

Legal Transnationalism: The Relationship between Transnational Social Movement Building and International Law

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This article examines the compelling enigma of how the introduction of a new international law, the North American Agreement on Labor Cooperation (NAALC), helped stimulate labor cooperation and collaboration in the 1990s. It offers a theory of legal transnationalism—defined as processes by which international laws and legal mechanisms facilitate social movement building at the transnational level—that explains how nascent international legal institutions and mechanisms can help develop collective interests, build social movements, and, ultimately, stimulate cross-border collaboration and cooperation. It identifies three primary dimensions of legal transnationalism that explain how international laws stimulate and constrain movement building through: (1) formation of collective identity and interests (constitutive effects), (2) facilitation of collective action (mobilization effects), and (3) adjudication and enforcement (redress effects).

INTRODUCTION

In 1994, the North American Free Trade Agreement's (NAFTA's) labor side agreement, the North American Agreement on Labor Cooperation (NAALC), created a new and unprecedented transnational labor rights regime that linked trade and labor rights for the first time in a free trade agreement. The hotly contested regional governance institution established new transnational labor rights standards and transnational legal mechanisms to adjudicate complaints of labor rights violations across the continent. Despite its innovation, however, labor leaders in all three NAFTA countries bemoaned the NAALC's lack of teeth and predicted it would do little to advance labor rights in North America. An examination of the NAALC's results suggests that labor leaders' fears were prescient; the NAALC has not provided adequate tools to ensure that the rights of workers across the continent are protected. But it does reveal one

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unexpected outcome of the NAALC that has *indirectly* advanced labor rights in North America—the stimulation of labor transnationalism or ongoing cooperative and collaborative relationships among Mexican, US, and Canadian unions and union federations.

As has been well documented, the relationships among unions and federations that emerged in NAFTA's wake were new and unique in North America (see Cook 1997; Compa 1999; Kay 2005). They were more equitable and based on efforts to create and nurture long-term programs based on mutual interests. The relationships stand in stark contrast to the sporadic contacts unions had in the pre-NAFTA era. The unanticipated emergence of labor transnationalism in North America therefore presents two compelling and interrelated questions I address in this article: How did the NAALC, a new regional legal mechanism, help stimulate labor cooperation and collaboration? And what were the limitations of the NAALC's effects on labor transnationalism?

The questions that arise out of the emergence of North American labor transnationalism are situated at the intersection of social movement and legal scholars' efforts to develop a robust theoretical framework to explain the relationship between law and social movement building. In this article, I argue that the emergence of labor transnationalism in North America was generated by the introduction of a new international law that helped facilitate collective action and mobilization.¹ I offer a theory of *legal transnationalism*—defined as processes by which international laws and legal mechanisms facilitate social movement building at the transnational level. I identify three primary dimensions² of legal transnationalism that explain how international laws stimulate and constrain movement building: formation of collective identity and interests, facilitation of collective action, and adjudication and enforcement.

Although the emergence of labor transnationalism is surprising, particularly given North American labor activists' derision of the NAALC itself, its analysis opens a theoretical window onto the processes and mechanisms by which social movement building occurs at the *transnational* level in relationship to the law. Sociolegal research on the law's effects on movement building has developed almost exclusively in relationship to social movements and laws at the *national* level. We therefore know very little about the effects of laws on movement building at the transnational level. In particular, we have limited knowledge of how collective identities and interests (which can facilitate collective mobilization and action) form and develop across borders and how the obstacles to their formation are overcome. The *process* by which workers in different countries recognize and develop mutual interests, and how new legal structures and mechanisms facilitate their creation, has not been adequately examined.

NAFTA, then, is a case of an international law that catalyzed activism across North American borders. Broadly speaking, it shows how a new legal mechanism—in this case a transnational system for adjudicating labor conflicts—can create an arena

1. I use the terms *international law* and *transnational law* interchangeably. Although NAFTA applies to only three countries, political scientists would use the term *international law*. See the distinctions in Tarrow (2005).

2. Although I use the term *dimension* in this article, these could also be conceptualized as mechanisms.

that generates transnational movement building. NAFTA provides a quite strong case because it is the only transnational legal system that (1) granted unions a formal role in the negotiation process, (2) has a review function dedicated solely to adjudicating labor rights complaints, (3) allows any union to utilize the process, *and* (4) allows public hearings and testimony. Because it is the only transnational legal instrument that requires unions to file complaints outside of their home countries, it has a unique structure compared to other transnational mechanisms, which makes its effects easier to isolate and identify. Finally, NAFTA is an important case to examine and a strong case around which to develop a theory of legal transnationalism because among all the transnational legal mechanisms North American unions have utilized since the founding of the International Labor Organization (ILO) in 1919, it is the only one that has generated *trinational* relationships among US, Canadian, and Mexican unions.³

It is important to underscore that I am not arguing that trade agreements are necessary for stimulating transnationalism, nor am I providing a general explanation for how all cases of labor transnationalism emerge. My analysis focuses on why and how labor transnationalism emerged in North America in the early 1990s. However, my argument about how international laws and legal mechanisms affect movement building in relation to the NAFTA case has clear implications for the myriad other international legal mechanisms and governance structures that are emerging around the world and their effects on different kinds of social movements—from environmental movements seeking climate change regulation to investors lobbying for corporate governance reform to citizens demanding international banking regulation.

SOCIOLEGAL PERSPECTIVES ON LAW AND SOCIAL MOVEMENTS

The vast majority of law and social movements research examines the efficacy of rights claims, legal mobilization, and the courts. A much smaller body of research explores the relationship between law and movement building, or the law's effects on movements' emergence, growth, decline, and strategic repertoires. Some of the earliest approaches focused on the labor movement and its relationship to labor law. Scholars linked the bureaucratization of the labor movement to labor legislation that, they argued, tempered class struggle by privileging collective bargaining rights and constituting activists as bureaucratic actors with particular roles and obligations (see Klare 1978; Stone 1981; Rogers 1990).

While the law can undermine collective action, it can also have the opposite effect by constituting social movement actors in ways that build social movements. As studies of various rights movements have shown, the law can help catalyze movements, recruit members, promote rights consciousness, and nurture solidarity among movement activists (Schneider 1986; McCann 1994; Andersen 2005). According to

3. In 1951, the ILO's newly created Committee on Freedom of Association began to adjudicate complaints of government violations of ILO Conventions 87 and 98.

McCann (1994), the law can help nascent movements name and frame their grievances in relationship to particular rights violations they experience and seek to redress. The law and the rights claims it legitimizes can therefore provide a concrete mechanism to facilitate the formation of cohesive collective identities and interests that are so crucial for social movement development (see Melucci [1988] on collective identity formation).

The law can also shape the political opportunity structure through which social movement activists must maneuver (McCann 1998). Favorable laws and adjudicatory mechanisms can serve as important signals to social movements that encourage them to mobilize the law (i.e., use litigation) and/or use strategies that push or test legal boundaries to further their goals and improve their chances of success. Successful litigation can strengthen movements by increasing morale, weakening opposition, and granting legitimacy to rights claims. Even unsuccessful attempts at legal mobilization can galvanize activists by highlighting the need for political or legal reform (McCann 1998). Although scholarship on law and social movement building reveals much about how the law promotes and constrains collective interests and action, scholars have not advanced a general theory or model to explain social movement building in relationship to the law.

