

## Continentalism from Below: Variations in Tri-National Mobilization among Labour Unions, Environmental Organizations, and Indigenous Peoples

*It would be difficult to imagine a more elite-driven process than the negotiation and implementation of the North American Free Trade Agreement (NAFTA). Like all social processes, however, NAFTA has encouraged the emergence of contradictory and potentially powerful forces outside the control or expectations of any elite group. The authors believe the value of studying this dynamic lies in understanding how the agreement has served to increase the capacities of the counter-movement to neo-liberal economic integration, as this agenda expands to the hemispheric and global arenas. The alternative think tanks which grew out of the free trade debates, for example, continue to produce reports on the social and environmental costs of NAFTA to strengthen their case against further trade liberalization. Similarly, the anti-NAFTA lobbying and mobilization coalitions have developed post-NAFTA to deal with these costs and to generalize lessons and tactics for application in present struggles.*

*The following paper analyses the effects of NAFTA on three North American socio-political actors: organized labour, the environmental movement and Indigenous communities. The authors were each tasked with analyzing the role of NAFTA in generating the emergence of a continental "governance from below" within their respective sectors. Indeed, NAFTA dealt with and affected each group in markedly different ways, allowing for few overarching conclusions to be drawn. Due to the specific effects of North American free trade on labour, environmental and Indigenous communities, actors representing these constituencies have assumed varying levels of involvement in these structures of contestation. While often sharing a common opposition to trade liberalization, the disparate programmatic reactions of these groups also reflects their differing ideological perspectives, organizational structures and social capacities. The thesis of the emergence of a North American "governance from below" must therefore be strictly qualified.*

Karl Polanyi argued in his *The Great Transformation* that the creation of a liberalized market economy in the nineteenth century induced the creation of a 'double movement' that pressed government to reduce the insecurities occasioned by free trade. Applying this logic to a liberalized North America would lead to the prediction of the emergence of a similar counter-movement that sees its principal function in lobbying government for the inclusion of social clauses in free trade deals along with such damage-control measures as trade adjustment assistance. While this has certainly occurred, the unwillingness of North American governments to adequately address the concerns of the popular sector, combined with the related ineffectiveness of NAFTA's formal governance structures, has encouraged a rather distinct double movement that recognizes the limitations of state-mediated strategies and hence the importance of exercising independent governance from below. Labour unions have moved farthest in this direction: under NAFTA, cross-border solidarity has increasingly become an effective tactic to leverage labour's declining governing power in society and the workplace. The environmental mobilization was marked by deep ideological cleavages, whereby the large-scale endorsement of the agreement fragmented their role in governance from below. Indigenous communities have perhaps moved the towards governance from below, reflecting divergent concerns that have less connection to the specific workings of NAFTA.

### *Labour*

Eight years of NAFTA have confirmed the fears of Canadian and American unionists that the deal would bring damaging competitive pressures to bear on their memberships, and has strengthened their resolve to oppose future trade liberalization agreements. More telling, however, has been the reversal of the Mexican labour movement's early acceptance of NAFTA. While Canadian and American unions unanimously rejected the agreement, including the labour side accord, the Mexican state effectively secured broad union support for the agreement, with the expectation of job and wage gains and the implementation of an effective labour enforcement mechanism.

Contrary to the tenor of the NAFTA debate in the North, which implicitly assumed Mexican workers would gain at the expense of Canadian and American workers, Mexican labour has fared the worst of the three under the agreement. This “lose-lose-lose” scenario, combined with the manifest failure of the North American Agreement on Labour Cooperation (NAALC) to protect workers’ rights, has served to promote a common, continental rejection of future trade liberalization among labour unions.

The destructive impacts of the agreement on labour and the coalescing of a common opposition to the project is thus only the story, however; completely unintentionally, NAFTA has introduced a creative-destructive process that, in many ways, has revitalized the North American labour movement. Not only did NAFTA initiate downward pressures on wages and working conditions, encourage the ongoing restructuring of national employment patterns and restrict the bargaining position of organized labour, but these developments themselves have forced dramatic re-assessments within the Canadian, American and Mexican labour movements. Most significantly, NAFTA has brought the issue of continental labour cooperation to the fore of labour union strategy, not as a well-meaning moral duty or empty political slogan, but as a necessary and concrete tactic in the neo-liberal era of the regionalized production system.

Many observers of labour union response to trade liberalization have put forward the contrary thesis: that free trade pits protectionist workers in the North against workers in the global South, the latter demanding the elimination of tariffs and voicing suspicions of the motivations behind social rights clauses advocated by their northern brothers and sisters. While it is commonly understood that free trade agreements increase competitive pressures in an expanded labour market, various interpretations are drawn from this fact. The dominant view, embracing a surprisingly wide range of analytical frameworks, emphasizes the cross-border conflict that this competition engenders between national working classes. Bob Milward argues, from a “Marxian perspective”, that labour unions “are in direct competition for the jobs of their members with the workers in underdeveloped economies and therefore, there appears to be no coincidence of

interest.”<sup>1</sup> Liberals also have argued that workers cannot bridge the North-South divide because, as Sylvia Ostry argues, “they are competing, and in southern countries their governments are competing ferociously for foreign investment.”<sup>2</sup> Others have emphasized cultural and linguistic cleavages as well as the enormous asymmetry of living conditions between the North and the South as barriers to cooperation.<sup>3</sup> Antonio Negri, an intellectual linked to the explicitly internationalist anti-corporate globalization movement, has even declared the definitive end of working class internationalism.<sup>4</sup>

The acceptance of this thesis arises out of a conceptual confusion over the effects of labour competition and the role of labour unions in this dynamic. As this confusion extends to decision-makers and activists in labour movements, the thesis becomes self-fulfilling and defenders of this understanding of labour competition are able to rely on some empirical validation in its support. Canadian unions garnered little support from their American counterparts in opposing the Canada-United States Free Trade Agreement (CUFTA), and the AFL-CIO in turn received no support from the main Mexican labour union federation and long time ally, the CTM, in challenging NAFTA. Since the passage of NAFTA, American unions such as the Teamsters have fought for and won protectionist measures, often couched in chauvinistic terms, against industries and workers in underdeveloped countries.<sup>5</sup> Most recently, the American Steelworkers (USWA) have concentrated their legislative efforts on the passage of the Steel Revitalization Act, which would impose tariffs on foreign steel, including Mexican producers.<sup>6</sup>

This “impossibility thesis” of labour cooperation relies on a view of labour unions that sees them as simple economic interest groups that defend the competitive interests of

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1 Milward, Bob. “On the Consequences for the Empowerment of Labour in the Era of Globalization: a Marxian Perspective.” Manuscript, 2000. p16.

2 Ostry, Silvia. “A Clarion Call to Whatever.” *Literary Review of Canada* 9 no. 6 (Summer 2001): 6.

3 Carr, Barry. “Globalization from Below: Labour Internationalism Under NAFTA.” *International Social Science Journal* 51 no. 1 (March 1999): 52.

4 Negri, Antonio. *Empire*. Boston: Harvard University Press, 2000.

5 Moody, Kim. “NAFTA and the Corporate Redesign of North America.” *Latin American Perspectives*. 22 no. 1 (Winter 1995): 95.

6 Gary Hubbard, USWA’s political affairs director denies, however, that these protectionist measures have caused a rift in their close relations with Mexican unions. In interview, April 2002.

their members in the labour market.<sup>7</sup> Rather, workers formed unions to withdraw the price and conditions of their labour from market competition, first within a specific trade, and then along industrial lines. As there is no qualitative difference between competition among workers in a factory, and competition between workers in production systems spanning borders, it is logical to expect labour unions will play catch up with the market as it expands internationally. Unionized workers naturally support the unionization of other workers, as this strengthens their bargaining power by reducing the threat posed to their living standards by cheaper, non-union labour. Unions are thus not competitive agents, but anti-competitive agents.<sup>8</sup> As such, labour unions resist attempts to enlarge and de-regulate labour markets. In circumstances where such resistance has failed, however, they continue to support the organization of workers in the new, larger market, with the consistent goal of removing labour from competition.

