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## The Future of Health and Safety at Work as a Fundamental Principle and Right – Will it Meet ISO and UN Challenges?

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ISABELLE DAUGAREILH

### I. Introduction

In June 2022, the International Labour Conference of the International Labour Organization (ILO) adopted a landmark Resolution on the inclusion of a safe and healthy working environment in the ILO's framework of fundamental principles and rights at work ('the Resolution').<sup>1</sup> In the aftermath of the COVID-19 pandemic and the disastrous effects it had on workers, the ILO overcame challenges, crises and conflicts to arrive at a consensus on the place of a right to a safe and healthy working environment in its normative system. This has strengthened the ILO's hand at a time when other institutions are jockeying to occupy policy space.

Although a safe and healthy working environment has been a constitutionally based concern of the ILO since 1919, it has taken a century for it to become designated as a principle and a fundamental right. Now integrated into the 1998 Declaration on Fundamental Principles and Rights at Work, ILO member states, whatever their level of economic development, have undertaken to respect and promote this principle and this right, whether they have ratified the relevant conventions or not. With this historic gesture, the ILO constituents (governments, employers and workers) have added the Occupational Safety and Health Convention, 1981 (No 155) and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No 187) to the list of the other eight ILO fundamental Conventions.

Whilst continuing to regulate through the adoption of conventions, at the same time the ILO is using forms of regulation that rely on soft law (instruments other than conventions).<sup>2</sup> Indeed, it was with the 1998 Declaration and its follow-up, now amended by the Resolution, that the Organisation invented a combination of the two types of regulation.

<sup>1</sup> Resolution adopted at the 110th Session of the International Labour Conference, 10 June 2022, ILC.111/Resolution I.

<sup>2</sup> F Maupain, 'LOIT devant le défi de la mondialisation – de la réglementation à la régulation internationale du travail ?' in P de Senarclens, *Maîtriser la mondialisation – La régulation sociale internationale* (Paris, Presses de Sciences Po, collection Académique, 2000) 147.

The combination consists of creating a non-legally binding platform to encourage the ratification of the fundamental Conventions. That the ILO has found, with this type of arrangement, a way of rendering its normative actions effective is proven by the indisputable indicator of the number of ratifications of the so-called fundamental conventions. This combination organises a continuum between conventions and non-convention instruments. This allows for some experimentation with a whole range of indices of normativity (degree of binding force/precision of rules, etc.)<sup>3</sup> which make the distinction between *soft law* and *hard law* redundant. Since the 1998 Declaration, ILO has undergone what Prosper Weil has called a 'stretching of international normativity',<sup>4</sup> the ILO Centenary Declaration (2019) and the Resolution that followed on from it being part of this underlying normative trend. Francis Maupain was one of the prime movers on this normative trend, which has proven to be a transformative impulse for the ILO.

After what has been a long march, the right to health and safety at work has become the fundamental right to a safe and healthy working environment (Part II). This new normative gesture by the ILO is also an example of the 'venerable old lady' showing that she still has the ability to stand up and be counted in an international normative context where competition is rife on this subject (Part III).

## II. The Long March of the Fundamental Right to a Safe, Healthy Workplace

After a long process made up of advances, postponements and programming changes, the ILO managed to arrive at a consensus that led to the adoption on 10 June 2022 of the Resolution (A). This was achieved at the price of a compromise which heralds another whose outcome is clearly in the hands of the constituents and is therefore their responsibility (B).

### A. Setbacks with the 2019 Declaration

The right to a safe, healthy workplace is evoked in the ILO Constitution (1919), which refers in its Preamble to 'the protection of the worker against sickness, disease and injury arising out of his employment' being 'urgently required'. The Declaration of Philadelphia (1944), annexed to the Constitution, sees furthering 'adequate protection for the life and health of workers in all occupations' as one of the 'solemn obligations' of the ILO. And yet it was not included in the fundamental principles and rights at work in the 1998 Declaration. In the Declaration on Social Justice for a Fair Globalisation 2008, it was included in the strategic objective on social protection. The question is therefore more than just a simple subject of interest for the ILO, which now has 43 different documents that refer to it.

