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Matteo BORZAGA
University of Trento

Riccardo SALOMONE
University of Trento

Challenging the right to strike or attacking the ILO's monitoring system?

The possible consequences of recent Employers' claims on the enforcement perspectives of International Labour Standards

by Matteo Borzaga and Riccardo Salomone*

Associate Professors in Labour Law
University of Trento (Italy)

Abstract:

In 2012 the International Labour Organisation (ILO) was affected by a severe crisis, since the Employers' Group (EG) at the International Labour Conference (ILC) decided to question the recognition of the right to strike within the ILO Conventions on freedom of association (No. 87 of 1948 and No. 98 of 1949). This decision had, as a consequence, the block of the ILO's monitoring system. In the following years the latter could work again, but continuous conflicts among the constituents strongly influenced its functioning in general terms. The June 2015 ILC Session demonstrates the possibility of a procedural way out from this impasse, since the cases concerning the ILO Conventions on freedom of association have been placed on the list by common consent and this has not blocked the process of the adoption of the Committee on Application of Standards (CAS) conclusions. Nonetheless, fundamental disagreement remained unresolved, in particular as to whether ILO Conventions on freedom of association include the right to strike, or not.

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With this paper we try to understand the described position of the EG at the ILC, concentrating on the real reasons why it exactly decided to challenge the right to strike. Our assumption is that the EG at the ILC wanted to attack the ILO's monitoring system in order to obtain a powers rebalance within the Organisation. More particularly, the EG has tried to weaken the role played by the Committee of Experts on the Application of Conventions and Recommendations (CEACR), which is the most important organ of the ILO's monitoring systems. Arguably, the EG decision attacks not only the formal recognition of the right to strike, but also the comprehensive framework of the ILO's monitoring system. Our conclusion is based on different considerations concerning the increasing significance of the role played by the CEACR over recent years with relation to the implementation of the core labour standards inside and outside the ILO.

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1. Introduction

In 2012 the International Labour Organisation (ILO) was affected by a severe crisis, since the Employers' Group (EG) at the International Labour Conference (ILC) decided to question the recognition of the right to strike within the ILO Conventions on freedom of association (No. 87 of 1948 and No. 98 of 1949; on the right to strike s. now the comprehensive study edited by Hepple, le Roux, Sciarra 2015). This decision had, as a consequence, the block of the monitoring system and the impossibility to inflict "political" sanctions to Member States (MS) which had seriously violated international labour standards. In the following years the monitoring system could work again, but the conflicts about the right to strike continued and strongly influenced the functioning of the system as a whole.

With this paper we aim to understand the described position of the EG at the ILC, concentrating on the real reasons why it exactly decided to challenge the right to strike.

Our assumption is that, in truth, the EG at the ILC wanted to attack the ILO's monitoring system in order to obtain a powers rebalance within the Organisation. More particularly, the EG has tried to weaken the role played by the Committee of Experts on the Application of Conventions and Recommendations (CEACR), which is the most important organ of the ILO's monitoring systems.

Accordingly, in the next sections (after some historical and legal remarks about the recognition of the right to strike within the ILO and the decision of the Employers' to question it), we will investigate the grounds why the ILO's monitoring system and the CEACR in particular have gained importance over the years, pointing out that this happened both inside and outside of the Organisation.

This analysis will not only enable to better understand the aforementioned position of the EG at the ILC, but also to properly reflect about the future developments of the ILO's monitoring system and, at the same time, of the implementation of the international labour standards within the domestic legal systems of the MS.

2. The recent Employer's decision to challenge the recognition of the right to strike within ILO Convention No. 87/1948: an attempt to attack the whole ILO's monitoring system?

As already pointed out, in 2012 the EG at the ILC decided to question the recognition of the right to strike within the ILO Conventions on freedom of association (No. 87 of 1948 and No. 98 of 1949) (La Hovary 2013, 341 ff.).

This decision is particularly challenging since it affects a right which is not

provided for by the aforementioned ILO Conventions, but has rather been created, through interpretation, by the organs of the so called “ILO’s monitoring system”, i.e. by the CEACR and by the Committee on Freedom of Association (CFA) (Wisskirchen 2005, 253 ff.).

