

AMBIANCE: Street food market in Tlacolula, Mexico

NICOLAS: Welcome to a new edition of the bilaterals.org podcast. Today I will be discussing the 30th anniversary of the North American Free Trade Agreement with some special guests. NAFTA came into force in 1994 and inspired many free trade agreements that were subsequently signed around the world.

Over the past 25 years, bilateral investment and trade agreements have proven to be instruments of "deviation of power". They have shaped public norms and policies, opening space for corporate interests while closing legal channels for people who cannot defend themselves. So for movements confronting free trade on every continent, a look in the mirror at NAFTA can be helpful. Now may be the right time to ask ourselves why was this particular treaty a turning point in the history of the global regime of trade and investment? To what extent was this agreement a laboratory for free trade?

To answer these questions, I will turn to our first guest Ramón Vera Herrera. Ramón is from Mexico, and he is part of the continental Alianza Biodiversidad and the Mexican Corn Defense Network [Red en defensa del maíz].

RAMON: When many people talk about the free trade agreements, they think sometimes that they are really free trade agreements, or at least trade agreements. But the complexity of NAFTA in this case, and all free trade agreements, make us think of how it started, you know. And it started as a lock for all these structural reforms that were agreed at the end of the 80s. And all these structural changes really became a kind of instrument to subdue national and international legal structures, and that, at the discretion of the economic interests of corporations. This is something that hadn't happened so blatantly, so openly. And after that, of course, when all the panorama changed in 1994, when the general agreement of tariffs, this GATT, changed into what we call World Trade agreement, well, sorry, World Trade Organisation, immediately, all the free trade agreements that follow, all these bilateral free trade agreements that follow, were already in this way of moving all the structure of a country into the submission of all the economic interests.

It is more and more frequent today that diverse free trade agreements are signed here and there, triggering the dismantling of national legal apparatuses in order to open space for corporations to manoeuvre, while closing the legal spaces for populations to defend their common interests. All these big powers that came to the idea of having these structural changes, structural reforms, understood that they needed instruments to subdue all the juridical apparatus or all the juridical structure of a country. That is how all these bilateral free trade agreements become. But the first of them was not bilateral, it was regional, and it's the North American Free Trade Agreement, you know, that now is reaching its 30 years of existence.

MUSIC: Vivir Quintana feat. El Palomar "Canción sin miedo"

NICOLAS: Mexico's food systems have been deeply affected by NAFTA. Xavier León, who is part of GRAIN's Latin America team and researches the impact of agribusiness and monoculture on indigenous and peasant communities, takes us through one of the most damaging sides of NAFTA.

XAVIER: Agriculture and food systems are strongly affected by FTAs. For example, although in many countries the details may be different, NAFTA promoted land grabbing directly and the privatisation of formerly common plots and land owned collectively by indigenous peoples.

There is also an issue with dumping and disloyal imports. With FTAs, there is an open field for imports according to the rules and interests of companies in different countries. That at a global

level. In Mexico maize imports were boosted, despite the fact that maize is a staple food for the Mexican population and despite all the asymmetries in productivity and subsidies between US and Canadian producers and Mexican producers.

By definition, free trade agreements drive agricultural production towards international export markets. As a result, food crops get replaced by cash crops. This political push more industrial agriculture leads to soil and water depletion, creates dependence on commercial seeds, and drives increased use of chemical fertiliser and pesticides that are harmful to health and the environment. Processed food and distribution control is another important dimension. The installation of the food industry pushed also the immediate marketing, with direct foreign investment, of a world of processed foods, changing consumption patterns, triggering cancer, diabetes, and obesity that became severe health issues in Mexico. Distribution opened the battle about controlling where and what is bought. And convenience stores began to expand expelling many corner shops in their vicinity.

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NICOLAS: Over the past 30 years, NAFTA has had many negative consequences. One of them is that it has allowed labour and environmental deregulation to be used as an "advantage" offered by governments, especially in the case of Mexico.

Camila Montecinos is a member of the National Association of Rural and Indigenous Women [ANAMURI] in Chile. She will discuss this point and the impacts of free trade deals on workers' rights.