<sup>3</sup> C Thibierge, *La densification normative: découverte d'un processus*, *Mare et Marin*, 2013. *Recueil Dalloz*, no 14, 2014, 834; *La force normative: naissance d'un concept* (Brussels, LGDJ-Bruylant, 2009).

<sup>4</sup> P Weil, 'Le droit international en quête de son identité', 237 (VI) *Recueil des Cours de l'Académie de droit international* (1992) (The Hague, Martinus Nijhoff Publishers, 1996) 227.

Healthy and safe working conditions were among the issues raised in the draft text of the Centenary Declaration. The very clear initial proposal to include the right to safe and healthy working conditions in the fundamental rights of the 1998 Declaration<sup>5</sup> gave way to a more ambiguous, less bold, vaguer and less constraining phrase: 'safe and healthy working conditions are fundamental to decent work'. This statement used part of the wording of the amendment proposed by the European Union (EU) governments and part of the employers' amendment. The rewriting of the text of the Centenary Declaration revealed that there was very strong resistance to extending the substantive content of the 1998 Declaration.<sup>6</sup> However, the Centenary Declaration was accompanied by the Resolution on the Centenary Declaration, adopted by the International Labour Conference on 21 June 2019, which 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 adoption of the 2022 Resolution is the result of a process of discussions held within the Governing Body<sup>7</sup> ('GB') and the General Affairs Committee of the Conference ('the Committee'). The latter was charged with deciding on points relating to form: should the inclusion of the new principle-right in the 1998 Declaration be an amendment to the Declaration or should a new Declaration be adopted, potentially with its own follow-up mechanism? By opting for the first solution, the Committee and then the ILC chose to preserve the unity, authority, scope, visibility and efficacy of the 1998 Declaration and its follow-up mechanism, which has ensured its success, and which would now be applicable to the right to a safe and health working environment. Like the 1998 Declaration, the Resolution is declaratory and does not aim to establish the fundamental character of the rights, for 'fundamental rights are not fundamental because the Declaration says so; the Declaration says that they are fundamental because they are'.<sup>8</sup> As for the choice of C155 and C187 as the two Conventions to underpin the fundamental right to a safe and healthy work environment,<sup>9</sup> this is logically in line with the conclusions of the two ILO General Surveys, respectively those of 2009<sup>10</sup> and 2017 and their referencing outside the ILO in the International Covenant on Economic, Social and Cultural Rights (Art.7), the European Social Charter (Art 3), the Seoul Declaration of 2008 and then the Istanbul Declaration of 2011. This choice corresponds to a concern to have a global, even a systemic vision of this right and in so doing to justify the choice of the wording, which does not refer to a right to health but to a safe and healthy environment as mentioned in Articles 1(d) and 2(1)

<sup>5</sup> Draft: ILC: 'Safe and healthy working conditions constitute a fundamental principle and right at work to be added those contained in the ILO Declaration on Fundamental Principles and Rights at Work of 1998.'

<sup>6</sup> International Labour Conference, *Provisional Record* No 6B (Rev), Fourth item on the agenda: ILO Centenary outcome document, Report of the Committee of the Whole.

<sup>7</sup> 337th Session of the GB, GB.337/PV, §116. 341st Session of the GB and 343rd Session of the GB GB.341/PV, §198.

<sup>8</sup> ILO, *Consideration of a possible declaration of principles of the International Labour Organization concerning fundamental rights and its appropriate follow-up mechanism*, Report (ILC), 86th session, 7, 1998, p. 1.

<sup>9</sup> C Brakenhielm and J Obadia, 'Sécurité et santé au travail' in JM Thouvenin and A Trebilcock, *Droit international social*, Bruylant, Cedin, Tome 2, 2013, Brussels, p. 995. The 1985 Convention C171 on occupational health services was suggested by the workers' group whereas the employers' group only wished to use Convention C187, see ILC.110/Record no 1D, 17 June 2022.

<sup>10</sup> 2009 General Survey concerning Convention C155, ILC.98/III(1B), §294 and 295.

of Convention No 187.<sup>11</sup> As for the discussions on the substance, they concerned the legal effects of the Resolution, which led to a compromise.

## B. The Compromise on the 2022 Resolution

‘International law is a creative and flexible instrument that can regulate anything and do anything as long as States want and know how to use it.’<sup>12</sup> ILO law is no exception to this rule and seems to have inspired the two elements in the compromise that are expressly contained in the Resolution. These are the saving clause for States (1) and the principle of complementary responsibility, which concerns the constituents (2).