Indeed, neither Convention No. 87/1948 nor Convention No. 98/1949 explicitly mention the right to strike: the first one is devoted to freedom of association in a general sense, i.e. to the right to create or to join a trade union or an employers’ organisation, the second one aims at combating anti-union discriminations and at supporting collective bargaining in the ILO’s MS. Nevertheless, both the CEACR and the CFA have started to recognize the right to strike at ILO level already in the 1950s, affirming that this right is intrinsically linked with freedom of association and in particular with its organisational dimension. In this context it has been stated that the recognition of the right to strike derives, in particular, from Art. 3 and 10 of Convention No. 87/1948. In other words, the recognition of the right to strike has been considered, within the “ILO’s quasi-jurisprudence”, as a mean for protecting and further developing the workers’ interests. Without the possibility of striking, workers would not have a real chance of realising their interests, because they would lack of a fundamental instrument to put pressure on their employers (Novitz 2003, 197).

This interpretation has been confirmed in several occasions especially by the CEACR, which has dedicated to freedom of association (and subsequently to the right to strike) a number of general surveys. In these important documents the CEACR has not only recognized the right to strike, but has also pointed out how this right should be regulated by MS and what kind of limits could be imposed to its exercise.

In 2012, according (as usual) to a request of the ILO’s Governing Body (GB), the CEACR prepared its last general survey partly devoted to freedom of association, in which it simply recalled, with regard to the right to strike, the principles it had elaborated starting from the 1950s. Surprisingly, the EG at the ILC started to question the part of the general survey 2012 exactly concerning the right to strike, although it had almost always shared the respective position of the CEACR in the past. This happened already in the hearings the CEACR normally holds before elaborating the general survey and went on in the following years (CEACR 2012).

During the ILC session in June 2012 the EG strongly reaffirmed its position: as a consequence, the activities of one of the most important ILC’s committees, i.e. the CAS, were completely blocked. Indeed, the EG did not agreed on the list of cases regarding the most serious violations of the ILO standards by the MS, that therefore was not adopted. Without a list, the CAS could not discuss individual cases and address recommendations to the MS. In the end, the CAS were prevented

from playing its fundamental role, which consists in inflicting “political” sanctions to the MS which seriously violate ILO standards (Swepston 2013, 199).

The approach of the EG to the recognition of the right to strike did not change in 2013 and 2014, when an agreement regarding the list of cases was reached, but no case concerning exactly the right to strike could be discussed during the meetings of the CAS.

Therefore, in 2014 the GB started to look for ways out from this *impasse*, proposing to the ILO’s constituents, in particular, the possibility to address an interpretation question of Convention No. 87 regarding the right to strike to the International Court of Justice (in accordance with Art. 37, para. 1 of the ILO Constitution) or to face the problem internally, through the convening of a tripartite meeting (GB 2014a, 31). Not surprisingly, the ILO’s constituents preferred to find a solution internally and a tripartite meeting was convened last February (GB 2014b, 1).

Although this meeting seems to have played an important role in indicating a way out from the abovementioned *impasse* (as also the ILC session 2015 has partially showed: see section 4), it seems interesting to devote the following pages to the analysis of the reasons why the EG has decided to question the recognition of the right to strike and of the possible consequences of this decision for the functioning of the Organisation in the future.

As we will try to point out in the next sections, we suppose that the EG at the ILC has decided to take the described position not really because it believes that the way in which the CAECR and the CFA have interpreted Convention No. 87/1948 with regard to the recognition of the right to strike cannot be shared, but rather because it wanted to attack the ILO’s monitoring systems as a whole, with the purpose of blocking or at least of weakening it.

3. Possible explanations of the Employers’ position and of the subsequent crisis of the ILO’s monitoring system: an overview

There can be different reasons why the EG at the ILC decided, in 2012, to challenge the recognition of the right to strike within Convention No. 87/1948.

In general, one could argue that employers are traditionally against a too wide set of labour regulation both at national and international level. Accordingly, their claim for a strict interpretation of the concept of freedom of association as regulated by ILO Conventions would not surprise (La Hovary 2013, 355 ff). However, this explanation seems to be too superficial, for many different grounds.

