

The ILO's *Declaration on Social Justice for a Fair Globalization* and International Labour Regulation after the Financial Crisis

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Abstract

The International Labour Organization (ILO) created the Declaration on Social Justice for a Fair Globalization (2008) to advocate "decent work" policies in response to the increasingly precarious nature of labour in the globalized economy. As a "soft" law document, the Declaration aims to move policymakers towards a protective framework for international labour regulation, a timely proposal considering the recent financial crisis (2007-2010). However, due to substantial divisions between the ILO's economic and political members, the labour safeguards the Declaration proposes are unlikely to become critical policy statements in the era of globalization.

Introduction

The International Labour Organization's (ILO) Declaration on Social Justice for a Fair Globalization was adopted at the 97th Session of the International Labour Conference in June 2008. With the Declaration, the ILO institutionalized its Decent Work Agenda, mandating that member organizations promote policies that advance "opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and human dignity" (ILO 1999). In structuring the Declaration around the Decent Work Agenda, the ILO adopted four strategic objectives or "pillars," seen as necessary requirements for the safeguarding of labour in a globalized world.¹ Central to the ILO's *Declaration* is the idea that the processes of globalization have led to increasing inequality, and severe negative consequences for the most vulnerable actors within the global labour system.

¹ The four strategic objectives adopted from the *Report of the Director-General: Decent Work* (1999) were: the creation of greater employment and income opportunities for women and men (with a focus on skills training and capacity building); social protection (the development of social security and labour protection); social dialogue and tripartism (building the relationship between social progress and economic development); and fundamental principles and rights at work (a reassertion of the importance of core labour standards). See further discussion below.

The *Declaration* is in some respects a rallying call for the members of the ILO, a “statement of faith” in the principles that underlie the organization’s constitution and a reaffirmation of its importance and legitimacy (2008, 3). This paper will seek to balance the competing objectives (political, fiscal and multilateral), within the *Declaration* and attempt to discern the true influence of such a document in a globalized world “characterized by the diffusion of new technologies, the flow of ideas, the exchange of goods and services, the increase in capital and financial flows, the internationalization of business and business processes and dialogue as well as the movement of persons, especially working women and men” (2008, 5).

As a policy document, the *Declaration* can be praised for drawing attention to problems of global justice through the lens of labour systems and supply. On the other hand, it could be criticized for excluding some equity-based proposals and measures that would more accurately reflect the ILO’s comprehensive Decent Work Agenda (2008, 3). The tension between the social justice components of the ILO’s *Declaration* and its refusal or inability to fully critique the mechanisms of free trade and neoliberal development that accompany globalization will be part of this analysis. The *Declaration* is, however, a strong political statement, and may provide global actors with more clout when discussing the stratification of the global workforce and the importance of sector-based union involvement. Additionally, in the wake of the global financial crisis (2007-2010), the *Declaration* may compel a more sustained monitoring of “decent work” indicators in order to move away from purely economic measures of domestic production.

The ILO and globalization

The ILO was created following the Treaty of Versailles due to the need for a multilateral institution responsive to the realities of global competition and the social justice requirements found therein (Maupain 2009, 825). It must be recognized that the ILO is not an impartial body when it comes to defining a fair globalization: its very establishment as an international actor for labour relations was fully embedded in the so-called “first globalization” (Maupain 2009, 824). It has since reflected the internal principles of its member states, including a strong neo-liberal outlook throughout the recent globalization period. The ascendancy of a neo-liberal ideology within the organization is likely why the ILO perceived globalization for many years as a purely economic process, rather than a complex combination of social, financial and cultural

processes (Kosonen 2007, 232).² Only with the *World Commission on the Social Dimension of Globalization* (2004) did the ILO begin to frame the issues of globalization in a more dynamic fashion.

