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Zeki, Nuna; Rombouts, Bas

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DECENT AND SUSTAINABLE WORK FOR THE FUTURE?

THE ILO FUTURE OF WORK CENTENARY INITIATIVE, THE UN 2030 AGENDA FOR SUSTAINABLE DEVELOPMENT, AND THE EVOLUTION OF THE MEANING OF WORK

S.J. Rombouts and N. Zekić

ABSTRACT

The meaning of work for individuals and society is evolving and is increasingly linked to sustainability challenges on a global level. For paid work to be meaningful, it has to be ‘decent work’, which has become a central principle in international labor and human rights law. This concept of decent work is an important component of high-profile international initiatives that chart the pathways towards a sustainable future. This Article analyzes and clarifies the evolving meaning of decent work as one of the main objectives of the international labor and human rights discourses and illustrates the increasingly closer connection between decent work and global sustainability instruments and challenges.

The United Nations (UN) 2030 Agenda for Sustainable Development incorporates decent work as a central theme of its social pillar. The recently adopted International Labour Organization (ILO) Centenary Declaration for the Future of Work further emphasizes the close relation between decent work and sustainability requirements. To get to a more comprehensive understanding of the evolving meaning of ‘decent and sustainable work’, this concept is examined from both a

labor law perspective and a human rights law viewpoint. These overlapping but not identical vantage points show that both societal and environmental elements supplement traditional individualized values of work as personal remuneration and fair working conditions. This way, decent work is reconceptualized to assist in addressing the challenges of creating a socially, environmentally, and economically sustainable future. By tracing the development of decent work and related fundamental labor standards in international human rights law and by inquiring into the core values attached to work from a labor law perspective, we aim to contribute to a better understanding of the deep transition the meaning of work is undergoing, in particular concerning its increasingly closer relation to sustainability challenges. While the modern understanding of decent work for all is firmly embedded in the global sustainability framework, it is argued that in the dynamics of the contemporary globalized economy, it remains important to safeguard its goal of inclusiveness to guarantee a ‘human-centred approach’ in which no vulnerable groups fall outside its scope of protection.

ABOUT THE AUTHORS

Bas Rombouts is associate professor at Tilburg University, Tilburg Law School where he specializes in international labor law and human rights law. Nuna Zekić is associate professor in labor and employment law at Tilburg University, Tilburg Law School where she specializes in inequality and flexible employment.

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INTRODUCTION: SUSTAINABILITY AND DECENT WORK— PARAMETERS AND APPROACH

The right to work is a fundamental human right that is instrumental to the survival of the individual considering that it is “essential for realizing other human rights and forms an inseparable and inherent part of human dignity.”¹ However, it is not enough that people merely have access to paid work, the Committee on Economic, Social and Cultural Rights explains. “Work as specified in article 6 of the Covenant must be *decent work*.”² However, this notion of “decent work,” or in other words, what we consider to be proper or fair aims and parameters of employment, is currently in transition.³

Recent high-profile international initiatives and instruments—in the framework of the United Nations (UN) and its specialized agency on labor standards, the International Labour Organization (ILO)—assert a transformative and ambitious agenda for a better future. Importantly, these initiatives explicitly connect the concept of decent work—one of the key aims of the ILO—to sustainability requirements. Sustainability focuses on the importance of and the interrelation between people, planet and prosperity. Decent work is one of the central concepts in the 2030 Agenda for Sustainable Development, as demonstrated by the core aim of Sustainable Development Goal No. 8: [to] “[p]romote sustained, inclusive and sustainable economic growth, full and productive

1. Comm. on Econ., Social and Cultural Rights (CESCR), General Comment No. 18: The Right to Work (Art. 6 of the Covenant), ¶ 1, E/C.12/GC/18 (Feb. 6, 2006).

2. *Id.* ¶ 7.

3. A number of developments have influenced this transition and the broader shifts in the world of work, see Int’l Labour Org. [ILO], *Rules of the Game: An Introduction to the Standards-Related Work of the International Labour Organization*, at 10 (2019), https://www.ilo.org/wcmsp5/groups/public/-ed_norm/-normes/documents/publication/wcms_672549.pdf [<https://perma.cc/BND6-5ZAK>] (“Since the 1980s, a series of global changes have profoundly transformed employment and work: the accelerated globalization of trade, technological change, the rise in the activity rate of women, the fragmentation of value chains and subcontracting, changes in demand, individual aspirations, the skills of the active population, etc. But today, with climate change, demographic growth and technological transformation, new challenges have emerged for everyone, and particularly for the world of work, including: the diversification of types of employment, the development of the digital economy, and particularly platforms, a new relationship with the meaning of work, and the reconciliation of work and personal life.”).

employment and decent work for all”.⁴ Furthermore, in the opening lines of the 2030 Agenda, the UN General Assembly resolves to:

create conditions for sustainable, inclusive and sustained economic growth, shared prosperity and decent work for all, taking into account different levels of national development and capacities.⁵

This relation between sustainability and work is also at the heart of the ILO Future of Work Initiative. One of the three key pillars of the 2019 Report of the Global Commission of the Future of Work is “increasing investment in decent and sustainable work” in line with the UN 2030 Agenda for Sustainable Development.⁶ Subsequently, in June 2019, the International Labour Conference, the parliamentary assembly of the ILO, adopted the “Centenary Declaration for the Future of Work,” which outlines key principles for a decent and sustainable future of work.⁷ Sustainability comprises—next to environmental or ecological aspects—socioeconomic elements. Decent work and social justice collectively constitute the central objectives of the ILO. Decent work is both a substantive norm in international labor and human rights law and a specific set of key policies of the ILO, the so-called “Decent Work Agenda.” Decent work requirements are increasingly linked to sustainability objectives and will be used together in many future economic, social and environmental policies. Therefore, we need to explore this relation between decent work and sustainability objectives in more detail. This Article will first and foremost highlight and clarify the connections between decent work and sustainability instruments. There is, however, a second purpose to this study:

[t]he transition to more environmentally and economically sustainable and inclusive growth requires deep structural transformation that implies profound economic and social changes, which reaffirms the relevance of the ILO’s mandate to advance social justice as a central pillar for the transition towards more sustainable economies and societies for all.⁸

4. G.A. Res. 70/1, *Transforming our World: the 2030 Agenda for Sustainable Development*, at 19–20 (Oct. 21, 2015).

5. *Id.* ¶ 3.

6. Int’l Labour Org. [ILO], *Work for a Brighter Future: Global Commission on the Future of Work*, at 45 (2019), https://www.ilo.org/wcmsp5/groups/public/-dgreports/-cabinet/documents/publication/wcms_662410.pdf [<https://perma.cc/RR8X-9JT9>].

7. Int’l Labour Org. [ILO], *Provisional Record: ILO Centenary Declaration for the Future of Work, 2019*, ILC108-PR6A (June 20, 2019), https://www.ilo.org/wcmsp5/groups/public/-ed_norm/-relconf/documents/meetingdocument/wcms_711288.pdf [<https://perma.cc/K6VL-45KW>].

8. Int’l Labour Org. [ILO], *Decent Work for Sustainable Development: Transformation Towards Sustainable and Resilient Societies*, at 3 (Apr. 26, 2018), https://sustainabledevelopment.un.org/content/documents/18233HLPF_Decent_Work_for_Sustainable_Development_2018.

This transition suggests a possible change in the meaning of decent work, which calls for a closer examination of how decent work is to be understood today and in the future. Are we not moving towards ‘decent and sustainable work’ instead? This Article will proceed by taking two perspectives from largely distinct but overlapping disciplines in which the meaning of work is examined in detail: labor law and international human rights law.

We will begin by examining the scope and content of two recent normative frameworks that contain many references to decent work and its close relation to sustainable development: the UN 2030 Agenda for Sustainable Development and the ILO’s Future of Work Initiative, which culminated in the Centenary Declaration for the Future of Work of June 2019. Decent work, which summarizes the aspirations human beings have in relation to work, “is not merely an objective, it is a means of achieving the specific targets of the new international programme of sustainable development.”⁹

Our assessment of these recent initiatives will enable our closer examination of the evolution of the concept of decent work in Part I, which will be conducted by analysing decent work from two separate but related angles.

In Part II, we consider the perspective of international human rights law, and we trace the development of decent work in the framework of the ILO and broader human rights law up to the Future of Work Declaration. Particular emphasis is placed on the so-called fundamental labor standards or fundamental principles and rights at work, which are the most central ‘human rights at work’. For a clear understanding of the close link between decent work and human rights, Part II will provide a short overview of the ILO’s function and a brief examination of the core of workers’ rights that the organization has adopted over the past century.¹⁰

In Part III, we analyse the meaning of ‘work’ and of ‘decent work’ from the perspective of the mostly domestically centered discipline of labor law. Women’s rights advocate, professor and former ILO official Virginia Leary argued in 1996 that it was a regrettable paradox that human rights and labor rights movements “run on tracks that are

pdf [<https://perma.cc/P9H9-5MS8>].

9. ILO, *Rules of the Game*, *supra* note 3, at 13.

10. These fundamental labor standards, institutionalized by the 1998 Declaration on Fundamental Principles and Rights at work, are an important component of the guiding principle of decent work. Int’l Labour Org. [ILO], *ILO Declaration on Fundamental Principles and Rights at Work and its Follow Up* (June 15, 2010), https://www.ilo.org/wcmsp5/groups/public/-ed_norm/-declaration/documents/normativeinstrument/wcms_716594.pdf [<https://perma.cc/GBX8-AS4F>].

sometimes parallel and rarely meet.”¹¹ Fortunately, as we illustrate, both disciplines have become more closely aligned in recent decades. Nevertheless, they still offer informative and—at least partially—distinct viewpoints for inspecting the changing nature of the meaning of work.¹²

In labor law, work is one of the foundational elements of the employment contract. An employment contract is defined as a contract whereby one party, the employee, commits himself to perform labor under the direction of the other party, the employer, in exchange for remuneration.¹³ The employment contract itself is often a large component of existing social protections and a principal building block of what is often characterized as the welfare state. As important as remunerated work is for labor and social security law and for the welfare state as a whole, it is not the concept of work that plays a central role in the legal doctrine. Rather, the dependency of the worker and the position of the worker as the weaker party to the employment contract are typically discussed in the literature in order to explain why labor laws exist and should exist.¹⁴ As we explain in Part III, the meaning predominantly assigned to paid work is that of a means by which to earn an income.

As a result, labor law has been rather ambivalent toward the type of work performed as long as work is remunerated; in other words, as long as there is an economic aspect to it. Traditionally, labor law has not been concerned with the question whether work performed by workers is sustainable socially, environmentally, or even economically. The legal concept of the employment contract—as the gateway to social protection—has always been more about work *relations* and much less about work as an *activity* or its effects on the society and the planet. By

11. Virginia A. Leary, *The Paradox of Workers' Rights as Human Rights*, in HUMAN RIGHTS, LABOR RIGHTS, AND INTERNATIONAL TRADE 22, 22 (Lance A. Compa & Stephen F. Diamond eds., 1996).

12. See Kevin Kolben, *Labor Rights as Human Rights?*, 50 VA. J. INT'L L. 449, 450 (2010) (describing that “[r]ecently, however, the tracks have begun to meet much more often”); see also Janice R. Bellace, *Labour Rights as the Means for Recognizing Human Rights at Work*, LEIDEN UNIV. (Oct. 22, 2018), <https://www.universiteitleiden.nl/binaries/content/assets/rechtsgeleerdheid/instituut-voor-publiekrecht/sociaal-recht/bellace-leiden-lecture-22-oct-2018-.pdf> [<https://perma.cc/6TW3-UJVD>] (observing that “until recently many human rights scholars veered off and focused on civil and political rights, all but ignoring rights that are violated when people are working. It is as if individuals, when they are viewed as workers, are compartmentalized, sealed off and cast to the side in human rights scholarship.”).

13. For a thorough analysis of the employment contract in comparative European private law and EU law, see Georges Cavalier & Robert Upex, *The Concept of Employment Contract in European Union Private Law*, 55 INT'L & COMP. L. Q. 587 (2006).

14. See generally GUY DAVIDOV, A PURPOSEFUL APPROACH TO LABOR LAW (2016). See further *infra* § 4.

examining the key workings of labor law and highlighting its possible flaws and strengths, we offer a distinct legal perspective on the concepts of decent and sustainable work.