LAW AND TRANSNATIONALISM

Sociolegal scholarship is also limited because it focuses on the relationship between law and movement building at the national level. Scholars focus on the emergence of international laws and transnational legal mechanisms (Harlow 1992; Koh 1996; Slaughter 2004; Djelic and Sahlin-Andersson 2006; Helfer 2006), when and how social movements invoke them (Sikkink 2005; Lutz and Sikkink 2001), and how activists locally use and adapt international legal norms (see Merry 2006). There is very little scholarship, however, on the relationship between law and movement building at the *transnational* level. Keck and Sikkink (1998) provide an important exception. They describe how activists use international treaties and legal obligations to leverage their states by applying pressure from international allies. Although their work is an important contribution to understanding how social movements use international legal mechanisms to create policy change and build transnational advocacy networks, Keck and Sikkink do not articulate a theory of transnational social movement building in relationship to the law. Indeed, despite the proliferation of research examining the effects of globalization on transnational social movements, a more general theory that explains the aspects of law that catalyze *and* limit transnational movement building does not exist. And, although scholars suggest that NAFTA's procedural rules facilitate transnationalism, they have not fully fleshed out the process by which this occurs (see Cook 1997; Compa 1999; Kidder 2002).⁴ This study makes a significant contribution to

4. In Kay (2005), I discuss NAFTA's nascent institutions as being adjudicatory in nature but do not analyze them as *legal institutions* or offer a model to explain the relationship between law and social movements. Graubart's (2008) compelling analysis of NAFTA's labor and environmental side agreements centers on the efficacy of the legal mechanisms rather than on their effects on movement building.

research and theory on both international law and law and social movements by expanding our understanding of how the content *and* structure of international laws affect mobilization outcomes.

LEGAL TRANSNATIONALISM: HOW LAWS STIMULATE AND CONSTRAIN MOVEMENT BUILDING

A theory of *legal transnationalism* helps isolate the characteristics of international laws that make them more or less useful to movement building across borders.⁵ I identify three primary dimensions of legal transnationalism that explain how international laws stimulate and constrain movement building through (1) formation of collective identity and interests (constitutive effects), (2) facilitation of collective action (mobilization effects), and (3) adjudication and enforcement (redress effects).⁶ If international laws and their concomitant legal mechanisms rank high on each of these dimensions, they will be more conducive to transnational movement building. Conversely, international laws and legal mechanisms that rank low on each of these dimensions are unlikely to help generate transnational cooperation and collaboration. And, in cases in which an international law ranks high on one or two dimensions and low on the other(s), the results on movement building can be mixed. As we will see, the NAALC presents a mixed case.

The first dimension of legal transnationalism highlights the *constitutive effects* of international laws and legal mechanisms. Many analyses of the law's effects on group identity or consciousness utilize a cultural or constitutive approach in which "law is understood to consist of a complex repertoire of discursive strategies and symbolic frameworks that structure ongoing social intercourse and meaning-making activity among citizens" (McCann 1994, 282).⁷ Although my approach is consistent with constitutive sociolegal theory, here I expand the idea of the law's constitutive effects by illuminating how legal rules *and* the contestation of those rules shape how labor activists in different countries view themselves in relationship to each other. I argue that international laws can do more than simply allow or enable activists to make claims: international laws can also participate in the process of constituting transnational interests and identities.⁸

This process of constitution is particularly critical to the emergence of transnational social movements that must overcome geographic and cultural barriers as well as interests that are frequently constructed in opposition to each other (which is

5. The terms *globalization of law* (Kennedy 2003), *legal diffusion* (Lutz and Sikkink 2001), and *transnational legal process* (Koh 1996) have been used to describe different international legal processes.

6. Here I use the broad term *movement building* to describe various kinds of relationship, coalition, and network building that emerged in NAFTA's wake.

7. For examples of constitutive approaches, see also Merry (1990) and Fleury-Steiner and Nielsen (2006).

8. See Koh (1996) for an interesting analysis of how nation-states' participation in the transnational legal process helps constitute their identities and solidifies international norms through interaction.

particularly true for transnational labor movements).⁹ Thus, the process of establishing collective interests is more crucial and more difficult at the transnational level. Moreover, while collective actors and interests at the national level are frequently forged prior to mobilization (for example, through a shared experience of subjugation as African Americans or as workers in the same workplace), the NAFTA case suggests that at the transnational level collective actors and interests are frequently forged *through* mobilization. International laws and legal mechanisms can assist in this process.

Many analyses of the law's constitutive effects capture them at either one of two moments: prior to a law's passage (prepassage contestation), or after a law is already in force (implementation). NAFTA provides an interesting and unique case to evaluate transnational social movement building in relationship to the law both before *and* after a law's passage. In the case of the NAALC, initial constitutive processes began during the prepassage contestation phase as labor activists formed coalitions through which to shape the nature and content of the side agreement. Only after coming together to discuss their individual concerns did they begin to articulate North American interests and develop cooperative transnational networks and relationships to advance them. Constitutive processes continued once the NAALC went into force; new legal rules and mechanisms helped forge collective interests and legitimized them through adjudication. The NAALC therefore ranks high on its constitutive effects.

While collective identity formation is a necessary condition of transnational movement building, it is not a sufficient one. The second dimension of legal transnationalism—facilitation of collective action—foregrounds the *mobilization effects* of international laws and legal mechanisms. It expands upon the first by emphasizing how the content and structure of international laws affect mobilization outcomes. In terms of content, international laws that define and recognize transnational rights can facilitate mobilization by allowing activists to make rights claims and legitimizing activists' collective interest to protect their rights. By laying out eleven North American labor principles and recognizing activists' right of standing through an adjudicatory process, the NAALC creates a set of North American labor rights that all three countries agree to protect and that did not exist prior to NAFTA's passage.¹⁰

In terms of structure, international laws that create adjudicatory arenas that require (either *de facto* or *de jure*) activists to engage each other are more conducive to mobilization than those that do not. The NAALC created a new transnational legal arena for collaboration and cooperation. National Administrative Offices (NAOs) in each of the three NAFTA countries handle complaints of labor rights

9. This *does not* imply that social movement actors no longer retain national identities and interests, but rather that these exist simultaneously and are compatible with their nascent transnational identities and interests.

10. These eleven labor principles do not comprise a supranational labor law. The NAALC obligates countries to maintain high labor standards in domestic law and enforce labor laws related to the eleven labor principles. In practice, labor activists view them as a set of North American labor rights, in the same way they view ILO principles as a set of international labor rights—despite problems of enforcement.

violations (called *public submissions*, referred to herein as *submissions*) at the transnational level. The NAALC stipulates that complaints may be filed against the government of any NAFTA country only through an NAO in a country other than the one in which the alleged labor violation occurred. Because it requires submitters to file complaints outside of their home countries, the NAALC forces labor unions to search for allies in other NAFTA countries with whom to collaborate on submissions. By requiring cooperation and collaboration through its procedural rules, the NAALC strengthened existing transnational relationships and catalyzed others that had not previously existed.

Although scholars and activists have noted this link, they have not generated a data set that actually tracks the emergence of relationships and their catalysts in the early 1990s. Beyond enabling me to definitively link the emergence of particular relationships to NAFTA, my data set—which includes all cases of transnational labor relationships in North America that emerged during this time period—also allows me to shed light on the processes by which those relationships were forged and developed. I can therefore illuminate *how* the NAALC enabled newly constituted transnational labor activists to collaborate in concrete and meaningful ways. Accordingly, the NAALC ranks high on its mobilization effects.

The third dimension of legal transnationalism—adjudication and enforcement—highlights the *redress effects* of international laws and mechanisms. It emphasizes the ability of activists to invoke legal protections and remedy grievances at the transnational level. The NAALC, for example, not only defines and recognizes transnational rights, but also creates procedures and institutions to adjudicate complaints of labor rights violations. The agreement, however, lacks strong enforcement mechanisms. International laws with greater enforcement mechanisms are more conducive to movement building because they provide activists with collective leverage against their targets (states, employers, and corporations) and the possibility of forcing policy changes by imposing severe sanctions. Moreover, they justify the time and expense of utilizing legal mobilization strategies. Although the NAALC scores high on constitutive and mobilization effects, it ranks low on redress effects and is therefore a mixed case.

