

INTERNATIONAL LABOUR STANDARDS AND THE ILO DECLARATION OF FUNDAMENTAL PRINCIPLES AND RIGHTS

Associate Professor Burhan ÖZDEMİR

Hacettepe University, Department of Public Administration, Ankara, TURKEY

Associate Professor Çağlar ÖZEL

Hacettepe University, Department of Public Administration, Ankara, TURKEY

I- INTRODUCTION

As it is known the International Labour Organisation (ILO) was founded by the Versailles Treaty signed at the end of the First World War. Later, the ILO joined the United Nations Organisation upon its foundation, and started to function as an expert organisation of the United Nations.

The ILO was founded in the conviction that lasting peace can only be obtained through social justice, and has arranged international labour standards generally by means of convention and recommendations (**Kutal: 24**). Today, the number of ILO conventions reached 185 and the number of recommendations reached 194.

In the General Conference, convening at Geneva in 1998, the ILO adopted a declaration entitled “ Declaration On Fundamental Principles And Rights at Work And Its Follow-Up” (see **ILO, 1998 b:1** and following). It is the third document that the ILO arranged under the title of a “declaration”. In the United Nations implementation, a declaration is defined as a “formal and solemn instrument suitable for rare occasions when principles of lasting importance are being enunciated” (**ILO, 1997 b: 2**).

It is beyond doubt that the International Labour Standards formed by the ILO has had an initial and continuing impact on the legislations of the member countries. This is a result that was expected and sought by the ILO Constitution, and also by the mechanism and procedures devised in accordance with this Constitution.

Approaching the issue from this aspect, the ILO standards, and especially the provisions of the ILO Declaration On Fundamental Principles And Rights, are of prime importance in the Central Asian republics - Kazakhstan, Kyrgyzstan, Uzbekistan, Turkmenistan - and also to the Caucasian republic of Azerbaijan, due to the reason that all of these countries have become members of the ILO after they have gained their independence upon the collapse of the Soviet Union.

II- INTERNATIONAL LABOUR STANDARDS AND INTERNATIONAL TRADE

International labour standards and principles reflected in the ILO conventions and recommendations were not solely guidelines in arranging labour lives of the member countries, but they have effects on some international organisations as well. For example, organisations such as OECD and the European Union benefited from the ILO standards and principles as guidelines; additionally, organisations such as the UN, GATT, and the WTO made direct references to the ILO principles in the widely participated platforms they have arranged.

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On the other hand, some countries endeavour towards ensuring that the fundamental conventions concerning arrangement of labour life will be taken as a basis for international commercial life. These endeavours have become even more intensified within the environment of competition created by globalisation (1).

In accordance with a view supported by the developed countries in general, some countries are employing workers without conforming with the international labour standards. In other words, they are employing workers subject to low standards resulting in a “social damping” (2). This is a situation which must be impeded. Therefore, international labour rules must be taken as a basis for international trade, and a social clause must be accepted in regards to this issue. The most appropriate way of achieving this result would be to adopt the International Labour Organisation’s fundamental conventions as a basis for international trade. However, the international labour standards and principles, which are devoid of sanctions, must be supported and united with sanctions while they are transferred to the area of international trade (**Günalp: 43-44; Dener: 68**).

There is an opposite view set forth against the above mentioned view by the developing countries. It states that countries that are setting forth “social damping” are actually making “concealed protectionism” in order to take away the advantages of the countries that have comparative cost advantages originating, and resulting from a cheap labour force. In accordance with this view, a solution to this problem does not lie in boycotting goods and services produced by the countries using a cheap labour force and placing restrictions or prohibitions in the trade with these countries, but on the contrary, buying more goods and increasing trade with these countries to the extent possible are to be permitted by the conditions in line with the liberalisation of trade which will contribute to resolving the problem. Probably the situation may become worse in the case that trade is stopped with these countries, because the essential element that would increase the level of labour standards is the economic development in a country, which would be adversely effected in the event of a trade ban (**Günalp: 44; Dener: 57-58**).