By closely analysing decent work from domestic labor law and international law viewpoints, we combine labor law and human rights research. This way, we hope to arrive at an enhanced understanding of what decent work could mean. In so doing, we hope to provide an improved frame of reference for discussions and initiatives that aim to realize sustainable and decent work for the future.

I. THE FUTURE OF WORK INITIATIVE AND THE 2030 AGENDA FOR SUSTAINABLE DEVELOPMENT

In June 2019, the International Labour Conference, the parliamentary assembly of the ILO that is mandated to create international labor standards, adopted the ILO Centenary Declaration for the Future of Work.¹⁵ It is a milestone in the ILO's Future of Work Initiative, which launched in 2015 at the 104th International Labour Conference.¹⁶ Director General Guy Ryder explained that the initiative would “link up with important international processes” related to sustainability, “not least the Post-2015 Development Agenda and the followup to the Paris Climate Change Conference.”¹⁷

In order to investigate the impact of current transformations in the world of work, a high level commission was established under the leadership of South African President Cyril Ramaphosa and Swedish Prime Minister Stefan Löfven. This Global Commission on the Future of Work produced its seminal report, *Work for a Brighter Future*, in January 2019. The report served as a key source for the content of the Centenary Declaration. We will examine both these documents in order to illustrate the strong link between the promotion of social justice and decent work on the one hand—the core objectives of the ILO—and sustainable development as enshrined in the UN 2030 Agenda on the other. The way in which decent work requirements and related workers' rights, especially fundamental labor standards, are incorporated in the 2030 Agenda and in many of the Sustainable Development Goals and Targets will be described in the subsequent Part.

15. ILO, *Provisional Record: ILO Centenary Declaration for the Future of Work*, *supra* note 7.

16. See Int'l Labor Org. [ILO], *Guy Ryder: Anticipating the Future of Work Essential for Advancing Social Justice* (June 13, 2015), https://www.ilo.org/ilc/ILCSessions/previous-sessions/104/WCMS_375766/lang-en/index.htm [<https://perma.cc/E2P5-HSA4>].

17. *Id.*

A. The International Labour Organization and the Future of Work

The *Work for a Brighter Future* report aimed to answer the question of how “to achieve a future of work that provides decent and sustainable work opportunities for all.”¹⁸ This independent 27 member expert commission included “leading global figures from business, trade unions, think tanks, government and non-governmental organizations,” and it was established in 2017 as part of the Future of Work Centenary Initiative.¹⁹ Tripartite dialogues at a domestic level informed the work of the Commission, whereby the governments of the different member states consulted national workers’ and employers’ organizations to discuss challenges, priorities and opportunities related to the future of work.²⁰ *Work for a Brighter Future* outlines a ‘human-centered agenda for the future of work’ and calls for “a new approach that puts people and the work they do at the centre of economic and social policy and business practice.”²¹ This vision is indicative of a broader and more inclusive perspective on labor-related issues and it intersects with the increasingly closer relationship between workers’ rights and human rights, which will be discussed in more detail in Part III of this Article.

The Commission explained that there has been enormous progress made in work-related issues during the past several decades, including sharp reductions in incidences of child labor, increases in wages that lifted millions out of poverty, and increases in the efficacy of social protection systems. Additionally:

the recognition and respect of rights have given workers a say in their daily working lives. And employers’ and workers’ organizations have increasingly had a seat at the policy table by engaging in social dialogue. Importantly, social justice, full employment and decent work now figure expressly in the UN 2030 Agenda for Sustainable Development.²²

Nevertheless, many current and pressing issues persist. Unemployment remains unacceptably high, while billions of workers operate in the informal economy. Moreover, millions of children and workers are

18. *Work for a Brighter Future*, ILO (Jan. 2019), <https://www.ilo.org/infostories/en-GB/Campaigns/future-work/global-commission#intro> [<https://perma.cc/5VTU-8HP5>].

19. *Global Commission on the Future of Work, Work for a Brighter Future*, ILO, https://www.ilo.org/ankara/publications/WCMS_662410/lang-en/index.htm [<https://perma.cc/G2CX-K7SG>] (last visited Apr. 26, 2020).

20. *Five Questions About the ILO Centenary Declaration*, ILO (July 1, 2019), https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_712047/lang-en/index.htm [<https://perma.cc/A8HC-BR44>].

21. ILO, *Work for a Brighter Future: Global Commission on the Future of Work*, *supra* note 6, at 24.

22. *Id.* at 23.

trapped in forced labor, and income inequality is rising.²³ According to recent estimates, 2.78 million fatalities are caused by work-related accidents or disease annually, 300 million people have paid work but still live in extreme poverty, the global gender wage gap is approximately 20 percent, and 36 percent of the worldwide workforce works excessive hours (more than 48 hours per week).²⁴ In addition, new challenges, such as those presented by artificial intelligence, robotics, and automation, along with issues related to the digital economy and the much needed transition to “a future of work which respects the planet and seeks to arrest climate change,” have serious disruptive effects on the labor market.²⁵

In order to deal with these issues, the Commission proposes its human-centered agenda for the future of work,²⁶ which consists of three pillars of action to achieve growth, equity, and sustainability for present and future generations.²⁷ The first and second pillars focus on increasing investment in people’s capabilities and increasing investment in the institutions of work, such as legislation, employment contracts, collective agreements, and labor inspection systems.²⁸ It is the third pillar, however, which will be analyzed in more detail here because this pillar concerns the “increasing investment in decent and sustainable work”.²⁹ Under this pillar, the Commission aims to deal with the disruptive effects that demographic shifts, such as new technologies and climate change, will have on the global economy.³⁰ It recommends “transformative investments, in line with the UN 2030 Agenda for Sustainable Development” and “incentives to promote investments in key areas for decent and sustainable work.”³¹ The Commission describes ‘decent and sustainable work’ as the overall goal in this pillar.³²

23. ILO, *Work for a Brighter Future: Global Commission on the Future of Work*, *supra* note 6, at 18.

24. *Id.* at 20.

25. *Id.* at 18.

26. *Id.* at 11 (“We propose a human-centred agenda for the future of work that strengthens the social contract by placing people and the work they do at the centre of economic and social policy and business practice. This agenda consists of three pillars of action, which in combination would drive growth, equity and sustainability for present and future Generations.”).

27. *Id.*

28. *Id.* at 12.

29. *Id.* at 13.

30. *Id.* at 46.

31. *Id.* at 13.

32. *See id.* at 46 (“Countries must now prioritize long-term, sustainable investments that favour human development and protect the planet. New rules, business incentives and economic policy targets can better direct investments towards areas of the economy that advance decent jobs, gender equality and sustainable development, at the same time providing a foundation for high value-added activities. The overall goal is to invest in ‘decent

This key objective of the third pillar clearly demonstrates the close relationship between decent work and sustainability goals and marks the first time these concepts have been combined into a central goal for the ILO and its member states. Social fairness is seen as both an element of sustainability in itself and an important goal to secure when implementing broader, economic and ecological sustainability goals.

These social, environmental and economic goals are connected, and this is reflected in the options the report offers to address the challenges of the future of work. The Commission recognizes that “in the 2030 Agenda, the international community has embraced the goal of full employment and decent work for all,” and strongly recommends investments in areas of the economy that can address inescapable global needs.³³ It also recognizes that the action required to combat climate change will have a transformative impact on work, and it proposes carefully designed adaptation strategies to “advance an inclusive future of work.”³⁴ Opportunities for strategic investment await in the renewable energy and sustainable construction sectors,³⁵ as well as in the care economy³⁶ and in sustainable agriculture.³⁷ Additionally, physical, digital and social infrastructure is key to securing decent and sustainable work.³⁸ Moreover, the role of the private sector is likewise essential; adapting corporate governance to extend stakeholder representation could promote the human-centered approach the commission

and sustainable work’, a term we use for the human-centred growth and development path to deliver decent work for all.”).

33. *Id.*

34. *Id.* at 46–47.

35. On the opportunities on combining environmental and decent work goals, see Int’l Labour Org. [ILO], *World Employment and Social Outlook 2018: Greening With Jobs*, at iii (May 14, 2018), https://www.ilo.org/wcmsp5/groups/public/-dgreports/-dcomm/-publ/documents/publication/wcms_628654.pdf [<https://perma.cc/YFT6-AE29>] (“Taking action in the energy sector to limit global warming to 2 degrees Celsius by the end of the century can create around 24 million jobs, largely offsetting any job losses. Embracing the circular economy to reduce material extraction and waste generation will also result in net job gains.”).

36. See *The Care Economy*, INT’L LABOUR ORG., <https://www.ilo.org/global/topics/care-economy/lang-en/index.htm> [<https://perma.cc/9H88-85VS>] (last visited Mar. 21, 2020) (“Care work is to be found in a variety of settings and across formal and informal economies. Some of this care is provided by the health services sector, most of which is formal and public. Public services for childcare, early childhood education, disability and long-term care, as well as elder care, are other areas comprising the care economy.”).

37. ILO, *Work for a Brighter Future: Global Commission on the Future of Work*, *supra* note 6, at 47.

38. *Id.* at 48. Physical infrastructure includes, for example, public transport networks and adequate housing; digital infrastructure comprises e.g. connectivity to the internet or access to mobile phones and social infrastructure includes e.g. sickness benefits, pensions or unemployment benefits.

proposes.³⁹ The investment community could further promote instruments for socially and environmentally responsible investment, backed by a robust set of reporting obligations.⁴⁰ Furthermore, the UN Guiding Principles on Business and Human Rights can fulfil an important task by bringing about more sustainable corporate activity.⁴¹ These are just a handful of proposals the Commission has included in its report, but they are representative of the close relationship between decent work and sustainability. Indeed, many of the Commission's recommendations in this area have subsequently found their way into the ILO Centenary Declaration for the Future of Work.

Although Declarations do not have binding force under international law, the international community considers the Declarations of the ILO formal and authoritative statements that outline key principles on how the world of work should be organized in order to cope with contemporary challenges.⁴² After the 1944 Philadelphia Declaration, the 1998 Declaration on Fundamental Principles and Rights at Work, and the 2008 Social Justice for a Fair Globalization Declaration (these will be discussed in greater detail in Part III), the Centenary Declaration marks the fourth important moment in which the ILO reconsiders and reiterates its founding principles—related to promoting social justice—that were contained in the 1919 Constitution.⁴³ Many of its paragraphs contain references to decent work and sustainability.

The preamble of the Centenary Declaration warns about the threats to decent work caused by “persistent poverty, inequalities and injustices, conflict, disasters and other humanitarian emergencies” and recognizes the role of sustainable enterprises in securing decent work.⁴⁴ The strong link between securing decent work and promoting social,

39. *Id.*

40. *Id.*

41. *Id.* at 57.

42. *ILO Declarations*, ILO, https://www.ilo.org/global/about-the-ilo/how-the-ilo-works/departments-and-offices/jur/legal-instruments/WCMS_428589/lang-en/index.htm [<https://perma.cc/R78B-CBE4>] (last visited Mar. 21, 2020).

43. Int'l Labour Org. [ILO], *ILO Declaration of Philadelphia: Declaration Concerning The Aims And Purposes Of The International Labour Organization* (May 10, 1944), <https://www.ilo.org/legacy/english/inwork/cb-policy-guide/declarationofPhiladelphia1944.pdf> [<https://perma.cc/63SU-RYBX>]; ILO, *ILO Declaration on Fundamental Principles and Rights at Work and its Follow Up*, *supra* note 10; Int'l Labour Org. [ILO], *Declaration on Social Justice for a Fair Globalization* (June 10, 2008), https://www.ilo.org/wcmsp5/groups/public/-dgreports/-cabinet/documents/genericdocument/wcms_371208.pdf [<https://perma.cc/9PT9-SMMF>]; Int'l Labour Org. [ILO] Constitution. These principles are further examined below in Subpart II.A.

44. ILO, *Provisional Record: ILO Centenary Declaration for the Future of Work*, 2019, *supra* note 7, Preamble.

economic, and environmental sustainability is clearly stated in the Introduction, which contains the key motives and goals of the Declaration.⁴⁵ Paragraphs B, C and D explain that in order to address the current challenges of globalization, technological innovations, demographic shifts and climate change:

B. It is imperative to act with urgency to seize the opportunities and address the challenges to shape a fair, inclusive and secure future of work with full, productive and freely chosen employment and decent work for all.

