
The ILO Response to Covid-19: ILO and international labour standards in times of a pandemic

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Abstract

In 2017, ILO issued recommendation no. 205 on employment and decent work for peace and resilience, which is an international labour standard of particular relevance and importance for managing the labour market in times of crisis, and especially so in the wake of the Covid-19 pandemic. A body of generally applicable international labour standards provides social protection to workers during the pandemic and applies to the challenges to the labour market in such times. The Article describes the labour policy of ILO and international labour standards in relation to the Covid-19 pandemic, as well as ILO's concrete response to the present crisis. Finally, the Article presents a reminder that ILS and social protection in the future must be able to handle social risks resulting from biological vulnerabilities on part of workers and the importance of the principle of universality in social protection.

Keywords: International Labour Organisation; Covid-19; International labour standards; R205; Crisis.

1. Introduction: Employment and Decent Work for Resilience in the Age of Covid-19.

The International Labour Organization¹, born 1919 in the aftermath of the First World War, and survivor of the Second World War, is no stranger to responding to crises. Well before the present pandemic, in 2017, an international labour standard particularly aimed at handling the labour market aspects of crises and disasters was decided; *i.e.* the Recommendation no. 205 on employment and decent work for peace and resilience². The 2017 standard replaces and supersedes a 1944 recommendation on employment in the transition from war to peace, relevant to the period just after the end of World War II³. Until very recently, ILO Recommendation no. 205 of 2017 was quite peripheral to international labour law/rights, but the current pandemic has swiftly put this international standard front and centre of the body of international labour regulation.

While citizens of the world note with concern how major institutions of international co-operation – UN, EU and EMU, WHO, IMF, NATO etc. – seem to lose some of their relevance at a time when they are needed the most, we should not forget that the ILO already has a standard on the books for crisis prevention and building resilience in relation to crisis. When we start asking the important questions on how the labour market should be organized in a post-Covid-19 future, we have reason to carefully consult the pre-existing ILO

¹ On the ILO, *see*; Hughes, S., Haworth N., *The International Labour Organisation. Coming in from the cold*, Routledge, London, 2010; Rodgers, G., et al. (eds.) *The ILO and the Quest for Social Justice, 1919-2009*, International Labour Office, 2009; Maupin, F., *The Future of the International Labour Organization in the Global Economy*, Hart Publishing, Oxford, 2013.

² R205 – Employment and Decent Work for Peace and Resilience Recommendation, 2017.

³ R71 – Employment (Transition from War to Peace) Recommendation, 1944.

framework, not only to make sure that national laws are in accordance with international obligations, but also for more general inspiration for labour policy and regulation.

The aim of this Article is thus to present the role of the ILO in handling the Covid-19 pandemic⁴. To fulfil this aim the Article will cover three issues: A) the particular labour standard for crisis response (R205) (Sections 2–4) and its implementation (Section 5), B) international labour standards as they apply in a pandemic (Section 6) and as they apply particularly for workers engaged in crises and emergency management (Section 7), *e.g.* health care workers (Section 8). Besides describing the regulatory framework⁵ put forward by the ILO, the Article will C) relate the concrete organisational actions and responses on part of the ILO and its constituents in relation to the current pandemic (Section 9–10). A summary and a brief discussion on the role of the ILO and labour law in the post-Covid-19 labour market finalises the Article (Section 11).

2. Recommendation No. 205 on Employment and Decent Work for Peace and Resilience: Historical Trajectory and Contemporary Standing.

The international labour standard on employment and decent work for peace and resilience was adopted by the International Labour Conference in June 2017. It was supported by a vast majority of the ILO constituents: 378 votes in favour, five votes against and eight abstentions⁶. The process towards the adoption of R205 was launched by a decision at the 2016 International Labour Conference, followed by the ILO's usual two-year standard setting procedure with tri-partite consultations⁷. As of today, ILO lists 72 submissions to the competent authority in relation to R205⁸.

While both the 2017 instrument and the 1944 instrument⁹ rely on the same mandate concerning labour and employment, the differences in scope illustrate the broader agenda of the present-day ILO. The 1944 recommendation on transition from war to peace proscribes a principled approach to handling problems particularly topical to the beginning of the end of the World War II, such as the demobilisation of the armed forces and of assimilated services and the repatriation of prisoners of war, persons who have been deported, and national programmes for industrial demobilisation and reconversion.

⁴ This implies that the ILO response to internal and/or international conflicts is not covered in the present Article.

⁵ Due to space restrictions the Article will not cover sectoral standards for migrant workers, domestic workers and seafarers.

⁶ ILO, International Labour Conference, Provisional Record 17, 106th Session, Geneva, June 2017, 42.

⁷ On the standard setting procedure, see Valticos N., *Fifty Years of Standard-Setting Activities by the International Labour Organisation*, in *International Labour Review*, Vol. 100, 1969, 201–237, Wisskirchen A., *The Standard-setting and Monitoring Activity of the ILO: Legal Questions and Practical Experience*, in *International Labour Review*, Vol. 144, No. 3, 2005, 253–289.

⁸ ILO Website;

https://www.ilo.org/dyn/normlex/en/f?p=1000:13300:13628052510154:::P13300_INSTRUMENT_SORT:1. Last visited 07-05-20.

⁹ R71 – Employment (Transition from War to Peace) Recommendation, 1944.

The focus of the 1944 recommendation is the prospective implications for the supply and demand of labour in an economy that is transitioning from war to peace. Governments are asked to “formulate a national industrial demobilisation and reconversion programme to facilitate the rapid and orderly conversion of the economy from wartime to peacetime requirements”, with “a view to attaining full employment with the least possible delay” (R71, p. 9.1). It is stipulated that states revise upward “the school-leaving age and the age for admission to employment (R71, p. 30.1) and that the “redistribution of women workers in the economy should be organised on the principle of complete equality of opportunity for men and women on the basis of their individual merit, skill and experience (R71, p. 36). Francis Maupin has raised doubts as to the relevance of this instrument in the context of the aftermath of the 2008 financial crisis¹⁰.

The 2017 international labour standard on the role of employment in crisis management and the building of resilience is, like its 1944 predecessor, in the legal form of a recommendation. While there are many similarities between recommendations and conventions, one crucial difference is that measures put forward in recommendations “do not become obligatory on ratification but rather constitute mere reference standards on which countries are encouraged to base their labour policies, legislation and practice”¹¹. From the perspective of member states recommendations give rise to effects quite similar to those of conventions, most importantly to bring them before the competent national authority for legislation or other action, inform the Director-General of the ILO of measures taken to that end and report to the Director-General on the position of the national law and practice regarding matters covered by the recommendation. It follows from the constitution of the ILO that the national adoption of recommendations does not give rise to any other obligations¹².

3. Covid-19 as a ‘Disaster’: on the Applicability of R205.

The specific ILS on measures to generate employment and decent work for the purposes of prevention, recovery and resilience is applicable in the event of a ‘disaster’ (R205, p. 1). Does, then, the Covid-19 pandemic render R205 applicable? The International Labour Office noted during the standard setting process that “health related crises” are covered by the “category of ‘disasters’ arising from biological hazards”¹³.

