

The International Labour Organisation (ILO) as an actor of global governance: sufficiently involved to help overcome the latest financial and economic crisis?*

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Abstract: This article focuses on the analysis of the role of the International Labour Organization (ILO) in the current global governance, analysing its interaction with the main actors of governance and the involvement of the ILO itself as a current actor in global governance. It has taken into account for this writing both the historic role played by the ILO in the international institutional architecture since its creation in 1919 (today as a part of United Nations System), and the relevance it may have now seeking social justice in a global economy still governed by neoliberal principles. The question is whether social justice can be accommodated between these principles and if the main actors of global governance are really willing to strengthen the social dimension of globalization in times of crisis. The formal inclusion of some of the proposals of the ILO among those that seek to define the terms of post-crisis global governance (for example, the decent work strategy) cannot be overly optimistic even be considered a positive step.

Keywords: ILO, global governance, crisis, decent work, social justice, G20, social dimension of globalization, neoliberalism, fundamental rights at work, conditionality.

Resumen: Este artículo se centra en el análisis del papel de la Organización Internacional del Trabajo (OIT) en la gobernanza global actual, ponderando su interacción con los principales actores de la misma pero también el alcance de la implicación de la propia OIT como uno de esos actores. Se han tomado en cuenta para su elaboración tanto el rol histórico jugado por la OIT en la arquitectura institucional internacional desde su creación en 1919 (y hoy como parte del Sistema de las Naciones Unidas), como la relevancia que pueda tener hoy su mandato de mejorar la justicia social en el contexto de una economía global todavía gobernada por principios neoliberales. La cuestión es si la justicia social puede ser encajada en-

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tre esos principios y si los principales actores de la gobernanza global desean realmente fortalecer la llamada dimensión social de la globalización en un período de crisis como la actual. La inserción formal de algunas de las propuestas de la OIT entre aquellas que pretenden definir los términos de la gobernanza global post-crisis (por ejemplo, la estrategia del trabajo decente) no permite ser excesivamente optimista aunque pueda entenderse como un logro positivo.

Palabras clave: OIT, gobernanza global, crisis, trabajo decente, justicia social, G20, dimensión social de la globalización, neoliberalismo, derechos fundamentales en el trabajo, condicionalidad.

1. Introduction

The latest financial crisis starting in 2007/2008, yet another one cyclically unleashed by the capitalist system, can almost be seen as a *perfect storm*¹: it practically ran parallel to the price increase of basic products as a result of offer and supply imbalances in some global sectorial markets —due to higher demand from emerging countries among other causes— that led, as a consequence, to a food and an energy crisis. This financial crisis triggered an economic crisis affecting countries and areas of the planet unevenly but hitting more intensely those who are placed in the centre of the global economic system.

Even if establishing the causes of above is not a priority in this article, the crisis was triggered by excess liquidity brought by low interest rates, by trying to obtain a high yield through insufficiently assessed high risk products; or by speculative over-appraisals of real estate in many countries leading to increased mortgage risk due to growing level of borrowing amounts and mortgage securitisation.

These causes, however, are linked to institutional management, as pointed out by the G20 members: “Policy-makers, regulators and supervisors, in some advanced countries, did not adequately appreciate and address the risks building up in financial markets, keep pace with financial innovation, or take into account the systemic ramifications of domestic regulatory actions”². We can precise further such mistakes in political and legal terms: financial deregulation “based on theory and ideology”, and “[t]rusting that the efficient market hypothesis reflected how financial markets worked and that the Washington Consensus view of the global economy offered the correct vision of international trade and finance”³. As pointed out by a Spanish economist⁴, the financial crisis was caused by deregulation doing away with some of the sensible restrictions that kept the mentioned excesses at bay.

The lesson to be learnt is that having no legal rules or legally based institutional decisions applicable to some trans-border economic transactions

¹ Xavier Fernández Pons, “Globalización económica, soberanía de los Estados y políticas sociales: funciones y retos del Derecho internacional ante el ‘trilema’ de la globalización”, *Revista Sociedad Global*, vol. 3, n.º 1 (2009): pp. 72-74.

² *G20’s Declaration Summit on Financial Markets and the World Economy*, november 15, 2008.

³ Richard B. Freeman, “It’s financialization!”, *International Labour Review*, vol. 149, No. 2 (2010): p. 165.

⁴ José Tugores Ques, *Crisis: lecciones aprendidas... o no?* (Barcelona: Marcial Pons, 2010), p. 32.

has favoured freedom to private economic operators and has increased the risks to stability in the global economy.

This *state of affairs* —showing clear failures in the structures of global governance— is part and consequence of the dogmatic consolidation of neoliberal ideology. This global construction is the result, however, of both decisions taken by States located in the centre of the economic system and the increasing power gathered by private economic operators in the transnational sphere. And so, it can also be argued that “the institutional foundations of markets have been under systematic neoliberal attack for three decades, through financial deregulation and the promotion of competition between different systems of labour and environmental law”⁵.

The aim of this article is to analyse under these parameters the contribution of ILO to the global governance of the economic and financial crisis unleashed by the events of 2007-2008 by taking into account three factors that can somewhat justify such choice of parameters:

- The conjunctural factor: ILO has categorized the consequences of the economic and financial crisis as a *Global Job Crisis*⁶.
- The functional factor: the essence of ILO’s mandate is to promote social justice, being its normative and operative activity directed to improve the labour and living conditions of workers through a three-party reformist methodology (principle of tripartism).
- The institutional factor: ILO was included, after the II World War, in the basic institutional architecture of the international society as a specialized agency within the structure of United Nations System.

The analysis below shall develop two fundamental aspects: first, the analysis of the mandate and institutional action of ILO as vectors of global governance; and, two, the review of its repercussion on decision-making affecting global governance.

Also, the so-called “political trilemma of the world economy” (*globalization trilemma*), which intends to explain “the tension between national democracy and global markets”⁷ is included in this international political

⁵ Alain Supiot, “A legal perspective on the economic crisis of 2008”, *International Labour Review*, vol. 149, No. 2 (2010): p. 152.

⁶ Setting up a center for conceptual and statistical analysis, even when from “1 July 2012 the ILO Global Job Crisis Observatory will no longer be updated” (ILO: *Global Job Crisis Observatory. Home Page*, available on: <http://www.ilo.org/dyn/jobcrisis/f?p=11105:1:0:::> (accessed 11/01/2013).

⁷ Dani Rodrik, *The Globalization Paradox. Why Global Markets, States and Democracy can’t Coexist* (Oxford: Oxford University Press, 2011), p. 200.

and legal analysis. The three vectors of this trilemma are: deepening global economic integration; the existence of a system of sovereign states with decision making powers in the domestic political and economic spheres; and, finally, depending on the conceptualization used, political democracy (social pact) and/or the government commitments with regard social protection and economic stability. This trilemma shows the extreme difficulty or even the impossibility of developing conveniently and/or evenly the three vectors at the same time given that, in accordance with RODRIK, “the nation-state system, deep economic integration, and democracy are mutually incompatible”⁸. Currently, it seems that the preferences driving the results of the trilemma are in accordance with the predominant ideological and economic parameters in international society: the most common interaction seems to be a deepening global economic integration and the system of states. The consequence seems to be obvious: these preferences operate also on the institutional action addressed to global governance and/or in the production of public international law.

2. The mandate and institutional action of ILO as vectors of global governance

Given the *global* involvement and universal vocation of ILO —composed of 185 Member States at present— in an increasingly globalized economy, a historical and a contemporary reflection about the socio-economic issues arising in international society is needed.

2.1. *Historical reflection about the institutional activity of ILO: social justice and world agenda*

The founding of ILO, foreseen in Part XIII of the Versailles Treaty, 29 June 1919⁹, was determined by a combination of *structural and conjunctural factors* that explain the universal dimension of its mandate and institutional action; the Preamble of ILO’s Constitution expresses it in very general terms: universal peace “can be established only if it is based upon social justice”.

⁸ Dani Rodrik, “Feasible globalizations”, *Center for Economic Policy Research Paper*, No. 3524 (august, 2002), p. 25.

⁹ ILO (1920): *The Labour Provisions of Peace Treaties* (Geneva: International Labour Office), p. 1.

In short, the *structural factors* were the extremely harsh working conditions during the industrial revolution and the period of expansion of capitalist production model: as stated in the Preamble of the ILO's Constitution "conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled"¹⁰. This extended social injustice became, already during XIX, a factor of political destabilization in industrialized societies and of political regimes guaranteeing bourgeois predominance —among other things due to the growing organization and mobilization of the labour movement and its opposition to prevailing interests. The will to transform this *status quo* encompasses two differing approaches: moderate improvements in the living and working conditions, such as the *bourgeois social reformism* —gradually embraced by non-revolutionary sectors of the labour movements and starting point for the idea of developing an international labour law¹¹—, and revolutionary projects integrated in the labour movement.