C. Such a future of work is fundamental for sustainable development that puts an end to poverty and leaves no one behind.

D. The ILO must carry forward into its second century with unremitting vigor its constitutional mandate for social justice by further developing its human-centred approach to the future of work, which puts workers' rights and the needs, aspirations and rights of all people at the heart of economic, social and environmental policies.⁴⁶

Both the human-centered approach of the Global Commission on the Future of Work and the reasoning that decent work is essential for sustainable development are core foundations for the provisions in the Declaration. In order to promote these key principles, the ILO should direct its efforts at “ensuring a just transition to a future of work that contributes to sustainable development in its economic, social and environmental dimensions” and harness “the fullest potential of technological progress and productivity growth, including through social dialogue, to achieve decent work and sustainable development, which ensure dignity, self-fulfillment and a just sharing of the benefits for all.”⁴⁷ Considerable emphasis is placed on the importance of intensifying cooperation in the multilateral system in line with the recognition that “decent work is key to sustainable development, addressing income inequality and ending

45. Cf. Paris Agreement to the United Nations Framework Convention on Climate Change, Preamble, Dec. 12 2015, T.I.A.S. No. 16-1104: “Taking into account the imperatives of a just transition of the workforce and the creation of decent work and quality jobs in accordance with nationally defined development priorities, Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.”

46. ILO, *Provisional Record: ILO Centenary Declaration for the Future of Work*, 2019, *supra* note 7, § I ¶¶ A–D.

47. *Id.* § II ¶¶ A(i)–A(ii).

poverty.”⁴⁸ Special attention is therefore needed in “areas affected by conflict, disaster and other humanitarian emergencies.”⁴⁹

The Declaration also refers, not surprisingly, to the topics of the fundamental labor standards (to be discussed in more detail in the following Part), paying specific attention to their central role in the ILO labor standards framework and in securing decent work. A key element to attaining inclusive and sustainable growth is the promotion of workers’ rights, especially “freedom of association and the effective recognition of the right to collective bargaining as enabling rights.”⁵⁰ These rights have the potential to empower workers to set the agenda for collective bargaining processes and engage in decisionmaking processes about their own working terms and conditions. Gender equality rights and equal opportunity for vulnerable groups, such as persons with disabilities, are also seen as important components to inclusive and sustainable growth, as is the eradication of forced and child labor.⁵¹ As we discuss below, these fundamental labor rights are also part and parcel of the decent work agenda.

Section III of the Declaration contains the three-pillar structure incorporated in the report from the Global Commission as described above, including: “[p]romoting sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all,” which mirrors the text of Sustainable Development Goal 8.⁵²

The Centenary Declaration offers an important statement of principles and goals to address the challenges of the future of work. Furthermore, it offers a “platform for cooperation with other organizations in the international system.”⁵³ Both the report of the Global Commission on the Future of Work and the Centenary Declaration contain many references to sustainability and emphasize that decent work is a central component of sustainable development.

Having inspected the ILO’s vision for the future of work and the way in which sustainable development is extensively incorporated in that vision, the next Subpart will examine the aspects of the 2030 Agenda for Sustainable Development related to decent work and some of the most important internationally recognized workers’ rights.

48. *Id.* § II ¶ AA(xvii).

49. *Id.*

50. *Id.* § II ¶ A(vi).

51. *Id.* § II ¶ A(vii, viii, xiii).

52. *Id.* § III ¶ C; G.A. Res. 70/1, *supra* note 4.

53. *See* ILO, *Five Questions*, *supra* note 20.

B. Workers' Rights and the 2030 Agenda for Sustainable Development

The United Nations General Assembly adopted its resolution “Transforming our world: the 2030 Agenda for Sustainable Development” on September 25, 2015.⁵⁴ Decent work and related basic social rights form a central component of this most important current global initiative to promote sustainable development, which can be defined as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”⁵⁵ In order to take urgently needed “bold and transformative steps” to “shift the world on to a sustainable and resilient path,”⁵⁶ this ambitious document included a global plan of action based on five “P’s”: people, planet, prosperity, peace and partnership.⁵⁷ The 2030 Agenda builds on its predecessors, the Millennium Development Goals, by proposing 17 Sustainable Development Goals (SDGs) and 169 accompanying targets that are to be accomplished before 2030.⁵⁸

The 2030 Agenda and the SDGs are addressed not just to governments, but also to all stakeholders: “governments, civil society, the private sector, and others, are expected to contribute to the realization of the new agenda.”⁵⁹ Governments are, however, expected to establish the necessary infrastructure to follow up on and review the implementation of the SDGs.⁶⁰ Essential to realizing the SDGs is building and strengthening global partnerships and generating and allocating sufficient resources to effectively address the global sustainability challenges.⁶¹ While international public finance is key, the diverse private sector is also considered a major driver of productivity and economic growth, and is called upon to “apply their creativity and innovation to

54. G.A. Res. 70/1, *supra* note 4.

55. *The Sustainable Development Agenda*, U. N., <https://www.un.org/sustainabledevelopment/development-agenda> [perma.cc/U4GB-662R] (last visited Mar., 31, 2020).

56. G.A. Res. 70/1, *supra* note 4, Preamble.

57. The goals are seen as “integrated and indivisible” and “balance the three dimensions of sustainable development: the economic, social and environmental.” *See id.*

58. The Goals have widening targets, but their weight may be felt most acutely in the social area (e.g. 1. No Poverty, 3. Good Health and Well-being, and 5. Gender Equality), in the environmental area (e.g. 13. Climate Action, 14. Life below Water, 15. Life on Land) and in the economic area (e.g. 9. Industry, Innovation and Infrastructure, 11. Sustainable Cities and Communities, 12. Responsible Consumption and Production). *See id.* at 15–25.

59. *The Sustainable Development Agenda*, *supra* note 57.

60. *Id.*

61. G.A. Res. 70/1, *supra* note 4, ¶ 62. *See Addis Ababa, Action Agenda of the Third International Conference on Financing for Development (Addis Ababa Action Agenda) (July 13–16, 2015)*, endorsed by the General Assembly in its resolution 69/313 of July 27, 2015.

solving sustainable development challenges” in line with international standards such as the labor standards of the ILO.⁶² Many private sector initiatives already include the SDGs in their corporate policies and decent work standards, especially fundamental workers’ rights, are included in the vast majority of those initiatives.⁶³

In the UN 2030 Agenda, decent work is mentioned frequently. The ILO sees the pillars of the Decent Work Agenda, which will be covered in Part III, as essential building blocks of sustainable development that should be central to policies for sustainable and inclusive economic growth and development.⁶⁴ In paragraph 9 of the 2030 Agenda, the General Assembly envisages “a world in which every country enjoys sustained, inclusive and sustainable economic growth and decent work for all.”⁶⁵

To realize this objective, a number of challenges that relate to the topics of the fundamental labor standards will have to be addressed. The General Assembly recognizes gender inequality and unemployment, especially of young persons, as major issues.⁶⁶ Moreover, equal opportunities for women and men in employment, leadership and decisionmaking should be achieved.⁶⁷ Forced labor and child labor need to be eradicated in all their forms and all countries have to “benefit from having a healthy and well-educated workforce with the knowledge and skills needed for productive and fulfilling work and full participation in society.”⁶⁸

Many of the Sustainable Development Goals contain direct or indirect references and links to workers’ rights. The most important goal for this study is SDG 8: [to] “[p]romote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.”⁶⁹ With respect to the protection of fundamental labor rights, SDG 8 develops a number of far-reaching targets.⁷⁰ All of

62. G.A. Res. 70/1, *supra* note 4, ¶¶ 43, 67.

63. S. J. Rombouts, *The International Diffusion of Fundamental Labour Standards, Contemporary Content, Scope, Supervision and Proliferation of Core Workers’ Rights Under Public, Private, Binding, and Voluntary Regulatory Regimes*, 50 COLUM. HUM. RTS. L. REV., 78, 167–68 (2019).

64. ILO, *Decent Work for Sustainable Development: Transformation Towards Sustainable and Resilient Societies*, *supra* note 8, at 3.

65. G.A. Res., 70/1, *supra* note 4, ¶¶ 3, 9.

66. *Id.* ¶ 14.

67. *Id.*

68. *Id.* ¶ 27.

69. *Id.* at 19 (Sustainable Development Goals).

70. *Id.* at 19–20; *see also* G.A. Res. 71/313, at 1–4, 12 (July 6, 2017): Target 8.5 calls for “full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value” by 2030. Equal pay for work of equal value is the topic of Fundamental Convention No. 100

the topics of the ILO's Fundamental Conventions—which will be briefly examined in Section 4—are present in the SDG framework.⁷¹ This illustrates that fundamental labor standards, the essential components of decent work, are essential goals and targets of the 2030 Agenda and offer the main normative framework for measuring social sustainability.

A large number of other SDGs have clear links to workers' rights, decent work and employment. This protracted focus on the three elements of the 2030 agenda—economic, social, and environmental—is, according to the ILO, an international and intergenerational demand for social justice. Economic development, social justice and environmental sustainability are seen as the essential elements for creating more resilient societies.⁷² In this light, the ILO observes that:

The quest for decent work for all men and women, for productive, high-quality employment and for inclusive labor markets is encompassed in the 2030 Agenda under Goal 8, but it is also seen as a cross-cutting topic, underlying other goals as well and intertwined with many targets across the 2030 Agenda.⁷³

To give just a few examples of these links, Goal 1 (eradication of poverty) and Goal 2 (elimination of hunger), clearly relate to fairly remunerated and decent work.⁷⁴ Goals 3 and 4, which deal with health and

of the ILO and a general prohibition of discrimination in employment and occupation is found in Convention 111. Target 8.6 aims to substantially reduce youth unemployment by 2020. Target 8.7 covers the prohibitions of child labor and forced labor and addresses the immediate eradication of forced labor, human trafficking and modern slavery. Four of the ILO's Fundamental Conventions deal with the prohibition of child labor and forced labor. Target 8.7 contains a progressive objective to "secure the prohibition and elimination of the worst forms of child labor, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms." Target 8.8 contains a general objective to protect labor rights and occupational health and safety and specifically mentions (women) migrant workers as a particularly vulnerable group. The fact that this includes rights to freedom of association and collective bargaining is mentioned in resolution A/RES/71/313, which contains a framework of global indicators that serve as tools to followup and review the goals and targets. *See id.* at 12. The two fundamental ILO Conventions dealing with these topics are: Freedom of Association and Protection of the Right to Organise Convention, July 9, 1948, 68 U.N.T.S. 17; Right to Organise and Collective Bargaining Convention, July 1, 1949, 96 U.N.T.S. 257.

71. Freedom of Association and Protection of the Right to Organise Convention, *supra* note 72; Right to Organise and Collective Bargaining Convention (ILO No. 98), *supra* note 72.

72. ILO, *Decent Work for Sustainable Development: Transformation Towards Sustainable and Resilient Societies*, *supra* note 8, ¶¶ 5, 8.

73. Int'l Labour Org. [ILO], *Decent Work and the Sustainable Development Goals: A Guidebook on SDG Labour Market Indicators*, at v, ILO Doc. STATI-180920-1 (2018), https://www.ilo.org/wcmsp5/groups/public/-dgreports/-stat/documents/publication/wcms_647109.pdf [<https://perma.cc/P9H9-5MS8>].

74. See, for example, the close cooperation between the Secretary General of the ILO and the UN High Commissioner on Human Rights in achieving target 1.3 on implementing social protection worldwide. *Expand Social Protection To The 4 Billion Excluded*, ILO

high quality education, also have a clear link to the world of work in which occupational safety, health and proper skills development are key to decent work. Goals 5 and 10, which focus on reducing inequality, relate directly to the fundamental standards on nondiscrimination and equal treatment covered by Fundamental Conventions No. 100 and No. 111. Furthermore, sustainable water, sanitation and energy (Goals 6 and 7) can be seen as both preconditions and opportunities for decent work.⁷⁵

The SDGs contain an all-encompassing agenda for a sustainable future and are to serve as a catalyst for change in which decent work and labor standards are a crucial component. If implemented effectively, the work-related goals and the specific and progressive targets with respect to equal treatment, forced labor and child labor could lead to major improvements for workers worldwide without compromising environmental and economic challenges.

