

THE ILO DECLARATION ON FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK

IOE POSITION PAPER

INTERNATIONAL ORGANISATION OF EMPLOYERS

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BACKGROUND

The ILO Declaration on Fundamental Principles and Rights at Work (the “Declaration”) has taken on a new importance for enterprises in recent years. Though primarily addressed to member States, the Declaration has increasingly become a reference in the context of corporate social responsibility (“CSR”) and international framework agreements¹.

The purpose of this Position Paper is to provide employers with a general overview of the key features of the Declaration and to highlight priority areas and areas of concern to employers.

This paper is divided into three parts. Part I provides general background information about the Declaration and its Follow-up. Part II addresses the views of employers on the important aspect of the Declaration. Part III addresses how employers’ organizations can play a role in ensuring that the profile and credibility of the Declaration remain high.

THE DECLARATION

Adopted in 1998, the Declaration requires ILO member States to respect, promote and realize the following four fundamental principles:

- *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*
- *The elimination of discrimination in respect of employment and occupation*

Whereas ILO Conventions apply only to those member States which ratify them, the Declaration is relevant to all member States by virtue of their membership and Constitutional obligations towards the ILO. As such, the Declaration represents a political commitment by governments to respect, promote and realize the Declaration’s principles.

Furthermore, whereas ILO Conventions, if ratified, require governments to respect their strict legal detail, **the Declaration is intended to focus on the steps taken by governments to promote the four fundamental principles.**

¹ For further information and employers’ perspectives on CSR and international framework agreements, please refer to the following IOE publications: “Corporate Social Responsibility – An IOE Approach” (March 2003) and the accompanying Explanatory Note “The Role of Business within Society – Position Paper” (May 2005); “International Framework Agreements – An Employers’ Guide” (updated September 2005).

The Declaration was born out of an idea from the Employers' Group as an ILO proactive action to promote positive evolution towards universal fulfilment of internationally recognized values in the world of work. The Declaration was conceived as a preferred and more positive approach to the social clause - i.e. trade sanctions for violation of worker rights. It was felt that, by focussing on the fundamental principles that every member State should promote, the responsibility for creating and maintaining minimum national standards would remain where it should be – at the government level – rather than on individual companies.

Given the current emphasis on CSR, the purpose that gave rise to the Declaration is more relevant than ever. As companies are sometimes asked to fill gaps that governments fail to meet, the Declaration can be a very useful vehicle through which to reinforce the clear distinction between the role of governments and the role of business by providing an effective basis for governments that have as yet failed to give effect to the fundamental principles.

In addition, the fact that the four fundamental principles of the Declaration are referenced as the labour principles in the Global Compact has helped to raise the value and profile of the ILO Declaration.

THE FOLLOW-UP

To ensure that it is viewed as a meaningful and credible tool, particularly in the context of global and regional trade integration, the Declaration has two Follow-up mechanisms: the Review of Annual Reports and the Global Report.

The Review of Annual Reports (the “Annual Review”)

The purpose of this Follow-up is to provide an opportunity to review, each year, the efforts made in accordance with the Declaration by member States that have not ratified one or more of the eight core Conventions.²

The nature of the reporting required of member States under the Annual Review is very different from the reporting required under the ILO's supervisory machinery. Whereas the reports under the ILO's supervisory machinery submitted to the ILO by member States are intended to assess their adherence and compliance with specific obligations (for example, resulting from ratification of Conventions), the reports submitted by member States for the Annual Review are intended to demonstrate the progress in their efforts to promote the Declaration. Neither the efforts to be made nor the progress to be achieved is stipulated in the Declaration.

² Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87); Right to Organize and Collective Bargaining Convention, 1949 (No. 98); Forced Labour Convention, 1930 (No. 29); Abolition of Forced Labour Convention, 1957 (No. 105); Discrimination (Employment and Occupation) Convention, 1958 (No. 111); Equal Remuneration Convention, 1951 (No. 100); The elimination of child labour: Minimum Age Convention, 1973 (No. 138); and Worst Forms of Child Labour Convention, 1999 (No. 182).

The Annual Review fulfils a particularly useful function since it not only allows countries to report on promotion and progress but it allows countries that already comply in principle with the four fundamental principles to report on their national situation. This is important since the prescriptive nature of certain Conventions, or their prescriptive interpretation, means that, whereas respect for the principle is possible, adherence to detail, being contrary to national practice, is not.

