft resolution. As regards the 2008 Declaration in particular, the inclusion of safe and healthy working [conditions/environment] as a fifth fundamental principle and right at work necessarily implies it no longer being listed under the strategic objective of social protection and being classified instead under the strategic objective of fundamental principles and rights at work. This would be in line with the objectives of rationalization and visibility of the ILO mandate underlying the identification of four strategic objectives in the 2008 Declaration.<sup>13</sup> It would also ensure that all five categories of fundamental principles and rights at work are addressed in the same manner in the interest of clarity and coherence of the ILO's framework on fundamental principles and rights at work. The impact of this shift on the practical modalities of the recurrent discussion on labour protection in 2023 and the recurrent discussion on fundamental principles and rights at work in 2024 would be discussed by the Governing Body as part of its follow-up to the Conference resolution.<sup>14</sup>
15. Limited amendments would also be needed to the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy but these should be adopted by the Governing Body as part of its follow-up to the Conference resolution.
16. Consistent with Office drafting practices, it is proposed that the amended 1998 Declaration should keep its current title with the addition of the words "as amended" at the end. This would also ensure the necessary differentiation between the original 1998 Declaration and the amended text for reasons of clarity and legal certainty. It is recalled that the term "revised" is used when a newly negotiated instrument replaces a previous one in its entirety whereas the term "amended" is used to denote the consolidated version of an instrument which has undergone one or more amendments to specific provisions. In this latter case, by reason of its consolidated nature, the instrument retains the year of its original adoption, as per consolidated ILO standards (for instance, the Maritime Labour Convention, 2006, as amended or the Seafarers' Identity Documents Convention (Revised), 2003, as amended (No. 185)).

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<sup>13</sup> ILO, *Strengthening the ILO's capacity to assist its Members' efforts to reach its objectives in the context of globalization: Continuation of the discussion on strengthening the ILO's capacity and possible consideration of an authoritative document, possibly in the form of a Declaration or any other suitable instrument, together with any appropriate follow-up, and the form they may take*, ILC.97/VI, 2008, paras 14 and 27.

<sup>14</sup> Under Part II(B) of the follow-up to the 2008 Declaration, the modalities of recurrent discussions are to be decided by the Governing Body.

Attributing a different title to the amended 1998 Declaration followed by the year of adoption “2022” would be suitable for a stand-alone Declaration.

17. As explained in greater detail below, the draft resolution would include a saving clause to specify that the amended 1998 Declaration is without prejudice to the rights and obligations of Member States arising out of existing trade agreements, or, in other words, that the labour provisions and express references to the 1998 Declaration or to the existing fundamental principles and fundamental Conventions that many of those trade agreements contain may not be interpreted evolutively to include binding commitments with respect to the protection of safe and healthy working [conditions/environment].
18. As per the Governing Body decision, the Conference is expected at its next session to determine the occupational safety and health instrument(s) which should be classified as fundamental in addition to the eight Conventions currently listed as such.<sup>15</sup> The draft resolution would designate accordingly the Convention, or Conventions, which should henceforth be considered “fundamental” within the meaning of the amended 1998 Declaration, i.e. Conventions that express and develop the constitutional principle of protection of safe and healthy working [conditions/environment] in the form of specific rights, and which are recognized as fundamental both inside and outside the Organization. Further, the designated Convention or Conventions would serve to guide ILO technical assistance and the application of the promotional follow-up through the annual review and the recurrent report.
19. It is important to recall, in this respect, that the draft resolution would not create a new constitutional principle but would simply recognize or solemnly affirm that an existing constitutional principle should henceforth be recognized as being of fundamental importance for the attainment of the objectives of the Organization. The resolution would thus have a “declaratory” and not a “constitutive” effect, or, as has been stressed with reference to the 1998 Declaration itself, “fundamental rights are not fundamental because the Declaration says so; the Declaration says that they are fundamental because they are”.<sup>16</sup>
20. Finally, as regards the process for updating references to the 1998 Declaration or to the four categories of fundamental principles and rights contained in existing international labour instruments, this would necessitate the adoption of a revising Convention and a revising Recommendation at a future session of the Conference. Accordingly, it is proposed that the draft resolution invites the Governing Body to take appropriate action in this respect. More detailed explanations are provided in the following sections.