Having illustrated that ‘decent and sustainable work’ is a key concept in the ILO’s future of work initiative and that decent work and related labor rights constitute a significant element of the social items on the 2030 Agenda for Sustainable Development, we can now turn to our deeper exploration of the evolution of the concept of decent work. We will do so in two steps. First, in Part II, we will analyse the development of decent work in the framework of the ILO and its relation to broader international human rights law. Then, we will examine the core aims of labor law to analyse how the meaning of work has evolved and how this colours our understanding of a ‘decent’ job. Part III will therefore explore the foundations of labor law and the notion of work in-depth.

II. DECENT WORK AND HUMAN RIGHTS: DEVELOPMENT OF THE INTERNATIONAL NORMATIVE FRAMEWORK

This Part will investigate the concept of the ILO’s framework of decent work and the relation between decent work, ILO standards, and broader human rights law. Specifically, the fundamental labor standards and the related fundamental principles and rights at work illustrate this closer alignment between labor rights and human rights. For a clear understanding of the development of decent work in the international setting, this Part will provide a brief introduction into the functioning of the ILO and explore some of its key conventions and declarations.

(Oct. 25, 2018) https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_647931/lang-en/index.htm [<https://perma.cc/2Q87-KGZ6>].

75. ILO, *Decent Work for Sustainable Development: Transformation Towards Sustainable and Resilient Societies*, *supra* note 8, at 4.

Subpart III.B will then examine the scope and content of decent work and its relation to broader human rights law in-depth.

A. The International Labour Organization and Fundamental Labor Standards

The ILO celebrated its centenary in June 2019 with the adoption of the Centenary Declaration, one hundred years after its creation as part of the Versailles Peace Treaty on 1919 and its later adoption into the UN family as the UN's first specialized agency. Today, the ILO is the principal organization for creating binding international Conventions and nonbinding Recommendations on work-related topics. One of the unique features of the ILO is that the adoption of international labor standards requires a tripartite approval process, in which representative of employers, workers and governments all have formal decisionmaking powers.⁷⁶ A complex but acclaimed supervisory systems backs the ILO's standards in which different monitoring mechanisms can be invoked to exert pressure on governments that violate labor standards they have ratified.⁷⁷ The regular supervisory system contains periodic reporting obligations for member states, while three special complaint-based procedures may be invoked when standards are allegedly violated.⁷⁸ The ILO has 187 member states and has adopted 190 Conventions, the latest in June 2019, which deals with on violence and harassment at work and contains 206 Recommendations and 6 Protocols.⁷⁹

76. ILO, *Rules of the Game*, *supra* note 3, at 15.

77. A. G. Koroma & P.F. van der Heijden, *Review of ILO Supervisory Mechanism*, INT'L LABOR ORG. [ILO], ¶¶ 92, 122, 126, ILO Doc. GB.326/LILS/3/1 (Feb. 29, 2016), https://www.ilo.org/wcmsp5/groups/public/-ed_norm/-relconf/documents/meetingdocument/wcms_456451.pdf [<https://perma.cc/SAX5-6RBM>]. The CFA may deal with complaints regarding violations of the principles of freedom of association even if the member state under review has not ratified the relevant (Fundamental) Conventions. See *Committee on Freedom of Association*, ILO, <https://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-on-freedom-of-association/lang-en/index.htm> [<https://perma.cc/6J7L-VSY7>] (last visited Apr. 26, 2020).

78. *Id.* ¶¶ 19–33. The supervisory system of the ILO does not impose binding measures but aims to resolve conflicts through softer means such as (social) dialogue, recommendations and requests, and collaboration and technical assistance. See *Id.* While the ILO has been criticized for 'lacking teeth,' the long history of the supervisory machinery has shown that the different means of—sometimes simultaneously—pressuring governments leads to real changes in practice. See Kari Tapiola, *The Teeth of the ILO: The Impact of the 1998 ILO Declaration On Fundamental Principles And Rights At Work*, INT'L LABOR ORG. [ILO] 111 (2018), https://www.ilo.org/wcmsp5/groups/public/-ed_norm/-ipecc/documents/publication/wcms_632348.pdf [<https://perma.cc/U9PC-WX3F>].

79. See *NORMLEX*, ILO (Apr. 4, 2020), <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:1:0::NO::> [<https://perma.cc/6YCF-ACDE/>].

There have been many moments in the ILO's long history in which its core principles were asserted or restated. The preamble to the 1919 Constitution famously stated that, "universal and lasting peace can be established only if it is based upon social justice."⁸⁰ Over time, as will be explained below, decent work became a critical component of social justice and a key aim of the ILO. In 1944, the Philadelphia Declaration was adopted, constituting the second major statement of the principles and objectives of the ILO.⁸¹ The Philadelphia Declaration reiterates and incorporates a number of key values that guide the work of the ILO. The most famous provisions of this seminal instrument express four key principles:

- (a) labour is not a commodity;
- (b) freedom of expression and of association are essential to sustained progress;
- (c) poverty anywhere constitutes a danger to prosperity everywhere;
- (d) the war against want requires to be carried on with unrelenting vigour within each nation, and by continuous and concerted international effort in which the representatives of workers and employers, enjoying equal status with those of governments, join with them in free discussion and democratic decision with a view to the promotion of the common welfare.⁸²

To secure respect for these key principles, the Declaration asserts that: "all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity."⁸³ This focus on collective and individual freedom, self-determination and democratic decisionmaking, and equality and nondiscrimination clearly link the objectives of the ILO to the human rights character of the new world peace organization, the UN. This close relationship between key labor rights and principles and the broader human rights framework is elaborated on more extensively in a third important declaration that was adopted half a century later: The Declaration on Fundamental Principles and Rights at Work.⁸⁴

80. Int'l Labour Org. [ILO] Constitution Preamble.

81. See ILO, *ILO Declaration of Philadelphia: Declaration Concerning the Aims and Purposes of the International Labour Organization*, *supra* note 45.

82. *Id.* para. I.

83. *Id.* para. II.

84. See ILO, *ILO Declaration on Fundamental Principles and Rights at Work and its Follow Up*, *supra* note 10.

The 1998 Declaration identified four areas—the prohibition of child labor, the prohibition of forced labor, nondiscrimination and equal treatment and, freedom of association and recognition of the right to collective bargaining—as fundamental, and linked these four areas to eight corresponding conventions, which were subsequently designated as ‘Fundamental Conventions’.⁸⁵ Following the recommendations of the Global Commission on the Future of Work, the Centenary Declaration calls on the ILO 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.”⁸⁶ Occupational safety and health has always been a key area of ILO action, and incorporating this category into the list of fundamental rights seems a proper step forward, also considering the major impact the Covid 19 crisis has on workers worldwide.⁸⁷

The 1998 Declaration aims to promote universal ratification of the eight current Fundamental Conventions, and it has been successful in this respect: currently 92 percent of eligible states have ratified the 1998 Declaration.⁸⁸

The international community greeted the 1998 Declaration with a mixed reception. It is beyond the scope of this Article to go into detail on the debate surrounding the 1998 Declaration, but some authors, especially Philip Alston, expressed the concern that the language of ‘principles’ might water down the effectiveness of recognized labor

85. *Id.*, annex pt. II.

86. ILO, *Provisional Record: ILO Centenary Declaration for the Future of Work*, 2019, *supra* note 7, at 9.

87. One way to do so would be to elevate the Occupational Safety and Health Convention No. 155 of 1981 and the Promotional Framework for Occupational Safety and Health Convention No. 187 of 2006 to the status of fundamental conventions. Nevertheless, it is important to consider the consequences this would have on other international public and private instruments and initiatives that already include references to the present list of fundamental principles and rights at work. Would this mean that instruments that presently refer to fundamental principles and rights at work will also have to adhere to health and safety norms, while those were not ‘part of the deal’ when they committed to the fundamental principles and rights? Additionally, these Conventions have not been ratified as widely as the present fundamental conventions. C155 and C187 have been ratified by 68 and 48 member states, respectively, whereas the 2002 protocol to C155 has only been ratified by 12 member states.

88. *Conventions and Recommendations*, ILO (Apr. 4, 2020), <http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang-en/index.htm> [<https://perma.cc/8G4Q-MKWF>]. There is a special followup system annexed to the Declaration on Fundamental Principles and Rights at Work through which ILO member states that have not ratified the Fundamental Conventions will have to report to the ILO on changes that may have taken place in their law or practice. See ILO, *ILO Declaration on Fundamental Principles and Rights at Work and its Follow Up*, *supra* note 10, annex pt. II.B.1.

standards.⁸⁹ However, the four fundamental principles and rights have been included in many international human rights treaties and have found their way into many other different instruments that aim to protect labor standards in an international setting, such as the UN Global Compact, the UN Guiding Principles on Business and Human Rights, and different free trade agreements.⁹⁰

Given that these four areas are considered fundamental labor standards and components of decent work, that they are widely incorporated in broader human rights law, figure prominently in the goals and targets of the 2030 Agenda for Sustainable Development, and the vast majority of states have ratified the Fundamental Conventions of the ILO, we will briefly inspect these four areas below.

As previously mentioned, the fundamental principles and rights correspond to eight Fundamental Conventions.

Combatting child labor is the first category. Despite a sharp decline in the practice of child labor since 2000, combatting child labor remains an important area for the ILO and other UN bodies.⁹¹ Child labor refers to work that “is mentally, physically, socially or morally dangerous and harmful to children” and interferes with their education.⁹² According to 2017 estimates of the ILO, 152 million children are engaged in child labor about 73 million of whom are engaged hazardous work.⁹³ Two Fundamental Conventions cover the prohibition of child labor: the Minimum Age Convention, 1973 (No. 138) and the Worst Forms of Child Labour Convention, 1999 (No. 182).⁹⁴

Convention No. 138 aims to progressively increase the minimum age for admission to employment consideration, and includes three

89. For the full debate, see Philip Alston, “Core Labour Standards” and the Transformation of the International Labour Rights Regime, 15 EUR. J. OF INT’L L. 457, 457–521 (2004); Philip Alston & James Heenan, *Shrinking the International Labor Code: An Unintended Consequence of the 1998 ILO Declaration on Fundamental Principles and Rights at Work*, 36 N.Y.U. J. INT’L L. & POL. 221, 264 (2004); Brian Langille, *Core Labour Rights—The True Story (Reply to Alston)*, 16 EUR J. OF INT’L L. 409, 409–37 (2005); Francis Maupain, *Revitalization Not Retreat. The Real Potential of the 1998 ILO Declaration for the Universal Protection of Workers’ Rights*, 16 EUR J. OF INT’L L., 439, 439–65 (2005).

90. For a more detailed and comprehensive overview see Rombouts, *supra* note 63, at 78–175.

91. Int’l Labor Org. [ILO], *Global Estimates of Child Labor: Results and Trends, 2012–2016*, at 11 (2017), https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575499.pdf [<https://perma.cc/YSG6-ZL2L>].

92. *International Programme on the Elimination of Child Labor*, ILO (Apr. 4, 2020), <http://www.ilo.org/ipec/facts/lang-en/index.htm> [<https://perma.cc/D2E5-X8UQ>].

93. ILO, *Global Estimates of Child Labor: Results and Trends*, *supra* note 91, at 8.

94. Minimum Age Convention, June 26, 1973, 1015 U.N.T.S. 297; Worst Forms of Child Labor Convention, June 17, 1999, 2133 U.N.T.S. 161.

different categories: a basic minimum age, hazardous work, and light work.⁹⁵ Convention No. 182 focuses on immediate and comprehensive actions to effectively eliminate “the worst forms of child labor as a matter of urgency,” such as slavery, prostitution and illicit activities.⁹⁶ The definition of child here covers all persons under the age of eighteen years old.⁹⁷

Fundamental Conventions No. 29 and 105—the Forced Labour Convention and the Abolition of Forced Labour Convention—cover the second category, concerning the prohibition of forced labor.⁹⁸ Approximately 25 million people worldwide are trapped in forced labor.⁹⁹ This issue has been on the agenda of the ILO since its inception, and the 1930 Forced Labour Convention, No. 29 seeks to suppress forced or compulsory labor in all its forms. Forced labor is defined as: “all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily.”¹⁰⁰ The 2014 protocol to Convention No. 29 modernizes the Convention to more effectively combat modern forms of slavery such as human trafficking.¹⁰¹ Convention No. 105 emphasizes a specific set of categories of forced labor that require additional attention and focus—on abolishing the use of forced labor for political coercion, economic

95. The first category is the basic minimum age, set at either age fifteen or at the age of completion of compulsory schooling. The second category establishes a minimum age of eighteen for hazardous work, which is defined as work that “is likely to jeopardize the health, safety or morals of young persons.” Finally, there is an optional exception for the category of ‘light work,’ which can be allowed for children between thirteen and fifteen years. See Minimum Age Convention, *supra* note 94, arts. 2, 3, 7.

