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WITHERED GIANTS: MEXICAN AND U.S. ORGANIZED LABOR AND THE NORTH AMERICAN AGREEMENT ON LABOR COOPERATION

Fredrick Englehart*

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[A] society which evades its responsibility by thrusting upon the courts the nurture of the spirit in the end will perish.

—Learned Hand

I. INTRODUCTION

The North American Agreement on Labor Cooperation (NAALC), the supplemental labor standards agreement to the North American Free Trade Agreement (NAFTA), links the promotion of fundamental labor rights with the privilege of trade. While it is not the first agreement negotiated by the United States that addresses social issues, the NAALC is unprecedented in that it is the first trade agreement that contains a

mechanism by which the labor practices of the United States and its trading partners may be examined on demand.\textsuperscript{6}

To initiate the review of a labor law matter arising in the territory of another country, an interested party files a public submission with the National Administrative Office (NAO), a NAALC administrative agency.\textsuperscript{7} Progressively, the matter may be pursued through consultations among NAOs, cabinet-level or ministerial consultations, evaluations by a committee of experts, and finally through arbitration, which may result in monetary sanctions.\textsuperscript{8} However, labor relations matters involving freedom of association and collective rights may not be carried beyond ministerial consultations.\textsuperscript{9}

NAFTA arrives at a time when the organized labor movements of the United States and Mexico are in transition. From its peak during World War II, U.S. union membership has steadily declined. Today only about one out of seven workers belongs to a labor union.\textsuperscript{10} This Note argues that the principal causes for the decline of U.S. organized labor are its (1) overuse of the work stoppage, (2) tolerance for criminal

\begin{flushleft}
\textsuperscript{7} See NAALC, supra note 2, art. 16.
\textsuperscript{8} See id. arts. 21 (consultations between NAOs), 22 (ministerial consultations), 23-26 (evaluation committees of experts), 29-38 (provisions governing the procedures of invoking and pursuing a submission through the arbitral panel), 39(4)(b) and 39(5)(b) (specifying the imposition of monetary sanctions).
\textsuperscript{9} See id. art. 23(2).
\textsuperscript{10} See Union Membership: Data for 1994 Shows Membership Held Steady at 16.7 Million, Daily Lab. Rep. (BNA), No. 27, at D-23 (Feb. 9, 1995) (reporting that union density of 15.5% in 1994 represented a decrease from 15.8% in 1993, but that the number of union members increased by 150,000 to 16.7 million over the same period) [hereinafter Union Membership: Data for 1994].
\end{flushleft}
infiltration, (3) philosophical decisions, and (4) tolerance for the entrenchment of internal power. This conduct has caused debilitating reactive legislation and loss of public and political support.

Organized labor, as embodied by the U.S. umbrella confederation, the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO) has a plethora of problems. But most observers agree that its most urgent task consists of reversing its loss of membership and thus reestablishing a significant presence in the workplace. Supporters fear that if union membership and its corollary, political influence, continue their precipitous decline, organized labor soon will be irrelevant. The confederation opposes the NAALC arguing that because the NAALC does not penalize violations of collective rights with monetary sanctions, these most fundamental rights are unprotected.

Mexican organized labor is also at a crossroads, but for entirely different reasons. For over sixty years, the Partido Revolucionario Institucional (Institutionalized Revolutionary Party, or PRI) has ruled Mexico. The ruling party controls the presidency, the congress, and most state and local governments. The party’s labor bloc, the strongest of the three political factions that comprise the PRI, historically has dominated the party, and Mexico’s powerful labor confederation, Confederacion de Trabajadores de Mexico (the Confederation of Mexican Labor),

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11 See infra part II.A.2.a-d.
13 See Peter Rachleff, Peering into the Crystal Ball: The Future of the U.S. Labor Movement, CAN. DIMENSION, Aug. 1, 1994, at 23.
16 See DAN LA BOTZ, MASK OF DEMOCRACY: LABOR SUPPRESSION IN MEXICO TODAY 39 (1992); see also The Long Haul (Institutional Revolutionary Party, Mexico), ECONOMIST, Aug. 26, 1995, at 17 (describing the PRI as not so much a source of power or doctrine, but a mechanism through which the country’s rulers give themselves legitimacy, encompass dissent, and assure continued rule) [hereinafter The Long Haul].
17 See FREDERIC MEYERS, MEXICAN INDUSTRIAL RELATIONS FROM THE PERSPECTIVE OF THE LABOR COURTS 14-15 (Institute of Industrial Relations Monograph Series Vol. 24, 1979); see also SCHLAGHECK, supra note 15, at 6-10.
Workers, or CTM) dominates the labor bloc and thus the PRI. This proximity to the ruling party has produced an organized labor movement without an ideology of its own. The PRI labor confederations have perpetuated their own political power by supporting Mexico's president whether or not administrative policy benefits workers. Indeed, many observers assert that the function of the PRI labor machine is to maintain its power; any salutary effect on wage earners is coincidental. In recent years, however, this hegemony has weakened. The PRI labor bloc is losing power to other factions within the party, and recent electoral losses suggest that the PRI monopoly over political power is waning.

The PRI unions vigorously support NAFTA, envisioning Mexico as the beneficiary of U.S. job losses. However, they oppose NAALC, arguing that Mexican workers' fundamental rights are protected adequately by Mexican labor law and presumably by the PRI unions themselves. Thus far, two NAO submissions, each questioning one country's enforcement of fundamental labor rights, have resulted in ministerial consultations. Those submissions provide a foundation for judging the legitimacy of labor's criticisms of the NAALC.

To provide a basis for evaluating the validity of these criticisms, Part II of this Note sketches the history of each nation's labor movement and discusses the laws that guarantee collective labor rights in each nation. Part III outlines the provisions of the Agreement that govern the NAO submission process. Part IV evaluates the two submissions that resulted in ministerial consultations. Part IV then argues that organized labor's historical view prevents it from recognizing that the NAO review process has produced positive results, and that the NAALC presents to U.S. and Mexican organized labor an opportunity to better understand and respond

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18 See SCHLAGHECK, supra note 15, at 9-10; MEYERS, supra note 17, at 15.
19 See, e.g., LA BOTZ, supra note 16, at 41.
20 See, e.g., The Long Haul, supra note 16.
to the increasing globalization of capital. Part V suggests an amendment to NAALC that will allow complaints of persistent violations of fundamental collective labor rights to be pursued beyond ministerial consultations to the expert committee evaluation stage. This Note concludes that the NAALC presents an opportunity to each labor movement to regain a measure of lost political power; however, to exploit that possibility each organization must alter its respective historical response pattern.

II. ORGANIZED LABOR AND LABOR LAW

The modern rise to power for organized labor in the United States and Mexico began in the 1930s, but over the past two decades each nation has lost a substantial measure of its once formidable political strength. Unless the organizations implement material changes further degeneration is likely. Each country's labor history provides the insight and perspective essential to this Note's theme: that given each labor organization's current reserve of political power, its criticisms of NAALC are unrealistic, and neither will discover nor exploit NAALC's virtues unless it changes its historical conduct. While substantially different for each country, the historical forces that fueled organized labor's ascent, and contribute to its continuing decline, portray the contemporary character of each national labor movement. Accordingly, this section will trace the ascent of labor in each country and postulate reasons for the decline of each national organized labor movement, thereby providing a basis for evaluating the criticism each directs at NAALC.

Part A of this section demonstrates that U.S. organized labor gained legitimacy and solidified a formidable power base in approximately one decade, but notes that its power base began to deteriorate soon after its advent. The ability to strike is a necessary weapon for organized labor and the unions annealed their power by its swift and instinctive use. But during and after World War II, labor leaders called too many strikes, injuring labor's public image and prompting congressional retaliation that struck at the heart of union power. Labor leaders ignored the criminal infiltration of some of the largest unions. They expelled the malefactors only after congressional investigation, leading to more debilitating legislation and further erosion of public support. By philosophical predilection, U.S. organized labor directs resources at the union member instead of at the working class. This singularity of focus provided a cornucopia

\[25\] See discussion infra parts II.A.1, B.1.
\[26\] See discussion infra parts II.A.2, B.2.
\[27\] See discussion infra part II.A.2.a.
\[28\] See discussion infra part II.A.2.b.
\[29\] See discussion infra part II.A.2.c.
of benefits for members, but detractors seized upon its adversarial elements, characterizing big labor as a villain protecting a privileged few at the expense of the many. While membership and public support declined steadily over half a century, changes in the legal landscape diminished the effect of the old methods, namely the strike, sit-in, and boycott. Union leadership, itself comfortably ensconced, appears unable to reverse the losses. Although a first-ever, contested election for AFL-CIO president reportedly invigorated U.S. labor, it is questionable whether the new regime’s agenda seriously addresses the future. Today, union density is less than one-half of its World War II era high and continues to fall. Membership and density figures for most industrial nations have been receding, but only France’s has plunged as deeply as that of the United States. Foremost among the many factors that combined to weaken labor’s house are its shortsightedness and reflexive response to adversity. Little has changed. The AFL-CIO threatened politicians who supported NAFTA and reviled NAALC before its first test. The unions and organizations involved in the first few NAALC cases condemned the agreement after two predictable losses, and summarily repudiated it as useless, betraying a continuing reflexive shortsightedness.

Part B of this section demonstrates that as Mexican organized labor’s ascendancy was tied to the PRI, so is its decline. Labor achieved its political status by supporting the constitutional forces during Mexico’s revolution and maintained power through its unqualified support of the party, its president, and the policies of the current administration. However, Mexico’s omnipresent charges of official corruption and scandal, continuing economic doldrums, and PRI electoral losses are combining to threaten PRI hegemony. If the party suffers substantial or irreparable harm, the labor unions closely aligned with it will also be harmed.

References:
31 See discussion infra part II.A.3.
32 See discussion infra part II.A.2.d.
33 See discussion infra part II.A.3.
34 See Walter Galenson, Trade Union Growth and Decline: An International Study 1-3 (1994).
35 See Susan Page, Clinton Blames Union Tactics: Says ‘Raw Muscle’ Threatens NAFTA, Newsday, Nov. 8, 1993, at 4 (reporting that President Clinton accuses labor unions of threatening politicians who support NAFTA).
37 See discussion infra parts IV.A.6, IV.B.6, VI.
38 See discussion infra part II.B.1.
39 See discussion infra part II.B.2.a-c.
unions' power base within the party has already been weakened already. As long as they remain firmly a part of Mexico's ruling structure, the unions may boast that because they protect the interests of Mexican workers, the NAALC is an unnecessary adjunct, regardless of the truth of the assertion. But organized labor's place within Mexico's political hierarchy is changing, and labor leaders must realistically reassess its strength and determine its future direction. As the historical relationship unravels, so should the rhetoric and conduct based upon that relationship.

A. The United States

1. Organized Labor's Ascent

The 1935 National Labor Relations Act (NLRA), enacted after decades of labor strife, gives workers the right to form, join, or assist labor organizations; the right to bargain collectively; and the right to strike. Six years after passage of the NLRA, World War II provided the crucible from which the labor leaders of the day fashioned a strong national organized labor movement.

After the attack on Pearl Harbor, President Roosevelt's order of January 12, 1942 established the National War Labor Board (WLB) and gave it jurisdiction over industrial relations to facilitate war production. The WLB, a product of President Roosevelt's labor-friendly New Deal, commanded recalcitrant employers to sign collective bargaining agreements, allowed a version of the closed shop; and due to restraints on

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40 See discussion infra part II.B.2.b.
42 See generally 2 PHILIP S. FONER, HISTORY OF THE LABOR MOVEMENT IN THE UNITED STATES (1955) (describing the history of the labor movement in the United States from 1880 onward); DAVID BRODY, WORKERS IN INDUSTRIAL AMERICA: ESSAYS ON THE 20TH CENTURY STRUGGLE (2d. ed. 1993).
44 See id. §§. 157, 163.
45 See BRODY, supra note 42, at 112-16; HARRY A. MILLIS & EMILY CLARK BROWN, FROM THE WAGNER ACT TO TAFT-HARTLEY 271-72 (1950).
46 See Exec. Order No. 9017, 3 C.F.R. 1075 (1938-1943), reprinted in 2 U.S. Dep't Lab., TERMINATION REPORT OF THE NATIONAL WAR LABOR BOARD 49 (1949) [hereinafter 2 TERMINATION REPORT]. The WLB expired on December 31, 1945 having disposed of 20,800 industrial disputes involving more than 12.5 million workers. See 1 U.S. Dep't Lab., TERMINATION REPORT OF THE NATIONAL WAR LABOR BOARD xxii (1949) [hereinafter 1 TERMINATION REPORT].
47 See BRODY, supra note 42, at 120-28.
48 See id. at 113.
wage increases,50 expedited the inclusion into labor agreements of manifold fringe benefits,51 all of which contributed to labor’s ascendancy.52 Union membership had reached its zenith, increasing from 13.2% in 1935 to 35.5% in 1945.53 But labor’s tenure at the top was to be short-lived.

2. Organized Labor’s Decline

a. The Strike

Shortly after the United States officially entered World War II, President Roosevelt received from labor a no-strike pledge. President Roosevelt also received a no-lockout pledge from management concerning labor disputes that might erupt in industries vital to the war effort.54 During the early war years, labor generally honored its pledge by minimizing strikes and slowdowns, consenting to longer working hours, relaxing work rules, and striving to increase production.55 But in 1943, strike and lockout activity increased,56 and a particularly acrimonious

49 See id. at 114; MILLIS & BROWN, supra note 45, at 297.
51 See BRODY, supra note 42, at 115. Fringe benefits in collective bargaining officially were not subject to the austerity controls until early in 1945 when the war was nearly over. On March 8, 1945—and supplemented six weeks later—the Director of Economic Stabilization issued a policy directive which placed within the WLB’s purview, vacations, shift differentials, merit increases and automatic progressions, and intra-plant re-evaluations and reclassifications. See 2 TERMINATION REPORT, supra note 46, at 124-25.
52 See BRODY, supra note 42, at 112-16.
53 See A.B. Cochran, III, We Participate, They Decide: The Real Stakes in Revising Section 8(a)(2) of the National Labor Relations Act, 16 BERKELEY J. EMPLOYMENT & LAB. L. 458, 466 (1995); see also BRODY, supra note 42, at 157 (noting that in 1950, historian Arthur M. Schlesinger’s list of the ten most important events during the first half of the twentieth century placed “the upsurge of labor” behind only the two world wars).
54 See Witt Bowden, Labor in Transition to a War Economy, 54 MONTHLY LAB. REV. 843, 867 (1942); MILLIS & BROWN, supra note 45, at 296.
55 See MILLIS & BROWN, supra note 45, at 298.
56 See 1 TERMINATION REPORT, supra note 46, at 10. In 1942, 2,968 work stoppages having an average duration of 11.7 days idled 840,000 workers; in 1943, 3,752 work stoppages having an average duration of five days idled 1,981,000 workers.
work stoppage in the bituminous coal industry undertaken in defiance of the President and the WLB prompted Congress to enact the War Labor Disputes Act\textsuperscript{57} over President Roosevelt's veto.\textsuperscript{58} The legislation provided for imprisonment of up to one year and or a fine of up to $5,000\textsuperscript{59} for a strike or lockout undertaken in an industry the president seized or operated pursuant to his war powers.\textsuperscript{60} Public sentiment had turned against organized labor over the wartime strikes.\textsuperscript{61} Immediately after the war a crippling wave of strikes swept the country.\textsuperscript{62} Labor's no-strike pledge had expired, and it was time to offset the austerity of the war years.\textsuperscript{63} Additionally, the production cutbacks occasioned by the

See Work Stoppages Caused by Labor Management Disputes in 1945, 62 MONTHLY LAB. REV. 718, 720 (1946) [hereinafter Work Stoppages 1945].


\textsuperscript{58} See 1 TERMINATION REPORT, supra note 46, at 10; MILLIS & BROWN, supra note 45, at 298.

\textsuperscript{59} See id. § 6(b).

\textsuperscript{60} See Selective Training and Service Act of 1940, Pub. L. No. 76-783, § 9, 54 Stat. 885, 892 (terminated 1947) (giving the president the war power to seize and operate any enterprise that provided, or was capable of providing arms, ammunition, and military supplies or equipment, upon the refusal of the enterprise to timely and for a reasonable price, supply to the government the kind, quantity, and quality of equipment it ordered). Section 3 of the War Labor Disputes Act amended § 9 of the Selective Training and Service Act to include specifically "any plant, mine, or facility . . . which may be useful in connection" with war production. War Labor Disputes Act, § 3, Pub. L. No. 78-89, 50 U.S.C. § 1501.