CAMILA: At this point in time, it is well known that labour conditions in Mexico, and not only in Mexico, but in Canada and the United States, worsened after the FTA was implemented. Most of all, a lot of labour insecurity, permanent jobs decreased, and so on. That is well known, it's well documented. But from a broader point of view, I think the most important influence that NAFTA has had on labour rights is that for the first time, a trade agreement somehow claimed that they had the right to determine labour conditions. For the first time, you had a trade agreement that talked about labour and somehow said what was acceptable and what was not. And of course, what was acceptable was not what the workers needed. Somehow, the FTA opened doors to intervene on labour relations, which is a process that has continued all these years. After NAFTA, the European Union took that, and also included in the agreements that they pushed, the fact that labour rights could be somehow influenced by free trade agreements. And then all the agreements after that, bilateral agreements, regional agreements, and so on, started including labour in their text.

Now, starting about 10 years ago, I don't remember, but anyway, right now, what we have, we have that every single trade agreement includes the definition of what a labour right is. And that definition is extremely narrow, extremely restrictive. They recognise basically four rights. Among those, it is included no forced labour and no child labour. And some very, very important rights are not included. Therefore, they will not be considered labour rights. And if any country implements them, it opens the door to possible litigation. What are the rights that are not included included? For instance, the right to strike, the right to maternity leave, the right to holidays. Well, not in the case of the agreement between the US, Canada, and Mexico, but in other agreements, and not even a minimum wage is included. There's no clear right to, for instance, having a weekend, of not working on weekends, and so on. So now what we have, because of this door opened by NAFTA, what we have is a real, what is it, a loss of labour rights. In fact, the basis for that definition is a definition by the International Labour Organisation that was signed in 1998, almost 25 years ago, as the very minimum that every country should acknowledge. And now, free trade agreements have

turned that into the maximum because the way it has been defined in the trade agreement, it says that those are the rights and the only labour rights that will be acknowledged.

So it has been a way of going backwards, which is very serious now. We haven't seen still the practical impact of that, except by the fact that those regulations are used to somehow threaten workers of, you know, "OK, you better behave, let's put it that way, or things will get much worse". For me, that's the deepest impact that NAFTA had. It opened the door to something that has become extremely negative and extremely dangerous.

AMBIANCE: Maquiladora

NICOLAS: There is no denying free trade agreements weaken labour relations in favour of corporations. But they also continue the colonial pattern of natural resources plunder. Cecilia Cherez is a member of Acción Ecológica in Ecuador. She will explain why free trade agreements such as NAFTA fuel extractivism and exploitations of territories and how communities resisted in Ecuador.

CECILIA: The alert launched to the world by the Zapatista Communities on January 1st 1994 about the effects of NAFTA on territories, peoples, and their cultures, was received by the peoples of the Global South with alarm. Free trade agreements give so much power to transnational corporations that they place human, collective, and nature rights under the interests of capital. In those years, in Ecuador, strategic steps were taken to expand extractivism and agribusiness, with serious environmental impacts, and impacts on the lives of campesino communities, peoples, and nationalities, but at the same time in scenarios of a strong community resistance. Later came another measure that weakened controls on corporate activities. In addition, several free trade agreements have been signed. But the constellation of resistance struggles have been and are ongoing.

Many achievements have been made by the indigenous and campesino movement, nature defenders, environmentalists, academics, human rights defenders, independent media. All of them keep the dispute alive to defend life, dignity, and justice. The territories, peoples, and natures of the global South come from a long colonial history that imposed on us a destiny of exploitation and devastation that does not end. And today, it is expressed through free trade agreements and investment protection treaties which guarantee greater impunity for large corporations.

In addition, they act on the basis of deceit, revolving doors, and with the complicity of governments to repress and criminalise the defenders of nature. Those have become a threat to capital because with their opposition to the destruction and contamination of their living spaces, they put at risk the profits that the companies expected to obtain. Community struggles in defence of water, campesino agriculture and local autonomy continue to stop or overthrow corporate plans. Some examples of resistance are those to save the Yasuni, the Andean Chocó, the Kimsacocha Paramo, the Intag forest, or the Chevron-Texaco case, demanding full restoration. Along the way, there have been legally binding local and national referendums. Courts have been used at the provincial and national levels, including the Constitutional Court. Also, articulations have been woven with international networks that amplify the voice of the communities and the environmental movement.

