

Part II: Contentious Politics: National and Cross-Border Variations

Chapter 3: Civil Society Organizations Against Free Trade Agreements

in North America

Dorval Brunelle and Sylvie Dugas¹

The analysis of civil society mobilization against free trade agreements in North America raises a number of normative and theoretical concerns for two basic reasons. First, because the convergence of nationally-based coalitions to oppose the Canada-United States Free Trade Agreement (CUSFTA) and the North American Free Trade Agreement (NAFTA) failed dismally on both occasions, a result which is not easy to reconcile with the prevailing optimistic view about the relevance of social mobilization. And secondly, because the emergence of armed struggle in Mexico, led by the Zapatista Army of National Liberation (*Ejercito Zapatista de Liberación Nacional*, or EZLN),² once the agreement came into force, January 1st, 1994, deeply affected the relevance and legitimacy of any further reformist opposition to NAFTA. In turn, this could explain the swiftness with which North American coalitions against NAFTA shifted their mobilizing capacity to embark on an anti-Free Trade Area of the Americas' (FTAA) campaign, and the consequent disinterest toward any further mobilization against NAFTA.

If anything can be credited either directly or indirectly to the coalitions against the CUSFTA, it is probably the exemption extended to cultural industries in article 2005 of the

¹ This article is an overhauled and expanded version of a paper published initially in: D. Brunelle and Christian Deblock, eds., *L'ALENA: le libre-échange en défaut*, Montréal, Éditions Fides, 2004, pp. 273-296. The authors wish to thank Jeffrey M. Ayres and Laura C. Macdonald for their comments and suggestions in preparing the present version.

² See Sub-comandante Marcos' declaration (1997) in which NAFTA is seen as the first shot in World War Four.

agreement, and if anything can be credited to its successor coalitions against the NAFTA, it is probably the addition of two side accords on labour and the environment imposed by president Clinton, and reluctantly accepted by the other partners.³ But how does one compare the extension of an exemption to Canadian cultural industries, or even the addition of the two side accords, with the truly momentous innovations implemented in NAFTA, such as chapter 10 on government procurement, chapter 11 on investment and investors rights, chapter 12 on services, or chapter 20 on institutional arrangements and dispute settlement procedures?

The former additions are small consolations indeed when they are juxtaposed to the numerous normative innovations found in both agreements -especially when due consideration is given to the fact that the NAFTA goes much further than the CUSFTA-, and when one underlines that they also set the stage for the implementation of a new mode of consultation which basically benefited the business sectors to the detriment of all others, including parliamentarians. In a sense, as Stephen Clarkson and others have argued, NAFTA did indeed usher in a new form of governance for North America.⁴

By comparison, global mobilizations against the Multilateral Agreement on Investment (MAI) and mobilization in the Americas against the Free Trade Area of the Americas (FTAA) ended up defeating both projects,⁵ whereas not only did mobilizations in North America not prevent the free trade agreements (FTAs) from going through, they did not even succeed in delaying or in scaling down the huge normative and institutional leap which separates CUSFTA from NAFTA. As a matter of fact, the leap is such that it does beg the question as to whether

³ Respectively the North American Agreement on Labor Cooperation (NAALC) and the North American Agreement on Environmental Cooperation (NAAEC).

⁴ See Stephen Clarkson *et alii*, "La dure réalité de la gouvernance continentale", in D. Brunelle and C. Deblock, editors, *L'ALENA: le libre-échange en défaut*, Montréal, Fides, p. 107-132.

⁵ See Maude Barlow and Tony Clarke, *Global Showdown. How the New Activists Are Fighting Global Corporate Rule*, Toronto, Stoddart, 2002, pp. 179-225. See also: Sylvie Dugas, *Le pouvoir citoyen*. Montréal, Éditions Fides, 2006.

these mobilizations were not skillfully manipulated by governments which succeeded in concentrating focus on secondary points all the while carefully hiding the core issues from political as well as from public scrutiny.

Today, all three NAFTA governments are still very much in favour of free trade, and neither twenty years of social opposition and mobilization, cross border or otherwise, nor a total of thirteen changes of governments, or eight political alternations in the three countries involved have led to any significant reorientation. Quite the contrary in fact, as the launching of the Security and Prosperity Partnership of North America (SPP), in March of 2005, and the proliferation of NAFTA type agreements signed by the three over the years with other partners all over the world show all too clearly.

In order to establish a balanced evaluation of the results of these social mobilizations against CUSFTA and NAFTA, we will start off by laying the theoretical foundation of our analysis, before presenting the political and institutional context in which these mobilizations emerged. Our analysis will show that social mobilizations against free trade agreements in North America had little influence on the content and substance of these agreements, but had a modest and innovative impact on the consultation processes set up by governments. In other terms, social mobilization did not influence governments in any way, but it did serve as a lever to allow some social actors to play a minor role in the governance of the free trade issue.

The present analysis will seek to tie the dynamics of social movements to political processes in line with the interpretations proposed by Giugni et al. (1999), and to opportunity structures along the lines proposed by Ayres (1998:82). And if our subject is apparently close to the contribution of Dreiling and Silvaggio to this book, who devote attention to the formation of a transnational alliance against the free trade policies adopted by the governments of Canada, the United States (US) and Mexico, our own focus is quite different, since we will explore the

reasons why these movements were unsuccessful, which goes a long way towards explaining the swiftness with which they shifted their attention from the CUSFTA and the NAFTA to the FTAA project.

This shift is important on both theoretical and empirical levels, since it represented a partial substitution of the NAFTA frame of reference in favour of a FTAA frame, a substitution that can be attributed to three factors. First, to the political failure of the social mobilizations against CANUSFTA and NAFTA to influence the free trade agenda and prevent the conclusion of the negotiations. Secondly, to the tactical concession made by the newly-elected US president, Bill Clinton, to reopen negotiations in order to include two side accords, the North American Agreement for Environmental Cooperation (NAAEC) and the North American Agreement on Labour Cooperation (NAALC), the latter contributing significantly to the dampening of union opposition to NAFTA. And thirdly, to the emergence of an armed opposition to NAFTA, that of the *Ejercito Zapatista de Liberación Nacional* (EZLN), which erupted onto the media and political scene on January 1st, 1994, the very day NAFTA came into force. By resorting to armed insurrection and the manipulation of a political discourse steeped in warmongering,⁶ *subcommandante* Marcos and his troops managed to occupy the ideological high ground and, consequently, to overtake the softer forms of opposition.

This evolution is particularly revealing, since some authors view the current phase of citizen mobilization -which they see as starting with the intervention of the EZLN against NAFTA-, as qualitatively different from the type of mobilizations that prevailed earlier. According to Benasayag and Sztulwark, in particular, the EZLN ushered in a new type of

⁶ See sous-commandant Marcos, "La quatrième guerre mondiale a commence", *Le Monde diplomatique*, août 1997, pp. 1, 4 et 5.

mobilization steeped in a “new radicalism”⁷. But when we cast a closer look at this “new radicalism”, we see that it covered up the previous forms of public opposition to free trade in North America and, in this regard, it probably had a profound negative political impact on the extension of these mobilizations, even though the EZLN’s discourse itself, by ranging far and wide, played a significant role in bringing NAFTA on the world stage.

