Top Arbitration Lawyer Says Corporate Sovereignty System Needs 'Complete Overhaul'

From the *weapons-of-legal-destruction* dept

By Glyn Moody

May 15, 2014

A few months back we wrote about the free trade supporter Cato Institute arguing that corporate sovereignty provisions should be dropped from trade agreements, for a variety of cogent reasons. You wouldn't expect one of the top arbitration lawyers that actually uses the system to go quite so far, but this is pretty close:

A prominent international lawyer has launched a scathing critique of the international arbitration system that deals with investor-State disputes, calling for its "complete overhaul".

Delivering the keynote address to the Eighth Annual Juris Investment Treaty Arbitration Conference held in Washington, D.C. in late March, George Kahale III -- who has been lead counsel in several of the world's largest international arbitration cases, including a pending claim against Venezuela -- also listed the top ten of what he viewed were the most troubling aspects of investor-State arbitration.

His ten points are all good, and well-worth reading, but the first is particularly important. It helps to explain why corporate sovereignty has become such a big issue recently -- and why some nations are starting to withdraw from such schemes:
many governments are jumping on to the bandwagon of investment treaties -- which Kahale described as "weapons of legal destruction" -- often without scrutinising the serious implications and significance of the obligations contained therein.

Governments also often overlook the changing nature of investment treaties -- which are expanding in breadth and ambiguity -- in favour of investors with the corresponding effect that more and more types of State acts, gestures or Statements are becoming liable to challenge and compensation by foreign investors, said Kahale.

It's the fact that investor-state dispute settlement (ISDS) chapters are like a ticking trade time-bomb, just waiting to explode at some unknown future date, that makes them so dangerous. A country can't predict which apparently innocuous change to its laws or regulations will trigger a

multi-million -- or even multi-billion -- dollar ISDS claim against it. Since awards must be met from the public purse, that means there could be a huge unexpected shortfall in the national budget. That lack of certainty -- and lack of financial control -- is no way to run a country, and is yet another reason why all nations, even the largest, would be wise to refuse to include corporate sovereignty provisions in their trade agreements.