Firstly, it is certainly true that Convention No. 87/1948 does not explicitly mention the right to strike, but this does not automatically imply that it has to be

excluded from the material scope of this international labour standard. As many scholars pointed out, ILO's constituents have always understood the concept of freedom of association as a very broad one, comprising not only the possibility to create or to join a trade union or an employers' organisation and to bargain collectively, but also to take industrial action. This approach to freedom of association within the ILO is historically very old, going back to the origins of the Organisation and more particularly to the discussions held during the elaboration of Part XIII of the 1919 Treaty of Versailles, i.e. the ILO Constitution. Indeed, the "fathers" of the ILO clearly pointed out, during these discussions, that the ILO Constitution should encompass a very wide concept of freedom of association (with the inclusion of the right to strike) essentially because of the fundamental importance of such a concept for the existence and the functioning of a tripartite organisation, like the ILO. This development, that has been coherently accompanied by the interpretations given by the CFA and by the CEACR, makes the strict understanding of the concept of freedom of association claimed by the EG at the ILC legally very difficult to understand (Bellace 2014a, 29 ff.).

Moreover, the traditionally narrow approach of employers to labour standards cannot be considered as a justification to question the recognition of the right to strike as a part of freedom of association because the latter is, according to ILO Declaration 1998, a fundamental principle. As well known, in 1998 the ILO adopted the so called "Declaration on Fundamental Principles and Rights at Work", in which the four core labour standards were solemnly proclaimed. Point 2 of the aforementioned Declaration affirms, indeed, that MS have to respect, promote and realize - because of their membership and irrespective of ratification of the relevant Conventions - these core labour standards, i.e. they have on the one hand to fight against child labour, forced and compulsory labour and discrimination in employment and occupation, and, on the other, to foster within their domestic legal systems freedom of association and the effective recognition of the right to bargain collectively. Although this Declaration is a soft law tool, it has completely changed the approach of the ILO and of the MS (especially emerging countries) towards international labour standards, because of (informally, but significantly) creating a distinction between fundamental international labour standards and other standards and affirming, at the same time, that the first ones have to be implemented with priority (and irrespective of ratification of the relevant Conventions) (Maupain 2005, 439 ff.; Bellace 2014b, 175 ff).

Finally, a strict interpretation of the concept of freedom of association, excluding the recognition of the right to strike, is very difficult to justify if one considers the legal context in which nowadays Convention No. 87 of 1948 is placed. Indeed, there are numerous international law sources that explicitly

recognise the right to strike and also almost all domestic legislators have introduced and regulated such a right, many of them (around a hundred) even at constitutional level (CEACR 2012, 4).

Against this background, the decision of the EG at the ILC to question the recognition of the right to strike within Convention No. 87/1948 can hardly be considered as due to the traditional narrow approach of the employers to (international) labour standards.

As we pointed out at the beginning of this section, however, there can be different reasons why the employers took this decision and we argue that one of them can be considered as particularly plausible: the EG at the ILC could have decided to challenge exactly the recognition of the right to strike because it wanted to attack the ILO's monitoring system as a whole.

Our idea is based on two different considerations.

The first one regards the decision of questioning the right to strike: this could be due not really to the right to strike *per se*, but rather to the fact that this right is probably the most important result, in the ILO's history, of the interpreting activity of the CEACR, i.e. of the most important actor of the ILO's monitoring system (Sweepston 2013, 199 f.).

The second one concerns, more generally, the increasing importance of the role played by the ILO's monitoring system in the last 20 years. The attempt of the ILO to find a new position in the international arena in times of globalisation had, as one of its consequences, the decision to pay particular attention to implementation issues (including the supervision of the application of ratified Conventions within the domestic legal systems of the MS), especially with regard to the core labour standards. This has caused an adjustment in the power relations at the ILO: the CEACR has gained more centrality, the constituents (and especially the employers) have experienced a decline in their importance. Accordingly, the employers could have decided to challenge the recognition of the right to strike in order to weaken the position of the CEACR within the Organisation, i.e. exactly to attack the ILO's monitoring system (La Hovary 2013, 346).

This assumption will be discussed in the following section, in which it will be also pointed out that the ILO's monitoring system and the interpretations provided by the CEACR with particular regard to the core labour standards are playing an increasing important role not only within the organisation, but also outside of it, i.e. regarding to the possible interrelations between labour and trade.

3.1 The increasing significance of the core labour standards (and of the right to strike) within the ILO: towards decent work conditions for all?

The increasing importance of the role played by the monitoring system and in particular by the CEACR within the ILO is essentially due to the way in which the Organisation has decided to try to go out of the deep crisis which had affected it after decolonisation and, at the same time, to answer the challenges of economic globalisation.