Nevertheless, the distinction provided by Benasayag and Sztulwark between a new and an old radicalism is interesting because it can explain the emergence of a profound rift within the opposition to free trade in North America which will oppose those civil society organizations (CSOs) that operated within a classic form of opposition along the lines of what these authors call “pure militancy *against*”, to movements whose radicalism would be characterized by “the development of multiple practices...and ways of life that, concretely, go beyond the individualism of the system” (2002: 6). However, in the North American context, in particular, the first term of the equation must be refined for two reasons: first, because “pure militancy against” is not a definite nor a definitive posture for a good number of CSOs and does not apply to the union movement, in particular, and, secondly, because the so-called *old radicalism* is also capable of innovation in practice, even though these initiatives do not imply any break from the capitalist system as such.

The idea of “pure militancy against” is unconvincing in these circumstances because, for reasons that will be explained later, in the context of these trade negotiations, some governments have shown a certain degree of openness towards the consultation of stakeholders. The difficulty here is that not all stakeholders have the same access to the consultation processes, on one hand, and that their respective recommendations do not benefit from the same consideration, on the

⁷ See Miguel Benasayag and Diego Sztulwark, *Du contre-pouvoir*, Paris, La Découverte/Poche, 2002. The original Spanish edition is dated 2000. Benasayag had previously coauthored with Dardo Scavino a work titled *Pour une nouvelle radicalité*, Paris, La Découverte/Poche, 1997.

other. But our main point here is that a government's openness *vis-à-vis* CSO consultation should have an important impact both on the nature and content of the opposition of any given actor to a free trade agreement (FTA), as well as on the nature and content of the transnational coalition set up at the instigation of the actor in question, even though it is less consultation *per se* that is the determining factor, but the status conveyed to a given stakeholder under the consultation process.⁸

Obviously, the oppositions to free trade in North America analyzed in this chapter do not fall under the new radicalism of the EZLN type, which does not mean that they are purely oppositional either, since a number of CSOs chose to participate in consultation processes and make their own propositions and recommendations.⁹ This being said, these considerations should not lead us to overlook a dimension of these movements that represents an important part of their originality, that is the transnational dimension of their practices. This aspect affects both the content of internal initiatives –as when an organization incorporates in its actions and initiatives at home elements or contents coming from the outside- as well as to external actions at the level of the political opportunity structure itself.

And just as, when looking at the external side of the process of transnationalisation on the part of multinational corporations (MNCs), due consideration should be given, over and beyond the transnationalisation of their commercial practices, to the transnationalisation of their political

⁸ These practices are followed in Canada and the United States, but less so in Mexico, and they were much less important in the case of NAFTA than they have been in the case of the FTAA. See Shamsie, 200?. The most well-known case of collaboration of this type is that of the Canadian Foundation of the Americas (FOCAL), which is part of a panamerican network of organizations, like the Esquel Foundation, the North-South Centre in the United States, Participa in Chile, the Fundacion Futuro Latinoamericano in Ecuador, Inter American Dialogue and the Women's Leadership Council of the Americas that participated in the Civil Society Task Force created by U.S. AID in 1993.

⁹ Although the division just discussed, between CSOs *against* and CSOs which agree to participate in official consultations seems easy to establish in theory, it is somewhat delicate to manipulate in practice, given the fact that many organizations can successively assume both roles. Some groups, in fact, agree to participate in dialogue with governments in sites established for this goal, all the while reserving the right to contest governments in other settings.

practices, we should also give due consideration to both the immediate and practical benefit as well as to the political dimension of such practices when analyzing CSOs.¹⁰ This raises the question as to whether non-profit organizations have engaged in the process of transnationalising their own political practices through mimesis, or if they have done so owing to the shift of the nexus of power outside the purview of their home nation-state into the netherland of political summits open to a group of selected corporate-tied appointees.

To account for this evolution, two broad explanations have been provided. One suggests that this process is the result of an ever widening citizen involvement fueled by an expanding international consciousness (Kriesberg: 3-18), an optimistic hypothesis which dodges the issue of overextension and the effect of an expanded consciousness on involvement in home affairs, but also fails to tie the process of extension to deeper institutional transformations occurring on the home front. Another sees this as the result of a plurality of globalizations which contributes to the establishment of a “transnational public sphere” (Guidry, Kennedy and Zald 2000: 5-30), a hypothesis which gives due consideration to framing and the transformations which have taken place within the structures of political opportunity. This hypothesis offers an interesting point of departure especially if one can tie the emergence of a transnational public sphere to two complementary processes: first, to the growing dysfunctionality –or incapacity- of the domestic public sphere itself to pry open the black box of free trade negotiations, and secondly, to the extension of a transnational private –and secluded- sphere where politicians and businessmen make decisions on questions of trade that have a growing impact on the public interest.

¹⁰ There has clearly been insufficient attention paid to this phenomenon in the studies of movements of opposition of to free trade. Regarding these agreements in the North American context, see Weintraub (1990), who cites the following case: “When IBM agreed in 1986 to establish a plant to produce personal computers, a specific bargain was struck between a private company and the Mexican government. This agreement spawned a series of subagreements between IBM and technical institutions, some private others public... (p. 19). See also John Stopford and Susan Strange, with John S. Henley (1991).

And the issue of free trade is as good as any to illustrate how this works, because the ever expanding number of matters that are covered by trade agreements and the multiplication of trade negotiations themselves at the global, regional, or continental levels, have led to an ever increasing extension and multiplication of domains coming under the purview of commercial matters. Whereas the resort to secrecy in commercial negotiations could be defended in the past, its maintenance today is more and more unjustifiable. But before we go any further along these lines, and because the differential roles bestowed to economic and social actors in the consultation processes set up during trade negotiations hold an important place in our argument, we propose to revisit the legal and political content of the notion of civil society.

The Notion of Civil Society Briefly Revisited

The emancipatory function imparted to global civil society is basically tied to the fact that, in the wake of Cohen and Arato (1992), picking where Habermas (1979) and others left off, the normative content or aspect of the concept tends to take immediate precedence over the establishment of a clear definition. Thus, Mary Kaldor, Helmut Anheier and Marlies Glasius, in their Introduction to *Global Civil Society 2004/5*, have this to write under a paragraph entitled “Revisiting global civil society” :

For us, civil society is about managing difference and accommodating diversity and conflict through public debate, non-violent struggle, and advocacy. Historically, civil society was bounded by the state; it was about managing difference within a bounded community and about influencing the state. What we mean by global civil society, is not just civil society that spills over borders and that offers a transnational forum for debate and even confrontation; rather, we are concerned about the ways in which civil society

influences the framework of global governance –overlapping global, national and local institutions (2005: 2).

There are two problems with this statement: first, what was, and still is, the effective political role still played by a *state bound* civil society, and secondly, what kind of political mark can an *unbound* global civil society pretend to make on a stateless world order? Or to phrase the question differently: what is civil society's impact on national governance, and how does this impact relate to the one it should have on the framework of a global governance? These are not easy questions, and certainly not questions that can be evaded lightly, especially because the unresolved nature of this issue seems to rely on a shift of focus from government to governance.

Putting aside this difference to which we will turn shortly, we want to underline that a normative approach to civil society, and especially to global civil society, as both the depository and the carrier of a positive and constructive approach to global governance is quite unjustified at such an early point in time, basically because it evades a number of thorny issues. First, the individualistic and emancipatory vision of civil society as the medium through which individuals establish a social contract with the state is totally unjustified both on theoretical and legal terms. The reason for this is quite simple: if a society can be said to be made up of individuals, the notion of “civil society” on the other hand must carry a different meaning, otherwise the qualification is pointless.