The *conjunctural factors* are related to the development and ending of I World War and are based on one premise: improving existing labour conditions as a contribution to the world political and socio-economic stability¹². This idea explains why the international regulation of working conditions was included in the agenda of peace negotiation and a specific commission was created for such purpose: the Commission on International Labour Legislation (1 February to 4 March 1919).

To name but a few, the main conjunctural factors acting together were:

- The acceptance by sectors of labour organisations, trade-unions and political parties that one part of their claims could be met immediately after the war if the principles of social reformism were followed —among them the enactment of international labour legislation¹³— and that the consensual positions were the most suitable ones.

¹⁰ Objective conditions obtained favouring intensive exploitation and unbalance between the parties to the employment relationship. Antony Alcock, *History of the International Labour Organisation* (London: Macmillan, 1971), pp. 4-5.

¹¹ Victor Yves Ghébaly, *The International Labour Organization. A Case Study of the evolution on U. N. Specialised Agencies* (Dordrecht: Martinus Nijhoff Publishers, 1989), p. 2.

¹² The Preamble of ILO's Constitution also includes an economic reason (comparative disadvantage) for legitimizing a universal project: "Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries".

¹³ Among the works of the *International Association for the Legal Protection of Workers*, set up in 1901, we can find the probably first international labour conventions of a multilat-

- The end of armed conflict favoured that the workers claims, at least in part, were met: the undeniable contribution to the *national war effort* (army and production mobilization in the avanguard and in the rearguard) and the political and economic instability that demobilization could generate explain the above.
- The need to neutralise the impact of the soviet revolution shared by the government, business and workers representatives taking part in the previous negotiations leading to the establishment of ILO.

The origin of ILO's mandate was therefore a direct consequence of the structural and conjunctural needs of xx Century's international society. But such mandate is historically evolutionary and changeable depending on political and ideological considerations due to the undetermined, inclusive and open nature of the notion of *social justice*. That means that it is feasible to adapt the international legal treatment of the labour factor to the political, economic and humanitarian aspects obtaining at a given time.

These legal/political parameters were immediately tested due to ILO's start of activity coinciding with the need to face the immediate consequences of post-war —including a high unemployment rate in the most industrialised countries¹⁴. It is not surprising that, next to international treaties addressed to improve working conditions straightaway —*Convention n.º 1 Limiting the Hours of Work in Industrial Undertakings to Eight in the Day and Forty-eight in the Week*—, *Convention n.º 2 concerning Unemployment*, was adopted in the first meeting of ILO's General Conference whereby the member States undertook "to establish a system of free public employment agencies under the control of a central authority" (art. 2.1).

The crisis in 1929 (the *Great Depression*), often compared with the crisis unleashed in 2007-2008, brought consequences that in the opinion of ILO's Director General "have drawn the nations deeper down into the abyss", taking into consideration that "[o]n the top of the economic depression came an acute financial crisis, which was soon complicated by a recrudescence of the trade crisis and, as a last consequence, by a new psychological crisis"¹⁵.

eral nature: the *Convention related to the prohibition of night work for women in industrial employment*, and the *Convention on the prohibition of the use of white phosphorus in the manufacture of matches*.

¹⁴ The agenda of the first meeting of ILO's General Conference (29/10 to 29/11, 1919) included the question of preventing or providing against unemployment (Point 2).

¹⁵ ILO, *Report of the Director. International Labour Conference Sixteenth Session (Geneva 1932)* (Geneva: International Labour Office, 1932), p. 18.

ILO's institutional activity shows well, in one way or the other, the scope and the deep effects of the crisis:

- ILO's mandate was widened both with regard the productive sectors included and because of the intention to show the interaction between economic and social factors by following some of the basic Keynesian principles¹⁶. The consequence was a frantic normative activity during period 1930-1939: 39 Conventions and 32 Recommendations were adopted.
- Concerns about unemployment are again shown in the adoption of *Convention n.º 34 concerning Fee-Charging Employment Agencies Convention* (1933) and *Convention n.º 44 Ensuring Benefit or Allowances to the Involuntarily Unemployed* (1934).
- Also, the first of what shall be called, years later, *ILO's fundamental conventions* was adopted, complementing the Society of Nations' work on slavery: the *Convention n.º 29 concerning Forced or Compulsory Labour* (1930).

The end of II World War gave the winners the opportunity to realise those values and principles believed essential for the building of a *new world order*. Very soon afterwards, ILO took up those principles and was called to be part of the institutional framework to develop such project: no wonder that at ILO's General Conference held in New York and Washington (27 October and 6 November 1941) a resolution in support of the *Atlantic Charter* and another one regarding *post-war rebuilding* were passed. Before the end of armed conflict, ILO's General Conference adopted, on 10 May 1944-26th session, the *Declaration regarding the ends and goals of ILO or Philadelphia Declaration*.

¹⁶ Jean Michel Bonvin, *L'Organisation Internationale du Travail. Étude sur une agence productrice de normes* (Paris: PUF, 1998), p. 37.

Governmental and business sectors questioned such widening; however, the Permanent Court of International Justice (PCIJ) stated in a consultative opinion that the term *industry* should not interpreted in its most strict interpretation—the manufacturing industry in that historical period—, but as a generic reference to productive activity of the worker in all sectors (PCIJ, "Advisory Opinion on the Competence of the ILO in regard to International Regulation of the Conditions of the Labour of Persons Employed in Agriculture, of 12 august 1922", *Series B*, n.º 2, pp. 35-37. A similar opinion was held in: PCIJ, "Advisory Opinion on Competence of the ILO to Examine Proposal for the Organization and Development of the Methods of Agricultural Production, of 12 august 1922", *Series B*, n.º 3; "Advisory Opinion on Competence of the ILO to Regulate Incidentally the Personal Work of the Employer, of 23 july 1926", *Series B*, n.º 13; and "Advisory Opinion on Interpretation of the Convention of 1919 concerning Employment of Women during the Night, of 15 november 1932", *Series A/B*, n.º 50).

With the Philadelphia Declaration, ILO not only reaffirms its fundamental principles (section I)¹⁷, but reshapes its future action:

- Social justice is linked to values such as *freedom* and *dignity*: in accordance with Section II.a), “all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity”, and, therefore, outlines the need to protect the individual/worker—in the line stated by the Universal Declaration of Human Rights in 1948. The adoption of five of the eight fundamental Conventions of ILO during the period 1948-1958¹⁸ represents an essential legal contribution of ILO to human rights at the work place. The setting of special procedures still operative today is also relevant by implementing the competences conferred on the Fact-Finding and Conciliation Commission on Freedom of Association (1950) and Committee on Freedom of Association (1951)¹⁹.
- The centrality of social goals in domestic and international political and legal/political action is promoted in such manner that the national and international policies “should be judged in this light and accepted only in so far as they may be held to promote and not to hinder the achievement of this fundamental objective[s]” —Section II.c)—.

The importance of the Philadelphia Declaration is *institutional*, given that in accordance with article 1 of ILO’s Constitution after the coming

¹⁷ That is to say: (a) labour is not a commodity; (b) freedom of expression and of association are essential to sustained progress; (c) poverty anywhere constitutes a danger to prosperity everywhere; (d) the war against want requires to be carried on with unrelenting vigour within each nation (...).

¹⁸ *Convention n.º 87 concerning Freedom of Association and Protection of the Right to Organise* (1948); *Convention n.º 98 concerning the Right to Organise and Collective Bargaining Convention* (1949); *Convention n.º 100 on Equal Remuneration* (1951); *Convention n.º 105 concerning the Abolition of Forced Labour Convention* (1957); *Convention n.º 111 concerning Discrimination (Employment and Occupation)* (1958).

The seventh fundamental Convention of the ILO was the *Convention n.º 138 concerning the Minimum Age Convention* (1973); the last one was the *Convention n.º 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour* (1999).

¹⁹ The complaints in these special procedures can be based on legal obligations in the field of trade union freedom emanating from ILO’s Constitution, and, consequently, independently of whether the state have ratified or not the relevant Conventions. On the other hand, there is a relevant difference between both special procedures: the complaints before the Committee on Freedom of Association do not need the consent of the reported state to be processed.

into force of amendment adopted in 1946²⁰, it determines, together with the Preamble, the content of the institutional mandate; but also *systemic*: its principles and goals shall be part of the political/legal framework addressed to support this supposed new world order.