NAFTA has powerfully underscored this logic; the staggering wage differentials across the North-South divide in continentalized production systems are largely the product of the weak bargaining position of Mexican workers who are compromised by corrupt unions and persistent labour rights violations. Since NAFTA, it has become the immediate preoccupation of American and Canadian labour unions to address this situation, if only to protect their own members' interests from a "race to the bottom" in working conditions and living standards. Paradoxically, by the very logic of neo-liberal integration, Canadian and American unions are driven, in defending their own members' interests, to fight for the interests of Mexican workers as well. Thus, far from exposing a rift between Northern and Southern unions, NAFTA has in fact revealed the necessity of continental labour cooperation.<sup>9</sup> This thesis is evaluated below through an examination of NAFTA's effects on country-specific working classes and the development of labour's

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<sup>7</sup> This conception was first expounded by John R. Commons, founder of the Wisconsin school of trade union theory. see Larson, Simeon, and Bruce Nissen. *Theories of the Labour Movement*. Detroit: Wayne State University Press, 1987. p. 132.

<sup>8</sup> Sam Gindin, former research director at the CAW, argues that union strategies based on "competitiveness" are self-defeating: "Competitiveness can't address working class needs because even from the most narrow perspective, there will always be someone else to take your job once you play the game that way. . . competitiveness ultimately translates into workers competing against each other [thus lowering wages, working conditions, etc.] "Internationalism Beyond Slogans: Concretizing Working Class Solidarity" presented to the International Research Network on Autowork in the Americas, Hamilton, November 9-10, 20001.

<sup>9</sup> This argument is presented in Ian Thomas MacDonald, "NAFTA and the Emergence of Continental Labour Cooperation," in the *American Review of Canadian Studies*, forthcoming.

reaction to this impact.

### *The Impact of NAFTA on North American Working Classes*

The negative effects of the strictly economic workings of NAFTA on North American working classes have been relatively uneven, reflecting both nationally specific labour market conditions and the disproportionate shift in investment flows occasioned by the agreement.<sup>10</sup> As NAFTA has had a minimal impact on the redirection of Canadian foreign investment and trade towards Mexico compared with the shift in the United States, American workers have suffered higher levels of NAFTA-related job and wage loss than Canadian workers. Though a low Canadian dollar has to some extent mitigated the effects of tariff-reduction and investment re-direction on job loss, an Industry Canada report established that, due to free trade, “imports are displacing relatively more jobs than exports are adding.”<sup>11</sup> Daniel Schwanen’s study for the CD Howe Institute reveals that workers in industries where imports have been expanding due to trade have seen significant wage losses, while wages in industries where both exports and imports have expanded due to trade have remained stagnant at 1983 levels.<sup>12</sup> In the United States, the Economic Policy Institute has argued that NAFTA eliminated 766,030 actual and potential U.S. jobs between 1994 and 2000.<sup>13</sup> Mishel, Bernstein and Schmitt have established in an exhaustive study of the American labour market that increased U.S. trade “has been an important factor in both slowing the growth rate of average wages and reducing the wage levels of workers with less than a college degree.”<sup>14</sup> In Mexico, wages in the manufacturing sector have fallen by 10%, while real minimum wages have fallen

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10 Canada-Mexico trade, while it has doubled in volume since NAFTA, remains at a modest 3% of Canada-US trade. Jackson, Andrew. “Impacts of the Free Trade Agreement and the North American Free Trade Agreement on Canadian Labour Markets and Labour and Social Standards. CLC research paper, November 20, 1997. US imports from Mexico, in contrast, have increased by 240% since NAFTA, creating a \$24.2 billion trade deficit. “NAFTA’s Seven year Itch,” AFL-CIO research paper, 2000.

11 Dungan, Peter, and Steve Murphy. “The Changing Industry and Skill Mix of Canada’s International Trade.” in *Perspectives on North American Free Trade*. Ottawa: Industry Canada, 1999. p98

12 Schwanen, Daniel. “Trading Up: The Impact of Increased Continental Integration on Trade, Investments and Jobs in Canada,” *C.D. Howe Institute Commentary* no. 89: 172.

13 Scott, Robert E. “NAFTA’s Hidden Costs.” *NAFTA at Seven*. Economic Policy Institute.

<http://www.epinet.org/>

14 Mishel, Lawrence, Jared Bernstein and John Schmitt. *The State of Working America*. New York: Economic Policy Institute, 2000. p172.

by 24.8% since 1994.<sup>15</sup> Though productivity levels in Mexican manufacturing have actually surpassed Canadian and American levels under NAFTA, wages have failed to keep pace due to Mexico's compromised, official unions, which keep wages low in concert with the government's macro-economic strategies. Both the powerful telephone workers' union, the STRM, and the main, pro-NAFTA union central, the CTM, have concluded that the agreement has produced neither wage nor job gains for Mexican workers.<sup>16</sup> The smaller, independent FAT central claims NAFTA has eliminated 1, 000, 000 jobs, apart from the post-NAFTA Mexican economy's inability to provide the necessary 1, 300, 000 jobs for young people entering the workforce.<sup>17</sup>

Arguably, the most devastating impact of NAFTA on the Canadian and American working classes has been a pronounced increase in capital mobility, encouraged by tariff elimination and the constitutionalization of property rights. The ability of corporations to shift production and investment to Mexico, where wages are low, labour rights are ignored and workers in the maquiladora sector are controlled by *charro*, or corrupt, unions, has significantly undermined the bargaining position of Canadian and American labour. In a NAALC-commissioned study, Kate Bronfenbrenner found that, when confronted by a unionization drive, 50% of corporations threatened to re-locate to Mexico, while 12% followed through on their threat once a union was successfully formed.<sup>18</sup> A strong correlation of this phenomenon to NAFTA can be made as the 15 percent post-1994 relocation rate is triple its pre-NAFTA level.<sup>19</sup>

### *The Labour Side Agreement and the Failure of "Governance from Above"*

The North American Agreement on Labour Cooperation (NAALC) was intended to meet labour union fears that NAFTA would lead to these erosions of working conditions. As the NAALC fails, however, to establish any common minimum standards

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15 Bensusan, p. 5.

16 in interview with Salvador Medina, International Affairs Director with the CTM, February 2002, and Eduardo Torres, editor of the STRM's publication, *Restaurador*, February 2002.

17 in interview with Antonio Villalba, International Affairs Director at the FAT, February 2002.

18 Bronfenbrenner, Kate. "We'll close! Plant closings, plant-closing threats, union organizing and NAFTA." *Multinational Monitor* 18 no.3 (March 1997): 8.