The recommendation defines – in correspondence with definitions stemming from the International Law Commission as well as working groups and agencies within the United

¹⁰ Maupin F., (n. 2) 108.

¹¹ Servais J-M., *International Labour Law*, Wolters Kluwer, Alphen aan den Rijn, 2020, Sect. 191.

¹² *Ibid.* Sect. 195.

¹³ International Labour Office, Report V (2A), Employment and decent work for peace and resilience. Revision of the Employment (Transition from War to Peace) Recommendation, 1944 (no. 71), International Labour Conference, 106th Session, 2017, 13.

Nations system – ‘disaster’ in terms of “a serious disruption of the functioning of a community or a society at any scale due to hazardous events interacting with conditions of exposure, vulnerability and capacity, leading to one or more of the following: human, material, economic and environmental losses and impacts” (R205, p. 2.a). The *travaux préparatoires* quote definitions of hazard which include not only loss of life, but also injury and other health impacts, together with social and economic disruption. Hazards can be of biological origin¹⁴.

In sum; the Covid-19 pandemic is a disaster in the meaning of R205. The recommendation is thus applicable to the present situation and a relevant source for national labour market policy response to the pandemic.

Following the adoption of R205 the crisis response regime of ILS is two-fold: R205 relates immediately to the actual events – disaster and conflict – that leads to a state of crisis, while the general body of ILS relates also to economic and financial crises that possibly will be the result of a crisis.

4. Resilience in the Age of Covid-19: on the Labour Policy of R205.

4.1 The Concept of Resilience as Benchmark for Labour Market Policy.

The ultimate purpose of R205 is to counter disasters and create ‘resilience’, which is defined – in line with definitions in the UN system – as “the ability of a system, community or society exposed to hazards to resist, absorb, accommodate, adapt to, transform and recover from the effects of a hazard in a timely and efficient manner, including through the preservation and restoration of its essential basic structures and functions through risk management” (R205, p. 2.b).

International labour standards acknowledge that discrimination might arise from, or be exacerbated by, disasters. R205 thus proscribes that member states, when they take measures to prevent crises, enable recovery and build resilience, should “respect, promote and realize equality of opportunity and treatment for women and men” while taking into account the relevant international labour standards¹⁵ (R205, p. 15.a). Furthermore, R205 assumes that child labour and forced or compulsory labour might be exacerbated in times of disaster, and therefore reiterates the international labour standards¹⁶ that combat these practices (R205, p. 16, 17).

¹⁴ International Labour Office, Report V n. (1), Employment and decent work for peace and resilience. Revision of the Employment (Transition from War to Peace) Recommendation, 1944 (no. 71), International Labour Conference, 106th Session, 2017, 10. International Labour Office, *Ibidem*, 15.

¹⁵ C100 – Equal Remuneration Convention, 1951, R90 – Equal Remuneration Recommendation 1951, C111 – Discrimination (Employment and Occupation) Convention, 1958, R111 – Discrimination (Employment and Occupation) Recommendation, 1958.

¹⁶ C138 – Minimum Age Convention, 1973, R146 – Minimum Age Recommendation, 1973, C182 – Worst Forms of Child Labour Convention, 1999, R190 – Worst Forms of Child Labour Recommendation, 1999,

States' preparations for and responses to crisis situations should be based on strengthened international cooperation within bilateral and multilateral arrangements within the UN system and "other regional or international mechanisms of coordinated response" (R205, p. 42). States "should make full use of existing arrangements and established institutions and mechanisms and strengthen them, as appropriate" (R205, p. 42, cf p. 43–48). In relation to the Covid-19 pandemic, the World Health Organization clearly represents an important form for international cooperation that, following R205, should be utilised and strengthened.

4.2 Realising Resilience: Guiding Principles and Strategic Approaches.

R205 defines a set of guiding principles which states should take into account when responding to and preventing crises (R205, p. 7). The most prominent principle to adhere to concerns the responsibility to promote, in terms known from *e.g.* the Employment promotion and protection against unemployment convention¹⁷, "full, productive, freely chosen employment and decent work" as a means to "preventing crises, enabling recovery and building resilience" (R205, p. 7.a). In times of crisis states are to "respect, promote and realize the fundamental principles and rights at work, other human rights and other relevant international labour standards" (R205, p. 7.b). Furthermore, states should "pay special attention to population groups and individuals who have been made particularly vulnerable by the crisis" (R205, p. 7.h).

In addition to reiterating the importance of social dialogue (R205, p. 7.k) R205 highlights, also for times of crisis, "the need for a just transition towards an environmentally sustainable economy as a means for sustainable economic growth and social progress" (R205, p. 7.j cf p. 8.c).

Besides laying down the above stated guiding principles, R205 suggests that states "adopt a multi-track approach implementing coherent and comprehensive strategies" for "preventing crises, enabling recovery and building resilience" (R205, p. 8), and that they respond to a "need for simultaneous actions over consecutive periods"¹⁸. Primarily, states should stabilize "livelihoods and income through immediate social protection and employment measures" (R205, p. 8.a). R205 emphasizes the role of the labour market parties; not only should states promote social dialogue and collective bargaining (R205, p. 8.i), but states should consult with, and encourage the "active participation of employers' and workers' organizations in planning, implementing and monitoring measures for recovery and resilience" (R205, p. 8.d).

C29 – Forced Labour Convention, 1930, P29 Protocol of 2014 to the Forced Labour Convention, 1930, C105 – Abolition of Forced Labour Convention, 1957, R203 – Forced Labour (Supplementary Measures) Recommendation, 2014.

¹⁷ C168 – Employment Promotion and Protection against Unemployment Convention, 1988.

¹⁸ International Labour Office, Report V (2A), Employment and decent work for peace and resilience. Revision of the Employment (Transition from War to Peace) Recommendation, 1944 (no. 71), International Labour Conference, 106th Session, 2017, 27.

4.3 Immediate Response.

States' crisis response in the immediate aftermath of a disaster should include *i.a.* “an urgent response to satisfy basic needs and provide services, including social protection, support to livelihoods, immediate employment measures and income-generation opportunities for population groups and individuals who have been made particularly vulnerable by the crisis” (R205, p. 9.b). Working conditions should be safe and decent, also in the immediate aftermath of a disaster (R205, p. 9.d).

States should “as quickly as possible” “seek to ensure basic income security”, “develop, restore or enhance comprehensive social security schemes and other social protection mechanisms” and “seek to ensure effective access to essential health care and other basic social services” (R205, p. 21).

4.4 Response and Recovery.

Implementing “a comprehensive and sustainable employment strategy to promote full, productive, freely chosen employment and decent work” in line with the international labour standard on employment policy¹⁹ is understood to be key for enabling recovery from and building resilience to crises (R205, p. 10).

Furthermore, states should implement “employment-intensive investment strategies and programmes, including public employment programmes” (R205, p. 11.a) and support the public sector (R205, p. 11.g).

Recovering from a crisis represents an opportunity to facilitate not only “a just transition towards an environmentally sustainable economy”, but also “respecting, promoting and realizing the fundamental principles and rights at work of those in the informal economy and encouraging the transition of workers and economic units in the informal economy to the formal economy”, all in line with the specific international labour standard²⁰ (R205, p. 11.e, f).