The shift by the ILO to a "soft law" declaration model

The *Declaration* is the latest action by the ILO to move from its traditional convention-focused platform, to become a "soft law" declaration-based organization. In many respects, the ILO has become a policymaking instrument focusing heavily on areas of public opinion and issue framing in order to remain relevant in the international labour milieu of the 21st century. The success of this progression has been heavily debated within international labour circles, to the extent that reaching any consensus as to the merit of the transformation may be impossible (Alston 2005; Langille 2005; Maupain 2005). Those that approve of the current shift felt that the ILO needed to be replaced by a more progressive declaration system since its role as a supervisory body had become increasingly ineffectual (Alston 2005, 472). Alternatively, the ILO's change in direction was viewed as a "neo-liberal retreat" from its extensive legal mandate (Maupain 2009, 838). The ILO's new soft law methods were maligned as a vague set of principles, a step backwards from the highly detailed approach of earlier instruments (Maupain 2009, 838).

While the truth may lie somewhere in the middle, the current declaration-based approach has seemingly reinvigorated membership participation and action within the ILO. The most recent *Declaration* is an example of how one document can motivate a multi-year commitment to a central theme, by drawing on previous reports and commissions that have already gained general endorsement. The subsequent global spotlight allows the ILO to focus a wider audience on issues important to the organization. In addition, the release of declaration documents allows the ILO to reaffirm its commitment to earlier themes and objectives, such as full employment and core labour standards. Shifting to a declaration-based system has allowed the ILO to build public awareness, while appeasing members that may question the relevance of such an institution in the 21st century.

Building on the Declarations of 1944 and 1998

The ILO's *Declaration* is the first attempt since the Second World War to articulate a number of the organization's core principles to its tripartite (business, government

² This paper follows Kosonen's writings in utilizing a broader definition of globalization that considers social and cultural processes as equally important to the economic shifts that cause or accompany them.

and labour) group of stakeholders (Maupain 2009, 831). The *Declaration* begins with a restatement of many of the policies adopted since the ILO's inception in 1919, including two earlier declarations: the *Declaration of Philadelphia* (1944) and the *Declaration on Fundamental Principles and Rights at Work* (1998) (2008, 6). Following the 1944 document, the current *Declaration* proposes measures for full-employment, social security, and a focus on living standards and earning a living wage. Similarly, the new *Declaration* reaffirms the 1998 *Fundamental Principles Declaration*, particularly its promotion of core rights for collective bargaining, freedom of association, the elimination of discrimination as well as slave and child labour (2008, 7). Significantly, the current *Declaration* incorporates the Decent Work Agenda formulated at the *World Summit for Social Development in Copenhagen* (1995), and later endorsed at the *World Summit of the United Nations* (2005) by numerous heads of state and government (ILO, 2008, 7). Therefore, the *Declaration* is a broad review of several of the ongoing initiatives within the ILO that seek to answer the labour challenges ushered in by globalization. However, such an all-encompassing approach to issues of labour in the era of globalization is not without its problems.

The spirit of the current *Declaration* is quite reversed from the core labour standards documented in the ILO's *Fundamental Principles Declaration* and is essentially, a document more comparable to the earlier *Philadelphia Declaration*. This is an important distinction, as the core labour standards outlined in the *Fundamental Principles Declaration* were a precise and focused group of rights meant to promote the adoption of the related international conventions. By contrast, the recent *Declaration* is a return to the broad-strokes outline utilized in the *Philadelphia Declaration*, which promoted many objectives that have been largely ignored. In practice, the core labour standards of the *Fundamental Principles Declaration* have become nearly ubiquitous while the *Philadelphia Declaration's* broad goals, for full employment and the extension of social security, have been routinely ignored by both developed and developing countries. The goals for decent work and a fair globalization within the *Declaration* risk the same fate—by setting broad objectives that are difficult to quantify or measure, its provisions are relatively easy to disregard.