### 1. *The Saving Clause for the Member States*

Historically, the ILO has stood apart from other international organisations due to its tripartite nature, which runs through all the processes involved in producing and controlling standards. Furthermore, the recital of the 1919 Constitution which refers to ‘the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries’ remains a central concern of the ILO. It is for these reasons that ILO law differs from public international law in many respects.

Thus, it rejects ratifications accompanied by reservations for two reasons. First, the Treaty that established the ILO does not provide for any system of general approval of reservations after the closure of the International Conference. Secondly, above all because it would go against the tripartism by virtue of which employers’ and workers’ organisations have equal standing with governments in the process of adopting a Convention and in the mechanisms for implementing them.<sup>13</sup>

However, some ILO Conventions contain flexibility clauses, which enable States to accompany their ratification with a declaration. These adaptations can take a variety of forms: authorised exclusion of certain branches or types of businesses, exceptions allowed for certain categories of workers, possibility of ratifying certain parts of the instrument, use of expressions leaving room for interpretation on the part of the States (‘if necessary, in light of national conditions and practice,’ etc.).<sup>14</sup> The options must be open and provided for in the text of the relevant Convention.<sup>15</sup> In the field of occupational health and safety,

<sup>11</sup> 2017 General Survey, ILC.106/III/1B, §573, 579, 580.

<sup>12</sup> Serge Sur, translated quote from ‘Le droit international au cœur des relations internationales’, Dossier A qui sert le droit international, *Questions internationales*, no 49, 2011, p. 4, sp.p.11.

<sup>13</sup> CW Jenks, *The International Protection of Trade Union Freedom* (London, Stevens, 1957) 542–47, 547, Statement in the Committee of the Whole of Vienna Conference on the Law of Treaties (Doc NU A/CONF 39/C1/SR; §11 quoted by PH Imbert, *Les réserves aux traités multilatéraux* (Paris, Pedone, 1979) 28 ; BIT, Code international du travail (ILO, International Labour Code), vol I, (Geneva, ILO, 1951) CV–CX ; Dupuy, Y Kerbrat, *Droit international public*, 12th edn (Précis Dalloz, 2014) 286.

<sup>14</sup> J-M Servais, *Droit international du travail* (Brussels, Larcier, 2015) 234 ff, 380 ff.

<sup>15</sup> This is the case of the Minimum Age for Admission to Employment Convention, 1973 (No 138) and the Employment Injury Benefits Convention, 1964 (No 121).

Convention No 155, for example, provided for flexibility clauses for the ratifying State, which can even make certain exclusions from the scope of application.<sup>16</sup>

The 2022 Resolution contains a quite different clause known as the savings clause, which is worded as follows: ‘nothing in this resolution shall be construed as affecting in any manner the rights and obligations of a Member arising from existing trade and investment agreements between States.’<sup>17</sup> The legal effects on multilateral and bilateral economic free trade agreements were the focus of a large part of the discussions among constituents, even though – the Resolution being a non-binding instrument – there was absolutely no need for such a clause. This gives an idea of how sensitive a subject this is.<sup>18</sup> The secretariat of the ILO expressed itself in somewhat different terms:

the Declaration, just as it does not create any new constitutional obligations for member States, does not release them from any legal obligations they may have under international law (...). The Declaration, given that it is not even a treaty, would not provide any legal basis for derogations from these treaties inter se. Neither would it allow the ILO to issue any sort of instructions on a matter that does not fall within its competence.<sup>19</sup>

Like the 1998 Declaration, the 2022 amendment to it does not create any new legal obligation, direct or indirect, for the States parties to economic free trade agreements. Its incorporation can only be explicit and therefore depends entirely on the willingness of the States, which are also not under any obligation to consider its insertion in the treaties in force. It should be emphasised that only 65 per cent of free trade agreements expressly mention the 1998 Declaration and 9 per cent the Fundamental Conventions, and that the binding force of the clauses relating to them varies considerably.<sup>20</sup> This shows just how far there still is to go for the 1998 Declaration in its initial version, never mind the version amended by the 2022 Resolution, to truly penetrate international trade and international economic law. The savings clause in the Resolution protects States against any over-bold interpretation or any attempt to give it a scope that in principle it does not have. Worded as it is, the clause potentially blunts the right newly qualified as fundamental, restricting its reach and leaving international labour law at the mercy of the globalisation of the economy and an international economic law that is very largely deaf to social issues.<sup>21</sup> The second element in the compromise, the principle of complementary responsibility,<sup>22</sup> could, if it were taken seriously by the constituents, have the effect of mitigating the savings clause. However, from a formal point of view, the Declaration’s authors did not include it in the body of the text of the Resolution, but rather in its preamble.