The results of surveys conducted did not support the allegations in the direction that there is a direct link between low standards and number of exports made or direct foreign investments (**Dener: 84-112; OECD: 105, 144**). Due to this reason, in recent years, the humanitarian aspect of the issue, which is to attach more of an importance to the protection of the workers, takes precedence over the commercial aspects in various forms.

In accordance with the views put forth in this direction, the social clause taking place in commercial agreements is used in the meaning of the provisions incorporated into the agreement for the protection of the workers. Additional methods in the form of a social clause must be adopted in an environment where global economy is prevalent. However, social rights must be protected with appropriate implementations depending on the countries and areas concerned, in order to offset the drawbacks of strict applications without any distinction (**Sur: 601, 609-610**).

Conversely, those who severely oppose the link between work standards and trade are stating that this link must be broken. In accordance with this view, two essential mistakes lie behind defending the existence of this link. The first mistake, in the event that such a link is not established, is that the working standards and real wages of the workers in the rich countries will collapse. The second mistake is that it is obligatory to establish such a link in order to ensure a minimum level protection for the workers in the countries. In accordance with this view, both of these arguments must be rejected due to the reason that they are based on certain fears and imaginative phobia. In other words, they do not have any connection with realities (**Bhagwati: 10**).

III – DEVELOPMENTS PRIOR TO THE DECLARATION

Three of the international documents prepared, and research conducted recently, have had special significant effects and contributions in the formation of the ILO Declaration of Essential Rights and Principles (**ILO, 1998a: 12**) First, one of these is the Declaration and Action Plan, which was constituted as a result of United Nations World Summit for Social Development that convened in Copenhagen from 6 through 12 March 1995. The heads of states and governments participating in the World Summit aimed at providing quality work, taking fundamental rights and benefits of the workers under protection stated, and made a commitment to the effect that they will encourage related ILO conventions, encompassing prohibition of forced and child labour, the freedom of association, the right to organize and bargain collectively, and the principle of non-discrimination (**Commitment: 3-i; UN: 16-17**).

Apart from this, in accordance with Paragraph 54 of the Action Plan, the participants made a commitment to encourage and assure: a full compliance with the ILO conventions in its true sense to take principles governing these conventions into account in order to materialise sustainable economic growth and development in countries which ratified these conventions, and also in countries which did not ratify the conventions by guaranteeing and fostering respect for the workers fundamental rights. These rights include principles governing prohibition of forced and child labour, freedom of association, and the right to organise and bargain collectively, the equality in the remunerations of the male and female workers for work of equal value and non discrimination in employment (**UN: 87**).

The second document is the Final Declaration of World Trade Organisation (WTO) Counsel of Ministers, prepared at the meeting held in 1996 in Singapore. In Paragraph 4 of this Declaration, a direct reference was made to the fundamental labour standards constituted by the ILO, and it stated that the necessity for the compliance to the internationally recognised rules of the fundamental conventions was once more confirmed. It was accepted that the ILO was the competent body to set and deal with these standards. Additionally, it was affirmed that the representatives of the countries were supporting the ILO efforts in the direction of improving these standards by stating that they believed liberalization in trade will contribute to enhancement of these standards. Meanwhile, the utilisation of labour standards for the protectionist purpose was refused, and it was stated that the comparative advantages of developing countries with low wages can not be interrogated under any circumstances (WTO:2).

Lastly, in the work that published the results of research conducted by the OECD in the year 1996, reference was made to the ILO norms, and four fields were determined as the fields of fundamental rights for this work (see OECD:26). However, it was also stated there was no exact consensus as to what constitutes fundamental rights (**OECD: 25**); i.e., it was stated that this issue can be standardised by one of the international organisations such as the ILO or the International Standards Organisation (OECD:214). The four fields stated in the work published by OECD were also determined as fundamental rights fields in the ILO declaration.

