

ILO – Role of New Zealand Government: Reflections of a Former Minister of Labour

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Introduction

The occasion of the 90th anniversary of the founding of the ILO provided an opportunity to reflect on the relationship between the ILO and New Zealand.¹ In this article I shall discuss one aspect of that relationship, namely, the relationship between the ILO and the Government during the time I was Minister of Labour (1999 – 2004). The first observation is that the objectives enshrined in the constitution of the ILO, and affirmed in the Philadelphia Declaration remain as relevant today as they did in 1919. It is worth recalling the fundamental principles affirmed by the Philadelphia Declaration, in particular that:

- (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, and by continuous and concerted international effort in which the representatives of workers, employers, enjoying equal status with those of governments, join with them in free discussion and democratic decision with a view to the promotion of the common welfare.

It is undeniable that while those principles remain as relevant today as they did in 1944, the reality of 30 years of neo-liberal public policies, the globalisation of capital and the growth of transnational corporations dominating the means of production, together with the decline of trade union membership and collective bargaining, combine to provide a challenge to the realisation of those principles. It is a challenge the ILO understands and has risen to meet.

Origins of ILO

An understanding of the role of the ILO today requires knowledge of the origins and the conditions that created and have sustained the ILO over 90 years. The seeds for an international organisation to promote and protect minimum labour standards grew out of the appalling working conditions endured by workers in the factories spawned from the growth in industrialisation of the 19th century. Although the ILO was established formally in 1919 as part of the Versailles Peace Treaty that ended the First World War, its genesis lies in the discussions and activities of those concerned with the improvement of working conditions and labour reform in the 19th century and early 20th century.

For example, as early as 1818 at the Conference of European Powers at Aix-la-Chapelle, France, the British industrialist Robert Owen and the French Industrialist Daniel Legrand, argued for a cooperative international effort to reform the conditions of labour. Owens even proposed an international institution to implement the reforms (Burkett, 2006). Although there were enlightened industrialists such as Owen and Legrand, who advocated labour reform; support for reform came from a cross section of concerned citizens including academics, social workers, lawyers and legislators. The first of many international conferences they organised to promote change was held in Brussels in 1856, followed by a Frankfurt conference the following year that supported the creation of international conventions on working conditions.

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This rise in social concern was mirrored by the development of international worker organisations with the first conference of the International Workers Association being held in Geneva in 1866. Workers were inhibited from organising to protect and further their interests by legal prohibition of the formation of unions. A group of workers gathering together to improve wages and working conditions was classified as an unlawful conspiracy. To remove this fear of legal prosecution the laws had to be changed, which meant engagement with the political process and in the 19th century when workers were also denied the right to vote that required new forms of political representation. It was not surprising, then, that the formation of socialist parties in Europe in the latter part of the 19th century resulted in the incorporation of a labour reform agenda into their platforms. It is also not surprising that the relationship between industrial and political labour movements was forged in a scarring historical experience that continues today.

While social and industrial concerns were well represented in these discussions in the 19th century, government recognition of the growing demand for reform was slower in coming. In 1890, the Swiss government promoted a conference to prepare for negotiations on an international agreement on the improvement of working conditions. While progress at government level was slow, in 1912, the first international labour convention was ratified on night work for women and the use of white phosphorous in the match industry. By 1915, there were over 20 bilateral labour agreements covering subjects from social insurance to the migration of workers. It is interesting to note how most of the issues raised in this period remain relevant today. The First World War curtailed progress towards international conventions but it can be seen that it was no accident that the establishment of an international labour organisation was incorporated in the peace settlement. The efforts of advocates for over a century were being formally recognised. And for those who, today struggle for social and economic justice, it is an encouraging reminder that political and social activism can produce change, even if it may not be our lifetime.

New Zealand and ILO – Early Period

Apart from a concern for social and economic justice, there was also another more pragmatic reason for the formation of the ILO. The rise of worker-led political movements, especially in Russia, but not only in Russia, was a warning to countries that, unless reform was undertaken, political revolution was possible. In the New Zealand context, it is interesting to note the government was also concerned with labour unrest during this period. Roth (1973) notes the early workers in New Zealand in the 1880s and 1890s spread ‘a wave of socialist feeling’ gained from reading ‘collectivist tracts and listening to altruistic sermons’ William Pember Reeves the first Minister of Labour espoused socialist views but enacted the Industrial Conciliation & Arbitration (IC&A) Act, which ensured government regulation of the industrial relationship (Moloney, 2002). It is perhaps then not surprising to note the bestselling book of the time was the utopian novel *Looking Backwards* by Edward Bellamy.