<sup>16</sup> Arts 1(2) and (3), 2(1) and 3 of the Convention. Convention C161 and the accompanying Occupational Health Services Recommendation (No 171) provide for a progressive commitment for States to introduce health services for all workers in all branches.

<sup>17</sup> Unilateral incentives were initially included.

<sup>18</sup> The clause was defended among others by Bangladesh and the United States.

<sup>19</sup> ILO, Consideration of a possible Declaration of principles of the International Labour Organisation concerning fundamental rights, 22, quoted at the 343rd Session of the GB, GB.343/INS/6, 14 October 2021.

<sup>20</sup> ILO, *Handbook on Assessment of Labour Provisions in Trade and Investment Arrangements*, 2017. Quoted in GB.343/INS/6.

<sup>21</sup> See LeClercq, Chapter 18 in this volume.

<sup>22</sup> Instead of shared responsibility. In fact, the workers’ group maintained that the responsibilities and duties of employers and governments were quite different to those of workers who have ‘little to no real power to influence their working environment’, ILC.110/Record 1 D, 17 June 2022.

## 2. *The Complementary Responsibilities of the Constituents*

The preamble also states 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 use of social dialogue globally in matters relating to safe and healthy working conditions is already established practice, whether as part of International Framework Agreements (hereinafter IFAs) or multi-stakeholder agreements (as in the Bangladesh Accords).

Safe and healthy working conditions count among the subjects most often dealt with in IFAs even though they were not part of the rights enshrined in the 1998 Declaration. Moreover, it is on this subject that IFAs are most innovative and most demanding. These agreements<sup>23</sup> in fact include obligations of means, including: the introduction of a dialogue with bodies of staff representatives in order to draw up a quality, health, safety and environmental policy, introduction of indicators relating to workstation safety<sup>24</sup> and control mechanisms within internal management systems which are made known to the staff representatives, recognition at global level of a worker's right to remove himself/herself from unsafe working conditions,<sup>25</sup> the setting up a global joint monitoring committee and an information system on risks and safety training.<sup>26</sup> These commitments are sometimes the subject of a cascade of contracts running through the global value chain, which gives them the potential to be legally effective.<sup>27</sup> The adoption of the Resolution should boost the inclusion of the right to safe and healthy working conditions in future IFAs or those that are renewed.

Furthermore, following the Rana Plaza building collapse of 24 April 2013, three initiatives were taken in Bangladesh involving public and private stakeholders, including the Accord on Fire and Building Safety in Bangladesh (hereinafter the Accord) signed on 13 May 2013 by two international trade union federations – IndustriAll Global Union and UNI Global Union – and by transnational companies. The Accord introduced a fire and building safety programme in the garment industry in Bangladesh. It applies to all suppliers of products made for the signatory companies, the latter committing to ensure that suppliers agree to be inspected and to apply the corrective and training measures set up by mutual agreement between the brand and the local company. The legally binding Accord has set up a tripartite executive committee which has the power to hire inspectors and to expel companies that fail to comply. The text gives the parties in a dispute the right to go to international

<sup>23</sup> I Daugareilh, 'Enjeux et limites des accords cadre internationaux: l'exemple des entreprises françaises' in I Daugareilh, *La RSE, vecteur d'un droit de la mondialisation?* (Brussels, Bruylant, 2017).

<sup>24</sup> Indicators introduced for the first time in the EDF Agreement of 25 January 2009 on the social responsibility of the EDF group. Available at: [www.industriall-union.org](http://www.industriall-union.org). Indicators also appear in the IFAs of companies such as Solvay (ex-Rhodia), Lafarge, Peugeot and France Telecom.