And the most critical, as well as the most fundamental difference between the two is that a civil society comprises both physical individuals and fictional ones –or *persona ficta*. This notion of *persona ficta* covers all type of legal organizations, either public or private, including cities, towns, villages, universities, friendly societies, cooperatives, unions, clubs, social organizations, as well as private businesses and corporations of all sizes. But how does this affect the social contract if all *persona ficta* are today excluded from the ballot box, and thus incapable of playing

an active part in the general will? In order to answer this question, we must recall that a civil society comprises both a political and a legal dimension. And if the political dimension - operating through a social contract- ties the citizenry to the state, as far as the legal dimension of civil society is concerned, this is the institution through which individuals and corporations of all kind come together as subjects of law -through contracts, compacts, agreements, obligations, etc. We can look at this from another angle, and, in line with Hannah Arendt's distinction¹¹, establish that the social contract ties the *individuals-as-citizens* to a state in a vertical relation, while contracts and other civil covenants tie *individuals and corporations-as-subjects-of-law* one to another in a complex web of horizontal relations. Historically, this innovation was wrenched by the citizenry from the state in order to secure a margin of normative autonomy, with the end result that, henceforth, there would coexist two fountains of law within the nation-state: state law proper: legislation and contracts negotiated by subjects acting under their legal capacity (Brunelle, 1997).

Secondly, notwithstanding this distinction between a vertical political relation tying citizens to a state, and a horizontal civil relation tying legal subjects one to another in a civil society, it should be underlined that the political citizen is also a legal subject grounded in a host of horizontal relations and organizations. In fact, the total number of these entities far exceeds that of the individuals themselves, especially in the wealthier counties, since each and every individual is in some way or another tied to a number of these bodies at the same time –as teacher, student, unionist, homeowner, worker, unemployed, etc.- with the obvious result that the spill-over of mobilizations out of the home state cannot be construed as mere transnationalization of individual interests, but rather of group interests. Consequently, if one maintains that global

¹¹ See Hannah Arendt, *On Revolution* (New York: Viking Press, 1963; revised second edition (New York: Penguin Books, 1965).

civil society “influences the framework of global governance” this statement begs the question as to what exactly is this spillover effect, which organizations it involves, and which remain behind and why.

It is easy to surmise that very few individuals, except for the better off, have the means to reach out into global civil society *qua* individuals, and that those who can will do so as representative of some organization or other. So there seems to be an important misreading here concerning both the individualistic and emancipatory approach to global civil society. We could probably gain a better understanding of global governance, if we looked at the whole picture in order to take into consideration both the role and impact of the major economic corporations who have an upper hand on global governance, on one side, and that of non-profit organizations vying for a better footing in governance, on the other.

Thirdly, we must add a few comments concerning the separation between the political and the legal in civil society and the state, in order to avoid yet another kind of formalism here. If the vertical relation between a citizen and the state is fundamentally political in nature, one should not conclude from this that the civil or legal horizontal relations either between citizens or between citizens and corporations are apolitical or non-political. Far from it, as any labour dispute or any citizen movement against the predatory practices of firms and companies show all too well. In other words, if the state is the nexus of political action, each and every action in a civil society, either public, private or even intimate can also be politicized -as the issue of abused women has shown all too well.

At this point in our argument, it would seem appropriate to follow on these developments in order to establish a preliminary distinction between government and governance. Thus government designates the exercise of institutional power on the part of the state and its agents through a social contract in conformity with the laws of the land. And, symmetrically,

governance would cover all other means of exercising power, through a multiplicity of agents that are not exclusively appointed by a state, and without the need of any kind of social contract. Clearly, government as well as governance, as means of exercising power and influence, can be applied simultaneously at the national level, but since there is no world government, governance must of necessity prevail outside the confines of the nation-state.

Finally, we should note that the ever widening circle of mobilizations against free trade in North America, both at the domestic and continental levels, into a complex web of cross-border alliances against the FTAA, trailed the negotiating process itself. In this regard, mobilizations against free trade were basically reactive in nature, in the sense that they were set up in response to initiatives taken by governments. Social mobilization against a political decision, a government initiative, or even against some piece of legislation is quite common, and as such, part and parcel of accepted democratic practice in an open society. So what is at issue here is not mobilization *per se*, but both its persistence in time and its expansiveness in space. Nevertheless, as we shall see, expansion, and especially cross-border extension, carries with it the risk of neglectfulness regarding the initial pretext for mobilizing against the process of negotiation itself. And this neglect is quite striking as far as civil society mobilizations against free trade agreements are concerned because, once CUSFTA was successfully completed, mobilizations in Canada, in particular, would henceforth engage in a struggle against NAFTA, thereby releasing pressure on the implementation process of the CUSFTA itself. And the same neglect would also affect NAFTA when social organizations reframed their opposition in order to engage in an anti-FTAA campaign.

This shift raises a number of problems. First, it would tend to give credence to the argument that, once an agreement of this kind is signed, there is not much that can be done about it. Nevertheless this argument can be countered by pointing out that if this was the case for

CUSFTA, as far as the NAFTA was concerned, things were quite different since the implementation process was closely monitored and, at times, firmly denounced, especially on the legal interpretation of the provisions of chapter 11 on investor-state litigation. But, here again, the denunciation of a contentious provision in an agreement cannot be construed as an outright denunciation of the agreement itself. Furthermore, this posture will not prevent either the renewal of mobilization against the FTAA among the CSOs of North America, nor the extension in cross border alliances and initiatives. Neglect is more apparent than real since there are actually two different processes at play here: one occurring upstream during negotiations which is eventually carried through until an agreement turns into legislation, and another occurring downstream during the implementation of said legislation. Social mobilization aims at the former process, while the latter relies on monitoring.

CSOs engaging in cross border networking with others which are now facing the same challenges they once fought against and lost, are actually not fighting a battle in which they are involved to the same degree that these new stakeholders are. In this sense, a shift in framing coming out of organizations which have just lost the battle on their own home ground cannot be equated with the framing of an issue on the part of CSOs which are confronted to this challenge for the first time. In such instances, the convergence of two sets of CSO mobilizations, one set coming out of a lost cause into a new one, and the other grappling with the issue for the first time, is bound to create misunderstandings. In turn, these misunderstandings can strain transborder solidarity in two ways: either because CSOs with prior experience could wish to take the upper hand on the new agenda, or because CSOs with no experience would have little confidence in CSOs whose mobilizations failed. We shall come back to these issues later but, for the moment, we will devote our next two sections to social mobilizations against FTAs in North America.

Opposition to CUSFTA

President Ronald Reagan and Prime Minister Brian Mulroney officially opened trade negotiations between Canada and the United States at the “Shamrock Summit” in Quebec City, in March 1985. Following this event, a large debate on the pros and cons of free trade captured public attention up to the federal election of 1988. On one side, the adversaries of free trade included both the unions and the nationalists, all political parties of the opposition, including the official opposition, the Liberal Party of Canada, as well as most provincial political parties, with the notable exception of Alberta and Quebec, where both the party in power -the Liberal Party of Quebec (PLQ)- and the opposition –the Parti Québécois (PQ)- were in favour of a free trade agreement with the U.S. On the other side, the promoters of an agreement included the Business Council on National Issues (BCNI), a host of MNCs –notably American Express- and most major think tanks operating in Canada –the Hudson Institute, the C. D Howe Research Institute, the Conference Board, and the Fraser Institute- while others –the Canadian Chamber of Commerce, the Association of Canadian Manufacturers and the Conseil du Patronat du Québec- extended a lukewarm support at best (McBride, 2005: 51-58; Brunelle and Deblock, 1987: 34-5).