\textsuperscript{61} See, e.g., Confusion on War, Gallup Declares, N.Y. TIMES, Jan. 6, 1943, at 33 (citing Dr. Gallup as stating that the country is ready for stringent restrictions on labor because of its "public be damned" attitude); cf. George Gallup, Eighty-one Percent Favor a Ban on Strikes in War, N.Y. TIMES, Jan. 20, 1943, at 15 (stating that although the average American supports union ideals, he or she believes the government should be stricter in preventing union strikes in the nation's war industries for the duration of the war); George Gallup, Workers in Nation's Key Areas Favor Ban on Strikes in War Plants, Gallup Poll Finds, N.Y. TIMES, May 5, 1943, at 17 (stating workers, even union members, in war industry plants favor a ban on war industry strikes); George Gallup, Poll Finds Public Hostile to Strikes, N.Y. TIMES, Nov. 21, 1943, at 13 (stating that when the poll participants were asked what caused strikes, the largest group blamed labor leaders).

\textsuperscript{62} See Postwar Work Stoppages Caused by Labor Management Disputes, 63 MONTHLY LAB. REV. 872, 872 (1946) (stating that "in the 12 months following VJ-day, August 14, 1945 . . . the country experienced 4,630 work stoppages, directly involving about 5 million workers and resulting in almost 120 million man-days of idleness") [hereinafter Postwar Work Stoppages]; BRODY, supra note 42, at 173-74.

war's end meant less take-home pay, and the unions demanded wage increases to recoup the lost income. The strikes tended to affect key industries with enormous numbers of employees, and often directly affected the public. There were major strikes in public utilities causing brownouts, and in public transportation paralyzing cities. Another coal strike led to a sympathy railroad walkout. Steel, oil, automobile, rubber, lumber, textile, glass, packing house, shipyard, and longshoremen's unions all struck. The national feeling produced by these strikes was that labor had become too strong; that its power needed equalization; and that the unions had not assumed responsibility to their members, the public, or to industry that accompanied the rights guaranteed by the NLRA.

The 1946 congressional elections produced unfriendly Republican majorities in both houses of Congress, and President Truman called for labor law reform in his State of the Union Message. The direct statutory result of the wave of work stoppages was the Taft-Hartley Act of (describing auto workers' lack of satisfaction with their wages after the war).

64 See Postwar Work Stoppages, supra note 62, at 872.
65 See id. at 872; MILLIS & BROWN, supra note 45, at 311-15.
66 See Postwar Work Stoppages, supra note 62, at 887-90, tbl. 5.
67 See MILLIS & BROWN, supra note 45, at 272.
68 See The People's Way, TIME, Nov. 18, 1946, at 21 (reporting that in the 96 seat Senate, Republicans gained 12 seats for a 51 to 45 majority, their House gain of 64 seats produced a majority of 246 to 188, and in addition to the numbers, that the voters' spoke at least in part to the plethora of labor stoppages); see also Horatius and the Great Ham, TIME, Dec. 16, 1946, at 22 (reporting that the pendulum of public opinion was swinging away from labor).

<table>
<thead>
<tr>
<th>Strikes: Year</th>
<th>No. work stoppages</th>
<th>No. Workers idled (millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1934</td>
<td>1856</td>
<td>1.467</td>
</tr>
<tr>
<td>1935</td>
<td>2014</td>
<td>1.117</td>
</tr>
<tr>
<td>1936</td>
<td>2172</td>
<td>0.789</td>
</tr>
<tr>
<td>1937</td>
<td>4740</td>
<td>1.861</td>
</tr>
<tr>
<td>1938</td>
<td>2772</td>
<td>0.688</td>
</tr>
<tr>
<td>1939</td>
<td>2613</td>
<td>1.171</td>
</tr>
<tr>
<td>1940</td>
<td>2508</td>
<td>0.577</td>
</tr>
<tr>
<td>1941</td>
<td>4288</td>
<td>2.363</td>
</tr>
<tr>
<td>1942</td>
<td>2968</td>
<td>0.840</td>
</tr>
<tr>
<td>1943</td>
<td>3752</td>
<td>1.981</td>
</tr>
<tr>
<td>1944</td>
<td>4956</td>
<td>2.116</td>
</tr>
<tr>
<td>1945</td>
<td>4750</td>
<td>3.467</td>
</tr>
<tr>
<td>1946</td>
<td>4985</td>
<td>4.600</td>
</tr>
</tbody>
</table>
1947, which sharply curtailed the rights labor had enjoyed since the passage of the NLRA only twelve years earlier. Taft-Hartley's more significant provisions excluded supervisors from the definition of employee, gave workers the right to refrain from participating in union activity, outlawed the closed shop, instituted a complex process for representation elections, and created an abundance of unfair labor practices by labor organizations. But the substantial restrictions Taft-Hartley placed on it were not organized labor's only problem: one year earlier Congress had passed a racketeering statute aiming to curtail extortion in trucking.

b. Criminal Infiltration

A few years after a U.S. Supreme Court decision involving extortion by a New York Teamsters Local, Congress amended an anti-racketeering statute to include the growing problem of labor racketeering. The result was the 1946 Hobbs Act. Five years later, U.S. Senator Estes Kefauver headed a committee investigating organized crime in interstate commerce, but spent little time on the labor link. Then in 1957, to probe the misuse of union funds and other corrupt practices of


75 See 29 U.S.C. § 159.
76 See 29 U.S.C. § 158(b).
77 See United States v. Local 807 of International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America, et al., 315 U.S. 521 (1942) (affirming on other grounds the lower court's reversal of the convictions of two union members who, by use or threat of violence, exacted the equivalent of the union wage scale for a day's work from nonunion truckers as they entered New York).
labor and management, the U.S. Senate appointed the Select Committee on Improper Activities in the Labor or Management Field, better known as the McClellan Committee after its chairman, John L. McClellan.\[^{82}\] The McClellan Committee focused on the Teamsters Union and two of its presidents, Dave Beck and James R. Hoffa.\[^{83}\] The well-covered confrontations between McClellan's chief counsel, Robert F. Kennedy, and the pugnacious Hoffa\[^{84}\] captured the nation's attention.\[^{85}\] The McClellan Committee's work led directly to the enactment in 1959 of the Landrum-Griffin Act,\[^{86}\] which regulated the internal and financial affairs of unions.\[^{87}\] Also called the union members' bill of rights, Landrum-Griffin established internal union election procedures, provided union members with access to the internal processes of their union, and required both labor and management to comply with financial reporting provisions.\[^{88}\]

Thirty years later, a presidential commission investigating labor and management racketeering reported that in the area of labor racketeering, nothing much changed for organized crime except the extent of its domination and the end of its influence,\[^{89}\] a clear and historical partnership between organized crime and organized labor goes back thirty years,\[^{90}\] and the infiltration of labor unions by organized crime is visible to the world.\[^{91}\] Although labor racketeering by most accounts is confined to a small proportion of organized labor,\[^{92}\] its colorful characters and sensa-

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\[^{82}\] See id. at 239.

\[^{83}\] See RALPH C. JAMES & ESTELLE DINERSTEIN JAMES, HOFFA AND THE TEAMSTERS 20 (1965).

\[^{84}\] See id.


\[^{88}\] See BRUCE FELDACKER, LABOR GUIDE TO LABOR LAW 4 (3d ed. 1990).

\[^{89}\] See PRESIDENT'S COMMISSION ON ORGANIZED CRIME, RECORD OF HEARING VI: ORGANIZED CRIME AND LABOR-MANAGEMENT RACKETEERING IN THE UNITED STATES xii (April 1985) (statement of Arthur P. Brill, Jr., Director of Public Affairs) [hereinafter PRESIDENT'S COMMISSION ON ORGANIZED CRIME 1985].

\[^{90}\] See id. at xiv.

\[^{91}\] See id. at xiv-xv.

\[^{92}\] See S. REP. No. 86-187, pt. 3 (1959), reprinted in 1959 U.S.C.C.A.N. 2318, 2328; see PRESIDENT'S COMMISSION ON ORGANIZED CRIME 1985, supra note 89, at 5-6
tional public revelations have undermined the public's confidence in collective bargaining, labor leaders, and organized labor. In addition to this ample mass of self-induced problems, organized labor has suffered an identity crisis almost from the beginning.

c. Philosophical Decisions

Samuel Gompers, the first president of the AFL, aimed the nascent labor movement away from political involvement toward twin doctrines that became known as "volunteerism" and "pure-and-simplism." Volunteerism held that political action, such as the sponsorship of legislation and the endorsement of political candidates or parties should occupy a minor place in labor's strategy because the well-being of workers is best guarded and advanced by union activity. Pure-and-simplism echoed Gompers' political sentiment that the goal of a labor organization is the pure and simple issue of better wages and working conditions. This early philosophy, although textured and amended by the vagaries of time and opportunity, produced an American labor movement slow to adapt to changes such as the increase of racial minorities and women in the workforce and the national economy's shift from manufacturing to services and technology.

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(statement of Samuel K. Skinner).

93 See President's Commission on Organized Crime, Report to the President and the Attorney General, The Edge: Organized Crime, Business, and Labor Unions 4 (Mar. 1986); Rogue's Gallery, Time, Apr. 7, 1958, at 20 (noting that although the AFL-CIO rightfully claimed that it expelled corrupt unions, it did so only after the McClellan Committee hearings); Labor's Love Lost, Time, Sept. 30, 1957, at 22 (reporting that the public's regard for labor unions has suffered substantially since the McClellan Committee hearings first revealed labor racketeering, and noting a 12% drop in labor's approval rating from 76% to 64% over seven months).

94 See Brody, supra note 42, at 21-32.

95 See id. at 27; Foner, supra note 42, at 100.

96 See, e.g., Brody, supra note 42, at 37; Reuther, supra note 63, at 255 (discussing this credo, also knows as business unionism; i.e., the union operates much as a business. It serves union members, not the working class, and its goal is to grow and to provide increasing and steady dividends to those members. Any benefit that may inure to those outside of the union [such as when organized labor attains the passage of legislation that reaches all American workers] is incidental. Business unionism demands "[g]ive us our share and the devil take the hindmost").

97 See, e.g., Industrial Union Department, AFL-CIO, Needed: A Constructive Foreign Trade Policy 103-05 (1971) (noting predictions by the U.S. Department of Labor that the service sector of the economy will grow at an increased rate eclipsing the manufacturing sector).
Another effect of Gompers' doctrine was American organized labor's rejection of the Marxist concept of class struggle. Although segments of the labor movement often flirted with labor militancy, and the history of the CIO cannot be told accurately without reference to its early socialist and communist influences, the movement at large ultimately rejected class-conscious political radicalism.

Just after World War II, when the labor movement was at its peak, an influential and forward-looking young labor leader made a decision, albeit not altogether of his own choosing, that profoundly affected organized labor's future direction. The industrial unions of the CIO wanted to extend the scope of collective bargaining into areas that management considered its exclusive sphere. In 1945, young Walter Reuther, spearheading the United Automobile Workers' Union (UAW) collective bargaining negotiations with General Motors Corporation (GM), proposed a thirty percent wage increase that was not to be offset by a corresponding increase in the price of GM automobiles. When GM declared the two proposals incompatible, Reuther demanded that GM open its books to substantiate the claim.

Reuther's price control proposal had two objectives. First, he hoped to enlist the support of consumers and the general public through this anti-inflationary measure. Second, he strove to expand labor's sphere by this incursion into management's territory. GM's resistance was fierce,
and Reuther called a strike that idled 175,000 workers in ninety-five plants.

The Truman administration, struggling with postwar industrial reconversion and a crippling wave of strikes, appointed a fact-finding board; however, GM refused to participate on the ground that its ability to pay was neither UAW nor government business. GM won the issue after a 113-day strike. Reuther, undercut by powerful factions within organized labor who did not understand his long-term view, abandoned the price control proposal. American labor has not attempted seriously to broaden its sphere since.

d. Entrenched Power

Since its founding in 1886, the AFL has had only six presidents. Over that time, two of the Western world’s most enduring

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103 See discussion supra part II.A.2.a.
104 See REUTHER, supra note 63, at 253-54; BRODY, supra note 42, at 173.
105 See REUTHER, supra note 63, at 254-56.
106 See BRODY, supra note 42, at 172-73; REUTHER, supra note 63, at 320-21.
107 See BRODY, supra note 42, at 213 (noting the 1955 merger of the AFL and CIO). The following chronology begins with AFL presidents and, incorporating the merger, continues with AFL-CIO presidents.
108 The author first learned of this statistic during a classroom lecture delivered in 1993 by Brenda Cochrane, Ph.D., Chairperson, Department of Labor Studies, San Francisco State University. The leaders and their tenure in office follow.

AFL (AFL-CIO) | Great Britain | Roman Catholic Church
---|---|---
1. Samuel Gompers (1886-1924) | Victoria (1837-1901) | Leo XIII (1878-1903)
2. John McBride (1894-95) | Edward VII (1901-10) | (Saint) Pius X (1903-14)
5. Lane Kirkland (1979-95) | George VI (1936-52) | Pius XII (1939-58)
7. | | Paul VI (1963-78)
8. | | John Paul I (1978 [34 days])

Many AFL chronologies ignore McBride who interrupted Gompers’ 37-year reign for one year as a result of a power struggle between Gompers and the socialist faction of
institutions, the British Empire and the Roman Catholic Church respectively, have had six and nine leaders. This fact illustrates the depth of entrenched power extant in organized labor, and provides a useful background against which to assess the AFL-CIO’s susceptibility to change. Indeed, some reformers within the U.S. labor movement accuse the current leadership of resisting change, referring to them as dinosaurs who only care about perpetuating their own power.109

3. Summary

While no empirical data show that strikes have lost their effectiveness,110 organized labor’s reliance upon work stoppage has decreased dramatically over the last fifty years.111 In February 1996, the U.S. Department of Justice announced that it had signed a consent decree guaranteed open elections with the over 400,000 member Laborers International Union of North America.112 The laborers union was one of four major unions singled out as corrupt by a Presidential commission in 1985.113 The other three are the Hotel Employees and Restaurant Employees International, the International Longshoremen’s Association, and the International Brotherhood of Teamsters.114 The Justice Department began supervision of the hotel and restaurant union in September 1995, and the Teamsters have been under a Federal court-imposed decree since

the organization. McBride himself fell ill and James Duncan presided in his stead. See George Gunset, Marching Ahead; New Union Chief Brings New Agenda, CHICAGO TRIB., Oct. 29, 1995, at C2; see generally PHILIP TAFT, ORGANIZED LABOR IN AMERICAN HISTORY 666 (1964); 2 PHILLIP S. FONER, HISTORY OF THE LABOR MOVEMENT IN THE UNITED STATES, 279-94 (1955) (describing labor’s struggle with socialism). This Note includes McBride, but ignores Thomas Donahue who assumed the AFL-CIO presidency for 87 days between Lane Kirkland’s resignation and John Sweeney’s election.

109 See Rachleff, supra note 13.


113 See PRESIDENT’S COMMISSION ON ORGANIZED CRIME 1985, supra note 89, at 7 (statement of Samuel K. Skinner).

114 See id.
To date, the government has not directed court action at the Longshoremen's Union International, but a number of union officials have been prosecuted individually, and the government filed civil racketeering actions against six longshoremen's locals in New York and New Jersey in February 1990. The long-term effectiveness of these measures remains to be seen, but observers regard the Teamsters clean-up as a success.

In the waning months of 1995, the AFL-CIO conducted its first contested presidential election since the AFL and CIO merged forty years earlier. New president John Sweeney's immediate priority is to reverse a half-century decline in union membership that has seen union density drop from over one-third of the workforce during the World War II era to a low of 16% in 1994. President Sweeney unveiled a blueprint for rebuilding the labor movement that focuses on organizing and directs increased emphasis on political action such as strategic campaigns, public affairs, education, and training. Skeptical observers remain unpersuaded that the new philosophical push will have any effect given the magnitude of the problem.

The corrosive effects of the reflexive use of the strike, the tolerance of criminal infiltration, philosophical decisions adopted by leaders like Gompers and Reuther, and the conversion of high office into personal sinecure, could have been mitigated by responsible, forward-looking leadership. As organized labor's numbers swelled, so did its concomitant store of power and political influence. Its reflexive, shortsighted use of that power furnishes the theme for its decline. Now, perhaps fatally weakened by declining membership, union leadership can no longer afford to act reflexively, but must reassess its responses and tactics with a view

\[\text{See id.}\]
\[\text{See Johnson, supra note 112.}\]
\[\text{See Greenwald, supra note 12.}\]
\[\text{See Cochran, supra note 53, at 466 (defining "union density" as that proportion of the non-agricultural workforce that is unionized).}\]
\[\text{See id.}\]
\[\text{See Union Membership: Data for 1994, supra note 10.}\]
\[\text{See Organizing: More Union Organizing Activity Predicted: Effectiveness is Questioned by Observers, Daily Lab. Rep. (BNA) No. 24, at D-22 (Feb. 6, 1996).}\]
\[\text{See id.}\]
to the long term that includes a searching evaluation of the tools at hand. NAALC is one tool that should be used more.