19 *ibid.*

and lacks a sanctions-based mechanism to enforce core labour union rights, Canadian and American unions rejected the agreement out of hand.<sup>20</sup> The Canadian Autoworkers (CAW) has refused to have anything to do with the institution,<sup>21</sup> while the Canadian division of the United Steelworkers has concluded, based on their experience of filing a complaint, that the process is a “resource intensive dead end.”<sup>22</sup> The United Electrical Workers (UE) filed the first complaint under the agreement in part to expose its ineffectiveness.<sup>23</sup> The CTM likewise rejected the agreement, although out of fears that it would actually succeed in enforcing Mexico’s progressive labour legislation and therefore undermine the federation’s corporatist privileges. Support for the agreement was thus confined to Mexico’s independent unions, which welcomed the agreement as an opportunity to “unmask the democratic face Mexico presents to the world.”<sup>24</sup>

Critics of the process have nevertheless noted one positive, if unintended, effect of the NAALC.<sup>25</sup> Due to the requirement that a labour rights violation be trade-related, a complaint against a government must be filed with that government’s NAFTA partner. The process may therefore have favoured the establishment of cross-border alliances of interested parties.<sup>26</sup> Notwithstanding their criticisms of the agreement, unions across the continent have indeed shown a willingness to use the process politically as a means of publicizing labour rights abuses. The first cases pursued by the FAT and the UE were followed by increasingly sophisticated complaints filed by large coalitions involving the main Canadian and American labour federations, independent Mexican unions and labour rights non-governmental organizations. The role of the NAALC in fostering tri-national and cross-sectoral linkages, however, can not be divorced from the actual inability of the structure to secure fundamental labour rights. Although recognizing the flawed nature of the process, the current director of the NAALC secretariat claims that governments do

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20 in interview with Sheila Katz, National Representative, CLC, February, 2002, and with Thea Lee, International Affairs Director, AFL-CIO, April, 2002.

21 in interview with Jim Stanford, economist with the CAW, February 2002.

22 in interview with Mark Rawlinson, lawyer with the Canadian Steelworkers, January 2002.

23 in interview with Chris Townsend, Political Action Director, UE, April 2002.

24 In interview with Antonio Villalba, FAT, February 2002.

25 see Rosen, Fred. “The Underside of NAFTA: A Budding Cross-Border Resistance.” *NACLA Report on the Americas* 32 no. 4 (Jan/Feb 1999).

26 Graubert, Jonathan. “Emergent Soft Law Channels For Mobilisation Under Globalization: How Activists Exploit Labour and Environmental Side Agreements.” (paper presented to the Envireform conference, Toronto, 2000). p. 3.

fear the ability of unions to use the agreement as a vehicle to denounce labour rights violations, and calls on unions to “triple or quadruple” the number of claims filed.<sup>27</sup> From a high-point of ten complaints filed in 1998, however, the case load has dropped off dramatically, with one filed in 2000, two in 2001 and none in 2002 as of May. Due to the limited outcomes of the process and the high costs of filing complaints, unions have become increasingly reluctant to participate. Whereas the UE and the FAT are still open to the possibility of filing further cases, arguing that the institution remains the best means available of condemning labour rights violations, the CLC and the AFL-CIO are currently re-evaluating their continued participation.<sup>28</sup>

### *Labour’s Reaction: Continental “Governance from Below”?*

Consistent with their views on the effectiveness of the NAALC, Canadian unionists have been more likely to downplay the significance of the agreement in promoting international links, while independent Mexican unions have often used the NAALC process as the focal-point of international strategies. Clearly, more significant in promoting continental union cooperation has been the increased competitive pressures occasioned by NAFTA itself. These pressures would have led to the elaboration of cooperative strategies even in the absence of formal governance structures. The legacy of the NAALC lies, rather, in the further promotion of continental contestation by revealing the antithetical nature of tying labour rights clauses to free trade deals. In its forthcoming policy paper on the matter, the CLC will express its opposition to future trade liberalization, with or without social clauses.<sup>29</sup> Thus not only has their experience of the NAALC hardened union attitudes towards neo-liberal globalization, it has also left concrete, autonomous international struggle, “governance from below,” as their only viable alternative.

The NAFTA-related emergence of tri-national cooperation among labour unions

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27 in interview with Anthony Giles, director of NAALC’s Commission for Labor Cooperation, April 2002.

28 in interview with Tim Beaty, International Affairs (Mexico) AFL-CIO, April, 2002, and Sheila Katz, CLC.

29 Sheila Katz, CLC.

has taken several forms, ranging from broad educational and mobilization coalitions to industry-based alliances to confront common employers. Typically, the broad coalitions that were formed to oppose the signing of the agreement fostered links between unions that later matured into formal agreements to cooperate in collective bargaining and organizing campaigns. The process is best exemplified by the activity of the Mexican Action Network on Free Trade (RMALC), formed by the independent FAT Mexican union federation in 1991.<sup>30</sup> Federations like the FAT and the National Workers' Union (UNT) were concerned that the agreement would lock-in neo-liberal policies, entrench corporate power, and impact adversely on their memberships. The network included other unions and union federations, labour representatives from left of centre parties including the Party of the Democratic Revolution (PRD), peasant organizations, indigenous groups, environmentalists, and women's organizations.<sup>31</sup>

RMALC conferences established contacts between Canadian and American unions and the FAT, which, before the threat of NAFTA, had experienced difficulty in interesting Northern unions in tri-national cooperation. The UE had lost 10,000 manufacturing jobs to Mexico during the 1980s and thus decided to conclude an alliance with the FAT to bargain collectively with common employers.<sup>32</sup> An RMALC statement argued that "the best way to defend jobs in the United States is to work together to elevate the level of salaries and workplace and environmental conditions in Mexico."<sup>33</sup> A UE statement concurred, predicting that "if we succeed [in building an international labour movement] workers will be able to unite in their demands for decent wages and working conditions on both sides of the border."<sup>34</sup> By 1992, the first targets of their "Strategic Organising Alliance" were American-owned *maquiladora* plants along the Mexican-American border, including attempts to organize workers at a GE plant in Ciudad Juarez and a Honeywell plant in Chihuahua.<sup>35</sup> The alliance brought a complaint against the American NAO when employers reacted to the drive by firing pro-union workers. As the victorious ruling failed to reinstate the illegally fired workers, the

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30 Hathaway, Dale. *Allies Across the Border*. Cambridge, MA: South End Press, 2000. p. 173.

31 *ibid.*

32 Carr, p. 53.

33 Hathaway, p. 176.

34 *ibid.*

35 Chris Townsend, UE.

alliance shifted its focus to other sectors where the FAT had a stronger base, and established a union school (CETLAC), which works to “conscientize” *maquiladora* workers.<sup>36</sup>

While on the margins of their countries’ labour movements, the more independent and ideological FAT and UE have exercised a role out of all proportion to their relatively small memberships. As with their leading role in initiating NAALC complaints, these unions have established a model that has been emulated to some extent by the mainstream labour movement. The UE was instrumental, for example, in forming the tri-national Dana alliance. Formerly the Echlin alliance, the ten-union agreement to cooperate in collective bargaining brought together the Teamsters, UNITE, the United Paperworkers, the U.S. and Canadian Steelworkers, the United Autoworkers (UAW), the Canadian Autoworkers (CAW), the International Association of Machinists (IAM) and the FAT.

Within the broader labour movement, NAFTA has also led to the inclusion of the Telecommunications Union of Mexico (STRM) into an alliance between the Communications Workers of America (CWA) and the Communications, Energy, and Paperworkers of Canada (CEP). The original bi-national alliance was reached after the signing of CUFTA and the relocation and anti-union activities of Nortel.<sup>37</sup> Under the agreement, the STRM was asked to send organizers to a Sprint call centre in San Francisco, where most of the workers were Mexican-American. The organizing drive was successful, but Sprint closed the plant before a contract was signed. The communications alliance filed a complaint under NAALC in 1995, alleging the violation of the right to association. The complaint was successful and ministerial consultations followed which commissioned a report on NAFTA-related plant closings, cited above. Nevertheless, the alliance was disappointed with the outcome of the proceeding and will focus more energy in the future on autonomous strategies.<sup>38</sup> The explicit goal of the communications alliance is wage parity, on the principle of equal pay for work of equal value. Examples of proposals for concrete cooperative tactics include Canadian and

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36 Carr, p. 53.