Disadvantaged and marginalized groups and those that have been made particularly vulnerable by the crisis should be targeted by specific active labour market policies (R205, p. 12).

Recovering from a crisis also implies reviewing, establishing, re-establishing or reinforcing labour legislation, labour inspection and the system of collective bargaining and collective agreements in line with the applicable international labour standards²¹ (R205, p. 23.a, c). The goal is to not only “recognize the vital role of employers' and workers' organizations in crisis response” (R205, p. 25), but also to “create an enabling environment for the establishment, restoration or strengthening of employers' and workers' organizations” (R205, p. 24).

¹⁹ C122 – Employment Policy Convention, 1964.

²⁰ R204 – Transition from the Informal to the Formal Economy Recommendation, 2015.

²¹ ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, 1998, C81 – Labour Inspection Convention, 1947, C98 – Right to Organise and Collective Bargaining Convention, 1949, C181 – Private Employment Agencies Convention, 1997.

4.5 Long Term Preparedness and Crises Prevention.

Measures to build resilience should be developed in consultation with employers' and workers' organizations and other stakeholders and contain an "identification of risks and evaluation of threats to and vulnerabilities of human, physical, economic, environmental, institutional and social capital at local, national and regional levels" (R205, p. 41.a). Furthermore, states should engage in "risk management, including contingency planning, early warning, risk reduction and emergency response preparedness" (R205, p. 41.b). These plans for prevention and mitigation of adverse effects should include "business continuity management in both the public and private sector" (R205, p. 41.c).

In relation to crisis prevention the Employment Policy Convention of 1964 implies that states shall, as a major goal, pursue an active policy to promote "full, productive and freely chosen employment" ensuring *i.a.* that "there is work for all who are available for and seeking work" (C122, art. 1)²².

The long term prevention of crises assumes that "the provision of education is not disrupted" for all children (R205, p. 18) and that workers have access to a "vocational guidance programme that assesses and responds to emerging skills needs for recovery and reconstruction" (R205, p. 19).

Social protection floors, in line with the particular international labour standard²³, represent important aspects in not only preventing crises but also building resilience (R205, p. 22).

4.6 Scope *Ratione Personae*: Universalism Proper for Migrants.

In times of crisis universality in social protection is particularly emphasized.

R205 is premised on a robust commitment to universality in social protection: States should, when they take "measures for promoting peace, preventing crises, enabling recovery and building resilience [...] ensure that the human rights of all migrants and members of their families staying in a country affected by a crisis are respected on a basis of equality with those of national populations, taking into account relevant national provisions, as well as relevant international labour standards and other international instruments and documents, as applicable" (R205, p. 15.i; cf also art. 26 and art. 27 for specific rules).

During the standard setting process the term "lawfully" was deliberately taken out from the text of the recommendation with the explicit intention to create universal coverage and include all migrants irrespective of their migration status²⁴. In the *travaux préparatoires* the

²² C122 – Employment Policy Convention, 1964.

²³ R202 – Social Protection Floors Recommendation, 2012.

²⁴ International Labour Office, Report V (1), Employment and decent work for peace and resilience. Revision of the Employment (Transition from War to Peace) Recommendation, 1944 (no. 71), International Labour Conference, 106th Session, 2017, 18. Cf International Labour Office, Report V (2A), Employment and decent

Office is reminding constituents that “limiting assistance to prevent loss of life only to those who are lawfully staying in the territory of a State goes against international law, including the right to life, which is a *jus cogens*”²⁵.

R205 is thus ‘more’ universal than R202 on social protection floors, even though the latter instrument claims to be built upon the principle of “universality of protection, based on social solidarity” (R202, p. 3.a). The actual coverage of R202 is, however paradoxically, not universal: social security guarantees should be provided to “at least all residents and children, as defined in national laws and regulations”, *i.e.* explicitly only to persons legally residing in the country, in effect excluding adult irregular migrants²⁶.

The truly universal approach to coverage of R205 is particularly relevant in the case of a crisis following a pandemic. The undocumented population is of course vulnerable – more vulnerable – to the Covid-19. Furthermore, the fate of residents and ‘legal’ migrants is dependent on the fate of the undocumented population. Including the undocumented population in social protection schemes is a policy marked by solidarity. At the same time, it is within the immediate self-interest of residents and ‘legal’ migrants that undocumented migrants receive social protection and health care, so that they do not contribute to the further spreading of the coronavirus.

5. The ILO Strategy and Action Plan to give Effect to R205.

When adopting R205, the International Labour Conference also decided on a resolution in which governments, employers and workers were invited to “give full effect” to the new labour standard²⁷. The resolution requests that the ILO develops “a strategy and action plan for promoting and supporting the implementation” of R205 through “awareness-raising initiatives, promotional materials and appropriate technical assistance to constituents in giving effect to the policies and measures” of R205²⁸.

The follow-up strategy drawn up by the Governing Body later in 2017 firstly invites constituents to translate R205 into “local, national and regional strategies and measures” and secondly devises a strategy consisting of “four complementary and mutually reinforcing components”²⁹:

work for peace and resilience. Revision of the Employment (Transition from War to Peace) Recommendation, 1944 (no. 71), International Labour Conference, 106th Session, 2017, 42.

²⁵ International Labour Office, Report V (1), Employment and decent work for peace and resilience. Revision of the Employment (Transition from War to Peace) Recommendation, 1944 (no. 71), International Labour Conference, 106th Session, 2017, 18.

²⁶ Dijkhoff T., *Principles for National Social Protection Floors*, in Dijkhoff T., Mpedi, L. G. (eds.) *Recommendation on Social Protection Floors. Basic Principles for Innovative Solutions*, Wolters Kluwer, Alphen aan den Rijn, 2018, 13–40, 26 ff.

²⁷ ILO, International Labour Conference, Provisional Record 13-1 (rev.), 106th Session, Geneva, June 2017, 17.

²⁸ *Ibid.*, 17.

²⁹ ILO, International Labour Office, Governing Body, 331st Session, Geneva, 26 October – 9 November 2017 (GB.331/INS/4/2).

1. Awareness raising and advocacy: R205 is to be introduced in briefings, training and knowledge-sharing events and a systematic campaign on global and national level that highlights how R205 can be put into effect in different contexts is developed.
2. Policy advice, technical cooperation and capacity development on both national and regional/global scale. On a country level ILO is to support constituents in countries affected by conflict and/or disaster, primarily targeting countries affected by protracted situations of fragility.
3. Knowledge development and dissemination: developing new research and tools on key policy areas, analysing “intervention models, policy combinations, technical guidance and implementation modalities that leverage employment and decent work tools to positively impact peace- and resilience-building”, collecting data and conducting impact assessments.
4. International cooperation and partnerships: bringing R205 “to the attention of relevant international and regional organizations and to promote cooperation and partnerships with these organizations with the aim of coordinating policies and initiatives” as responses to crises.

At the time of adoption in 2017 of the implementation strategy, nobody could have known that only a couple of years later the nations of the world would be in dire need of crisis management. Presently the ILO is involved in responding to the Covid-19 pandemic along the lines of the strategy (see below Sections 9 and 10).

6. International Labour Standards as Applicable during Emergencies following a Pandemic.

6.1 Introduction.

It is explicitly stated in R205 that its provisions apply to “all workers and jobseekers” as well as to all employers affected by crisis following disasters (R205, p. 4).

