

29 March, 2001

A SUBMISSION TO:

The Secretary
Joint Standing Committee on Treaties
Parliament House
CANBERRA ACT 26000

SUBJECT: Amendment to the Constitution of the International Labour Organisation (ILO)

BACKGROUND

Australia is gradually being caught up in a widening range of international obligations which are eroding national sovereignty and independence. This process is aided and abetted in an undemocratic way by successive governments resorting to the use of the external affairs power of the constitution in a way never envisaged by the framers of that document. Hence Recommendation 4.

The conventions of the ILO, to which Australia has bound itself, provide a good example of the way in which Australia's national sovereignty slowly but surely, is being surrendered to non accountable, non democratic external organisations.

The ILO was formed more than eighty years ago. Many of its Conventions are out dated and of no relevance to the world today. There is no mechanism for abrogation of irrelevant Conventions. Hence recommendation (1) which supports the proposed amendment.

More seriously Australia could be held to have violated a Convention even if it has not ratified it. This flows from ILO Declaration of Fundamental Principles and Rights at Work which states "...all members, even if they have not ratified the Conventions in question, have an obligation, arising from the very fact of membership in the Organisation, to respect, to promote and to realise, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of these Conventions.....". There have been reported instances where ILO committees e.g. Freedom of Association Committee (FAC) act more like "Convention Police" than an audit committee even when a particular Convention has not been ratified.

In Australia, a Federal Government (Keating Labor) has used a Convention of the ILO (158), to subvert the powers of the States (Victoria) to impose federal industrial relations powers.

Another factor of concern is the growing tendency of Australia's Courts to look to commitments, which Australia has entered into through international treaties, when interpreting domestic law.

Perhaps of even greater concern is the potential for bodies like the ILO, through the use of the Internet, to cross national borders and to reach directly the citizens of Australia to mobilise support for their own special causes.

Against this very brief background, which could be expanded upon at length the CNI argues that the ILO, more than eighty years old needs to be subjected to a thorough overhaul of all of its Conventions and its method of operation to make these relevant to the world in which it operates.

This would be a huge task and might not find favour with the ILO. Hence recommendation 2, which argues for a much more limited review. The form of the review recommended is identical to that taken to the ILO Conference, 85th Session, 1997 by New Zealand and, at that time, supported by Australia.

Unless the ILO is prepared to change fundamentally, it will become increasingly irrelevant. The same can be said for other international bodies and conventions with which Australia has become aligned. It is time Australia made a stand and reviewed all of these commitments. Where it is not possible to achieve the changes which make them relevant to the Australia of today then Australia should show national leadership and withdraw from such links. Whilst Australia at the same time should commit to the pursuit of ethical philosophies, which motivated our commitment in the first place, but only to the extent that they are relevant and beneficial to our society today.

RECOMMENDATIONS

CNI RECOMMENDS:

- (1) that Australia lodges with the Director General of the ILO in Geneva an instrument of acceptance of the amendment to Article 19 of the constitution of the International Labour Organisation;
- (2) that Australia lodges with the ILO a proposal to:
 - * review all existing ILO Conventions and standards against two key tests - their relevance and effectiveness to the world today, recognising 'the ILO must adjust to the changing reality around it';
 - * eliminate the bureaucratic proliferations of subject matter on Conventions (i.e. the processes of the Freedom of Association Committee (FAC) and other 'audit committees' of the ILO) by adopting less prescriptive, more flexible standards and better achieve the core principles of the ILO;
 - * establish evaluation procedures to test whether a Convention has achieved what it set out to do. In other words measure and evaluate outcomes 'rather than simply assess and criticize compliance with labour standards, some of which are of questionable moment in a modern world';
 - * improve the teaching functions of the ILO so it can educate organisations and countries (especially developing countries) on how to achieved the revised core principles of the ILO. This implies reducing the resources of the Convention police and increasing those of the training and extension services to member states;
- (3) that in lodging the proposal outlined in (2) Australia indicates that it will allow the ILO a reasonable time, say twelve months, to adopt the review proposal and to set a realistic time frame for the review to be completed failing which Australia will give notice of withdrawal from the ILO whilst at the same time reaffirming its willingness to pursue the relevant core principles as an ongoing philosophy;
- (4) that Australia's treating making process be amended to make it mandatory for all treaties to be approved by a current resolution of both Houses of Parliament before they are signed or ratified; alternatively that treaties must be approved by a 75% majority of the Senate before they are signed or ratified.

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