

***The Evolution of US-Mexico Labor Cooperation  
(1994-2010):  
The NAALC Institutions and their Policy  
Challenges***

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*This chapter offers an account of cooperation between Mexico and the US around labor issues from 1994, when the NAFTA labor side agreement first made labor issues relevant to US-Mexico foreign relations, to the present, where that cooperation has broken down substantially. I argue that while the NAFTA labor side accord features strong institutions created to reinforce trilateral cooperation on labor issues, the weak resolutions across NAALC cases and the breakdown of labor cooperation across these and other channels show that institutional frameworks are not enough to promote cooperation in North America if commitment to labor cooperation and a strong policy direction do not complement institution building.*

Mexican-US relations in the area of labor cooperation have become an important aspect of the binational agenda, mostly due to the effect that the NAFTA agreement has had on strengthening US-Mexico relations in general. Labor cooperation has also become more important over time as the relationship has been channeled through the NAFTA institutions that were set up to promote labor issues. However, in recent years, formal channels of labor cooperation-- meetings between the representatives of these respective governments--have broken down considerably.

In this chapter, I offer an account of how the formal channels for labor cooperation between the US and Mexico have evolved, and offer a panorama of the scope and content of US-Mexico labor cooperation since 1994, based principally on a review of the North American Agreement on Labor Cooperation (NAALC), NAFTA's side accord on labor. Unlike in other areas of cooperation in North America, labor issues potentially benefit from a range of new institutions established by NAFTA to open channels of communication at all levels of government between the NAFTA countries, as well as a unique labor dispute resolution mechanism that reveals common labor violations, encouraging states to collaborate to strengthen labor protections for

the workers of North America. Yet, I argue that while the NAFTA labor side accord thus features an number of institutions created to reinforce trilateral cooperation, the weak resolutions across NAALC cases and the breakdown of labor cooperation across these channels show that an institutional framework is not enough to promote cooperation in North America. Rather, the absence of policy direction in the NAALC has meant that the framework of the side agreement has been adapted by member states to avoid labor cooperation, leading to an important breakdown in these channels of collaboration in recent years. As such, this contribution to the edited volume shows that institutions may be necessary, but are not a sufficient by themselves to promote cooperation among the states in North America.

### ***Early Efforts at Cooperation on US-Mexico Labor Issues***

Formal channels of US-Mexico cooperation on labor issues date from meetings of the Mexico-United States Binational Commission, the most important forum for high-level dialogue between the executives of both states (Secretaría de Relaciones Exteriores n.d.), which by 1989 included representatives from the Ministries of Labor. Labor issues would become more salient the next year as the Mexicans approached the US delegation at the World Economic Forum and asked them to consider a trade deal (Cameron and Tomlin 2000). Once Canada was to be included, and all three states publicly declared an intention to negotiate what would eventually become the North American Free Trade Agreement (NAFTA), labor issues took on a new importance in North America.

First, initial discussions on the trade deal imagined labor mobility within North America, an idea quickly scrapped but since taken up again in recent discussions on reopening the NAFTA agreements (Viano 2010). Even without EU-style integrated labor markets, it is clear that labor is no longer a bordered phenomenon in some productive sectors in North America, while access to labor arbitration remains largely rooted in domestic processes. With a set of supranational standards and institutions, workers who experienced violations of their rights could apply for redress regardless of where the violations took place, and without regard to their national status. Second, the US and Canada both have mature industrial relations systems and efficient labor law enforcement mechanisms, but while Mexico's labor laws may have been the most progressive of the three, enforcement was and remains problematic. Given these asymmetries, US policymakers worried that a trade agreement may draw US businesses to Mexico, where labor

costs were cheaper and industrial relations less well regulated.

As the NAFTA negotiations wore on, it became clear that the trade accord would have to address labor issues in order to pass Congressional ratification in the United States. Democratic legislators, responding to union's concerns that trade integration would pull jobs from the US to Mexico, and worried that weaker labor regulations in Mexico would then create pressures to weaken regulations in the US, lobbied for the inclusion of labor guarantees to the negotiation agenda (Hafner-Burton 2009). As such, the Democrats tied fast track negotiation authority to the inclusion of labor protections in the trade accord. After six rounds that threatened at times to upend the entire negotiation (Cameron and Tomlin 2000), an agreement was reached on the labor and environmental side accords in August of 1993, and signed in September.