Movement activists' decisions to use particular tactics or strategies—whether they involve invoking the law or not—are complex and contingent upon a range of economic, political, and social considerations. It is important to emphasize that a theory of legal transnationalism does not explain the calculus by which activists choose strategies, the efficacy of legal strategies, or the concrete outcomes and results of legal mobilization. Rather, it provides a useful way of conceptualizing *how* the structure and content of international laws influence movement building processes.

DATA AND METHODS

This article is based on a variety of primary and secondary sources that document the state of relations among industrial unions between 1950 and 1989, prior to NAFTA's passage (pre-NAFTA), and the emergence of labor transnationalism in

North America between 1990 and 2001, after NAFTA's introduction.¹¹ My sample includes more than fifty-three individual industrial labor unions, federations, and labor advocacy organizations across North America. Because I was concerned with a shift in the nature of the relations among unions, a qualitative approach using a combination of in-depth interviews and archival research was essential. I conducted more than 140 interviews with Mexican, Canadian, and US labor leaders and union staff, government officials, NAALC officials, labor activists in nongovernmental organizations (NGOs), and labor lawyers, between 1999 and 2001. Respondents included national leaders of major unions and union federations (including secretaries general, presidents and vice-presidents, directors of international relations, lead organizers, etc.); directors and national presidents of NGOs; prominent labor lawyers; and government officials (including trade negotiators, legislators, NAALC and labor department officials, etc).¹²

Interviews lasted between one and four hours and were recorded and transcribed. Those with Mexican respondents were conducted in Spanish.¹³ Interview transcripts generated more than three thousand single-spaced pages of text. The timing of the initial interviews and data collection is a strength of the analysis because it was proximate to the process of creating the institutional shift that generated transnational relationships. In 2009 and 2010, I conducted a set of follow-up interviews with key labor leaders to gauge whether the landscape of labor transnationalism had changed significantly since my initial interviews. They revealed that it has not: industrial unions that developed relationships during the NAFTA struggle maintain them, and those that did not prioritize transnationalism have not developed new relationships.¹⁴ This article therefore focuses on the relationships that emerged during the first seven years of the NAALC's existence.

In addition to conducting in-depth interviews, I examined twenty-four Mexican, Canadian, and US union newspapers and magazines during a sixteen-year period (1985–2000) and union documents culled from archival collections of major North American labor unions, including press releases, internal memoranda, educational materials, newsletters, position papers and policy statements, and correspondence. Finally, I reviewed legal documents and all NAO submissions filed between 1994 and 2008.

FORMATION OF COLLECTIVE IDENTITY AND INTERESTS (CONSTITUTIVE EFFECTS)

The relationships that developed during NAFTA's negotiation among many North American unions and union federations stand in stark contrast to the sporadic

11. I selected the largest industrial unions across North America as cases because they were in key industries—auto, trucking, garment/apparel, steel, electronics manufacturing, and telecommunications—most likely to be affected by trade.

12. Respondents' organizational affiliations and titles are current as of date of interview.

13. Three were conducted in English. The author translated the interviews from Spanish to English.

14. One exception is the United Steelworkers of America (USW), which developed a new and quite strong relationship with a Mexican mining union.

contacts unions had in the pre-NAFTA era. Prior to 1989, the international program of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) focused on promoting US business interests and combating global communism (see Spalding 1992).¹⁵ In Mexico, the AFL-CIO and Canadian Labour Congress (CLC) had contacts with the Confederation of Mexican Workers (CTM), an official or corporatist union federation with extensive ties to the ruling party—the Institutional Revolutionary Party (PRI).¹⁶ Prior to NAFTA, the AFL-CIO and CLC privileged their connection to the CTM and refused to work with or even have formal contact with independent unions or union federations (i.e., unions not affiliated with the Mexican government). The associate director of the AFL-CIO’s International Department asserted that the CTM’s rhetoric of free and democratic unionism and anticommunism “made for a really very superficial relationship . . . between the AFL-CIO and the CTM. It was almost a kind of ceremonial relationship.”¹⁷ Labor activists generally agreed that pre-NAFTA relations among unions were not rooted in common interest and did not reflect a strong sense of collective identity.

NAFTA, however, changed the terrain of transnational relationships among US, Canadian and *independent* Mexican unions.¹⁸ The prepassage contestation over NAFTA began a process of constituting North American actors and interests by (1) serving as a collective threat to North American unions that began to see their futures as linked, (2) bringing them into contact with each other and helping coalesce their interests through coalitions, and (3) compelling them to define and defend what they considered to be North American labor rights.

NAFTA’s Threat

Upon NAFTA’s introduction, labor leaders realized the potential havoc the agreement could wreak if it undermined labor standards across the continent. They therefore began to see it as a common threat. The leader of one Mexican union explained, “NAFTA permitted us to understand that we were all a part of the same strategy and process of economic integration. It helped us to see that we face the same challenges and problems. Globalization has provoked the fall of labor standards and salaries in the three countries. The consequences have been for us to realize that the same labor and economic policies that cause the fall in labor standards and salaries apply in the three countries, and that we’re therefore facing the same enemies.”¹⁹ Another concurred: “[O]ne thinks that nothing would unite us, that we are different, at different levels of development, but suddenly we realize that the problems of workers are similar. And we

15. Which it did primarily under the auspices of four international institutes created in 1962 to promote these goals abroad.

16. In 2000, Vicente Fox, the National Action Party (PAN) candidate, won the presidential election.

17. Stan Gacek, former associate director, International Affairs Department, AFL-CIO, personal interview by phone with author, August 23, 2009.

18. This article focuses on the independent Mexican unions. For ease, I will refer to independent Mexican unions as *Mexican unions*.

19. Bertha Luján, former national coordinator of the Authentic Labor Front (FAT), personal interview with author, August 3, 1999.

realize that neoliberalism doesn't harm us and leave Americans and Canadians well off, it harms all of us."²⁰

Labor leaders responded to NAFTA's threat by working in trinational coalitions to lobby and mobilize popular support to demand that the agreement have teeth.²¹ The timing of the final negotiations catapulted the issue of free trade into the 1992 presidential election. In September 1992, fifty labor unions and other NGOs opposed to NAFTA organized a "Trade Conference for the 21st Century," demanding that Bill Clinton and the other presidential candidates either significantly change or reject the agreement (Audley 1997). On the eve of the election, Clinton announced that he would support supplemental labor and environmental agreements. Although they had pushed him to commit to stronger labor protections, many labor activists did not support a side agreement because they feared it would not be strong enough.

Building Common Interests through Coalitions to Strengthen the NAALC

The NAALC's introduction did more than help constitute transnational actors by serving as a threat. The NAALC also helped coalesce their interests to deal collectively with that threat. As a Mexican labor lawyer explained, "NAFTA [has] been good for facilitating relations among unions because there is a common interest. It created a common interest, which before was very difficult [to create]."²² The NAALC also helped change the consciousness of North American labor activists so that they viewed each other not as enemies but as allies. As a prominent Mexican labor lawyer explained, "I think with NAFTA . . . workers started to create relations and internationalize their problems and realize that Mexican workers aren't stealing North American jobs, but that the problem is much more severe, that capital is looking for the lowest labor costs and all of us are going to lose. And from there a structure and coordination of forces began to deal with this."²³

A leader of the Mexican Telephone Workers' Union (STRM) expressed similar opinions about NAFTA's role in generating North American interests: "In reality NAFTA was what accelerated a lot the possibility of international relations. In reality in Mexico for a long time US unions were seen as a means for imperialism. We also thought this here, and we had no relation with the AFL-CIO. I think this changed with NAFTA, because it changed the old conceptions of the Cold War that existed among Mexican unions. That ideology decreased and people began to talk about common interests. And the US, principally the AFL-CIO, abandoned many of its conceptions."²⁴

20. Patricia Carrillo Alejandro, former secretary of relations and solidarity for the National Union of the Ministry of the Environment, Natural Resources and Fishing, personal interview with author, April 7, 2000.