AMBIANCE: Demonstration against mining in Ecuador

MUSIC: Amparo Ochoa "El Barzón"

Another controversial aspect of free trade and investment agreements is the investor-state dispute settlement mechanism, commonly known as ISDS. It allows corporations to sue states if new laws,

even in the public interest, adversely affect their investment potential or expected profits. NAFTA is one of the most used instruments to invoke such disputes, which are decided by an international arbitration tribunal rather than a public court.

Manuel Perez Rocha is a Mexican national and a research fellow at the Institute for Policy Studies. As such, he has delved into this mechanism and analysed its most negative impacts.

MANUEL: Investor state dispute settlement allows foreign investors to challenge public policies enacted by governments, bypassing local courts also. Investor state disputes are heard by unaccountable, often secret tribunals with the power to issue enormous fines against governments. The most frequently used tribunal is that of the World Bank's International Centre for the Settlement of Investment Disputes. Many suits under NAFTA have been under this tribunal at the World Bank. While investment tribunals cannot force a government to repeal laws and regulations, costly litigations do have what we call a "chilling effect" on responsible policy-making. Affected communities by transnational corporations are almost always excluded from the tribunals. It is what I call a one-way system. It is like playing a football game in only one half of the pitch where one team attacks (that's the company), and the other one (the government) defends itself. It's a completely unfair system, a one-way system.

AMBIANCE: Demonstration against NAFTA in Mexico

NICOLAS: During the Trump administration, NAFTA was renegotiated and became the United States-Canada-Mexico Agreement or USMCA. Several parts of the agreement evolved and ISDS took on a different form in North America.

MANUEL: The renegotiation of NAFTA resulted in great changes in terms of investors-state dispute settlement among North American countries, but mostly between Canada and the US that dropped it. However, now with the new NAFTA, the USMCA, or United States Canada-Mexico Agreement, North America has not one, but three distinct investment protection regimes. In terms of arbitration, there will be a system for the United States and Canada in which ISDS no longer exists and dispute settlement is instead limited to national or local courts or state to state mechanisms. But there's another investment protection regime for Mexico and the United States, different, in which ISDS persists.

There's a third regime between Canada and Mexico, but now that one is under the Comprehensive and Progressive Trans Pacific Partnership (TPP), which is also largely based on NAFTA's pre-existing Chapter XI model. While the elimination of ISDS between the US and Canada is clearly positive for those countries, the USMCA's fragmented investment provisions otherwise represent a step backwards towards the original asymmetrical postcolonial investor protection system in which ISDS was established, primarily between developed and developing countries. In this, developed countries are increasingly withdrawing from or rejecting ISDS among themselves. Countries like Mexico should try to do the same instead of accepting it. The USMCA has already had chilling effects on Mexico. That is the case, for example, of the Talos Energy Company that threatened Mexico to sue it under the USMCA. And because of this, the AMLO government decided to allow Talos to continue investing in an oil project of Pemex, the national company of Mexico. This is an important case of a so-called chilling effect.

And also under the TPP, Mexico has already been sued by a Canadian company called the Caisse de dépôt et placement du Québec. It has received a notice of intention of being sued by Canadian mining companies Almadex and Almaden. We see very clearly that for Mexico, ISDS remains a very grave, a very worrisome issue, both under the new NAFTA and under the Trans Pacific Partnership.

NICOLAS: As we have seen, NAFTA changed the rules of the game between, countries and between corporations and the people of the countries concerned. Some communities in Mexico understood so well the damage it would do to the country that the Zapatista National Liberation Army, which is an indigenous, community-based movement, declared war on the Mexican government on the same day that NAFTA came into force.

Between 2011 and 2014, a process of the Permanent Peoples' Tribunal was held in Mexico. It allowed communities from over 25 regions to weave together their grievances and motivations for rejecting not only the FTAs but the full range of their effects today. This work of reconstruction continues and legitimises more and more the validity of popular resistance in Mexico, the American continent and the world.

MUSIC: Fallas del Sistema “Himno Zapatista”