Meanwhile, the ILO could not stay away from the effects of the globalisation winds of the world. In the General Manager's Report submitted to the 81th General Conference convening in 1994, the ILO questioned its own function in view of the changing conditions in the world and values of today. The ILO in this Report referred to the issue of "social dumping", stating that it should not be a party to this discussion, and it should be conscious of the fact that it should not support trade limitations or compulsory equalisation of social costs. The ILO made an evaluation stating that in the alternative when the discussions regarding "social dumping" are taken into consideration,

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this stance will not only be devoid of any action, but the fundamental principles of the ILO will be in contradiction with each other (**ILO, 1994: 54**).

The Fundamental Rights Declaration was adopted at a time when the ILO was questioning its own function (**ILO, 1994: 1, 2, 38**), while others were discussing what the functions of the ILO should be (**Centel, 1998: 9; Arici: 2**). Under growing expectations, there were pressures on the ILO for making such an arrangement for the reason that the ILO was the organisation specialised in the issue of international labour standards. The organisations related to international trade refrained from making arrangements in regards to fundamental rights, because the issue did not directly fall into their fields of action.

IV-PROVISIONS OF DECLARATION

We will review provisions of declaration under three topics by taking three significant characteristics into consideration: 1- Determination and Reaffirmation, 2- Promotion and Assistance, 3- Follow-Up.

1- Determination and Reaffirmation

Certain principles are determined and some issues stated by the ILO are reaffirmed within the scope of the declaration.

The Declaration determines with priority the four fields related to fundamental rights:

- a- The freedom of association and effective recognition of the right to collective bargaining;
- b- The elimination of all forms of forced and compulsory labour,
- c- The effective abolition of child labour, and
- d- The elimination of discrimination in respect of employment and occupation.

Today, conventions numbered a-87 and 98, b- 29 and 105, c-138 and 182, d-100 and 111 are taken in sequence within the four fields (**ILO, 2000: 2; see and compare Sur: 600 n. 7**).

Member states will respect, encourage, and activate principles arranged by conventions in the four fields which are considered fundamental within or outside the organisation regardless of whether they have ratified the mentioned conventions or not. However, affiliation of the members is more in the context of political and ethical meaning; it is not in the meaning that they would be legally bound by conventions they have not ratified (**see and compare Centel, 1999: 22**). The member state undergoes the absolute obligation of having to implement or incorporate provisions of a convention into the legislation in the event of signing that convention.

There is no justification as to why the four fields stated above were determined to be fundamental rights. Although a large portion, or all of these, are considered within fundamental rights in various platforms of the ILO, in the works of authors who are interested in this field, or in different research, one can not say that there is an exact consensus of opinion on this issue. For example, "workers' health and safety" does not occur in this list, but this issue is an issue which is proposed to be added to the fundamental rights list (**OECD: 26; Sur: 606-607**).

The determination of the fields included in the fundamental rights list is the most important and crucial point of the issue. Due to this reason, we are going to return to this issue later when we are making our evaluation regarding the Declaration.

2- Promotion and Assistance

One of the important characteristics of the declarations is that it provides for promotion and assistance (**Kellerson: 225**).

The main provisions reflecting this characteristic is as follows:

- Ratification of the conventions that are related to the rights and principles stated in the declaration will be promoted (3(a)),
- Countries that are not ready to ratify these essential conventions will be provided assistance in their efforts in respecting, promoting, and realising these principles (3(b)).
- Assistance will be provided to the efforts of the member countries in creating an atmosphere for economic and social development (3(c)),
- Additionally, the mechanism devised in order to materialise the declaration in its true sense is of a promoting nature (**Annex, I/1**).

Foreign resources and supports will be mobilised in order to accommodate the determined requirements of the member countries, and in order to attain the goals indicated in the declaration. Pursuant to the provisions of Article 12 of the ILO Constitution, encouragement will be provided to other international organisations with whom the ILO is in close relationship. Assistance will be provided to the members by fully utilising constitutional, operational resources, and budget contingencies.

3- Follow-Up

The declaration requires a follow-up mechanism for full achievement of the goals determined in the declaration.