B. Mexico

1. Organized Labor’s Ascent

The primary source of Mexican labor law is Title VI, Article 123 of the Mexican Constitution of 1917.\textsuperscript{125} \textit{Ley Federal Del Trabajo}\textsuperscript{126} (the Federal Labor Law, or FLL), is the secondary source of Mexican labor law.\textsuperscript{127} The FLL covers individual\textsuperscript{128} and collective\textsuperscript{129} rights, employment rights and obligations of both workers and employers,\textsuperscript{130} working conditions and standards,\textsuperscript{131} strikes,\textsuperscript{132} and procedure. Because it is grounded in the constitution, the application of the FLL is national in scope. Interpretive variation may exist from state to state through the operation of the various adjudicatory fora, primarily the nation’s labor tribunals called the Conciliation and Arbitration Boards\textsuperscript{133} (CABs). Treaties entered into by the government on constitutional authority provide the third major source of Mexican labor law.\textsuperscript{134} Foremost among such treaties are the seventy-six International Labor Organization (ILO) Conventions that Mexico has ratified since it was admitted as an ILO member in 1931.\textsuperscript{135}

Like the constitution, the influence of labor in contemporary Mexican politics also can be traced to the 1910-1920 Mexican Revolution.\textsuperscript{136}


\textsuperscript{127} See \textit{Meyers}, supra note 17, at 1, 12.

\textsuperscript{128} See L.F.T. tit. ii.

\textsuperscript{129} See id. tit. vii.

\textsuperscript{130} See id. tit. iv.

\textsuperscript{131} See id. tit. iii.

\textsuperscript{132} See id. tit. viii.

\textsuperscript{133} See \textit{Const.} tit. vi, art. 123(A), pt. xx; see discussion \textit{infra} parts II.B.2.a, IV.A.3.b.(4), IV.A.4.

\textsuperscript{134} See \textit{Const.} tit. vii, art. 133.


\textsuperscript{136} See Schlagheck, supra note 15, at 3-7; Anderson, supra note 15, at 517-19;
During the power struggle between the Villa-Zapata forces and the constitutionalists after the dictator Porfirio Diaz was overthrown, the labor organizations confederated as the Casa del Obrero Mundial (House of the World Worker, or Casa). They supported the eventually victorious constitutionalists under future president Carranza and the men who would succeed him: Obregon and Calles.\(^{137}\) Casa did not survive the continuing turmoil of the ongoing revolution. The confederation called a general strike which so angered Carranza that he crushed and disbanded this organization and solicited the establishment of another more pliable labor coalition, the Confederación Regional Obrera Mexicana (Regional Confederation of Mexican Workers, or CROM).\(^{138}\)

For eight years CROM was the trusted labor ally to Presidents Obregón and Calles, proving its loyalty by breaking the strikes of opposition labor organizations.\(^{139}\) CROM’s influence eventually receded but one of its former leaders, Vicente Toledano, forged another labor alliance that eventually became the CTM.\(^{140}\) To unify the myriad revolutionary interests during the 1930s,\(^{141}\) President Cardenas organized the PRI and divided the party into three blocs: the labor bloc, consisting of the official trade unions and confederations; the agricultural bloc, consisting of the farmers; and the popular bloc, consisting largely of government employees and their organizations.\(^{142}\)

At present, the PRI’s labor bloc is organized under the Congreso de Trabajo (Congress of Labor, or CT), whose most influential members are the CTM, CROM, and the Confederación Regional de Obreros Mexicanos (Regional Confederation of Mexican Workers, or CROC).\(^{143}\) The CT primarily functions as a coordinating body and wields little if any power, requiring of affiliates not much more than their participation in CT councils.\(^{144}\) The forum supplied by the CT acts as a safety value for union leaders who wish to publicly proclaim their outrage against govern-
ment austerity policies that they actually support. Since Cardenas, the CTM has sustained a dominating influence within the CT and the labor bloc and thus within the party. Because of this proximity, the CTM has developed a philosophy that may be described as the defense and promotion of party and government policy as construed by the president in power. The CTM alternately has supported the labor-friendly policies of the leftists and the centrists as well as the policies of rightist presidents closely aligned with business interests and capital.

2. Organized Labor's Decline

a. Corruption

Corruption is threatening the PRI as Mexico attempts to enter mainstream twentieth century commerce as a modern nation. President Ernesto Zedillo (1994-present), inherited a party that is on the brink of a severe institutional crisis. According to testimony before the U.S. Senate Foreign Relations Committee, corruption has so infected the government bureaucracy over the last twenty-five years that today the entire system is infiltrated with organized crime. Perhaps the most flagrant example is Raul Salinas, the previous president’s brother, whose foreign bank accounts total approximately $100 million, and who is under arrest, accused of murdering the PRI Secretary-General and perhaps a congressman.

145 See GRAYSON, supra note 138, at 48.
146 See SCHLAGHECK, supra note 15, at 9-10; MEYERS, supra note 17, at 14-15; but see discussion infra part II.B.2.c.
147 See LA BOTZ, supra note 16, at 41.
148 See MEYERS, supra note 17, at 16.
149 See id.
150 See, e.g., Humberto Marquez, Salinas Allowed to Escape Investigation, Analyst Says, Inter Press Serv., Mar. 14, 1995, available in 1995 WL 2259682 (reporting that if Zedillo’s reforms fail, the result might be a social uprising that threatens Mexico’s first institutional crisis in 70 years).
152 Cf. Baer, supra, note 151 (asserting that “widespread suspicions about systemic corruption in the upper reaches of power” have been confirmed).
President Zedillo promised to replace corruption and graft with the rule of law. He symbolically chose his Attorney General from the opposition party, the Partido de Acción Nacional (the National Action Party, or PAN). However, many doubt Zedillo’s resolve. Some observers insist that the new president conducts business as usual, citing as an example, the deal he made not to investigate his predecessor, Carlos Salinas. A watchdog group monitoring Zedillo was refused an accounting of the $90 million that is budgeted to his office and under his control despite the president’s promise of governmental openness. Furthermore, with Zedillo’s support, the PRI reneged on promised electoral reform. President Zedillo’s clean-up efforts also have been characterized as lethargic. He is accused of delaying a demand that two PRI state governors step aside. One governor is accused of outrageous campaign spending law violations; the other is tainted by acts of officials in his administration who were implicated in covering up a police massacre of seventeen peasants.

Corruption also infects the CABs, the federal and local boards charged with hearing labor disputes. The CABs are staffed by representatives from labor and management sitting in equal numbers with one government representative, but most of the labor seats on the CAB are gifts of political patronage from the CTM. The CTM’s stature as the PRI-backed confederation of official unions and its influence over CAB personnel cannot be denied. Most independent non-CTM unions are apolitical and thus tolerated, but others are leftist and considered a destabilizing force. Repression is not unknown. Due to the domi-

153 See id.
154 See Jordan Testimony, supra note 151.
155 See id.; see also Marquez, supra note 150.
156 See id.; see also Ray Sanchez, Mexican Governor Quits Amid Probe, Possible Role in June Massacre of 17, NEWSDAY, Mar. 13, 1996, at A17 (reporting that state of Guerrero Governor, Ruben Figueroa Alcocer, the embattled veteran of the governing PRI party, resigned on March 12, 1996, amid a Supreme Court investigation, nine months after the massacre of 17 peasants by Guerrero state police, and that the uproar had forced President Ernesto Zedillo to invoke a constitutional provision allowing the high court to intervene in a state matter).
157 See CONST. tit. vi, art. 123(A), pt. xx.
158 See id. See Anderson, supra note 15, at 513.
160 See id.
161 See MEYERS, supra note 17, at 16-17.
nance of CTM appointees on the boards, CAB decisions resolving conflicts between a radical independent union and an apolitical independent union or between a radical independent union and a CTM affiliate, will disfavor the radical if possible, prompting legitimate charges of bias and corruption. The U.S. Embassy reports that while charges of corruption, strong-arm tactics, sweetheart deals, and the active frustration of true union organizing efforts have some validity, they are not the predominant pattern. The Embassy also reports that the government and the major labor confederations neither encourage nor sanction such acts, but instead work to eliminate them. A less systemic CAB problem is bribery, where the incentive is not political but pecuniary, and which may be instigated by either management or union at the expense of the aggrieved worker.

Another corrupting influence stemming from Mexico's one-party system is the corruption of the judiciary, including the judiciary's composition. The pool of candidates from which judicial appointees are chosen consists of those people the PRI endorses or considers reliable. While overt decisional manipulation is rare, the political reality cannot be ignored. More abstractly, judicial decisions that are not compatible with official PRI positions lack an independent power base and are not sustainable. The PRI has survived amid charges of official corruption for decades, but a new element is surfacing to further complicate the picture: the PRI seems to be losing a measure of power to another political party.

b. Electoral Losses

Recent electoral losses threaten the PRI from the outside. In the allegedly tainted 1988 presidential election, Carlos Salinas was elected president of Mexico by the narrowest margin in PRI history. Although

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162 See Curtis & Gutierrez, supra note 159, at 34.
163 See FOREIGN LABOR TRENDS 94-95, supra note 22, at 17.
164 See id.
165 See generally MEYERS, supra note 17, at 27-28 (discussing corruption and its effects on the Labor Court).
166 See id. at 29.
167 See Keith S. Rosem, Judicial Review in Latin America, 35 OHIO ST. L.J. 785, 817 (1974) (stating that the Mexican judiciary is notoriously corrupt).
169 See id.
170 See, e.g., The Long Haul, supra note 16 (stating that corruption is the glue that holds the PRI together).
171 See Debate Shakes Up Mexico President Race, S.F. CHRON., May 14, 1994, at
another PRI president was elected in 1994, the conservative PAN party continues to gain influence. In the 1995 state of Baja California gubernatorial election, the PAN defeated the PRI in consecutive elections for the first time by successfully defending the governorship it captured in 1989. Also in 1995, the PAN defeated the PRI in three of four elections, and the one PRI victory in Yucatan was tainted with allegations of electoral fraud. In 1996, parties opposing the PRI won mayoral races in five of the seven largest municipalities in the country’s most populous state of Mexico, but the PRI retained control of the state legislature and Ecatepec, the state’s biggest city. The PAN presently controls four governorships, about 175 municipalities, over twenty percent of the seats in the General Congress, and hopes to elect a PAN president in the year 2000.

c. Economic Hardship

While Mexican organized labor has been a ubiquitous political power for over sixty years, that power has not always benefitted Mexican wage earners. Mexican wages, which were approximately one-quarter of the wages earned in the United States in 1975, slipped to one-tenth by 1985, and at present are even lower. Inflation for 1995 was around 50%, further eroding the purchasing power of stagnant wages. The unemployment rate, which hit a record high in August 1995 has been

A13; see also Marquez, supra note 150 (reporting that a factor in the institutional crisis facing the PRI is the belief of many in Mexico’s middle class that Salinas did not really win the 1988 election).

172 See Curtis & Gutierrez, supra note 159, at 34.

173 See Mexico Politics, supra note 21.

174 See id.

175 See Geri Smith & Stanley Reed, The Brave New World of Mexican Politics, BUS. Wk., Aug. 28, 1995, at 42; but see The Long Haul, supra note 16 (stating that PAN’s election victories are engineered by the PRI as a method of encompassing dissent).

176 See, e.g., DePalma, supra note 22 (quoting one worker as stating that “[g]overnment and unions support each other in a nice little arrangement that has nothing to do with the working man”).

177 See LA BOTZ, supra note 16, at viii.

178 See DePalma, supra note 22 (reporting that government austerity policy demands that workers acquiesce to low wages today equal to less buying power than in the 1980s).

dropping, but experts say that the economy was so badly damaged by the 1994 peso collapse that an upturn is inevitable.\footnote{See, e.g., '95 Was So Bad For Mexico That '96 Can Only Be Better, ARIZ. REPUBLIC, Jan. 3, 1996, at D1.}

Traditionally, May Day is a day of labor celebration, marked by a parade in Mexico City and various ceremonies of revolutionary zeal. The government, however, canceled the 1995 parade, prompting speculation that the CTM leadership was afraid to be so close to so many workers because of economic malaise.\footnote{See, e.g., Sam Quinones, Rally at Site of PRI Gatherings Shows Mexico's Discontent, SAN ANTONIO EXPRESS-NEWS, May 4, 1995; Andrew Downie, Amid Crisis, Mexico Cancels May Day Parade/Government, Union Ties Bottom Out, HOUSTON CHRON., Apr. 10, 1995, at A8.} The 1996 parade, held as scheduled, more closely resembled an anti-government protest than a celebration of worker solidarity. These events indicate that organized labor's instrumentality has never been weaker, and the historic relationship between labor and the PRI is unraveling. Further indications that the historical interdependence is deteriorating are found within the party itself.

Shortly after taking office in 1988, President Salinas, a free market advocate, began moving against some of the strong, official unions. He challenged the powerful petroleum workers union whose leader was ultimately convicted of financial impropriety, illegal possession of firearms, and involvement in the death of a federal agent. The union leader was ultimately imprisoned for a period of thirty-five years.\footnote{See DePalma, supra note 22 (stating that when the Salinas Administration sold off state-owned enterprises, 400,000 jobs, many of which were union jobs, were lost); but see The Long Haul, supra note 16 (stating that the reason for the labor leader's arrest was that in a close election, he failed to deliver to Salinas the votes of his union members).} Salinas transferred the responsibility for education from the federal to the state governments, weakening the school teachers' union.\footnote{See id.} His administration's privatization of many formerly state-owned businesses cost the unions approximately 400,000 jobs.\footnote{See id.} On the eve of NAFTA implementation, President Salinas announced an increase in the national minimum wage and for the first time tied it to productivity,\footnote{See Completing the Package: Supplemental Agreements on Environment, Labor, and Import Surges; North American Free Trade Agreement, BUS. AM., Oct. 18, 1993, at 26.} lessening the clout of the official labor unions who traditionally negotiated such increases. Other key structural policies adopted by the Salinas administration weakened the PRI-CTM relationship. These policies include: (1)
efficiency measures in the state-run railroad (Ferronales) and oil company (Pemex) that resulted in massive layoffs; (2) adoption of a plant-by-plant collective bargaining negotiation regime in derogation of the former industry-wide method; and (3) enactment of the inflation-fighting Economic Stability and Growth Pact (PECE) which capped wages and prices.166

The Zedillo administration announced the successor agreement to Salinas’ PECE, the Pact for Economic Welfare, Stability, and Growth (PBECE), and the CTM again agreed to participate,187 but later reneged on the promise.188 In response to the 1994 peso crisis, President Zedillo began soliciting foreign buyers for Mexico’s big banks, and initiated a new cycle of privatization that featured the sell-off of ports, airports, and railways.189 Additionally, the PRI recently effected an internal realignment that cost the labor bloc a substantial portion of its power within the party.190 The beneficiary is the popular bloc which is spearheaded by two groups, Movimiento Popular Territorial (the Popular Territorial Movement) and Frente Nacional Ciudadana (the National Citizens Front).191

3. Summary

The PRI’s sixty-year power monopoly may be cracking under the combined strain of a grim economy, systemic corruption and scandal, and election losses.192 To Mexico’s official labor unions what should be more important than whether the PRI’s official demise is forthcoming is the effect of the genuine structural economic changes of Presidents Salinas and Zedillo that inevitably will unravel the fabric that has bound organized labor to the seat of political power for most of this century.193

189 See The Long Haul, supra note 16.
190 See FOREIGN LABOR TRENDS 91-92, supra note 23, at 9.
191 See id.
192 But see The Long Haul, supra note 16 (stating that in the beginning of President Salinas’ administration, his prospects [and thus those of the PRI] appeared bleaker than Zedillo’s, which suggests the resiliency of the PRI rather than its impending demise).
193 See id. (stating that the structural economic changes in Mexico are real, and that
Meanwhile, the PRI’s internal reconfiguration further depreciates the political capital of the labor bloc within the party. The CTM’s repudiation of the austerity pact and the cancellation of the May Day celebration may be signals that the official unions are positioning themselves for a break with the party. But whether the posturing is genuine or contrived remains a question. In any event, whatever it once was, the CTM is no longer the guardian of workers’ rights that its anti-NAALC position asserts.

Mexican organized labor, like the AFL-CIO, is responsible for most of its current problems. From its historical position of power, the Mexican labor movement developed methods of action and response that arguably served it well. Supporting the party rather than the interests of workers and crushing independent unions seemed to guarantee continuing power for the leadership. The splintering of labor’s power base, however, coupled with the growing internationalism of capital should demonstrate that the old tactics and posture are no longer useful. Like the AFL-CIO, Mexican organized labor must realistically reassess its position, determine its future direction, and adjust its tactical behavior toward that future. The next section evaluates NAALC and argues that it presents each labor movement with an opportunity to better understand and respond to the evolving order.