The ILO changes its perspective

With the release of its *Commission* in 2004, the ILO broke with previous ideologies and denounced its membership for allowing an inequitable transition to a globalized labour economy. The *Commission* found particular fault with the ability of markets to self-govern, while presenting concerns related to current governance structures and

their lack of transparency and accountability (Kaul 2004, 141). The *Commission* made this association clear in its statement that there “is a serious democratic deficit at the heart of the system” (ILO 2004, xi). However, the ILO’s *Commission* is similar to its subsequent *Declaration* in that it does not seek out the underlying cause of such a “democratic deficit.” Instead it uses value-based ethical appeals for developing collective action, on both the domestic and global scale, in order to put pressure on state- and market-based actors (Kaul 2004, 141). This value-based approach is apparent in the *Commission* report’s language, which highlights issues of “fairness” (III.2.2), “social dialogue,” and “democratic representation” (III.2.4) (ILO 2004). In effect, the report remains grounded in more general themes relating to the inequity of globalization rather than proposing mechanisms of social change.

Establishing the validity and relevance of the ILO

Understanding the motivation behind the *Declaration*’s creation allows a more accurate conception of the document’s importance, and illustrates the underlying tensions within the ILO’s membership. As stated by Francis Maupain, a former ILO Legal Adviser, “[t]he modernized presentation of the ILO’s objectives in the 2008 Declaration was intended to improve the visibility, credibility, and relevance of its message among decision-makers and the general public” (2009, 839). For many, the ILO needed to reaffirm its regulatory significance within the international system due to the development of two, not unrelated, problems.

Firstly, with the collapse of the Soviet model, several members had started to perceive the ILO as an impediment to global economic trade due to its regulation of factors that could be perceived to decrease economic efficiency, i.e., collective action, safe working conditions, etc. (Maupain 2009, 826). Secondly, the actual strength of the ILO’s regulatory function had come into question: of chief concern was whether the ILO had enough power to ensure the level playing field mandated by an increasingly global economy (Maupain 2009, 826). For these reasons, the ILO was perceived to be both highly intrusive when it came to global financial markets, but also largely ineffectual when it came to controlling economic mechanisms. These two competing views contributed to a growing crisis of confidence within the membership of the ILO, which had already become destabilized by the decline of the organizational power of many worker’s unions (Maupain 2009, 826). Additionally, the rising power of the World Trade Organization (WTO) led some members to question the relevance of the ILO, particularly if ‘social clauses’ could be developed by the WTO that would mandate many of the regulations typically associated with core labour standards (Lim 2001, 3). In the end, it is uncertain whether the ILO’s

Declaration was written to appease its increasingly insecure membership (maintaining its relevance as an organizational entity) or to challenge the dominant force of trade liberalization within globalization.

Labour-based perspectives on globalization

The ILO seems ambivalent when determining the positive and negative consequences of globalization, reflecting the tension between the tripartite groups that make up its collective. Near the beginning of the *Declaration*, two conflicting opinions of globalization are provided. At first, the *Declaration* describes globalization as a course of economic integration and cooperation that has created a number of benefits for both the rural poor and modern urban economy (2008, 5). Immediately following this warm description, the *Declaration* describes how such integration has created income inequalities, growing unemployment, poverty, and created vulnerability through global market instability (ILO 2008, 5).

The ILO's stance on globalization is, at once, an appreciation of economic integration and a critique of the disequilibrium it creates. As Kerry Rittich describes, the ILO is of the opinion "that 'globalization is good'; it just needs to be made to work better" (Rittich 2004, 41). As a consequence, the ILO ignores any meaningful discussion with regard to the necessity of economic integration and its actual benefit to labourers. The ILO missed an opportunity to appease their labour faction by neglecting to take the position that economic growth, without subsequent gains in employment, is counter to their support of globalization (Rittich 2004, 42). In effect, the *Declaration* furthers the economic positions of its government and business members, while closing the door on labour-based, or quality-of-life-based criticisms of globalization.

The ILO's Decent Work Agenda

The *Declaration's* incorporation of the four strategic pillars of the Decent Work Agenda displays a renewed commitment to employment issues affecting the most vulnerable constituents of the global economy, and looks to correct the so-called "race to the bottom" accelerated by globalization (ILO 1999). The *Report of the Director-General: Decent Work* (1999) provided a set of social policies that are central to the *Declaration* and form the basis of the ILO's core constitutional objectives (ILO 2008, 9). The decent work strategy emerged from the ILO's recognition that globalization, while providing economic growth, may not be producing enough quality jobs. The social policies that constitute decent work would

ensure that a universal floor be created to provide a platform for better employment opportunities (Stewart 2008). Although many within the ILO quickly adopted the idea of decent work, the concept had no legal meaning within the ILO's institutional framework until it was adopted through the *Declaration* (Maupain 2009, 838).