The anchoring of ILO to this political and legal framework meant to start a process of institutional remodelling to establish its institutional autonomy and at the same time to integrate it in such institutional framework. What is most relevant of amendments to ILO's Constitution —that of 1945²¹ and of 1946 already mentioned— is that they consolidated the international legal personality and the functional autonomy of ILO, while they eased the cooperation between ILO and United Nations Organisation (UN). This interrelation became more solid by means of the *Agreement between the UN and ILO of 30 May 1946*²², making ILO a *specialized agency* within the so-called *United Nations System*.

In sum, it can be said that ILO was founded and developed as a reformist project in search of social justice and linked to very deep political and economic crises. After World War II, ILO was placed, as part of the United Nations System, as one of the theoretical institutional pillars of world governance, next to UN and other specialized financial agencies, in order to bring in a social justice functional sensibility. Another matter is whether, in the game of interactions, the influence of ILO is similar or comparable to that of other international organisations which, in accordance with the principle of functional speciality, focus their mandate on other segments linked to world governance. The failure to create a World Trade Organisation right after World War II²³ is perhaps an eloquent sign that the social justice speciality ended up not having the same power.

²⁰ *ILO's Official Bulletin*, volume XXIX, 4 (1946): pp. 203-253.

²¹ *ILO's Official Bulletin*, volume XXVIII (1945): pp. 1-4.

²² In force since 16 december 1946 (UNITED NATIONS. *United Nations Treaty Series*, Volume 1, n.º 9, 1946-1947, pp. 183-205).

²³ The foundational instrument of the International Trade Organization (the Havana Charter), which was adopted at the United Nations Conference on Trade and Employment (november 21, 1947 to march 24, 1948), suggests that "all countries have a common interest in the achievement and maintenance of fair labour standards related to productivity, and thus in the improvement of wages and working conditions as productivity may permit. The Members recognize that unfair labour conditions, particularly in production for export, create difficulties in international trade, and, accordingly, each Member shall take whatever action may be appropriate and feasible to eliminate such conditions within its territory" (art. 7.1).

2.2. *Social justice as an element of the world agenda of XXI Century: ILO's politics and the scope for developing a social dimension of globalization*

Without prejudice of institutional activism against *apartheid* or in favour of regulating the activity of multinational companies²⁴, the dedication of ILO to normative activity kept its institutional precedence from the 60s to the 90s.

Nevertheless, while the normative policy was subjected to strict institutional scrutiny²⁵, the critical voices regarding the relevance of international labour standards didn't cease to grow. In particular during the latest decades, the dominant political and economic powers have seen the international labour standards of ILO as a source of excessive rigidity for labour markets. Likewise, the universality of legal standards or their effectiveness in a globalized economy have been seriously questioned —as shown the low number of ratifications of Conventions or the lack of flexibility of their provisions.

On occasion of its 75th anniversary, the internal discussion at ILO became weightier. Although the meeting was called to discuss the suitability of international legal standards made by ILO, the pertinence as a whole of the institutional action of ILO was addressed; so, the importance of highlighting the terms of the internal debate regarding ILO's policies for the XXI Century and the specification of ILO's strategies of action in order to strengthen the social justice dimension of globalization.

A) THE DEBATE REGARDING ILO'S POLICIES FOR THE XXI CENTURY

The debate, promoted by ILO's Director General, Michel HANSENNE, was based on two main ideas: "the market economy has become the universally accepted standard" and "a growing integration of financial markets and a massive flow of capital between countries" exist —due to a

²⁴ See: *Declaration concerning the Policy of "Apartheid" of the Republic of South Africa*, adopted by the International Labour Conference on 8 July 1964; and *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy*, adopted by the Governing Body on 16 november 1977 (amended on 2000 and 2006).

The ILO has also developed an institutional policy in the field of cooperation and technical assistance.

²⁵ See two prior reports (*Ventajol Reports*): *Final Report of the Working Party on International Labour Standards*, in: *ILO's Official Bulletin*, Volume LXII, Series A (1979): pp. 1-30; and *Report of the Working Party on International Labour Standards*, in: *ILO's Official Bulletin*, volume LXX, Series A, Special Issue (1987): pp. 1-57.

“general deregulation of capital markets”²⁶. The adaptation of institutional policies to the demands of this setting required, according to him, a renewed consensus about shared values and three basic lines of action²⁷: “better adapt our standard setting to real and pressing needs; explore new opportunities for promoting basic social rights; create a new synergy between international labour standards and the growth of international trade”.

- On the *normative level*, the replacement of the ILO’s regulatory model—that prioritized the Convention as a normative act—with a regulating model of a trend-based, promotional and guiding nature was suggested: a model that limits commitments to very general goals, widely discretionary with regard the rhythm and means to reach them; and a model that expresses a preference for non-binding normative acts, too²⁸. The opposition to this normative paradigm change did not prevent a consensus over the need of “a renewal of the means of action of the ILO” —*Resolution concerning the 75th anniversary of the ILO and its future orientation*, 22 June 1994. Important decisions regarding the normative activity were adopted which, truth be told, were far removed from HANSENNE’s wishes, who had to gradually soften his discourse²⁹: first, after the setting in 1995 of a *Working Party on Policy regarding the Revision of Standards*, the review of a set of international legal standards made by ILO was carried out—described by personalities connected to ILO, such as MAUPAIN³⁰, as *normative pruning* (a deregulatory

²⁶ ILO: *Defending values, promoting change. Social justice in a global economy: An ILO agenda*, Report of the Director-General (Part I) to the International Labour Conference in its 81st Session (Geneva: International Labour Office, 1994), pp. 10 and 12.

²⁷ *Ibid.*, p. 42.

²⁸ “pinpointed that “there is unquestionably a need for a sort of soft law—with a shorter life and less binding than standards in the strict sense—in the form of codes, practical manuals or directives, to provide governmental and non-governmental decision-makers with the counsel they might need to deal with new problems” (*ibid.*, p. 49). His normative proposal had three core ideas: a) giving priority to Recommendations; b) selective use of Conventions based on expectations of ratification and enforcement—besides a preference for *Promotional Conventions*—; and c) boosting *soft law* likely to guide state political decisions in a non binding manner.

²⁹ ILO: *The ILO, standard setting and globalization*. Report of the Director-General (Part I) to the International Labour Conference in its 85th Session (Geneva: International Labour Office, 1997); take also into account that, very likely his proposal required amendment of art. 19 of ILO Constitution.

³⁰ François Maupain, “OIT, justice social et mondialisation”, *Recueil des cours de l’Académie de droit international*, vol. 278 (1999): p. 230.

process by another, softer, name?); second, *the rhythm of creation of Conventions and Recommendations has slowed down*³¹; and, third, the *methodology of normative work* has been modified, including, from 2003, an *integrated approach* to the preparation and adoption of Conventions and Recommendations³².

- With regard *fundamental rights*, beyond the initiative to promote the ratification of fundamental Conventions —letter of the Director General of 25 May 1995—, the essential milestone is the adoption on 18 June 1998 by the General Conference of the *ILO's Declaration regarding fundamental principles and rights at work* (Declaration 1998)³³. Declaration 1998 will consolidate fundamental rights at work as a model of institutional activity and as a guarantee “to maintain the link between social progress and economic growth” (Preamble of Declaration 1998).

Without devaluing its institutional importance and its later political/legal influence, it should not be forgotten that Declaration 1998 is a declarative and promotional text —including the follow-up mechanism of its Annex (revised in 2010). And also, that Declaration 1998 responds to a proposal posed by the employer group³⁴ as an alternative the one entertained to strengthen the institutionalised guarantee mechanisms with regard the fundamental rights at work: to extend the technique of special procedures regarding trade union freedom —in which it is not relevant whether the states are parties or not to the ILO's Conventions in the field— to the supervision of fundamental rights at work.

³¹ Between 1995 and 2012 (both inclusive), 14 Conventions (0.83/year) have been adopted, while the average from 1919 (1919-2012) exceeds 2 Conventions/year —including II World War period and excluding the additional Protocols.

³² In 2005, the Governing Body adopted an integrated and comprehensive standards strategy which covers four components: standards policy; the supervisory system; standards and technical cooperation; and information and communication on the standards system (ILO, “Improvements in the standards-related activities of the ILO: Outlines of a future strategic orientation for standards and for implementing standards-related policies and procedures”, *Document GB.294/LILS/4*, 2005); on the other hand, in 2007, the Governing Body drew up an interim plan of action for implementing the standards strategy (ILO, “Improvements in the standards-related activities of the ILO: Possible approaches and an interim plan of action to enhance the impact of the standards system”, *Document GB.300/LILS/6*, 2007).