III. THE NAALC

Predicting the wholesale deportation of U.S. jobs to Mexico, the AFL-CIO mounted a massive campaign in opposition to NAFTA. The

Zedillo has a fair chance of effecting real political reform because as the last minute replacement for the PRI’s assassinated presidential candidate, Zedillo owes few debts to the PRI’s patricians).

194 NAALC, supra note 2. The NAALC’s principal governing body is an international institution, the Commission for Labor Cooperation (Commission), consisting of a Council, and supported by a Secretariat. See id. art. 8. The Council, the governing body of the Commission, is composed of a Cabinet-level labor official from each country. See id. art. 9(1). The Council has a broad mandate that allows for cooperative work on numerous labor issues, including occupational safety and health, child labor, worker benefits, minimum wages, industrial relations, collective bargaining, workplace discrimination, legislation on the formation of unions, and the resolution of labor disputes. See id. arts. 10-11. The independent Secretariat is headed by an Executive Director who is appointed by the Executive Council for a three-year term. See id. art. 12. The business of the Secretariat is technical in nature; its functions include preparing background reports to the Council on labor issues such as labor law enforcement, training programs, and labor market conditions. See id. art. 14. The Secretariat is the world’s second international body dedicated to labor; the ILO is the first. See Jeffrey Hoffman, Setting Up Shop; NAFTA Labor Secretariat Opens Intergovernmental Office in Dallas, DALLAS MORN. NEWS, Oct. 9, 1995, at 1D.

195 See Harry Bernstein, Clinton’s NAFTA Endorsement, L.A. TIMES, Oct. 13, 1992,
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trenchant opposition caused a rift between the labor confederation and President Clinton, the first Democratic Party president in twelve years. The Clinton administration negotiated the NAALC and appended it to the trade agreement to mollify organized labor, a traditional party ally. The administration promised to deliver an Agreement with “real teeth,” but the package left organized labor unsatisfied. The basis for the dissatisfaction lies in NAALC’s drawn out procedural steps and in the separate adjudicatory tracks it establishes. Complaints that allege violations of core collective rights, such as freedom of association, union organization, and collective bargaining, are not subject to monetary penalty, while those alleging violations of technical labor standards, such as forced labor, minimum wages, and workplace health and safety, are subject to monetary sanction.

The history of NAALC confirms that although all three signatory Parties have an NAO and each may allege violations against any other, NAALC’s true purpose was to assuage U.S. concerns about the potential loss of jobs due to much lower Mexican wage rates. Thus, NAALC does not offer U.S. organized labor a method to replenish its membership rolls because NAALC focused on U.S. job loss, not the decrease in union

at D3; see also Jurek Martin & Nancy Dunne, Party Loyalties Do Not Apply: The Stakes Are High in the Battle to Guide NAFTA Through the U.S. Congress, PIN. TIMES, Nov. 3, 1993, at 19 (stating that most labor unions were anti-NAFTA).

See Bernstein, supra note 195; see also Martin & Dunne, supra note 195 (stating that the [Clinton] administration pinned a lot of its midsummer hopes on NAFTA’s side agreements, covering Mexican environmental and labor laws and guarding against import surges meeting most objections); see generally Herzstein, supra note 5 (discussing the historical and political background of the NAALC).

See Labor Leaders Denounce Side Agreements to NAFTA, supra note 36 (reporting that labor union officials including AFL-CIO president Lane Kirkland, Teamsters president Ron Carey, UAW president Owen Biber, International Union of Electronic Workers president William Bywater, Amalgamated Clothing and Textile Workers Union president Jack Sheinkman, and United Food and Commercial Workers vice president Willie Baker disapprove of the agreement and will work to oppose the re-election bids of members of Congress who vote to ratify the package); Peter T. Kilborn, Unions Gird for War over Trade Pact, N.Y. TIMES, Oct. 4, 1993, at A14 (reporting from the AFL-CIO convention that not a single union in attendance backs NAFTA, but that some, “like the American Federation of State County and Municipal Employees, and the American Federation of Teachers are less alarmed than others,” and that at least one major union, the American Federation of Government Employees, questions the wisdom of working to defeat members of Congress who support the trade agreement).

See also Labor Leaders Denounce Side Agreements to NAFTA, supra note 36.

See NAALC, supra note 2, arts. 27(1), 39(5)(b).

See Hagen, supra note 5, at 919.
membership. NAALC also does not offer official Mexican labor unions a means to recoup and retain power. Indeed, the NAFTA debate at times focused on the close relationship between the Mexican government and official unions and its resulting effect on labor law enforcement, independent unions, and authentic workers’ rights. However, when viewed objectively, NAALC provides the process that promotes the transparency of domestic labor law enforcement. Perhaps more abstractly, NAALC introduces unions to the international process of treaty creation, thereby providing education as to various national legal systems. This expertise will become increasingly necessary as the rapid movement of capital through global trade continues to transform the world economy.

A fair reading of U.S. organized labor’s criticism of NAALC reveals the interlaced notions that labor is only interested in an instrument that will produce immediate and concrete results, and thus labor finds no value in understanding international processes. This position ignores present reality and perpetuates the conduct that has landed labor in its current predicament. Accordingly, this section of the Note outlines the provisions of NAALC that describe its oversight and dispute resolution procedures as a prelude to the evaluation of the two submissions that have resulted in ministerial consultations.

A. Purpose

The objectives of NAALC include improving working conditions and living standards, promoting increased production and quality, encouraging data sharing and cooperative labor-related activities, and promoting compliance with and effective enforcement of domestic labor laws. NAALC acknowledges the right of each signatory nation to adopt its own labor laws, but commits each to the promotion of the fundamental principles of freedom of association, the right to organize unions, the right to bargain collectively, and the right to strike, subject to its own

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201 See Anthony DePalma, Law Protects Mexico’s Workers But Its Enforcement Is Often Lax, N.Y. TIMES, Aug. 15, 1993, at A1 (quoting University of California at Berkeley industrial relations professor Harley Shaiken as saying that the difficult issue is the effect on U.S. jobs and the lack of genuine labor rights in Mexico).

202 See NAALC, supra note 2, art. 1(g).

203 See generally LESTER THUROW, HEAD TO HEAD (1992) (examining the future of the world economy in terms of global trade); THE WORLD BANK, GLOBAL ECONOMIC PROSPECTS AND THE DEVELOPING COUNTRIES (1994).

204 See NAALC, supra note 2, art. 1.

205 See id. art. 2.
domestic labor laws. NAALC is more than aspirational. The Parties specifically agree to promote compliance and enforcement of domestic labor laws through appropriate government action, to ensure aggrieved parties have access to labor tribunals, and to ensure that labor tribunals are fair and equitable in their adjudication and transparent in their process. Oversight mechanisms are aimed at enhancing the public's understanding of labor laws and the transparency of enforcement rather than punishment through trade sanctions. Sanctions exist, but are contemplated to be applied only upon the failure of cooperation and consultation, expert evaluation, negotiation, and arbitration.

B. Administration

The public face of NAALC resides in the National Administrative Offices which are domestic institutions established by each Party to administer the agreement. The NAO is principally responsible for coordinating tri-national cooperative activities, providing information to the public, and receiving and reviewing public submissions on labor matters arising within the territory of another Party. Each NAO is empowered to establish its own domestic procedures for reviewing public submissions. Faithful to the spirit of cooperation and consultation that permeates NAALC, the U.S. NAO refers to the filings by private parties alleging persistent unenforced violations of labor law as submissions, not as complaints.

206 See id. annex 1.
207 See id. art. 3.
208 See id. art. 4.
209 See id. art. 5.
210 See id. art. 1(d), (g).
211 See generally id. arts. 20-41.
212 See id. art. 15.
213 See id. art. 16.
214 See id. art. 16(3).
215 See Compa, supra note 5, at 163.
C. Procedure

1. Level One: Submission Through Ministerial Consultations

The chief officer of the U.S. NAO is the Secretary of the NAO. U.S. NAO procedure allows "any person" to file a public submission regarding "labor law" matters arising in the territory of another Party, and requires that each submission be signed and specify the matters of the alleged complaint. The submission also should state the harm suffered, the action contrary to the Party's obligations under NAALC, whether the submitter has sought relief through domestic proceedings or through another international body, and that the subject matter of the submission appears to demonstrate a pattern of non-enforcement of labor law by the Party. Thus, the scope of NAO review encompasses not only the expansive list of labor principles enumerated in NAALC, but also that the Party has promoted compliance with and effectively enforced its labor laws. NAALC expressly rejects extraterritorial enforcement by one Party of another Party's domestic labor law, but allows any NAO to request consultations with the NAO of another Party about that Party's labor law, administration, or labor market conditions in its territory. The U.S. NAO Secretary appears to have authority to reject any public submission that substantially fails to provide the requested information, or any submission whose adjudication or resolution would not further the objectives of NAALC.
Generally, once the NAO has accepted a submission for review the Secretary investigates the allegations; conducts a noticed public hearing at which the Secretary of another Party's NAO may participate; and within 120 days after the submission is accepted, issues a public report that includes findings and recommendations. The objective of a review is to gather information so that the NAO may better understand and publicly report on a Party's promotion of, compliance with, and effective enforcement of its labor law according to NAALC's Article 3. If after the NAO publishes its report the Secretary finds that the Party against whom the submission was filed has not resolved the dispute, he may recommend that the Secretary of Labor attempt to resolve the matter through ministerial consultations with his counterpart in the subject country. Any matter within the scope of NAALC may be the subject of ministerial consultations.

2. Level Two: Evaluation Committee of Experts

If a matter has not been resolved after ministerial consultations, a consulting Party may request that the Council establish an Evaluation Committee of Experts (ECE) comprised of three members chosen by the Parties and chaired by an expert chosen in consultation with the ILO. The Council will not convene an ECE to consider a matter that a previous ECE has investigated, one that is not trade-related, or one covered by mutually recognized labor laws. The scope of the ECE's

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227 See id. § H.


230 See NAALC, supra note 2, art. 22(1).

231 See id. art. 23.

232 See id. art. 24(1)(a)-(b).

233 See id. art. 49 (defining "trade-related" as "related to a situation involving workplaces, firms, companies, or sectors that produce goods or provide services: (a) traded between the territories of the Parties; or (b) that compete, in the territories of the Party whose labor law was the subject of ministerial consultations under Article 22, with goods or services").

234 See id. art. 23(3), (4); see also id. art. 49 (defining "mutually recognized labor laws" as "laws of both a requesting Party and the Party whose laws were the subject of ministerial consultations under Article 22 that address the same general subject
analysis, conducted "in the light of the [NAALC's] objectives ... and in a non-adversarial manner," is limited to "patterns of practice by each Party in the enforcement of its occupational safety and health or other technical labor standards as they apply to the particular matter" under consideration. Pattern of practice is defined as more than a single instance of non-enforcement beginning after the Agreement's effective date. Technical labor standards exclude the fundamental collective rights of freedom of association and organization, collective bargaining, and striking. Thus, a dispute alleging non-enforcement of collective rights that is not resolved at the ministerial level is not subject to ECE or other review.

The ECE first prepares a draft evaluation report. After receiving comments, it presents the draft to the Council and later publishes a final evaluation report. The Parties then consult and attempt resolution. If these consultations fail to resolve the dispute a Party may request from the Council a special session to decide the matter. The Council may consult technical advisors, create working groups of experts, suggest alternative dispute resolution, or make recommendations to the Parties. Alternatively, if the disputing Parties are party to another agreement, the Council has the discretion to refer the matter to the Parties for action under the other agreement.

3. Level Three: Arbitration

If the efforts of the special Council session fail and there is a two-thirds vote following a Party request, the Council shall establish an Arbitral Panel composed of five experts selected from a roster developed by the Council. Employing a procedure similar to that followed by the ECE, the Arbitral Panel first develops an initial report, then after

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235 See id. art. 23(2).
236 See id. art. 49.
237 See id.
238 See discussion infra part V.
239 See NAALC, supra note 2, arts. 25-26.
240 See id.
241 See id. art. 27.
242 See id. art. 28(1).
243 See id. art. 28(4).
244 See id. art. 28(5).
245 See id. arts. 29-32.
246 See id. art. 36.
receiving comments it presents a final report to the Parties. After re-
view, the disputing Parties submit the final report to the Council, option-
ally accompanied by a comment. The Council then publishes the final
report. If the final report finds that a Party’s actions establish a per-
sistent pattern of failure to effectively enforce its occupational safety and
health, child labor, or minimum wage technical labor standards, the dis-
puting Parties may agree on an action plan that conforms with the
findings and recommendations of the Arbitral Panel. If the Parties
cannot agree on an action plan or if a dispute arises concerning the
implementation of an action plan, any disputing Party may request that
the Council reconvene the Arbitral Panel.

If reconvened because the Parties failed to adopt an action plan, the
Arbitral Panel shall approve any plan offered by the Party against whom
the complaint is alleged that sufficiently remedies the pattern of non-
enforcement, or it shall establish an action plan consistent with the
domestic law of the Party against whom the complaint is alleged. At
its discretion, the Arbitral Panel may impose a monetary enforcement as-
se ssment up to .007% of the total trade in goods between the disput-
ing Parties during the most recent year for which data is available. If
reconvened to determine whether the complained-against Party is fully
implementing the action plan, and the Arbitral Panel finds that the Party
is derelict, the Panel shall impose a monetary enforcement assessment up to .007% of the total trade in goods between the disputing Parties
during the most recent year for which data is available. Decisions of
a reconvened Arbitral Panel are final. If a Party fails to pay a mone-
tary enforcement assessment, the complaining Party or Parties may
suspend NAFTA benefits by reimposing the lesser of either pre-
NAFTA tariffs or Most-Favored-Nation tariffs in an amount not greater
than the monetary enforcement assessment.

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247 See id. art. 37(1).
248 See id. art. 37(2).
249 See id. art. 37(3).
250 See id. art. 38.
251 See id. art. 39(1).
252 See id. art. 39(4)(a)(i).
253 See id. art. 39(4)(a)(ii).
254 See id. art. 39(4)(b).
255 See id. annex 39(1).
256 See id. art. 39(5)(b).
257 See id. annex 39(1).
258 See id. art. 39(6).
259 See id. art. 41(1), (2).
260 See id. annex 41B.
D. Summary

NAALC is steeped in the language of compromise and cooperation rather than confrontation, and its detractors in organized labor cite this aspect as proof that the agreement lacks "teeth." This criticism is not wholly accurate. NAALC may punish violations of technical labor standards, such as the persistent failure to prevent occupational injuries and illnesses, with monetary sanctions. During the debate over NAFTA, opponents frequently described horrific health and safety conditions in and around Mexican maquiladoras. To date, none of the submissions brought before an NAO has alleged a ripe violation of a technical labor standard, thus the blanket judgment that the Agreement lacks teeth is premature.

The first two submissions, numbers 940001 and 940002, are the subject of previous scholarly attention, therefore this Note refers to them only as necessary to develop analytical points. The fourth submis-

\[261 \text{ See discussion supra part III.}\]

\[262 \text{ See generally NAALC, supra note 2, art. 49 (defining "labor law," and then defining "technical labor standard" to exclude collective rights).}\]

\[263 \text{ See id. art. 49(1)(i).}\]

\[264 \text{ See id. art. 39; see discussion supra parts III.C.3.}\]

\[265 \text{ See, e.g., Linda Gasparello, Face of Trade With Mexico Is Ugly, House Hears Rep. Kaptur, Criticizes Campbell's for Barring Congressional Delegation From Plant In Mexico; Favors Country-of-Origin Labeling For Food, FOOD & DRINK DAILY, Nov. 8, 1993, available in 1993 WL 2791209 (reporting U.S. Congressional testimony that health conditions in and around the maquiladoras are "inhumane" and "horrendous").}\]

\[266 \text{ See International Labor Rights Education and Research Fund, Complaint, In re Sony Corp. d/b/a Magnéticos de Mexico 1 (Aug. 16, 1994) (alleging hours of work violations, a technical labor standard under NAALC article 49) (on file with the author) [hereinafter ILRERF Complaint]; but see Notice of Determination Regarding Review of Submission #94003, 59 Fed. Reg. 52992 (Dep't Labor 1994) (explaining that the issue of Mexico is not ripe for NAO relief because appropriate review has not been sought under the domestic labor law). Why no submission thus far has pressed a challenge to occupational safety and health is curious.}\]

\[267 \text{ See, e.g., Compa, supra note 5; Bazar, supra note 5. The first two submissions were consolidated for review by the U.S. NAO. See U.S. NAO REP. 940001-940002, supra note 228, at 14. The report recommended (1) the establishment of tri-national cooperative programs regarding freedom of association and the right to organize, and (2) that each party undertake public information and education programs to increase public awareness of the agreement, including its purpose, institutions, oversight mechanisms, and remedies, but did not recommend ministerial consultations because the available information did not establish that the Mexican government failed to promote compliance with or enforce the specific laws involved. See id. at 31-32, 34.}\]
sion, number 940004, filed as a supplement to the second, was withdrawn before hearing.268 The next section evaluates submission number 940003 (Sony), filed with the U.S. NAO, alleging that Mexico failed to enforce its labor laws that guarantee freedom of association; and submission number 9501 (Sprint), filed with the Mexican NAO (NAO MEX) alleging that the United States failed to enforce its labor laws that guarantee workers the right to join labor unions.

