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Appendix E

To Joint Standing Committee on Treaties, Parliament House, Canberra (May 3, 1998)

Submission on the Multilateral Agreement on Investment (MAI)

Summary

In working to prevent war, our Association aims to minimise human situations which cause or aggravate inter-group and/or international tensions. For reasons given below, we believe that the OECD's MAI, as drafted, has considerable potential to increase such tensions. We recommend, therefore, that the Australian Government: (a) refrain from entering into the proposed agreement and (b) actively promote wide-ranging discussions at home and internationally with a view to formulating substitute agreements, the aim of which would be to raise standards for human equity and justice and for protection of the environment.

Before the MAI: Economics for What?

MAPW has considered the MAI proposal in the historical context of long-term economic trends and the impact these have had (and continue to have) on natural environments and human societies, including our own. One could have hoped that the ever-expanding technological and financial resources of the present century would have been applied, *inter alia*, to fulfil humankind's essential material, health and security needs. Technically that was easily possible and, as we know, economic activity has generated quite unprecedented levels of wealth, far more than enough to cover all basic human requirements.

We recognise the reality that the many minor and major conflicts of the past have taken precedence over more constructive projects. Indeed, this, the most violent century in history, has witnessed besides innumerable 'small' wars, two major World Wars which, fought with increasingly 'efficient' weapons of mass destruction, resulted not only in the deaths of over 80 million people and untold suffering, but the dissipation of literally thousands of billions of dollars. Whether 'victor' or 'vanquished' nation, the end result was, even at a purely mercenary level, a 'lose-lose' situation all round. So what lay behind such counter-productive results?

It seems clear that the principal circumstance which led to the military confrontation and horrors of World War I was the unbridled commercial and colonial competition between would-be ever-expanding nation state economies at the turn of the century.

And further, that it was ongoing commercial competition, coupled to ill-judged and applied peace treaty terms, which led a mere 20 years later, to the even greater destruction of World War II. That there was general recognition of these factors is implied in the international solutions subsequently proposed.

Thus, by the end of WWII, responding to the popular revulsion against war and looking critically at previous 'business as usual' attitudes, statesmen had formulated a radically new set of principles designed to produce a just world order, the major aim of which was to free us of the scourge of war. The outcome was the United Nations Charter, a solemn treaty that obliges signatory states to honour a wide range of human justice provisions, including obligations to promote universal respect for human rights, full employment, improved health standards and higher standards of living generally. As we see, the Charter places special emphasis on the critical importance of economic justice, an essential precondition for a productive, peaceful world.

Over the intervening years, however, despite the extraordinary acceleration of technology, fossil fuel exploitation and consequent wealth creation, the resulting material benefits have been less and less evenly distributed. Indeed, notwithstanding limited trickle-down effects for the majority, the long-term trend since WWII has been away from more equitable distribution of land and worldly goods to a widening of the gap between rich and poor (Susan George, Oxfam, Martin and Schuman). Thus the world has experienced trends aggravating those conditions known to lead to greater tensions and war.

Of course such neglect of the Charter provisions for basic human needs, may (by some) have been excused, or at least 'explained', by the demands of the Cold War - so long as it endured. However, the essential irrelevance of that is now apparent since although the Cold War ended some 10 years ago, the trend towards ever-increasing human inequality has not only continued, but has accelerated. Thus throughout both underdeveloped and developed worlds we witness ever greater disparities of income and material security. For the majority at the lower end of the scale we see job insecurity, mounting low-paid work, rising long-term unemployment and growing poverty - all of which are causing social distress in the midst of unprecedented wealth.

Not only is the above situation unjust, with the potential to generate dangerous inter-group and international tensions, but in the long run, it is counter-productive of literally everyone's interests. That follows because, even in the medium term, it cannot be sustained. Space precludes a full exposition of reasons for this statement, but some crucial limits to sustainability can be summarised as:

First, man-made environmental assaults have led to unacceptable levels of land clearing and salination, to depleted top-soils, fisheries and forests and to seriously depleted and/or contaminated waterways in most parts of the world.

Secondly, there are increasingly cost/price-sensitive limits on what is economic in the exploitation of minerals, most crucially oil, limits which are rapidly being reached.