21. Official Mexican unions such as the CTM, however, supported NAFTA.

22. Oscar Alzaga, lawyer with the National Association of Democratic Lawyers (ANAD), personal interview with author, June 9, 2000.

23. Oscar Rubio González, lawyer with ANAD, personal interview with author, May 3, 2000.

24. Rafael Marino Roche, official of the STRM, personal interview with author, May 15, 2000.

According to the AFL-CIO's assistant director for international economics, the struggle against NAFTA was instrumental "in cementing the idea that there were common interests between Mexican and American workers. And I think it's something that we always believe and we always say that the battle against NAFTA was not a battle against Mexican workers but against US corporations or other multinational corporations that were abusing the rights of Mexican and American and Canadian workers."²⁵ A Canadian labor leader concurred: "Well in my view we just wanted to try and involve unions from each of the countries because we were all going to get hurt somehow. The employers didn't raise the standards for people in Mexico, as they tried to push it down in the US and Canada. They squashed heads at all ends."²⁶

Defining and Defending a Transnational Labor Rights Agenda

As NAALC negotiators began to hammer out the structure and content of the agreement, labor unions involved in trilateral coalitions solidified their positions and pushed common agendas. A leader of the Canadian Steelworkers²⁷ explained how the space created by the NAALC's negotiation allowed unions to coalesce their interests as they contemplated North American labor rights policies: "[B]ecause of the context created by NAFTA there were lots of opportunities for relevant discussions and sort of common policy discussions and so on."²⁸ A Mexican labor lawyer echoed the point: "These are important relationships, and they basically were created through working on NAFTA and the labor side agreement in defense of a common agenda for democracy and to improve working conditions."²⁹

Labor unions across the continent came together to ensure that the side agreement would be as strong as possible. Through their efforts to influence negotiators, they began to define a body of North American or transnational rights. As an AFL-CIO official explained, the process was not always easy, but it was extremely important for building collective interests: "I learned a lot from those meetings. I remember one in Toronto. . . . [W]e had different reasons for not liking the agreement and we'd try to put together language that would lay out an alternative and we'd come against some pretty serious obstacles. . . . And so it was a really important educational process . . . sitting down with the three countries and from different sectors."³⁰

North American unions built consensus around a position that they would only endorse the NAALC if it provided significant enforcement mechanisms for key labor

25. Thea Lee, official of the AFL-CIO, personal interview with author, December 8, 2000.

26. Fred Pomeroy, former president of the Communications, Energy, and Paperworkers Union (CEP), personal interview with author, February 28, 2001.

27. Although part of the USW, the United Steelworkers in Canada remains extremely independent and autonomous. To distinguish between the USW in Canada and in the United States, I refer to the former as the *Canadian Steelworkers*.

28. Gerry Barr, former official of the Canadian Steelworkers, personal interview with author, March 1, 2001.

29. Arturo Alcalde, lawyer for the FAT, personal interview with author, March 29, 2000.

30. Thea Lee, official of the AFL-CIO, personal interview with author, December 8, 2000.

rights, including freedom of association and the right to strike and bargain collectively. In September 1993, at their fifth trilateral meeting, labor and other fair trade activists created a document titled “A Just and Sustainable Trade and Development Initiative for North America” that not only detailed the problems of the flawed NAALC, but also outlined the fundamental characteristics of an acceptable trade agreement. They agreed as a trilateral coalition that equitable regional economic integration should be transparent and democratic, incorporate trilateral standards, promote corporate accountability, and protect basic labor rights (Evans 2002).

Despite their tremendous collective effort, North American unions lost the NAFTA battle when President Clinton cobbled together enough votes to ensure its passage in September 1993 (see Evans and Kay 2008). Although labor activists across the continent almost universally viewed NAFTA’s passage as a crushing defeat and predicted it would do little to advance labor rights in North America, their achievements were quite significant; they had helped ensure labor rights protections in a trade agreement that only months earlier included none. Moreover, they could not predict that, despite its many weaknesses, the agreement actually helped solidify their nascent transnational relationships. During the period of prepassage contestation, unions that for decades had had no contact began to work together to develop their common interests; the NAALC compelled them to collectively define and defend these new interests.

The NAALC and Transnational Rights

After the NAALC went into force on January 1, 1994, it continued to help constitute transnational actors by articulating transnational labor rights and providing a venue for their adjudication. The final agreement committed each of the three signatory countries to “*protect, enhance and enforce basic workers’ rights*” (North American Agreement on Labor Cooperation, 1993) while advancing regional market integration, enhancing the competitiveness of North American firms, and creating new employment opportunities.

The NAALC established eleven “guiding principles”: each signatory country agreed to promote (1) freedom of association and protection of the right to organize, (2) the right to bargain collectively, (3) the right to strike, (4) prohibition of forced labor, (5) labor protections for children and young persons, (6) minimum employment standards, (7) elimination of employment discrimination, (8) equal pay for women and men, (9) prevention of occupational injuries and illnesses, (10) compensation in cases of occupational injuries and illnesses, and (11) protection of migrant workers. Complaints of labor rights violations may be filed against a NAFTA country and must allege a failure to enforce national labor law in another member state. They cannot be filed against an employer, company, or individual. The NAALC process can begin even if domestic remedies have not been initiated or exhausted.

The NAALC created new adjudicatory venues and procedures for filing complaints alleging that a signatory failed to effectively enforce its labor laws related to one or more of the eleven labor principles. The Commission for Labor Cooperation (CLC) is composed of a secretariat and a ministerial council. The latter serves as the governing

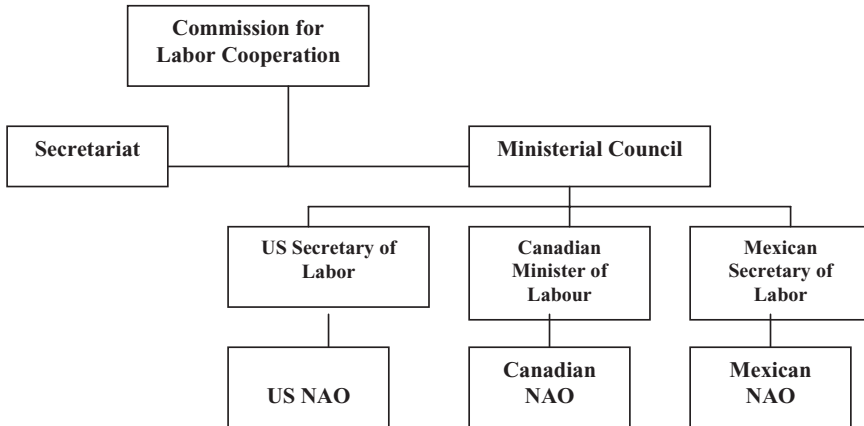


FIGURE 1.
Organizational Chart of the Commission for Labor Cooperation

body of the CLC and has ties to each party's federal government, specifically the labor department (or its equivalent), which maintains an NAO to serve as a point of contact and source of information as well as to receive and respond to submissions. Figure 1 illustrates the structure of the CLC.

There are three primary levels in the adjudicative process. Not all types of complaints, however, can reach the highest level in the institutional hierarchy. Ministerial consultations can be initiated based on an alleged failure to enforce labor laws associated with any of the eleven labor principles. An evaluation committee of experts (ECE) can be convened if the alleged violation pertains to eight labor principles (excluding freedom of association and the rights to bargain and strike). Finally, an arbitral panel can be invoked if the submission deals with labor protections for children and young persons, minimum wages, and/or prevention of occupational injuries or illnesses. Trade sanctions can only be levied at this level. In order for an ECE or an arbitral panel to be established, the matter must be both trade-related and covered by mutually recognized labor laws. Table 1 details the eleven principles and their different levels of treatment in the NAALC process.