Two additional complaints, submitted too late for consideration by this Note, have been filed with the U.S. NAO. In August 1996, the U.S. Department of Labor announced that on December 3 it would review a complaint filed in June 1996 by three human rights groups who alleged that Mexican fishing ministry workers were denied the freedom to associate when their union was deregistered.269 In October 1996, the Communications Workers of America and two Mexican labor unions, Sindicato de Telefonistas de la Republica Mexicana (the Union of Telephone Workers of the Mexican Republic or STRM) and the Federation of Unions of Goods and Services Companies (FESEBS), together submitted a complaint charging that the Mexican government failed to protect maquiladora union activists from “brutal anti-union” tactics by an Arizona-based computer keyboard manufacturer, Maxi-Switch, Inc. The U.S. NAO accepted the submission for review.270 Among the human rights groups filing the fisheries complaint is the International Labor Rights Education and Research Fund (ILRERF) who spearheaded the Sony complaint. The Communication Workers of America was also a prominent party in the Sprint complaint.

IV. THE SUBMISSIONS

Structurally, this section presents each submission as follows: the allegations and responses; the NAO report, findings and recommendations; post-report developments; the ministerial consultations; and summary. In the Sony case, the submission charged that the local CAB colluded with Sony’s maquiladora and a CTM union to block the registration of a non-

CTM union at the Sony plant. The U.S. NAO recommended ministerial consultations over the issue of union registration, noting that the case raises serious questions concerning workers' ability to register an independent union. The Mexican labor union that filed the Sprint submission alleged that the company closed a subsidiary operation in San Francisco to avoid a scheduled union representation election. The NAO MEX recommended ministerial consultations over the issue of union organizational rights in the context of a plant closure, noting its concern for the protection of such rights as related to the commercial realities of open trade.

The discussion of these two cases demonstrates that the criticisms leveled at NAALC by organized labor are reflexive, rooted in the past, and miscomprehend the agreement. The Note argues that even if the processes initiated by the ministerial consultations do not immediately and decisively redress the instant grievance, the publicity they generate if properly exploited may create an environment in which further abuses are less likely.

A. U.S. NAO Submission: Number 9400037

An international coalition of four human rights and workers' rights organizations filed the third submission with the U.S. NAO. The submission alleged that officials of five maquiladoras in Nuevo Laredo, State of Tamaulipas, Mexico, a subsidiary of the Sony corporation operating under the name of Magnéticos de Mexico (MDM) and employing 1,700 unionized workers: (1) routinely violate their workers' rights of freedom of association; (2) by firing, demoting, surveilling, harassing, and using violence against union activists; (3) that MDM continually violates the federal labor statute pertaining to allowable hours of work; and (4) that the Mexican government persistently fails to enforce labor laws that prohibit this conduct.

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271 See ILRERF Complaint, supra note 266.
272 See id. at 1-2 (identifying the four organizations: ILRERF; The Asociacion Nacional de Abogados Democraticos (National Association of Democratic Lawyers) (NADL); The Coalition for Justice in the Maquiladoras (CJM); and the American Friends Service Committee (AFSC)).
273 See id. at 1, 4.
274 See id.
1. The Allegations

The union representing Nuevo Laredo maquiladora workers including those employed by MDM, the Federacion de Trabajadores de Nuevo Laredo (the Federation of the Workers of Nuevo Laredo, or FTNL), is affiliated with the CTM.275 The submission alleges that maquiladora workers had been agitating against CTM control, attempting to inject more democracy into the union and to break its alliance with management.276 It further alleges that just before the events that generated the submission, the FTNL had undergone a leadership change accompanied by a power grab, causing additional discontent within the ranks.277 Plant-wide, MDM implemented a work shift requiring most employees to work weekends and holidays. When the in-plant union delegate complained, MDM suspended her for twenty-eight days and threatened her with dismissal if she talked to other MDM employees while suspended.278 The company fired those workers who protested this action with a wildcat strike.279 The submission further alleges that when a dissident faction formed a slate of candidates to oppose the FTNL slate, MDM and the FTNL leadership allied and began a campaign of intimidation against the faction that included discharging four of the renegade candidates and demoting to odious jobs four others.280 The union delegate election was held on short notice, by open ballot, and was monitored by management in concert with the FTNL officials.281 In response, some workers struck for four days.282 The submission further alleges that MDM management contacted the police who violently dislodged the striking workers.283 After the strike, MDM surveilled, harassed, and discharged dissidents, and filed criminal complaints against some who joined the events that culminated in the strike.284 Approximately one month later, twenty-six workers petitioned the local CAB to register their own union, Sindicato Único de Trabajadores de la Cia Magnéticos de Mexico (The Only Union of Workers of the Company Magnéticos de Mexico).285 The CTM opposed

275 See id. at 4, 6.
276 See id. at 4.
277 See id. at 6.
278 See id. at 5-6.
279 See id. at 6.
280 See id. at 6-7.
281 See id. at 7-9.
282 See id. at 8-9.
283 See id. at 9.
284 See id. at 10.
285 See id. at 11.
the registration arguing that because the FTNL already has a collective agreement with Sony, the registration of an independent union is illegal. The CAB refused to register the new union because (1) its petition had not used the exact statutory language to state the union's objective, (2) the workers were already covered under a collective labor agreement (CLA) held by the FTNL, and (3) the documentation submitted with the application was deficient.

The submission claims that the conduct of MDM violates the freedom of association guaranteed by article 123 of the Mexican Constitution and four articles of the Federal Labor Law that limit hours of work. It also claims that the Mexican government violated each of these provisions because it failed to enforce them against MDM. The submission further claims that the government's inaction violates (1) the labor principles of the NAALC, (2) ILO Convention 87, relating to Freedom of Association, which it has ratified, and (3) ILO Convention 98, Right to Organization and Collective Bargaining, which according to the ILO Constitution binds all ILO members whether or not the government has ratified the Convention.

2. The Response

Sony/MDM responded through counsel that although the company was not a party to the proceeding, it nonetheless wished to correct "numerous distortions and misstatements" in the submission, which on the whole betrayed an "overwhelming political agenda of the Submitters." The company stated that MDM complies with all applicable Mexican labor laws, and that MDM's employment standards "far exceed" the requirements of the law. Sony/MDM argued that under the NAALC, the issue for NAO review is whether the government is effectively enforcing its labor law, and that the submission made no showing that any employee had sought domestic relief or that the Mexican government had denied review, thus the U.S. NAO lacked a basis for review.

286 See id. at 11.
287 See id. at 11-12.
288 See id. at 12-13. It also violates articles, 60, 61, 73-75. See id.
289 See id. at 12.
290 See id. at 12, 21.
291 See id. at 12, 17-21.
292 See Letter from Philip M. Berkowitz of Epstein, Becker & Green, representing Sony Electronics, Inc., to Irasema T. Garza, Secretary, U.S. NAO 1-3 (Jan. 19, 1995) (on file with the author) [hereinafter Berkowitz Letter].
293 See id.
294 See id. at 5.
MDM set forth the reason for discharging each of the workers and the status of her or his response, concluding that (1) all but two had executed a full release, which the company properly registered with the local CAB, and (2) that the two challenged discharges are proceeding through the system.295

Additionally, MDM challenged the submission's characterization of the union delegates and the union election. According to MDM, in-plant union delegates are appointed, not elected, and the FTNL replaced the suspended delegate in the normal course of the union leadership change.296 Furthermore, MDM claims that the purpose of the election was not to select in-plant delegates, because the union appoints these representatives, but to select convention delegates as the new FTNL leadership planned to reorganize its administration of the Nuevo Laredo maquiladoras.297 MDM's response also asserts the following: (1) management personnel were not at the election because the company had instructed them to stay away, but a Mexican Congressman informed MDM that the election was legally and fairly conducted and that the picketers were simply unhappy with the election results; (2) MDM did not intimidate the dissidents and strikers, in fact twice during the strike and again at its conclusion the company had offered amnesty to all even though the strike was illegal; (3) because it had learned that he had scheduled a meeting with the dissident faction, the company contacted the Nuevo Laredo mayor rather than the police in response to the wildcat strike; (4) the allegation of police violence in removing the strikers from the plant is false; and (5) beginning with the second day of the strike, only about half of the protesters were actually employees.298 The company further states that an attempt by some of its employees to form a union independent of the CTM "is not and never has been a concern of MDM," and that the company has no substantive knowledge of the matter.299

295 See id. at 6-8; see also U.S. NAO REP. No. 940003, supra note 24, at 22 (reporting that the CAB upheld the two terminations, one for clocking-out another employee's time-card, and that the other voluntarily resigned).
296 See Berkowitz Letter, supra note 292, at 9.
297 See id.
298 See id. at 10-11.
299 See id. at 12.
The NAO Report

a. Procedural Matters

In its announcement accepting this submission, the U.S. NAO declined to review the work hours allegations because the employees had not sought appropriate relief under the domestic laws of Mexico; rather, it accepted for review only those allegations regarding freedom of association and the right to organize.\(^{300}\)

The report first announces the issue for review: whether the Mexican government is ensuring effective enforcement of its domestic labor laws pursuant to its obligations under the Agreement—specifically, those constitutional, statutory, and international treaty provisions that guarantee freedom of association and the right to organize, those that offer protection to workers who exercise these rights, and those that govern the formation of unions.\(^{301}\) Next, it affirms that jurisdiction lies with the State of Tamaulipas CAB, rather than with the federal CAB, lists the various other state labor authorities that have jurisdiction, very briefly discusses the law of amparo,\(^{302}\) and reviews the allegations, responses, and points of agreement.\(^{303}\) The report then recites the subsequent history of the workers’ attempt to register the new union, an amparo filing with a Second District Federal Court. The court found that the prior existence of the FTNL at the maquiladora, and the union’s failure to render exactly the statutory language in its statement of objective did not properly support the CAB’s refusal, but upheld the CAB on the documentary deficiencies.\(^{304}\)


\(^{301}\) See U.S. NAO REP. NO. 940003, supra note 24, at 17-19 (noting inter alia that NAALC articles two through five set forth the parties’ obligations regarding levels of protection, government enforcement, private action, and procedural guarantees).

\(^{302}\) See JOHN T. VANCE & HELEN L. CLAGETT, A GUIDE TO THE LAW AND LEGAL LITERATURE OF MEXICO 172-73 (1945) (quoting Mexican jurist and law professor, Manual Gual Vidal, who defines amparo as “a constitutional suit of a summary nature, the object of which is to protect, in a special case and at the request of an injured party, private persons whose individual rights as established in the Constitution have been violated through laws or acts of the authorities . . . .”); see generally Hector Fix Zamudio, A Brief Introduction to the Mexican Writ of “Amparo,” 9 CAL. W. INT’L LJ. 306 (1979) (describing amparo law).

\(^{303}\) See U.S. NAO REP. NO. 940003, supra note 24, at 19-24.

\(^{304}\) See id. at 20, 24; see discussion infra part IV.A.4.
b. Findings and Recommendations

Noting that the aim of the review is not to determine whether MDM violated any labor laws, the NAO states its purpose: to gather sufficient information to allow it to better understand and publicly report on the Mexican government’s fulfillment of its obligations under the Agreement. Of the four allegations, the discharges, the lack of statutory control over internal union conduct, the wildcat strike, and the local CAB’s refusal to register the independent union, the report recommended ministerial consultations on only the last.\textsuperscript{305} Although the report recognizes that Mexico’s obligation to enforce its ratified ILO Conventions is also an NAALC obligation,\textsuperscript{306} its nearly eight-page presentation of findings and recommendations does not further mention the ILO Conventions. This is susceptible to at least two readings: (1) the U.S. NAO intended to incorporate the Conventions by the earlier reference, or (2) it signaled its reluctance to implicate ILO jurisprudence in its process. The U.S. NAO procedural guidelines require that a submitter explain whether the matter complained of is pending before an international body, and allow the Secretary to refuse the submission if it is;\textsuperscript{307} thus, the latter reading seems more likely.

(1) Dismissals

The submitters won the day. While acknowledging the different reasons the employees and MDM offered to explain the discharges, the report clearly accepted the submitters’ claim that the company dismissed at least some of the workers because of their involvement with the independent union, implying that it was unwilling to dismiss as coincidence the employees’ known association with the independent union, the friction between the independent and the FTNL union, and the coincident timing of the ‘organizing drive’.\textsuperscript{308} By accepting the workers’ version of the discharges, the U.S. NAO adopts two inferences: (1) MDM is at least comfortable, and perhaps in league with, the CTM union; (2) MDM did

\textsuperscript{305} See U.S. NAO Rep. No. 940003, \textit{supra} note 24, at 32 (recommending that ministerial consultations are appropriate to further address the operation of the union registration process).

\textsuperscript{306} See id. at 18-19 (placing the discussion of the ILO Conventions under the heading, “NAALC Obligations”).


\textsuperscript{308} See U.S. NAO Rep. No. 940003, \textit{supra} note 24, at 27.
not discharge the workers for cause, but for agitating to turnout the incumbent union.

The report also noted the similarity between the allegations in this complaint and those in the first two submissions referring specifically to (1) the workers’ testimony that both the CTM and employers apply pressure, including the threat of blacklisting, to coerce workers to accept severance; (2) the events here as in the first two submissions, coincided with an organizing drive by an independent union against a CTM union; and (3) the workers’ concern that the legal remedies available to them were to some extent illusory,\(^3\) again inferring that coincidence was an unsatisfactory explanation. The report also recognized from the first two submissions the recurring theme of economic despair. However strong the merits of a discharged worker’s case against her employer might be, because of the dire economic conditions in Mexico, she is likely to accept the monetary severance indemnification available under the law.\(^3\) To obtain the severance pay, she must waive her right to challenge the discharge,\(^3\) but such a challenge involves a lengthy, bureaucratic CAB procedure that she at least perceives is biased against her.\(^3\) One result of this dynamic is that because termination followed by severance and waiver becomes mundane for both employers and workers, neither party knows whether its conduct is defensible, and an entity wishing to review adjudicatory process will likely find a database skewed by unnatural selection. Citing the Parties’ obligation to ensure fair, equitable, and transparent labor tribunal proceedings, the U.S. NAO announced its intention to study CAB processes; the public report is forthcoming.\(^3\)

The submitter faulted the outcome because the discharged workers were not reinstated,\(^3\) but the Agreement’s obeisance to national sovereignty recognizes that no Party is empowered to enforce domestic labor law within another Party’s territory.\(^3\) Regarding the discharged employees who accepted severance and waived their right to challenge, the

\(^{309}\) See id. at 26-27.

\(^{310}\) See L.F.T. tit. ii, ch. 5, art. 50.

\(^{311}\) See id. art. 49.


\(^{313}\) See id. at 28; see also U.S. Nat’l Admin. Off., U.S. Dep’t Lab., Report on Ministerial Consultations on NAO Submission #940003 Under the North American Agreement on Labor Cooperation at 7 (June 7, 1996) (on file with the author) (noting that the study was conducted by Cirila Quintero Ramirez and Dr. Kevin Middlebrook of the University of California, San Diego).


\(^{315}\) See NAALC, supra note 2, art. 2.
pertinent question is why they made that decision. If they did so out of economic necessity alone, or because they believed their terminations were justified, or because they wanted to leave MDM anyway and used the union organizing drive as a ruse to ensure a severance payment, freedom of association is not implicated. The report's discussion of the dismissals suggests that employers, aware of the forces that impel workers to deal for severance, exploit that reality to conceal the true reasons for their actions. Whether or not that suggestion is accurate, such a strategy alone does not raise a freedom of association issue: if employers exploit the poor economy, they may do so to obscure discharges that have nothing to do with union activity. A freedom of association issue is raised only if the discharges were motivated by union activity. The report inferentially accepted that they were, and made a twofold recommendation: (1) exploration of the issue through a study of local CAB practices regarding workers' complaints of unjustified discharges, and (2) expansion of the tri-national conference mechanism the Parties agreed to after the first NAO report. The NAALC is not a cure-all, but criticizing the U.S. NAO for not ordering the reinstatement of the workers faults the agency for not exercising power it does not have. The studies and conferences, for the first time, examine and publicize the workings of the Mexican labor boards and whatever the outcome, the process will be more transparent than before—a remarkable result given the opacity demanded by the symbiotic relationship between the PRI and the CTM.