37 *ibid.*

38 Eduardo Torres, STRM.

American unions putting pressure on employers with satellite operations in Mexico not to sign agreements with the CTM.<sup>39</sup> The STRM can also learn how to deal with the pressures of technology and productivity changes which Canadian and American unions are more likely to deal with first in their collective bargaining. More broadly, international labour cooperation in the telecom sector can lead to a common understanding of global and regional challenges, including the elaboration of a unified approach to resistance. The participation of a large delegation of the STRM in the Porto Alegre Social Forum has been key in formulating the union's opposition to the proposed FTAA, for instance. As Eduardo Torres, editor of the union's publication argues, the STRM "continues to believe in the old idea of international unionism as a way to confront capitalist globalization."<sup>40</sup>

At the level of the main union federations, NAFTA has led to a considerable shift in the AFL-CIO's foreign policy. Since the traditional ally of the American labour movement in Mexico, the CTM, promoted NAFTA and has shown little willingness to fight for wage gains, the AFL-CIO has moved to the entire Mexican labour movement, including the more radical FAT. This represents a significant change for the federation, as until NAFTA it had completely ignored FAT overtures to cooperation. Though the CLC has never had close ties with the CTM, except for an uncomfortable relationship through the International Confederation of Free Trade Unions, Mexican labour leaders have noticed an increased willingness in the Canadian union movement to cooperate with Mexican independent unions. Indeed, Antonio Villalba of the FAT considers the shift in the international perspectives of the AFL-CIO and the CLC as the most felicitous outcome of NAFTA.

### *The Environment*

The environment and liberalized trade are inextricably connected in terms of expanded production and consumption, energy expenditures and the re-conceptualization

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39 *ibid.*

40 *ibid.*

of standards and regulations. When examining these links and the contentious politics they have inspired, it must be emphasized that environmentalism holds as many ideological sects as does religion, resulting in vastly different perceptions of what constitutes adequate environmental protection. Secondly, an aggregation of the environmental effects of NAFTA cannot adequately account for differing regional and organizational reactions. This being said, there are fundamental ecological impacts of liberalized trade that present a profound challenge to the present development model. According to the degree to which this is understood by environmental organizations (ENGOs), NAFTA has served to promote their mobilization under the agreement.

While many environmentalists recognize the potential of private voluntary standards, they consistently emphasize the importance of environmental regulations and enforcement. The NAFTA places these two essential measures in jeopardy. Perhaps the most well-known example of this is the first Chapter 11 case launched by US Ethyl Corporation against the Canadian Government's ban on the gasoline additive MMT, a known nerve toxin.

It is not only that half of all Chapter 11 panels have concerned 'objectionable' environmental regulations, rather it is the more general consequence of blurring the line between legitimate environmental standards and legislations and "unfair barriers to trade." This ambiguity is compounded by the inability to refuse market entry based on environmentally unsound production methods of foreign goods. While the language of Chapter 11's Article 1114 does prohibit a country from deregulating environmental standards in the name of competition, the real working of the agreement has resulted in a climate where environmental standards are subject to competitive deregulation as firms are forced to compete with those who are not obliged to internalize environmental costs.

The phenomenon of competitive deregulation is often dismissed by trade advocates on the basis of empirical studies showing that environmental abatement costs usually constitute only a small fraction of production costs and therefore environmental standards should not be a significant drag on the price competitiveness of industries.<sup>41</sup>

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41 Grossman, G.M. and Krueger, A.B., 'Environmental Impacts of a North American Free Trade Agreement,' National Bureau of Economic Research Working Paper Series, 1991, No. 3914

Despite studies showing otherwise, environmentalists point out that producers and governments still perceive environmental regulation as detrimental to success in international markets and the discourse of international competition is widely used to justify a slashing of standards and lax enforcement.<sup>42</sup>

Rugman and Soloway outline two ways by which environmental regulations can be conceived (and thus attacked) as shelter based: 1) by imposing discriminatory policies against foreign imports as part of the environmental regulation 2) by enforcing product standards that either completely restrict or place a significantly higher cost burden on foreign producers.<sup>43</sup> With regards to the first point, the logic that an environmental regulation must be applicable to all equally or else it is discriminatory can be countered by its logical inverse: if environmental regulations constitute a disadvantage for firms, then lax or non-existent environmental regulations confer an advantage. Weak environmental regulations could be considered the equivalent of illegal government subsidies to domestic firms because they can adopt processes drawing more heavily on the natural environment and can externalize costs in ways unavailable to those complying with environmental laws.

With regards to the second criteria, because a regulation places a significantly higher cost burden on a foreign producer, this does not mean that the regulation does not serve a legitimate purpose. Rather, the cost of entering the market is a reflection of local physical realities as a cost of doing business. Attempting to tailor one's market to meet the conditions of every exporter will entail a radical restructuring of regulations. This could be avoided if open, negotiated harmonization occurred (as in the EU), however central to the environmental platform of the NAFTA and its side agreement is the enforcement of national laws, not harmonization.

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42 This point is addressed in Juillet, Luc. "Regional Models of Environmental Governance in the Context of Market Integration." Centre on Governance, University of Ottawa. Paper to be published in Edward O. Parsons, ed., *Governing the Environment: Trends and Challenges*, Toronto, University of Toronto Press, 2000.

<http://www.governance.uottawa.ca/english/Publications/Juillet/Regional%20models%20of%20environmental%20governance.pdf>

43 Ibid. 67

*The Environmental Side Agreement and the Failure of “Governance from Above”*

As with the NAALC, the North American Agreement on Environmental Cooperation (NAAEC) was appended to NAFTA to secure U.S. Congressional approval. In keeping with its emphasis on regulation and enforcement, the environmental lobby sought a side agreement with strong enforcement and watchdog capacities from the outset. Unfortunately, even with a much larger budget, the side-agreement “does not have the legal or political power to deal with the core environmental issues of the trade agreement.”<sup>44</sup>

The NAAEC’s institutional structure is dominated by the three member states, “rendering it dependent on the support of its member governments, and correspondingly limiting its ability to deliver on the wide range of functions promised in its Charter.”<sup>45</sup> To date, thirty-one citizen submissions have been filed, while only three were deemed worthy of action and have proceeded through the submission process. Far from enacting powerful trade sanctions which would potentially inspire some remedial action, the NAAEC commission prepares ‘factual records’ which can only be issued with 2/3 of the Council members support. Provisions for dispute settlement do exist, but neither the Canadian nor Mexican governments agreed to the terms of enforcement. Canada managed to avoid the issue by arguing that since much of our environmental jurisdiction is provincial, violations could be reprimanded internally at the Federal level.<sup>46</sup> Mexico agreed that a case brought against it would result in a monetary fine imposed by an arbitration panel. One of Canada’s NAFTA negotiators argued that trade sanctions were “overkill, dangerous for the US and Mexico and totally unacceptable for Canada. The US Democratic party felt it was the necessary “red meat” to feed the protectionist US Congress.”<sup>47</sup>

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44 Seligman, Dan. US Sierra Club Senior Trade Fellow. Quoted in John Foster

45 Mumme, Stephen P. and Pamela Duncan. ‘The Commission on Environmental Cooperation and the U.S. Mexico Border Environment.’ *Journal of Environment and Development*, Vol.5., No.2, June, 1996.pg 201

46 The question of environmental jurisdiction in Canada has proven highly problematic, the Canadian government arguing that seeing as natural resources are provincial, it cannot be expected to fulfill international environmental commitments even if they were committed to Federally. See Kibel, Stanton. *The Earth on Trial: Environmental Law on the International Stage*. New York: Routledge, 1999.

47 Hard Choices Soft Law: Combining Trade, Environment and Social Cohesion in Global Governance. Munk Centre for International Studies. November 8-9, 2001. Taken verbatim from video tape of his speech available at <http://www.envireform.utoronto.ca/>

The NAAEC has proven effective, on the other hand, at producing critical literature, including a recent report that received widespread media attention.<sup>48</sup> The contrasts between the NAAEC and NAFTA itself, however, are striking. Under Chapter 11, a corporation can directly attack a government for enacting an ‘unfair’ environmental legislation in an arena where the arbiters are partly appointed by the parties themselves, resulting in the revocation of national laws and large financial settlements. Under the side agreement, the public/ENGO can only complain about the government to the government, and if they agree they have been violating their own laws persistently, the odd ‘factual submission’ may result.