³³ The Declaration 1998 was adopted with 273 votes in favour, with 43 abstentions and no votes against.

³⁴ ILO, “Reports of the Committee on Legal Issues and International Labour Standards”, *Document GB.267/9/2* (1996): § 38.

— In the related field of work/international trade, the failure of HANSENNE's initiatives to promote the multilateralism in the field of social justice was not firmly counterbalanced by the World Trade Organisation (WTO)³⁵: first, the difficulty to find normative references to the link work/trade in the WTO law; and, second, by the limited relevance in the institutional action of Point 4 of the Singapore Ministerial Declaration, adopted on 13 December 1996³⁶. The contributions have come, rather, from normative instances linked to regional or sub-regional integration processes, or free trade bilateral or restricted multilateral treaties³⁷.

B) ILO'S STRATEGIES OF ACTION TO STRENGTHEN THE SOCIAL DIMENSION OF GLOBALIZATION

What was discussed in 1994 and later years is how ILO could give answers to the challenges of the global economy and to achieve the alignment of advancements in world economic integration with social justice: that is to say, the *social dimension of globalization*³⁸.

Although the social dimension of globalization initially searched for a balance based on the link between work and international trade —paying special attention to fundamental rights at work—, the new ILO's Director

³⁵ Hansenne proposes a multilateral regulation of social conditionality or the creation of a global system of social labels (ILO, *Defending values...*, op. cit. (1994), pp. 65-66).

³⁶ "We renew our commitment to the observance of internationally recognized core labour standards. The International Labour Organization (ILO) is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them. We believe that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards. We reject the use of labour standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question. In this regard, we note that the WTO and ILO Secretariats will continue their existing collaboration" (WTO, "Singapore Ministerial Declaration, adopted on 13 december 1996", *Document WT/MIN (96)/DEC* (1996): p. 2).

³⁷ Characterized by the "limited number of the negotiating States and the object and purpose of a treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound" (art. 20.2 of the Vienna Convention on the Law of Treaties, 23 may 1969).

³⁸ This is related to the setting up of a subsidiary organ to the Governing Body —the *Working Party on the Social Dimensions of the Liberalization of International Trade* (1995)—, from 2000 onwards knows as *Working Party on the Social Dimension of Globalization*, as a forum: a) to discuss main issues arising out of globalization; b) to develop an integrated approach to economic and social policies; and c) to promote dialogue and consensus building with other multilateral institutions. Also, ILO founded in 2001 some sort of independent body of high level experts known as *World Commission on the Social Dimension od Globalization*.

General, Juan SOMAVÍA, launched from 1999 onwards the so-called *decent work* strategy, addressed “to promote opportunities for women and men to get decent and productive work, in conditions of freedom, equity, security and human dignity”³⁹. This integrated methodological approach to decent work is based on the idea that economic, social and environmental goals can be simultaneously reached by humanizing the economy—decent work can yield economic dividends—; on the other hand, gender equality is recognised as transversal principle of the decent work strategy. The promotion of decent work has *four strategic aims*: creation of quality jobs by means of promoting sustainable growth policies; effective protection of employee rights—logically, by focusing on fundamental rights at work—; the strengthening and expansion of social protection; and strengthening social dialogue.

The decent work strategy has given way to some institutional initiatives:

- Being the creation of quality jobs one of its strategic aims, when an increase in unemployment started to show, ILO’s General Conference adopted the so-called *Global Jobs Pact* on 19 June 2009. Its design is that of an economic and social programme aimed at guaranteeing that the recovery of the job market respects decent work⁴⁰, undertaking ILO to bring the added value of its experience and its human and financial means “to governments, social partners and the multilateral system”. Likewise, it is projected as an ILO’s systemic initiative to be coordinated with other institutionalised proposals—such as the G20⁴¹—.
- If another aim is the strengthening and extension of social protection, ILO has taken part in an initiative of the United Nations sys-

³⁹ ILO, *Decent Work. Report of the Director-General (Part I) to the International Labour Conference in its 87st Session (1999)* (Geneva: International Labour Office, 1999), p. 3.

⁴⁰ The Resolution of the International Labour Conference point out that four issues are capital: “(i) a supervisory and regulatory financial framework serving the real economy, sustainable enterprises and decent work; (ii) efficient and well-regulated trade and markets working for all, without protectionism but with due regard to the situation of lower-income countries; (iii) shifting to a low-carbon, environment-friendly economy; and (iv) a development path that enables all—including developing countries—to place employment and social protection at the centre of their economic, social and poverty reduction policies, supported internationally”.

⁴¹ Already in 1969, ILO adopted the *World Employment Programme* (WEP)—focusing on cooperation and technical assistance—; in 2000, as an answer to the Millennium Goals Declaration, it adopted the *Global Employment Agenda*, in order to establish a coherent and coordinated international strategy for the promotion of freely chosen productive employment.

tem⁴² addressed at coping with the effects of the economic crisis: the *Social Protection Floor Initiative*. Its aim is to maintain a global social policy approach promoting integrated strategies for providing access to essential social services and income security for all. As a result, on 14 June 2012, ILO's General Conference adopted *Recommendation n.º 202 concerning National Floors of Social Protection*; its authors affirm that "members should, in accordance with national circumstances, to establish as quickly as possible and maintain social protection floors comprising basic social security guarantees. Guarantees should ensure at least that, over the life cycle, all in need have access to essential health care and to basic income security which together secure effective access to goods and services defined as necessary at the national level"⁴³ (Point 4).

- Finally and as an aglutinating element of all ILO's policies and strategies, the *Declaration on Social Justice for a Fair Globalization Adopted by the International Labour Conference at its Ninety-seventh Session*, of 10 June 2008 (Declaration 2008).

This Declaration intends to be a reinterpretation and updating of ILO's principles and values for the XXI Century⁴⁴ —as it was the Declaration of Philadelphia in 1944—, and it is based on an institutional evaluation, perhaps excessively optimistic, pointed out in its Preamble: "the international community's recognition of Decent Work as an effective response to the challenges of globalization", visible in "the wide support, repeatedly expressed at global and regional levels, for the decent work concept developed by ILO". ILO wants to translate its current aims and mandate in action parameters both for its Member States and for the international society as a whole; assuming that its mandate includes "to place full and productive employment and decent work at the centre of economic and social policies", but also its own international legal standards —Point I.A.—.

⁴² UN System Chief Executives Board of Coordination (UNCED), *The Global Financial Crisis and its Impact on the work of the UN System* (United Nations, Geneva/New York: CEB Issue Paper, 2009), Part VI.

⁴³ The notion of *social protection floors* refers to a "nationally defined sets of basic social security guarantees which secure protection aimed at preventing or alleviating poverty, vulnerability and social exclusion" (Point 2).

⁴⁴ As stated in the Preamble, the Declaration is "based on the mandate contained in the ILO Constitution, including the Declaration of Philadelphia (1944), which continues to be fully relevant in the twenty-first century".

ILO assumes the mission, fundamentally, to counsel the Member States to make decisions coherently with the aims of decent work —Point II.A—, understanding that they have to adopt or participate in “a national or regional strategy for decent work, or both, targeting a set of priorities for the integrated pursuit of the strategic objectives” —Point II.B (i)—. At the same time, other international, universal or regional, organisations are *invited* to promote decent work within their own functional specialization area —Point II.C—.

Declaration 2008 clarifies what ILO understands as *social dimension of globalization* and intends to *constitutionalise* the aims of the decent work strategy for Member States under the principle of its “inseparable, inter-related and mutually supportive” nature —Point I.B—. And it is done to open a third way between social policies and globalization that could ease the main problems arising out of the globalization trilemma. Notwithstanding the above, the analysis of its presence and future perspectives presents two dimensions: the *factic*, that should measure its effectiveness as a strategy aimed at member states and to the multilateral system as a whole over time⁴⁵; and the *legal*, that could lead to question its *constitutional dimension* if it is not established that the aims of decent work are part of the ILO’s Constitution —as it happens with the fundamental rights at work—, given that formally Declaration 2008 has not been annexed to the ILO’s Constitution through an amendment, as it was the case with the Declaration of Philadelphia.

3. The operativeness of ILO as an actor of global governance in the XXI Century

In order to analyse this issue, we begin by identifying some of the *factors determining state behaviour* with regard globalization’s state of development to then analyse the influence of ILO on the governance multilateral system and its results. Such analysis is based on two points: the financial/economic crisis has not impacted evenly on the international society and no comprehensive examination of adopted measures is intended but to point out how ILO has performed as an actor of global governance from its position as promoter of social justice.