Thirdly, the ever-increasing disparity between the solvent minority 'haves' and the progressively less-solvent majority 'have-nots' means that, increasingly, the price of many classes of goods and services will rise beyond the majority's reach (Thurow). Thus the market may fail not for lack of real need, but simply for lack of effective demand.

Fourthly, the ever hoped-for 'saver', export business, is limited for essentially the same reason. That is, irrespective of the presence or absence of man-made trade barriers, 'economic salvation' through exports likewise depends on aggregate effective demand. Yet the world-wide growing gap between rich and poor inevitably causes downward pressure on effective demand. This factor, along with the ongoing trend to replace existing manpower by energy-consuming automated processes for the manufacture of ever increasing quantities of goods makes understandable how many overseas markets have already reached saturation.

As we know, there are many concerns about unjust, unsustainable economies. One is the great concern, already mentioned, that competition for the necessarily limited aggregate export trade could, as in the past, cause internal and external tensions leading to war. Another major concern is that, again as in the past, the increasingly limited buying power of those in real need could lead to another 'Great Depression' in which human wants would become altogether desperate. For obvious reasons, these two major concerns are closely related.

Finally, a brief comment on the nature and purposes of the world economy and Australia's part in it. Efforts continue to portray this world economy as purely market-driven, inevitable and 'best for all', including Australians. Indeed, the belief that this particular economy should be served by humankind (rather than the other way round) has become so extreme that it has taken on a quasi-religious status, one requiring urgent challenge. In short, MAPW believes that Australians, in concert with other peoples, must reshape their economies to serve the real needs of their citizens. In our case that means urgently rectifying a whole range of injustices, prime amongst which is the lack of employment opportunities, especially for our young.

We have examined the MAI proposal in the light of the above considerations.

Comments on the proposed MAI

It will be clear from the above that MAPW favours cooperation between nation states on a wide range of issues bearing on human health and wellbeing, including preservation of the natural environment. Accordingly, it is very much in favour of a multilateral (hopefully universal) agreement on international investment that would not only protect investors, but would provide for uniform equitable benefits to the host countries, including proper health and safety working standards, adequate remuneration and strict environmental constraints. By agreeing on what would be a more truly level playing field, that approach could lead to improved living standards and so reduce those tensions which can lead to war.

Unfortunately, the MAI under consideration appears to have radically different aims. Accordingly we will concentrate our comments not so much on the details of MAI's rolling text, but on what appears to be its principal intentions and on how these fall short of a more appropriate set of rules for international investment.

As we know, the MAI aims to provide a uniform set of rules that would facilitate international investments throughout the world. Clearly indicating its major approach to such facilitation, the proposed MAI would prohibit national governments of host countries from legislating to require foreign investors to meet particular "performance requirements" with respect to the "...*establishment , acquisition, expansion, management, operation, or conduct of their investment.*" Signatory states may specify particular "*exclusions*" to this rule - which might seem to allow for democratic control over the nature and conduct of foreign (as well as domestic) investment - but such exclusions will be accepted only on the understanding that they are temporary, "rolled back" as soon as practicable.

In contrast to these constraints on the host country, there is total protection of investors' 'rights' to move money in and out of the host country at will. Thus "*Each contracting Party shall ensure that all payments relating to an investment in its territory of an investor of another Contracting Party may be freely transferred into and out of its territory without delay*" Aside from the important issues of investors who may elect to repatriate all profits or to transfer their investment operations to another country at short notice, the provision for funds transfers "without delay" would leave Australia (and any other country) open to potentially damaging speculative transfers - a very dangerous predicament, especially in these times.

Again, in contrast to most international agreements, which can be cancelled on six months notice, once ratified, signatory states would be bound by the agreement's terms for a full 20 years!! During the first 5 years, unregulated numbers and types of overseas investors could invest and conduct operations free of any 'performance conditions'; then for a further 15 years these already-established investors could continue their condition-free operations. It is not hard to imagine what serious damage might be sustained over this period by countries, such as Australia, under these investment conditions.