Stone also notes: “Labour discontent in New Zealand coincided with an upsurge of socialist agitation in Germany, France, Britain, the United States and Australia. New socialist ideas were abroad: sometimes syndicalist, sometimes utopian, but invariably class-conscious” (1963: 203). The Industrial Workers of the World (often known as the wobblies) were the organising force behind the challenges to the arbitration system in the 1908 to 1914 period when New Zealand experienced considerable industrial unrest (Shor, 2002). This period also saw a struggle for control of the ideological direction of the trade union movement – between the predominantly trades arbitrationist unions and the industrial syndicalist unions. The formation of the Labour Party in 1916 provided a political forum for the pursuit of workers’ rights and labour reform, but in the early period was seen as too conservative for the syndicalist unionists, who however by the 1930s had come to support the Labour Party.

As Stephen Hughes and Nigel Haworth note in their excellent paper to be presented to this conference, *A Distant Detachment/New Zealand and the ILO 1919-1945*, New Zealand became a founder member of the ILO in 1919 because of the initiative of Great Britain that, in reality, controlled New Zealand’s foreign policy. The distinct lack of interest in the organisation at that time by the government was not unexpected

given the politics of the time. It was not unexpected, however, that the union movement and new Labour Party took more interest in the new international labour organisation. Both movements had always been internationalist in outlook. The New Zealand government's interest and approach to the ILO has reflected the ideology of the government of the time. It is also not unreasonable to surmise that business was also aware of events overseas. New Zealand business appeared to show little interest in the ILO in the beginning but its involvement has reflected its concern to ensure its class interest was represented in all contact with the ILO.

For a variety of different but related reasons than workers, business and governments all had reasons for supporting an international organisation that facilitated the promotion of international labour standards in the workplace. The fact that the ILO has survived to be the oldest surviving international organisation owes much to the skill of those who have managed the organisation, but it also owes as much to the perception that a balance needs to be maintained amongst the interests of labour, capital and governments to ensure the well being of all parties.

ILO Reinvented

The story of the survival of the ILO and its emergence today as a key international influence on social and economic global policy is one worth retelling. As Haworth and Hughes (2009) have noted, the ILO developed a strategy that they characterised as of independence, relevance, and presence that has served it well since its inception. The leadership skills of two recent Director-Generals, Michel Hansenne (1989-1998) and Juan Somavia (1998- current) have guided the ILO from one of questionable relevance in a rapidly changing economic environment to one whose role is at the heart of global policy making. The achievement of the Declaration of Fundamental Principles and Rights at Work (1998) positioned the ILO to provide a relevant framework within which to engage with the new global and domestic policy frameworks.

When Juan Somavia became Director-General in 1998, he built on this foundation through guiding the *Declaration on Social Justice for a Fair Globalisation* (2008) through the ILO (ILO, 2008). That Declaration clearly stated the nature of the relationship between social and economic policy in a globalised world. The Declaration not only provided support for the Decent Work initiative but also invited the ILO to work with other international and regional organisations to promote decent work. The link between trade and financial policies and employment was made explicit. Labour standards must be considered as part of any global trade, economic and financial policy.

The Declaration has been characterised as marking the most important renewal of the ILO since the Philadelphia Declaration. It set in place and affirmed a new course of action founded on the 1998 Declaration of Fundamental Principles and Rights of Work and the Decent Work Agenda. It has marked the recognition by the ILO for a more integrated and holistic approach for the implementation of labour standards. In particular, the need to work with civil society for the reduction of poverty and recognising the relationship between poverty and poor labour standards has distinguished the work of the ILO in recent times.

On a local and regional level, however, perhaps the most important recent initiative of the ILO has been the Decent Work Agenda. Juan Somavia has stated "The primary goal of the ILO today is to promote opportunities for women and men to obtain decent and productive work, in condition of freedom, equity, security and human dignity" (ILO, 2009). The strategies to implement this goal have been identified as:

- the promotion and implementation of international standards and rights at work;
- the creation of decent employment and income opportunities for all men and women;
- the enhancement of coverage and effectiveness of social protections for all peoples; and
- the strengthening of economic and social dialogue between government, employers and workers (ILO, 2009).