That this agreement is unable to address the core environmental issues of the environment and trade nexus is evident. A recent study by the Washington-based Institute for International Economics explains that in the view of most public interest groups “the trip to the CEC will not generate enough pressure to justify the investment of time and energy required. Basically the provisions are designed to be dormant.”<sup>49</sup>

#### *ENGO Reaction: Governance from Below?*

The tri-national dimension of the anti-NAFTA fight comprised alliances whose actions took a variety of forms, including site visits, educational tours and workshops, meetings attended by tri-national representatives, regular communication and information exchange, joint political strategizing, solidarity campaigns around specific struggles and pressuring of government officials.<sup>50</sup> Linkages and collaborations with key Democratic Congressional Offices and tri-national citizens presentations at Congressional Committees and lobbying in the hall of the Senate and the House developed in 1992 and 1993. On the eve of the vote “corporate lobbyists celebrated under chandeliers, while Ralph Nader, Jesse Jackson and a diverse group of US organizational representative and allies from Mexico and Canada rallied in the rain outside.”<sup>51</sup> This resulted in US

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48 “The North American Mosaic: A State of the Environment Report”

49 qtd in John Foster NAFTA at Seven: issues in play. See: <http://www.iie.com/catalog/wp/1998/98-4.htm>

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51 See John Foster pg 6

ENGO's taking on a much more prominent role in the NAFTA fight, even given the tri-national coalition building, leading to the first characteristic of the continental environmental mobilization.

It is important to recognise that the new tri-national arena created by the NAFTA process has not remained stagnant over the last eight years. Rather, it has expanded to include Central and South America in face of the impending FTAA. Social movements require political space where they feel that their oftentimes meagre resources are best allocated to achieve real change. Consequently, the environmental community has not devoted excessive amounts of resources dwelling on a painful and divisive loss that is almost a decade old. The exception to this is that of the Chapter 11 investor-state disputes where there has been a push from the environmental community to clarify the definition of "expropriation" given that half of all chapter 11 panels are attacking environmental regulations. As a trade lawyer for the WWF recently articulated, NAFTA is distinguishable from other trade deals mainly by the Chapter 11 investor state clause. Indeed, even the CEC has trouble isolating the specific effects of NAFTA's deregulation of the electricity market from that of liberalized trade more generally, and recently replaced the word 'NAFTA' for the more accurate 'liberalized trade' in a recent report.

Nevertheless, the host of robust transnational civil society linkages and coalitions remains a tangible legacy of the heated NAFTA debates. Many of the networks that emerged from the NAFTA fight now embrace South and Central America and organizations such as RMALC, the ART and Common Frontiers and have all expanded their mandates. There has also been a flurry of new organizational activity as embodied in the "Hemispheric Social Alliance" and "Peoples Global Action" which, while opposed to both the FTAA and the NAFTA, stress neo-liberal economic agendas as their main target. It becomes difficult to differentiate ENGO opposition to the NAFTA from ENGO opposition to neo-liberal interpretations of sustainable development and liberal environmentalism more generally.

While the potential for government-independent pressures such as voluntary agreements has been largely embraced, consistent across various environmental sects is

the importance of regulations and enforcement. To return to the definition provided by McCarney, Halfani and Rodriguez, governance can be construed as “the *relationship* between civil society and the state, between rulers and the ruled, the government and the governed.” This stormy relationship has thus far been revealed as polygamous, opportunistic, and mired in religious differences, a highly problematic union indeed. It is polygamous insofar as it can be characterized by its cross-sectoral coalition building, necessary to counter the powerful and intimate state/industry teams such as the US\*NAFTA. The anti-NAFTA movement, and now the anti-FTAA movement, appears to be most strongly represented by the cross-sectoral umbrella organizations; indeed this diversity can be argued to be one of the strongest facets of the movement. This calls into question the cogency of isolating environmental governance as a separate phenomenon, wrenching it from the umbrella coalitions that constitute the central agents in free trade debates.

The division in the US environmental community with the pro-NAFTA alliance fragmenting the environmental voice, succeeded to some extent in appeasing the consciences of the environmentally minded public. In order to align themselves within umbrella coalitions, ENGOs must be responsive to the environmental justice critique and also receptive to the democratic deficit critique of the less recognized members. In terms of Polanyi’s double movement, it can be argued that as soon as ENGOs agree to sit at the negotiation table, they are crossing the proverbial line from one social ‘push’ to another. These deep divisions result in a fragmented governance relationship.

It is likewise problematical to isolate environmental organizations that work exclusively within Canada, the US and Mexico. The small number of ENGO’s which deal with trade (i.e. World Wildlife Fund, Friends of the Earth, the Sierra Club, etc.) tend not to stop at the continental level, but rather are inter-continental in scope. The Sierra Club, perhaps the most active in Canada and the US, is also working in South and Central America, not only Mexico. In addition, most of the transnational ENGO contact remains concentrated on localized border issues such as acid rain or air pollution, which although global in scope, are primarily felt at a local level. When asked whether or not he considered there to be a North American environmental reality, John Audley of the

Sierra Club cautioned that this was a large overstatement. As such, the exclusively tri-national North American dimension of environmental governance from below is revealed as problematic.

This is indicative of the evolutionary nature of environmental governance from below. What began as an environmental reaction to the common enemy NAFTA, has since reacted to new environmental affronts as embodied in the FTAA and new WTO rounds, searching out new political space where change can be made. Furthermore, it has become difficult to isolate the environmental effects of the NAFTA from those of the overarching narrative of neoliberalism and its brethren agreements more generally, as the mantra of deregulation is adopted at all levels.

The emergence of North American environmental governance-from below must therefore be heavily qualified. Firstly, the evolutionary and reactive nature of the mobilization calls into question the exclusively tri-national dimension of the work of these groups. Secondly, its cross-sectoral nature calls into question the cogency of isolating the issue of the environment from the umbrella coalitions who constitute the main anti-trade actors. Thirdly, the deep ideological cleavages among the environmental community call into question the from-below, grassroots nature of a large number of the environmental groups. Indeed, these groups' approval of NAFTA helped secure passage of the agreement.

### *Indigenous Peoples*

Indigenous organizing has occurred in a multi-level, multinational setting for decades, as illustrated by the persistence of groups like the American Indian Movement (AIM) and the Warrior's Society. While Indigenous movements have challenged neoliberal economic policies and structures such as the NAFTA, they have done so within an Indigenous analysis that places emphasis on colonization.<sup>52</sup> This difference in

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<sup>52</sup> Ward Churchill, a Keetoowah Cherokee AIM activist and professor at University of Colorado/Boulder, speaking on January 17, 2002 in Toronto, stressed the need for all activists, Indigenous or otherwise, to address issues of colonization in order to effectively combat global trade structures.

emphasis changes the expectations one would have of continental governance from below developing as a result of the NAFTA, as it speaks to a specifically Indigenous focus activists hold as compared to labour or environmental actors.<sup>53</sup> Indigenous struggle seeks to replace colonial systems and influences in communities, and is both a far more local and international process than a strictly continental response to NAFTA.