Since the ILO's crisis has mainly been a standard-setting crisis - i.e. has been characterized by the difficulty of finding the necessary majority, within the ILC, to adopt new Conventions (and Recommendations) -, the way chosen by the Organisation to overcome it consisted in the decision to focus on the existing international labour standards and to work, together with the MS, in order to increase the degree of their implementation within each domestic legal system. Moreover, as the existing international labour standards are really numerous, the ILO also decided to pay particular attention to some of these standards, i.e. to the core labour standards (or fundamental principles).

These decisions have been firstly realized through the adoption of the 1998 "ILO Declaration on Fundamental Principles and Rights at Work", which has been briefly described in the previous section. This Declaration has changed the policy of the Organisation exactly because it has given priority to some of the existing standards without legally obliging the MS to ratify the respective Conventions. Nonetheless, the number of ratifications of these Conventions has incredibly increased (Maupain 2005, 439 ff.; Hepple 2005, 35 ff.). This situation has clearly strengthened the role played by the ILO's monitoring system and in particular by the CEACR, both from the "political" and the "technical" point of view: politically because of the centrality gained by implementation issues after 1998 and technically since the increased number of ratifications allows a higher degree of penetration of the ILO's supervision activities into the national legal systems of the MS. If one considers that freedom of association is included among the core labour standards and that the right to strike is the most important result ever of the interpreting activity performed by the CEACR, it seems to be very plausible that the EG at the ILC has decided to question its recognition exactly in order to attack the ILO's monitoring system and to produce a rebalance of the powers relations within the Organisation.

The plausibility of this assumption seems to have been reinforced by the most recent developments of the ILO's strategy to combat the negative effects of economic globalisation, i.e. the promotion of "decent work". As known, this strategy - launched in 1999 by the former Director-General of the International Labour Office, Juan Somavia - is now enshrined in the so called "ILO Declaration on

Social Justice for a Fair Globalisation”, adopted by the ILC in June 2008. According to this Declaration (again a soft law tool), decent work is based on four “pillars” (strategic objectives), i.e. supporting employment, enhancing social security measures, promoting social dialogue and tripartism, and respecting, fostering, and realizing the core labour standards solemnly proclaimed in 1998. As this last “pillar” shows, there is a strict link between the 2008 and the 1998 ILO Declarations exactly with regard to core labour standards (Maupain 2009, 823 ff.).

Furthermore, in the 2008 Declaration the ILC explicitly affirms that there is a fundamental right which is more important than the other ones in order to reach the goal of decent work, i.e. freedom of association: thus, freedom of association can be nowadays considered as the most important principle on which the ILO is based (ILC 2008, 11).

Finally, the centrality of the core labour standards seems to be further reinforced by another clause that can be read in this part of the 2008 Declaration with regard to the relationship between labour and trade. Accordingly (and unlike a clause contained in the 1998 Declaration), labour and trade must no more remain absolutely separated, since “the violation of fundamental principles and rights at work cannot be invoked or otherwise used as a legitimate comparative advantage” (ILC 2008, 11). This clause is particularly important and innovative, because it admits, for the first time, the possibility to make use of trade sanctions in case of violation of (fundamental) labour rights.

Against the described background, it seems quite clear that the goals of the newest ILO’s strategy consist, above all, in the national implementation of the core labour standards. It is certainly true that the 2008 Declaration has enlarged these goals, starting to consider as fundamental other standards than the four proclaimed in 1998 (like, for example, social security or the ones contained in the so called “governance Conventions”), but the core labour standards still remain central for the ILO’s policy. This is in particular due to their nature of enabling rights, i.e. to rights that, if concretely respected, allow a further development of labour law within the domestic legal system of the MS, can therefore be used as the main basis to promote, especially in emerging countries, decent work conditions for all.

Within this new context, the ILO’s monitoring system and its most important actor, the CEACR, have also experienced a change in their role, which has become, as anticipated, more important than in the past (Wisskirchen 2005, 253 ff.). However, this increased importance is not only due to the fact that the ILO currently pays much more attention to standards’ implementation than to standard-setting: indeed, implementation essentially concerns the core labour standards, enshrined in programmatic Conventions, on which the interpreting activities performed by the CEACR become essential in order to indicate to the MS

(and in particular to emerging countries) how to correctly implement them; moreover, according to the new ILO's strategy, the CEACR on the one hand, and the CAS, on the other, have increasingly dealt with individual cases which concern exactly the core labour standards, as observations and general surveys of the CEACR and the lists of cases discussed by the CAS after 1998 clearly show.