The Declaration states that the International Labour Office³ (the “Office”) may call upon a group of experts appointed for the purpose of drawing attention to aspects of the Annual Review Report that might call for a more in-depth discussion. The Office has exercised this option and convened the group of experts every year since the first year the Annual Review was completed in 2000.

The report of the Annual Review is presented to the March session of the Governing Body⁴ where it is discussed. The main focus of the Governing Body discussions to date has been on the comments by the group of experts about various aspects of the report for the Annual Review.

The Global Report

The second Follow-up to the Declaration is the Global Report. The Declaration states that the purpose of the Global Report is to provide a dynamic global picture relating to each of the fundamental principles during the preceding four-year period. One of the four principles is explored every year.

The ILO uses a number of sources of information in drafting the Global Report. Included in the source of information are the reports prepared by member States. For States that have not ratified the core Conventions, this will include the information gathered through the Annual Review (discussed above). In the case of States that have ratified the core Conventions, information is taken from the reports that member States are, in light of their obligations under the ILO Constitution, required to submit to the ILO.

There are two important characteristics of the Global Report that are worth highlighting. First, it is discussed every year at a special session of the International Labour Conference (the “ILC”) in June. Secondly, the Declaration states that the Global Report is to serve as a basis for assessing the effectiveness of the assistance provided by the ILO and for determining priorities for the following period in the form of Action Plans for technical cooperation.

³ The International Labour Office is the permanent secretariat of the ILO and focal point for the overall activities that it prepares under the leadership of a Director-General.

⁴ The Governing Body is the executive council of the ILO and meets three times a year in Geneva. It takes decisions on ILO policy. It establishes the programme and the budget which it then submits to the Conference for adoption. The Governing Body also elects the Director-General.

THE ILC GLOBAL REPORT DISCUSSIONS

The discussion of the Global Report takes place every year during the second week of the ILC. It is tripartite with employers, workers and governments each participating in the discussion. Some selected NGOs may also be provided with time to make interventions at the end of the discussion.

An important objective of the discussion is to review the progress made by governments in giving effect to the principle addressed in the Global Report. Through their interventions, governments are encouraged to discuss the concrete steps they have taken over the past four years. Governments may also take this opportunity to communicate particular challenges they have faced in giving effect to the principle and call attention to any areas in which they could benefit from technical cooperation. The discussion allows for an assessment of the effectiveness of the ILO's assistance and opportunities for further assistance can also be identified.

Like the Global Report itself, an important purpose of the ILC Global Report discussions is to serve as a credible means for identifying areas in which the assistance of the ILO may help its members to give effect to the Declaration.

ACTION PLANS & TECHNICAL COOPERATION

Using the Global Report and the information gathered through the ILC discussions, the Office prepares a proposal for an Action Plan for the next four-year cycle. The proposed Action Plan is discussed every year in the Committee on Technical Cooperation of the November session of the Governing Body.

The purpose of the Action Plan is to provide the much-needed framework within which technical cooperation priorities can be set for the short, medium and longer term. These priorities are meant to be agreed to by the social partners and based on the specific requirements of the region or country.

EMPLOYERS' POSITION

THE DECLARATION IS DIFFERENT FROM A CONVENTION

In order for the strength and purpose of the Declaration to be maintained, a clear distinction must continuously be made between the fundamental principles and the eight core Conventions. The fundamental principles are enshrined in the ILO Constitution, which is itself an international treaty signed by member States. These principles inspired the creation of the eight core Conventions which, when ratified, transform those "promotional" principles into specific legal obligations. Therefore, the political obligations required to promote, achieve and realize the principles under the Constitution – and, by extension, the Declaration – must remain distinct from the specific legal obligations that are undertaken through the ratification of the core Conventions.

The Declaration should not be employed as another supervisory or enforcement mechanism. The ILO already has very well developed supervisory machinery and the Declaration was never intended to derogate from, or to add to, this machinery. To do so would result in double-scrutiny, such that multiple avenues would be pursued against governments for alleged actions or inactions arising from the same or similar set of facts. The assessment under the Follow-up should not, therefore, involve a discussion of law and practice. It should instead focus on the process – i.e. the steps taken by the member State to give effect to the fundamental principles, including taking advantage of ILO technical cooperation.