## Inclusion of a saving clause

21. As indicated above, during the discussions at the 343rd Session (November 2021), the point was made by several Governing Body members that it would be useful to include appropriate wording in the amended 1998 Declaration – in the form of a saving clause – which would clearly indicate that the rights and obligations of Member States arising from bilateral or plurilateral trade agreements to which they are parties would remain unaffected.

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<sup>15</sup> For detailed explanations on the different occupational safety and health Conventions that could possibly be recognized as fundamental, see GB.344/INS/6(Add.1), Part II.

<sup>16</sup> ILO, *Consideration of a possible Declaration of principles of the International Labour Organization concerning fundamental rights and its appropriate follow-up mechanism*, ILC.86/VII, Geneva, 1998, section II.

22. Saving clauses, also known as conflict or compatibility clauses, are frequently inserted in treaties to regulate the relationship between the international agreement employing the clause and other treaties in order to resolve or prevent conflicts between provisions stemming from different legal instruments.<sup>17</sup> The International Law Commission has defined a conflict clause in an international treaty as a clause “intended to regulate the relation between the provisions of the treaty and those of another treaty or of any other treaty relating to the matters with which the treaty deals”.<sup>18</sup> Saving clauses serve as guidance for the interpretation of the instruments concerned and can take a variety of forms.
23. Saving clauses are not unknown to the ILO and have so far been included in two Conventions, namely the Indigenous and Tribal Peoples Convention, 1989 (No. 169), and the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185). Concretely, Article 1(3) of Convention No. 169 provides that “the use of the term ‘peoples’ in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law”<sup>19</sup> whereas Article 2(6) of Convention No. 185 specifies that “this Convention shall be without prejudice to the obligations of each Member under international arrangements relating to refugees and stateless persons”.<sup>20</sup>
24. Saving clauses are principally used in international treaties. However, nothing would prevent the Conference from inserting such a clause in a non-binding instrument such as a resolution amending the 1998 Declaration.<sup>21</sup>
25. A saving clause concerning trade agreements could be placed either in the preamble or in the operative part of the Conference resolution to clarify that nothing in the text of the resolution would affect the rights and obligations of a Member arising from existing trade agreements to which it is a party. By doing so, the Conference would remove any ambiguity as to the legal consequences an amended 1998 Declaration might have on existing trade agreements. Thus, a saving clause would effectively pre-empt any evolutive or dynamic interpretation of labour provisions in existing free trade agreements that might consist in including the safe and healthy working conditions among the fundamental principles and rights at work without the express consent of the States concerned.<sup>22</sup> At the same time it goes without saying that a saving clause could not prevent States from modifying at their discretion trade agreements to which they are parties, in agreement with the other State signatories, in order to align the labour provisions of those agreements with the amended 1998 Declaration.
26. A reference to “trade agreements” is believed to be broad enough to include all types of international treaties which aim at facilitating inter-state trade through wide-ranging taxes, tariff and trade concessions and investment guarantees, and which contain provisions and

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<sup>17</sup> Nele Matz-Lück, *Treaties, Conflict Clauses*, Max Planck Encyclopaedia of Public International Law, 2006.

<sup>18</sup> *Draft Articles on the Law of Treaties with commentaries*, Yearbook of the International Law Commission, 1966, Vol. II, 214.

<sup>19</sup> The clause was the result of protracted discussions following reservations expressed by many Member States about the use of the term “peoples” and its possible implications on the right of self-determination; see ILC, 75th Session, [Record of Proceedings](#), 32/5 and ILC, 76th Session, [Record of Proceedings](#), 25/7.

<sup>20</sup> The clause was introduced based on suggestions that it would be more appropriate to address the question of issuing identity documents to refugees in other more encompassing international treaties; see ILC, 91st Session, Report VII(2B), 3.

<sup>21</sup> For instance, a saving clause is found in paragraph 6 of the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205) and specifies that “the provisions of this Recommendation are without prejudice to the rights and obligations of Members under international law, in particular international humanitarian law, international refugee law and international human rights law”.

<sup>22</sup> For more on the evolutive or dynamic interpretation of treaties under Article 31 of the Vienna Convention on the Law of Treaties, see GB.344/INS/6(Add.1), paras 119–127.

standards addressing labour matters. In contrast, a saving clause would not need to make specific reference to unilateral trade arrangements, such as the generalized system of preferences (GSP), since those incentive schemes are not negotiated agreements and therefore the resolution amending the 1998 Declaration could not have any effect on them.<sup>23</sup>

27. The position of the saving clause should be determined depending on the emphasis that the Governing Body or the Conference may wish to place on that clause. In that regard, a saving clause would carry more weight if it were included in the operative part rather than in the preamble.
28. Based on the information available and the preliminary views of constituents, it is proposed to include a saving clause as the last operative paragraph of the draft Conference resolution.