Very few of the instruments that comprise the body of international labour standards indicate that their respective application is suspended in the event of a disaster and assuming crisis. Thus, the international labour standards system applies, with few exceptions, to the labour market during calamities, such as the current Covid-19 pandemic (cf Section 7).

Importantly, as a result of the acute challenges that arise from working during a pandemic and the strains on the labour market during such times, a plethora of generally applicable international labour standards become particularly relevant for the protection of workers’ rights.

The following section will provide a brief overview of ILS as they relate to workers and workplaces in times of a pandemic.

6.2 A Right to Health Care and to Social Security during a Pandemic.

Health care and possibilities for subsistence during illness are naturally highly topical issues in times of a pandemic.

Access to medical care and sickness benefits have been regulated in ILS since early 19th century. According to the ILS of 1969 states are to ensure that *i.a.* workers (cf C130, art. 2–5) enjoy a right to curative medical care (C130, art. 8), such as general practitioner care, specialist care and hospitalisation (C130, art. 13-14)³⁰. The size of the cost of the care for the person covered shall not be allowed to cause him or her hardship, and must not “prejudice the effectiveness of medical and social protection” (C130, art. 17).

Health care should, according to the 2002 recommendation, meet “the criteria of availability, accessibility, acceptability and quality”, while basic income security should cover both sickness and unemployment (R202, p. 5.a, c). Finally, states are urged to consider that “persons in need of health care should not face hardship and an increased risk of poverty due to the financial consequences of accessing essential health care” (R202, p. 8).

States are to ensure *i.a.* workers (C130, art. 19–20) sickness benefits (C130, art. 18) in the form of periodical payments (C130, art. 21) amounting to at least about 60 % of the previous earnings (C130, art. 22–24).

The recently (2002) adopted ILS consider social security systems as “automatic social and economic stabilizers” which, particularly in times of crisis, “help stimulate aggregate demand” (preamble), and favour universal social protection of an adequate standard (R202, p. 3)³¹. States are to establish basic social security guarantees which ensures that “all in need have access to essential health care and to basic income security” (R202, p. 4)³².

The 1969 recommendation on medical care and sickness benefits proscribes that a person who suffers a loss of earnings because of absence from work because she “is isolated for the purpose of a quarantine” should be granted a cash benefit (R 134, p. 8)³³.

A worker who is off from work to care for a dependent child who is ill have the right to social security (R165, p. 28)³⁴.

³⁰ C130 – Medical Care and Sickness Benefits Convention, 1969. Cf C102 – Social Security (Minimum Standards) Convention, 1952, parts II and III.

³¹ R202 – Social Protection Floors Recommendation, 2012.

³² Furthermore, states who have made the right to medical care conditioned to occupational activity, “shall endeavour to ensure [...] the provision of medical care to persons in receipt of unemployment benefit and to their dependants”, C168 – Employment Promotion and Protection against Unemployment Convention, 1988, art. 23.

³³ R134 – Medical Care and Sickness Benefits Recommendation, 1969.

³⁴ R165 – Workers with Family Responsibilities Recommendation, 1981.

6.3 Safety and Health, Serious Dangers to Health, and Personal Protective Equipment at Work.

A contagious disease presents particular challenges to workers, employers and workplaces in relation to health and safety at work.

The occupational safety and health convention demands that states implement “a coherent national policy on occupational safety, occupational health and the working environment” with the aim of preventing “accidents and injury arising out of, linked with or occurring in the course of work, by minimizing, so far as reasonably practicable, the causes of hazards inherent in the working environment” (C155, art. 4)³⁵. States should, according to the accompanying recommendation, take measures in the fields of “design, manufacture, supply, use, maintenance and testing of personal protective equipment and protective clothing” as well “sanitary installations, washing facilities, facilities for changing and storing clothes, supply of drinking water, and any other welfare facilities connected with occupational safety and health” (R164, p. 3.n, o)³⁶.

The national policy demanded by the occupational safety and health convention implies placing obligations on both employer and employee.

Essentially, the employer bears the responsibility of securing a safe and healthy workplace: employers are “to ensure that, so far as is reasonably practicable, the workplaces, machinery, equipment and processes under their control are safe and without risk to health” (C155, art. 16.1). Furthermore, employers are “to ensure that, so far as is reasonably practicable, the chemical, physical and biological substances and agents under their control are without risk to health when the appropriate measures of protection are taken” (C155, art. 16.2). Finally; “Occupational safety and health measures shall not involve any expenditure for the workers” (C155, art. 21). Workers are to be informed in an adequate and appropriate manner of health hazards involved in their work³⁷.

Personal protective equipment is included in the employer’s responsibility: “Employers shall be required to provide, where necessary, adequate protective clothing and protective equipment to prevent, so far as is reasonably practicable, risk of accidents or of adverse effects on health” (C155, art. 16.3). The recommendation accompanying the occupational health and safety convention defines this in terms of an obligation “to provide, without any cost to the worker, adequate personal protective clothing and equipment which are reasonably necessary when hazards cannot be otherwise prevented or controlled” (R164, p. 10.e)³⁸.

Workers’ primary responsibility in relation to realizing the goal of safe workplaces is to respect safety measures put forward by the employer: workers shall “in the course of performing their work, co-operate in the fulfilment by their employer of the obligations placed upon him” (R164, p. 19.1). Thus, while it is an obligation on part of the employer to

³⁵ C155 – Occupational Safety and Health Convention, 1981.

³⁶ R164 – Occupational Safety and Health Recommendation, 1981.

³⁷ C161 – Occupational Health Services Convention, 1985, art. 13, R171 – Occupational Health Services Recommendation, 1985, p. 22.1.

³⁸ R164 – Occupational Safety and Health Recommendation, 1981.

provide personal protective equipment, it is an obligation on part of the worker to actually use this equipment at work. The recommendation states that workers are to “take reasonable care for their own safety and that of other persons who may be affected by their acts or omissions at work”, “comply with instructions given for their own safety and health and those of others and with safety and health procedures” and “use safety devices and protective equipment correctly and do not render them inoperative” (R164, p. 16.a, b, c).

Acute dangerous situations are of particular concern to the occupational health and safety convention. Workers are to report “to his [sic] immediate supervisor any situation which he has reasonable justification to believe presents an imminent and serious danger to his life or health”, and “until the employer has taken remedial action, if necessary, the employer cannot require workers to return to a work situation where there is continuing imminent and serious danger to life or health” (C155, art. 19.f). Furthermore, “A worker who has removed himself from a work situation which he has reasonable justification to believe presents an imminent and serious danger to his life or health shall be protected from undue consequences” (C155, art. 13). Thus, depending on the degree of danger, *e.g.* exposure to Covid-19, in the actual instance, a worker might have a right to leave situations at work, which could be particularly relevant in times of a pandemic.

6.4 Covid-19 as an Occupational Disease.

What if a worker catches Covid-19 at work and becomes ill? Benefits in the occasion of injury at work has been subject to regulation in ILS since the beginning of the 19th century. A disease caused by a biological agent at work, “where a direct link is established scientifically, or determined by methods appropriate to national conditions and practice, between the exposure to these biological agents arising from work activities and the disease(s) contracted by the worker”, represents an occupational disease (R194, Annex p. 1.3.9)³⁹.