96. Worst Forms of Child Labor Convention, *supra* note 94. In Article 3 of the Convention, the four categories of ‘worst forms of child labor’ are mentioned, and they are: (a) slavery, debt bondage, serfdom and forced labor; (b) child prostitution and pornography; (c) illicit activities such as drug trafficking and production; (d) hazardous work that is likely to harm health and safety of children.

97. *Id.*

98. Forced Labour Convention, June 28, 1930, 39 U.N.T.S. 55; Abolition of Forced Labour Convention, Jan. 17, 1957, 320 U.N.T.S. 291.

99. Int’l Labour Org. [ILO], *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*, at 5 (2017), https://www.ilo.org/wcmsp5/groups/public/-dgreports/-dcomm/documents/publication/wcms_575479.pdf [<https://perma.cc/CFL2-86RY>].

100. Forced Labour Convention, *supra* note 98, art. 2. Military service, civic obligations, prison labour, emergency situations and minor communal services may be exempted from this prohibition. See Int’l Labour Org. [ILO], *What is Forced Labour, Modern Slavery and Human Trafficking*, <http://www.ilo.org/global/topics/forced-labour/definition/lang-en/index.htm> [<https://perma.cc/Z6AA-2N4J>].

101. Protocol of 2014 to the Forced Labour Convention, June 28, 1930, 39 U.N.T.S. 55. See also Int’l Labour Org. [ILO], *Recommendation on Supplementary Measures For the Effective Suppression of Forced Labour* (June 11, 2014), https://www.ilo.org/wcmsp5/groups/public/-ed_norm/-relconf/documents/meetingdocument/wcms_248908.pdf [<https://perma.cc/D2GY-AFCU>].

development, and labor discipline, and creates sanctions for collective action and discrimination.¹⁰²

The third category, which is included in SDG 5 (Achieve gender equality and empower all women and girls) and SDG 10 (Reduce inequality within and among countries), concerns nondiscrimination and equal treatment. The two Fundamental Conventions that cover this issue are Discrimination Convention No. 111 and the Equal Remuneration Convention No. 100.¹⁰³

Convention No. 111 covers a prohibition of direct and indirect discrimination in relation to employment and occupation. Discrimination is defined as: “any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.”¹⁰⁴

Convention No. 100 deals specifically with the principle of equal remuneration for work of equal value for men and women workers. According to the Global Commission on the Future of Work and recent statistics of the ILO, the gender wage gap worldwide stands at approximately 20 percent.¹⁰⁵ While the Convention does not specify what kind of method ratifying members should use for determining what is ‘work of equal value’ it does offer some guidance, such as that the equal pay principle may be applied by means of national laws, specific machinery for wage determination or collective agreements.¹⁰⁶

The fourth category, consisting of the right to freedom of association and the related right to collective bargaining, is distinguished from the other fundamental standards, as these rights have a more procedural

102. Abolition of Forced Labour Convention, *supra* note 98, art. 1.

103. Discrimination (Employment and Occupation) Convention, June 25, 1958, 362 U.N.T.S.; Equal Remuneration Convention, June 29, 1951, 164 U.N.T.S. 304. Another important ILO instrument on equal treatment is Workers with Family Responsibilities Convention, June 23, 1981, 1331 U.N.T.S. 295.

104. Discrimination (Employment and Occupation) Convention, *supra* note 103, art. 1. The Convention also applies to access to employment or vocational training. Exceptions to the prohibition are (restrictively) allowed when the inherent requirements of a job call for differential treatment. *Id.* art. 1 ¶ 2).

105. ILO, *Work for a Brighter Future: Global Commission on the Future of Work*, *supra* note 6, at 20. See also Int’l Labour Org. [ILO], *A Quantum Leap for Gender Equality: For a Better Future of Work for All*, at 14 (2019), https://www.ilo.org/wcmsp5/groups/public/-dgreports/-dcomm/-publ/documents/publication/wcms_674831.pdf [<https://perma.cc/K6RF-4XR7>]. To address this, states should “promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.” See Equal Remuneration Convention, *supra* note 103, art. 2, ¶ 1.

106. Equal Remuneration Convention, *supra* note 103, art. 2.

character. These rights aim to establish and secure what labor lawyers often call industrial democracy—democratic deliberations and decision-making structures at the company and sectoral levels—and they operate as a gateway for worker and employer organizations to negotiate and assert employment terms and conditions.

Convention No. 87 and No. 98 are often seen as the most important conventions of the ILO since they secure a system of social dialogue within which workers have genuine decisionmaking powers. Convention No. 87 guarantees independence for workers' and employers' organizations from governmental interference.¹⁰⁷ Workers' and employers' organizations furthermore have rights to create their own internal rules and organize their own administration and activities free from interference by the public authorities, and they cannot to be dissolved or suspended by the government.¹⁰⁸

Convention No. 98 concerns the proper relationship between management and trade unions and the protection of union members against unfair treatment. This Convention prohibits acts of anti-union discrimination.¹⁰⁹ Trade unions and employers' organizations should be protected against unfair influence by management.¹¹⁰ Safeguarding the independence of workers' and employers' organizations is essential for effectively exercising rights to freedom of association and collective bargaining, and these rights are seen as vital for any well-functioning labor law system.

A basic understanding of these fundamental standards is key to a proper understanding of decent work and the relationship between international human rights and labor rights. This relationship is perhaps best described by Francis Maupain, former legal advisor to the ILO, who stated that the approach taken by the 1998 Declaration on Fundamental Principles and Rights at Work “concretely contributes to a new vision whereby all workers' rights are ‘universal indivisible,

107. Freedom of Association and Protection of the Right to Organise Convention, July 9, 1948, 68 U.N.T.S. 7 (“Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.”).

108. *Id.* arts. 3–4.

109. Right to Organise and Collective Bargaining Convention art. 1, July 1, 1949, 96 U.N.T.S. 257. This is specifically so when such discrimination would prohibit workers from joining trade unions, would lead to their dismissal, or hinder their participation in union actions.

110. *Id.* (“[A]cts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations.”).

and interdependent and inter-related.”¹¹¹ More recently, Director General Guy Ryder argued that the 1998 Declaration contains “a much needed statement of human rights at work and vehicle for their promotion” which produced lasting benefits.¹¹² Kari Tapiola, another key expert on the ILO, stated in his 2018 study of the impact of the 1998 Declaration that the “global recognition and realization of fundamental principles and rights at work” are the essence of the ILO’s human rights mandate.¹¹³ Furthermore: “[t]he four categories of the 1998 Declaration are the cornerstones that keep erect the normative edifice of Decent Work.”¹¹⁴

B. The Right to Work, Decent Work and Human Rights

With this background in place, the stage is set for a more detailed examination of the concept of decent work. This Subpart examines the right to work and subsequently traces the development of decent work in the framework of the ILO.

1. The Right to Work

According to Article 23 (1) of the UN Universal Declaration of Human Rights: “Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment”. Most countries have committed themselves to ‘tak[ing] appropriate steps to safeguard this right’.¹¹⁵ However, the right to work does not guarantee employment and is difficult to enforce in court, since it includes only a positive obligation on the government’s behalf to put measures in place that promote and stimulate employment.¹¹⁶ Nevertheless, the right to work is seen by many as an important element of social protection as the effective enjoyment of other social rights is ‘inconceivable unless the right to work is guaranteed

111. Maupain, *supra* note 89, at 463.

112. Tapiola, *supra* note 78, at III. The ratification rate of the Fundamental Conventions is now at 92 percent of the total number of possible ratifications; the 1998 Declaration provided an enormous boost in the ratification rate. *See Conventions and Recommendations*, ILO, <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang-en/index.htm> [<https://perma.cc/T44E-8698>] (last visited Apr. 26, 2020). This means that almost all countries worldwide (of course there are notable exceptions) have legislation on forced labor, child labor, nondiscrimination and freedom of association at the level of the ILO norms, and in many instances at a higher level.

113. Tapiola, *supra* note 78, at 111.

114. *Id.* at 94.

115. Comm. on Econ., Social and Cultural Rights (CESCR), *supra* note 1, ¶ 2.

116. Diamond Ashiagbor, *The Right to Work*, in *SOCIAL RIGHTS IN EUROPE* 241–59 (Gráinne de Búrca et al. eds., 2005).

first'.¹¹⁷ It is enshrined in many constitutions and has a prominent place in the European Social Charter's first article. Moreover, many ILO Conventions can be seen as an elaboration of this right.¹¹⁸

It is, however, possible to hold the view that this right is not 'substantial', because it only requires the States to have a labor market policy in place that is targeted towards full employment. According to professor Diamond Ashiagbor, for example, it has always been clear that the interpretation by the European Committee of Social Rights falls short of requiring states to guarantee a job for everyone who wants one.¹¹⁹ Indeed, the right to work does not entail an absolute and unconditional right to obtain employment.

This is, however, a rather restricted conception of the right to work.¹²⁰ First, the right to work concerns not only a social right in the sense of a state obligation, but also a civil right, since it entails the right to earn one's living in a freely chosen occupation.¹²¹ This has implications for the labor market opportunities, as access to employment should be free of discrimination. A freely chosen occupation, furthermore, implies a prohibition of forced or compulsory labor.¹²² Second, we can deduct normative implications from the right to work as a social right if we look closely at its interpretation by, for example, the European Committee of Social Rights and the Committee on Economic, Cultural and Social Rights. A normative implication of the fundamental right to work is the requirement that the government—while increasing employment opportunities for everyone—pays attention to the quality of work that is, or becomes, available on the labor market.

This is where the meaning of work itself becomes visible as an essential element of the right to work. The Committee on Economic, Social and Cultural Rights, in their general Comment on the right to work, provides that a right to work must mean a right to decent work.¹²³ The reality is that most people must work in order to make a living.

117. European Comm. of Social Rights, *Conclusion I*, at 13 (May 31, 1969).

118. *See, e.g.*, Convention Concerning Employment Policy, July 9, 1964, 569 U.N.T.S. 65; Convention Concerning Employment Promotion and Protection against Unemployment, June 21, 1988, 1654 U.N.T.S. 67.

119. Ashiagbor, *supra* note 116, at 244–45.

120. Nuna Zekić, *Job Security or Employment Security: What's in a Name?*, 7(4) EUR. LAB. L.J. 548, 568 (2016).

121. *See* Council of Europe, Revised European Social Charter art 1, para 2, May 3, 1996, 2151 U.N.T.S. 277.

122. For an assessment of the workfare schemes in relation to the free choice of employment, see Amir Paz-Fuchs & Anja Eleveld, *Workfare Revisited*, 45(1) INDUS. L.J. 29, 36–40 (2016).

123. Comm. on Econ., Social and Cultural Rights (CESCR), *supra* note 1, ¶ 3.

After all, most do not have other sources of income. Therefore, merely providing that people have a right to work does not accomplish much in the sense of economic and social rights. If, for example, most available jobs endanger workers' health and leave them in poverty, then a right to work is a hollow notion. Respect for fundamental human rights and the rights of workers in terms of work safety and remuneration are central to the notion of decent work. Furthermore, in reference to ILO Convention No. 158, the European Committee of Social Rights explicitly mentions that 'the right not to be unfairly deprived of employment' falls under the normative content of the right to work.¹²⁴ A right to work would indeed have limited effect if it would allow for a person to lose that work at any given moment and on any arbitrary grounds. As explained, the normative implication of the right to work is that work should meet a certain level of quality; it should be decent work.