<sup>25</sup> Total agreement signed in 2015 with IndustriAll. Available at: [www.industriall-union.org](http://www.industriall-union.org).

<sup>26</sup> In the Danone agreement the beneficiaries of the safety obligation are the employees of temporary work agencies and subcontractors and, more generally, anyone present on the site, whether or not they are there to work and whatever their legal status.

<sup>27</sup> L Boy, 'Les apports de la certification, de la normalisation, et de la labellisation à l'effectivité ou l'efficacité des normes juridiques' in I Daugareilh, *La RSE, vecteur d'un droit de la mondialisation?* (Brussels, Bruylant, 2017).

arbitration.<sup>28</sup> The signatories gave the ILO a role as ‘trustee’ of the implementation of the Accord.

The Accord highlights the responsibility of the host State in the face of global value chains.<sup>29</sup> The results of its implementation<sup>30</sup> demonstrate that the national territory is the right level at which to achieve a progression from a situation of poor working conditions to a satisfactory state. Without external pressure, the Bangladesh State would not have accepted such initiatives; conversely no progress is possible in these contexts without the full and willing involvement of the host State as well as the economic and social actors. Now, the difficulties encountered when it came to renewing the 2013 Accord in 2018 due to the organised resistance of the exporter employers in Bangladesh (who had supporters in the government) and the seising of the Supreme Court by the owner of a local garment factory led the Bangladesh government to take a harder line in the face of what it considered to be interference in its internal affairs on the part of the ILO as well as the partners in the Accord. Given this context, the signing of a new Accord on 1 September 2021 for a two-year period can be seen as a victory on two fronts. Firstly, the Accord remains multipartite, binding and includes a simplified process for going to arbitration. Secondly, its subject-matter scope has been extended from safe and healthy working conditions to include due diligence on human rights throughout the supply chain, and a commitment was made to extend the scope of the Accord to other countries as well. The enshrining of the right to safe and healthy workplace as a fundamental right in the 2022 Resolution reinforces the application of the new Accord.

Far from ending the debate on safe and healthy working conditions, the 2022 Resolution in fact opens a new chapter whose effectiveness will depend partly on the constituents’ engagement in the context of free trade agreements as well as agreements that arise out of the transnational social dialogue. Since safe and healthy working conditions have been a source of tension in international relations, the adoption of the Resolution should allow the ILO to re-position itself more favourably.

### III. The ILO’s Multilateral Re-Positioning on Safe and Healthy Working Conditions

Re-asserting multilateralism<sup>31</sup> is one thing, while actually implementing and maintaining it is another. As a United Nations (UN) Specialised Agency, the ILO is often confronted

<sup>28</sup> Two sets of arbitration proceedings were brought by the trade unions IndustriALL Global Union and Uni Global Union at the Permanent Court of Arbitration in 2016 against two brands. The Arbitration tribunal issued a termination order on 17 July 2018 following a financial settlement reached by the parties, whose identity has remained secret. Permanent Court of Arbitration, Arbitrations under the Accord on Fire and Building Safety in Bangladesh between IndustriALL Global Union and UNI Global Union and two global fashion brands, PCA Press Release, 17 July 2018, The Hague. See [www.pca-cpa.org/cases/152/](http://www.pca-cpa.org/cases/152/). See Yiannibas, Chapter 23 in this volume.

<sup>29</sup> See Martin-Ortega and Trusgnach, Chapter 24 in this volume.

<sup>30</sup> Y Kang, ‘The Rise, Demise and Replacement of the Bangladesh Experiment in Transnational Labour Regulation’ (2021) 160(3) *International Labour Review* 407–30; A Trebilcock, ‘The Rana Plaza Disaster Seven Years On: Transnational Experiments and Perhaps a New Treaty?’ (2020) 159(4) *International Labour Review* 545–68.

<sup>31</sup> See B Badie and G Devin, *Le multilatéralisme. Nouvelles formes de l’action internationale* (Paris, La Découverte, 2007).



with competing international regulation initiatives. This is the case in particular with the International Organisation for Standardization (ISO), which has adopted a standard on workplace health and safety, ISO 45001<sup>32</sup> (A). The ILO also has to defend its leadership on work and social protection issues in the international diplomatic sphere, within the UN system itself (B).