In case a worker suffers an employment injury in the form of an occupational disease he or she is entitled to benefits (C121, art. 6, art. 8). In respect to a morbid condition, the worker has a right to medical care and in respect to injuries that incapacitates the worker, he or she is entitled to cash benefits (C121, art. 9)⁴⁰.

³⁹ R194 – List of Occupational Diseases Recommendation, 2002, Revised 2010. The 1980 version of the list of occupational diseases was phrased “Infectious or parasitic diseases contracted in an occupation where there is a particular risk of contamination” and “Health or laboratory work” was enumerated as work involving exposure to risk; see C121 – Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980], 1964.

⁴⁰ C121 – Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980], 1964. Cf C102 Social Security (Minimum Standards) Convention, 1952, part VI.

6.5 Social Distancing and the Regulation of Home Work.

Since an important government response to the Covid-19 pandemic is the policy of social distancing, *i.e.* in effect demand that people do not leave their homes, working from home might become more prevalent in the future. For some tasks that are possible to perform from home, employers might be inclined to shift into home work for parts of the labour force. The ILS regarding home work becomes relevant⁴¹. However, presently, no ILS specifically on tele-work exists.

States are to implement “a national policy on home work aimed at improving the situation of homeworkers” (C177, art. 3). The basic principle of the regulation of home work is equality of treatment between homeworkers and other workers, while still “taking into account the special characteristics of home work” (C177, art. 4.1). Importantly, the employer’s responsibility for safety and healthy workplaces (see above) is in effect also for home work, while “taking account of its special characteristics” (C177, art. 7). The recommendation accompanying the home work convention, proscribes that employers should be required to “ensure that machinery, tools or other equipment provided to homeworkers are equipped with appropriate safety devices and take reasonable steps to ensure that they are properly maintained” (R184, p. 20.b)⁴².

Should the particular ILS for home work not be applicable to a particular worker working from home, the generally applicable labour standard on safety and health at work applies – under which the employer is responsible for safety and health at work (see above).

6.6 Employment Protection and being Sick from Covid-19.

In the course of a pandemic many people will become ill and many people will have ill relatives, making it harder for workers to perform their work as agreed. Employers’ might thus want to terminate employment relationships because of reasons pertaining to the workers on an individual basis.

The convention on termination of employment stipulates that “valid reason” is necessary in order for termination of the employment of a worker, and that “Temporary absence from work because of illness or injury” or the “filing of a complaint [...] against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities” shall not constitute valid reasons for termination (C158, art. 4–6)⁴³.

Staying home from work while being sick with the coronavirus, or putting forward a complaint, for example that the employer does not comply with health and safety regulations, shall not lead to termination of employment.

⁴¹ C177 – Home Work Convention, 1996.

⁴² R184 – Home Work Recommendation, 1996.

⁴³ C158 – Termination of Employment Convention, 1982. Cf R166 – Termination of Employment Recommendation, 1982, p. 6(2).

A worker has the right to leave of absence from work in order to care for a dependent child who have taken ill, *e.g.* from the novel coronavirus (R165, p. 23)⁴⁴.

6.7 Working Time, Partial Loss of Work and Temporary Suspension of Work.

Changing patterns of consumption in the course of the pandemic and lockdowns, for example, might lead to a decrease in employers' demand for labour, prompting the employer to initially look for solutions to this problem, short of termination.

The starting point is that termination for "reasons of an economic, technological, structural or similar nature" (C158, art. 13) should be averted and minimised (R166, p. 21)⁴⁵. Furthermore, in case "a temporary reduction of normal hours of work would be likely to avert or minimise" terminations, "consideration should be given to partial compensation for loss of wages for the normal hours not worked, financed by methods appropriate under national law and practice" (R166, p. 22).

As part of a policy "to promote full, productive and freely chosen employment" (C168, art. 7) states are to cover both the contingency of "loss of earnings due to partial unemployment" in the wake of "a temporary reduction in the normal or statutory hours of work" and "suspension of reduction of earnings due to a temporary suspension of work, without any break in the employment relationship for reasons of, in particular, an economic, technological, structural or similar nature" (C168, art. 10, cf art. 14, art. 15)⁴⁶.

6.8 Protection of Wages and Levels of Wages.

Financial troubles on part of the employer are of course very common during the Covid-19 crisis. According to ILS, the employer cannot, in the absence of national law, unilaterally transfer these troubles to the employees in the form of reductions of salaries.

Deduction from wages shall, according to the wage protection convention, be permitted only under conditions, and to the extent, prescribed by national law (C95, art. 8.1)⁴⁷.

Furthermore, the minimum wage fixing convention demands that states establish a system of minimum wages with "the force of law" that "shall not be subject to abatement" (C131, art. 1, art. 2)⁴⁸.

⁴⁴ R165 – Workers with Family Responsibilities Recommendation, 1981.

⁴⁵ R166 – Termination of Employment Recommendation, 1982.

⁴⁶ C168 – Employment Promotion and Protection against Unemployment Convention, 1988. Cf C102 – Social Security (Minimum Standards) Convention, 1952, part IV.

⁴⁷ C95 – Protection of Wages Convention, 1949.

⁴⁸ C131 – Minimum Wage Fixing Convention, 1970.

6.9 Redundancy because of Decrease in Demand for Labour; Structural Changes to the Labour Market after Covid-19.

Societies plagued by widespread illness due to a pandemic, including counter measures consisting of a quarantine, naturally implies decreased demands for many kinds of goods and services on part of workers/citizens, and a decreased demand for labour on part of enterprises. Employers might be pressured to ending employment relationships for reasons not immediately pertaining to the individual workers. ILS do not prevent the employer from terminating contracts of employment in cases of redundancy.

However, “When the employer contemplates terminations for reasons of an economic, technological, structural or similar nature” he or she shall in good time provide the workers’ representatives with relevant information on reasons for termination, numbers and categories of workers affected and consult “on measures to be taken to avert or minimise the terminations and measures to mitigate the adverse effects of any terminations” (C158, art. 13)⁴⁹. The employer must also notify the competent national authority of the scope of the terminations (C158, art. 14).

States are furthermore to establish “special programmes to promote additional job opportunities and employment assistance and to encourage freely chosen and productive employment” for a number of categories of workers, *e.g.* “workers affected by structural change” (C168, art. 8)⁵⁰. States should introduce into their general employment policy measures which “facilitate adjustment to structural change at the global, sectoral and enterprise levels and the re-employment of workers who have lost their jobs as a result of structural and technological changes” (R169, p. 10[a])⁵¹.

ILS assume that workers should be protected from “financial or other hardships” in the wake of unemployment because of structural change to the labour market, *e.g.* in the form of “long-term and substantial change taking the form of shifts in demand” (R122, p. 13 cf p. 8, p. 10)⁵². One suggestion concerning method of application of employment policy in this regard is “public works or other public investment including the expansion or the setting up of public undertakings” (R122, Annex, p. 7.2.b).

It follows, then, that while employers are allowed to terminate employment contracts in situations of redundancy, states should be prepared to handle restructuring of the labour market, *e.g.* sectors and professions disappearing and new ones coming into existence, in the wake of the Covid-19 pandemic and government countermeasures in the forms of lockdowns.