⁴⁵ See the *preliminary implementation plan*, adopted by ILO in 2008 (ILO, “Declaration on Social Justice for a Fair Globalization Preliminary implementation plan”, *Document GB.303/SG/DECL/2*, 2008).

3.1. *Factors determining state behaviour and globalization*

Even among the member states of the European Union (and within the *Eurozone*), the shock measures were at first taken by states, notwithstanding the fact that a state of awareness demanding political and legal coordinating measures progressively appeared. This means that, even in such circumstances, states retain powers and decision capacity to a varying degree⁴⁶ despite interference caused by an increase of interdependence and integration in the global economy. The option of many states to rescue their banking system or to nationalize their banks on the brink of bankruptcy resulted in the socialization of losses, an increase of public deficit and foreign debt leaving little room for manoeuvre to promote expansive policies of employment and social policies. In terms of the globalization trilemma, the options of sovereign state action have left aside the social policies path, especially in those states most affected by the crisis, due to the existence of external guidelines aimed at reducing deficit⁴⁷.

States are subjected to intense pressure by decision making private operators in those financial markets where the undertaken foreign debt, be it public or private, can be financed or refinanced. For example, the most influential rating agencies, which are decisive in the determination of financing costs, are private companies in the most part⁴⁸. This dependency de-

⁴⁶ Despite being a conceptualization used mainly with regard developing countries, the balance between the availability of their *space for national economic policy or policy space*, and the *loss of policy space* derived from a more globalized economic structure could be extrapolated to all states (United Nations Conference on Trade and Development (UNCTAD), "São Paulo Consensus", *Document TD/410* (2008): pp. 3-4, § 8).

⁴⁷ It must be remembered that, except when proven otherwise, the Committee on Economic, Social and Cultural Rights emphasises "on the general presumption that retrogressive measures are prohibited" (Amrei Müller, "Limitations to and Derogations from Economic, Social and Cultural Rights", *Human Rights Law Review*, vol. 9, n.º 4 (2009): p. 587); on the other hand, the *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights* include as examples of violation of economic, social and cultural rights (UN, "Substantive issue arising in the implementation of the International Covenant on Economic, Social and Cultural Rights", *Document E/C.12/2000/13* (2000): p. 20): "The adoption of any deliberately retrogressive measures that reduces the extent to which any such right is guaranteed" and "[t]he reduction or diversion of specific public expenditure, when such reduction or diversion results in the non enjoyment of such rights and is not accompanied by adequate measures to ensure minimum subsistence rights for everyone" —14 (e) and (g)—.

⁴⁸ In accordance with the International Monetary Found (IMF), these agencies above all "do have an impact on the funding costs of issuers and consequently their actions can be a financial stability issue" (IMF, *Global Financial Stability Report. Sovereigns, Funding, and Systemic Liquidity*, IMF, Washington DC (october 2010): p. 111); this report shows that, together with Fitch Ratings, Moody's Investors Service, and Standard & Poor's, the number of credit rating agencies around the world is about 75 (*ibid.*, pp. 118-119, Annex 3.1).

rives not only from the economic and financial dynamics of globalization but from the absence or little regulation (or even its removal) in sectors of the global economy and/or very strategic sectorial markets.

Also, the international legal system may contribute to, in practice, the social parameters to lose out in the globalization trilemma. The current political/legal logic permits to find an explanation: Public International Law is useful today to create a framework of reference which, basically built by and for states, aims to facilitate a minimum stability and safety for capitalist production and exchange relationships develop; there exist, directly and indirectly, trend coordination guidelines facilitating certain uniformity, even if competitive, in state social and economic policies.

The convergence of the above trends takes place, for example, in the treatment of foreign investment due to the existence of the so-called stabilization clauses⁴⁹, which “protect investors, particularly corporations, from the application of unfavourable legislation or administrative measures subsequent to the conclusion of the contract [binding a state and an investor]”⁵⁰. Bilateral Investment Treaties (BITs) may include formulas referring to the legal security of investments or that provide economic compensation for losses, establishing, for example, an analogy between expropriation or nationalization and measures having an equivalent effect, referred to as *regulatory takings*⁵¹. The temptation to interpret as *unfavourable law* those measures affecting employment or social legal standards is an inter-

The *European Parliament resolution of 8 June 2011 on credit rating agencies: future perspectives* (P7-TA (2011) 0258); establishes, among other things, that «the over-reliance of the global financial regulatory system on external credit ratings has to be reduced as far as possible and in a realistic timeframe» (Point 1), and «that competition biases caused by the common practice that credit rating agencies assess market participants while simultaneously obtaining orders from them, have to be reduced» (Point 2). An overview of the EU policy on rating agencies can be found in: European Commission: The EU Single Market. Rating Agencies, available on: http://ec.europa.eu/internal_market/rating-agencies/index_en.htm, accessed 11/02/2013. On 21 March 2012, four Commission Delegated Regulations establishing regulatory technical standards for credit rating agencies (*Official Journal*, L 140, 30 May 2013); the European Commission has also attempted to reinforce the regulatory framework on credit rating agencies through the *Regulation (EU) No 462/2013 of the European Parliament and of the Council of 21 May 2013 amending Regulation (EC) No 1060/2009 on credit rating agencies Text with EEA relevance* (*Official Journal*, L 146, 31 May 2013).

⁴⁹ Jernej Letnar Cernic, “Corporate Human Rights Obligations under Stabilization Clauses”, *German Law Journal*, vol. 11 (2010): pp. 213-214.

⁵⁰ Even when stabilisation schemes are also “routinely built into BITs [Bilateral Investment Treaties]” (David Kinley, *Civilising Globalisation. Human Rights and the Global Economy* (Cambridge: Cambridge University Press, 2009), p. 174).

⁵¹ “Regulatory takings are those takings of property that fall within the police powers of a State, or otherwise arise from State measures like those pertaining to the regulation of the environment, health, morals, culture or economy of a host country” (UNCTAD, *Taking of*

ested but feasible reading—if seen as affecting legal security, costs and/or value of investment—; furthermore, it can place the state in the situation of having to answer for its international legal obligations in the employment and/or social fields⁵². The search of a balance between the application and interpretation of these contractual or conventional clauses is seen as a need deserving an ever growing institutional and doctrinal predicament⁵³.

Finally, Public International Law offers the legal foundations for regional or sub-regional integration processes that, as it happens in the European Union (EU), give way to a supranational legal system—or even a single currency for 17 of its members [the so-called *Eurozone*]. The solution of financial and economic problems of UE's member states, and especially the members of the Eurozone, has given way to various fields of action, such as:

- The support of states in difficulties: for example, by means of the European Financial Stability Facility (EFSF)⁵⁴ and the European Fi-

Property, United Nations, (New York and Geneva: UNCTAD Series on Issues in International Investment Agreements, 2000): p. 12).

⁵² However, in the latest U.S. BIT program, it is understood that except “in rare circumstances, non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, and the environment, do not constitute indirect expropriations” (United States Trade Representative, 2012 *U.S. Model Bilateral Investment Treaty*, 2012, available on: <http://www.ustr.gov/sites/default/files/BIT%20text%20for%20ACIEP%20Meeting.pdf>, Annex B, 4 b), accessed 11/09/2013).

⁵³ Without being exhaustive and taking into account the references already made: Raphael de Vietri, “Incorporating Humanity and the Global Economy: The Law of International Investment and Human Rights”, *International Trade and Business Law Review*, volume 15 (2012): pp. 211-229; Committee on the International Law on Foreign Investment of the International Law Association, *International Law of Foreign Investment. Final Report* (London: Rio de Janeiro Conference, International Law Association, 2008), pp. 4-5, 10-11; Lorenzo Cotula, “Regulatory Taking, Stabilization Clauses and Sustainable Development”, Paper prepared for the OECD Global Forum on International Investment VII (Paris, 27-28 march 2008), 2008, available on: <http://www.oecd.org/investment/globalforum/40311122.pdf>, accessed 10/30/2013; Andrea Shemberg, *Stabilization Clauses and Human Rights*. International Finance Corporation/UN Special Representative to the Secretary General on Business and Human Rights (Geneva/New York: 2008), pp. 1-43; Thomas W. Waelde & George Ndi, “Stabilizing International Investment Commitments: International Law versus Contract Interpretation”, *Texas International Law Journal*, vol. 31 (1996): pp. 238-245.

