

III. Report on ILO Convention No. 144

BE IT RESOLVED that the American Bar Association urges the Senate of the United States to give its advice and consent to ratification of International Labor Organization Convention (No. 144) Concerning Tripartite Consultations to Promote the Implementation of International Labor Standards.

REPORT

International Labor Organization (ILO) Convention No. 144, concerning Tripartite Consultations to Promote the Implementation of International Labor Standards, was adopted by the International Labor Conference in 1976.

The United States delegation to the 1976 Conference, including the Government, Worker and Employer delegates, voted for adoption of the Convention.

On April 10, 1986, the President of the United States transmitted ILO Convention No. 144 to the Senate of the United States with a recommendation that the Senate give its advice and consent to ratification of the Convention.

Significance to the United States

In general, the Convention relates to administrative procedures within each ratifying country for consultations between government, worker and employer representatives to discuss ILO matters.

The Convention is significant within the ILO because it emphasizes the importance of the principle of tripartism, i.e., independent representatives of governments, workers and employers have an equal voice and vote within the International Labor Organization. Each member country's delegation to the International Labor Conference consists of two government representatives and one worker and one employer representative each of whom votes separately.

In addition, the Convention emphasizes that the persons representing workers and employers in the tripartite consultations must be chosen according to the principle of freedom of association. The principle of freedom of association is expressed in ILO Convention No. 87 which states that workers and employers shall have the right to establish and to join organizations of their own choosing without previous authorization. The right to freedom of association for workers and employers is a cornerstone upon which the ILO is based and is considered to be among the basic international human rights.

Convention No. 144 further takes on a significance beyond its administrative provisions when it is recognized that this Convention may well become the first ILO Convention ratified by the United States in forty years.

To date the International Labor Organization has adopted over 160 International Labor Conventions, of which the United States has ratified seven, principally relating to maritime matters.¹

Within the International Labor Organization the United States has been active in its criticism of other countries which have failed to carry out their obligations under ILO Conventions which those countries have ratified. These countries point out in turn that the United States is in a very poor position to criticize their record of implementation when the U.S. has ratified so few ILO Conventions.

President Reagan pointed out in his letter of transmittal to the Senate that United States ratification of ILO Convention No. 144 would reduce U.S. vulnerability over our poor ratification record.

In his letter of March 20, 1986 submitting the Convention to the President, Secretary of State George Schultz stated that the United States is already in compliance with its obligations under the Convention.

United States Compliance with Convention No. 144

Tripartite consultations on ILO matters take place within the context of the President's Committee on the International Labor Organization created by Executive Order as a federal advisory committee in 1980. The members of the Committee are the Secretaries of Labor, State, and Commerce, the Assistant to the President for National Security Affairs, and the Presidents of the AFL-CIO and the United States Council for International Business.

The President's Committee provides a forum for tripartite consultation on all ILO matters including those matters which are to be the subject of consultation under Convention No. 144.

Provisions of Convention No. 144

Under the provisions of Convention No. 144, each member of the International Labor Organization which ratifies the Convention undertakes

1. The United States has ratified the following five ILO Conventions which are in force: No. 53, Officers Competency Certificates (1936); No. 55, Shipowners Liability (Sick and Injured Seamen) (1936); No. 58, Minimum Age (Sea) (1936); No. 74, Certification of Able Seamen (1946); No. 80, Final Articles Revision (1946).

The U.S. has also ratified two Conventions which are not in force because the minimum number of ratifications necessary to bring the Conventions into force have not been deposited with the ILO: No. 54, Holidays with Pay (Sea) (1936) and No. 57, Hours of Work in Manning (Sea) (1936).

to operate procedures to ensure effective consultations between government, employer and worker representatives on ILO matters.

The procedures provided for shall cover:

- a. government replies to ILO questionnaires concerning items on the agenda of the International Labor Conference;
- b. proposals to be made in connection with the submission of ILO Conventions and Recommendations for ratification;
- c. re-examination of unratified Conventions and of Recommendations to consider what measures might be taken to promote their implementation and ratification;
- d. reports to the ILO on ratified Conventions; and
- e. proposals for the denunciation of ratified Conventions.

Employers and workers shall be represented on an equal footing and shall be freely chosen by their representative organizations.

The Convention defines the term "representative organizations" to mean the most representative organizations of employers and workers enjoying the right of freedom of association.

The ILO and Freedom of Association

In proposing the incorporation of the principle of freedom of association into the Convention, the United States Government adviser on the drafting committee noted that it was important that employers' and workers' organizations should enjoy freedom of association, without which there can be no effective system of tripartite consultation either at the national or international level, since employers and workers have to be able to state their views independently.

Freedom of association has been considered to be a basic human right by the International Labor Organization and a cornerstone on which the tripartite nature of the ILO is founded.

The ILO is unique among international organizations in that representatives of private organizations, namely workers' and employers' organizations, as well as government representatives have an equal voice and an equal vote in all policymaking bodies in the ILO. This tripartite system is the most distinctive feature of the ILO and depends upon the independence of the employers' and workers' organizations from their governments.

The principle of tripartism is reflected in ILO Convention No. 87, concerning Freedom of Association and Protection of the Right to Organize, under the terms of which both workers and employers shall have the right to establish and join organizations of their own choosing.

Convention No. 87, Freedom of Association, has been widely ratified by ILO members, including the Soviet Union, but actual implementation of its provisions may be open to question even in ratifying countries.

When the International Labor Conference Committee debated draft Convention No. 144, Tripartite Consultations, the Soviet Government delegate made a strong statement against the incorporation of the principle of freedom of association into Convention No. 144. The proposal for such incorporation nonetheless was adopted by the Conference Committee and in turn by the entire International Labor Conference.

The Soviet Union which has not ratified Convention No. 144 has subsequently denounced the incorporation of the principle of freedom of association into this Convention noting that for that very reason the Soviet Union will be unable to ratify the Convention.

This denunciation by the Soviet Union of Convention No. 144 and its link to freedom of association has, in fact, created the situation within the ILO whereby Convention No. 144 has become a symbol and a test of whether a member country supports the basic philosophy and principles of the Organization.

Conclusion

The significance of ILO Convention No. 144, Concerning Tripartite Consultations to Promote the Implementation of International Labor Standards, thus becomes clear both to the United States and to the International Labor Organization. The Convention restates the principle of tripartism upon which the ILO was founded and incorporates the principle of freedom of association which guarantees independence for workers' and employers' organizations.

The United States is already in compliance with the terms of the Convention.

The Section of International Law and Practice, therefore, urges that the American Bar Association adopt the proposed Resolution asking for United States Senate advice and consent to ratification of International Labor Organization Convention No. 144.

Respectfully submitted,

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Chairman

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