Elements of—and at times the entire spectrum of—Decent Work have been enshrined as human rights in several international conventions, with the ICESCR having the broadest coverage for the right to decent work.¹²⁵ For the ILO, the idea of 'work' in the concept of 'decent work' expands beyond classical conceptions of 'labor or employment' to encompass the many ways that people contribute to the economy and society, including formal and informal work and unpaid care work.¹²⁶ This means not only that people that work on the basis of a formal employment contract are subject to protection under the decent work umbrella, but it also includes, for instance, the two billion people in the informal economy.

2. The ILO, Decent Work and Human Rights

We will now proceed to address the ILO understanding of decent work. The concept of decent work was developed following the adoption of the ILO's 1998 Declaration, and can be seen as both a substantive normative concept—with many of its elements incorporated in human rights instruments—and a specific policy agenda for the ILO, in the form of the Decent Work Agenda. Decent Work was formally institutionalized in a third important declaration of the ILO, the 2008 Social Justice for a Fair Globalization Declaration.¹²⁷ Kari Tapiola

124. *Id.* See also Antonio O. Avilés & Jordi G. Viña, *Regulation of the Labour Market*, in *THE TRANSFORMATION OF LABOUR LAW IN EUROPE* 59, 61 (Bob Hepple & Bruno Veneziani eds., 2009).

125. Gillian MacNaughton & Dianne F. Frey, *Decent Work, Human Rights and the Sustainable Development Goals*, 47 *GEO. J. OF INT'L L.* 607, 625 (2016).

126. *Id.* at 629.

127. ILO, *Declaration on Social Justice for a Fair Globalization*, *supra* note 45.

observed that: “A new wave of excitement was created by the “Decent Work” approach, launched by Juan Somavia, who took office as Director General before the March 1999 Governing Body. Decent Work was a concise way to express the strategic aims of the ILO: employment, social protection, rights at work and social dialogue.”¹²⁸ According to the ILO, decent work covers:

the aspirations of people in their working lives. It involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.¹²⁹

In his comprehensive analysis published shortly after the launch of this interpretation of decent work, Amartya Sen—generally regarded as one of the most important thinkers on advancing social justice and someone who regards the ILO as a key organization in this respect—reflects on the implications of decent work. Sen analyzes four salient features of this new initiative, welcoming the more universalist approach initiated by the ILO in its the adoption of the 1998 Declaration, its ‘fundamental principles and rights’ and the idea of ‘decent work for all’.¹³⁰ The first feature he examines relates to the primary goal of the ILO, described in Director General Somavia’s report to the ILO in 1999. This goal is “securing decent work for people everywhere” by promoting “opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and human dignity.”¹³¹ This universal and inclusive approach is very much in line with ‘human rights thinking’, the idea that international human rights apply to all people, simply because they are human.

The second feature Sen describes is that decent work is based on the idea of rights. To this end, the framework for evaluation “begins with

128. Tapiola, *supra* note 78, at 47.

129. *Decent Work*, ILO, <https://www.ilo.org/global/topics/decent-work/lang-en/index.htm> [<https://perma.cc/WK5G-LK8K>].

130. See Amartya Sen, *Work and Rights*, 139(2) INT’L LAB. REV. 119 (2000). According to Sen, the 1998 Declaration and the concept of decent work came at “a crucial moment in the history of working people across the world.” *Id.* at 199.

131. Int’l Labour Org.[ILO], *Report of the Director-General, Decent Work*, at 3 (1999), <https://www.ilo.org/public/english/standards/reilm/ilc/ilc87/rep-i.htm> [<https://perma.cc/9LRP-YRJR>]. See also Sen, *supra* note 130, at 120. Importantly, this way, the vast numbers of worker in the so-called ‘informal economy,’ homeworkers and other groups are also protected. The new approach is inclusive, broad and universal, and focuses not only on workers in formal employment relationships, but on all workers, irrespective of whether they are protected by domestic legislation.

acknowledging certain basic rights, whether or not they are legislated, as being a part of a decent society.” Sen explains that the 1998 Declaration is a key instrument that reflects this rights perspective, in that it also focuses on the universal application of certain fundamental labor rights.¹³²

The third conceptual feature of decent work described by Sen is that it “situates conditions of work and employment within a broad economic, political and social framework.”¹³³ As we discussed at length, the integration of decent work in the 2030 Agenda adds the environmental factor to this mix of contextual areas of attention. Sen’s central argument is that effective protection against vulnerability and contingency is dependent upon fair democratic participation and effective governance.¹³⁴

The fourth feature of decent work described by Sen is the increasingly global, rather than merely international, approach to basic ethics and political and social procedures.¹³⁵ This globalized approach is visible in the ILO’s proposal with the decent work initiative, which does not only focus on labor legislation but is much more comprehensive, and is part of the “heritage of labour movements in world history.”¹³⁶ Sen convincingly argues that the concept of decent work is universalistic and global in scope, is based on human rights thinking, and should be applied when considering the broader economic, social and political context.

Maupain’s view on the universalization of labor rights aligns with Sen’s perspective. Maupain argues that the approach taken by the 1998 Declaration and the concept of decent work can be seen as “an effort to

132. Sen, *supra* note 130, at 123. Such rights-based thinking is “strongly in line with what is becoming increasingly the United Nations’ general approach to practical policy through rights-based reasoning. The framework of rights-based thinking is thus extended from the pure domain of legality to the broader arena of social ethics.” *Id.*

133. *Id.* at 125.

134. *Id.* at 125–26 (arguing that political freedom is a valuable tool to safeguard economic freedom, and a lack of transparency and public participation in governance or business could lead to economic issues and crises).

135. *Id.* at 127 (“An *international* approach is inescapably parasitic on the relation between nations, since it works through the intermediary of distinct countries and nations. In contrast, a truly *global* approach need not see human beings only as (or even primarily as) citizens of particular countries, nor accept that the interactions between citizens of different countries must be inevitably intermediated through the relations between distinct nations. Many global institutions, including those central to our working lives, have to go well beyond the limits of ‘international’ relations.”) (emphasis in original).

136. *Id.* at 128. Such a universalist understanding of work relationships, linked to the principle of solidarity, could “indeed be fruitfully invoked in rising to the challenges of decent work in the contemporary world.” *Id.* Sen concludes that, “[t]he need for invoking such a global approach has never been stronger than it is now. The economically globalizing world, with all its opportunities as well as problems, calls for a similarly globalized understanding of the priority of decent work and of its manifold demands on economic, political and social arrangements. To recognize this pervasive need is itself a hopeful beginning.” *Id.*

underline the necessary complementarity and interdependence between the various aspects of workers' protection and rights, which correspond to the ILO's constitutional objectives."¹³⁷ This way, it "tends to apply to workers' rights the model applying to human rights, which were recognized in Vienna to be 'universal, indivisible, interdependent and interrelated.'"¹³⁸ This means that states that have ratified the ICESCR—the vast majority of whom have¹³⁹—recognize decent work as an important human rights concept.

MacNaughton and Frey further examine the link between decent work and the broader human rights dimension. They argue that questions related to decent work need to be "addressed in a holistic human rights framework" to secure that no one is excluded from its protective scope.¹⁴⁰ In a more recent analysis of decent work and the SDGs, the same authors conclude that "the centrality of full employment and decent work to poverty elimination has been recognized in the SDG framework, and the ILO has played a key role in the SDG process."¹⁴¹ Yet, they do not agree with the way in which decent work seems to be coupled with economic growth and argue that a separate SDG on decent work itself is preferable.¹⁴²

Having explored some of the key features that link decent work to human rights discourse, the next paragraphs will examine the substance of the normative content of decent work and the related Decent Work Agenda in more detail.

As alluded to above, the substantive content of decent work has been clarified by the Committee on Economic, Social and Cultural Rights, which monitors the International Covenant of Economic Social and Cultural Rights.¹⁴³ In its 2006 General Comment 18 on the Right to Work, the Committee argued that—in light of the right to work enshrined in article 6 of the ICESCR—"work" needs to be decent work.¹⁴⁴ The Committee provides a description of the normative content of decent work, which should be understood as:

137. Maupain, *supra* note 89, at 462.

138. *Id.* at 462.

139. 170 states have ratified the ICESCR. See *Status of Ratification Interactive Dashboard: International Convention on Economic, Social, and Cultural Rights*, OFFICE OF U.N. HIGH COMM'R FOR HUMAN RIGHTS, <https://indicators.ohchr.org> [<https://perma.cc/KR5G-H5SU>] (last visited Mar. 21, 2020).

140. Gillian MacNaughton & Diane F. Frey, *Decent Work for All: A Holistic Human Rights Approach*, 26(2) AM. U. INT'L. L. REV. 441, 468 (2011).

141. MacNaughton & Frey, *supra* note 140, at 662.

142. *Id.*

143. Comm. on Econ., Social and Cultural Rights (ICESCR), *supra* note 1, ¶ 3.

144. *Id.* ¶ 7.

work that respects the fundamental rights of the human person as well as the rights of workers in terms of conditions of work safety and remuneration. It also provides an income allowing workers to support themselves and their families as highlighted in article 7 of the Covenant. These fundamental rights also include respect for the physical and mental integrity of the worker in the exercise of his/her employment.¹⁴⁵

To illustrate the close relationship between decent work and the broader human rights framework, the Committee emphasizes that: “The characterization of work as decent presupposes that it respects the fundamental rights of the worker.”¹⁴⁶

In addition to its substantive meaning, decent work is also a policy agenda that directs ILO action. These objectives are included in the Decent Work Agenda, which consists of four important pillars that are institutionalized in the 2008 Declaration on Social Justice for a Fair Globalization.¹⁴⁷ These four pillars are: (1) promoting employment by creating a sustainable institutional and economic environment; (2) developing and enhancing social protection, social security and labor protection; (3) promoting social dialogue and tripartism; and (4) respecting, promoting and realizing the fundamental principles and rights at work.¹⁴⁸ The Decent Work Agenda serves as the “overarching framework for achieving the ILO constitutional mandate,”¹⁴⁹ and the 2008 Social Justice Declaration places it “at the core of the Organization’s policies to reach its constitutional objectives.”¹⁵⁰ Moreover, the universality of the Decent Work Agenda is illustrated in that it “stresses a holistic and integrated approach by recognizing that these objectives are ‘inseparable, interrelated and mutually supportive’, ensuring the role of international labour standards as a useful means of achieving all of them.”¹⁵¹ As both the central policy framework of the ILO and as a human rights norm, decent work is firmly embedded in broader human rights law.

Decent work is therefore an important conduit for bringing labor rights closer to human rights, which expands the protective scope of labor rights—especially fundamental labor rights. Having examined in detail the normative concept of decent work in the international human

145. *Id.*

146. *Id.* ¶ 8.

147. ILO, *Declaration on Social Justice for a Fair Globalization*, *supra* note 45, at 9–11.

148. *Id.*

149. MacNaughton & Frey, *supra* note 140, at 449. As mentioned earlier, tripartism refers to decision making processes in which governments, workers and employers are (formally) involved. It is a distinguishing feature of the ILO.

150. ILO, *Declaration on Social Justice for a Fair Globalization*, *supra* note 45, at 1.

151. *Id.* at 2.

rights and ILO framework, and having established the close relationship between decent work and sustainability requirements, the next Part will contain a deeper exploration of the development of the meaning of work from a more labor law-based perspective.

III. THE CORE AIMS OF LABOR LAW AND THE CONCEPT OF WORK

A. The Idea of Labor Law¹⁵²

Decent Work and other international norms need to be implemented in national legal systems in order for them to be effective and have a functional—rather than merely formal—meaning. National labor laws thus give a more concrete interpretation of what decent work entails in accordance with the social and cultural characteristics of a certain country. At the same time, national labor laws have distinct histories from international legal standards and sometimes aim to serve other objectives.¹⁵³ Obviously, the content and nature of labor law differs from one legal system to another.¹⁵⁴ As Bob Hepple explains: Labor law is “the outcome of struggles between different social actors and ideologies, of power relationships.”¹⁵⁵ This struggle has separate manifestations in different countries. Still, these national differences are usually not so great or overwhelming that they prevent labor law scholars from around the world to engage in labor law scholarship and to research and write about more or less the same problems and challenges these national systems face.¹⁵⁶ It is thus possible to consider the normative framework of national labor laws in general terms.