On a practical level, the Decent Work Initiative is designed for the ILO to assist countries with the implementation of these strategies. It has enabled the redirection of its resources to provide countries with technical support for the development of a national framework within which priorities can be targeted to make that the decent work goal a reality and not just an aspiration.

Role of New Zealand Government

Since the relationship between the Government and the ILO reflects the ideology and policies of the Government of the day, I shall focus my reflections on the role of the New Zealand government during the period I was Minister of Labour. In particular, I shall examine on the institutional support the government gives to the ILO as an organisation; the legislative recognition of ILO Conventions 87 and 98 and the development of a policy to recognise the need to incorporate minimum labour standards into free trade agreements. Before I look at three aspects of the ILO/government relationship, I shall make a few general observations about the role of governments in the ILO.

At present there are 183 member countries of the ILO. Their reasons for support of the ILO are likely to be a combination of the factors identified on the ILO website, namely security, humanitarian, political and economic. The fear of political instability was an important motive for the formation of the ILO and still remains so today. Industrial unrest is not only economically damaging, it is politically unsettling. The level of support the ILO has received from countries varies according to domestic and international factors. Signing up to Conventions and Declarations does not guarantee the countries implement the provisions within their own jurisdictions. The provisions of the Conventions and Declarations are more often considered aspirational than real. Also economic, social, political and culture conditions vary greatly among the member countries. This is why the ILO technical programmes are so important. They assist the member countries to find ways to implement labour standards that are appropriate to the conditions of the countries. The ILO can only provide this assistance, however, if it is funded adequately and this is perhaps the most important role of member countries.

Countries often show their displeasure by not paying their fees, withdrawing from active participating or on occasions boycotting the activities of the ILO. The best example of the latter action was the withdrawal of the United States from the ILO during the cold war period because of a fear that its support for workers' rights was support for the communist ideology (Potter, 2006). Although the ILO survived this period, it did have an impact on the resources, the organisation and its capacity to pursue its agenda. Financial viability and administrative efficiency are fundamental preconditions to the success of the ILO achieving its primary objective. The best way to stifle the effectiveness of any organisation, domestic or international, is to starve it of resources.

In many ways, governments are the cement or the glue that ensures the continuing institutional existence of the ILO. It is governments' financial and active support of the organisation that is vital. Hughes and Haworth (2008) have documented that, from the outset, the New Zealand government's support for the ILO was lukewarm at best. There is an understandable tension between the ILO and its government members on the most effective use of resources. One of the achievements of Juan Somavia has been to push for administrative and budgetary reform within the ILO. Like many large well established organisations, the ILO had become resistant to change, and questions were being raised about its relevance in an age when neo-liberalism meant the new managerialism was the standard against which all institutions were being measured.

When I became Minister in 1999, one of the decisions that confronted me was whether New Zealand supported the Director-General's administrative and budgetary reform agenda. The 1999 Report of the Programme, Financial and Administrative Committee to the Governing Body (GB 279/PFA/7 ILO 279th Session) noted the need to shift the focus from Geneva into the regions and to ensure to local programmes

were results orientated with efficient management practices. It was a good introduction into the internal working of the ILO and the reality that, as with all governance in large institutions, the organisation is as good as the interest and commitments of its members. New Zealand strongly supported the budgetary and administrative reform agenda and, in particular, the emphasis to decentralise the ILO technical programmes into the regions and away from Geneva. I confess to not being very impressed at the first ILO regional conference I attended in Bangkok and understand the feeling may have been mutual. Like many New Zealanders, I underestimated the task of change in international institutions. I tried to explain that although New Zealand was committed to the ILO, all expenditure had to be justified, including ILO fees and there needed to be a greater allocation of resources in the Pacific region. Currently New Zealand pays \$1,900 annual subscription to the ILO (Budget, 2009).

I also emphasised that I was a Minister of Labour in a government that recognised the reality of globalisation and the need for New Zealand to actively participate in international organisations and events to protect and further New Zealand's interests whether they were issues economic, social or security. For the Minister of Labour, the primary international organisation was the ILO and participation primarily took the form of attending the ILO annual conference held in Geneva in May/June of each year. The New Zealand delegation consisted of representatives from the NZCTU and Business New Zealand. Officials from the Department of Labour supported the delegation. New Zealand was fortunate in having very able and knowledgeable officials who were familiar with the operation of the ILO but also facilitated the more active role of Labour-led government in the organization's activities.