### Consequential amendments to existing standards

29. The adoption of a Conference resolution amending paragraph 2 of the 1998 Declaration would entail, in the interest of clarity and consistency, consequential amendments to those international labour Conventions and Recommendations adopted after 1998 which contain a reference to either the 1998 Declaration or the current four categories of fundamental principles and rights at work, with a view to aligning those references with the provisions of the amended 1998 Declaration. Even though these amendments would be narrow and of a technical nature, they are formal amendments to standards adopted by the Conference, and as such, may only be introduced through a partial revision of the standards in question.
30. In fact, the partial revision of several Conventions through a single instrument has already been undertaken twice in the past. In 1946, the Conference adopted the Final Articles Revision Convention, 1946 (No. 80), with a view to partially revising the Conventions adopted during the first 28 sessions for the purpose of introducing amendments consequential to the dissolution of the League of Nations and the amendment of the ILO Constitution.<sup>24</sup> A similar exercise was undertaken in 1961 when the Conference adopted the Final Articles Revision Convention, 1961 (No. 116), with a view to partially revising Conventions adopted during the first 32 sessions for the purpose of standardizing the provisions regarding the preparation of reports by the Governing Body on the working of Conventions.<sup>25</sup>
31. It should be noted that Conventions Nos. 80 and 116 only addressed the partial revision of previously adopted Conventions and that no action was taken with respect to relevant Recommendations.<sup>26</sup> Since then, however, a specific procedure – article 51 of the Conference Standing Orders – has been adopted for the revision of Conventions and Recommendations. Accordingly, the partial revision of the Recommendations adopted after 1998 that contain

<sup>23</sup> For more on the possible impact of the resolution on the GSP conditionalities, see GB.344/INS/6(Add.1), paras 157–159.

<sup>24</sup> According to Article 1(1) of Convention No. 80, in the texts of the Conventions adopted by the International Labour Conference in the course of its first 25 sessions the words “Secretary-General of the League of Nations” and “Secretariat” would be replaced respectively by the words “Director-General of the International Labour Office” and “International Labour Office”.

<sup>25</sup> Under Article 1 of Convention No. 116, the final Article providing for the presentation by the Governing Body to the Conference of a report on the working of the Convention would be amended to provide for a report to be presented to the Conference at such times as the Governing Body might consider necessary.

<sup>26</sup> In the context of the discussions that led to the adoption of Convention No. 80, however, a proposal had been made by the 1946 Conference Committee on constitutional questions that the Office should revise the text of Recommendations so as to reflect the same modifications as those included in the revised Conventions; see ILC, 29th Session, 1946, Record of Proceedings, Second Report of the Committee on Constitutional Questions, Appendix VI, 359.

references to the 1998 Declaration or to the current categories of fundamental principles and rights at work, would equally require the formal adoption of a revising instrument.

32. To facilitate the Governing Body's concrete understanding of the scope of the revision required, and without pre-empting any decision on the terminology to be used, the Convention(s) to be recognized as fundamental or the timing for the examination of such item by the Conference, the text of a draft Convention and a draft Recommendation appear in Appendix II. If so decided at the 110th Session (2022), the earliest occasion for the Conference to examine those potential new instruments would arise at its 111th Session (2023).
33. The proposed Convention would partially revise seven Conventions and one Protocol.<sup>27</sup> The consequential amendments are enumerated in draft Article 1 and seek to update the references to the 1998 and the 2008 Declarations, the categories of fundamental principles and rights at work and the list of fundamental Conventions wherever these appear in the instruments concerned.
34. The proposed Convention would have three practical consequences. First, a Member which would ratify any of the eight instruments concerned after its entry into force would be deemed to have ratified that instrument in its amended version. Second, by ratifying the Convention, a Member which would have previously ratified any of the instruments concerned would continue to be bound by that instrument as modified by it. Third, upon its entry into force, the Office would ensure that only the amended text of the instruments concerned appear in all collections of standards, whether in printed or electronic form.
35. The proposed Recommendation would partially revise seven Recommendations.<sup>28</sup> The consequential amendments are listed in draft Paragraph 1 and – like the corresponding provision of the revising Convention – seek to update the references to the 1998 and the 2008 Declarations, the categories of fundamental principles and rights at work and the list of fundamental Conventions wherever these appear in the instruments concerned. The Recommendation would take effect on the day of its adoption and the Office would follow up by including the text of the amended Recommendations in all ILO collections of standards.
36. Should the Conference decide to proceed with the consequential amendments to the 15 international labour instruments referenced above, the adoption of the proposed Convention and Recommendation would need to be placed on the agenda of a future session of the Conference as required under article 51 of the Standing Orders of the Conference. Accordingly, the Conference resolution under consideration could invite the Governing Body to take the necessary steps in order to introduce all relevant consequential amendments into existing international labour standards.