### A. The Spectre of Standard ISO 45001 on Health and Safety in the Workplace

After the ILO and ISO signed a first Memorandum of Understanding (MoU) in 2005 when the ISO 26000 standard on organisations' social responsibility came out,<sup>33</sup> they signed a second MoU in August 2013.<sup>34</sup> The latter concerned the two organisations' collaboration in the field of occupational safety and health management systems. This agreement was terminated by the ILO on 8 March 2018. The aim of the 2013 MoU was, first, to avoid ISO standards contradicting those of the ILO and, secondly, to reinforce the complementarity between the mandates of the two organisations. In this MoU it was stipulated that 'Given the broad mandate and action of the ILO to promote social justice and decent work, and ISO's broad mission, ISO standards that relate to issues within the ILO's mandate (ILO issues) should respect and support the provisions of ILS and related ILO action, including by using ILS as the source of reference with respect to ILO issues in case of conflict.'<sup>35</sup> Where the two conflict, the MoU specified that precedence must be given to the ILO's standards over those of ISO.

The conflict between the two organisations concerned the content of the ISO standard on occupational health and safety published in April 2018. Prior to this, the ILO had taken part in four years of discussions with ISO. Notwithstanding the ILO's observations, however, the ISO standard contains protection requirements that are less demanding than the ILO standards. It does not contain guarantees for workers such as the right to withdraw in the case of serious and imminent danger for their health and safety without fear of reprisals, the right to free personal protective equipment, the right to free training, etc.

The ISO 45001 standard harbours several risks: jeopardising progress in national legislation towards the ILO international standard, impeding the effectiveness of a State's own standards adopted in line with ILO legal instruments, and giving companies involved in international trade carte blanche to thwart the ILO's efforts to establish the fundamental right to a safe and healthy working environment. This illustrates the extent to which the principle of coherence mobilised in the Centenary Declaration is a condition for the ILO

<sup>32</sup> International standard ISO 45001, Occupational health and safety management systems – Requirements with guidance for use, Reference no ISO 45001:2018 (F).

<sup>33</sup> I Daugareilh, 'L'ISO à l'assaut du social : risques et limites d'un exercice de normalisation sociale' in I Daugareilh (dir.) *Responsabilité sociale de l'entreprise transnationale et globalisation de l'économie* (Bruylant, Brussels, 2010). By the same author, 'La norme ISO 26000 sur la responsabilité sociale des organisations: observations sur un exercice d'inter-normativité' in M Capron, F Quaisnel-Lanoizelée, M.F., *ISO 26000, une norme 'hors norme'?* (Economica, Paris, 2010) p 147.

<sup>34</sup> 319th Session of the Governing Body of 16–31 October 2013, GB.319/INS/INF/1, 2013.

<sup>35</sup> See ILO GB of 26 October–9 November 2017, GB.331/INS/10, Appendix I, p 11 and decision of 7 November 2017.

maintaining its position on the international institutional and normative plane. This example also shows the extent to which international organisations whose standards are directly aimed at companies, especially those involved in international trade, indirectly hold sway over the Member States of the ILO, by allowing those companies to claim that they comply with a standard on occupational health and safety, albeit one that is less demanding than those of the ILO.

In this respect, the confirmation of safe and healthy working conditions as a fundamental right at the 110th Session of the ILC is an eminently powerful political act that will help to tackle 'lowest bidder' international (technical) standards – as long as the constituents take the principle of complementary responsibility established by the 2022 Resolution seriously. The interest of this principle becomes tangible here in the sense that each ISO 45001 certification sought by a company on the basis of said text could be seen as undermining the reach of the 2022 Resolution.