Although the NAALC did not create a supranational labor law in North America, in practice its eleven core labor principles formed a body of recognized continental-wide labor rights, granting a new legitimacy to labor activists who tried to invoke them. These new rights also provided a new platform around which activists continued to solidify their collective interests. As the associate director of the AFL-CIO's International Department explained, "[The NAALC process] has created a paradigm. It has created a mind-set. It's created a frame of reference in which we understand ourselves in the labor movement to work on a trilateral basis. And there is a need for that. And that, I think, has tremendous benefits in the point of view of labor solidarity. So that aspect, I think, is very critical."³¹ The former secretary of international relations for

31. Stan Gacek, former associate director, International Affairs Department, AFL-CIO, personal interview by phone with author, August 23, 2009.

TABLE 1.
NAALC Labor Principles and Levels of Treatment

Ministerial Consultations	Evaluation Committee of Experts	Arbitral Panel
Freedom of association and the right to organize		
The right to bargain collectively		
The right to strike		
Prohibition of forced labor	Prohibition of forced labor	
Labor protections for children and young persons	Labor protections for children and young persons	Labor protections for children and young persons
Minimum employment standards	Minimum employment standards	Minimum employment standards
Elimination of employment discrimination	Elimination of employment discrimination	
Equal pay for women and men	Equal pay for women and men	
Prevention of occupational injuries and illnesses	Prevention of occupational injuries and illnesses	Prevention of occupational injuries and illnesses
Compensation in cases of occupational injuries and illnesses	Compensation in cases of occupational injuries and illnesses	
Protection of migrant workers	Protection of migrant workers	

STRM concurred: "The side agreement provides a platform to discuss what is needed to improve the lives of workers in the three countries. It allows us to make the agenda more profound and analyze the problems. So it is an advance."³²

Once the NAALC created a platform, constructing problems as violations of North American labor rights became possible. For the first time, labor activists in each country saw their rights, and remedies for rights violations, as inextricably linked to those of their counterparts beyond their own borders. One Mexican labor activist explained: "I think NAFTA opened relationships between unions in the three countries. Through NAFTA, relationships have been pushed a lot more than they were before. Before unions were worried about their national problems, what happened in their own homes. Now they are worried about what happens outside because what happens there has repercussions here because we are under the same treaty. So this has improved relations. You have to care about what happens there, you have to have allies there to improve problems here. And to know that what affects them there will affect us here. So there has been a growth of relations."³³ A Mexican labor lawyer elaborated: "But the NAALC process gives more pressure because it is regional, between two or three countries. So between these countries they are looking at the violations because it is in their interest, and there is a public audience, and because of

32. Alicia Sepúlveda Nuñez, former secretary of international relations with the STRM, personal interview with author, August 27, 2000.

33. Ruben Ruiz Rubio, labor organizer for the FAT, personal interview with author, April 13, 2000.

this it creates links between unions in the three countries. And this gives workers a new perspective.”³⁴

This new perspective, coupled with the NAALC’s nascent mechanisms, enables unions to develop collective goals across the continent. As a Mexican activist explained, “It’s allowed us to construct an agenda in common. Through the submissions, for example, labor freedom has become a unifying goal among unions in the three countries. We realize that the only way to rectify violations of union liberty which occur in the three countries is through unity. The side agreements have helped us strengthen our efforts toward this goal.”³⁵ Labor activists use the NAALC process to foreground collective labor conditions and goals. A US lawyer explained the significance of having US and Mexican workers testify together at one particular NAO hearing:

And then when we were preparing for the hearing in Mexico City with the Mexico NAO, the question arose whether we should have Anglo workers also be part of the group. . . . And the Mexicans said . . . it’s important to show that both Mexican workers and American Anglo workers are affected by these conditions, and it’s important to us to have [them there]. So that actually turned out to be a great kind of symbolic thing that you had Mexicans working in the US side-by-side with a woman, fifty years old, a large blonde-haired woman, [who] didn’t speak a word of Spanish but she’d worked in the warehouses all her life . . . so that was all very good.³⁶

Although the decision to have US workers testify was strategic, it also reflected a developing sense that workers’ interests across the continent are quite similar.

FACILITATION OF COLLECTIVE ACTION (MOBILIZATION EFFECTS)

In addition to helping constitute transnational actors and interests, the NAALC created a new legal institutional context for transnational cooperation and collaboration. Specifically, it established new legal mechanisms and adjudicatory venues that facilitate transnational mobilization by allowing labor activists to collaborate in concrete and meaningful ways. One of the primary ways the NAALC catalyzes transnationalism is through its procedural rules that require a submission be filed in a country other than the one in which the alleged labor law violation occurred. For example, a union with a grievance in the United States must file a submission with the NAO in Mexico or Canada (or both). This procedural rule not only makes it extremely difficult to file with a “foreign” NAO without the assistance of a “foreign” union, but also provides an incentive for unions to collaborate on submissions across borders. As a

34. Oscar Rubio González, lawyer with ANAD, personal interview with author, May 3, 2000.

35. Bertha Luján, former national coordinator of the Authentic Labor Front (FAT), personal interview with author, August 3, 1999.

36. Lance Compa, US labor lawyer, personal interview with author, December 19, 2000.

prominent Mexican labor lawyer explained, “In our experience one of the most important sources of relations has precisely been this type of submission because above all else you must present them in another country. If you don’t have contacts you can’t submit complaints.”³⁷

Many unions filing submissions transnationally develop more than contacts with their foreign counterparts, however. A US labor lawyer explained how working on submissions helped build relationships among unions:

I’d be on the phone with . . . a couple people at the Teamsters in Washington, D.C., and a couple people in Mexico, planning. . . . We talked about the complaint, we talked about how to get ready for the hearing, and everything . . . and just that experience of working together on a very concrete thing. It’s very different when you’re working on a case, where you’ve got to prepare witnesses, you’ve got to draft a complaint, you’ve got to put together a media strategy. That’s a lot different than writing a resolution, you know, or agreeing to make some denunciatory statement and that’s the end of it. And that had been, by and large, the mode of cross-border labor collaboration before this instrument became available. They’d be high-level meetings at the Inter-American Regional Workers’ Organization or something and top union officials would go to meetings, they don’t speak the language, they would just adopt resolutions that the staff wrote and that would be the end of it. . . . And what the NAALC has created is this kind of framework for a lot of rich interaction between union activists in the countries.³⁸

By enabling newly constituted transnational labor activists to collaborate in concrete and meaningful ways, the NAALC unexpectedly helped generate cross-border collaboration.

Perhaps even more significantly, unions almost always initiate submissions and/or request assistance to file submissions against *their own* governments—not against foreign governments. An analysis of the thirty-five submissions in Table 2 reveals that thirty-four were filed by, or at the request of, unions against their own governments. A Mexican labor leader revealed her preference to use the process against her own government and explained how doing so infused her union’s leadership with new ideas that emerged from interaction with US and Canadian unions:

First of all the side agreements which are very weak and have no teeth . . . have one, I think, good part to them: that I could not go against the Mexican government without the intervention of either an American or a Canadian or American and Canadian unions. So if I wanted to launch a complaint against my government, I would have to find a partner in either country or both. So that helped, because I had to start looking around and say look I need somebody to sign this complaint for me, who can that be? So it promoted looking for partners on both sides or all sides of the border, even the Canadian border. . . . Also in some cases we saw what could be done with political mobilization. We saw what American unions did, what Canadian unions did and it started sort of creating an attraction