According to these internal developments, our assumption that the EG at the ILC decided to challenge the recognition of the right to strike within ILO Conventions on freedom of association with the real goal to attack and weaken the whole ILO's monitoring system certainly gains credibility. As it has been anticipated at the end of the previous section, however, in the last years the importance of the core labour standards has increased not only inside the ILO, but also outside of it, and especially within international trade. This evolution - which seems to have been internally recognized by the clause of the 2008 Declaration according to which the violation of the core labour standards cannot be used as a legitimate comparative advantage - could further strengthen our assumption: therefore, it will be analysed in depth in the following pages.

3.2 The increasing significance of core labour standards (and of the right to strike) outside of the ILO: the role of international trade

As far as the significance of labour standards outside of the ILO is concerned, over recent years there have been new attempts to integrate social issues into international trade instruments. Explicit references to the ILO are becoming frequent in trade measures and other economic initiatives. The ILO core labour standards have been integrated, for example, into private initiatives as international framework agreements, transnational company agreements and codes of conduct for multinational corporations (Sciarra, Fuchs, Sobczak 2014). Furthermore, labour standards are increasingly being incorporated into economic partnerships and agreements governing relations between States (and corporations) all over the world.

As a matter of fact, the debate on the possible linkage between "trade" and "labour" has a long tradition, dating back to the origin of the influence of social values on the global trading regime (Servais 1989, Blackett 1999). To summarize, this is probably one of the most controversial theoretical issues in international law and a number of different assumptions exist. Put simply, the opinions of some scholars argue that links between free trade and social values maintain fair competition by ensuring that those who respect minimum labour standards are not penalized: producers and States not observing these standards have to choose between the risk of increased trade barriers or labour reforms through which

workers and their organisations may promote their economic and social interests. On the contrary, discussing the protectionism of these kind of “social clauses” is another issue. Those opposing trade-labour conditionality claim that such measures are ineffective. Moreover, social clauses are considered to be attacks on developing countries’ economic systems: the real intention behind the trade-labour conditionality is to introduce unilateral protectionist barriers to the free trade regime (Bartels 2015b, 1071 ff.; Perulli 2014, 27 ff.).

In practice, there have been several efforts to explicitly link trade and labour. Within the WTO, however, no specific provision relating to labour standards was made in the original GATT (1947). The new GATT (1994) made no changes in this respect. During the negotiations of the Uruguay Round, the inclusion of a social clause was hotly debated, as the Singapore Declaration (1996) reveals. This Declaration affirms that economic development fostered by increased trade liberalisation will promote high labour standards and labour standards should not be used for protectionist purposes. Symmetrically, the above mentioned “ILO Declaration on Fundamental Principles and Rights at Work” (1998) stresses that labour standards should not be used for protectionist trade purposes. Finally, the already described “Declaration on Social Justice for a Fair Globalisation” (2008) clearly affirms the possibility of making use of trade sanctions in case of violation of fundamental labour rights.

At present, there is little prospect for the formal inclusion of a “general” social clause within the GATT/WTO. As a result, labour would not be part of the multilateral trade system and, accordingly, nor would the ILO be in the follow-up of the international trade and labour debate (and one may argue in any case, as Bob Hepple has pointed out, that “multilateral trade-labour conditionality is politically unlikely” and “the WTO would be an unsuitable mechanism for ensuring observance of international labour standards and for achieving democratic legitimacy”: Hepple 2007, 178; Hepple, 2008, 426). Nevertheless, multilateral trade-labour conditionality “pushed out the door, comes back through the window” (Peels, Fino 2015, 189) and so called social clauses are generally more resistant than expected. In this respect, within the global scenario, the increasing significance of labour standards outside of the ILO seems quite evident, and it is essentially due to the way in which trade initiatives have evolved.

Both the US and the EU have a stable unilaterally imposed generalised system of preferences (GSP), assisted by the GATT/WTO framework, whereby special incentives might be given to developing countries if they meet certain requirements, including respect for freedom of association, the right to collective bargaining and the right to strike. The analysis of recent GSP schemes and the concerned WTO Appellate Body case law demonstrate that there is considerable room for integration of trade liberalisation and workers’ rights as defined by the

above mentioned ILO Declarations. (Pantano, Salomone 2008). In particular, EU GSP mechanisms provide balanced incentives for the observance of ILO core labour standards and the importance of the role of the ILO itself is clearly emphasized as a result of its functions as a standard-setting body and its investigations and monitoring activities (Alston 2004, 457).

