

INTRODUCTION TO LEAKED CHAPTER ON INVESTMENT

Saturday, April 21, 2001. We are two days into the Quebec FTAA, which has seen peaceful as well as violent protest, and a great deal of police, rubber bullets, and tear gas. Quebec's wall has gone up, been torn down, built once more, and then torn down once more. The delegates are either afraid to come out, or they have been told to stay in place by the police, in fear of tear gas getting to them and likely setting up international incidents. Some of the delegates reportedly even failed to arrive, in fear of what they felt may occur in Quebec. Well, it did occur.

And on the eve of the FTAA commencement, we have this leaked section of the FTAA on investment. Remember this is only one chapter. I am unsure exactly how many different chapters there are or would be. The leaked chapter is the one that discusses investment regulations among the membership, and since regulations around investment are the heart of what they are all getting at in Quebec, its rather appropriate that we have this to look at so we can participate in the Quebec FTAA, so to speak.

WHAT DOES IT SAY?

You can read it for yourself if you disagree. Since it is a leaked chapter, it is a work in progress by the delegates. Much of the document references past meetings, particularly San Jose. Much of the document is a list of alternative ways to phrase the same point, sometimes up to around seven to eight different versions, all enclosed in brackets. However, averaging the points together, one can correlate the points they are working towards, as well as noticing some of the 'stickier' issues among the delegates themselves based on the number of phrasings or outright disagreements in the versions of the same point.

It discusses how the FTAA is to be set up against existing frameworks of state level rights and laws in the aims of undermining them, which have (more or less, as the cases go historically) been assembled through varieties of democratic processes that include local and geographic specific actors in the relations of the state. By these more local, geographically specific groups I mean human, labor, or environmental rights frameworks that have been won out of conflict.

Different than this historical democratic process that includes varieties of interests, the FTAA is a structure that seems to be designed exclusively for making a distanced (despatialized) framework of rights paramount over local, geographically specific rights and laws--the latter typically having to take many more players into account. The FTAA in other words is the story of a stacked deck in one direction--entirely towards securing supply side and financial arrangements without any requisite obligations at all on the part of the corporations or investors to whom this document is being tailored for and among whom it has been circulating exclusively--until April 20, 2001--though it has global repercussions supposedly if signed.

It says nothing about 'public' recourse against the FTAA at all. It is entirely about securing the mobility of investment capital over local, state, or national legislatures and courts and people. It is about setting up a Constitution of sorts, replete with the granting of privileges in all territories throughout North and South America, without any state capable of 'legally' touching them.

HYPOCRISY OF THE DISCOURSE THAT FTAA IS A 'DEMOCRATIC CLUB'

It is interesting that much is made in the media of only 'democratic' countries being in the FTAA. However, by definition of what this FTAA 'democratic' assemblage of countries would do according to this document, it's hypocritical: these democratic representatives aim to agree to demote the very democratic processes, as a group, that they claim was the 'ticket for admission' to the FTAA talks. FTAA may be about democracy, though it is about calmly signing away local, geographic groups' rights to the participation in the democratic process. The FTAA does this by its desire to set up a framework of courts--ones without further appeal--where corporations are the only citizenship worthy of listening to. These courts are to be higher than the national courts, and they are to be retroactive against any democratic laws at any level.

THREE SECTIONS TO THIS DOCUMENT

There are three basic sections to this document. The second part is a large section on this court (arbitration) system and its procedures and administration, and what 'rights' have been granted and taken away from states if states fail to perform according to the guidelines. The third section is another long section on definitions.

The first part is what I describe below. What follows is a description of various policy points the delegates are agreeing upon, as they create a separate citizenship around investors, within states as well as external to particular states. Structurally, this makes a two level citizenship. This makes everyone in North and South America second class citizens--except investors, who are separate and are making their own laws over everyone else and trumping every other framework of law.

TURNING THE WORLD INSIDE OUT, CORPORATIONS RULE SEPARATED TERRITORIES;

FTAA: DEMOTING NATION-STATES FROM WITHIN AND WITHOUT

I am organizing this as a 'within' and a 'without' category. This is based on my reading of what the different bracketed versions have in common. I point out some contention among the delegates' versions, where I thought it was notable:

FTAA: TWO WAYS IT UNDERMINES DEMOCRATIC STATES, WITHIN AND WITHOUT

WITHIN:

FTAA TRUMPS ALL LEVELS OF GOVERNMENT, *RETROACTIVELY* TO ALL PAST LAWS

DESIRES TO AVOID ANY "NATIONALIST BIAS" IN STAFFING OF CORPORATE INVESTMENT CONCERNS, though some phrases say that a 'nationalist bias' would be fine, as long as it this nationalist bias

fails to interfere with the operations and management of the investment operation.

TRUMPS 'MOST FAVORABLE TRADING NATION' STATUS
phrased as: "[. . .The treatment to be accorded to a state, territory, possession, or province under paragraph 1 is treatment no less favorable than the treatment that it accords, in like circumstance, to natural persons resident in and companies constituted under the laws of other states, territories, possessions, or province of the Party of which it forms a part, and to their respective investments.]"