As part of the *Declaration*, four decent work pillars advocate for a fair globalization through a protectionist stance against the forces of the competitive international labour market. The first pillar describes the promotion of employment in terms of sustainable job creation and the achievement of such goals as “development” and “social progress” (ILO 2008, 9). Notably, the concept of job promotion is part of a shift away from the ILO's earlier focus on problems of unemployment (Maupain 2009, 834). The first pillar also suggests that decent work involves the provision of opportunities for skills training and capacity building. The importance of human capital is made implicit, which is likely a response to the increasing amount of precarious work within the global employment market. In fact, all four pillars of the decent work structure look to improve the worst aspects of precarious employment, including the lack of employment guarantees and social protections (Rittich 2004, 40).

The second pillar of the decent work component of the *Declaration*, the development of social security and labour protection, distinctly identifies the need to fortify workers against uncertainties that follow rapid “technological, societal, demographic and economic changes” (2008, 10). The *Declaration*, while once again highlighting the problems of precarious work, is also emphasising the need for social safety nets to protect the most vulnerable workers within the new economy. Inherent to the second objective is the need to shield workers from competitive economic practices that negatively affect those within the international labour market. The ILO, recognizing that precarious forms of employment have grown exponentially in developing countries during the current period of globalization, seeks to correct for the worst effects of labour competition (Auer 2006, 132). Therefore, the ILO is seeking to compensate countries that suffer the most from the negative effects of the current race to the bottom by focusing on measures that value social security, safe working conditions, and “a just share of the fruits of progress” (2008, 10).

Similarly, the third pillar of the *Declaration* attempts to link social progress with ideas of economic development (ILO 2008, 10). The dialogue and tripartite action that the ILO advocates in this section could be used to ensure that any economic development is socially relevant and progressive. The ILO's *Declaration* aims to

empower developing countries, so that they could resist dominant economic policies and make decisions that reflect the best interests of their constituencies.

With its fourth and final pillar, the *Declaration* restates the importance of core labour standards while also mandating that the violation of such fundamental rights cannot be used to maintain a comparative advantage (2008, 11). Expanding on the guidelines related to multinational behaviour outlined in the ILO's *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy* (2001), the *Declaration* attempts to negate the comparative advantage argument for inexpensive labour costs when such an advantage is due to the neglect of fundamental labour rights.

While it is important to ensure that fundamental rights are protected, the ILO missed an opportunity to truly confront the inadequacies of the comparative advantage argument for cheap employment. The *Declaration* makes no attempt to prevent member countries from avoiding decent work criteria through the strategic multinational positioning of their production. Effectively, multinational actors that ratified the *Declaration* can continue to base their operations in countries that do not employ a decent work standard. Therefore, any country that attempted to fulfil decent work objectives for the social and economic welfare of their citizens would be put at a comparative disadvantage. The ILO could have used the *Declaration* to truly level the playing field, but instead left participating nations with the ability to exploit the workforces in states that resist the Decent Work Agenda. The ILO missed an opportunity to set a social floor for labour standards, effectively allowing member states to act differently abroad than when they are in their own backyard.

The global financial crisis (2007-2010)

The recent financial crisis may have provided the *Declaration* with its most significant illustration and endorsement, as it exposed the income disparities and precarious employment conditions that emerged during globalization. As Francis Maupain states:

“The financial crisis which broke within a few weeks of the adoption of the Declaration does bring a paradoxical reason for hope. It came as a sad vindication of the Declaration's content, in particular the emphasis placed on redistribution issues (through its very title) as the need to develop new forms of regulation and restore state capacity in this respect” (2009, 851).