Unions and other civil society organizations pointed to the threats that a free trade agreements would pose for employment, labour legislation, and for Canadian social policy and culture at large. To shore up their claims, they invoked three predictions all drawn from the same source, the 1985 Report of the Royal Commission on the Economic Union and Development Prospects for Canada, better known as the Macdonald Report.

First, the commission predicted that “a liberalization of trade would especially be felt in our manufacturing sector”, and added: “This sector currently represents less than 20 percent of jobs in Canada. So, at worst, trade liberalization would only have a direct effect on a fifth of the

Canadian workforce” (Report 1985: 369), a consequence that the opponents of Canada-U.S. free trade promptly denounced.

Secondly, the Macdonald report also indicated that such an agreement could have negative effects “on regional economic development,” as well as on “cultural initiatives”. To confront these challenges, the commission proposed that such matters should be left out of the agreement, thus preserving federal, as well as provincial governments sphere of authority (*Idem*: 395). Finally, the report underlined that free trade “would force the provinces to abandon some of their prerogatives” (*Idem*: 401), a requirement that could have deep repercussions on the labour force as well as on social affairs since they both come under their jurisdiction.

Furthermore, we should recall four events that had an impact on the public debate at the time and fed the prevailing concerns as to the eventual spill over effect of free trade into other domains and particularly, in social affairs. The first was the day to day monitoring of the progress of negotiations with its twists and turns which challenged social actors and unions. At one point, the media had reported on the misunderstandings between the American negotiator, Peter Murphy, and the Canadian negotiator, Simon Reisman, regarding the inclusion of social programs in the draft. The American negotiators had demanded the inclusion of these programs, since they viewed them as non-tariff barriers, while the Canadian negotiator had to fend off public outcry about this issue.¹²

A second event which occurred during negotiations was the offensive mounted by East Coast fishermen in the United States against the Canadian scheme of unemployment insurance which they denounced as unfair trade practice since it extended payment of premiums to seasonal workers in Canada while the US did not provide this to their own. They claimed that such a

¹² See, for example, *Le Devoir* of May 20 1986, p. 3 : “Reisman exclut les programmes sociaux”.

measure exerted a downward pressure on salaries in Canada in relation to U.S. salaries and thus provided an unwarranted advantage to Canadian fleet owners.¹³

A third occurrence was the release of the results of a survey carried out in the summer of 1986 among MNC executives regarding the impact of free trade on government policies. According to the survey, the agreement would jeopardize existing government procurement policies, curtail provincial jurisdiction over their own affairs and roll back Canadian environmental regulations. Finally, the last event was the Conservative government's parallel strategy to restrict access to social programs, more specifically to old age pensions and family support.¹⁴

Canadian publisher Mel Hurtig summed up the dark mood prevailing in some quarters when he said : "What is on the table is Canada itself. We are not talking about sovereignty association with the U.S. What we are talking about is association sovereignty. We get the association and the United States gets the sovereignty". In the same spirit, Ed Finn from the Canadian Union of Public Employees (CUPE) declared: "The Tories [Mulroney's Conservative Party] have given up on Canada and its people. They want to bring Canada into the American empire. Those of us who still have faith in this country, and in our ability to stay free and independent, must commit ourselves to this historic battle."¹⁵

In such a polarized context, with free trade being bandied about, it was not long before "disparate groups" (Ayres, 1998: 32) began emerging in a most haphazard way and to converge

¹³ These same groups would finally win their case because it was after the deposit of a complaint by U.S. lobster fishers under the FTA that the federal government would abstain from paying for the deficits in the unemployment insurance fund. This decision would confirm *ex post facto* the link that analysts had established at the beginning between trade and social policy.

¹⁴ The Conservative government had announced its intentions in a document presented shortly after its election. See Ministry of Finance, *A New Direction for Canada, An Agenda for Economic Renewal*, Ottawa, 1985. The document proposed scaling down payments to beneficiaries and bringing down government spending.

¹⁵ Both quotes are taken from: Randy Robinson: "Colonizing Canada. A Year and a Half of Free Trade", in *Multinational Monitor*, 1990, vol. 11, nr 5.

On line: <http://www.multinationalmonitor.org/hyper/issues/1990/05/robinson.html>

on two parallel tracks along a linguistic and *national* divide with an aggressive Canadian coalition on one track, and a lukewarm Québec coalition on the other.¹⁶ The first coalition against the agreement, the Pro-Canada Network (PCN), was formed in 1987. It included the Canadian Labour Congress, environmentalists, anti-poverty organizations, nationalist groups, women's organizations, including the National Action Committee on the Status of Women, peace groups, farmers, nurses, teachers, seniors, as well as churches. Arising from the initiative of diverse activists like John Trent and Tony Clarke from Bishops University, as well as Duncan Cameron from the University of Ottawa, it was built in the midst of the establishment by the Catholic church of a solidarity movement, the Social Solidarity Network, created to combat poverty and promote social equality in Canada. This vast network launched the greatest non-partisan campaign of public education in the country in order to prevent the adoption of the FTA. But since Quebec nationalists were offended by the use of the name "pro-Canada" so soon after the referendum of 1980, the patriation of the Constitution in 1982 and the interminable debates that ensued in Québec at least, the network changed its name to "Action Canada Network" (ACN) in order to rally them to its cause.

Thanks to its links with members of the U.S. Congress, the coalition succeeded in denouncing the lack of transparency of the negotiation process and a campaign was promptly launched. This step permitted activists to acquire better analytical capacity and research on the issues at stake. The Canadian coalition also succeeded in sparking a large debate around and about the social and cultural consequences of free trade.

On the other hand, the situation in Quebec was quite fuzzy. Social organizations, and the union movement in particular, after having been deeply involved alongside the Parti Québécois

¹⁶ The significance and consequence of this two-track approach has not been given much thought in the sociological literature on the subject. We will try to fill the gap here. But this issue would undoubtedly require a more extended treatment than is allotted here.

during the referendum campaign of 1980 could not bring themselves to either join the PCN or its successor, the ACN, essentially because, with very few exceptions, the organizations making up these coalitions had never been remotely sympathetic to their cause. It would have been untenable on their part to simply ignore this and band together on this new issue especially because it seemed ironic somehow that they should now be seen as defenders of Canada so soon after having failed at reforming its basic institutions or even, as some would have it, after having failed to break it apart. Furthermore, a distancing on their part was all the more legitimate in the circumstances that, looked at from Québec at least, the extended social and public debate in which Canadian organizations, their militants and intellectuals were engaged about the survival of the country and the fate of its basic institutions, was but a replication of a debate that had deeply divided Québec society, pitting individuals, families, groups and organizations one against another from the moment the referendum campaign was launched up to the episode of patriation almost three years later.