Linkages between Indigenous Nations and organizations are certainly in evidence throughout North America, though these have yet to develop into anything that can be described as a form of continental governance. Despite the obvious effects NAFTA has had on Indigenous Peoples, the weak institutional frameworks within the agreement has induced a cooperative dynamic that has fallen well short of continental governance. It would be disingenuous to claim, however, that the weak institutional framework dealing with Indigenous Peoples in the NAFTA is the only cause of an underdeveloped Indigenous continental governance. Just as Indigenous analysis of the NAFTA differs from that of other sectors' understandings of the agreement, so too do the goals and aims of Indigenous Peoples differ from mainstream activists. State actors maintain the ability to exert control far greater than any international institution or multi-lateral agreement over Indigenous Peoples, and Indigenous activists must therefore direct their tactics towards this power.

The dispute that has unfolded at Esgenoopotij<sup>54</sup> since the fall of 1999 and the Supreme Court of Canada's *Marshall* decisions is indicative of the more immediate needs of Indigenous communities. To the Canadian government, the dispute over the Mi'kmaq lobster fishery was construed in terms of conservation and economics.<sup>55</sup> To the Mi'kmaq,

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53 Anishinaabe activist Rebeka Tabobondung expresses this when she states, "NAFTA and colonization cannot be separated. The value systems that allowed colonization to take place are the same that allowed NAFTA to materialize." In Interview with Rebeka Tabobondung, March 2002

54 Burnt Church, New Brunswick, Canada

55 Numerous statements by Herb Dhaliwal, Minister of Fisheries and Oceans, make reference to federal attempts to bring Mi'kmaq fisheries under a federal conservation regime by signing agreements with individual bands to provide monies in exchange for fishing under federal licences. The Department of Fisheries and Oceans also attempted to buy out non-Indigenous commercial fishermen's licences to create 'space' for Indigenous fishers, keeping in line with an earlier approach solidified in the Aboriginal Fisheries Strategy. See p. 167, Coates, Ken. *The Marshall Decision and Native Rights*. Montreal: McGill-Queen's University Press, 2000; [http://www.ncr.dfo.ca/COMMUNIC/FISH\\_MAN/AFS\\_e.htm](http://www.ncr.dfo.ca/COMMUNIC/FISH_MAN/AFS_e.htm); <http://www.dfo-mpo.gc.ca/COMMUNIC/statem/2000/marshall-sept21e.htm>; and <http://www.web.ca/nben/envnews/media/01/aug/bc27.htm> all accessed on 15/1/2002.

however, the dispute primarily concerned honouring treaties and the rights of the Mi'kmaq to their political rights as a people.<sup>56</sup> This wider approach that reaches beyond mere trade is also advocated by Dr. Matthew Coon Come, National Chief of the AFN, who urges the Canadian government to 'think outside the box' when negotiating the redistribution of rights and resources.<sup>57</sup> As disputes at a national level are not being handled effectively; it is difficult to imagine therefore that disputes with multi-national trade mechanisms would be any more effective. The dispute at Esgenoopitj is also indicative of the challenges Indigenous Peoples face: most originate from the state, not multi-lateral trade agreements.

### *Effects of the NAFTA on Indigenous Peoples*

The uprising in Chiapas, Mexico is perhaps the most famous impact of the NAFTA on Indigenous Peoples. The Zapatista Revolution started January 1, 1994, the implementation date of the NAFTA, and very specifically targeted NAFTA because the Mexican government removed the protection of *ejido* land under Article 27 of the Constitution to make way for foreign investment under the agreement.<sup>58</sup> That being said, NAFTA itself is not the only cause of the revolt. The Zapatistas had been training for over a decade previous and many other factors, from economic marginalization to colonial policies, led to the push for self-determination and autonomy. In the final analysis, the Zapatistas, like Indigenous Peoples in Canada and the United States, must negotiate with the state, and not with NAFTA; there is no mechanism in the agreement to

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56 The Esgenoopitj First Nation Management Plan for the lobster fishery states in its preamble: "WHEREAS the government of Canada has illegitimately imposed their federal and provincial jurisdictions upon the Mi'kmaq, Maliseet and Passamaquoddy lands and waters, the Mi'kmaq People of Esgenoopitj First Nation (EFN) will vigorously contest any infringement upon their sovereignty." Accessed from: <http://www.web.ca/mben/ffa/00/mplan/htm> on 15/1/2002.

57 His comments were made at the Romney Moseley Memorial Lecture, March 12, 2002.

58 The *ejido* system was one which distributed land to those who worked it, allowing peasants to have land, however marginalized it was. The removal of *ejido* protection and NAFTA acted as the final straw to many Indigenous people in Chiapas, and the Zapatistas, who had been in training for over a decade, choose the date of NAFTA's implementation as the start of their revolution. To read the Mexican constitution and amendments (in Spanish), go to <http://www.georgetown.edu/pdba/Constitutions/Mexico/mexico.html>. Subcomandante Marcos refers to the revision as the "detonating factor in the Zapatista decision to go to war. Now the Zapatista demand was to return Article 27 not just to its original 1917 Constitutional language but to the language of Emiliano Zapata's much tougher 1915 agrarian reform law...." p. 241, Ross, John. *Rebellion from the Roots: Indian Uprising in Chiapas*. Monroe: Common Courage Press, 1995.

protect their fundamental rights as Indigenous Peoples. There cannot be self-determination without a land base, just as there cannot be decolonization without attention paid to human and Indigenous rights.

Softwood lumber and the concerns of the Algonquins of Barriere Lake are illustrative of the potential of NAFTA to impact the economic viability of logging on Indigenous lands. The community experienced degradation of their land without input into its use, forcing the community to begin negotiations with the federal and provincial governments.<sup>59</sup> In 1991 the community entered into a Trilateral Agreement covering a territory of 10,000 km<sup>2</sup>.<sup>59</sup> Provisionally, sensitive areas in cutting zones were to be identified and protected, and attempts were made to harmonize forestry operations with the Algonquins way of life through greater community input and consultation. In the summer of 2001, however, the Canadian government withdrew funding, effectively ending negotiations despite political will from all sides<sup>64</sup>

Russell Diabo, who has represented Barriere Lake in these negotiations, expressed concern that if the Softwood Lumber tariffs imposed by the United States are lifted under the NAFTA, lumber companies will move in and log CAAF<sup>s</sup> (Contract d'Approvisionnement d'management Forestier) without Barriere Lake permission, creating the potential for conflict and more blockades<sup>66</sup> Canada has little interest in encouraging Algonquin work on this issue as Canada looks at the NAFTA as a trade agreement only, without considering the social or cultural impacts. This approach is demonstrated by the statements of Bill Crosby at the Canadian Embassy in Washington, DC, commenting that he 'did not think softwood is relevant' to the Algonquins<sup>68</sup> Past victories of Canada at

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<sup>59</sup> Ibid., Trilateral Agreement text available at [www.barrierlake.ca](http://www.barrierlake.ca)

<sup>64</sup> *Russel Diabo, ibid.*

<sup>65</sup> *CAAFs are Forestry Management Agreements 25 years in length, signed in the Barriere Lake area in 1990, however as a Barriere Lake 1991 briefing note stated, "There is no mechanism for modifying the 25 year Forestry Management Agreements, which thereby constrain our efforts to make any meaningful changes to land use practices in La Verendrye Wildlife Reserve." The concerns of 1991 exist today, as Russel Diabo articulated. accessed: 4/5/2002*

<sup>66</sup> *Ibid.*

<sup>68</sup> *Bill Crosby, April 8, 2002*

NAFTA tribunals and the possible movement of the softwood dispute to the WTO carries concerns of not only economic and environmental impacts but also socio-cultural impacts as traditional lands of Indigenous Peoples are usurped.