37. Arturo Alcalde, lawyer for the FAT, personal interview with author, March 29, 2000.

38. Lance Compa, US labor lawyer, personal interview with author, December 19, 2000.

TABLE 2.
Union Participation in NAO Cases (1994–2008)³⁹

Year	NAO	Submission	Outcome
1994	US	Honeywell (940001)	Ministerial consultations not recommended
1994	US	General Electric (940002)	Ministerial consultations not recommended
1994	US	Sony (930003)	Ministerial consultations recommended
1994	US	General Electric (940004)	Accepted for review, then withdrawn
1995	Mexico	Sprint (9501)	Ministerial Consultations recommended
1996	US	SEMARNAP ⁴⁰ (9601)	Ministerial Consultations recommended
1996	US	Maxi-Switch (9602)	Accepted for review, then withdrawn
1997	US	Gender Discrimination (9701)	Ministerial Consultations recommended
1997	US	Han Young (9702)	Ministerial Consultations recommended
1997	US	Echlin ⁴¹ (9703)	Ministerial Consultations recommended
1998	Canada	Echlin (98-1)	Ministerial Consultations recommended
1998	Canada	Yale/INS (98-2)	Declined for review
1998	Mexico	Solec (9801)	Ministerial Consultations recommended
1998	Mexico	Apple Growers (9802)	Ministerial Consultations recommended
1998	Mexico	Decoster Egg (9803)	Ministerial Consultations recommended
1998	Mexico	Yale/INS (9804)	Ministerial Consultations recommended
1998	US	Flight Attendants (9801)	Declined for review
1998	US	McDonald's (9803)	Accepted for review
1998	US	Rural Mail Couriers (9804)	Declined for review
1999	US	TAESA (9901)	Ministerial Consultations recommended
2000	US	Auto Trim/Custom Trim (2000-01)	Ministerial Consultations recommended
BUSH ADMINISTRATION			
(2001-8)			
2001	US	Durobag (2001-01)	Declined for review
2001	Mexico	New York State (2001-01)	Ministerial Consultations recommended
2003	US	Puebla (2003-01)	Ministerial Consultations recommended
2003	Canada	Puebla (2003-1)	Ministerial Consultations recommended
2003	Mexico	North Carolina (2003-1)	Under consideration
2004	US	Yucatan (2004-01)	Submission withdrawn
2005	US	Labor Law Reform (2005-01)	Declined for review
2005	Mexico	H2-B Visa Workers (2005-1)	Under consideration
2005	US	Mexican Pilots—ASPA (2005-02)	Declined for review
2005	Canada	Mexican Pilots—ASPA (2005-01)	Declined for review
2005	US	Hidalgo (2005-03)	Accepted for review
2006	Mexico	(North Carolina) 2006-01	Accepted for review
2006	US	Coahuila (2006-01)	Declined for review
2008	Canada	North Carolina (2008-1)	

39. Two additional submissions were filed by companies: Tomato/Child Labor (US NAO 9802) and EFCO (Canada NAO 99-1).

40. Also referred to as SUTSP.

41. Also referred to as ITAPSA (in the US and Canada submissions).

from some of us towards those unions and trying to find people to talk to, or to talk to within those unions.⁴²

An AFL-CIO representative also preferred using the NAALC process against his own government: “I used to say this to the Mexicans and the South Americans in other contexts: that the reason that I’m interested in getting really strong labor rights language in a trade agreement—particularly on the right to organize and bargain—is not so I can complain about you. I want it so you can help me by complaining against the US. And that’s why I wanted an agreement, it’s a lever for us here domestically.”⁴³

Steve Herzenberg, an assistant to the US chief negotiator of the NAALC, explained that while some labor negotiators realized the procedural rule might stimulate cross-border collaboration among unions, that was not the intention of the business and government representatives:

The side agreement contributed to that increase [in international solidarity] because it created new venues through which you could act in solidarity and support one another and . . . we were aware of that when the side agreement was crafted. . . . The Canadians were the first ones who came up with this notion of a dispute resolution procedure which would include the possibility of filing complaints against another country in another country, and that ultimately [sets] up some kind of a trilateral dialogue. And at some point . . . the US negotiators or at least some of us began to sort of recognize that . . . this in some ways is actually better than starting trinational. And one of the reasons is because in fact it would require coordination between labor folks from at least two of the countries. And so . . . if you had a problem in your country and you actually wanted to use this agreement to get leverage, you had to go to somebody in the other country, you couldn’t file it yourself.”⁴⁴

Herzenberg explained that the probusiness contingent did not foresee this possibility and described its reaction four years after the agreement’s implementation: “The conventional view . . . was that this labor agreement that they’d let be created was totally useless, and the dispute settlement in particular was sort of the subject of great merriment. . . . I mean if you look at . . . the four-year review . . . one of the reviews was done by a three-person committee . . . from the Mexican expert you get a little bit of this flavor of we’ve been had. That we didn’t know it was going to do this and it’s not fair.⁴⁵ So that reinforces your interpretation that it was certainly not intended on their part.”⁴⁶

42. Alicia Sepúlveda Nuñez, former secretary of international relations with the STRM, personal interview with author, August 27, 2000.

43. Mark Anderson, former director, Task Force on Trade of the AFL-CIO, personal interview with author, January 8, 2001.

44. Steve Herzenberg, former official with US Department of Labor, personal interview with author, September 27, 2002.

45. The Mexican expert wrote a separate dissenting opinion focusing on what he believed was the politicization of the NAALC process, including a critique of its stimulation of labor transnationalism (see Medina 1998).

46. Steve Herzenberg, former official with US Department of Labor, personal interview with author, September 27, 2002.

The NAALC's procedural rules that promote transnational contact and collaboration are incredibly useful for generating transnational relationships. I interviewed participants in twenty-six of the thirty-five submissions listed in Table 2, and all but one respondent (with the CTM) noted that the NAALC process helped strengthen existing transnational relationships or developed new ones. Indeed, all of the US, Canadian, and independent Mexican unionists I interviewed suggested that the NAALC process has facilitated cross-border collaboration—even if their unions had never participated in the process. As will be discussed below, the lack of similar rules in other international labor rights mechanisms may help explain why they failed to stimulate the kinds of labor relationships the NAALC did. I now turn to a discussion of key NAO cases in order to illuminate the *process* by which the NAALC's legal institutional arena helped stimulate transnational mobilization.⁴⁷

Building Transnational Relationships through NAO Submissions

North American labor unions began to test the waters of the new transnational legal mechanism established by the NAALC as soon as it went into force in January 1994. The process of filing complaints not only strengthened transnational relationships, but also helped shape a strategic plan to promote labor rights across the continent. The International Brotherhood of Teamsters (Teamsters) filed the first submission (the Honeywell submission) in February 1994, approximately one month after the NAALC went into effect. It grew out of a broader anti-NAFTA campaign the Teamsters launched while the agreement was being negotiated. Matt Witt, then Teamsters communications director, explained how the Teamsters and the Authentic Labor Front (FAT) expanded their work together by developing a general campaign against Honeywell: "This was a whole campaign that we did—twenty workers who were fired at a FAT organizing drive at Honeywell—and the Teamsters represented the Honeywell workers in Minnesota at the main operation of Honeywell in the United States. And so over a period of time we did a whole campaign about this. And eventually it turned into the [NAO] complaint."⁴⁸ The Honeywell submission alleged that the Mexican government failed to enforce its labor laws guaranteeing freedom of association and the right to organize after Honeywell fired activists leading a struggle to organize.

The second NAO case (the General Electric submission) followed the same pattern as the first. Filed by the United Electrical, Radio and Machine Workers of America (UE) with the FAT's participation, the complaint grew out of an extensive organizing campaign carried out by the two unions at General Electric (GE) plants in Mexico. The submission asserted that GE violated health and safety laws, failed to pay overtime, and undermined workers' rights to organize and associate freely. The UE and FAT worked closely to develop a strategy, prepare the submission, and organize publicity around it. The UE and Teamsters covered a significant portion of the expenses for the first NAO cases, and they even brought two Mexican workers to the United States for

47. Although space constraints prevent me from discussing all the submissions in detail, I chose quite representative cases.