Nevertheless, a Québec coalition against free trade (Coalition québécoise d'opposition au libre-échange, or CQOL) was duly set up in 1986. It included the three largest labour unions – Centrale de l'enseignement du Québec or CEQ, the Confederation des syndicats nationaux or CSN, and the Fédération des travailleurs et travailleuses du Québec or FTQ), as well as the farmers -Union des producteurs agricoles, or UPA.¹⁷ However, despite a large distribution of pamphlets on the economic impact of a free trade agreement on the Quebec economy and society, and despite numerous interventions within the union movement itself, the coalition's capacity to influence public debate was nowhere comparable to that of its Canadian counterpart. This relative weakness can be attributed to three factors: first, the craftiness of the Conservative

¹⁷ This quadripartite composition is all the more interesting since the UPA did not renew its participation to the successive offshoots of the CQOL, preferring to go it alone and intervene directly at the WTO level. This strategy was completely distinct from that pursued by the agricultural sector elsewhere in Canada.

government of Brian Mulroney which succeeded in tying together the recognition of Quebec as a “distinct society” in the Canadian Constitution in the ultimately failed Meech Lake Accord of 1987 and the free trade issue¹⁸; secondly to the fact that both provincial parties, the PLQ and the PQ, had come out in favour of a free trade agreement despite the fact that, in assuming such a position, the PLQ government of Robert Bourassa was breaking rank with the Official opposition’s own stance on this matter in Ottawa, and, thirdly, to the historical lack of any serious institutional connection and constituency building either among unions or among social organizations in Québec and in Canada.

Of the three factors, the first is indeed the most important and should be given precedence over the other two basically because it was the double-pronged strategy put in place by the Progressive Conservative government soon after it came to power, in September of 1984, which carried the day. By reaching out to Quebec, the Mulroney government hoped to succeed where the Liberals of Trudeau had failed, and this strategy proved most rewarding in the election of November 21, 1988, which was basically fought on the issue of the CUSFTA. To understand why Quebec voters rallied around the Progressive Conservatives and secured the party a majority government, we should recall both their profound resentment towards the federal Liberals for having bungled up patriation by ignoring Quebec’s dissent, and their unreserved approval of the Meech Lake Accord of 1987 which was still in the process of ratification on the province’s part at the time. This process extended to 1990, and it is only that year that the failure to do so on the part of Manitoba and Newfoundland would prove fatal to the agreement.¹⁹ In fact, conscious of

¹⁸ No government in Quebec had ratified the *Canada Bill* of 1982, which put in effect the patriation of the Canadian constitution.

¹⁹ A short chronological reminder is in order here: if negotiation of the Meech Lake Accord began shortly after the election of the Progressive Conservative government in September, 1984, while the Parti Quebecois was still in power, there was little progress until the return of the PLQ of Robert Bourassa, in December of 1985. This event opened up “renewed collaboration between Quebec and her partners in Confederation”, to borrow the title of a

the fact that good will toward constitutional negotiations could be used to prop up its trade policy, the federal government embarked on a strategy to enlist provincial support to free trade. This was the rationale behind the conference of economic ministers known as the Regina Economic Summit held in mid-February 1985.²⁰

Moreover, the common position of the two main political parties in Quebec vis-à-vis free trade is another element that explains the profound differences between the behaviour of social organizations in Quebec and in Canada on this issue. The PLQ's position on this was basically reactive. It was tied to the economic policies implemented by successive federal Liberal governments since 1963, but especially since the arrival to power of Pierre-Elliott Trudeau's government in 1968. Both Robert Bourassa and René Lévesque blamed these policies for having reinforced the concentration of economic activity in Ontario and for having led to the relative decline of Quebec's share within the Canadian economy. The most striking and most publicized illustration of this concentration is undoubtedly the importance of the shift of the headquarters of large Canadian and U.S. companies to Toronto during this period.²¹ As for Quebec exports to the U.S. market, even if they had improved by 25% in 1984, those of the rest of the country had improved by 33% that year, with the result that Quebec's share in the Canadian exports to the US did not stop dropping until it fell to 16% in 1985 (Black, 1985). Furthermore, the PQ's stand on free trade was also tied to the fact that the party had little inclination toward the Canadian system and was more inclined to deal directly with American interests, even though some analysts

workshop held under this theme in May 1986. Let us also recall that the official launching of free trade negotiations between Canada and the United States occurred in March, 1985.

²⁰ The four main subjects on the agenda were investment, international trade, regional economic development, and manpower training.

²¹ This was particularly the case of Canadian Pacific, Molson Breweries and Bell Canada, as well as some entire sectors, like the banks (Bank of Montreal, Royal Bank, Scotiabank, etc.) and insurance companies (Sun Life). See Black, 1985.

claimed that the PQ's economic nationalism was best safeguarded by protectionism rather than free trade.

As a result, the debate on and about free trade in Quebec was basically tied to what was best for the Québec economy –especially in terms of market access- with very little – if any - consideration given to what might be the reasons why free trade was either promoted or vilified elsewhere in Canada. Similarly, the debate on free trade in the rest of Canada was less concerned about market access *versus* protectionism, and more about the effects of free trade on the Canadian society, its values and culture. These differences in framing go a long way towards explaining why convergence between Québec and Canadian organizations on this issue was impractical. They can also explain the extent of the anti-free trade movement in Canada, a movement that brought together trade union, social, cultural and religious groups, while by contrast the first Quebec-based coalition had a very limited membership.²²

In any case, the federal election of the fall of 1988 was won by the PC government of Brian Mulroney, largely due to the support of Quebec voters. This result had a devastating effect on the opponents of free trade in Canada.²³ Shortly afterward, the coalitions suspended their activities. Moreover a few groups and unions actually formally opposed the subsequent round of negotiations with Mexico when it was announced, but refused to commit themselves further. In Québec on the other hand, the failure of the CQOL to oppose CUSFTA did not have the same demobilizing effect since in April of 1991, a new coalition (Coalition québécoise sur les

²² Historically, convergence between Québec and Canadian organizations has always been a most difficult issue. Language certainly plays an important role in this, but the problem goes much deeper than this because it is tied to the issue of nationality. If Canadians have one nationality and one allegiance, does this imply that Quebecers should have two, or one? And if so, which one?

²³ One could say a great deal about the support of the Quebec voters for Mulroney's party, which has been interpreted too quickly as representing support for free trade. This may be true for some PQ and Liberal supporters, but it is equally important to see it as a support for the government's constitutional policies.

négociations trilatérales, or CQNT) was launched shortly after of the start of the NAFTA negotiations.

Opposition to NAFTA²⁴

In this section, we will present an overview of CSO mobilization against NAFTA in the three countries, starting with the U.S., and following up with Mexico and Canada. The first two cycles of bilateral trade negotiations, with Israel in 1985 and with Canada in 1989, did not have much impact on civil society organizations the United States. But by contrast, the opening of negotiations with Mexican authorities led to the formation of coalitions against NAFTA at both extremes of the political and ideological spectrum. On one side, Republican preacher Patrick Buchanan and the independent candidate to the presidency, Ross Perot, both came out virulently against the project. On the other, the trade unions -especially the AFL-CIO- and environmental movements - especially Sierra Club and Greenpeace - mounted a strong social opposition to NAFTA.²⁵

The strategy adopted by these organizations played out in two phases. In January 1991, they launched two parallel networks, each with a specific mission. The first network, called the Citizens Trade Campaign (CTC), developed an essentially political strategy aimed at the legislators in Congress, in order to prevent the passage of the so-called “fast-track” procedure

²⁴ See also Barlow and Clarke, 2002: 90-122.