⁴⁹ Also in R166 – Termination of Employment Recommendation, 1982, p. 19-20.

⁵⁰ C168 – Employment Promotion and Protection against Unemployment Convention, 1988.

⁵¹ R169 – Employment Policy (Supplementary Provisions) Recommendation, 1984.

⁵² R122 – Employment Policy Recommendation, 1964.

6.10 Insolvency on part of the Employer.

The financial hardship for the company might worsen and develop into insolvency. In case the employer becomes insolvent and proceedings, in accordance with national laws, are opened relating to the “employer’s assets with a view to the collective reimbursement of its creditors” (C173, art. 1.1) a specific set of protective rules become applicable⁵³. Workers’ claims in the event of insolvency on part of the employer are to be protected by either a privileged status “so that they are paid out of the assets of the insolvent employer before non-privileged creditors can be paid their share” (art. 5) or through a guarantee institution (C173, art. 9). If workers are made into privileged creditors, no less than three months’ pay, holiday pay and severance pay shall be covered (C173, art. 6). The guarantee institution shall cover no less than two months’ pay, holiday pay and severance pay (C173, art. 12).

7. International Labour Standards and Immediate Crisis Response.

To a certain small degree, ILS contain particular rules for emergencies. The aim of this type of regulation is, in some instances, to explicitly state that a set of standards applies, and in some instances to explicitly state that a set of standards does not apply.

In the immediate aftermath of a disaster, workers engaged in rescue and rehabilitation activities have the right to “safe and decent working conditions, including the provision of personal protective equipment and medical assistance” (R205, p. 9.d).

Furthermore, the standards laid down in R205 on fundamental principles and rights at work, and the right to safe and healthy working conditions are, following explicit reference, applicable “to workers engaged in crisis response, including in the immediate response”, as well as to persons volunteering in crisis response (R205, p. 5 cf p. 4).

National emergencies, calamities, force majeure and abnormal pressure at work allow for a temporary exception to the normal hours of work (R116, p. 14)⁵⁴.

Even though forced or compulsory labour – *i.e.* “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily” – is punishable as a penal offence, an important exception prevails (C29, art. 2)⁵⁵. Outside the definition⁵⁶ of forced or compulsory labour is “any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would

⁵³ C173 – Protection of Workers’ Claims (Employer’s Insolvency) Convention, 1992. A 1949 convention proscribes that workers shall be treated as privileged creditors in case of bankruptcy on part of the employer. C95 – Protection of Wages Convention, 1949, art. 11.

⁵⁴ R116 – Reduction of Hours of Work Recommendation, 1962.

⁵⁵ C29 – Forced Labour Convention, 1930.

⁵⁶ Cf, for Europe, Stoyanova V., *Human Trafficking and Slavery Reconsidered. Conceptual Limits and States’ Positive Obligations in European Law*, Cambridge University Press, Cambridge, 2017.

endanger the existence or the well-being of the whole or part of the population” (C29, art. 2.2.d). While this rule undeniably is on the books of ILS, the scope for invoking the rule particularly applicable to emergencies, and exact work from someone without his or her consent is minuscule⁵⁷.

8. International Labour Standards for Nursing Personnel during a Pandemic.

In times of a pandemic such as the Covid-19 nurses of course become a crucial category of workers. The ILO assumes a sectoral approach to the regulation of nursing personnel in the 1977 convention no. 149 and recommendation no. 157 on the matter⁵⁸. Presently 41 states have ratified this convention⁵⁹.

The 1977 convention assumes that “special conditions in which nursing is carried out make it desirable to supplement” the generally applicable body of labour standards “by standards specific to nursing personnel, designed to enable them to enjoy a status corresponding to their role in the field of health and acceptable to them” (C149, preamble).

Member states “shall adopt and apply [...] a policy concerning nursing services and nursing personnel designed [...] to provide the quantity and quality of nursing care necessary for attaining the highest possible level of health for the population” (C149, art. 2.1). In this way the convention caters to the needs of the general population, besides also regulating the working conditions for nurses.

In relation to a number of working conditions, *e.g.* working hours and different forms of leave, nursing personnel “shall enjoy conditions at least equivalent to those of other workers in the country concerned” (C149, art. 6).

While equal status between nursing staff and other sectors of the labour market certainly is the starting point, the recommendation accompanying the convention, explicitly allows for exceptions. For example; while normal daily hours of work should not exceed eight hours (R157, p. 33.1), temporary exceptions are allowed; “only in case of special emergency” (R157, p. 33.3).

A specific provision in the recommendation suggests a more favourable position for nursing staff than other categories of workers: nursing personnel “who work in particularly arduous and unpleasant conditions should benefit from a reduction of working hours and/or an increase in rest periods, without any decrease in total remuneration” (R157, p. 40).

While nursing personnel “should have sufficient notice of working schedules to enable them to organise their personal and family life accordingly”, exceptions to these schedules should be “authorised only in case of special emergency” (R157, p. 35).

⁵⁷ This, in effect, exception to the main rule of prohibition was regrettably not updated during the 2014 standard setting process regarding forced labour; cf P29 – Protocol of 2014 to the Forced Labour Convention, 1930 [2014].

⁵⁸ C149 – Nursing Personnel Convention, 1977, R157 – Nursing Personnel Recommendation, 1977.

⁵⁹ ILO Website;

https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312294 .
Last visited 07-05-20.

The nursing personnel recommendation stipulates that the employment relationship must be maintained, and income security provided for, while nurses are absent from work by reason of illness or injury (R157, p. 41.1). Furthermore; the sick leave entitlement system should distinguish between service-incurred illness and injury, “cases in which the person concerned is not incapacitated for work but absence from work is necessary to protect the health of others” and “cases of illness or injury unrelated to work” (R157, p. 41.2).

Member states shall also “endeavour to improve existing laws and regulations on occupational health and safety by adapting them to the special nature of nursing work and of the environment in which it is carried out” (C149, art. 7). Work clothing and “other supplies required by the employer or necessary for the performance of the work should be provided by the employer” at no cost for nurses (R157, p. 29).

General rules on safety and health at the workplace (see above) applies also to nurses. The nursing personnel recommendation furthermore proscribes that states “should endeavour to adapt laws and regulations on occupational health and safety to the special nature of nursing work and of the environment in which it is carried out, and to increase the protection afforded by them” (R157, p. 44, cf p. 45–48).

Risks and particularly dangerous situations for nurses are covered by both the general and the sectoral regulation of safety and health at work, in sum creating a partially contradictory normative approach. The reason for this is that nurses’ work in a pandemic (and often otherwise, during normal circumstances) is very often inherently dangerous. On the one hand; the generally applicable regulation (*i.e.* the convention) on safety and health at work provides workers with a right to remove herself, without risking negative consequences on part of the employer, from a “work situation where there is continuing imminent and serious danger to life or health” (C155, art. 19.f, art. 13). On the national level the right to leave dangerous work is understood to be influenced by the nature of work, so that this right is not entirely present in case the work is inherently dangerous. According to the general survey of 2009 a worker’s right to remove herself from inherently dangerous work actually is applicable “if the understood risk of serious harm has materially increased in a given situation” explained in terms of “the risk of harm has become significantly more likely”⁶⁰. On the other hand, the nursing personnel recommendation demands extra protection for nurses compared to other workers (R157, p. 44); *i.e.* that “All possible steps should be taken to ensure that nursing personnel are not exposed to special risks” and that “Where exposure to special risks is unavoidable, measures should be taken to minimize it” (R157, p. 49.1). The nursing personnel recommendation demands “Measures such as the provision and use of protective clothing, immunization, shorter hours, more frequent rest breaks, temporary removal from the risk or longer annual holidays [...] in respect to nursing personnel regularly assigned to duties involving special risks so as to reduce their exposure to these risks” (R157, p. 49.2).

