



110th Session of the International Labour Conference (May-June 2022)

Agenda item VII

Briefing Note for Workers' Delegates

Inclusion of safe and healthy working conditions in the ILO's framework of fundamental principles and rights at work

Context

Already at the time of the adoption of the 1998 Declaration on Fundamental Principles and Rights at Work it was clear for workers that occupational safety and health was as fundamental as the other principles and rights. It applies to all workers in all sectors and occupations. The human right to health does not end where employment starts. It should therefore have been included in the 1998 Declaration from the start. The fact that it was omitted is an anomaly. During the Recurrent Discussion on Fundamental Principles and Rights at Work in 2017, workers supported the position of the European Union that the ILO should explore the feasibility to include occupational health and safety into fundamental principles and rights at work and have pushed since then for such inclusion during key discussions in the ILO.

The Centenary Declaration adopted in 2019 declared that “safe and healthy working conditions are fundamental to decent work”. The resolution requested the Governing Body “to consider, as soon as possible, proposals for including safe and healthy working conditions in the ILO’s framework of fundamental principles and rights at work”.

The [report](#) submitted to the Conference outlines the process that has led to the draft resolution on the inclusion of Occupational Safety and Health in the framework of fundamental principles and rights at work of the ILO. It also describes the scope and significance of the proposed amendment to the ILO Declaration on Fundamental Principles and Rights at Work, 1998 (“the 1998 Declaration”), and provides an overview of key aspects of the draft resolution.

The matter will be treated in the General Affairs Committee (GAC) of the ILC, and any additional items sent to the General Affairs Committee by the Conference, such as urgent resolutions. The General Affairs Committee operates under the Standing Orders of the Conference (ILCSO) (article 7, article 18, paras 6 and 7, and articles 35 to article 43), and the Operational arrangements for the 110th Session of the International Labour Conference. This means that while in the General Affairs Committee normally only the 14 Worker Members (normally GB members, titular members or deputies) will have the chance to participate in the Committee discussions, in this discussion accredited delegates who has registered to the committee, beyond the GB membership, can participate. The General Affairs Committee will also deal with the approval of amendments to the Code of the Maritime Labour Convention, 2006. This GAC is not expected to re-open the amendments agreed during the Special Tripartite Committee of the Maritime Labour Convention, 2006 held in May 2022.

Structure of the discussion

A draft resolution has been prepared by the Office to serve as a basis for discussions at the ILC, following Governing Body discussions and informal tripartite consultations. The draft text can be amended in its entirety, but since it is based on consensus coming out of preparatory discussions, the Workers' Group may wish to stress to all groups the need to limit the number of amendments. to the issues where there is not yet tripartite agreement, namely:

1. the determination of occupational safety and health as a ‘shared responsibility’ (draft fourth preambular paragraph)
2. the formulation of the new fundamental principle and right at work (draft operative paragraph 1),
3. the identification of fundamental conventions (draft operative paragraph 3)

4. and the wording of the saving clause (draft operative paragraph 5).

Opening statements will be made at the start of the discussion, immediately followed by the possibility for all groups to submit amendments that will be discussed in as many subsequent sittings as the Committee may need. As usual practice, Workers' Group amendments will be tabled after discussion in the Group by the Secretariat of the Workers' Group.

The tentative workplan envisages to complete the work on June 4 while planning for additional sittings should they be necessary. The Workers' Group should support the in order to complete its work by the end of the first week. Worker delegates are advised to regularly check the Conference App for possible changes in the schedule of meetings.

Workers' Group position

1. The determination of occupational safety and health as a 'shared responsibility' (draft fourth preambular paragraph)

This proposal comes from the Employers' group, and has not received wide support, with only a few governments supporting it in the preparatory phase. The Workers' Group cannot support this formulation. The notion of 'shared responsibility' gives the impression of equal responsibility of governments, employers and workers which is not what ILO standards say. A safe and healthy working environment is a worker's right. Governments and employers have correlating fundamental duties and responsibilities. The OSH Conventions raise complementary roles, duties and responsibilities as well as a 'shared commitment' of governments, employers and workers to a safe and healthy working environment. Looking at the responsibilities and roles for health and safety in C155, Governments and Employers have the primary responsibility including all responsibilities for health and safety expenditures. Workers are (only) called upon to participate, cooperate and report at the level of the undertaking to ensure effective implementation. This reflects the shared commitment arising from our complementary roles and responsibilities, but certainly not a shared responsibility.

This single duty on workers must be considered in the context of a series of rights – information, instruction, training and protection from victimisation. There is no parallel rights/duties equation for either employers or governments (when looking at the duties versus rights formulation in C. 155 we have the following breakdown: Governments – 14 duties and employers 11, while workers have one in addition to 9 references to rights.) During the preliminary discussions, several alternative text suggestions were on the table. The Workers' Group may consider to support the following alternative to the proposed wording in the draft resolution, which is more in line with the framework of principles and rights in existing OSH standards: "Noting that a safe and healthy working 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". The Workers' group may wish to acknowledge the shared commitment of workers, employers and governments to a safe and healthy working environment guided by the principle that "OSH is a worker's right with correlating fundamental duties and responsibilities for governments and employers" when considering alternative proposals.