Like all such international events, the annual conferences are large, highly structured with short formal presentations and little opportunity for participation, even in committee meetings. I can see why it is possible to question the value of such gatherings. New Zealand is a small country of no or little significance beyond what can be created through its own participation and efforts. During the time I was Minister I attended four such conferences and came to understand the value of participation and the need to have a long-term perspective. The opportunity to discuss developments in other member countries gave a valuable insight into the way they handled common experiences. The regular meetings with the Director-General were an opportunity to ensure the developments in New Zealand were understood and supported. I was also invited by ILO officials to make presentations explaining the developments under the Employment Relations Act and contrast them with the previous statutory regime. Such invitations were important because they provided the opportunity to explain and discuss the situation in New Zealand with those officials who received the reports on New Zealand's compliance with its ILO obligations.

For me, personally observing and participating in a tripartite social dialogue policy framework strengthened my resolve to apply the same model to employment relations policy reform in New Zealand. It was the model used for changes to the Holidays Act, the Health and Safety in Employment Act and the report on contracting out and sale and transfer of businesses. It was a model followed by New Zealand for 90 years and only abandoned as a tenet of public policy with the enactment of the Employment Contracts Act. I had long felt that not only was our employment relations poorer for rejecting tripartism but also our democracy. The reform of the employment relations statutory framework, therefore, seemed an appropriate opportunity to revive the democratic notion of tripartism.

The reform of the statutory framework provided the opportunity to review whether New Zealand was in a position to ratify the two most important ILO Conventions, namely, Convention 87 on Freedom of Association and Convention 98 on the Right to Organise and Bargain Collectively. It is somewhat ironic that New Zealand, as a founder member of the ILO, had developed an industrial relations system that made it impossible to comply with these fundamental conventions. The IC&A system, as it developed, not only prevented collective bargaining but also freedom of association. It is true that the system served the interests of the parties well at various times and that New Zealand workers benefited through their wages and conditions. The dominant role of the state, however, precluded New Zealand ratifying these conventions.

Although New Zealand did not ratify these Conventions, it did not prevent the employer and union parties at various times complaining to the ILO alleging a breach of the conventions (Roth, 2001; Novitz, 1996). The fact that New Zealand was a member and, therefore, had agreed with the fundamental principles of the ILO provided sufficient jurisdiction for ILO intervention through the Freedom of Association Committee to investigate whether or not a breach had occurred. Although in such instances, there was no enforcement mechanism, the parties deemed the publicity surrounding the investigations provided leverage domestically to highlight the issue and support a campaign for change.

I came to understand the value and the limits of such ILO intervention during the process investigating the NZCTU complaint to the ILO alleging the Employment Contracts Act breached of Conventions relating to freedom of association and collective bargaining. I attended a meeting with others convened by Alan Gladstone who carried out the ILO Direct Contact Mission investigation. Although this Mission's report was not very critical of the government legislation, the final report of the Freedom of Association Committee (Case No. 1698, 1994) was critical and recommended the government initiate a tripartite process to ensure the Act was consistent with the principles of freedom of association and collective bargaining. The then Minister of Labour Doug Kidd rejected such a notion.

The importance of this Report was not only its criticism of the ECA, but for me anyway, it highlighted the relationship between freedom of association and the ability to engage in collective bargaining. If workers could not join unions and could not be involved in actions in pursuit of their right to collectively bargain without the threat of legal action, then they did not have the right to bargain collectively. There could be no collective bargaining without genuine freedom of association, which was not only the right to join or not join a union but to freely pursue collective action without legal penalty.

The Employment Relations Act was an attempt to comply with both Conventions 87 and 98. I suspected the attempt would fail because of the continuing restrictions on the right to strike when bargaining collectively, for example, secondary boycotts. This turned out to be correct. Although there were extensive discussions with the ILO officials, the ILO would only agree that the Act complied with Convention 98 but not 87.

The inclusion of specific reference to the two Conventions in the Employment Relations Act was, however, to make explicit that the Act was founded on the principles in those Conventions and any interpretation of the Act should be consistent with those principles. In particular, the ILO jurisprudence on the relationship between the right to organise and the right to bargaining collectively are very useful when determining whether in fact there has been 'good faith' bargaining or 'good faith' when unions try to organise workers, especially in a new workplace.