We stress these grim possibilities for the MAI not because we are opposed to international investment as such but for two separate reasons. First, because we are conscious of the human and environmental damage which is occurring whenever unscrupulous investors are able to exploit the resources of unsuspecting (often indigenous) people. Secondly, because the MAI fails to require investors to maintain any sort of "performance standards" to cover such conditions as minimal levels of local employment, working conditions (including health and safety standards), conservation of scarce resources, conservation of threatened species and protection of the environment generally.

Significantly, such omission in this agreement is no mere oversight because, as

indicated above, the MAI specifically prohibits the requirement of any performance standards which might detract from an investment's profitability. Here the intention is very clear because "A contracting Party shall not expropriate or nationalize directly or indirectly an investment.....or take any measure or measures having equivalent effectexcept for a purpose which is in the public interest.....accompanied by payment of prompt, adequate and effective compensation." Now since "performance standards" do detract from profitability, they will have an effect "equivalent to expropriation", a situation which would enable investors to invoke the law and have the MAI's proposed "arbitral tribunal" award them "effective compensation".

And of course it is not only the signatory Federal Government which would be liable to pay such compensation, but State and local governments, or indeed any regulatory authorities which, though not themselves signatories to the agreement, would be equally liable. Aside from the fact that, in any case, those ultimately liable to pay are the taxpayers, the even more crucial issue is the loss of democratic control over what is, or is not, permitted in one's own country.

Such loss of democratic control is no trivial matter. Of the many examples that could be cited, we mention just three. One is the very real prospect of total concentration of ownership of our print and electronic media - clearly a vital issue if we wish to retain even a vestige of independent thought and expression. A second relates to the prospect of socially damaging and /or physically hazardous products being foisted onto our markets. There is for example the global expansion of Western tobacco corporations aimed at improving their penetration of world markets. Since disease and death rates from smoking are already very high and rising, we see it as highly inadvisable to have an MAI agreement that would favour further rises and preclude future controls. The final example is the issue of widespread 'land clearing' which, already far advanced in Australia, is still occurring at very high rates over marginal lands in western Queensland and NSW. The realisation of the damage done to habitat and, especially, to top-soil quality through erosion, might result in effective controls and at least partial restoration - but such action could be prevented under the MAI's conditions for foreign ownership.

Finally, a medico-biological analogy which may help to see things in perspective. The idea is that we consider the several billion individuals of our world as comparable to an individual's billions of living cells. We then have to imagine the result of a gradual but progressive deregulation of intercellular relationships with respect to the cells' freedom to consume nutrients, to excrete toxins, to proliferate, and to occupy territory outside their normal confines. If all cells did that simultaneously, the individual would promptly lose recognisable shape, literally disintegrate, and die. Of course, that never happens in such a way. However, it does happen that when certain cells follow such a deregulated course, they form a cellular mass, they literally invade the territories of surrounding normal tissues and even 'metastasise' to distant parts of the body. And all the while such deregulated cells are taking more and more nutrients to themselves so that while the tumour cell mass increases, the body mass declines. Thus the individual wastes away and ultimately dies. Applying the analogy to the the present global economy, we see that 'deregulation' (or inappropriate regulation) has taken us far down a comparable (i.e.,

unjust and unsustainable) road. To go even further down that road, implementing yet further steps towards total deregulation by adopting the MAI before having a radical rethink about its consequences is, ethics aside, simply to 'kill the goose that lays the golden egg' - to act in a thoroughly counter-productive manner

Conclusion

The present MAI proposal, being drafted by finance representatives of but 29 OECD countries - for agreement by all countries, aims to bind all to rules that would ensure great privileges to overseas investors who would, at the same time, have no binding restraints or responsibilities to the people of the host countries. That is not the sort of 'one-way' contract Australia should contemplate signing. Instead we should foster discussion between all countries, say within the UN, in an attempt to arrive at a uniform set of investment laws capable of protecting the environment on which we all depend, of providing greater equity and justice for all and thus helping to guarantee a more sustainable and peaceful world.

MAPW would appreciate an opportunity to appear before the Committee at one of its Hearings

Ian Buckley,
ACT Coordinator,
for MAPW (Australia)

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