48. Matt Witt, former communications director of the Teamsters, personal interview with author, January 17, 2001.

ten days to visit different unions and talk about the submission and labor conditions in Mexico. Mexican workers fired from Honeywell in Chihuahua met with Teamsters Honeywell workers in Minnesota and spoke at the national Teamsters Women's Conference. UE leaders' doubts about the NAALC's efficacy appeared to be confirmed, however, when the US NAO ruled on the Honeywell and GE submissions. It found that "the timing of the dismissals appears to coincide with organizing drives by independent unions in the two plants" (quoted in Atleson et al. 2008, 287) but did not recommend ministerial consultations. Although UE and FAT activists overwhelmingly viewed the GE submission as a failure, the value of having an institutional arena (however weak) in which to engage, cannot be ignored. This new and viable arena provided the UE and FAT recourse after their organizing efforts were thwarted, legitimized their claims, and, perhaps most significantly, allowed them to strengthen their relationship.

The NAALC process also served as a vehicle to strengthen the relationship between the Communication Workers of America (CWA), the Communications, Energy, and Paperworkers Union (CEP) in Canada, and the STRM. In 1995, the STRM became the first Mexican union to file a complaint (the Sprint submission) against the US government under the NAALC. The case involved Sprint's closure of its La Conexión Familiar subsidiary in San Francisco (that targeted the Latino market) when workers began an organizing drive to join the CWA. A former CWA official explained that a trinational strategy had been planned from the very beginning: "The reason we became involved with it is because that was a mutual promise of solidarity between the two [Mexican and Canadian] groups. When we had the Sprint problem in San Francisco, we had the Canadians and we had the Mexicans, they came down. Francisco [Hernández Juárez, secretary general of the STRM] himself came. And Fred [Pomeroy, president of the CEP] came to a meeting that we had in San Francisco with the press to try to expose the situation."⁴⁹

As Cohen and Early (1998) explain, the STRM's move attracted a lot of attention because "[i]t had previously been assumed that NAALC's complaint procedures—a sop to NAFTA foes in the United States—would mainly be used by American unions complaining about workers' rights violations in Mexico that help keep unions weak, wages low, and working conditions poor in the runaway shops of US multinationals" (156). STRM officials realized, however, that Sprint's desire to enter Mexico's long-distance market through a joint venture with the Mexican telephone company Telmex could mean that Mexican labor rights would similarly be jeopardized. STRM Secretary General Francisco Hernández Juárez declared, "We don't want the mass firings of workers to happen here" (156). In its NAO complaint, the STRM demanded that Sprint be barred from doing business in Mexico until it reinstated the fired US workers at La Conexión Familiar and agreed to recognize unions in either country chosen by a majority of workers. In September 1995, Hernández Juárez invited CWA President Morton Bahr to speak at the STRM's national convention in Mexico City. Bahr declared to the delegates: "We are using NAFTA to provide a forum to air the problems of US workers, particularly immigrant workers, and Mexican workers. . . . Your participation is vital to our efforts" (Cusick 1995, 10).

49. Anonymous, official of the CWA, personal interview with author, 2001.

The CEP also participated in the Sprint submission. Former President Fred Pomeroy described joint actions associated with the case: “We created a racket over that. The Postal, Telephone, and Telegraph International⁵⁰ was having their World Congress here so we had a big demonstration with delegates from about eighty-nine countries in Montreal and we hired a lawyer to get involved in that one.”⁵¹ Although the Sprint submission did not result in victory for the Sprint workers, STRM officials pointed out the benefits of using the NAALC process. As the STRM’s director of public communications explained, “I think the submission process stimulates and facilitates transnational collaboration and cooperation. NAFTA has been incredibly important for us in our solidarity between unions. I would say fundamental. I think it makes a difference and it is beneficial to have international alliances because in the face of globalization we think internationalization is fundamental. . . . But NAFTA has assisted this process. In the case of Sprint we recognized that Sprint is one of the most anti-union companies, and we protested by creating an alliance with American workers.”⁵²

In 1996, another opportunity to build unity around an NAO submission emerged. This time, northern unions supported their Mexican counterpart. The CWA and CEP assisted the STRM by filing an NAO submission to contest the treatment of Mexican workers at Maxi-Switch, a manufacturer of high-technology keyboards in Cananea, Mexico. Maxi-Switch also maintains a distribution center in Tucson, Arizona—160 miles from the Cananea plant. Maxi-Switch workers who attempted to organize an independent union (through a union federation to which the STRM belonged) were denied the right to organize. The STRM set up a cross-border meeting in Hermosillo, and CWA Local 7026 in Tucson attended and pledged support. The NAO submission grew out of this initial meeting.

An STRM lawyer described the strategic decisions behind the case: “We chose Maxi-Switch because it was a transnational. It also had establishments in the United States; that was another reason. CWA was the principal union to help us, then the AFL-CIO. It was a decision in common; we already had a close relationship with the CWA.”⁵³ The submission is considered one of the most successful because four days before the April 1997 scheduled public hearing on the case, the Mexican government issued a legal registration to the independent union. This was the first instance in which a “participant in a NAFTA labor side agreement proceeding has capitulated and agreed to follow its own laws” (Cohen and Early 1998, 159).

The NAALC process helped North American unions construct common interests, which allowed them to expand their activities beyond legal mobilization. The FAT and Canadian Steelworkers embarked on an innovative project to build a strike fund for the FAT, which previously had no access to emergency funds. The UE and Teamsters helped the FAT build three worker education centers in Mexico. The UE created an

50. PTTI (now UNI Global Union) was an international trade secretariat which is now referred to as a *global union federation*.

51. Fred Pomeroy, former president of the Communications, Energy, and Paperworkers Union (CEP), personal interview with author, February 28, 2001.

52. Eduardo Torres Arroyo, official of the STRM, personal interview with author, July 12, 1999.

53. Hector Barba García, former labor lawyer for the STRM, personal interview with author, May 8, 2000.

adopt-an-organizer program that its rank-and-file members support through a voluntary supplementary dues check-off and monthly contributions. The FAT sent Mexican organizers to help the UE and Teamsters organize Latino workers in key plants. The CWA, CEP, and STRM held a joint organizing school for bilingual organizers in all three unions, after which two STRM organizers assisted with a CWA organizing campaign among Spanish-speaking workers in Los Angeles. These and a plethora of other examples of new types of mobilization and organizing demonstrate the incredible shift in the breadth and depth of interactions among North American unions in NAFTA's wake. A leader of the Canadian Steelworkers explained the nature of the cultural shift toward transnationalism within his union:

Because of the history I've described and the relationships we've built, there is now an automatic expectation among our ordinary local officers and activists that every major conference—health, district—will have an international component. There will be an international speaker; somebody we've had a relationship with will be there. It's just sort of become an expected thing, and they would comment if it didn't happen now. Twenty years ago they wouldn't have [cared]. They would have seen it as something exotic or a waste of time. That's sort of the culture change in the organization. When you ask a lot of our activists what they are most proud of about their union, in the old days it might have been, oh that great strike at Inglis when we burned the boss's car, or the wonderful militant health and safety action, or this famous sit-down strike. As often as not now they'll talk about the international work . . . it is a cultural change. I don't know how else to describe it.⁵⁴

Clearly, the interactions among North American unions had moved beyond the ephemeral interest groups and talk shops of the Cold War era. Key unions, such as the Canadian Steelworkers, had developed a sense of mutual interest coupled with a commitment to joint action.

Building a Continent-Wide Campaign

The Han Young campaign reflected that commitment to joint action across the continent and was a watershed event for North American labor organizing; it was the largest trilateral campaign focused on Mexican workers' rights in the continent's history, and the largest campaign to include an NAO submission as part of its strategic repertoire up to that point. For three years, beginning in 1997, activists from across the continent engaged in a variety of transnational actions to demand that Mexican workers' rights be protected at Han Young, a Tijuana factory that produced truck chassis and shipping containers for Hyundai. Workers tried to organize an independent union with the Union of Metal-Mechanic, Steel, Iron, and Related Industries Workers (STI-MAHCS, an affiliate of the FAT) to deal with the myriad health and safety and economic issues at the plant. They demanded an election to vote out the PRI-backed

54. David Mackenzie, official of the Canadian Steelworkers, personal interview with author, February 16, 2001.

Revolutionary Confederation of Workers and Peasants (CROC) that enjoyed a “protection contract” with Han Young (Bacon 1998a).