2. The formulation of the new fundamental principle and right at work (draft operative paragraph 1)

In respect of the terminology to be used, **the Workers' Group has expressed support for 'the right to a safe and healthy working environment'** because it is the formulation that ensures consistency with the ILO health and safety instruments of general application, notably Conventions 155, 161 and 187. This is also the terminology used in the UN sustainable development Goal 8, target 8.8. This concept better reflects the different interactions in the

workplace that impact safety and health at work and that need to be taken into account for the protection of workers against sickness, disease and injury arising out of employment.

The terminology of 'safe and healthy working conditions' is a more narrow concept. It is used in the Centenary Declaration. However, the intention of the Centenary Declaration was merely to seek a mechanism to place the item on a future Conference agenda, not to define the exact terminology to be inserted in the revised 1998 Declaration.

3. The identification of fundamental conventions (draft operative paragraph 3)

To the Workers' Group, the **inclusion of Convention 155 is an absolute must**. It sets out clearly the responsibilities of governments, the duties of employers and the rights of workers and their representatives with regard to health and safety. It thus codifies core principles of OSH. Importantly, Convention 155 reflects the protection dimension included in the ILO constitution and is centred on the principles of prevention of occupational accidents, diseases and deaths. In addition to the formulation, implementation and periodical review of a national policy on OSH, Convention 155 includes specific requirements regarding the rights, duties and responsibilities of employers, workers and their representatives at the level of the undertaking. It is widely recognised in the health and safety world, and among occupational health and safety professionals, as the primary international instrument addressing the organisation of health and safety at work, including risk assessment, the role of governments and employers, consultation with and rights for workers.

The international trade union movement and the Workers' Group has **also always argued in favour of the inclusion of Convention 161 as a core convention**. Occupational health services are key to identify and address potential causes of work-related ill-health and injury by identifying risks in the workplace and ensuring the early recognition of any adverse impact on workers' health. Convention 161 is closely linked to C155, given the close relationship between the development of a national OSH policy and the establishment of occupational health services. Convention 155 refers to occupational health services but without regulating them. Effective health services enable employers to retain valuable, trained staff through preventive approaches and the provision of rehabilitation and support for those developing work-related health problems. They also confer significant savings to Governments, employers and the wider economy on insurance, compensation, health care, welfare and other costs. Occupational health services are also necessary to ensure that workers with disabilities or health concerns can work safely. It is worth noting that of the nearly 2 million work-related deaths that the ILO and WHO have identified as clearly occupational in nature, over 80% are the result of occupational diseases and that only 20% of formal sector workers currently have access to an occupational health service. It is therefore occupational health that deserves the greatest attention if we are to make a major impact on work-related deaths. Although all these arguments are still valid, in the preparatory discussions, no other group (neither Employers, nor Governments) has supported the Workers' group position, and there are no signals that these positions will change during the ILC. The Workers' group should be ready to accept this reality, and we may be able to find other ways to promote C161 once occupational health and safety becomes a fundamental right.

Employers have argued in favour of Convention 187, and also argue that this should be the only core convention. Convention 187 builds on the policy, principles and processes defined in

Convention 155 and provides further guidance on how to develop the national policy envisaged in article 4 of C155. It is thus providing additional guidance on how to implement the obligations contained in C155 but it does not cover the rights and obligations set out in C155 and is therefore not strictly speaking a rights convention at all so it would be strange to make it a fundamental convention. It is largely aimed at governments to promote active steps towards achieving and maintaining a safe and healthy working environment through a national policy; a national system; and national programmes on OSH. From the preparatory discussions, it seems clear that the majority of governments is in favour of a combination of C155 and C187. This could be considered an acceptable outcome for the Workers' Group, unlike only C187 being considered fundamental.

Ratification rates should not be considered as a criteria to decide whether a Convention is fundamental or not. There is ample evidence that ILO standards have an impact beyond their ratification levels and can provide useful guidance to Governments. Moreover, the promotional aspect of the 1998 Declaration coupled with ILO technical assistance has shown how instrumental the Declaration has been to increase ratification levels of conventions declared as core, notably the ones on child labour, with universal ratification of Convention 182 achieved in 2020. We would therefore also expect that declaring some OSH conventions fundamental would assist in increasing their ratification rates. In any case, looking at ratification rates, it is clear that C155 with 74 ratifications has the highest rate.

4. and the wording of the saving clause (draft operative paragraph 5).

The impact of a revision of the 1998 Declaration on free trade agreements would be up to the parties to these agreements to decide. This reflects a basic principle of international law. Regardless of a saving clause, it will be up to the parties to decide whether they keep referring to the 1998 Declaration in their agreements or want to modify them to take into account the amendments of 2022. The same would apply to the reference to ILO fundamental Conventions. Similarly, a country offering generalized schemes of preferences that include reference to FPRW would also need to take specific action to include the new FPRW. **The Workers' Group has always argued that we therefore do not see the need for a saving clause, but if there needs to be one (and there is broad support for this among governments and employers) it needs to be formulated in a simple and straightforward manner. The language in the draft resolution without brackets has therefore been supported by the Workers' Group in the preparatory phase.** The formulation as proposed is "5. 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."