We have seen above that the principal normative implications of the right to work as a human right are the following: governments should pursue full employment policies; there should be equal access to paid work; work should be freely chosen; and work must be decent work. Concisely, decent work means that workers’ fundamental rights

152. This subtitle is based on the influential book: *THE IDEA OF LABOUR LAW* (Guy Davidov & Brian Langille eds., 2011).

153. One of those objectives is income security or income stability. On the evolution of this objective, see MARK FREEDLAND & NICOLA KOUNTOURIS, *THE LEGAL CONSTRUCTION OF PERSONAL WORK RELATIONS* 379–82 (2011).

154. There are also purely terminological differences. For example, “labor law” in the United States refers exclusively to collective bargaining and workers’ representation, whereas in most other countries, it is a generic term that includes both collective and individual labor law, the latter also being referred to as employment law.

155. Bob Hepple, *Factors Influencing the Making and Transformation of Labour Law in Europe*, in *THE IDEA OF LABOUR LAW* 30, 30 (Guy Davidov & Brian Langille eds., 2011).

156. Miguel Rodríguez-Piñero Royo, *What Do We Talk About When We Talk About Labour Law*, 23 *COMP. LAB. L. & POL’Y J.* 701, 703–04 (2002).

as human beings need to be respected, including their right to organize and bargain collectively, as well as their right to adequate work safety conditions and adequate income.¹⁵⁷ In many European countries, workers' rights actually extend further than these basic standards of decent work, mostly due to the strong trade union presence in these countries.

However, they are in most cases linked to the employment contract, meaning that they are primarily reserved for employees. The employment contract is the central feature of labor law. In many legal systems, this makes labor law part of contract law, even though the employment contract is not treated as a regular contract. Since the labor power cannot be separated from the employee as a human being, the employee is always personally involved in the execution of the contract. When performing labor under the employment contract, the employee is subordinated to the control or direction of the employer, according to the definition of the employment contract. Subordination of one party to the other is in fact one of the central elements of this definition. This is why we say that the unequal position between the employer and the employee (with respect to their bargaining power over the terms of the employment) is *inherent* to the employment contract.

In addition, when we consider that most human beings need to work in order to maintain their livelihood, the unequal position vis-à-vis the employer becomes apparent. This is why it is generally accepted that in an employment relationship, the worker is considered to be the weaker party, not only because he is economically dependent on the employer for income, but also because he is legally subordinated to the employer.¹⁵⁸ In sum, national labor laws give concrete meaning to decent work according to national customs, and at the same time, these laws place the worker in a dependent position, where he needs protection. Employers' interests are met in labor law as well. National labor laws try to balance these interests according to the domestic power relations.

In the legal doctrine, the protective features of labor law hold a prominent place and the prevalent view is that the regulation of the employment contract is—or at least, was—designed in such a way as to protect the weaker party to the contract.¹⁵⁹ The question then is what is the ultimate goal of that protection. Protection of the worker is often

157. Comm. on Econ, Social and Cultural Rights (CESCR), *supra* note 1, ¶ 7.

158. Much has been written on the inequality between workers and employers; in labor law literature, works of Hugo Sinzheimer and Otto Kahn-Freund are the most famous. For a reexamination of their work from a modern perspective, see RUTH DUKES, *THE LABOUR CONSTITUTION* (2014).

159. *E.g.*, DAVIDOV, *supra* note 14, at 88; Harry Arthurs, *Labour Law After Labour*, in *THE IDEA OF LABOUR LAW* 13, 17–18 (Guy Davidov & Brian Langille eds., 2011).

presented through the framework of protecting human dignity, more or less similar to human rights law.¹⁶⁰ In the quest to give meaning to the statement, ‘labor is not a commodity’,¹⁶¹ upholding human dignity serves as the ultimate objective of labor law.¹⁶² Since labor law deals with power-relations, enhancing *human freedom* has also been articulated as the ultimate ‘philosophy’ for constructing normative arguments.¹⁶³ Freedom is then to be understood as the emancipation of workers from their subordination to capital.¹⁶⁴

Enhancing human freedom through protective labor legislation can, however, be reached in many different ways. In fact, legal scholars write about a plurality of ‘goals’ or ‘values’ underpinning labor law.¹⁶⁵ In recent decades, the emphasis has increasingly come to be upon enhancement of the efficiency of the functioning of the labor market in terms of productivity, competitiveness, and employment creation. In this view, instead of worker protection, the efficient functioning of the labor market is emphasized. Most recent legislative reforms in Europe are characterised by the intent to strike a balance in the labor market between flexibility and security in employment.¹⁶⁶ How this goal fits along with the traditional goals of human dignity, redistribution, emancipation, social inclusion, and income stability has, in fact, been labor law’s ‘recurring regulatory dilemma’.¹⁶⁷ It is important to stress that the protective goals of labor law have been developed in the framework of a market economy. Labor market regulation has always required

160. E.g. Max G. Rood, *Internationalization: A New Incentive for Labour Law and Social Security*, in *LABOUR LAW AT THE CROSSROADS: CHANGING EMPLOYMENT RELATIONSHIPS: STUDIES IN HONOUR OF BENJAMIN AARON* 139, 149 (J. R. Bellace & M. G. Rood eds., 1997); Arthurs, *supra* note 159, at 23–24; Manfred Weiss, *Re-Inventing Labour Law?*, in *THE IDEA OF LABOUR LAW* 43, 44 (Guy Davidov & Brian Langille eds., 2011); F.H.R. Hendrickx, *Arbeidsrecht voor de spiegel [Employment Law in Front of the Mirror]*, 2010 *REVUE DE DROIT SOCIAL (RDS) = TIJDSCHRIFT VOOR SOCIAAL RECHT (TRS)* 3, 35–36 (Belg.), <https://research.tilburguniversity.edu/en/publications/arbeidsrecht-voor-de-spiegel> [<https://perma.cc/QQE7-34KL>]; MARK FREEDLAND & NICOLA KOUNTOURIS, *THE LEGAL CONSTRUCTION OF PERSONAL WORK RELATIONS* 371–76. (2011).

161. One of the key principles included in the 1944 Philadelphia Declaration discussed above in paragraph 3.1.

162. See ILO, *ILO Declaration of Philadelphia: Declaration Concerning The Aims And Purposes Of The International Labour Organization*, *supra* note 45, para. I.

163. DUKES, *supra* note 158, at 198. Davidov has also articulated ‘emancipation/social equality’ as one of the purposes of labor law. See DAVIDOV, *supra* note 14, at 68.

164. DUKES, *supra* note 158, at 198.

165. Nuna Zekić, *The Normative Framework of Labour Law*, 9 *LAW & METHOD* 1, 8 (2019), <https://doi.org/10.5553/REM/000044> [<https://perma.cc/X4VV-23B8>].

166. See generally FLEXICURITY AND THE LISBON AGENDA: A CROSS-DISCIPLINARY REFLECTION (Frank Hendrickx ed., 2008).

167. Cf. Eric Tucker, *Renorming Labour Law: Can We Escape Labour Law’s Recurring Regulatory Dilemmas?*, 39 *INDUS. L.J.* 99, 124–25 (2010).

trade-offs between efficiency, equity, and workers' and employers' interests. To be sure, there are protective laws, but the law also allows for human labor to be exchanged for goods in the first place, inherently at the risk of exploitation and impoverishment of workers. As Bogg explains, it is precisely this ambivalence that gives labor and social security law its moral urgency as protective regulatory activity.¹⁶⁸

In sum, the internal normative framework of labor law is a complex framework comprised of different—sometimes even conflicting—principles or values. This explains why employment *relations* are perhaps even more important in labor law than the performed work itself is. In the next part, we explore what meaning is given to work as an activity within this normative framework.

B. The Concept of (Decent) Work in Labor Law Theory

It can be rather surprising to learn that—notwithstanding several important exceptions—there is relatively little attention paid to work as an activity in labor law literature.¹⁶⁹ One could even go so far as to say that labor law has been rather ambivalent about the meaning of work. Within the normative framework of labor law, work receives an *instrumental* role, where paid work is treated as a means to gain a living for one's self and one's family. To make a living, we need income and most of us receive income from labor. Work is therefore a *necessity*. This reality means that workers are dependent on employers. The dependency of the worker and imbalance of power explain many of the protective workers' rights.

In the literature on the right to work one can find some important considerations on work as an activity. Guy Mundlak distinguishes between two separate but related dimensions of the right to work: the value of work as a means for obtaining income (to satisfy other needs) and the value of work as a need in itself.¹⁷⁰ The first (economic) dimension—the instrumental approach—seems to imply that work is a necessity “because society wants individuals to remove themselves

168. Alan Bogg, *Labour, Love and Futility: Philosophical Perspectives on Labour Law*, 33(1) COMP. LAB. L. & POL'Y J. 7, 14 (2017).

169. Critical (feminist) scholars, have raised and discussed the issue of exclusion of 'family labor' (e.g. domestic housework and caretaking within families) for example from labor law regulation. See Noah D. Zatz, *The Impossibility of Work Law*, in THE IDEA OF LABOUR LAW 234, 234–35 (Guy Davidov & Brian Langille eds., 2011). Zatz refers to the work of Paula England & Nancy Folbre, *Gender and Economic Sociology*, in THE HANDBOOK OF ECONOMIC SOCIOLOGY 627 (Neil J. Smelser & Richard Swedberg eds., 2d ed. 2005).

170. Guy Mundlak, *The Right to Work: The Value of Work*, in EXPLORING SOCIAL RIGHTS: BETWEEN THEORY AND PRACTICE 343–44 (Daphne Barak-Erez & Aeyal M. Gross eds., 2007).

from a position of dependency on the community”.¹⁷¹ As such, it is mostly this instrumental role of work that seems to drive labor regulation. Because of its ambivalence to the broader meaning of work, this system places the worker in a position of dependence: the worker becomes dependent on the employer, the functioning of the labor market or on the economy as a whole. The law then needs to compensate for putting the worker in this vulnerable position by constructing rights at work, which are mostly aimed at protecting the human dignity of the worker, as previously discussed.

The second (social) dimension presupposes that work has a value in and of itself. As Mundlak explains: “The importance of work lies in the externalisation of one’s capacity, and not in the fact that labor power is commensurable according to a conversion scale determined by government, collective agreements or contract.”¹⁷² Besides providing people with opportunities to acquire knowledge and skills, as well as to externalize their capacities, work also allows people to participate in their communities, to contribute in a meaningful way and to socialize with others. It is not only ‘high-profile jobs’ for the highly-educated workers that might offer these values. Sennett demonstrates how the so-called low-level, seemingly unskilled workers can take pride in their work as well.¹⁷³ People find fulfillment in providing something valuable to others or even merely in performing a task well, not only for the rewards they may get, but from the act itself. Sennett refers to this latter phenomenon as craftsmanship—doing something well for its own sake.¹⁷⁴ He argues that people should be allowed to develop a craftsmanship in their work even in light of the fact that this usually takes time. Many philosophers have placed great emphasis upon the value of doing work that is ‘proper’ to the particular person, given his abilities, his reasonable predilections, his situation and commitments. Doing that work well can therefore be understood as one of the main contributors to human development and happiness. As David Wiggins remarks, “what a shame it would be, given the huge portion of life that is consumed in labor”, to see so many people have an “imperfect fit” between their everyday occupation and the work that would suit them best.¹⁷⁵

171. *Id.*

172. *Id.* at 344.

173. RICHARD SENNETT, *THE CULTURE OF THE NEW CAPITALISM* 104–05 (2006).

174. *Id.*

175. David Wiggins, *Work, Its Moral Meaning or Import, in THE RIGHT TO WORK: LEGAL AND PHILOSOPHICAL PERSPECTIVES* 12 (Virginia Mantouvalou ed., 2014).