²⁵ A partial list of the environmental groups and consumer’s organizations opposed to NAFTA include: Environmental Action; Friends of the Earth, U.S.; Greenpeace; Natural Resources Defence Council; Sierra Club; Center for Science in the Public Interest; Community Nutrition Institute; Consumer Federation of America; National Consumer League; Public Citizen; Public Voice; Arizona Toxins Information Project; Child Labor Coalition; Southern Arizona Environmental Management Society. These groups and associations, formally or not, constituted the “green” front against NAFTA. Besides, there were several other coalitions formed by groups on the right, for example, with Patrick Buchanan, behind the slogan “America First”. In this regard, it is important to mention that the Citizen Trade Campaign that will be discussed below, presented itself as a coalition of groups on the left. See Wiarda 1994: 128-9.

requested by President Clinton in expectation of the forthcoming trade negotiations. The second network, called the Alliance for Responsible Trade (ART), was made up of a host of organizations, as well as think-tanks based in Washington, the International Labor Rights Fund, Development Gap, and the Institute for Policy Studies. ART was to form a large social coalition against free trade with a double mandate: first, to develop alternative proposals for the Americas in order to raise environmental and labour norms in the region, and to promote equitable and sustainable development; secondly, to establish links with similar coalitions in Canada and Mexico.

The originality of the second dimension of this mandate should be emphasized because, in historical terms at least -and especially vis-à-vis Latin America- the AFL-CIO had been known to act as a staunch promoter of U.S. government policy. During the Cold War, in particular, the American Institute for Free Labor Development (AIFLD) had carried out the defense of so-called “moderate” unions close to authoritarian or dictatorial regimes, against progressive or radical unions.²⁶ In this regard, opposition to NAFTA represented an important shift on the part of the largest U.S. trade union which from this point on will be seen collaborating in an open way with labour unions and other organizations opposed to their own governments on the issue of free trade.

The political and ideological opposition of the AFL-CIO to NAFTA can be explained by the direct link that analysts had established between free trade and the loss of jobs. This loss would result from the relocation of industrial activities in Mexico by corporations seeking lower salaries and benefits compared to those extended to unionized workers in the U.S. Also evoked were questions regarding child labour, illegal immigration, as well as social dumping. Furthermore, for tactical reasons, the labour movement sought alliances with another adversary

²⁶ Armbruster (1995) qualified the history of the institute as nothing but “sordid”.

of free trade, the environmental movement, even though relations between the two had been remained strained essentially because trade unions and environmentalists were at odds regarding the detrimental effects of environmental protection on job creation (Wiarda: 124-5).

In Mexico, the background of the anti-free trade movement was quite different from those of both the U.S. and Canada, especially because of the dominance exercised by the Institutional Revolutionary Party (Partido Revolucionario Institucional, or PRI) on governments as well as on the major economic and social organizations, from 1929 to 2000.²⁷ This dominance was exercised through obligatory affiliation with the party in return for state support granted to, for example, the Confederation of Mexican Workers (CTM) and the National Peasant Confederation (CNC). The official trade union movement was thus not in a position to sustain or defend an autonomous position regarding the government's economic policy. The official labour movement's lack of autonomy was displayed in its support for free trade at the dawn of the 1990s, despite the fact that Mexican authorities had systematically adopted protectionist policies throughout preceding decades. Moreover, the political realignment carried out by Presidents de la Madrid and Salinas de Gortari, the former at the end of his mandate and the other at the beginning of his mandate, rested on an unprecedented rapprochement with the United States.

The most striking phenomenon in the Mexican "monetarist counter-revolution" – beyond its political or ideological dimensions - is the swiftness with which public opinion shifted from protectionism to openness, which displayed a high degree of compliance regarding the joining into an eventual free trade agreement with the United States.²⁸ This shift is attributable in part to the effectiveness of the PRI and its propaganda instruments within the organizations of civil

²⁷ The PRI carried this name since 1947. However, it is the direct heir to the Revolutionary Party established by Plutarco Elias Calles in 1928-9. The name had been changed to the Mexican Revolutionary Party by Lazaro Cardenas in 1938.

²⁸ Regarding the monetarist revolution in Mexico see Villarreal, 1995; on the favorable response to NAFTA in Mexico see Loeza, 1994.

society, but it was also due to the fact that an important segment of public opinion saw in a trade agreement with the U.S. an opportunity to loosen the grip that the PRI had maintained over Mexican society and to expand democracy at home. If the market could open up the economy, it should open up the polity as well. These factors explain why CSOs, instead of openly rejecting the goal of economic integration between the three partners of North America, chose instead to propose alternatives to the official project.

In 1991, the Authentic Labour Front (Frente autentico del trabajo, or FAT) together with other organizations, set up the Mexican Network on Free Trade (Red mexicana de accion frente al libre comercio, or RMALC), a coalition made up of trade unions, human rights groups, environmentalists, peasant and indigenous groups, as well as academics. As discussed by Marie-Josée Massicotte in her contribution to this volume, the RMALC had the responsibility of promoting opposition to NAFTA and brainstorming on an alternative project to free trade which would integrate the requisites coming out of member organizations.

RMALC's strategy developed in two phases, during and after negotiations. Between 1991 -the opening of the negotiations- and 1994 - the coming into effect of the agreement - RMALC argued that the free trade negotiations should be opened to public debate, and that civil society organizations should participate in this debate. During 1991-92, RMALC launched a series of trilateral reunions, rallying opponents of NAFTA in order to prepare a joint trilateral strategy. An informal but effective trilateral concertation of national coalitions was also developed during the negotiation of the parallel accords on labour and the environment, as well as during the ratification procedures for the agreement, in 1993. Once the agreement came into force, on January 1st 1994, RMALC concentrated its energies on the analysis of NAFTA's impacts on the national economy, in order to feed the discussions around the proposal of an alternative agreement that would effectively promote a sustainable and just development. RMALC also

enlarged its horizons by mobilizing around Mexico's entry into the Asia Pacific Economic Cooperation (APEC), the World Trade Organization (WTO), and the FTAA. One of the more notable actions carried out by RMALC at the time was the drafting of an alternate economic program for Mexico, which was subsequently submitted to public consultation in 1995, –the so-called “Freedom Referendum”. More than 430,000 citizens participated in this consultation.

These strategies should be interpreted against the backdrop of the emergence of the EZLN which, as noted above, chose the highly symbolic date of January 1st to take up arms against NAFTA, a decision which would create a deep rift between the oppositions to NAFTA within Mexico. And if the majority of opponents opted for peaceful resistance, the EZLN occupied the media high ground, if not in Mexico, on the world stage. Finally, shortly after Canada became partner to the trade negotiations in progress between the U.S. and Mexico, in the winter of 1991, trade unions, environmental groups, religious, international development, and human rights organizations formed a coalition against NAFTA - Common Frontiers²⁹ - within which the voice of the Canadian Labour Congress (CLC) was predominant in the definition of strategies and policies.³⁰ The first of a series of cross border actions took the form of a small Canada-Mexico solidarity project launched by a group of trade unionists and members of international development NGOs in Toronto, among them the Latin American Working Group (LAWG).

Back in 1990, facing an imminent widening of trade negotiations in North America, Canadian activists had established contacts with some Mexican groups to form a common front

²⁹ Currently, Common Frontiers is composed of two unions, the Canadian Autoworkers Union les Travailleurs canadiens de l'auto and United Steelworkers, as well as the main trade union confederation, the Canadian Labour Congress as well as the following five groups: Canadian Environmental Law Association, the Latin American Working Group, the Ecumenical Coalition for Economic Justice, Oxfam-Canada and Solidarity Work/Maquila Network, as well as the International Centre for Human Rights and Democratic Development. [Update??]