The progressive extension of private international – technical – standards is a formidable weapon in the hands of – transnational – companies, which could prove to pose a major risk (to democracy and social justice) in the absence of legal regulation of the activities of transnational companies. The power of these economic actors and their legal irresponsibility remains one of – if not the major – problems facing us this century. The fact that the Centenary Declaration says nothing about this issue can no doubt be seen as one of the text's weaknesses. Even if, since 2013, the UN has undertaken<sup>36</sup> the development of a legally binding international instrument to regulate companies' transnational activities,<sup>37</sup> the question of the regulation of global value chains would certainly deserve more significant input from the ILO.<sup>38</sup>

## B. The Construction of ILO/UN Relations on Decent Work, and Safe and Healthy Working Conditions

Leadership on social issues in the UN's global goals does not go without saying. The ILO's rapprochement with the UN began with an initiative by Juan Somavia during the preparation of the 1995 Copenhagen summit (which Somavia chaired before becoming ILO Director-General).<sup>39</sup> The Decent Work Agenda initiative launched at the 1999 ILC was supposed to serve as the basis for a reflection on development within the UN. And yet, decent work would only feature on the margins of the September 2000 Millennium Summit, the UN having turned to the Organisation for Economic Co-operation and Development

<sup>36</sup> UN, General Assembly, A/HRC/RES/26/9. See E Decaux, 'La sous-commission des droits de l'homme des Nations Unies, de 1947 à nos jours' (2007) 132(4) *Relations internationales* 59. By the same author (ed.), *La responsabilité des entreprises multinationales en matière de droits de l'homme* (Brussels, Bruylant, 2010).

<sup>37</sup> S Grosbon, 'Projet de traité international sur les sociétés transnationales et les droits de l'homme' *Revue des droits de l'homme*, Varia 16/2019; see also Trebilcock, above n 30, 556–63.

<sup>38</sup> After this chapter was written, a tripartite working group of the ILO agreed on a strategy for decent work and supply chains, with recommendations to be reviewed by the ILO Governing Body in November 2022. Available at: [www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_850378/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_850378/lang--en/index.htm).

<sup>39</sup> M Louis, *L'Organisation internationale du travail et le travail décent, Un agenda pour le multilatéralisme*, (L'Harmattan, coll. Questions contemporaines, 2011) 89.

and the Bretton Wood institutions to draw up a report in which the ILO was not invited to participate.<sup>40</sup> The ILO reacted by convening a World Commission on the Social Dimension of Globalisation, which would produce a report which recommended that decent work 'should become a global goal, not just an ILO goal'.<sup>41</sup> It was thanks to this report that the Decent Work Agenda would largely be taken up again at the Millennium Summit in 2005.

This was the 'beginning of recognition',<sup>42</sup> which at the last Millennium Summit on sustainable development in 2015 led to the integration of full employment and decent work into Sustainable Development Goal 8 (Target 5). The promotion of safe and secure working environments is part of the UN's 2030 Agenda for Sustainable Development: as a 'worker's right' it is necessary to 'protect labour rights and promote safe and secure working environments of all workers, including migrant workers, particularly women migrants, and those in precarious employment'.<sup>43</sup> Under the Agenda, the ILO is in charge of providing indicators on the frequency of frequency of fatal and non-fatal occupational injuries, by gender and immigration status. The Agenda includes other targets on mental health and illness caused by hazardous chemicals.

Even if the taking on board of the ILO's strategies by the international institutions implies constant efforts, it is facilitated by the institutional links in the UN system, whereas no such connection exists with the ISO, making the resumption of the dialogue broken off in 2018 all the more complex.

#### IV. Conclusion

The universalisation of the rights enshrined in ILO law no doubt offers the best way forward to reinforce, in an indisputable manner, the ILO's role in the regulation of labour relations on a global level. The integration of safe and healthy working conditions in the 1998 Declaration puts them on that path. Although the ILO has never been so close to its goal since the fall of the Berlin Wall, the institution is, as Francis Maupain has often said,<sup>44</sup> facing the challenge of a globalised economy that still lacks regulation of social issues in a formal and binding way in the same way that it regulates economic issues. It can only be hoped that the fundamental right to a safe and healthy working environment will not pay the price!

<sup>40</sup> *ibid.*, 94. C Percher, 'Le concept de travail décent à l'épreuve de l'Union européenne' Doctoral Thesis, Lyon 2, 2017.

<sup>41</sup> World Commission on the Social Dimension of Globalization, *A Fair Globalization: Creating Opportunities for All* (Geneva, ILO, 2004).

<sup>42</sup> Louis, above n 39, 96.

<sup>43</sup> See Novitz, Chapter 8 in this volume.

<sup>44</sup> F Maupain, *L'OIT à l'épreuve de la mondialisation financière – Peut-on réguler sans contraindre?* above n 2.