THE PROMOTION OF THE PRINCIPLES IS DIFFERENT FROM RATIFICATION

The Declaration recognizes that every State, by virtue of its membership of the ILO, is required to promote and give effect to these four fundamental principles, which are considered universal regardless of social or economic conditions. However, the Declaration protects the autonomy of the States in choosing whether to give effect to these principles in the manner prescribed by the core Conventions or in other ways. It should be ensured that the States' autonomy in this regard continues to be protected.

Ratification of the ILO's core Conventions is only one way to promote the Declaration principles; it is not the only possible expression. By using the Declaration mainly as a means to promote ratification, the importance of promotional efforts that do not include ratification may be neglected or undervalued, therefore diminishing the Declaration's value and impact. A powerful practice has evolved to use the Declaration primarily as a promotional vehicle for the ratification of the core Conventions rather than a promotional vehicle for the fundamental principles which inspired the core Conventions. As mentioned above, the Declaration is intended to focus on the steps taken by governments to promote the four fundamental principles.

THE NEED FOR STRONG AND USEFUL FOLLOW-UP

It is in the employers' best interest to ensure that the Follow-up to the Declaration remains credible and meaningful.

The employers support the efforts of the group of experts and the Office to enhance the relevance and strength of the Annual Review process. The process, to date, has led to less than satisfactory discussions during the Governing Body with no real benefits or impact being derived from the discussion. Part of the problem resided in the fact that the efforts of member States compiled in the Annual Review were reported in isolation and added very little value to the overall objectives of the Declaration.

The Annual Review now consists of a review of a baseline analysis of the progress made by member States in giving effect to each of the principles. The baseline analysis is prepared using the reports that have been provided since the first year of the Annual Review in 2000. This will allow for an objective and constructive evaluation of the efforts and challenges

faced by member States over time in giving effect to the four fundamental principles. The next step will be to ensure that this information is closely linked to technical cooperation, as discussed below.

As regards the Global Report, the Employers' Group continues to appreciate the enormous efforts and resources that are dedicated to ensuring that it provides an accurate global picture of the principle it addresses annually. Though employers recognize the challenge of preparing reports of this nature in a global context, they remain concerned about three primary characteristics of the Global Reports drafted to date.

First, the Office must find a way to meet the challenge of ensuring that the Global Report is based on concrete information. Where statistics are cited, these should be based on reliable and verifiable data. Where examples are cited, these should be more than anecdotal. This will undoubtedly require the Office to ensure that proper resources are devoted to conducting reliable and relevant research. Specific information about the outcomes and effectiveness of its technical cooperation programmes must also be included in this process of information gathering. Through such research, not only will the Global Report become a more reliable global picture, but the information will also help to better guide the Action Plan over the following four-year cycle.

Secondly, the Global Report should contain specific cases illustrating good practices in giving effect to the principle being discussed. Though many examples are provided in the current Global Reports, these are too vague and broad to be of value to the reader. It would be of great use to understand what programmes have worked and why.

Thirdly, employers continue to disagree with the application of the strict legal detail of the core Conventions in definition of the principle provided in the Global Reports. As it has been argued by the employers during ILC discussions, the interpretation of strict legal detail in the Convention is outside the scope of the fundamental principles. The terms contained in a Convention are only one of many possible expressions of the fundamental principle.

THE NEED FOR INCLUSIVE AND STRATEGIC TECHNICAL COOPERATION

In order for technical cooperation to be as meaningful as possible, better use must be made of the information gathered through both of the follow-ups, namely the Annual Review and the Global Report.

To date the Action Plan and technical cooperation have been almost exclusively based on the Global Report and the ensuing ILC discussions. It is expected that the baseline analysis prepared in the context of the Annual Review will be incorporated in the Action Plan by using it to assess priorities for technical cooperation. This will allow for a more proactive approach so that priority can be given to member States that are willing but unable to apply the fundamental principles.

A problem – which is not unique to technical cooperation under the Declaration - is the serious imbalance that exists between regular budgetary and extra-budgetary resources. This results in very little consultation with the constituents about priorities.

Though donors will undoubtedly continue to maintain control over their funding to ensure that the technical cooperation programmes they finance meet their objectives and priorities, the Office could play a role in better steering donors in a way that also meet the needs of constituents. The Office could work with the constituents to prepare a list of priority technical cooperation programmes that would be presented to potential donors. Such suggestions for technical cooperation programmes would provide donors with alternative options on how to use their funding in ways that meet their objectives while also meeting those of constituents. This would also be a constructive way for the Office to continuously and actively involve the constituents in technical cooperation that is funded by extra-budgetary resources.