As Wiggins acknowledges, despite this recognition of the value in finding “proper” work, many jobs do little to enhance individual, family or community wellbeing. They can be dangerous, demoralizing, demeaning, or simply boring.¹⁷⁶ Even when a job is stable and relatively well paid, it may still do little to for an individual’s wellbeing. David Graeber’s book, *Bullshit Jobs*, provide examples of such jobs.¹⁷⁷ Graeber’s main claim is that in contemporary, developed, service-economies, there are many pointless and even pernicious jobs. While these jobs are often well-paid, people in such positions produce very little of what Graeber calls “social value”, while simultaneously exacting an enormous ‘spiritual’ toll on the workers.¹⁷⁸

Sennett has a different critique on the contemporary economy. He describes how craftsmanship sits uneasily in the institutions of flexible capitalism based on short-term transactions and constantly shifting tasks.¹⁷⁹ People who want to concentrate on tasks and take their time to improve at their job do not fit in well with flexible organizations who want their employees to do many different things in short order. Sennett asserts that—especially in large organizations—people who work quickly are rewarded with promotions, even though their work proves to be a muddle upon closer inspection. The result, according to Sennett, is that a growing number of employees feel frustrated.¹⁸⁰

In addition, there has been very little attention paid in labor law to the environmental consequences of productive employment. As long as jobs meet the criteria of decent work, labor law is not concerned with possible environmental effects of remunerated work. Consequently, until recently, labor law scholars have been largely absent from climate discussions.¹⁸¹ However, it is not difficult to see that climate change is related to power relations, both domestically and at the global level. As David Doorey explains: “Large and powerful business enterprises produce a substantial proportion of greenhouse gases, and citizens of wealthy nations contribute far more to climate harm than do citizens of poor nations.”¹⁸² There is a growing awareness within the labor studies about the importance of contributing to the discussion on the human dimensions of climate change from the workers’ perspective. Likewise,

176. MacNaughton & Frey, *supra* note 125, at 633.

177. See generally DAVID GRAEBER, *BULLSHIT JOBS: A THEORY* (2018).

178. *Id.* at 101.

179. SENNETT *supra* note 173, at 128–29.

180. *Id.*

181. David J. Doorey, *Just Transitions Law: Putting Labour Law to Work on Climate Change*, 30 J. ENVTL. L. & PRAC. 201, 223 (2017).

182. *Id.* at 226.

environmental scholars are increasingly interested in labor studies.¹⁸³ Some have identified a new field of inquiry called Environmental Labor Studies (or labor environmentalism).¹⁸⁴ Workers have an interest in taking part in the consultation and codetermination process on differential impacts of climate on their work and on climate policy of the firm that employs them. After all, these issues directly affect their jobs and their employment security. Trade unions as social actors are increasingly getting involved in the climate change discourse. Paul Hampton, who has documented trade union engagement with climate change in the UK, reports that trade unions were involved in discussions around “substantial energy efficiency measures with their employers, such as the installation of solar panels and wind turbines, modifications to heating and ventilation systems, changes to IT and lighting use, as well as other energy consumption measures at work.”¹⁸⁵ The possibilities of connecting labor law—more specifically collective bargaining rights—and environmental issues have not yet been explored to the full extent. Linking labor rights to ecological sustainability comprises to a new way of looking at remunerated work, and this might lead us to broadening the concept of work in law and policy.¹⁸⁶

To sum up, work is an important concept in (domestic) labor law systems and, hence, in labor law scholarship. However, remunerated work is mostly considered as a means for obtaining income. Domestic labor law has been mainly concerned with the vulnerable position of the worker and has constructed different ways to offset the unequal position between the worker and his employer. Less attention has been paid to the social dimension of work in domestic labor law. The new global initiatives, however, are promising in the sense that they introduce a more ambitious vision of paid work, one in which work contributes to sustainable development in its economic, social *and* environmental dimensions.

183. See generally, e.g. Nora Räthzel & David Uzzell, *Mending the Breach Between Labour and Nature: Environmental Engagements of Trade Unions and the North–South Divide*, in 4 INTERFACE: J. FOR & ABOUT SOC. MOVEMENTS 81 (2012).

184. Stefania Barca & Emanuele Leonardi, *Working-Class Ecology and Union Politics: A Conceptual Topology*, in 15 GLOBALIZATIONS 487, 487 (2018).

185. Paul Hampton, *Trade Unions and Climate Politics: Prisoners of Neoliberalism or Swords of Climate Justice?*, in 15 GLOBALIZATIONS 470, 475 (2018). See generally TRADE UNIONS IN THE GREEN ECONOMY: WORKING FOR THE ENVIRONMENT (Nora Räthzel & David Uzzell, eds., 2012).

186. Paolo Tomassetti argues as well for enlarging the notion of decent work “from the quality, safety, and justice dimensions to the paradigm of environmental sustainability.” Paolo Tomassetti, *Labour Law and Environmental Sustainability*, 40 COMP. LAB. L. & POL’Y J. 61, 64 (2018).

CONCLUDING REMARKS: DECENT AND SUSTAINABLE WORK FOR THE FUTURE?

The meaning of work is undergoing a significant transition and is increasingly linked to securing social, economic and environmental sustainability objectives. For work to be meaningful at all, it should qualify as ‘decent work’, which is both a central objective of the ILO and a significant principle and goal of the UN 2030 Agenda for Sustainable Development. The ILO Future of Work Centenary Initiative contributed significantly to strengthening these linkages between decent work requirements and sustainable development.

In this respect, the Global Commission on the Future of Work highlights that the overall goal in furtherance of promoting human development and protecting the planet should be to invest in “decent and sustainable work.”¹⁸⁷ The Future of Work Initiative culminated in the June 2019 Centenary Declaration for the Future of Work, which contains many references to the sustainability dimension of the future of employment. The proposed ‘human-centred approach’ to the future of work sees fair, inclusive and secure work as essential to sustainable development.¹⁸⁸

The 2030 Agenda for Sustainable Development contains the most comprehensive roadmap until now concerning a global—economically, environmentally, and socially—sustainable future. Decent work is one of the crosscutting and main elements of its social pillar and figures prominently in SDG 8. References to the ILO’s fundamental principles and rights—the prohibition of forced and child labor, equal treatment and freedom of association and the right to collective bargaining—are present in different Goals, Targets and Indicators attached to the 2030 Agenda and reflect pressing societal labor-related issues on a worldwide scale.

Decent work became a key policy objective of the ILO in 1999, but the principles underlying this concept have guided ILO action since the establishment of the Organization a century ago. Additionally, decent work requirements, such as health and safety standards, fair remuneration and respect for the physical and mental integrity of the worker, are included in many human rights instruments. Decent work presupposes respect for the fundamental rights of the worker and in particular for the fundamental principles and rights of work.

187. ILO, *Work for a Brighter Future: Global Commission on the Future of Work*, *supra* note 6, at 46.

188. ILO, *Provisional Record: ILO Centenary Declaration for the Future of Work*, 2019, *supra* note 7, § I ¶¶ A–D.

The right to work, which is enshrined in several human rights documents, underlines the fact that respect for the individual and his dignity is expressed through the freedom of the individual regarding the choice to work, while emphasizing the importance of work for personal development as well as for social and economic inclusion.¹⁸⁹ ‘Work’ in the context of the right to work is interpreted as work that must be decent for a meaningful application of the right. The universalistic approach of the principle of decent work for all, together with the decent work agenda and the recognition of certain labor rights as fundamental labor standards, has led to a closer alignment between labor rights and human rights in recent decades.

As such, decent work sets the parameters for securing a fair quality of work, and these parameters are in transition. By reviewing both the international developments and instruments and the field of labor law theory and scholarship, we sought to demonstrate that both societal and environmental elements should supplement traditional individualized values of work as personal remuneration and fair working conditions. Decent work should therefore also be a notion that is dynamic and adaptable to changes in society with respect to securing a sustainable future.

The parameters of decent work are in flux at two different levels. At the individual level, work is no longer merely about material elements such as remuneration and safe conditions, but also—for many people—about immaterial values and needs. Work can function as an act of self-expression and self-fulfillment, and a venue for socialisation. We should not only pay attention to the effects of globalisation, technological advancement and the new economic realities on work as a means of subsistence, but also to the effects of these developments on these ‘social’ aspects of employment. This way, the focus is also on how we perceive and experience remunerated work as an activity. Moreover, work should facilitate as much as possible our participation in and enjoyment of our activities outside the labor market. A decent job allows people to participate in society in a meaningful way and enables them to further develop themselves.

On the domestic level, labor law takes a slightly narrower approach: The focus is mainly on the economic dimension of work—as a means to obtain an income—and to a lesser degree on the social and environmental dimensions of work. The protective labor laws are targeted at regulating the employment relationship in such a way as

189. Comm. on Econ., Social and Cultural Rights (CESCR), *supra* note 1, ¶ 4.

to establish decent working conditions for the individual worker. As long as the norms for working conditions are met, domestic labor law is more or less ambivalent to the role work might play in the social and environmental framework. The new global initiatives introduce a more ambitious vision of paid work and have the potential to broaden the traditional meaning of decent work.

Decent work is therefore increasingly connected to demands for a sustainable future at the societal or global level. This way, certain requirements of decent work transcend individual or personal needs, but also fit within the interconnected framework of ‘people, planet and prosperity’ as the basic idea behind sustainable development. Decent jobs do not impair equality, or prolong situations of poverty elsewhere. Decent work is not work that pollutes waterways or contributes to environmental degradation. Workers’ rights should be utilized to promote broader societal and environmental sustainability goals. Codetermination, collective bargaining and freedom of association rights, for instance, could be further operationalized to devise, institutionalize, and implement policies that advance the 2030 Agenda. We have illustrated that the current focus is increasingly on these societal and environmental aspects of work.

These evolving parameters of decent work align closely with the conceptual features described by Amartya Sen. If we see decent and sustainable work as a universalistic, inclusive, and global concept based on fundamental rights, which positions employment in a broad economic, social, political, and environmental framework, decent work may be very well suited to guide fair employment practices in the future.

Nevertheless, there are reasons to be concerned about the feasibility of the goal of ‘decent work for all’ in the modern world. The needed transition to a sustainable economy will be intensely demanding for workers worldwide and will require major adjustments to cope with technological, economic, and ecological challenges. Furthermore, global unemployment is expected to reach 201 million and vulnerable forms of employment are expected to account for 1.4 billion people worldwide.¹⁹⁰ As the CESCR remarks: ‘for millions of human beings throughout the world, full enjoyment of the right to freely choose or accept work remains a remote prospect.’¹⁹¹ Is it realistic that full employment will be reached by 2030? According to the ILO

190. Int’l Labour Org. [ILO], *World Employment Social Outlook: Trends 2017*, at 1–2 (2017), https://www.ilo.org/wcmsp5/groups/public/-dgreports/-dcomm/-publ/documents/publication/wcms_541211.pdf [<https://perma.cc/B4QW-GKGA>].

191. Comm. on Econ., Social and Cultural Rights (CESCR), *supra* note 1, ¶ 4.

this would require 344 million jobs to be created by 2030, in addition to the 190 million jobs needed to address current unemployment.¹⁹² These estimates date back from before the Covid 19 crisis, therefore it is expected that many more jobs will be needed. It could be expected that ‘merely’ promoting employment will therefore remain the main policy objective in many states.

In addition, high and low-income countries are experiencing a rise in nonstandard forms of employment, leading to an increase in precarious jobs. This means that, with greater frequency, people fall outside the system of employment protection or are only guaranteed a small portion of that protection. Platform (or gig) workers, disguised self-employed persons, people working in the informal economy, undocumented migrant workers, family members with care duties, and many other groups often do not benefit from the range of normative safeguards that decent work entails. Consequently, in order to realize a genuine commitment to ‘decent and sustainable work,’ it remains very important to safeguard its goal of inclusiveness to guarantee a ‘human-centred approach’ in which no vulnerable groups fall outside its scope of protection. The perceived challenges for devising “effective ways of implementing a well-balanced approach to sustainable development, within which its social, economic and environmental pillars are fully integrated”¹⁹³ have not disappeared, and the transition described in this Article will not be an easy one. However, as we have tried to indicate, current international initiatives advocate a much more integrated and cooperative approach that perceives securing decent work as an essential component of a sustainable future.

192. ILO, *Work for a Brighter Future: Global Commission on the Future of Work*, *supra* note 6, at 20.

193. Int'l Labour Org. [ILO], *Director-General's Introduction to the International Labour Conference, Decent Work for Sustainable Development*, ILC 96–2007, at 3 (2007), <https://www.ilo.org/public/english/standards/relm/ilc/ilc96/pdf/rep-i-a.pdf> [<https://perma.cc/GSS7-ZH73>].