The financial crises may compel global monitoring systems to appreciate the value of income and decent work indicators over those that merely look at domestic production. At the national level, indicators that measure income are of greater consequence since the knowledge that GDP has increased may be of little relevance when determining if a population has become better off (Stiglitz et al 2009, 24). A recent *Report by the Commission on the Measurement of Economic Performance and Social Progress* (2009) highlighted the need for quality of life indicators such as those developed by the ILO as part of their Decent Work Agenda. Decent work indicators measure the economic and social security of workers and their families, and assesses a specific set of labour rights that relate to the ILO's *Declaration*, such as "opportunities for employment" and "social dialogue and workers' representation" (Stiglitz et al 2009, 172). While it is unlikely that this consideration of the ILO's decent work indicators signals a renewed global approach that foregrounds the issue of employment within any discussion of economic growth, it is possible that a larger global debate about market fundamentalism has been triggered. What remains to be seen is whether such considerations will continue as markets recover and the initial shock of the crisis dissipates.

Sector-based reforms

In the *Declaration's* preface, the ILO expresses its interest in developing new partnerships with "trade unions operating at the global sectoral level" (2008, 3). While the ILO has supported sector-based bargaining at the "central, sectoral, and enterprise level" since 1994, the *Declaration's* new focus on the global sectoral level is noteworthy (Gernigon 2000, 36). The ILO defines such global sector-based activities in the report *The sectoral dimension of the ILO's work*, describing it as "liaising with key sectoral actors at global and national levels, including Global Union federations, multinational enterprises and multi-stakeholder initiatives" (2009, 3). The report provides an example of a successful integrated approach completed during Morocco's *Decent Work Country Programme* when the ILO worked with a number of government ministries, national trade associations, and union actors to achieve a multi-stakeholder bargaining agreement (2009, 4). The ILO's endorsement of a global sector-based bargaining model may allow some inroads into the still prevalent "community of interest" model that has classically treated each workplace as its own bargaining unit (Baigent et al 1992, 384). The ILO is diverging from the opinion of other international institutions through its support for a method of collective bargaining that could reverse the current decrease in labour associations and unions: a global sector-based system would allow more efficient and sustainable forms of collective bargaining through joint international efforts. This would also fit with the

ongoing goals of the ILO's Decent Work Agenda to reduce precarious employment through the creation of social and economic protections.

Conclusion

The ILO's most recent *Declaration* has attained a level of significance through its discussion of the competing interests of social justice and globalization. However, the recent financial crisis has highlighted the need for a more stable protective strategy for international labour regulation. Given the competing objectives within the ILO to provide these protective labour mechanisms while maintaining credibility with its economic and political members, the question emerges as to whether the ILO is the most effective forum for providing such safeguards. The recent publication of their *Declaration* was a statement of a number of crucial elements necessary to provide for decent work. While the first three pillars of this *Declaration* could be seen as a decisive statement on modern labour in a globalized world, the fourth pillar was disappointing in its failure to prevent nations from strategically positioning their production in countries that aren't signatories to this agreement. This failure was particularly surprising given that the ILO's position on sector-based reforms outlined in the *Declaration's* preface was progressive in its recognition of the importance of a global scope to the organization of modern labour. There is a marked disparity between the *Declaration's* assertion that labour protection in a globalized environment must take a multilateral approach, and their inability to provide more substantive protections related to multinational actors in the fourth pillar of the Decent Work Agenda. Moreover, the ILO's recent transition from a convention- to declaration-based agenda could be seen as a larger retreat from the provision of substantive protective measures in general. While this move to a declaration-based model has certain advantages for international labour, it is undoubtedly a more favourable format for the political and economic members of the ILO, as it is less quantifiable and results-oriented. This is not surprising given that the ILO, from its very inception, has been coupled with organizations like the International Financial Institutions (World Bank, IMF, etc.) and the World Trade Organization: advocates for unrestrained market-based growth and global expansion. The ILO is torn between the need to maintain their organizational legitimacy through continued endorsement of their members who advocate for such global expansion, and the need to provide a more ethical and sustainable model for labour. Given this internal division, they will continue to have great difficulty in making any decisive policy statements about labour in the era of globalization.

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