We should emphasise two important points regarding this mechanism right away: although the follow-up mechanism was arranged as a text “Annex” to the declaration, it is included in the declaration and it does not have a different legal configuration than the declaration; the second point is that the follow-up mechanism which is going to be reviewed in detail, does not actually bring in any new obligation for the member states. The follow-up mechanism is based on existing procedures.

The main reason for bringing in a follow-up mechanism in the declaration is to encourage members of the organisation in their efforts for promoting, improving fundamental rights and principles taking place in the ILO Constitution Philadelphia Declaration, being reaffirmed by the 1998 Declaration.

The follow-up mechanism is based on two fundamental forms , the Yearly Report and the Global Report.

a- The yearly follow-up of the non-ratified fundamental conventions (Yearly Report).

The purpose of the yearly follow-up is to create a possibility of following a yearly level of effort displayed in accordance with the Declaration by members who did not ratify one or some of the conventions. The follow-up will be covering fundamental rights and principles concerning the four fields. The yearly follow-up regarding the non-ratified conventions will be based on reports to be requested from the members by the Board Of Directors in accordance with paragraph 5(e) of Article 19 of the Constitution.

Report forms will be arranged in accordance with Article 23 of the Constitution in a manner for obtaining information from members who did not ratify one or some of the fundamental conventions regarding the changes made in their legislations or practices.

The reports to be prepared by the International Labour Bureau, through consolidation of the information obtained, will be reviewed by the Governing Body.

b- Global report

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The two goals of this follow-up system is indicated in the Declaration as follows:

The first goal is to display the situation of the fundamental rights and principles of the previous four-year period in a dynamic picture. In fact, mere ratification or non-ratification of a convention may not give an idea as to whether or not the rights and principles of that convention are implemented, due to the reason that the ratification of a convention does not necessarily mean that implementation of its contents is an indispensable condition. Just in the same way, there is no hindrance for respecting the rights and principles contained in a convention which is not yet ratified by a member state (**Kellerson: 226**). Due to this reason, it was deemed appropriate to follow-up these situations in a fully open and dynamic way through a report.

The second goal of the report is to build a foundation which will serve in evaluating the effectiveness of aid provided by the ILO, and determining the priorities. Every year this report is going to cover one of the fundamental rights and principles group in sequence. The report will be based on the findings of the yearly follow-up reports stated above in respect to the countries that did not ratify the fundamental conventions.

The declaration also states that this report will be submitted to the Conference as the report of the Director General for tripartite discussions. The Conference may take up the report separate from the reports within the scope of Article 12 of the Internal Regulation, and this report can be discussed in a meeting to be held specifically for this report or another appropriate procedure may be applied.

IV- EVALUATION AND CONCLUSION

Solely setting the international labour standards is not adequate in respect to the goals of the ILO (**ILO, 1994: 43**). The final purpose of preparing the standards is definitely a wide acceptance and implementation of the rules to the extent possible (**ILO, 1978: 45**). The ILO Constitution also stipulates provisions determining complementary procedures which provides for the acceptance and implementation of the standards by the member states.

The most important one of these procedures is the presentation of conventions and recommendations adopted by the General Conference to the national authorities (Cons.Art.19). Upon such a presentation, it is expected that the conventions are ratified, and the principles of convention are enacted as a part of the legislation (**Cons. Art. 19/5-(a), (b)**).

Ratification is not an issue in case a recommendation is presented to the national authority. This time it is expected that the recommendation will come into force through incorporation into the national legislation or through other avenues (**Chart.Art.19-6(a)**).

Setting international labour standards principles would be meaningless if they are to be retained on paper only. Due to the reason that the number of states ratifying conventions within the normal procedure is inadequate, it is natural that the ILO attempts to find special mechanisms for ratification of more conventions. Likewise, in 1995 the ILO Director General requested and invited the member states to sign and ratify seven fundamental conventions (**ILO, 2000: 2**).

Later, the Fundamental Rights and Principles Declaration was adopted at the 1998 General Conference. Developments taking place after the request of the Director General, and the Declaration has been positive in respect to the conventions regarding this issue. Ratification of the four area conventions covered by the Declaration was gradually accelerated and intensified.