⁵⁴ Public Limited Liability Company governed by Luxemburg law offering needed financing to Euro-zone member states in difficulties. The application from the member state, in accordance with the *EFSF Framework Agreement*—entered into by the company and the Euro-zone member states— gives way to the negotiation with the European Commission and the acceptance by the applicant of a Memorandum of Understanding—art. 2.1 (a)—, imposing on the member state demands affecting its policies; for example, the *Memorandum of Un-*

nancial Stabilisation Mechanism (EFSM)⁵⁵; on 2 February 2012 the *Treaty establishing the European Stabilisation Mechanism (ESM)* was adopted by the Eurozone member states in order to create a permanent instrument⁵⁶, substituting the original version adopted on 11 July 2011.

- The tightening of the *Stability and Growth Pact* terms and an increase in macroeconomic and budget supervision⁵⁷.
- The aim of a greater coordination of the economic policies within the euro zone after the adoption of the *Treaty of Stability, Coordination and Governance in the Economic and Monetary Union*, 2 March 2012⁵⁸.
- A normative activity aimed at improving bank supervision and to prevent excesses caused by a lack of proper governance of financial markets⁵⁹.

This panorama seems to leave the social dimension of crisis out of its core and the logical consequence seems to be a progressive reduction of the social impulse of state policies —at least comparatively with other moments— and an open commitment for making the labour market more flexible in those member states most affected by the crisis⁶⁰.

derstanding on financial-sector policy conditionality, of 20 July 2012, whereby Spain is invited to continue with structural reforms beyond banking re-organization to which the economic assistance is applied (§ 31); such document was published in the Spanish official bulletin (*Boletín Oficial del Estado*, n.º 296, 10 December 2012).

⁵⁵ *Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism (Official Journal L118 (12/05/2010): pp. 001-004)*; a credit mechanism intended to assist the financial stability of the 27 EU members.

⁵⁶ “The ESM may therefore provide stability support on the basis of a strict conditionality” —as is established in its Preamble. ESM started to operate on 8 October 2012 and its first operation was Spain based on temporary measures with regard EFSF and, of course, under the perspective of the said conditionality.

⁵⁷ See: EU economic governance. *Surveillance of economic and fiscal policies*, available on: http://ec.europa.eu/economy_finance/economic_governance/index_en.htm, accessed 10/01/2013.

⁵⁸ “This Treaty shall enter into force on 1 January 2013, provided that twelve Contracting Parties whose currency is the euro have deposited their instrument of ratification, or on the first day of the month following the deposit of the twelfth instrument of ratification by a Contracting Party whose currency is the euro, whichever is the earlier” (art. 14.2).

⁵⁹ For example, it is interesting to see how it has evolved the 2001 proposal of a common system of financial transaction tax (EUROPEAN COMMISSION: *Taxations and Customs Unions. Taxation of the financial sector*, available on: http://ec.europa.eu/taxation_customs/taxation/other_taxes/financial_sector/, accessed 11/01/2013).

⁶⁰ It should be remembered that the recent employment reforms in Spain —especially, the Royal Decree 3/2012, 6 July 2012, and Royal-Decree-Law 20/2012, 13 July 2012— have been challenged by submitting a complaint to the *Specials procedures for the examination of*

3.2. *The repercussion of ILO's initiatives on the multilateral system*

It is necessary to analyze to what extent ILO is able to make contributions to redefine the trends fostering globalization and to bring into the global agenda the development of the proposed social dimension of globalization. As a general example of the guidelines drawn by global governance, we share SAIZ's thesis, in the sense that initially "despite the obvious human rights dimensions of the crisis, human rights barely figured in the diagnoses or prescriptions made by the international community"⁶¹. Therefore, despite the reference to decent work is becoming recurrent, it is easy to perceive it as rhetoric and lacking any functional concretion.

If UN may be deemed as a potential forum of global governance, the reference to decent work is coherent with the prior acceptance of it as a transversal aim in its policies and programmes⁶². The support to the ILO's decent work programme is shown in the *follow up process of the Declaration of Copenhagen on Social Development*⁶³ —in which reference was

complaints alleging violations of freedom of association, and more precisely a complaint addressed to the ILO's Committee on Freedom of Association (CFA) —Case No 2947—, and a representation regarding a breach of *Convention n.º 158 concerning Termination of Employment at the Initiative of the Employer*, in accordance with the arts. 24 and 25 ILO's Constitution.

The Case n.º 2947 is pending before the CFA, which has requested the Spanish government to send information; the Spanish government has already provided some of the information required and has submitted its observations, too. On the other hand, in the definitive Report on the Case n.º 2918, concerning the Royal-Decree-Law 8/2010, 20 may 2010, that suspended a collective agreement relating to an increase in remunerations throughout the public administrations, the CFA «considered that, if a government wishes the clauses of a collective agreement to be brought into line with the economic policy of the country, it should attempt to persuade the parties to take account voluntarily of such considerations, without imposing on them the renegotiation of the collective agreements in force» (ILO, «Reports of the Committee on Freedom of Association. 368th Report of the Committee on Freedom of Association», *Document GB.318/INS/5/1* (2013): pp. 94-95, § 362).

Concerning the claim on Convention n.º 158, the Governing Body decided that the representation was receivable and set up a tripartite committee for its examination (ILO, «Minutes of the 317th Session of the Governing Body of the International Labour Office», *Document GB.317/PV* (2013): p. 58, § 287).

⁶¹ Ignacio Saiz, "Rights in Recession? Challenges for Economic and Social Rights Enforcement in Times of Crisis", *Journal of Human Rights Practice*, vol. 1, number 2 (2009): p. 280.

⁶² UN, *Draft ministerial declaration of the high-level segment submitted by the President of the Council on the basis of informal consultations. Creating an environment at the national and international levels conducive to generating full and productive employment and decent work for all, and its impact on sustainable development*, of 5 July 2006, *Document E/2006/L.8*, 2006, § 34).

⁶³ Resolution S-24/2 adopted by the General Assembly on 1 July 2000, Commitment Three, § 35.

made to the fundamental rights at work—⁶⁴; and also in the incorporation in Target 1 (*achieve full and productive employment and decent work for all, including women and young people*) of the Millennium Development Goal 1 (*Eradicate extreme poverty and hunger*)⁶⁵. With regard the management of the last crisis, reference to decent work in the *Outcome of the Conference on the World Financial and Economic Crisis and Its Impact on Development*⁶⁶ is limited operatively to the petition to ILO to explain its *Global Jobs Pact*; while the *Report of the Commission of Experts of the President of the United Nations General Assembly on Reforms of the International Monetary and Financial System (Stiglitz Report)*⁶⁷ understands it as a long term aim for the reform of the global system (paragraph 11).

It has to be acknowledged, however, that it has been G20 who since 2008 has received a central position in the definition of global strategies of governance, highlighting, among others, the financial pillar and the macroeconomic coordination pillar as the main support of its strategy.

First, G20 states the need of new world financial governance based on two fundamentals: the centrality of the *International Monetary Fund* (IMF) and the *Financial Stability Board* (FSB)⁶⁸, with the help of the *Bank for International Settlements* (BIS), and the reform of IMF and its internal governance.

The result seems to be a pragmatic but inarticulate institutional machinery:

- The place at the top is shared by two international organisations (IMF and BIS), and the FSB, which is not an international organisation and whose constitutional instrument “is not intended to create any legal rights or obligations” —article 23 FSB Charter as amended on 12 June 2012—.

⁶⁴ ONU, “Report of the World Summit for Social Development”, *Document A/CONF.166/9*, Commitment Three (i) (1995).

⁶⁵ From 15 January 2008, indicators related to this MDG are delimited by ILO including decent work indicators (ILO, *Guide to the new Millennium Development Goals Employment indicators: including the full decent work indicator set* (Geneva: International Labour Office, 2009)). However, no express mention to the constitutive elements of decent work can be found and only to a decent standard of living (United Nations Development Programme, *Human Development Report 2011. Sustainability and Equity: A Better Future for All* (New York: United Nations, 2011), p. 166).

⁶⁶ Resolution 63/303 adopted by the General Assembly on 9 July 2009, Annex.

⁶⁷ United Nations, *Report of the Commission of Experts of the President of the United Nations General Assembly on Reforms of the International Monetary and Financial System* (New York: United Nations, 2009), available on: http://www.un.org/ga/econcrisisummit/docs/FinalReport_CoE.pdf, accessed 11/01/2013.

⁶⁸ The FSB is the successor to the Financial Stability Forum (FSF) which was founded in February 1999.