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<sup>27</sup> These eight instruments are the following: Worst Forms of Child Labour Convention, 1999 (No. 182); Maternity Protection Convention, 2000 (No. 183); Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187); Maritime Labour Convention, 2006, as amended (MLC, 2006); Work in Fishing Convention, 2007 (No. 188); Domestic Workers Convention, 2011 (No. 189); Violence and Harassment Convention, 2019 (No. 190); Protocol of 2014 to the Forced Labour Convention, 1930.

<sup>28</sup> These seven instruments are the following: Promotion of Cooperatives Recommendation, 2002 (No.193); Human Resources Development Recommendation, 2004 (No.195); Employment Relationship Recommendation, 2006 (No.198); HIV and AIDS Recommendation, 2010 (No. 200); Social Protection Floors Recommendation, 2012 (No. 202); Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204); Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205).

## ► Draft decision

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**37. The Governing Body requested the Director-General:**

- (a) to prepare a draft resolution regarding the 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, for consideration at the 110th Session (2022) of the International Labour Conference taking into account the guidance provided and the views expressed during the discussion of documents GB.344/INS/6 and GB.344/INS/6(Add.1); and**
- (b) to organize to that effect informal consultations to facilitate the examination of the draft resolution by the Conference.**

## ► Appendix I

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### **Draft resolution on the inclusion of safe and healthy working [conditions/environment] in the ILO's framework of fundamental principles and rights at work**

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

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

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

Desirous to include safe and healthy working [conditions/environment] in the ILO's framework of fundamental principles and rights at work as a means of furthering the visibility and impact of the ILO's core values and Decent Work Agenda,

Noting that protecting safety and health in respect of employment and occupation is a shared responsibility of governments, employers and workers and calls for collective engagement and action,

Considering that this should take the form of an amendment to the ILO Declaration on Fundamental Principles and Rights at Work,

Decides to amend paragraph 2 of the ILO Declaration on Fundamental Principles and Rights at Work to include after the words "elimination of discrimination in respect of employment and occupation;" the words "; and (e) the effective protection of [a] safe and healthy working [conditions/environment].", and make the consequential amendments to the Annex of the ILO Declaration on Fundamental Principles and Rights at Work as well as to the ILO Declaration on Social Justice for a Fair Globalization and the Global Jobs Pact, as specified in the annex to the present resolution.

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

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

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 and to the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.

Declares further 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.

## Annex. Consequential amendments to the Annex of the ILO Declaration on Fundamental Principles and Rights at Work

### Paragraph II.A.2

#### A. Purpose and scope

...

2. The follow-up will cover the ~~four~~ five categories of fundamental principles and rights specified in the Declaration.

### Paragraph III.A.1

#### A. Purpose and scope

1. The purpose of the Global Report is to provide a dynamic global picture relating to the ~~four~~ five categories of fundamental principles and rights at work noted during the preceding period, and to serve as a basis for assessing the effectiveness of the assistance provided by the Organization, and for determining priorities for the following period, including in the form of action plans for technical cooperation designed in particular to mobilize the internal and external resources necessary to carry them out.

## Consequential amendments to the ILO Declaration on Social Justice for a Fair Globalization

### Fourth preambular paragraph

Convinced that the International Labour Organization has a key role to play in helping to promote and achieve progress and social justice in a constantly changing environment: ...