KNOCKING DOWN A STATE'S PASSPORT REQUIREMENTS ON
MANAGEMENT PERSONNEL OF CORPORATIONS, REMOVING OTHER
TESTS OF ENTRANCE INTO TERRITORIES FOR "KEY PERSONNEL"

LAWS AGAINST ANY NATIONALIZATION OF PROPERTY WHICH IS CALLED
IN PARENTHESES "EXPROPRIATION"; however, this point is contentious--
some say it is fine to nationalize property with compensation, others want
nationalization as a state power entirely removed, other phrases say
nationalization with "due process" makes it fine., etc., or for a public
use makes it fine; there is contention about payment options, some wanting
expropriated/nationalized items if they fail to be "immediately" paid,
paid with interest.

INDEMNITY PAYMENTS FOR WARFARE THAT DESTROYS THE BUILT
INFRASTRUCTURE OR INVESTMENTS, TO BE PAID BY THE HOST STATE
TO THE INVESTOR

DESIRES TO OUTLAW ANY 'BUY LOCAL' CAMPAIGN.

TAX FREE INVESTING IN FOREIGN STATES? I was unclear on this phrasing.
It seems like a completely tax free operation is proposed by some delegates:
"[No Party may require its investors to transfer, or penalize its
investors that fail to transfer, the income, earnings, profits or other
amounts derived from, or attributable to, investment in the territory of
another Party.]" Of course with a great deal of world 'trade' actually
being only internal firm transfers, this amounts to legalizing tax free
investment for the largest TNCs.

ANY ATTEMPTS TO CURTAIL THESE MEASURES BY THE HOST STATE
AUTOMATICALLY GO INTO SOME FORM OF NEGOTIATIONS AFTER 6
MONTHS TO BRING THE SHEEP BACK TO THE FOLD

IMMEDIATE FINANCIAL TRANSACTIONS (WITHDRAWALS FROM A STATE)
TO BE ALLOWED, WITHOUT ANY BUREAUCRATIC DELAYS.

WITHOUT:

FTAA AS A MAGNA CARTA FOR INTERNATIONAL INVESTORS, NO ONE
ELSE MENTIONED

INTERNATIONAL MILITARY INCURSIONS ARE TO BE ALLOWED BY ALL PARTICIPANTS IN THE FTAA, TO SECURE AND PROTECT INVESTMENTS IN SAID TERRITORIES (my comment: legalizing in the FTAA framework the multi state putsches of NATO against places like Yugoslavia or (more exclusively U.S, in Columbia; what I would be interested in seeing is the section that says exactly WHO will be doing this militarily] though you can bet it is NATO or the UNITED NATIONS military, or "private police" forces which seem to be getting legal 'rights' in the host state.)

AN INTERNATIONAL COURT SYSTEM COMPRISED OF PAST TREATY ARBITRATION FRAMEWORKS AND ANY OTHERS WORKED OUT BY THE FTAA ARE THE OPTIONS FOR RESOLVING CONTENTION AMONG THE MEMBERS OF THE FTAA. ANY STATE COURTS, EVEN DOWN TO THE SMALLEST LEVEL OF GOVERNANCE WITHIN A STATE ARE UNIMPORTANT AND ARE TRUMPED "[. . .This Chapter applies to the entire territory of the Parties (governments) and to any level or order of government regardless of any inconsistent measure that many exist in legislation at those levels or order of government. . .]"

FTAA TRUMPS ANY OTHER REGIONAL TRADING BLOCKS THAT ARE MORE GEOGRAPHICALLY SPECIFIC, OR THAT CONTRADICT THE FTAA

OUTLAWING STATE GOVERNMENTS' 'BUY LOCAL CAMPAIGNS'

CONCLUSION

This sets up a government of sorts, within existing states and external to existing states. Both the within and the without aspects of the FTAA are designed to trump more locally, geographic democratic feedback into the governing process.

The FTAA in my opinion seeks to set up a 'formal framework' that ****requires**** additional structural adjustment across any state, something that has been informally been performed so far through World Bank/IMF/NATO frameworks since post WWII. This is less a code of expression of moral values or whatever else. This is a code of administration for undermining and 'structural adjusting' host states to be, within and without, part of the same society. Borders are down for money and finance, for "key personnel" (as the document calls them) who can do without passports; borders are down for locally specific tariffs. What borders remain up? Likely the ones on labor mobility, or on borders to democratic accountability. The borders are designed from the outside--to hold us in--and to keep TNCs and despatialized finance in a separate legal category, even though they are simultaneously within and external to states, our feedback on them is what is being written out of the picture.

What does this formal document mean informally? The FTAA means that informally the actors already on the scene are pragmatically going to be the ones institutionalized as the governing and administrative entities and these will expand: TNCs, IMF/World Bank, and 'group militaries' (similar to NATO) or the 'private policing' forces that have expanded particularly in African states, will expand. These lords, financial ministers, and private armies--these are the entities the FTAA presents to us.

These are the three entities our present democratic representatives present to us: a hemispheric state based on legalizing structural adjustment frameworks. This document describes what they want to do, and what court systems they will use to enforce and adjudicate it, as well as what will happen militarily if the "Parties" to the treaty ignore it.

Or, am I mistaken: are they our past democratic leaders who are offering us this?

We require more locally, geographically specific accountability, and more locally, geographically specific parties in government. If the present frameworks of informal despatialized political parties in states have led to this outgrowth of despatialized leadership, then we should be looking how to 'structurally adjust' our formal structures of democracy to facilitate a wider range of locally, geographically specific voices.

The state should bend the opposite way.