(2) The Union Election

The report neither resolves nor mentions the conflicting testimony regarding the purpose of the election or whether MDM played a role, but notes that "considerable testimonial evidence" suggests a flawed election, and that internal union matters—such as the conduct of elections, workers' access to union by-laws and copies of their Collective Labor Agreement (CLA)—appear to be unregulated. Moreover, despite the extensive expert testimony elicited in this regard, the report concludes that "it remains unclear whether . . . the workers have any viable recourse against improper union actions." Central to the U.S. NAO review is Mexico's NAALC obligation to provide private redress and access to fair process in all aspects of labor law enforcement, including allegations of

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317 See discussion supra part IV.A.3.b.4.
319 See id. at 28-29.
320 See id.
union abuse of power. This discussion also implies the monopolistic force of the CTM. The report recommended adding this issue to the agenda of the tri-national conference schedule. The report’s failure to link the lack of internal union regulation to the issue of union registration and submit it to the agenda for ministerial consultations is troubling. One lesson learned from U.S. labor history is that labor unions whose internal affairs are unregulated can also threaten freedom of association.

(3) The Work Stoppage

Affirming that the strike following the election was not authorized, the report labeled the allegations of police violence disturbing, noted that local news accounts appeared to corroborate the workers’ version of the police conduct, and requested from the Mexican NAO any available information it possesses. Judging by the total lines of print the report devoted to this allegation, it received the least attention from the U.S. NAO. This too is troubling. At least one observer alleges that the government systematically suppresses reform unionism with the use of massive police reaction. While the U.S. NAO requested from the NAO MEX a report providing “any available information on the police involvement,” its failure to include police reaction on the agenda for ministerial consultations is puzzling.

(4) Union Registration

The State of Tamaulipas CAB’s refusal to register the independent union forms the core of this submission. The CAB denied the registration because (1) the FTNL union already existed, (2) the union’s objective was insufficiently stated, (3) the necessary documentation was not submitted in duplicate, and (4) there were other generalized deficiencies in the required supporting documentation. The petitioners filed an amparo, and the reviewing court found that while the first two reasons were not sufficient grounds to deny registration, the third and fourth were. The U.S. NAO heard expert testimony that CABs are empowered to correct

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321 See id. at 29.
322 See id.
323 See discussion supra part II.A.2.b.
325 See LA BOTZ, supra note 16, at 67-71, 74, 137, 143, 153, 188 (describing the repeated use of massive military and police force against Mexican workers).
327 See id. at 24.
328 See id.
minor documentary deficiencies in union registration petitions,\textsuperscript{329} and insofar as the court affirmed the board’s refusal on those grounds, the report concluded that it acted incorrectly.\textsuperscript{330} However, the NAO confessed that it remained confused about the additional rationale the Mexican authorities offered to explain the court’s decision.\textsuperscript{331} Further, the report noted that the registration denial and its attendant delay may have inflicted irreparable harm because many workers who signed the original petition may not be eligible to sign a subsequent filing, and the appearance to remaining employees that coworkers were discharged for engaging in union activity in combination with the petition’s failure on technical grounds are significantly dissuasive factors that will dampen future organizing efforts.\textsuperscript{332} Finally, the report expressed wariness that the CAB allowed the FTNL to interfere with the registration of an independent union.\textsuperscript{333} The NAO concluded that the workers’ inability to gain recognition of an independent union represented the most fundamental protection of their right to freedom of association and recommended that the United States Secretary of Labor request ministerial consultations with the Mexican Secretary of Labor and Social Welfare to “further address the operation of the union registration process.”\textsuperscript{334}

Union registration and \textit{amparo} present complex, often subtle legal issues under Mexico’s civil law system. Unlike the U.S. NLRA which allows an employer to refuse to bargain with a union until the government has certified its majority status,\textsuperscript{335} Mexican unions become legal entities the moment their members create them\textsuperscript{336} and upon a union’s

\begin{itemize}
\item \textsuperscript{329} See id. at 31.
\item \textsuperscript{330} See id. at 30-31.
\item \textsuperscript{331} See id. That Mexico has a civil law tradition perhaps complicated the issue for the U.S. NAO personnel who are presumably trained in the common law tradition. See also discussion \textit{infra} part IV.A.4.
\item \textsuperscript{332} See U.S. NAO REP. NO. 940003, \textit{supra} note 24, at 31.
\item \textsuperscript{333} See id.
\item \textsuperscript{334} See id. at 32.
\item \textsuperscript{335} See Linden Lumber Div. v. NLRB, 419 U.S. 301, 310 (1974) (interpreting NLRA §§ 8(a)(5), 9(a) to mean that “unless an employer has engaged in an unfair labor practice that impairs the electoral process, a union with authorization cards purporting to represent a majority of the employees [which the employer has refused to recognize and bargain with] has the burden of taking the next step in invoking the Board’s election procedure [to achieve certification which triggers the employer’s duty to bargain].”)
\item \textsuperscript{336} See NATIONAL LAW CENTER FOR INTER-AMERICAN FREE TRADE, LABOR LAW ENFORCEMENT IN MEXICO AND THE ROLE OF THE FEDERAL AND STATE CONCILIATION AND ARBITRATION BOARDS 26 1994 (report submitted to the U.S. Dep’t Lab., U.S. Nat’l Admin. Off.) (on file with the author).
\end{itemize}
request, an employer incurs an obligation to conclude a CLA with the union.\textsuperscript{337} Once the collective agreement is executed, the employer is deemed to have recognized the union.\textsuperscript{338} The CLA covers all persons working in the establishment whether or not they are members of the party union,\textsuperscript{339} and it may include an exclusion, or admission, clause stipulating that the employer shall employ only members of the party union.\textsuperscript{340}

In addition to establishing its legal existence, a union also must obtain official recognition to interact with CABs and all other labor authorities.\textsuperscript{341} Unions achieve official recognition by registering with the appropriate jurisdictional authority—a union with federal competence must register with the federal labor department, the Secretariat of Labor and Social Welfare (STPS), and one with only local competence must register with the local CAB.\textsuperscript{342} In fidelity to its pro-worker thrust and attempting to compensate for a worker’s presumed lack of technical expertise, the law provides that if a worker’s petition to a CAB is incomplete, the authorities shall correct the deficiencies,\textsuperscript{343} a principle that is imputed to a labor union when acting in its capacity as the worker’s representative.\textsuperscript{344} Registration appears to be a perfunctory, administrative necessity that may be refused only where the application demonstrates that the union lacks either the proper statutory objectives, the statutory minimum membership, or it fails to submit a few basic internal verifying documents.\textsuperscript{345} However, the process becomes more complicated where two

\footnotesize{\textsuperscript{337} See L.F.T. tit. vii, ch. 3, art. 387.  
\textsuperscript{339} See L.F.T. tit. vii, ch. 3, art. 395.  
\textsuperscript{340} See id.; see also Cuevas, supra note 338, at 21 (asserting that under an exclusion or admission clause an employer is required to employ those workers who are unionized).  
\textsuperscript{341} See L.F.T. tit. vii, ch. 2, art. 365-68; Cuevas, supra note 338, at 10.  
\textsuperscript{342} See L.F.T. tit. vii, ch. 2, art. 365.  
\textsuperscript{343} See id. tit. xiv, ch. 1, art. 685.  
\textsuperscript{344} See Cuevas, supra note 338, at 6, 6 n.10 (interpreting L.T.F. tit. vii, ch. 2, art. 375 as imputing the correction principle to union registration petitions filed by labor unions); but see id. at 6 (noting that an exception to the rule operates when two labor unions demand title to a collective agreement and inequity would result if the government corrected the deficiencies of one filing but not another).  
\textsuperscript{345} See L.F.T. tit. vii, ch. 2, art. 366 (referring to the necessary objective of a trade union as set forth in article 356 of the Federal Labor Law as “an association of workers or employers set up for the study, aim and defense of their respective interests”), the minimum of 20 members as set forth in article 364 of the Federal}
similarly classified unions seek to coexist at the same workplace as was the case at MDM: then registration may become intertwined with the right to administer the CLA.

The CAB is not required to refuse to register the newcomer’s petition because an incumbent union already exists in the enterprise and holds a CLA as did the Tamaulipas CAB. But where two or more single-company unions exist within the same enterprise, only the union with the greatest membership may demand recognition by, and conclude a CLA with the employer. However, an employer that is currently a party to a CLA with one union is not obliged to recognize another unless the CAB declares that the union holding the CLA is losing majority status. The CAB declaration either reestablishes the incumbent’s assertion of majority status and its claim to employer recognition as bargaining representative, or it enables the newcomer union to do so. To resolve the dispute over majority status, the appropriate CAB conducts a vote and certifies the victor accordingly.

A 1982 amparo court held that the aspect of the principle of freedom of association that allows two or more identically classified

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Labor Law, and the documentation as set forth in article 365 of the Federal Labor Law.

See id. ("Registration may be refused only if—

I. the trade union does not have the aims and objectives referred to in [article] 356 (an association of workers or employers set up for the study, aim and defense of their respective interests);

II. the trade union does not have the number of constituent members prescribed in [article] 364 (not less than twenty workers in active employment . . . .);

III. the documents referred to in [article 365] are not submitted.)

See also id. art. 365 (‘I. a duly authorized . . . copy of the minutes of the constituent assembly; II. a list showing . . . members’ . . . names and addresses, [and] the name and address of the [members’] employer(s); III. an authenticated copy of the [union] rules; IV. an authenticated copy of the minutes of the meeting at which the committee of management was elected . . . .’).

See id. tit. vii, ch. 3, art. 388(I).


See id.

See L.F.T. tit. xiv, ch. 18, arts. 892, 895(III).

See id. tit. xiv, ch. 18, art. 931.

See id. tit. vii, ch. 2, art. 360(I-V) (distinguishing five types of trade unions: (1) gremiales, single-occupation, or craft unions; (2) de empresa, work unions, or company unions, consisting of persons employed in one and the same enterprise; (3) industriales, industrial unions covering more than one enterprise, but only one industry; (4) nacionales de industria, national industrial unions covering one or more enterprises in
unions to compete only applies prior to the existence of a CLA. The court reasoned that where a CLA is in effect and held by a registered general labor union, a newcomer will be denied registration because the incumbent alone is deemed to manifest the valid expression of the necessary statutory objective; thus, because the newcomer lacks the necessary objective, the CAB must refuse its registration petition. Similarly, a 1981 resolution issued by the STPS refused a newcomer's petition reasoning that where an incumbent union represents a majority of the workers in an enterprise, the proliferation of smaller labor unions would weaken the power of organized labor. Furthermore, if the workers supporting the newcomer are not in a majority and the CLA contains an exclusion clause, the minority risks dismissal through application of the clause; however, where the workers supporting the newcomer are in the majority, the exclusion clause does not apply. Logically, where the newcomer attains majority status, the reasoning of the STPS resolution lacks validity; moreover, if the resolution has any authoritative reach at all, jurisdictional considerations should limit its application to the federal sphere. In comparison, a different amparo court in 1990, faced with similar facts, did not rely on the similarity of union classification; it instead based its decision solely on the plain language of the statute governing registration, and authorized a newcomer's registration.

Amparo is a constitutional federal court process to establish federal jurisdiction over any dispute arising from laws or acts of authorities that violate individual constitutional rights. It has no precise analog in U.S. jurisprudence, but combines aspects of injunction, habeas corpus, mandamus, and certiorari. Although in form it is an appeal to a federal court challenging the decision of a subordinate body, amparo does not compare easily with U.S. judicial review or stare decisis. Amparo decisions are case-specific and do not establish law, but reach only the

the same branch of industry in two or more states; and (5) de oficios varios, general labor unions in municipalities where each occupation numbers fewer than twenty workers).

353 See CUEVAS, supra note 338, at 7-8.
354 See id. at 8.
355 See id.
357 See L.F.T. tit. vii, ch. 2, art. 366.
358 See CUEVAS, supra note 338, at 9.
359 See id. at 49.
360 See Dean Moises Hurtado, Address at the Judge Ben C. Green Lectureship Series, Case Western Reserve University School of Law (Oct. 31, 1995).
particular individual(s) and the particular right(s) violated.\textsuperscript{362} Thus, a second complainant, standing on all fours with a recently successful \textit{amparo} litigant, must seek the protection of a second \textit{amparo} judgment,\textsuperscript{363} which may or may not be in harmony with the earlier. Although five consecutive repetitions of the same \textit{amparo} opinion uninterrupted by any incompatible ruling establishes \textit{jurisprudentia}, an obligatory precedent,\textsuperscript{364} the doctrine of separation of powers as applied in Mexico's civil law system limits \textit{jurisprudentia}'s binding effect to courts and tribunals,\textsuperscript{365} which includes the CABS.\textsuperscript{366} Its obligatory, binding effect thus limited, \textit{jurisprudentia} lacks the universality and authoritativeness that characterize decisions of the United States Supreme Court;\textsuperscript{367} nonetheless, \textit{jurisprudentia} is a true source of law,\textsuperscript{368} but is generally understood to be an auxiliary, rather than an autonomous source.\textsuperscript{369}

The report determined that three of the four grounds the local CAB asserted to refuse the registration of the independent union are invalid, leaving only the fourth: generalized deficiencies in the supporting documentation. The two \textit{amparo} opinions and the STPS resolution cited by the experts also fail to explain the reasoning; all three present clear statutory analysis, not "generalized documentary deficiencies." That the Mexican authorities were unable to articulate clearly to the U.S. NAO a rationale for the denial\textsuperscript{370} supports the submitters' claim that the CAB denied registration for political reasons, which suggests that the Mexican government failed to enforce its labor laws in derogation of its NAALC obligations. Thus, the U.S. NAO recommendation for ministerial consultations is appropriate. Here, as with the dismissal issue, the submitters won

\textsuperscript{362} See CONST. tit. iii, ch. 3, art. 107, pt. ii.
\textsuperscript{363} See BAKER, supra note 168, at 270.
\textsuperscript{364} See id. at 256, 270.
\textsuperscript{365} See CONST. tit. iii, ch. 3, art. 107, pt. ii; see also, e.g., BAKER, supra note 168, at 259-60 (providing the following example: the Supreme Court long ago declared unconstitutional those sections of the 1944 Law of Professions that discriminate against aliens, nonetheless, the law remains fully in force and is regularly executed); id. at 252-54 (explaining that such a rigid doctrinal separation of legislative and adjudicative functions is normal in civil law systems).
\textsuperscript{366} See CONST. tit. iii, ch. 3, art. 107, pt. v(d).
\textsuperscript{367} See BAKER, supra note 168, at 260.
\textsuperscript{368} See id. at 252.
\textsuperscript{369} See id. at 253 (stating that in 1955 a published review of 1122 \textit{jurisprudentia} theses reported that "almost all are concerned, partially or wholly, with technical points of statutory or constitutional interpretations, the majority of these relating to the Amparo Law itself").
\textsuperscript{370} See U.S. NAO REP. NO. 940003, supra note 24, at 31.
the day. The U.S. NAO could have dodged the union registration issue, but it did not. The report met the matter head-on, and when faced with official obfuscation, it noted that the matter raised "serious questions," and took the historic step of recommending the first-ever ministerial consultations under the Agreement.371

4. Post-Report Developments: The Subsequent Union Registration Petition

A few weeks after the U.S. NAO report, a worker faction refiled the corrected registration petition with the Tamaulipas CAB, again attempting to register the Sindicato Único de Trabajadores.372 The FTNL again challenged the petition on the grounds that a registered union already holds a collective agreement with MDM, and that neither the individuals who signed the petition nor those listed as union management were employed by the company.373 The CAB again refused to register the union, citing numerous deficiencies in this second petition, including: (1) the union failed to show at least twenty employees currently in active service at MDM who supported the application; (2) neither the individuals who signed the petition nor those listed as union management were currently employed by the company; (3) the CAB lacks the power to alter a Federal District Court decision (translated as "peremptory exception"); (4) in violation of ILO Convention 87, the union failed to observe its own by-laws when it elected its Board of Directors, its by-laws violate the Federal Labor Law, and the petition suffered from other documentary deficiencies; and (5) the existence of an incumbent labor union at MDM that holds a valid CLA precludes the formation of another union.374 In response to this second registration denial, the ILRERF, which had spearheaded the presentation of the submission, angrily denounced the decision, the Clinton administration, and the Agreement.375 The United States Deputy Under Secretary of Labor replied that the CAB's decision is legally sound, having a firm basis in the Federal Labor Law's requirement that at minimum twenty currently active employees must constitute a labor union, and that a CAB cannot alter a prior decision of a District

See id. at 32.
373 See Disposiciones Legales Sobre Competencias en Materia de Registro de Sindicatos 3 (Junta Locale de Conciliación y Arbitraje el Estado en Ciudad Victoria, Tamaulipas, July 7, 1995) (translation available from the U.S. Dep't Lab., Nat'l Admin. Off.).
374 See id. at 5-13.
375 See Mexican Authorities, supra note 372.
5. Ministerial Consultations

In their consultations, the ministers developed a three-point program to study the U.S. NAO's findings. The Parties agreed to effectuate a joint program to explain and improve implementation and public understanding of union registration and certification at the federal and state levels in both countries. The Mexican NAO was directed to convene a panel of independent experts to study Mexican law regarding union registration and implementation, and to invite participation by local authorities. STPS officials were directed to meet with the involved MDM workers regarding union registration matters and to inform them of available remedies. They were also to meet with the local authorities to discuss matters raised by the report, and with representatives of MDM to discuss the public report.