³⁰ Common Frontiers played a strategic role in the rallying of opposition to NAFTA and later, the FTAA. The Canadian network was a pillar in the organization of an eventual parallel meeting to the ministerial meeting in Toronto, in November 1999, and to the General Assembly of the Organization of American States (OAS) in Windsor, in 2000.

around the questions of sovereignty and economic independence. The first encounter organized by the FAT took place in Mexico, in October 1990, a meeting that was attended by some thirty Canadians from all backgrounds. Shortly after, a large tri national meeting on the pros and cons of a North American trade deal was organized by the National Action Party (Partido de accion nacional, or PAN) with attendance from representative of major political parties, including Jean Chrétien from the LPC and Bernard Landry from the PQ.

Quebec organizations followed suit and a Quebec Coalition on Trilateral Negotiations (Coalition québécoise sur les négociations trilatérales, or CQNT) was set up. This coalition changed its name to Quebec Network on Continental Integration (Coalition québécoise sur l'intégration continentale, or RQIC) in November of 1995, when it was decided to concentrate energies on the mobilizations against the FTAA project launched at the first Summit of the Americas, held in Miami the previous year, in December of 1994.³¹

This shift in framing had one positive effect since coalitions from both Canada and Quebec would henceforth work more closely in mobilizing against the FTAA, and on the organization of the first People's Summit of the Americas, held in Santiago de Chile, in April 1998. This summit was convened by the Hemispheric Social Alliance (HSA), an inter-American coalition made up of national coalitions against free trade all over the Americas, and held in the wake of the 2nd Summit of the heads of state and governments of the Americas, which also took place in Santiago de Chile. And further along the way, the coalitions from Québec and Canada would both be responsible for the organization of the 2nd Peoples' Summit, held in Quebec City, in April 2001, just before the 3rd Summit of the Americas.

³¹ This coalition had three objectives: first, to criticize the reductionist, that is to say, exclusively trade and tariff-reduction approach adopted by the three partners throughout their negotiations; secondly, to bring the debate to the public, by organizing meetings, colloquia and press conferences, while seeking interviews with those responsible for this matter at the political level; and, thirdly, to participate in the establishment of meetings and exchanges with trade unions, associations or groups which, at the continental level, shared this critical approach regarding the project of integration that was being launched. At this time the RQIC was composed of 21 organizations.

The Results of Mobilization against CUSFTA and NAFTA

During the CANUSFTA negotiations, as we mentioned above, the most important citizen mobilizations against free trade were carried out by nationalist forces, social movements and trade unions in Canada, while opposition forces in Quebec were unfocused and weak for one contextual reason -besides the structural ones provided earlier- and that is because the heads within the union movement toed the PQ line and were therefore rather favourable to a free trade deal.³² In any case, these mobilizations had but one effect, that of securing a cultural exemption for Canada in CANUSFTA.³³

By comparison, mobilizations against NAFTA did have both a symbolic and strategic impact. Even though negotiations were, for all intent and purposes over by the end of the president George Bush's mandate, newly elected president Bill Clinton announced that the deal was to be reopened and that two side accords on labour and the environment -the NAALC and the NAAEC- should be added to the NAFTA. The president was fulfilling commitments made during the presidential campaign to long-time allies of the Democratic Party, the trade union and environmental movements, even though Canada and Mexico were quite reluctant about this.

But the most important effects of mobilizations against a free trade agreement, in particular, are not necessarily tied to what is kept in or in what is left out the text itself, but in

³² Needless to say, this situation created tensions within the union movement and presented insurmountable problems when time came to mobilize, especially after the vice-president of the CNTU had just made a pitch on public television in favour of the CANUSFTA.

³³ The text accompanying the FTA is indeed very explicit in the respect: "Since the start of the negotiations, the Canadians have expressed the fear of seeing the Agreement erode the capacity of the government to aid cultural industries in Canada...and to thus contribute to the flowering of the Canadian cultural identity. In order to clearly establish that the Agreement carries no threat to the Canadian cultural agreement, the two governments have expressly agreed in the article 2005 that, except in four very limited cases, nothing in this instrument affects the capacity of one or the other Party to manage the cultural policy of its choice" See Communication group on foreign trade, ...1987, p. 299. The highly selective character of this concession made by the U.S. negotiators to the Canadian position is striking when one thinks of the intransigence of these same negotiators on this matter in negotiations carried out with other partners.

who contributed to the final draft. And to understand who had the last word in this regard, we have to recall what was said in section one on civil society organizations. While social mobilizations had little impact and little say on the final content of both the CANUSFTA and the NAFTA, some elite civil society organizations and think tanks did play a major role and made important contributions to the agreements, even though the nature and extent of such contributions is difficult to establish.³⁴ But, in retrospect, the creation of the Americas Business Forum (ABF) in 1994, and its promotion to full-fledged consultant status at the first trade ministers meeting in Denver, in June, 1995, can shed some light on this issue. In a document released at its fifth meeting held in Toronto, in November, 1999, the ABF had this to say about its role in the FTAA negotiations: “many of the recommendations proposed by participants in the San José Forum –of March, 1998- are reflected in the mandates of the FTAA negotiating teams, and in the Plan of Action issued by the Summit of the Americas in 1998”.³⁵ Thus, these stakeholders had a direct impact on the end use of their recommendations both on the official negotiations and eventually on the terms and provisions of the agreement itself.

By contrast, as far as CSOs are concerned, their status as consultees is at best undefined with the result that their own recommendations are given an altogether different treatment. They are either ignored pure and simple, or they are simply submitted to an endogenization process whereby they

³⁴ See Linda McQuaig, *The Quick and the Dead*. Brian Mulroney, *Big Business and the Seduction of Canada*, Toronto, Penguin Books, 1991.

³⁵ See ABF-Canada, *Information Document*, Fifth Americas Business Forum, Toronto, November 1st, 1999. The minister for International trade, Pierre Pettigrew, put the issue in the following terms at the opening of the forum: “Trade negotiators cannot operate in a vacuum. Because they seek to create the rules and policy framework to suit a business environment that you have already forged, they must understand business, markets and market change. To do that, they have to be where business is -- so don't be surprised if you run into more than one trade negotiator over the next few days here in Toronto. They have to understand what your perspectives are on the main issues being negotiated. They want to make it easy for you to do business, and they are ready to work toward developing new or improved rules of the game ».

On line : http://w01.international.gc.ca/minpub/Publication.asp?publication_id=377331&Language=E

are merely integrated into preambles of declarations and action plans and, as such, have no juridical value nor legal consequences.

This contrast between the consultative status of the ABF and that of CSOs can best be analyzed by resorting to the analytical grid proposed by Diego Carrasco of the Chilean

Plataforma continental de derechos humanos :

The status of civil society in treaties can take different forms. It may be that of *observandi* or observers, such as the one we have before the assemblies of the United Nations. Or it may be as *consultandi* or *concurrenti*, when the assemblies or bodies allow the civil society organizations to voice their opinion or be part of an agreement of some kind.

Thirdly, there is that of *proponendi*, when the organizations are invited to propose specific clauses in treaties, such as the well-known labor clauses, democratic clauses or, as in the case of some treaties in Europe, to sit on administrative committees comprising civil society and the states. Lastly, there is the status as *resolutio*, the highest level, where civil society may appoint a representative who does not have decision-making powers, but may settle disputes that are regulated by a treaty (Carrasco, 2000).