In view of the promotional nature of the Declaration, priority should be given to technical cooperation that would offer assistance to those member States which have demonstrated political will to respect and realize the fundamental principles.

All Action Plans and technical cooperation programmes must include a means of measuring their success (and shortcomings) to ensure that what is learned from them can be applied to future Plans and programmes. A significant number of financial resources are devoted to technical cooperation. It is no longer sufficient for the Office to implement the programmes; the Office must also be accountable for concrete results.

THE NEED FOR RELEVANT AND CONSTRUCTIVE CONFERENCE DEBATES

Significant progress has been made regarding Conference Global Report debates. The decision to change the location of the discussion in 2004 from the Plenary to a smaller room enabled far more interactive discussions than were possible in the Plenary. The employers will continue to support further improvements to facilitate a more meaningful discussion. The following are additional points of importance to the employers with respect to the ILC discussions.

To assist in the quality of the interventions, the Office should prepare and distribute guidelines to governments prior to the Conference to help them in the preparation of their interventions. Though these guidelines should remain purely optional, they might help governments to better focus on information that would be of value in the ILO's work involving the Declaration. Such guidelines should be developed in conjunction with the social partners.

To avoid double-scrutiny, the current practice of avoiding references to specific cases during the discussions should be maintained and more closely enforced. The intent of the discussion is to review progress and obtain information for future action. Referring to specific cases will alienate governments, which would undermine the very purpose of the Declaration.

Some NGOs may be permitted to make interventions at the end of the discussion. Unfortunately, there have been cases where NGOs have violated the spirit of the discussion by citing specific cases of alleged violations of the fundamental principles. Changes are required to ensure that ILC Global Report discussions are not derailed in the future.

THE IMPACT OF UNIVERSAL RATIFICATION ON THE RELEVANCE OF THE DECLARATION

It has been argued that, as universal ratification of the eight core Conventions increases, the relevance of the Declaration is at risk of decreasing. Employers disagree with this position.

The Declaration serves to highlight and promote the areas of fundamental and universal importance to the ILO and its constituents. It is a sort of statement of priorities and it will remain relevant as long as member States continue to experience challenges in giving effect to the principles. A review of the follow-ups may become necessary to ensure their continued effectiveness and relevance. For the time being, the Declaration remains an effective promotional tool and employers will continue to be committed to its effectiveness in the future.

EMPLOYERS AND THE DECLARATION

As previously stated, the Declaration remains a useful reference for employers and it is important that its profile be maintained and even enhanced. The following are some of the ways in which employers' organizations can work towards its promotion.

Employers' organizations can begin by promoting the Declaration and the four fundamental principles to members, where appropriate. Keeping in mind that it was drafted for governments, the Declaration and its principles can serve as one of many useful references in the context of CSR.

Employers' organizations may also be involved in activities and programmes related to any of the four principles. Employers' organizations should link such programmes to the Declaration in the interest of promoting and demonstrating its continued relevance.

Employers' organizations should participate in both of the Follow-ups under the Declaration, which can be done in one or two main ways :

First, with respect to the Annual Review, employers' organizations should respond to the annual questionnaires sent by the ILO through their governments or directly to the ILO. This will ensure a balanced view of the promotional efforts of governments. It will also help to showcase any promotional activities engaged in by employers' organizations. Employers' organizations with representation on the Governing Body can take advantage of the opportunity to intervene during the Governing Body discussion of the Annual Review.

Secondly, employers' organizations should actively participate in the ILC Global Report discussions. These are excellent opportunities to provide feedback about the value of the Declaration and to help guide its future direction. Because of the significance of the Global Report in shaping the principle it addresses, it is also important that the voice of employers be heard in the debate. Employers have in the past used the ILC discussion as an opportunity to state their agreement or disagreement with the interpretation of the principle by the Office.

Efforts could also be made at the national level – such as through awareness raising or regular meetings, in collaboration with other stakeholders where relevant, to respect, promote and realize the Declaration and its principles. Employers' organizations should take an active role in any associated technical cooperation at the national level.

Regardless of the method for engagement chosen by the employers' organization and its members, the IOE is available to provide support. The IOE can answer questions about the Declaration and its use and can facilitate participation in its Follow-ups.

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