- The BIS includes a series of normalisation committees —among them, the *Committee on Banking Supervision (Basel Committee)*—, with powers to make recommendations or to create standards, non binding in principle, to supervise the financial/banking activity; in addition, BIS organs are rather intergovernmental political and technical forums whose secretary is assumed by BIS⁶⁹.
- The task of regulation and supervision is complemented by other forums with the presence of state authorities, such as the International Organization of Securities Commissions (IOSCO)⁷⁰, which, despite its intergovernmental nature, is not formally an international organisation.

Therefore, the global financial governance seems to be strongly based on these intergovernmental entities, without international legal personality, whose decisions are not binding and that operate in the field of what is known as *soft law* —and that, therefore, they do not strictly generate international legal obligations⁷¹—.

And, second, it is intended to create a macroeconomic coordination mechanism: at the Pittsburgh Summit (2009) a *Framework for Strong, Sustainable, and Balanced Growth* was established that, without failing to respect the state economic sovereignty, it foresees shared minimum economic goals and an evaluation procedure. If such project is a sort of *framework programme of global development*, facilitating a “more sustained and systematic international cooperation” —Point 2 G20 Leaders Statement—, the references to decent work and to the ILO’s Global Job Pact, besides the Millennium Goals, seem to be an appeal for the social dimension of globalization to be taken in consideration.

⁶⁹ The Basel Committee is defined as a “forum for regular cooperation between its member countries on banking supervisory matters” which ‘decisions have no legal force’ and whose Secretariat is provided by the BIS (Basel Committee, *History of the Basel Committee and its Membership*, 2012, available on: <http://www.bis.org/bcbshistory.pdf>, pp. 1 and 7, accessed 11/01/2013).

⁷⁰ See: *Declaration of the G20 Finance Ministers and Central Bank Governors* (october 15, 2011).

⁷¹ “[M]ost of the sources of international financial law are informal, intergovernmental institutions that set agendas and standards for the global regulatory community. These institutions are generally not grounded by treaty, but instead usually operate according to consensus and non-binding by-laws” (Chris Brummer, “Why Soft Law Dominates International Finance and Not Trade”, *Journal of International Economic Law*, n.º 13, n.º 3 (2010): p. 627); creating, at the same time, a problem of legitimacy, as in general, these forums “are nonetheless ‘exclusive’ clubs generally constituted by wealthy countries, which effectively export their rules to the rest of the world” (*ibid.*, p. 642).

Even if, during 2010, global employment goals were timidly quantified at the Toronto Summit —“ten of millions more jobs would be created” (Point 7 G20 Toronto Summit Declaration)—, and if in Seoul the Pittsburgh postulates were ratified —*Annex I to the G20 Seoul Summit Declaration*—, the advancements reached suggest a real progress but outline, at the same time, a very imprecise background for the implementation of the goals of the social dimension of globalization:

- The *Cannes Summit Final Declaration* (2011) is based on three elements for *fostering Employment and Social Protection*: respect for fundamental rights at work; creation of decent work —particularly, among young people—, and the articulation of “social protection floors in each of our countries”⁷². Even if the will expressed by the ministers concerned is to combine the structural reforms with active policies of employment⁷³, its concretion in policy commitments by G20 members of the *Action Plan for Growth and Jobs* —Point 2 of the Declaration— focuses on fiscal and financial consolidation, and also structural reforms which, in some cases, encompass the struggle against poverty or the job market.⁷⁴
- At the Los Cabos summit (2012), besides consolidating the *Accountability Assessment Framework* with regard state commitments, the social dimension of globalization is reinforced, at least formally, reading Point 20 of the Final Declaration⁷⁵ jointly with the recommendations made by the Ministers of Labour and Employment⁷⁶. Having said that, the basic directions of the action plan are not therefore to be remodelled in depth⁷⁷.

⁷² “[S]uch as access to health care, income security for the elderly and persons with disabilities, child benefits and income security for the unemployed and assistance for the working poor” (Point 4 of the Declaration).

⁷³ *G20 Labour and Employment Ministers’ Conclusions (Paris, 26-27 september 2011)*, available on: <http://www.g20.utoronto.ca/2011/2011-labour-110927-en.pdf>, Conclusion 7, accessed 11/01/2013.

⁷⁴ With regard Spain, the only proposal of structural reform is the partial privatisation of airports (www.g20.utoronto.ca/2011/2011-cannes-action-annex-111104-en.pdf, accessed 11/01/2013).

⁷⁵ *G20 Leaders Declaration, Los Cabos, Mexico, June 19, 2012* (<http://www.g20.utoronto.ca/2012/2012-0619-loscabos.html>, accessed 11/01/2013).

⁷⁶ See: www.g20.utoronto.ca/2012/2012-0518-labour.pdf, accessed 10/31/2013.

⁷⁷ It has to be taken into account that among the Spanish *policy commitment*, it is understood that it was necessary a labour reform “to address the main rigidities in the labour market” (www.g20.utoronto.ca/2012/2012-0619-loscabos-commitments.pdf, accessed 11/30/2013), some of the measures adopted by Spanish Government to comply with the policy commitment has been criticised and challenged before ILO (see above note 61).

- G20 Leaders' Declaration following the Saint Petersburg summit (2013) has emphasized the need "to coordination and integration of labour, employment and social policies with our macroeconomic and financial policies" (Point 28)⁷⁸; on the other hand, the guidelines for planning employment and complementary policies are still very generic and don't really constitute a *global plan*, as may be seen in the G20 Labour and Employment and Finance Ministers' Communiqué following (Moscow, July 19, 2013)⁷⁹.

Finally, we have to acknowledge that G20 is sensitive, and perhaps it has helped, to a more intense cooperation between specialized agencies of the United Nations system —ILO, IMF and World Bank Group—, and particularly between ILO and the Organisation for Economic Co-operation and Development (OECD)⁸⁰. The principle of functional speciality is an obstacle to greater integration of their respective institutional policies but the joint articulation of action proposals makes at least, mutual recognition and joint responsibility explicit.

3.3. *The influence of ILO on the multilateral system of global governance*

Besides ILO being part of the United Nations system, the fact that its proposals related to the establishment of a social dimension to globalization are progressively being reflected on the guidelines and decisions of G20 is reinforcing the impression that its project to lead the way out of the economic and financial crisis is being taken into account in global governance.

⁷⁸ G20 Labour and Employment Ministers' Declaration (Moscow, July 19, 2013) had recommended the Leaders "mobilize all their national policies (macroeconomic, financial, fiscal, education, skills development, innovation, employment, social protection) to promote jobs for all" (available on: <http://www.g20.utoronto.ca/2013/2013-0719-labour-declaration.html>, accessed 11/01/2013).

⁷⁹ See: <http://www.g20.utoronto.ca/2013/2013-0719-labour-finance-communique.html>, accessed 11/01/2013.

⁸⁰ Also, account should be taken the progress carried out in the joint analysis of the link between labour and trade, between ILO and WTO (Marion Jansen & Eddy Lee, *Trade and Employment. Challenges for Policy Research* (Geneva: International Labour Office/Secretariat of the WTO, 2007)), which is the result of a mutual technical cooperation in a relationship full in incidences such as the WTO's Ministerial Conference in Singapore (1996), during which the invitation to ILO'S director general "to address the ministers was withdrawn due to objections from developing countries who wanted no discussion of labour issues at the meeting" (Virginia A. Leary, "The WTO and the Social Clause: Post-Singapore", *European Journal Of International Law*, vol. 8, No. 1 (1997): p. 119).

However, the good news should be qualified or put into perspective:

- Even if, in accordance with section 1.4 of the Charter of United Nations, UN is presented as “a centre for harmonizing the actions of nations in the attainment of these common ends [including the international co-operation in solving international problems of an economic, social, cultural, or humanitarian character]”⁸¹, this international organization seems not to have been at the centre of global governance during this period of crisis, even when the specialized bodies ascribed to it are being targeted to redirect their actions —IMF— or are being taken into account when devising global strategies —ILO—.
- The emergence of G20 as an alternative to the direction of global governance does not seem fully satisfactory, even when realist: no doubt it gathers the most developed countries and the emerging countries, but, even without questioning the presence or absence of countries, the political centre of the global governance of crisis is moved from a universal decision making framework (UN) to a restricted and oligarchic one (G20).
- This oligarchic potentiality increases because other decisions affecting financial and economic governance are taken by normalisation committees and/or *transnational regulatory organizations* —as SLAUGHTER⁸²calls them— whose composition expresses also oligarchic power⁸³. The evidence that their rules are not legally binding do not affect the impression that, as it happens with the recommendations of International Organisations in financial and economic matters, the specific weight of their regulations is very significant.
- The regulatory dynamic suggests the presence of a fundamental joint responsibility of the most developed and emerging countries in world governance. At the same time, however, it can dilute the

⁸¹ It must be remembered the proposal in the *Stiglitz Report* to create a *Global Economic Coordination Council*.