New Zealand has ratified 60 Conventions of which 51 are in force. While I was Minister, an effort was made to ensure legislation did comply with the ILO obligations. I assume that practice continues. The officials were aware of our obligations and, as part of their briefings to the Minister, would draw attention to any relevant ILO matter. The shift in the ILO strategy to promote efficient management practices to ensure implementation of the 1998 Declaration of Fundamental Principles and Rights at Work through the Decent Work Agenda was endorsed by New Zealand when I was Minister (Hughes, 2005). The result has been the development of an extensive framework by the Department of Labour on how the Decent Work objectives can be and are being implemented in New Zealand. There is insufficient time to explain this policy work in detail but it is important and I am sure will be covered in other presentations. It is important because it provides a practical programme to measure New Zealand's compliance with the various ILO obligations. It is an outstanding example of a policy framework that translates international obligations into domestic legislative and policy terms.

Finally, I want to briefly mention one of other development when I was Minister of Labour that illustrated the attempt by New Zealand to implement into legislation and policy the ILO commitments. It is the framework for integrating labour issues into free trade agreements (MFAT, 2009). The failure of the Doha trade talks and the WTO to find multi-lateral agreement on free trade arrangements led the government to

seriously enter negotiations on bi-lateral free trade agreements. This development raised concerns relating to the undermining of working conditions in New Zealand through the use of cheap labour in the trading partner country.

To address these concerns and also to comply with and further the objectives of the Declaration on Fundamental Principles and Rights at Work, the government in 2001 adopted a framework to incorporate labour related issues into free trade agreements. Among the objectives of the policy was the statement that economic and trade partnerships were not an end in themselves:

The goal they serve is to improve living standards in the countries whose governments have negotiated them. This government believes that to reach that goal, economic and trade agreements need to be crafted in a way that promotes decent work. By this it means opportunities for work in which minimum standards are protected and adequate income is generated within an infrastructure which ensures social protection (MFAT, 2009)

There is also an explicit statement that the government supports the ILO's objectives of decent work and adheres to the principles of the core labour standards reflected in the Declaration of Fundamental Principles and Rights to Work. The statement concludes with the following:

While the details would need to be determined on a case by case basis, the government would look to include any or all of the following elements in the framework of any bilateral/plurilateral trade and economic partnership agreements: a workplan of initiatives or objectives; a mechanism for regular reviews of objectives or initiatives, and regular dialogue on how to better promote decent work; a mechanism for resolution of issues raised by the parties or the social partners (MFAT, 2009)

While this framework was an achievement, the reality is that it is a policy and needs to be implemented. In my brief review of the free trade agreements I could access, I found it difficult to identify the above policy being explicitly included in the agreements. I trust others who are more expert in the area than I am will follow up to ensure this important development has not been lost in translation.

Conclusion

In conclusion, I want to acknowledge and thank Business and Labour History Group of the NZ Work & Labour Market Institute, and in particular Professor Ray Markey, for organising this conference. It provides an opportunity not only to reflect on the contribution the ILO has made to the development of a regime of minimum labour standards, but the relevance of the organisation to the countering the challenges of globalisation and the attempts through neo-liberalism public policies to make the market the only determiner of working conditions and wages. The ideology of neo-liberal argues that economic and financial matters are the primary purpose of public policy. Matters of social justice have been relegated to accommodating the economic imperative. Not only has such a policy failed on its own terms as the recent collapse of the financial system has demonstrated, it has created a society in which economic and social inequality has become institutionalised and accepted by many as inevitable.

The ILO in its current reinvention has introduced a healthy dose of reality into international public policy making. Whether or not New Zealand actively supports this leadership demonstrated by the ILO is for the government to determine. I was reflecting on how much attention is paid in the media to international trade agreements and how little to international initiatives that highlight the relationship between such agreements and the level of employment and social justice within a community. The time is overdue, once again, to understand the interconnectedness of the economic, social, cultural and political factors that exist within our community. Until this is done there will be neither economic nor social prosperity. The ILO once again provides a pathway to follow to achieve these goals.

Notes

¹ This paper was presented at the *Symposium: 90 Years of the ILO: The Significance for Australia and New Zealand* organised by the NZ Work and Labour Market Institute, AUT in association with the Auckland Labour History Group.

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