Furthermore, the most recent generations of bilateral and regional free trade agreements contain a remarkable variety of social clauses, frequently with a proper labour dimension in connection with the ILO core labour standards and the ILO's monitoring system. This link suggests the importance of alignment between labour standards that are implemented under trade agreements and those that have been developed under the ILO (Agusti-Panareda, Ebert, LeClercq 2014; Peels, Fino 2015). Within this new context, the ILO's monitoring system and the CEACR, in particular, should play a pivotal role in the process of harmonization and unification under a common set of principles of the law of international trade concerning respect for freedom of association, the right to collective bargaining and the right to strike.

In any case, explicit references to labour rights are a relatively new phenomenon in trade agreements and references are still largely concentrated in the arrangements adopted by the US, EU and Canada. An acceptance of principles of trade-labour conditionality clearly emerges in relation to the number of trade agreements with labour provisions (from 0 in 1990 to 78 in 2014, according to the ILO 2014). From a substantial point of view, most of these commitments explicitly refer to the 1998 ILO Declaration (the Comprehensive Economic and Trade Agreement - CETA also promoting the ILO 2008 Declaration). In a number of trade agreements labour provisions relate directly to the ILO's Conventions, including those on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

As a result, despite the fact that an effective enforcement was often lacking, the process is involving the ILO's bodies in different ways. One may argue that if labour provisions rely on the Declaration alone, this can result in legal uncertainty and inconsistency with the application of the ILO supervisory machinery (Agusti-Panareda, Ebert, LeClercq 2014). Nevertheless, it is also relevant to mention that all members of the ILO are obliged to respect and to realise the fundamental rights and principles contained in the 1998 Declaration. Moreover, within this context, as already pointed out, the ILO's monitoring system may have a concrete "window of opportunity" for strengthening the ILO's own supervisory work and related advisory services.

As far as bilateral initiatives are concerned, another major change over the recent years is that frequently the same dispute settlement options are available

for all kind of commitments and obligations, and agreements provide the possibility of invoking sanctions as a last resort. As a result, these new agreements have generated a number of formal complaints, leading in some cases to concrete improvements in labour conditions (ILO 2015; Bartels 2015a).

Furthermore, aside from this new specific dispute settlement mechanism, without a doubt national and regional courts and tribunals are now turning ever more frequently to the interpretations of the ILO supervisory system to deeply understand and define the scope of freedom of association (and the right to strike) and this is having the effect of gradually transforming the soft principles of the ILO supervisory system into hard case law (La Hovary 2103, 366 ff.; ITUC 2014).

4. Concluding remarks

The 2012 EG decision to formally oppose the recognition of the right to strike within the ILO Conventions on freedom of association is particularly challenging, since it affects the principles regarding the issue of the right to strike gradually provided within a comprehensive framework by the CEACR and the CFA. Arguably, the EG decision attacks not only the formal recognition of the right, but also the role of the ILO's monitoring system as a whole. Our conclusion is based on different considerations concerning in particular the increasing significance of the role played by the CEACR over recent years with relation to the implementation of the core labour standards inside and outside of the ILO, within recent international trade initiatives.

In line with the agreement achieved in the February 2015 tripartite meeting, the June 2015 ILC Session has demonstrated the possibility of a procedural way out from this *impasse* since the cases concerning the ILO Conventions on freedom of association have been placed on the list by common consent. Nonetheless, from a substantial point of view, the EG urgently called upon the CEACR to reconsider its interpretation on the right to strike, while the Workers' Group has not changed its position on the right to strike interpreted as a fundamental feature of democracy and an essential means of action for workers. This has not blocked the process of the adoption of the 2015 CAS conclusions, but signs of weakness are quite evident, although these issues have been reflected in the record of proceedings and not in the conclusions. Arguably, fundamental disagreement remained unresolved in particular as to whether ILO Conventions on freedom of association include the right to strike or not (then, of course, in order to define, in terms of content, international principles and rules of conduct regarding the right to strike itself).

Therefore, how to solve the problem concerning the role of the ILO's monitoring system as a whole is still an open issue.

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