- drawing on and reaffirming the ILO Declaration on Fundamental Principles and Rights at Work ~~and its Follow-up (1998)~~, as amended, in which Members recognized, in the discharge of the Organization's mandate, the particular significance of the fundamental rights, namely: freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, ~~and~~ the elimination of discrimination in respect of employment and occupation, and the effective protection of [a] safe and healthy working [conditions/environment];

### Part I.A(ii)

- the extension of social security to all, including measures to provide basic income to all in need of such protection, and adapting its scope and coverage to meet the new needs and uncertainties generated by the rapidity of technological, societal, demographic and economic changes; and  
~~healthy and safe working conditions; and~~

## Consequential amendments to the Global Jobs Pact

### Paragraph 9

9. Action must be guided by the Decent Work Agenda and commitments made by the ILO and its constituents in the ~~2008~~ ILO Declaration on Social Justice for a Fair Globalization, as amended. ...

### Paragraph 14(1)

14. International labour standards create a basis for and support rights at work and contribute to building a culture of social dialogue particularly useful in times of crisis. In order to prevent a downward spiral in labour conditions and build the recovery, it is especially important to recognize that:

- (1) Respect for fundamental principles and rights at work is critical for human dignity. It is also critical for recovery and development. Consequently, it is necessary to increase:
  - (i) vigilance to achieve the elimination and prevention of an increase in forms of forced labour, child labour and discrimination at work as well as the effective protection of [a] safe and healthy working [conditions/environment]; and
  - (ii) respect for freedom of association, the right to organize and the effective recognition of the right to collective bargaining as enabling mechanisms to productive social dialogue in times of increased social tension, in both the formal and informal economies.

### Paragraph 28

The ILO commits to allocating the necessary human and financial resources and working with other agencies to assist constituents who request such support to utilize the Global Jobs Pact. In doing so, the ILO will be guided by the ~~2008~~ ILO Declaration on Social Justice for a Fair Globalization, as amended, and accompanying resolution.

## ► Appendix II

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### **Draft Convention and draft Recommendation on amendments consequential upon the adoption by the Conference of the resolution concerning the inclusion of safe and healthy working conditions in the ILO's framework of fundamental principles and rights at work (for discussion at a session of the Conference subsequent to its 110th Session (2022))**

#### **Draft Convention**

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its ... Session on ... June 20..., and

Having decided upon the adoption of certain proposals with regard to the partial revision of the Worst Forms of Child Labour Convention, 1999 (No. 182), the Maternity Protection Convention, 2000 (No. 183), the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), the Maritime Labour Convention, 2006, as amended (MLC, 2006), the Work in Fishing Convention, 2007 (No. 188), the Domestic Workers Convention, 2011 (No. 189), the Violence and Harassment Convention, 2019 (No. 190) and the Protocol of 2014 to the Forced Labour Convention, 1930 for the purpose of introducing therein certain amendments consequential upon the adoption of the Resolution on the inclusion of safe and healthy working conditions in the ILO's framework of fundamental principles and rights at work, and

Considering that these proposals must take the form of an international Convention,

adopts this ... day of ... of the year two thousand and twenty ... the following Convention, which may be cited as the Safe and Healthy Working Conditions (Consequential Amendments) Convention, 20...:

#### *Article 1*

1. The words "the ILO Declaration on Fundamental Principles and Rights at Work, as amended" shall be substituted for the words "the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, 1998" or any variant contained in the Preamble of the Worst Forms of Child Labour Convention, 1999 (No. 182), the Maternity Protection Convention, 2000 (No. 183), the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), the Maritime Labour Convention, 2006, as amended (MLC, 2006), the Work in Fishing Convention, 2007 (No. 188), the Domestic Workers Convention, 2011 (No. 189) and the Protocol of 2014 to the Forced Labour Convention, 1930.

2. The words "the ... Convention, ... (No. )" and "the ... Convention, ... (No. )" shall be added in the third preambular paragraph of the Maritime Labour Convention, 2006, as amended (MLC, 2006), the fifth preambular paragraph of the Work in Fishing Convention, 2007 (No. 188) and the twelfth preambular paragraph of the Protocol of 2014 to the Forced Labour Convention, 1930.

3. The words "the effective protection of [a] safe and healthy working [conditions] [environment]" shall be added in Article III, new subparagraph (e), of the Maritime Labour

Convention, 2006, as amended (MLC, 2006), in Article 3, paragraph 2, new subparagraph (e), of the Domestic Workers Convention, 2011 (No. 189) and in Article 5 of the Violence and Harassment Convention, 2019 (No. 190).