Although only 21 countries ratified these seven conventions prior to the request of the Director General in 1995, the number of ratifications increased to 52 as of 26.09.2000 (**ILO, 2000: 2**). The number of these seven conventions increased to eight conventions with the addition of Convention no:182 entitled “Convention Concerning The Prohibition and Immediate Action For the Elimination of the Worst Forms of Child Labour”, adopted in the General Conference in 1999. Adoption of this convention at first resulted in a relative decrease in the number of countries that has ratified all of the fundamental conventions when compared to the eight fundamental conventions. For example, the number of countries ratifying were 22 as of 26.09.2000 (**ILO, 2000: 2**). However, recent developments regarding Convention No:182 reveal that this negative effect has been eliminated (3).

In addition to the positive developments mentioned above, we believe that it would be beneficial to point out the following issues in our general evaluation concerning the Declaration:

- Making a distinction between the conventions as the fundamental and non fundamental conventions may lead to a lesser interest in the “non-fundamental” conventions.

Although the Director General announced that “fundamental” is used to mean conventions with “priority in implementation” (**ILO, 1997a: 20**), it is possible that the member states may be adversely effected by this announcement in the sense that they might feel the effect that ratifying eight conventions would suffice in respect to abiding the ILO norms (**see and compare Centel, 2001: 38**).

- The Director General stated that fundamental rights did not earn this quality due to the fact that they are referred to as “fundamental”, but on the contrary, these rights have taken place in the Declaration because they have a fundamental quality. However, we must admit that there is no full consensus of opinion regarding the scope and definition of these rights (**OECD: 214**). It is expressly requested that “workers’ health and job safety” be included into the fundamental rights (**Sur: 606-607; OECD: 26**). In fact, “workers’ health and job safety” is as important and fundamental as the other four fundamental fields and issues. It maybe the first one of the fundamental issues as far as priorities are concerned. What meaning would the other fundamental rights have in cases where workers’ health and job safety is non-existent? For example, in the event that workers lose their health due to non-existent or inadequately existent workers’ health and job safety measures, what meaning would non-discrimination have for those workers?

Actually, protecting and maintaining workers’ health and job safety has been an issue of top priority and of paramount importance for the ILO (**Alli: 7 Aslantepe: 19**), and a number of different conventions and recommendations have been adopted in this field. (4).

In our opinion, it has been a mistake not to address this issue as fundamental in an environment where 250 million on-the-job accidents occur in a year, 160 million people could not perform their duties due to occupational disease and accidents, and 1.2 million people died up to date (**Alli: 7**) (5).

We hope this mistake will be corrected by the ILO soon, and workers’ health and job safety will definitely be included in the fundamental rights and principles determined by the Declaration.

- As we have explained above, although Article 5. of the Declaration stipulates that labour standards can not be used for protectionist purposes under any circumstances, and comparative advantage of any country can not be interrogated within the framework of this Declaration and the follow up mechanism, we hope that anxieties regarding this

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issue (see Pirlor:10) would prove to be unfounded, and implementations in violation of this article of the Declaration will not take place.

NOTES

1. The first efforts in this regard may be seen in the World Economic Conference convened by League of Nations. See Charnovitz: 566.
2. For detailed information regarding “social dumping” view, see Dener: 29 and following.
3. The number of countries ratifying Convention No: 182 increased to 150, as of 9.9.2004. See ILO, 2004.
4. Roughly it could be said that half of the conventions and recommendations adopted by the ILO are directly or indirectly related to workers’ health and job safety (Allı:4). Major arrangements solely pertaining to the field of workers’ health and job safety may be summarised as Conventions Nos.: 155, 161, 174 and recommendations Nos.: 31, 97, 164, 171, 181.
5. The ILO Director General in his report stated that there may be some “fundamental” rights outside of those stated in the draft Declaration such as the standards regarding workers’ health and job safety. See ILO, 1997a: 20.

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