⁸² Ann-Marie Slaughter, “Governing the Global Economy through Government Networks”, in M. Byers, editor, *The role of law in international politics: Essays in International Relations and International Law* (Oxford: Oxford University Press, 2000), p. 186.

⁸³ It should be noted that the G20 has urged to implement the reform of the IMF governance system (*G20 Leaders Declaration, Los Cabos, Mexico, June 19, 2012*, Point 33); in *G20 Leaders’ Declaration, Saint Petersburg, September 6, 2013*, the G20 Leaders reiterate: “Completing the ongoing reforms of IMF governance is indispensable for enhancing the Fund’s credibility, legitimacy and effectiveness. For this reason, the ratification of the 2010 IMF Quota and Governance Reform is urgently needed” (Point 53).

reach of the hypothetical transnational joint responsibility of international organisations and other intergovernmental forums in which the states take part with regard the effectiveness of international legal obligations of states. In specific reference to the right to work, it seems clear that the financial specialised agencies should cooperate to effectively implement the right to work within the state and that their members states “should pay greater attention to the protection of the right to work in influencing the lending policies, credit agreements, structural adjustment programmes and international measures of these institutions”⁸⁴; but, no doubt, it is more difficult to translate such approach to highly technical intergovernmental cooperation systems that are not international organisations proper.

- The G20’s activity integrates ILO’s proposals for global governance; but it entails no significant advancement in the transversal insertion of human rights (or even less likely, the set of employment rights) in the global debate⁸⁵. What prevents not the acknowledgement that, timidly, both IMF and the World Bank Group have made their policies of conditionality more flexible, in particular opening a growing line of progress from the launch of the *Tilburg Guiding Principles on World Bank, IMF and Human Rights* (2002)⁸⁶.

⁸⁴ *General Comment n.º 18 (2005) of the Committee on Economic, Social and Cultural Rights: The Right to Work (art. 6)*, in UN, “The right to work. General comment No. 18, adopted on 24 november 2005. Article 6 of the International Covenant on Economic, Social and Cultural Right”, *Document E/C.12/GC/18*, 2006, pp. 8 and 13, §§ 30 and 53; a different matter are the international legal obligations imposed by general international law in the field of human rights: “International organizations are subjects of international law and, as such, are bound by any obligations incumbent upon them under general rules of international law, under their constitutions or under international agreements to which they are parties” (ICJ, *Interpretation of the Agreement of 25 march 1951 between the WHO and Egypt, Advisory Opinion, I.C.J. Reports 1980*, pp. 89-90, § 37).

⁸⁵ Ignacio Saiz, op. cit., p. 281.

⁸⁶ “The World Bank and the IMF have international legal obligations to take full responsibility for human rights respect in situations where the institutions’ own projects, policies or programmes negatively impact or undermine the enjoyment of human rights (Principle 5).

For example, the World Bank Group scheme named as *Doing Business* in 2013 “does not present rankings of economies on the employing workers indicators or include the topic in the aggregate ranking on the ease of doing business” (see: <http://doingbusiness.org/methodology/employing-workers>, 10/31/2013).

On the other hand, some States are trying to develop in their current practice new generations of bilateral economic agreements that evolve in the sense of including labour-related legal obligations and that pretend to go beyond the decent work and fundamental rights at work approach: for example, the art. 16, 7 (e) of the *US/Oman Free Trade Agreement* (2004) recognizes, as one of the “internationally recognized labor rights” that laws cannot weaken

The positive opinion, in general lines, regarding the participation of ILO in global governance should also be subjected to a brief critical reflection regarding its endogenous behaviour and the results of its institutional action.

ILO has carried out an important contribution to identify and promote fundamental rights at work⁸⁷ —undoubtedly universal today—. However, the proposed catalogue of rights seems very restrictive, becoming evident that its choice is political and arbitrary⁸⁸: it seems that the realist approach is a tribute to the neoliberal approach which tried to neutralise the normative activity of ILO and it has institutionally reinforced “a limited range of process rights and its neglect of substantive norms such as those relating to safety and health, minimum wages, and reasonable conditions of work”⁸⁹ —a criterium that could be followed if an analysis of the aspects included in decent work was carried out in depth.

But the criticism is also addressed to the internal governance: tripartism maintenance creates serious problems of legitimacy in the ILO —in view of the lack of real representativeness of some of its constituents and the restricted role played by NGOs and civil society— that weaken the coherence and pertinence of the institutional goals⁹⁰. Moreover, the authority of the ILO has been affected by an institutional crisis that has been opened in 2012 as a result of the decision of the employer members to transform their disagreement with the interpretation given by the Committee of Experts on the Application of Conventions and Recommendations Convention No. 87 on freedom of Association and protection of the Right to Organise (1948) into a capital problem for the credibility of the control system of the OIT⁹¹. Perhaps, BACCARO and MELE are right when they say

or reduce —art. 16.2—, the right to “acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health”; or the art. 13 of the 2012 *U.S. Model Bilateral Investment Treaty* (see above: note 53).

⁸⁷ 1) Freedom of association and the effective recognition of the right to collective bargaining; 2) The elimination of all forms of forced or compulsory labour; 3) The effective abolition of child labour; and 4) The elimination of discrimination in respect of employment and occupation.

⁸⁸ Claire la Hovary, *Les droits fondamentaux au travail. Origines, statut et impact en droit international* (Paris: PUF, 2009), p. 47.

⁸⁹ Philip Alston, “Facing Up to the Complexities of the ILO’s Core Labour Standards Agenda”, *European Journal of International Law*, vol. 16, n.º 3 (2005): p. 477.

⁹⁰ See, for example: François Maupain, op. cit. (1999), pp. 331-332.

⁹¹ “Interpretations of a right to strike by the Committee of Experts were fundamentally unacceptable to the Employer members” (ILO, “Report of the Committee on the Application of Standards”, *International Labour Conference, 101st Session, Geneva, may-june 2012, 19(Rev.) Part One* (Geneva: International Labour Office, 2012), p. 34, § 147). The interpretation given is not part of a *new jurisprudence*: the opinion of the Committee of Experts on the Application of Conventions and Recommendations was formulated in the 50s.

that: “The only topic on which unions and employers found themselves in full agreement was the need for the ILO to remain a tripartite organization and to exclude NGOs and civil society organizations from any formalized access to the organization”⁹²; from another perspective, this crisis can also be understood as the manifestation of employers will to increase its influence within the ILO, in line with the trends of economic globalization itself.

4. Final considerations

ILO contributes, with more or less intensity depending on how one looks at it, to the redefinition of the terms of global governance: in order to bring a social dimension to globalization, it provides social parameters as alternatives to what caused and/or helped to cause the current financial and economic crisis.

It is a modest contribution due to the restrictive nature of the social goals defining the *social dimension of globalization*. It can be said that they are confined to the category of basic parameters —be they fundamental rights at work, decent work or the minimum floor of social protection. The underlying legal/political logic is clear: a downward adaptation of ILO’s mandate to a socio-economic context marked by neoliberal principles.

Likewise, its framing within the guidelines of G20’s global governance mainly means being within the framework of financial and economic *policy commitments* addressed to guarantee systemic stability.

The first consequence is that social goals are subject to macroeconomic guidelines and to the traditional belief that economic growth will bring *per se* job creation. More difficult it will be that these jobs meet the specifications of decent work: the structural reforms affecting the labour markets in many states represent a regression in employment conditions and, therefore, the loss and devaluation of employment quality when compared with the past.

The second consequence is that ILO is helping rather relatively to the transversal incorporation of human rights —if you wish, labour rights— into the global agenda, perhaps being aware of the objective difficulty of anchoring them to a global governance that is still governed by neoliberal reticence to incorporate them as legal rules.

Finally, if we balance the positive and negative aspects of its proposal, it can be said that ILO is re-dimensioning the balance of concurring vectors

⁹² L. Baccaro and V. Mele, “Pathology of Path Dependency?: The ILO and the Challenge of New Governance”, *Industrial and Labor Relations Review*, vol. 65, n.º 2 (2012): p. 217.

in globalization trilemma—in favour, evidently, of the social vector—, but its contribution is not fundamentally changing the scheme of interactions and dominances that the trilemma is currently showing in the current globalized economy: the greater presence of the social vector does not shatter the understanding of the State as *an agent of the current form of understanding globalization* nor offers final political arguments in order for state policies conditioned by financial and economic crisis to give less weight to the reasons behind the structural reforms or budget adjustments and more to economic, social and cultural rights.

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