Point one, the joint program on union registration consisted of a series of three tri-national seminars: the first seminar was held in Mexico City, the second in Dallas, Texas, and the third in Monterrey, Nuevo

376 See Letter from Joaquin F. Otero, U.S. Deputy Under Secretary of Labor, to Pharis J. Harvey, Executive Director, ILRERF 2 (Aug. 18, 1995) (on file with the author) [hereinafter Otero Letter]; see also NAFTA: Mexico's Union Registration Procedures Will Be Examined by Panel of Experts, Daily Lab. Rep. (BNA) No. 175, at D-23 (Sept. 11, 1995) (quoting a CJM representative to the effect that the second denial, rather than representing a decision that was based on firm legal grounds, meant to demonstrate that Mexico will not tolerate independent unions) [hereinafter Union Registration Procedures].

377 See Otero Letter, supra note 376, at 2.

378 See U.S. Dep't Lab., News Release, U.S.-Mexico Agreement on Ministerial Consultations (with Attachment) (1995) (on file with the author); see also Otero Letter, supra note 376; U.S. Dep't Lab., Sony Expert's Report (explaining that under Mexican law, local labor authorities are not subordinate to the federal STPS; therefore, the STPS can neither interfere with local jurisdiction nor direct local authorities to act. This explains why the agreement "invites" local authorities to participate in the registration study, and why the U.S. Deputy Under Secretary of Labor expressed doubts about the real effect this element of the program will have on local authorities) (on file with the author) [hereinafter Sony Expert's Report].


380 See id.

381 See NAFTA: Researchers Examine Union Registration in Second Seminar
Leon, Mexico. Mexican officials promptly met with the parties to the submission in adherence to their commitment under point three. In compliance with point two, the STPS directed the Mexican NAO to convene a panel of independent experts to study Mexican labor law pertaining to union registration. In its public report of that study, the U.S. NAO found that it is very difficult to register an independent union at the local level in Mexico. The presence of CTM appointees on the local labor boards often complicates the registration of an independent union; registration laws are not applied uniformly in every local CAB jurisdiction; there is no provision in Mexican labor law regulating the internal affairs of unions, and secret ballot elections are not used widely in Mexican union elections. The expert committee recommended that the conflict of interest raised by the CTM presence on the CABs that would be eliminated included union registration at the local level to occur at the State’s Department of Labor and Social Welfare rather than at the CABs. Additionally, the experts emphasized the importance of consistent application of the registration process; stressed that registration should be purely an administrative matter; and strongly criticized the practice whereby the registering authority conducts workplace inspections to verify worker employment as asserted in a registration petition, labeling it “of dubious legality and effectiveness.”

6. Summary

The first seminar under the ministerial consultations agreement was attended by several workers from Mexican unions could question publicly Mexican government officials regarding the operation and policy of labor law. The ILRF chose not to attend, commenting that the seminar’s structure did not “deal with the problem.” This response recalls the


385 See id. at 9-10.

386 See id. at 10-13.

387 See id. at 13.

388 Id.

389 See Researchers Examine, supra note 381 (noting that the ability to publicly question officials historically has been rare).

390 Union Registration Procedures, supra note 376.
earlier statement by the ILRERF characterizing the Tamaulipas CAB’s second, post-amparo denial of the union registration petition as “the most serious travesty of due process since NAFTA was signed,” and accusing the Clinton administration of “capitulating to the objections of the multinational corporations.”391 The response recalls the letter withdrawing its second submission (# 940004) from the United Electrical, Radio, and Machine Workers of America (UE), to the U.S. NAO, accusing the agency of conducting a whitewash, ignoring evidence, demonstrating no real concern for workers’ rights, and of not being seriously prepared to effectuate its mandate.392 The response recalls the following comments by various labor leaders following the release of the U.S. NAO report on the first two submissions: International Brotherhood of Teamsters President Ron Carey, “The Clinton administration promised working people that NAFTA would protect workers’ rights on both sides of the border, but they clearly have no intention of keeping that promise”; UE Secretary-Treasurer Amy Newell, “The NAO report confirms what labor has maintained all along, that the NAFTA side agreements were toothless and ineffective. Workers’ rights are trampled by U.S. corporations like GE and Honeywell, protected by the lack of any action on the part of the government”;393 UE political action director Chris Townsend, “[the U.S. NAO] has not conducted an investigation that is worth a damn, and the NAO’s treatment of union complaints is an “exponential sham” and a “pro forma political handwashing.”394 This vituperative reaction is difficult to assess. It may be a residual effect of President Clinton’s support of NAFTA in the first instance,395 or it may be genuine. Either way, it suggests that those who speak publicly for organized labor are more interested in inflammatory rhetoric than in objectively assessing the possibilities that NAALC makes available to them.

The unions seemed to misapprehend the purpose of the Agreement in the first two NAALC submissions,396 focusing on alleged corporate wrongdoing rather than on the failure of the Mexican government to
enforce its labor laws against the corporations. One commentator suggested that due to their unfamiliarity with the new treaty, the unions relied on formulations with which they were comfortable; i.e., filing complaints against companies. The most magnanimous reading of that explanation does not excuse the ILRERF's response to the Sony report, nor does it explain U.S. organized labor's apparent abandonment of the U.S. NAO since the report's publication in October 1994. A more critical reading suggests that in responding from a position of comfort, the unions demonstrated their inability to react to a changing world as many critics suggest.

B. NAO MEX Submission: Number 9501/NAO MEX

STRM submitted the fifth NAALC complaint, the first filed with the NAO MEX. The submission alleges that the Sprint Corporation (Sprint) when it discharged 235 workers at its Spanish-speaking, San Francisco, California subsidiary, La Conexión Familiar (The Family Connection) (LCF), one week before a union representation election was to be conducted violated the labor laws of the United States, and that the government had not enforced its labor laws which prohibit these acts.

1. The Allegations

The submission alleges that after a vigorously contested union organizing drive in which Sprint committed nearly fifty unfair labor practices (ULPs), the Communications Workers of America (CWA)

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397 See Compa, supra note 5, at 167-68.
398 See id. at 168.
400 See Union of Telephone Workers of the Mex. Republic, Complaint Filed by the Union of Telephone Workers of the Republic of Mexico with the National Administrative Office of the United States of Mexico (Feb. 9, 1995), available in WESTLAW, BNA-DLR Database, 1995 DLR 28 D27 (English language translation) [hereinafter STRM Complaint].
402 See STRM Complaint, supra note 400.
403 See id. Chapter 7 of the NLRA establishes employees' "right[s] to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in other concerted activities for the purpose of collective bargaining ..." 29 U.S.C. § 157 (1988). Unfair labor practices...
secured a National Labor Relations Board (NLRB) representation election for the employees of LCF. The submission further alleges that eight days before the election, Sprint fired the employees and closed the enterprise in retaliation for the unionization attempt. In response, the CWA filed unfair labor practice charges against Sprint. The NLRB issued a complaint on the ULPs and attempted to stop the closure by petitioning the United States District Court for an injunction, which the court denied. The submission further alleges that Sprint maintains a

by employers are enumerated in § 158(a) of the NLRA. Section 158(a)(1) prohibits employer "interference" with the exercise of § 157 rights; and § 158(a)(3) prohibits employer "discrimination" regarding tenure of employment against employees for exercising § 157 rights. See 29 U.S.C. §§ 157-58 (1988).

See STRM Complaint, supra note 400. Under the labor laws of the United States, a union gains the right to represent workers for collective bargaining if the employer voluntarily recognizes it after the union demonstrates that a majority of the workers support such representation, or by a representative election conducted in accordance with section 9(c) of the LMRA.

See STRM Complaint, supra note 400.

See id. (referring to a "trial" during which the unfair labor practices (ULPs) were demonstrated). The "trial" was a procedurally required NLRB adjudicative hearing on the charges before an Administrative Law Judge (A.L.J.). LCF, Inc., d/b/a La Conexión Familiar and Sprint Corporation and Communications Workers of America, AFL-CIO, District Nine, 20-CA-26203, (NLRB Region 20, Division of Judges, Aug. 30, 1995) [hereinafter A.L.J. Decision]. See discussion infra part IV.B.4.

See Miller v. LCF, Inc., No. C-94-3372-VRW, 1994 WL 669837 (N.D. Cal. Sept. 22, 1994) (denying the NLRB’s request for an injunction). Section 10(j) of the LMRA empowers the NLRB to seek in a federal district court, an injunction against a party charged with an unfair labor practice, and authorizes the court to grant the temporary relief if just and proper. See id. In Miller v. California Pac. Medical Ctr., 19 F.3d 449, 459-60 (9th Cir. 1994) (en banc), the court joined several other circuits by adopting a new test for district courts to apply when asked to issue a section 10(j) injunction: whether injunctive relief is just and proper when considered “through the prism of the underlying purpose of §10(j), which is to protect the integrity of the collective bargaining process and to preserve the Board's remedial power while it processes the charge.” See id. To make this determination, courts must balance the equities, that is weigh the likelihood of the regional Board’s success on the merits against the possibility of irreparable injury, paying particular attention to the public consequences which in section 10(j) cases is to ensure that an unfair labor practice will not succeed because of Board delays in processing the charge. See id. at 460. If the party against whom the injunction is sought concedes the substance of the unfair labor practice charge, or if the Board demonstrates that it is likely to prevail on the merits, the courts presume irreparable injury. See id. If the Board demonstrates only a fair chance of succeeding on the merits, the court must balance the hardships, and will grant the injunction only if the hardships tip decidedly in the Board’s favor. See id. at 460 n.5.
corporate policy aimed at preventing unionization thus, as the first Sprint long-distance bargaining unit to have proceeded as far as an NLRB election, the LCF employees had to be stopped, otherwise, unionization would spread to other Sprint long-distance units. The submission also avers that the process of pursuing an allegation of a labor law violation in the United States is slow.

The submission claims that Sprint violated both U.S. labor laws and the norms of the NAALC when it closed LCF to prevent unionization. The submission further claims that the U.S. government acting through the federal District Court that denied the injunction and through the NLRB whose slow processes ensured that the fired employees had no effective remedy, failed to guarantee freedom of association and the right to unionize in violation of the Agreement. To remedy the alleged

Employing the California Pacific Medical Center test, the court found that because of LCF's unprofitability, the regional Board's chance of success on the merits of the ULP charge was only fair. See Miller v. LCF, Inc., at *8. Balancing the hardships, the court found that an injunction would accomplish little because many of the affected employees are unreachable and others have already secured new employment. The court further noted that an injunction would visit a severe hardship on Sprint: the facility was unprofitable, "equipment has been dismantled, former employees have received severance pay, and LCF's customer base has evaporated." Id. The court denied the injunction and concluded the regional Board did not meet its burden as required by California Pacific Medical Center because the regional Board has at best a fair chance of success on the merits, and the balance of hardships favors Sprint. See id. at *9. See discussion infra part IV.B.4.

403 See BLACK'S LAW DICTIONARY 150 (6th ed. 1990) (defining a bargaining unit as "a particular group of employees with a similar community of interest appropriate for [collective] bargaining").

409 See STRM Complaint, supra note 400; cf. A.L.J. Decision, supra note 406, at 25 nn.19, 20 (stating that while Sprint had approximately 35 collective bargaining agreements with either the CWA or another union, a petition for a representation election has never been presented on behalf of employees at a Sprint long-distance location).

410 See STRM Complaint, supra note 400; see also Paul C. Weiler, Promises to Keep: Securing Workers' Rights to Self-Organization under the NLRA, 96 HARV. L. REV. 1769, 1796-98 (1983) (reporting inter alia that in 1980 the median time for a ULP charge to proceed from the filing of the complaint to the binding decision by a federal court was over 48 months, having varied considerably over the 20-year period of the study). In this case, the ULP charge was filed on July 18, 1994. See A.L.J. Decision, supra note 406, at 1. The hearing began on November 8 and concluded on December 15, 1994. See id. The A.L.J. rendered his decision on August 30, 1995, therefore, from filing to decision the process consumed 408 days, exceeding by 13% the 1980 median time of 359 days. See id. at 35; Weiler, supra, at 1796, tbl. 3.

411 See STRM Complaint, supra note 400.

412 See id. (referring to the labor law norms appearing in NAALC annex 1).
violations, STRM asks that the NAO MEX (1) recommend reinstatement of the workers, or alternatively recommend an effective judicial remedy, or alternatively require Sprint to reinstate them; (2) declare that Sprint's actions violated the norms of the NAALC and require the company to comply with those norms and with U.S. labor law; (3) declare that such practices will not be allowed in Mexico under the Mexican Constitution and prohibit Sprint from operating in Mexico; (4) require Sprint to declare publicly that in respect of the labor law norms of the NAALC, it will grant recognition to any CWA or STRM unit that demonstrates majority support in any Sprint enterprise; (5) meet with the Canadian and U.S. NAOs to formulate tri-national standards to facilitate job development in the telecommunications industry; and (6) establish and publicize remedies for Mexican workers whose employment rights are violated in the United States.413

2. The Response

The NAO MEX met with Sprint representatives regarding the allegations presented in the submission, but the agency treated as confidential the information presented by the company.414 A Sprint media representative announced that the company closed LCF for purely economic reasons because the enterprise had been losing a substantial amount of money, and that the company's board of directors had discussed the closing before the CWA filed the election petition.415

3. The NAO Report

The NAO MEX accepted the submission under the authority of its promulgated regulations,416 and declared that its review focused on the provisions of U.S. labor law that guarantee freedom of association and the right to organize, specifically the procedures that assure worker access to union representation and collective bargaining.417 The agency conducted the inquiry seeking to achieve one of the objectives of the Agreement: to better understand the scope, application, and functioning of U.S. labor law.418

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413 See id.
414 See NAO MEX REP. 9501, supra note 24, at 10-11.
415 See Telephone Workers, supra note 401; see discussion infra part IV.B.4.
416 See NAO MEX REP. 9501, supra note 24, at 9.
417 See id. at 1.
418 See id.
To facilitate its preparation of the report, representatives of the NAO MEX consulted with the U.S. NAO, informed the Canadian NAO and the Secretariat of the Commission, studied the appropriate U.S. labor law, consulted with various STPS entities, attended a tri-national seminar concerning freedom of association and the right to organize, conferred with the Mexican National Consultative Committee, and received information from Sprint obtained from meetings with company counsel. The NAO MEX did not conduct a public hearing.

The report recommends further study through ministerial consultations after tersely noting the agency's concern that measures intended to guarantee fundamental labor rights may be ineffective given the commercial realities that motivate the corporate decisions that affect those rights. The report neither presents a summary of the facts nor evaluates the law as it applies to those facts in the manner of the reports issued by the U.S. NAO. However, the facts of the case were presented and reviewed during the NLRB hearing.

4. Post-Report Developments: The NLRB Hearing

Under NLRB (Board) procedure, the Board established geographical regions for administrative purposes including the filing of unfair labor practice charges. If after the preliminary investigation of a charge, the regional NLRB agent determines that the charge has merit, she will issue a complaint in the name of the Board, and the regional office conducts a hearing before an Administrative Law Judge (A.L.J.). As far as is practicable, the hearing is conducted according to the rules of evidence and procedure applicable in U.S. District Courts. Copies of the A.L.J.'s decision are served on the parties to the dispute and the original is filed with and transferred to the national Board, which issues an order announcing the transfer. If no appeal is filed, the decision

419 See id. at 11 n.32 (stating that The Mexican National Consultative Committee was established by Mexico under the authority of the NAALC article 17).