### *Institutional Absence of Indigenous Rights*

The weakness of NAFTA-zone continental Indigenous organization is attributable largely to the lack of institutional structure regarding Indigenous Peoples within the agreement. Labour and environmental concerns were at least acknowledged in side agreements to NAFTA; Indigenous concerns and issues did not even register with NAFTA's negotiators. Dr. Dean Jacobs, Executive Director of Walpole Island Heritage Centre and former band councillor for Walpole Island First Nation (WIFN), notes that, "there was some hope at the time that NAFTA could improve the WIFN economically by creating international opportunities....It seems to me that only big corporate players benefit the most. Environmentally we have been impacted as a result of upstream companies moving their operations south."<sup>60</sup>

The strongest institutional attention Indigenous concerns receive in NAFTA come in *Annex II: Reservations for Future Measures*<sup>61</sup> which makes explicit exemptions to NAFTA and the trade rules laid out in Chapters 11 and 12. Canada in part, "reserves the right to adopt or maintain any measure denying investors of another Party and their investments, or service providers of another Party, any rights or preferences provided to

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60 Interview with Dr. Jacobs, March 2002

61 The Annex reads in part: "1. The Schedule of a Party sets out, pursuant to Articles 1108(3) (Investment) and 1206(3) (Cross-Border Trade in Services), the reservations taken by that Party with respect to specific sectors, sub-sectors or activities for which it may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by: (a) Article 1102 or 1202 (National Treatment); (b) Article 1103 or 1203 (Most-Favored-Nation Treatment); (c) Article 1205 (Local Presence); (d) Article 1106 (Performance Requirements); or (e) Article 1107 (Senior Management and Boards of Directors)." Accessed from: <http://www.dfait-maeci.gc.ca/nafta-alena/annex2-e.asp> on 24/1/2002 While Canada had a specific reservation listed under Aboriginal Affairs, both Mexico and the United States have reservations under Minority Affairs. Mexico's states: "Mexico reserves the right to adopt or maintain any measure according rights or preference to socially or economically disadvantaged groups," while the United States reserves, "the right to adopt or maintain any measure according rights or preferences to socially or economically disadvantaged minorities, including corporations organized under the laws of the State of Alaska in accordance with the *Alaska Native Claims Settlement Act*." Ibid. The overall thrust of institutionalization regarding Indigenous Peoples is perhaps further illustrated when one considers that the *Alaska Native Claims Settlement Act* is essentially legislation setting up Indigenous corporations and business interests. Interview with Adam Bailey, NCAI, April 10, 2002

aboriginal peoples.”<sup>62</sup> This is joined by similar provisions from Mexico and the United States, though containing less recognition of Indigenous Peoples as a collective. Adam Bailey, Legislative Associate at the National Congress of American Indians notes that, “There’s different levels of response. While most tribes in the United States are more concerned with building their own economies and focusing a lot of home communities, just trying to get up to basic levels, there are some economically successful tribes that are starting to respond to NAFTA and how crossing borders in the Americas creating both business opportunities and opportunities for them to interact with other Indigenous communities.”<sup>63</sup> The question then becomes whether what is written into the NAFTA is responsive to the needs of Indigenous communities, not just from a socio-cultural standpoint but also from their needs as majority developing economies.<sup>64</sup>

#### *Continental Co-operation and Non-Development of Governance From Below*

Juxtaposing Indigenous institutionalization in NAFTA with that of labour and the environment is highly suggestive of a link between the NAFTA and civil society response. That Indigenous response has been slow to organize attempts to enter into formal partnership with NAFTA cannot be considered surprising, given the lack of institutional regard. Indigenous Peoples are not given any channels to participate in NAFTA; they must interact with the colonial governments of the three member parties. One Indigenous activist is concerned with the possible impact of this on internal Indigenous/state relationships, commenting “sometimes I think forces such as NAFTA in Canada are actually pushing Native people to engage more with the state structures.... people begin to see their lands more and more usurped so it pressures them to accept the current limited frameworks of land claim negotiations.”<sup>65</sup>

The result of these pressures are well illustrated by the Declaration of the Indigenous Peoples Summit of the Americas, which expresses concern over the exclusion

62 Ibid.

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64 Even this institutionalization, which in theory should protect Indigenous business interests, is extremely weak, as illustrated by Mexico and the United State’s lack of explicit guidelines for Indigenous businesses. However, comments made by Dr. Jacobs of WIFN would suggest that Canada’s more detailed guidelines have had little impact on cross-border links with other Indigenous communities: “Locally, I would say only marginal change since NAFTA. Economically we still face borders and barriers.

65 Interview with Rebeka Tabobondung, March 2002

of Indigenous Peoples from the NAFTA. The document links this exclusion and human rights violations of Indigenous Peoples, and calls for inclusion in the negotiation of the FTAA. The Declaration also calls for an intensification of social, political and economic relationships between Indigenous Peoples throughout the hemisphere.<sup>66</sup> The issues around the Indigenous Peoples Summit Declaration are also well illustrative of the division that exists within Indigenous communities, particularly those afforded 'status' or recognition by states as Indigenous. Accusations of co-optation, particularly in the United States and Canada are common, and most of the representatives at this Summit were elected under systems put in place by national governments, and are not recognized by traditional peoples and nor are they particularly responsive to ordinary Indigenous citizens. While the National Congress of American Indians is independently funded, the Assembly of First Nations (AFN), its Canadian counterpart and host of the Summit, is funded by the federal government and very susceptible to allegations of working within a government agenda. It is interesting that after National Chief Dr. Matthew Coon Come made remarks about the 'systemic racism' Indigenous Peoples in Canada face at the World Conference Against Racism in Durban, South Africa, funding for the AFN was cut, resulting in the layoffs of 70 employees and the elimination of a further 24 positions that had been vacant, or 64% of the AFN's workforce.<sup>67</sup> Given this dependence on the federal government for funding to fulfil its mandate, serious questions must be raised about the independence and effectiveness of the AFN.<sup>68</sup>

In Mexico, the government's claim to address indigenous rights is hotly disputed after the passage of the Indigenous rights law as originally proposed by the Peace and Concord Commission of the Mexican Congress (COCOPA). The reform, approved by 16 of the 31 Mexican state congresses, disappointed Indigenous Peoples and human rights

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66 'Declaration of the Indigenous Peoples Summit of the Americas' found at [www.afn.ca](http://www.afn.ca) on October 10, 2001. Similarly, after the Romney Moseley Memorial Lecture, March 12, 2002, Dr. Matthew Coon Come, National Chief of the AFN, expressed the need for the AFN and Indigenous Peoples in Canada to negotiate within the NAFTA, noting that 'things will only move if industry pushes them.'

67 October 16, 2002 press release, 'AFN undergoes massive staff layoffs following drastic budgetary cuts' *Assembly of First Nations Bulletin*. Available at [www.afn.ca](http://www.afn.ca) under Press Releases, 'AFN Staff Layoffs' accessed May 5, 2002

68 Currently, rumblings of discontent from within the AFN are causing problems after 3 resignations in March 2002 and rumours of several other key employees looking for employment elsewhere. Additionally, sources are saying that an attempt may be made to force Coon Come's resignation at the July Annual General Meeting. p.11, Barnsely, Paul. 'Coon Come lampooned, AFN a mess' *Windspeaker* April 2002 Volume 19, No. 12

organizations as it was severely watered down with “little or no consultation [with Indigenous Peoples] regarding the significant alterations to this initiative after President Fox submitted it to Congress.”<sup>69</sup> Mobilizations from Indigenous Peoples, organizations and NGOs have included protesting procedural violations in calculating state decisions; the submission of ‘constitutional controversies’ to the Supreme Court; several *amparos*, or challenges of actions resulting from the reform were submitted; and submissions were made to the International Labour Organization (ILO), “stating that the constitutional reform does not comply with the international obligations that were acquired by the Mexican government when it ratified Convention 169.”<sup>70</sup> On August 20, 2001, the ILO requested a report from the government detailing Mexico’s compliance with Convention 169<sup>71</sup>. When asked about opposition to the law, which includes the resubmission of the original COCOPA bill to Congress<sup>72</sup>, Carlos Rico, Minister of Political Affairs at the Mexican Embassy in Washington, D.C., responded, “We are willing to solve this as soon as possible. It is not a priority because it is not a problem anymore.”<sup>73</sup>

Due to the changes to the COCOPA proposal, the Zapatistas ended contact with government negotiators, which had only recently started up again after being broken off in 1996. Paramilitary groups still operate in the region – the Miguel Agustín Pro Juárez Human Rights Centre reports that the special office created to investigate and prosecute paramilitaries in Chiapas arrested 11 members of the Peace and Justice paramilitary in November 2000, however all were freed in April 2001. The Centre notes that, “[t]he

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69 p.2 ‘Constitutional Reform on Indigenous Rights Approved’ *Focus: Human Rights in Mexico*. Miguel Agustín Pro Juárez Human Rights Centre, A.C. Quarterly Bulletin, Issue 8, Fall 2001.