Even though there was no equivalent to the ABF at the North American level at the time of the CANUSFTA and the NAFTA negotiations, there nonetheless remains the fact that consultations with business circles were conducted at the time, that these were subsequently formalized during the FTAA negotiations, and have since been integrated into the ongoing “deep integration” process formalized by the Security and Prosperity Partnership of North America of March, 2005.³⁶ These consultations are of such nature that they confer to the business sector a status

³⁶ The North American business sector was duly invited to participate in the negotiations surrounding the setting up of a North American economic and security community, as witness the role imparted to businessmen at the second

equivalent to that of proponent (*proponendi*), the second highest in importance after the capacity to act in a dispute resolution mechanism (*resolutio*), while the CSOs must at best be satisfied with the status of observer (*observandi*), the weakest of the four.

On the other hand, this type of direct collaboration between governments and business organizations increases political power concentration in the hands of executive powers to the detriment of the legislatures for two reasons. First, because parliaments, and not cabinets, are the institutions appointed to act as public arbitrators of collective as opposed to particular interests, and secondly, because members of cabinets only are accountable to parliaments, not businesses (Brunelle, 2003). Consequently, when one looks at these issues from the CSO perspective, the question arises as to whether it would not be more efficient to do the same, and to address members of cabinets directly instead of parliaments, since governments have gained total command on the negotiation process, including consultations, which, in other circumstances should fall within the purview of parliaments alone.

In this regard, both the extension of their political activities on the part of MNCs, on the one hand, as well as the dealings of governments during negotiations, on the other, induce an important democratic deficit, not only because of the type of control some private actors have secured on the negotiation process itself, but also because the scope and ultimate result of this collusion is not open to the scrutiny of parliaments.

Security and Prosperity Partnership of North America meeting in Cancun, in March of 2006, as the following excerpt shows: "On January 10 and 11, 2006, the Council of the Americas convened a public/private sector dialogue on the SPP in Louisville, Kentucky. Approximately 50 government officials and business leaders from Canada, Mexico and the United States came together for the discussion made possible by UPS. The ensuing conversation was intended to give all the participants a better understanding of the priorities of various stakeholders. As a means to facilitate an ongoing conversation with a broader audience, a conference report was compiled and published (see report as an appendix to this summary) ». On line : www.spp.gov/pdf/SPPSummaryCounciloftheAmericas.pdf

Furthermore, this evolution has put CSOs in an awkward position, not knowing which way to turn : either they stick to the old way of doing things and submit to parliamentary commissions and other such initiatives set up by parliaments at the risk of having little or no impact on the negotiating process itself, or they strive to gain ascendancy in the eyes of cabinet, at the risk of gaining a formal status without any real influence on the outcome of negotiations.

Conclusion

Since NAFTA came into effect on January 1st 1994, we have witnessed a succession of three shifts among opponents to a trade deal for North America. First, the eruption of the EZLN that same day induced a marked radicalization at the fringes, but confirmed the others in their propositional stance that had, and still has, little impact on either the ongoing process of economic integration or on the terms of an oncoming security-led “deep integration”. The second shift is tied to the adoption of the two parallel agreements which have induced the organizations involved - the trade union movement and the environmental movement - to concentrate their energies on the recourses made possible through these agreements and to forsake full-fledged mobilization against the NAFTA.

The third and last shift has to do with framing and the transition to opposition against the FTAA after the first Summit of the Americas convened by president Clinton in Miami, in December 1994. This has prompted these two movements, for reasons we have just discussed, as well as other CSOs, to place the struggle against NAFTA on the backburner and to get involved in mobilizing against the FTAA with other coalitions all through the Americas.

Meanwhile, North America is quickly moving towards deep integration (Campbell: 2003; Grinspun: 2007) and few organizations in either country seem capable of mobilizing on this issue

even though a host of studies have shown that continental integration has been detrimental to citizens and workers in all three countries.

According to the AFL-CIO, some 766,000 jobs were lost from 1994 to 2001 in the United States to NAFTA. In Canada, a surge in importations has resulted in the loss of 276,00 jobs between 1989 and 1997, according to a study carried out by researchers from the Canadian Centre for Policy Alternatives, the Economic Policy Institute and the Colegio de Mexico (Scott, Salas and Campbell, 2001)³⁷. In Mexico, more than 1.8 million people have lost their jobs since 1994, according to a study conducted by Arroyo Picard (1997:52-3). Moreover, NAFTA is faulted for the growing economic inequality, the weakening of labour bargaining power, as well for the decline in the living standards of whole sectors of the population.

Nevertheless, it remains to be seen whether the evolution of the economic and political context will contribute to a remobilization of social forces against NAFTA in North America. There are some indications that this could happen. For instance, the ravages wrought by imports from the U.S. in the agricultural sector in Mexico have led to the creation a coalition named “*El campo no aguanta más*” (The countryside can’t stand any more), which has organized important demonstrations both against NAFTA and against the ongoing negotiations under Chapter 7 on agriculture. After several highly visible actions including the blockade of the capital city, on January 30th 2003, the Mexican government did set up eight dialogue tables on agrarian questions. Meanwhile, both in the U.S. and in Canada, political campaigning in 2003 and 2004 led to brief but significant openings, as when Democratic candidate, John Kerry, agreed to review all free trade agreements, including the NAFTA, during a period of 120 days after his election as president, and as when, following the elections of June 28, 2004, the minority government of

³⁷ The report concludes with this phrase: “The experience of NAFTA suggests that a commercial treaty that doesn’t place as much importance on employment and on social development that it gives to the protection of investors and of financiers is not viable”. (Scott, Salas and Campbell, 2001).

Paul Martin was expected to acquiesce to a proposition coming from parties of the opposition to set up a public citizen evaluation of NAFTA.³⁸

Of course, the return to power of president George W. Bush in January, 2004, the election of a Conservative minority government in May 2006 in Canada, as well as the protracted result of the Mexican elections held July 2nd, 2006, put an end to this. In the meantime, the signature of the Security and Prosperity Partnership of North America,³⁹ on March 23, 2005, ushered in a new phase in the process of deep integration under way in North America, but, for the time being at least, and considering their past experience in their failed mobilizations against the CANUSFTA as well as against the NAFTA, CSOs are particularly ill equipped to face up to this challenge. Worse, the few symbolic gains that they made under the civil society consultation protocol set up in parallel to the FTAA negotiations are completely lost this time around, while the business sector has secured the consultation high ground all for itself.

Finally, it remains to be seen if, following the election of Barak Obama as the 44th president of the US, November 4th, 2008, the file on NAFTA will be reopened as was promised on a number of occasions during his presidential campaign, thereby providing social movements with an opportunity to vent once more their opposition to the deal, or if, as is more likely, it will be laid dormant owing to the pressing and urgent nature of a host of other issues.

³⁸ This proposition came out of a colloquium entitled "NAFTA After 10 Years: Social evaluation and perspectives" convoked at the instigation of RQIC and Common Frontiers, in collaboration with the U.S network, ART, and the Mexican network, RMALC. It brought together more than 400 participants who attended 50 presentations. The event was based on an outline inspired by the one prepared for the second Peoples summit against the FTAA held in Québec city, in April 2001.

Victor Suarez, deputy from the Revolutionary Democratic Party (PRD), who attended the colloquium called a trilateral meeting of parliamentarians on NAFTA in the winter of 2005 in Washington D.C.

³⁹ The text of the Partnership can be found on the site of the Prime Minister's Cabinet:
<http://pm.gc.ca/fra/news.asp?id=443>.