### ***The NAALC Institutions***

Instead of developing new regional labor standards, as most of the groups that opposed NAFTA had wanted, the labor side agreement only obliges the three nations to "effectively enforce" their own national labor laws (Compa 2001; International Labor Rights Fund 1995).<sup>1</sup> What the NAALC accord does contribute to the protection of labor rights in North America is a set of new institutions dedicated to the arbitration and resolution of violations of NAFTA's labor rights principles. The agreement establishes a National Administrative Office (NAO) in each state to oversee the process of filing cases for dispute resolution, and these are the national offices that receive labor rights petitions.<sup>2</sup> The NAALC also established new formal channels for trilateral cooperation and coordination around labor rights issues in all three states. The Commission for Labor Cooperation (CLC) includes a tri-national Secretariat that assists the NAOs and the three labor ministers in

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<sup>1</sup> The NAALC agreement mentions 11 labor rights principles, including freedom of association and the right to collective bargaining, health and occupational safety, discrimination at work, technical labor standards (including wages and hours), and the rights of migrant workers, which largely mirror the labor rights enumerated in the International Labor Organization's 1998 *Declaration on Fundamental Principles and Rights at Work*.

<sup>2</sup> In the US, the NAO is now known as the Office of Trade and Labor Affairs (OTLA). I will refer to it as the US NAO to stay consistent with the parallel institutions in Mexico and Canada.

administering the activities associated with the NAALC.<sup>3</sup> As such, the NAALC process, and the institutions associated with the parallel accord have also served to strengthen and institutionalize contact between US and Mexican labor officials in a manner that has been constant, and at times, fruitful, for promoting labor rights protection in both countries.

### ***Labor Dispute Resolution***

The NAALC agreement also establishes a unique dispute resolution procedure for labor issues that is unrelated to the dispute provisions for investment or trade and commerce, and which allows individuals to bring cases against states under the terms of the agreement. During the arbitration process, any citizen or group can file a complaint with an NAO regarding the target state's performance on labor law enforcement. Once a case is filed alleging violations of any of these principles, the NAO has the option to review the complaint further or not. If a review is granted, the NAO then researches the allegations, attempts to verify them through discussions with the NAO in the state where the violation took place, and most importantly, assesses whether such violations are consistent with national labor law in the state in question. The NAO then makes a public report on how issues raised in the case could be addressed.

Through 2010, 41 petitions have been filed regarding labor rights violations in 36 separate cases, with 26 total petitions filed against Mexico.<sup>4</sup> Of the forty-one petitions submitted to date, 27, or just over 66% of the petitions filed have been accepted for review, the second step in the arbitration process. However, the highest level of resolution for any case to date has been Ministerial Consultations, which are meetings between the labor ministers. These are generally discussions about labor rights issues raised in the case, and often result in Ministerial Agreements, official pronouncements on what states might do to resolve recurrent labor rights violations, including the cooperative activities and public outreach programs that are then overseen by the CLC. The fact that most cases in the NAALC have ended in promises between governments to talk about labor issues rather than

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<sup>3</sup> Since 1994, the commission has coordinated 69 cooperative activities, 54 of which were held in Mexico, regarding labor issues in North America. These activities have ranged widely, from seminars on health and safety issues, to conferences about Mexico's labor justice system, to worker outreach regarding the rights of women workers and agricultural workers.

<sup>4</sup> Two cases have been filed on Canada and 13 against the United States.

resolve them at the plant level has been one of the points of contention for critics of the NAALC, who charge that the NAALC is "toothless" because it doesn't go far enough on punishing labor rights violations (Collingsworth 1996; Bensusán 2002; Singh 2002; Singh and Adams 2001). Still others note that the NAALC institutions were designed to not have strong regulatory power (Weiss 2003; Buchanan and Chaparro 2008), and therefore do not have the enforcement capacity that early challengers to NAFTA wanted.<sup>5</sup> Given that the NAALC thus far has not been able to award the types of resolutions that filing groups wanted, a number of groups have turned away from the process altogether in recent years, leading to a decline in cases filed and reviewed, but also a breakdown in cooperative activities promoted by the CLC.<sup>6</sup>

### ***The Recent Breakdown in Binational Labor Cooperation***

Labor cooperation in North America has been further challenged by the politicization of the Department of Labor in the United States under the Bush Administration (2001-2009). As such, after the 2000 election, the administration moved to isolate the Department of Labor and reverse the initiatives begun under the relatively pro-labor Clinton administration. The appointment of Republican officials that were hostile to labor into administrative positions in the Department of Labor, the reorganization of the international wing where the NAO is housed (the Bureau International Labor Affairs, ILAB), and cuts in funding to international labor rights programs during this period all in turn limited the ways that the US Department of Labor could address labor violations, including through international efforts like the NAALC.