70 p.2-3, *Ibid.* By September 26, 2001, the closing date for submissions of constitutional controversies, the Supreme Court had received 329.

71 In May 2001 La Red de Defensores, an Indigenous organization composed of representatives from 9 regions in Chiapas began Project 169. By October 12, 2001 La Red de Defensores, “filed the first of 3 formal complaints against the Mexican Government before the International Labour Organization...through Convention 169.... The first complaint challenged the validity of the Foxista farce known as the ‘Constitutional Reforms on Indigenous Matters’, the 2<sup>nd</sup> complaint dealt with paramilitary activity and state complicity; and the 3<sup>rd</sup> complaint will dispute the presidential land expropriations & consequent militarization in the Chiapaneco zone of conflict.” Red de Defensores, Estación Libre. ‘“In Our Own Defense” Campaign in Support of La Red de Defensores Comunitarios’ posted on Chiapas Indymedia February 19, 2002. [http://chiapas.indymedia.org/print.php3?article\\_id=102131](http://chiapas.indymedia.org/print.php3?article_id=102131) accessed April 9, 2002

72 168 deputies from all parties but the ruling Partido Acción Nacional (PAN) presented the original COCOPA law to Congress on February 18, 2002. Pérez Silva, Ciro. ‘Original Cocopa Law resubmitted to Congress’ appeared February 19, 2002 in *La Jornada*. Available at [http://chiapas.indymedia.org/print.php3?article\\_id=102130](http://chiapas.indymedia.org/print.php3?article_id=102130) accessed April 9, 2002

73 Interview at the Mexican Embassy, April 9, 2002

Fox administration has not taken any concrete steps towards disbanding paramilitary groups and prosecuting their members.”<sup>74</sup> Indigenous activists in Mexico are also concerned by the Plan Puebla Panama (PPP), covering Southern Mexico and the 7 countries of Central America. It promotes “investment in infrastructure in the areas of energy and others such as water and communications. This plan is governed by two legal frameworks that have been widely promoted by the Mexican government: the Free Trade Agreement of the Americas (FTAA); and constitutional reform regarding the indigenous people, which places restrictions on indigenous autonomy, particularly in the area of land rights.”<sup>75</sup> The PPP promotes investment in maquiladoras, some which are already being built around San Cristobal de Casas in Chiapas, and drawing upon Indigenous labour, as well as development projects such as dry canals (railways and highways) cutting across Indigenous land.<sup>76</sup>

Indigenous Peoples have no reason to support NAFTA; it has done little to further their causes. It is true that many foreign companies have easier access to resources on or use of Indigenous lands as a result of NAFTA, but it must be remembered that domestic corporations which operated on those lands before are in many ways as foreign to a people struggling for self-determination under colonial rule as so-called foreign ones. Indigenous lands were exploited prior to NAFTA, just as they have been exploited after the agreement was signed. It is also true that many of the priorities of Indigenous communities do not relate to the trade provisions of the NAFTA. While Indigenous Peoples are looking forward to attempt to proactively change agreements like the FTAA and are heavily involved in developing both the United Nations and Organization of American States Draft Declarations on Indigenous Rights,<sup>77</sup> activities that perhaps more

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74 p.8 ‘Initial Trends in the Fox Administration’ *Focus: Human Rights in Mexico*. Miguel Agustin Pro Juarez Human Rights Centre, A.C. Quarterly Bulletin, Issue 7, Spring-Summer 2001.

75 p.9 ‘Human Rights in the First Year of President Fox’s Administration’ *Focus: Human Rights in Mexico*. Miguel Agustin Pro Juarez Human Rights Centre, A.C. Quarterly Bulletin, Issue 9, Winter 2002.

76 See Rojas, Francisco’s article at [http://chiapas.indymedia.org/display.php3?article\\_id=102273](http://chiapas.indymedia.org/display.php3?article_id=102273) and his interview with Chris Trefer of Global Exchange at [http://chiapas.indymedia.org/display.php3?article\\_id=102294](http://chiapas.indymedia.org/display.php3?article_id=102294), both accessed April 8, 2002. Other sources include ‘Human Rights in the First Year of President Fox’s Administration’ *Focus: Human Rights in Mexico*. Miguel Agustin Pro Juarez Human Rights Centre, A.C. Quarterly Bulletin, Issue 9, Winter 2002, and my interview with Fernando Hernandez of Food For Chiapas, March 28, 2002.

77 Interview with Steven Tullberg, Indian Law Resource Centre, Washington D.C., April 9, 2002 and comments made by Margarita Guitierrez, ANIPA, Mexico at the Indigenous Peoples: Challenges for the 21<sup>st</sup> Century conference at American University on April 11, 2002.

accurately reflect the concerns and priorities of Indigenous communities. To many activists, NAFTA is not the issue, rather colonization is. As Cristina Fernandez commented at the World Social Forum in Porto Alegre, Brasil, 'Indigenous Peoples in the Americas have been resisting globalization for 500 years'<sup>78</sup> and it is perhaps with that in mind that the weak NAFTA-zone Indigenous governance from below should be viewed. NAFTA is only a manifestation of the problem; attacking it does not go to the root.

### *Conclusion*

NAFTA does not reflect the interests of the popular sector. The consequences of the agreement for labour have meant a dislocation of employment, stagnant or falling wages for many workers, a loss of bargaining power and the entrenchment of a neo-liberal regime that has privileged corporate rights over labour rights. While millions of dollars have been paid out in investor-state disputes, the labour side agreement has proven useless in safeguarding even basic human rights. Similarly, neither the NAFTA nor its side agreement effectively addressed the issues at the heart of the trade/environment nexus such as shelter based regulations, regulatory chill, competitive deregulation and energy expenditures. The lack of institutionalization concerning Indigenous issues in NAFTA has served only to accentuate the pre-existing regimes governing Indigenous rights and land tenure. The focus on business rights in Annex II with no attention paid to social and cultural impacts of the agreement furthers patterns of dispossession and poverty, though the examples of the labour and environmental side agreements serve to demonstrate the limitations of an institutional approach.

Despite the similarly adverse effects of NAFTA on these sectors, each reacted with differing programmatic responses. These differences reflected disparate ideologies and socio-economic capacities. Organized labour has responded to NAFTA with its own

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<sup>78</sup> Cristina's comments were made in response to presentations by members of the Socialist Workers Party at the workshop, 'The Anti-Globalization Movement after Seattle and New York' on February 3, 2002.

form of continental reorganization. Along with the strictly economic dynamics of free trade, the frustrated promise of enforceable labour rights regulation and the cooperative mechanics of NAALC process itself have promoted labour's continentalizing shift.

While labour unions overwhelmingly rejected NAFTA, a large majority of the environmental community endorsed the agreement, resulting in a dilute and fragmented mobilization. For their part, Indigenous groups were involved in umbrella coalitions, however their focus remained of necessity on local and national issues, resulting in an essentially symbolic continental engagement.