⁶⁰ As quoted in ILO Normes, ILO Standards and COVID-19 (coronavirus) FAQ, 29 May 2020 – version 2.1; https://www.ilo.org/wcmsp5/groups/public/---ed_norm/--normes/documents/genericdocument/wcms_739937.pdf. Last visited 09-06-20. Cf, for Sweden (and in Swedish), Andersson P., *Lagom krav på arbetsmiljön. Om förelägganden och förbud och arbetsmiljöansvarets gränser*, jure förlag, 2019, 68, 182.

In sum: The generally applicable main rule (*lex generalis* and *lex superior*) of a right of workers to cease particularly dangerous work, as balanced by the principle that the nature of work must be taken into account, is also counterbalanced by the sectoral regulation of nurses' work (*lex specialis* and *lex inferior*, non-binding) that demands that extra attention is given to special risks present particularly in nursing.

It seems that under the surface level of these standards a conflict plays out between health care workers' interest in acceptable working conditions and patients' need of care, which must be handled and balanced by national legislators and authorities.

The actual scope of nurses' right to cease dangerous work thus seem to some extent unclear. Nurses must, in light of this uncertainty regarding the interpretation of the standard, themselves decide whether to refuse a particular task on the grounds of it being overly dangerous for their health.

9. The Global Social Partners Responding to the Covid-19 Pandemic.

The social partners on the global level – International Organisation of Employers (IOE) and the International Trade Union Confederation (ITUC) – have issued a joint statement explicating how they view their position and actions in relations to the labour market in times of the Covid-19 pandemic⁶¹. IOE and ITUC's first priority is to focus on international cooperation in the multilateral international system, and point to the ILO and the World Health Organization (WHO) as being “at the heart of the international guidance to manage this pandemic and identify short, medium and long-term sustainable solutions for individuals, communities, nations and regions”.

IOE and ITUC call on the international financial institutions to “support focused, efficient and impact-proven measures to economies in need to address the health, economic, employment and social impact of the pandemic for workers in all sectors of the economy including the self-employed and non-permanent, casual and informal workers, and all of business, especially small and medium enterprises (SMEs)”.

The global social partners particularly emphasize five areas as important and call for action in relation to each one. 1) “Business continuity, income security and solidarity” are understood as key to prevent the spread of the novel coronavirus and protect lives and livelihoods. 2) “in the strongest terms” it is stressed that social dialogue and the social partners must play an important role in responding to the pandemic; on company and national level, as well as both in the short and the long term. IOE and ITUC argue that “Joint responsibility is needed for dialogue to foster stability.” 3) “Policy coordination and coherence” is essential. Public health policy “must take into consideration the need for protecting employment and income through strengthening social protection measures”, and

⁶¹ https://www.ituc-csi.org/IMG/pdf/20200323_joint_ioe-ituc_statement_on_covid-19.pdf. Last visited 09-06-20.

the ILO must play a key role in this project. 4) “Strong and functioning health systems are key to combatting a pandemic” and must have all possible resources. 5) Critical elements for a response to the pandemic can be found in the 2019 ILO Centenary Declaration for the Future of Work⁶².

At the same time as the global social partners IOE and ITUC have jointly formulated the above position in relation to Covid-19, the two sides of industry are at the same time also putting out its own specific message reflecting the position and role usually pertaining to the respective collective interest.

Trade unionist Sharan Burrow, General Secretary of ITUC highlights the need for a new social contract and the importance of social dialogue, while continuing:

“The antidote to this crisis is in the solidarity that is the lifeblood of trade unions, throughout history and today. All countries must work together to overcome the initial COVID-19 waves and to prepare for the future. Planning for and investing in a more equal world where we can build jobs on a living planet is the only pathway. Trade unions will fight for just that”⁶³.

ITUC seems to be of the view that the usual trade union policies developed during normal circumstances are particularly important also in a time of pandemic.

The employers’ organization IOE has not presented a general policy statement reflecting their overarching suggestions for either immediate or long-term response to Covid-19. Instead, IOE are issuing quite concrete advice to companies, reflecting the usual employer organization policy, *e.g.* on the understanding of resources and restrictions normally applicable to employers;

“Make sure you know the rules and assure you take maximum advantage of them. It has become clear that governments will resort to any measures to underpin social stability through a continuation of income for the population and to protect jobs. [...] cutting off pay and benefits to large numbers of the population would undermine isolation policies and cause social unrest. [...] Be careful that payment procedures you establish do not set precedents that are not sustainable or that will be hard to change. Right now, governments are less concerned with economics than with lives and essential services. Likewise, if companies are to restart quickly after the crisis then some kind of relationship needs to be maintained with employees. It is just as clear that companies who continue to pay large numbers of people without work and without substantial assistance will go under”⁶⁴.

ILO officials seem to understand the current pandemic as a game changer for the world of work, implying that the idea cannot be to return to the state of affairs before the pandemic. ILO Director-General Guy Ryder is quoted stating;

⁶² ILO website;

https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_711674.pdf . Last visited 09-06-20.

⁶³ https://www.ilo.org/actrav/media-center/news/WCMS_743439/lang--en/index.htm . Last visited 13-05-20.

⁶⁴ <https://www.ioe-emp.org/index.php?eID=dumpFile&t=f&f=146627&token=dbce8eb97c52827206ab1b83f15da0d501170b7a> . Last visited 13-05-20.

“Now is the time to look more closely at this new normal, and start on the task of making it a better normal, not so much for those who already have much, but for those who so obviously have too little. This pandemic has laid bare in the cruelest way, the extraordinary precariousness and injustices of our world of work. It is the decimation of livelihoods in the informal economy [...] It is the gaping holes in the social protection systems of even the richest countries, which have left millions in situations of deprivation. [...] And it is the unchecked dynamic of growing inequality which means that if, in medical terms, the virus does not discriminate between its victims in its social and economic impact, it discriminates brutally against the poorest and the powerless”⁶⁵.

While the labour market parties have been able to identify common standpoints as response to the Covid-19 crisis, the pre-existing positions of the organisations have not been entirely abandoned. Trade unionists emphasise that during a pandemic the normal trade union policy is even more important to effectuate. Employers’ organisations demand that extra-ordinary social protection measures implemented to the labour market during the pandemic must not be made permanent. ILO argues that the regulation of the labour market must not return to the state it was in before the crisis; the old normal is not an option for the future.

10. ILO Responding to the Covid-19 Pandemic.

The concrete organisational response of the ILO to the Covid-19 pandemic consists of a number of measures.