420 See id. at 9-11.

421 See NAO MEX REP. 9501, supra note 24, at 11-12.

422 See, e.g., U.S. NAO REP. NO. 940003, supra note 24, at 2-6, 10-12, 13-17, 21-32.

423 As used herein, the term "Board" refers to the NLRB in Washington rather than to any regional NLRB office.


425 See id. § 102.15.

426 See id. §§ 102.6, 102.34.

427 See id. § 160(b).

428 See id. § 102.45.
becomes the NLRB's final decision by default.\textsuperscript{429} If either party appeals, the Board reviews the decision and either reopens the case for further hearing or decides it on the record evidence.\textsuperscript{430} Once the Board enters a final decision, an aggrieved party may appeal to the appropriate United States Circuit Court of Appeals.\textsuperscript{431} If the Board finds that a party committed an unfair labor practice(s), it is authorized to issue a cease and desist order and to take other affirmative action, including reinstatement with or without backpay, so as to effectuate the purposes of the Act; however, the Board may not order reinstatement of any employee who was discharged for cause.\textsuperscript{432}

In the case between the CWA and Sprint, the parties introduced evidence alleging that Sprint had dual motives for closing LCF: anti-union animus and a legitimate business decision to close an unprofitable enterprise.\textsuperscript{433} The United States Supreme Court approved the standard that the lower courts must apply in unfair labor practice cases alleging dual motives: first, the (Board) General Counsel has the burden of proving by a preponderance of the evidence that the employer's action, (here, closing LCF) was motivated at least in part by anti-union animus; thereafter, the burden shifts to the employer who must demonstrate by a preponderance of the evidence that it would have taken its action regardless of the union activity\textsuperscript{434} (here, the organizing drive and pending election). If the employer meets its burden, it is held not to have violated the Act.\textsuperscript{435}

The A.L.J.'s decision noted various and abundant unlawful and threatening statements that Sprint managers had made to workers, such as threatening plant closure, interrogating employees regarding their union activity, and other similar conduct.\textsuperscript{436} The company offered no evidence to rebut the charges;\textsuperscript{437} therefore, the A.L.J. found that Sprint's closure of LCF was motivated by anti-union considerations,\textsuperscript{438} and held that by

\textsuperscript{429} See id. § 102.48.
\textsuperscript{430} See id. § 102.48(b).
\textsuperscript{431} See id. § 160(f).
\textsuperscript{432} See id. § 160(c).
\textsuperscript{434} See NLRB v. Transportation Mgmt. Corp., 462 U.S. 393, 401-03 (1983) (approving the dual-motive approach that the Board had taken in Wright Line, 251 NLRB 1083 (1980), enforced, 662 F.2d 899 (1st Cir. 1981).
\textsuperscript{435} See id. at 400.
\textsuperscript{436} See A.L.J. Decision, supra note 406, at 5-8, 12-13, 33, 34.
\textsuperscript{437} See id. at 34 n.27.
\textsuperscript{438} See id. at 33 (discussing anti-bias, but holding that the company mainly closed the business for lawful business considerations).
these acts Sprint had committed unfair labor practices. Sprint presented evidence that LCF was on a pace to lose nearly $4 million in 1994 and that the company’s customer base was steadily eroding. Further, Sprint alleged that six weeks before the union election was announced LCF’s Board of Directors had decided that its number one option was to cease operations immediately, and that the company had made no fewer than three attempts to sell LCF in the weeks following the board meeting. Having considered all of the evidence, the A.L.J. found that the pressing financial matters confronting the LCF Board of Directors rendered the anti-union animus comparatively incidental and concluded that the company had closed the plant for lawful business considerations.

The NLRB is empowered to grant relief “adapted to the situation which calls for redress.” The gravamen of the A.L.J.’s decision is that Sprint was held not to have discriminated against its employees “in regard to hire or tenure of employment;” accordingly, the company did not incur liability tailored to redress a tenure of employment violation such as an offer of other employment, back pay, or reinstatement. To remedy Sprint’s interference with its employees’ right to join a labor union by threat and interrogation, the A.L.J. issued a recommended order mandating that Sprint cease and desist from such action and that it must mail to each affected employee a copy of the order.

In December 1996, the NLRB overruled the A.L.J. finding that Sprint had committed “widespread misconduct, demonstrating a fundamental disregard for the employees’ fundamental rights.” To remedy the violation, the Board ordered Sprint to reinstate the employees to substantially equivalent jobs with appropriate moving expenses, and hiring preference in order of seniority. The Board further ordered that in the

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439 See id. (finding that Sprint had committed unfair labor practices in violation of NLRA § 8(a)(1), but not § 8(a)(3)); see also supra note 403 (discussing the difference between § 8(a)(1) and § 8(a)(3) ULPs).

440 See A.L.J. Decision, supra note 406, at 5-6.

441 See id. at 9.

442 See id. at 13.

443 See id. at 27-34.


445 See id.

446 See, e.g., NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1, 30, 32, 34, 41 (1937) (upholding an NLRB order of reinstatement where the Board found that by discharging members of a union, the employer had discriminated against them with regard to hire and tenure of employment).

447 See A.L.J. Decision, supra note 406, at 34-35.


449 See id. at *10.
event enough jobs were not available, Sprint must place those for whom jobs were not available on a preferential hiring list for any future vacancies which may occur in substantially equivalent positions. Finally, the Board ordered Sprint to make the employees whole by paying each of them a sum of money, including interest, equal to the amount that would have been earned from the date of termination to the date the company makes an offer of reinstatement.

5. Ministerial Consultations

Within a month after the NAO MEX published its report, the Parties agreed to ministerial consultations to examine the effect of sudden plant closure on the rights of freedom of association and organization, and several months later published the substance of their agreement. The U.S. Department of Labor assured the STPS that it would inform the latter of all developments related to the continuing domestic adjudication of the LCF case. Concerning the core issue, the effect of sudden plant closure on the rights of freedom of association and organization in the three countries, the Secretariat undertook a study, and the Department of Labor conducted a public forum in San Francisco. The outcome of each will be publicly reported.

6. Summary

The San Francisco public forum generated an enormous amount of publicity. Within three days no fewer than five major U.S. newspapers, one wire service, and a national radio network ran feature stories on the hearing. As with the Sony public seminars, fired workers, labor

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450 See id.
451 See id.
453 See Talks with Chile on NAFTA Expansion Continue Unofficially, Negotiator Says, supra note 382.
454 See Secretariat Report On Plant Closings Gets Second Review By NAFTA Countries, Daily Lab. Rep. (BNA) No. 19, at A-8 (Jan. 29, 1997) (reporting that the Dallas-based Secretariat states that the three NAFTA countries are still reviewing the latest draft of a report dealing with plant closings and that the Secretariat dismisses accusations that the U.S. Labor Department is trying to bury the report for fear it may spark anti-NAFTA sentiment).
455 See Marsha Ginsburg, Unusual S.F. Hearing for Sprint: Workers Complain Phone Giant is Evading Labor Laws, S.F. EXAMINER, Feb. 27, 1996, at D1; Clay Chandler
representatives, and union activists participated.\footnote{See discussion supra part IV.A.5.} STRM, the Mexican labor union that submitted the charge is a PRI-CTM union, the first official Mexican union to take an active role in an NAALC proceeding. STRM seemed poised to break with the PRI in the 1970s, but has since made peace with the ruling party;\footnote{See Ginsburg, supra note 455.} nonetheless, its pursuit of this matter is curious in view of the CTM's public position on the NAALC.\footnote{See LA BOTZ, supra note 16, at 126-28.} The primary Mexican labor entity that has been involved in the NAALC cases is the anti-CTM independent federation, the \textit{Frente Autentico de Trabajadores} (the Authentic Workers Front, or FAT).\footnote{See FOREIGN LABOR TRENDS 91-92, supra note 23, at 17.} FAT is not purely a labor organization, but a confederation of independent labor unions, organizers, slum and neighborhood associations, and credit unions that worked closely with the AFL-CIO unions during the anti-NAFTA campaign.\footnote{See, e.g., id. at 12; Stuart Silverstein & Juanita Darling, \textit{Unions Expect Gains for Labor Movement Despite NAFTA Loss}, L.A. TIMES, Nov. 19, 1993, at D1.} When AFL-CIO unions joined with FAT to oppose NAFTA or to support FAT's efforts to establish independent unions at the \textit{maquiladoras},\footnote{See U.S. NAO REP. 940001-940002, supra note 228, at 2-3, 5 (stating that an organizing drive by FAT affiliate union, \textit{Sindicato de Trabajadores de la Industria Metalica, Acero, Hierro, Conexos y Similares} (The Union of Workers of the Steel, Metal, Iron, and Related Industries) at a Mexican Honeywell plant formed the basis of the first submission under the NAALC, filed by the Teamsters Union, and that an alliance between FAT and the American union, the UE, resulted in a UE attempt to organize a General Electric \textit{maquiladora}, which formed the basis of the second submission under the NAALC). The UE is not affiliated with the AFL-CIO. See United Electrical Workers President Calls for Labor To Take More Aggressive Stance, Daily Lab. Rep. (BNA) No. 68, at A-10 (Apr. 8, 1992).} they opposed the CTM. The Sprint case involved an alliance between an AFL-CIO union and a CTM union and not just any CTM union. During the 1992 May Day parade in Mexico City, the STRM General Secretary, Francisco Hernández Juárez—the man

who signed the Sprint submission—stood at President Salinas’ side. When Mexican President Salinas toured the United States to promote his modern vision for Mexico, Hernández Juárez accompanied him. While care should be taken not draw too much from the CWA-STRM association, the alliance was consummated in 1992 and STRM has an interest in the conduct of multinational telecommunications companies, it suggests that at least some elements within Mexican organized labor have progressed beyond rhetoric. STRM reportedly used its influence with the PRI administration to pressure the labor authorities into recommending ministerial consultations at the behest of the CWA’s president who reportedly spent months courting STRM. Only time will reveal whether STRM will continue to exploit the possibilities of the NAALC or if other CTM unions will follow its lead.

V. RECOMMENDED AMENDMENT TO THE NAALC

United States Trade Representative (USTR) Mickey Kantor, who negotiated the NAALC, explained why disputes involving collective rights could not be pursued beyond ministerial consultations. He said that the Agreement’s limitation reflected the Parties’ fear that if the NAALC provided monetary sanctions to remedy violations of collective rights, a party in collective bargaining negotiations could play “some mischief” with the dispute settlement process to enhance its bargaining position, and that such interference with private collective negotiations is inappropriate. The NAALC offers two disincentives to labor law violation: the negative publicity generated throughout the procedure, and monetary sanctions, which attach upon failure of the arbitration phase. Because collective disputes taken even to the ministerial consultation level cannot result in monetary sanctions, the USTR’s statement logically cannot mean that the Parties feared a collective bargaining party could threaten its adversary with monetary sanction. The NAALC obligates only the three signatory Parties (Canada, Mexico, and the United States) and

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453 See LA BOTZ, supra note 16, at 128.
454 See STRM Complaint, supra note 400; see also Collier, supra note 455 (reporting that Sprint has entered a joint venture with Mexico’s telephone monopoly).
455 See Chandler & Swoboda, supra note 455.
458 See NAALC, supra note 2, arts. 39(4)(b), 39(5)(b).
459 See discussion supra part IV.B.6.
460 See NAALC, supra note 2, pmbl.
subjects only the Parties to monetary sanctions. Thus, the inference that may be drawn from the USTR’s explanation is that the sanctioned nation would in turn penalize the private bargaining party for violating the labor law that it, the signatory Party, was sanctioned for not enforcing. No other construction renders meaningful a threat to invoke the NAALC delivered during private collective bargaining negotiations. An analysis of the realities of collective bargaining is beyond the scope of this Note, thus this Note accepts the USTR’s explanation. But while it arguably justifies excluding disputes concerning collective rights from the arbitration and sanctions phase, the explanation is insufficient to justify excluding them from the ECE phase. Accordingly, this Note recommends amending the NAALC to allow collective disputes to be pursued through the ECE phase where appropriate. The ILO, the best known forum for labor rights treatment, utilizes an ECE to supervise compliance with its ratified Conventions. Indeed, NAALC procedure calls for cooperative arrangements with the ILO and requires the NAALC Council to select the chair of its ECE in consultation with the ILO. This Note advocates that the Parties consult with the ILO to develop the proposed amendment.

The reasoning urged by the USTR for limiting collective disputes to the ministerial consultation phase is flawed insofar as it is applied to expert committee evaluation. The proposed amendment will fill the Agreement’s logical gap.

VI. CONCLUSION

Globalization continues and for organized labor that means more international trade agreements that are by their nature the product of compromise. Insofar as they address labor issues, future trade agreements will likely reflect labor’s store and application of political capital at the time the agreements are negotiated. Because the labor movements of both countries are currently weak, neither can realistically expect to dictate the terms of contemporary international trade agreements. Nonetheless, their rejection of an Agreement because it is less than perfect is even more unrealistic.

472 See Compa, supra note 5, at 159.
474 See NAALC, supra note 2, art. 24(1)(b).
Historically, U.S. labor has used the strike reflexively,475 tolerated criminal infiltration,476 and adopted shortsighted philosophical goals without seriously considering the natural long-term consequences of its conduct.477 Thus far its reaction to the NAALC is faithful to that tradition: reflexive, ostrich-like, and shortsighted.

The public seminars agreed to during the ministerial consultations provide a forum whose scope is international. The first two involved a major Japanese corporation and a major U.S. corporation, Mexican and U.S. labor unions, and cabinet-level negotiators from three nations. Subsequent hearings will likely involve similar actors. The public proceedings placed under intense media scrutiny examples of the very abuse that U.S. organized labor complained of during the NAFTA debate,478 but many labor adherents find the process worthless and choose not to participate. Also curious is why no submission has concentrated on workplace safety and health, a complaint that could be pursued to the end of the Agreement's dispute resolution procedures, and one that was at the heart of the NAFTA debate. Some in organized labor have not made full use of the Agreement.479 Free trade interests are keenly aware that these seminars could generate tremendous negative publicity for corporations.480 During the debates over passage of the trade agreement, after initiating a remarkably effective anti-NAFTA campaign, U.S. organized labor lost the initiative to Ross Perot perhaps because it didn't know what to do with the resurrected weapon of visibility.481 As it came to power, U.S. organized labor learned how to meet muscle with muscle, how to sit-in, strike, and boycott. Now, under circumstances that are significantly different from those it faced over sixty years ago, the question is whether

475 See discussion supra part II.A.2.a.
476 See discussion supra part II.A.2.b.
477 See discussion supra part II.A.2.c.
478 See, e.g., Gerry Smith & John Pearson, Which Side (of the Border) Are You on? Well, Both: U.S. Unions Use a NAFTA Side Accord to Step Up Efforts in Mexico, Bus. Wk., Apr. 4, 1994, at 50 (reporting that low wages and miserable working conditions were an anti-NAFTA rallying point).
479 See Goldberg, supra note 86 (discussing CWA president Morton Bahr's comment that the case his union is involved in is the first under the NAALC when in fact it is the fifth).
481 See Bernstein, supra note 195 (stating that U.S. organized labor waged an effective anti-NAFTA campaign); John B. Judis, Can Labor Come Back? Why the Answer May Be Yes, NEW REPUBLIC, May 23, 1994, at 25 (quoting labor historian Michael Kazin).
organized labor can learn to fight effectively in more subtle ways, such as by exploiting the publicity and processes of the NAALC, attempting to promote reform through public embarrassment, for example.\textsuperscript{482} Considering its response to the first four submissions, the answer seems to be no, but a final judgment at this stage is premature.

Mexican organized labor is a more difficult study because of the organic opacity of its labor and governmental institutions under the single-party structure, and the turbidity caused by the recent upheavals and peso devaluation. During one hearing over the Sony submission, some U.S. and Canadian representatives reported that the Mexican delegation was less than forthcoming, that it dodged questions with an assertion of sovereignty and tried to limit public participation.\textsuperscript{483} The Mexican delegation at the hearing contained at least one CTM representative, which prompted conflict of interest concerns because the Sony workers had tried to decertify a CTM union.\textsuperscript{484} In filing the Sprint submission, the STRM acted in its traditional self interested manner and used its influence with the Zedillo government. All of which indicates that everything is normal for the PRI-CTM actors. Nonetheless, the Sprint filing is significant to the extent that it seems to represent an important, established PRI union's willingness to step beyond the fixed boundaries. The response of the labor communities in both nations to the publication of the final reports in the Sony and Sprint cases, and whether labor leaders in each country continue to plumb the possibilities of the NAALC will be telling.

\textsuperscript{482} See Lance Compa, Labor Rights and Labor Standards in International Trade, 25 LAW & POL'Y INT'L BUS. 165, 179 (1993) (stating that "the moral force of the ILO in the world community can bring reforms through public embarrassment of a violator").

\textsuperscript{483} See Jury Should Remain Out, supra note 480.

\textsuperscript{484} See id.