4. The words “the ILO Declaration on Social Justice for a Fair Globalization, as amended” shall be substituted for the words “the ILO Declaration on Social Justice for a Fair Globalization” in the Preamble of the Domestic Workers Convention, 2011 (No. 189) and the Protocol of 2014 to the Forced Labour Convention, 1930.

#### *Article 2*

1. Any Member of the Organization which, after the date of the coming into force of this Convention, communicates to the Director-General of the International Labour Office its formal ratification of any of the Conventions, or of the Protocol, referred to in Article 1 shall be deemed to have ratified that Convention, or the Protocol, as amended by this Convention.

2. Upon ratifying this Convention, each Member of the Organization which has previously ratified any of the Conventions, or the Protocol, referred to in Article 1 recognizes that it shall continue to be bound by its provisions as amended by this Convention.

#### *Article 3*

Two copies of this Convention shall be authenticated by the signature of the President of the Conference and of the Director-General of the International Labour Office. Of these copies one shall be deposited in the archives of the International Labour Office and the other shall be communicated to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations. The Director-General shall communicate a certified copy of this Convention to each of the Members of the International Labour Organization.

#### *Article 4*

1. The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

2. Subject to paragraph 3 of this Article, this Convention shall come into force at the date on which the ratifications of two Members have been registered with the Director-General. Thereafter, this Convention shall come into force for any Member on the date on which its ratification is registered.

3. This Convention shall come into force for the Maritime Labour Convention, 2006, as amended (MLC, 2006) in accordance with its Article XIV, paragraphs 4 and 6.

...

## **Draft Recommendation**

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its ... Session on ... June 20..., and

Having decided upon the adoption of certain proposals with regard to the partial revision of the Promotion of Cooperatives Recommendation, 2002 (No. 193), the Human Resources Development Recommendation, 2004 (No. 195), the Employment Relationship Recommendation, 2006 (No. 198), the HIV and AIDS Recommendation, 2010 (No. 200), the Social Protection Floors Recommendation, 2012 (No. 202), the Transition from the Informal to

the Formal Economy Recommendation, 2015 ( No. 204), the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205) for the purpose of introducing therein certain amendments consequential upon the adoption of the Resolution on the inclusion of safe and healthy working conditions in the ILO's framework of fundamental principles and rights at work, and

Considering that these proposals must take the form of an international Recommendation,

adopts this ... day of June of the year two thousand and twenty ... the following Recommendation, which may be cited as the Safe and Healthy Working Conditions (Consequential Amendments) Recommendation, 20...:

1. (1) The words "the ILO Declaration on Fundamental Principles and Rights at Work, as amended" shall be substituted for the words "the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, 1998" or any variant contained in the Preamble of the Promotion of Cooperatives Recommendation, 2002 (No. 193), the Human Resources Development Recommendation, 2004 (No. 195), the Employment Relationship Recommendation, 2006 (No. 198), the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), and the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), as well as in Paragraph 8(1)(a) of the Promotion of Cooperatives Recommendation, 2002 (No. 193), Paragraph 35 of the HIV and AIDS Recommendation, 2010 (No. 200), and Paragraphs 23(a) and 41(c) of the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205).

(2) In the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204):

- (a) the word "eight" shall be replaced by "..." in the eighth preambular paragraph;
- (b) the words "the effective protection of a safe and healthy working [conditions/environment]" shall be added in paragraph 16, new subparagraph (e); and
- (c) in the annex, the words "..." shall be deleted from the list of instruments under the subheading "Other instruments" and shall be added under the subheading "Fundamental Conventions".

(3) The words "the ILO Declaration on Social Justice for a Fair Globalization, as amended" shall be substituted for the words "the ILO Declaration on Social Justice for a Fair Globalization, 2008" or any variant contained in the Preamble of the Social Protection Floors Recommendation, 2012 (No. 202), the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204) and the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205).

2. The Director-General of the International Labour Office shall cause official texts of the Promotion of Cooperatives Recommendation, 2002 (No. 193), the Human Resources Development Recommendation, 2004 (No. 195), the Employment Relationship Recommendation, 2006 (No. 198), the HIV and AIDS Recommendation, 2010 (No. 200), the Social Protection Floors Recommendation, 2012 (No. 202), the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), as modified by the amendments set forth in Paragraph 1 of this Recommendation, to be prepared and shall communicate certified copies of these texts to each of the Members of the Organization.