With the US suddenly not interested in pursuing labor cooperation further, Mexico was then better able to reassert its own lack of interest in developing the NAALC, creating a new, more defensive position vis-à-vis the US NAO.<sup>7</sup> This in turn created new barriers to communication between the NAOs that caused friction in the relationship, and limited the ways that the US NAO could engage their

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<sup>5</sup> One example might be that most of the petitions, 29 of the total 41, feature freedom of association as the main violation, signaling that freedom of association violations are a major problem in North America, but it is these cases are not eligible for higher levels of resolution beyond Ministerial Consultations, including trade sanctions.

<sup>6</sup> The CLC office was closed in August of 2010.

<sup>7</sup> For example, Mexico took on a highly legalistic interpretation of their responsibilities under the NAALC, refusing to participate with the US NAO except for those activities and communication channels that were explicitly noted in the text of the NAALC agreement.

Mexican counterparts. The overall impact that the defensive position has left in the US is the perception that the Mexicans are no longer willing to cooperate on labor issues. The fact that the Mexican NAO has refused to participate in cooperative activities around even migrant labor issues, the *singular* labor issue that is important to them, only adds to the image that the Mexicans have become obstinate.

This discussion of NAFTA's labor side agreement underlines that compared to other issue areas, labor cooperation is one aspect of North American integration that is highly legalized, with a deep range of institutions. Yet, the institutionalization of labor cooperation has not been enough to assure cooperation in North America, much less the protection of labor rights. The creation of state-level labor offices, a trinational commission, regular meetings between high level officials, and continuous trilateral communication through the channels established by the side agreement have all largely failed to either strengthen labor protections, or maintain and deepen cooperation on North American labor regulation. What is left is a piecemeal approach to labor adjudication driven by the NAALC cases that in turn is subject to cross-cutting political interests in all three states. As the discussion on the politicization of the Department of Labor makes clear, the NAALC process over the last 10 years has been largely driven in by an interest in undermining the NAALC process, not strengthening it.<sup>8</sup> While the inclusion of the labor side agreement to the trade accord made labor issues a solid part of the trilateral agenda, institutional channels for cooperation are shown here to mean little without a strong policy direction.

### **Conclusions**

While labor issues have always been overshadowed by more pressing concerns between Mexico, the US, and Canada, after NAFTA, labor became a constant part of bilateral cooperation. On one hand, the NAALC established formal institutions and channels of communication for labor representatives, while on the other, the NAALC case process promoted cross-border mobilization between members of civil society in the US, Mexico and Canada. In turn, these channels of communication have formed the basis for better

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<sup>8</sup> The seemingly pro-labor agenda of the Obama administration remains agnostic on this point. Though there is a backlog of cases to resolve, and new cases under the CAFTA-DR and NAFTA agreements, the US NAO has not made an effort to reverse the inertia left by the leadership of Elaine Chao.

understanding of labor law and practice in all three states.

Nonetheless, the path that labor cooperation has taken since NAFTA can provide some lessons on how the larger bilateral relationship could be nurtured and sustained. First, the structure of cooperation under the NAALC necessarily demanded constant contact between labor bureaucrats as the NAOs interacted to ask questions, solicit information and determine overall what should be done with each of the petitions that the NAO offices received. In turn, staff members developed a comfortable rapport with their counterparts that reinforced the cooperative spirit of the agreement, and kept the NAALC process from becoming adversarial.<sup>9</sup> In turn, the cooperative spirit of the agreement set the tone for the wide range of activities of the CLC, which in the end, remains a core achievement of the agreement.

However, the fallout after the politicization of the Department of Labor after 2001 shows that the bilateral relationship between Mexico and the United States --the major players in the NAALC accord-- needs to be actively supported. When the US NAO became embroiled in the politicization of the Department of Labor, the Mexican NAO then also withdrew from the NAALC process, in part because the US was no longer pushing them to participate. This in turn had an important effect on how the NAALC institutions functioned, as once they were neglected, petition sponsors then turned away from the process as well. Once subject to political interests within states, the NAALC, and other channels of labor cooperation in North America, broke down considerably, and to date, the NAALC has not yet recovered.

What this chapter then shows is that in the absence of a strong policy direction from any of the three states on how to use the NAALC to develop areas for cooperation, and in turn to strengthen labor rights protection in North America, efforts at labor cooperation will remain stagnant, even with a wide set of institutions available to promote that cooperation.

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<sup>9</sup> Of course, most critics of the NAALC wish that it were more adversarial, so that its enforcement capacity would be of more use, but the states negotiated an agreement that kept the NAALC from having a strong enforcement capacity (Buchanan and Chaparro 2008; Weiss 2003). No state would have signed an agreement that had a stronger capacity to punish labor rights violations because no state wanted any other state to interfere in their labor laws or practices. Mexico nearly withdrew from the entire agreement over these very issues (Cameron and Tomlin 2000).

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