From the beginning of the global spread of the pandemic ILO has been monitoring and assessing the situation and the impact of Covid-19 on the world of work. ILO has been collating different kinds of data and information with the purpose of providing a sound basis for developing relevant policy options⁶⁶.

The ILO is issuing a number of policy briefs relating to the Covid-19 crisis; *e.g.* on general/framework policy issues⁶⁷, the ‘informal’ economy⁶⁸, protection of migrant

⁶⁵ https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_743326/lang-en/index.htm . Last visited 13-05-20.

⁶⁶ https://www.ilo.org/global/topics/coronavirus/impacts-and-responses/WCMS_745963/lang-en/index.htm . Last visited 09-06-20.

⁶⁷ https://www.ilo.org/global/topics/coronavirus/impacts-and-responses/WCMS_739047/lang-en/index.htm . Last visited 09-06-20.

⁶⁸ https://www.ilo.org/wcmsp5/groups/public/@ed_protect/@protrav/@travail/documents/briefingnote/wcms_743623.pdf . Last visited 09-06-20.

workers⁶⁹, maritime labour issues⁷⁰, youth unemployment⁷¹ and studies on the application of ILS⁷².

The task team for Jobs for Peace and Resilience within the ILO have developed a set of key recommendations particularly relevant to responding to the Covid-19 crisis in fragile contexts⁷³.

Furthermore, the ILO is developing practical guidance for a safe and healthy return to work as lockdown measures are being rolled back⁷⁴.

As the pandemic develops, ILO will adjust its actions accordingly.

11. Concluding Remarks: ILO and ILS during and after the Covid-19 Pandemic and the following Economic and Financial Crisis.

The general thrust of the ILS drafted particularly for crisis prevention and management (R205) is to adapt labour protection to the acute crisis situation without lowering the levels of protection. The overarching principle in ILS and ILO policy is that labour protection should not be suspended in a time of crisis and that labour standards play an important role in all stages of crisis prevention and management. Generally speaking, ILS do not as such allow for responding to crises by implementing a more or less permanent state of exception as regards protection levels or standard setting procedures⁷⁵.

The labour market framework applicable in times of crises, *e.g.* pandemics, comprises of the body of generally applicable ILS together with the ILS particularly aimed at responding to crises and particular ILS for nursing personnel and workers engaged in crisis response. The important role of trade unions and employers' organisations in crisis management is particularly emphasised in R205. Thus, states cannot invoke crises as an excuse in and of itself to shift the placement of risks for social costs away from the state and employer onto the worker. The idea underlying ILS is quite simply that a crisis following a disaster does not provide neither states nor employers/firms with an opportunity to stray from the high-productivity route to competitive success and to start competing on the basis of low pay and

⁶⁹ https://www.ilo.org/global/topics/labour-migration/publications/WCMS_743268/lang--en/index.htm . Last visited 09-06-20.

⁷⁰ https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/briefingnote/wcms_741024.pdf . Last visited 09-06-20.

⁷¹ https://www.ilo.org/emppolicy/pubs/WCMS_746031/lang--en/index.htm . Last visited 10-06-20.

⁷² https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/genericdocument/wcms_739937.pdf . Last visited 09-06-20.

⁷³ https://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/instructionalmaterial/wcms_742182.pdf . Last visited 09-06-20.

⁷⁴ https://www.ilo.org/global/topics/safety-and-health-at-work/resources-library/publications/WCMS_745549/lang--en/index.htm . Last visited 09-06-20.

⁷⁵ On the theoretical point; cf Rodgers L., *Theorising Labour Law in the State of Exception: Political and Judicial Responses to Crises*, in Blackham A., Kullmann M., Zbyszewska A. (eds.) *Theorising Labour Law in a Changing World. Towards Inclusive Labour Law*, Hart Publishing, Oxford, 2019, 37–53.

worsening working condition. In the wake of a crisis, destructive competition is to be avoided through the use of basic levels of labour protection⁷⁶. From an ILS perspective the response to a crisis following a natural disaster or pandemic is quite similar to the response of a crisis following a financial meltdown: the collective of workers is perceived as being not guilty of creating the crisis, and must accordingly be protected from bearing the sole responsibility for the occurring social costs.

ILO has been instrumental in proving the centrality of human work and production for societies to function. Accordingly, ILO has shouldered the task of safe-guarding workers during the pandemic.

It has been suggested that pandemics – similar to the present one – will become more frequent in the future. Labour law regulators should therefore intensify their efforts to develop ways and means for handling the particular social risk that arises from widespread disease and pandemics. Most importantly in this respect, a pandemic represents in and by itself a forceful argumentation in favour of social protection that is universal in its coverage. Writing in 2013 about ‘new social risks’ Bernd Schulte emphasises:

“Pandemics [...] do not respect borders, and therefore all regions of the world will need to have a similar level of preparedness to ensure that public health effects are minimized, and that impact on society and the economy is reduced as far as possible. Public health information from surveillance and monitoring needs to be shared effectively between countries and regions to ensure an equal level of knowledge, so that pandemics can be effectively managed. As public health measures taken in one country can have an impact on citizens from another country, they need to be evidence-based, proportionate, and effective, as well as ensuring a high level of health protection”⁷⁷.

The crisis in the wake of the Covid-19 pandemic goes to the very roots of labour regulation, while speaking to the need for expansion of social protection beyond the scope of the present labour law. The historical mandate of the ILO is to guarantee that workers are treated humanely and to secure that labour is not treated merely as a commodity, and this is effectuated through the introduction and operation of a legal category or persona for certain human labour – worker/employee etc. – that embeds the working human body in a legal system for social protection⁷⁸. A pandemic, however, invokes the human need for protection, rather than the worker/employee construct. In other words, social protection must be offered to workers also in their capacity as humans, not just employees. The social risks workers encounter during a pandemic do not solely or primarily come into existence as results of social inequalities and weak bargaining power on their part. The risks inherent to the coronavirus pandemic are biological and grossly exacerbated by social inequalities. Furthermore, in order to be most relevant, social protection must be distributed along the

⁷⁶ Cf Deakin S., Wilkinson F., *Labour Law and Economic Theory: A reappraisal*, in Collins H., Davies P., Rideout R. (eds.) *Legal Regulation of the Employment Relation*, Kluwer Law International, Alphen aan den Rijn, 2000, 29–62.

⁷⁷ Schulte B., *New Social Risks: Introduction*, in Becker U., Pennings F., Dijkhoff T. (eds.) *International Standard-Setting and Innovations in Social Security*, Kluwer Law International, Alphen aan den Rijn, 2013, 207–214, 211.

⁷⁸ Cf Supiot A., *The Tasks Ahead of the ILO at its Centenary*, in *International Labour Review*, Vol. 159, Iss. 1, 2020, 117–136, Supiot A., *The Spirit of Philadelphia. Social Justice vs. The Total Market*, Verso, London, 2012.

principle of need, and not along the lines of citizenship/migration status or predominantly based on contributions paid by the individual.

ILS and labour protection play important roles here: from protecting humans in their capacity as workers, while at the same time protecting workers in their capacity of humans. R205 is an important step in realising this expanded vision for ILS and labour law, as it is firmly rooted in universality as overarching guiding principle.

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