Han Young workers actively sought out support for their struggle from transnational allies using a classic “boomerang strategy” (Keck and Sikkink 1998) that rallied international pressure and criticism to try to force the Mexican state to respond. Public and media support was essential at key moments during the campaign. After the company attempted to repress and intimidate workers for almost four months, for example, the Tijuana labor board met to set a date for a union election but suspended proceedings when the CROC announced that the CTM also wanted to file for union recognition. Four hours after US supporters called the board to demand an election date (which coincided with a Han Young worker protest), the board finally set a date. On October 6, 1997, Han Young workers elected an independent union to represent them. They were the first workers in more than three thousand maquiladoras to successfully elect independent union representation.

International pressure was used again in conjunction with local worker agitation after Han Young—in defiance of the election results—fired four more workers and announced it would fire all union supporters and hire new workers from Veracruz. On October 22, allies began a US consumer boycott of Hyundai and, eight days later, filed a submission with the US NAO detailing the Mexican government’s failure to enforce its labor laws. When the Tijuana labor board announced that it would not certify the election, four fired Han Young workers began a hunger strike and others organized a series of work stoppages. North American allies conducted a one-day fast in solidarity with the hunger strikers, organized candlelight vigils, and sent letters to the labor board, the governor of Baja California, Mexican President Zedillo, US President Clinton, and Hyundai. The Support Committee for Maquiladora Workers issued an alert that announced, “The boycott of Hyundai Motors will continue until the Han Young workers have justice,” and requested delegations of clergy and human rights groups to visit Han Young workers in Tijuana” (Campaign for Labor Rights 1997a). The Mexican government ultimately forced the Tijuana labor board to certify the election. Han Young, however, failed to bargain with the union. In March, the union announced that it would launch a strike against Han Young if negotiations were not conducted in good faith, and, in May, the FAT began the first legal strike of a maquiladora by an independent union.

The Han Young struggle continued for almost two more years. During that time, workers faced intimidation by management, official unions, and police. The government issued arrest warrants for a union organizer and the FAT’s attorney and assailed the involvement of transnational allies using nationalist rhetoric to discredit the FAT and other independent unions. Transnational allies maintained their support despite the attacks. Activists in more than twenty-five cities across the United States demonstrated at Hyundai car dealerships, car shows, Mexican consulates, and US government buildings. Various unions and community groups hosted visits by Han Young workers and eagerly offered solidarity. At the Port of Portland, for example, labor activists picketed a ship waiting to be unloaded at Hyundai’s dock that International Longshore and Warehouse Union members then refused to unload, resulting in significant losses for Hyundai (Williams 2003, 542). In February 1998, the USW, the United Auto Workers, the Canadian Auto Workers, and two NGOs filed an addendum to the NAO

submission on health and safety issues. Activists declared February 7 a day of local actions in solidarity with Han Young workers.

Utilizing the NAALC process not only helped activists rally public support, but also enabled the FAT to embarrass and pressure the Mexican government by exposing labor abuses and threatening its trade relationship under NAFTA. Rep. David Bonior and fourteen Congress members urged President Clinton to discuss the Han Young situation with Mexican President Zedillo (Vice President Gore subsequently did). In a letter to Mexican President Zedillo, campaign supporters pointed out that “[t]he outcome of events at Han Young/Hyundai could affect future trade relations between the United States and Mexico” (Campaign for Labor Rights 1997b). There is evidence that the struggle influenced Congress members as they contemplated renewing the president’s fast-track authority in 1997. As journalist David Bacon reported, “Opponents of fast track used the Han Young election as a symbol of NAFTA’s failure to protect workers’ rights. As the administration sought to line up support, Democratic representatives David Bonior and Richard Gephardt buttonholed Congress members, telling them about Han Young. It worked well. In the end, even with substantial Republican support, President Clinton couldn’t come up with the necessary votes and pulled fast track off the floor” (Bacon 1998b, 27).

The US NAO ruled in late April 1998 that the Mexican government had failed to enforce its own labor laws in the Han Young case. Neither the ruling nor the struggle, however, resulted in a victory for workers. In the fall of 1999, Han Young, in a flagrant violation of Mexican labor law, closed the factory and opened another in eastern Tijuana. The struggle ultimately lost momentum and dissipated. Although many activists and scholars quite legitimately read it as a terrible defeat for the workers and the NAALC process (see Williams 2003), the Han Young struggle did have the quite positive effect of strengthening transnational labor relationships among unions across North America. It proved that it was possible to galvanize support for a continent-wide labor rights struggle that captured the public’s imagination and triggered international diplomacy. Major US newspapers, including the *New York Times*, regularly reported on the struggle. The Mexican federal government and Hyundai’s responses to pressure at various points during the struggle reflect the potential impact of transnational collaboration. Other workers in Mexico’s maquila factories had tried and failed to organize independent unions and strikes. It is unlikely that Han Young workers would have been able to achieve these goals if the campaign had not brought international pressure to bear on the Mexican government.

The campaign was also significant because it centered on the needs and interests that Mexican workers articulated; the focus and strategies were not dictated or imposed by northern counterparts. This built trust among participants. As Williams (2003, 532) explains,

The fact that the mass media in the United States and Mexico focused on the issues of worker autonomy and union democracy rather than simply sweatshop conditions or worker poverty indicates, first, a significant maturation of cross-border networks. Such maturation had much to do with the impact of sustained contact between groups on both sides of the US-Mexico border. Whereas in the early 1990s many labor unionists in the United States and Canada portrayed their

counterpart workers in Mexico as victims—or perhaps unwitting dupes in runaway factories that had left Americans and Canadians unemployed—solidarity partners now focused on the Han Young struggle as an issue of worker democracy.

As the case of Han Young shows, the NAALC was in part responsible for the sustained contact among North American labor unions that catalyzed the issue shift across labor rights networks. Moreover, the NAALC's articulation and legitimation of freedom of association and collective bargaining rights at the transnational level helped shape and bolster activists' claims; there was now a right to invoke, not simply a sweatshop to condemn. US and Canadian activists could therefore more clearly see that they faced similar problems as workers in Mexico. A Campaign for Labor Rights alert revealed how some US activists saw parallels between their own history and that of their Mexican counterparts: "Some US supporters pushing for federal intervention [by the Mexican government] likened the situation to the scene in the 1950s when the governor of Arkansas stood in the doorway blocking black children from entering the [school] after the *Brown vs. Board of Education* decision by the Supreme Court and the US government had to send in the military to oppose the state governor" (Campaign for Labor Rights 1998). By focusing on rights, the NAALC process helped reinforce workers' shared experiences and collective interests.

Catalyzing New Relationships and Building a Transnational Labor Rights Network

While the NAALC strengthened ongoing campaigns and existing relationships among key North American unions, it also stimulated new transnational relationships among others. One of the most important relationships the NAALC process facilitated was between the FAT and the AFL-CIO. The FAT viewed building relationships with US and Canadian unions through the NAALC process as one way to increase their visibility, influence, and power within the Mexican labor movement and with the Mexican government. They therefore actively sought allies with whom to file NAO submissions. In 1994, the AFL-CIO began to "unofficially" support NAO submissions in which the FAT participated. A UE lawyer involved in one of the first NAO submissions revealed that AFL-CIO officials arranged a meeting with the unions that participated: the UE, Teamsters, and FAT. The meeting, she explained, was held in secret: "Because of that case, or at the time we filed that case, the AFL-CIO hosted a lunch for us at their offices. Now that was before the change in AFL policy, so it was not an official lunch. But, it was a way in which various people got to meet."⁵⁵ The AFL-CIO continued its behind-the-scenes support for the FAT and other independent unions engaged in the NAALC process until 1997, when it signed onto its first NAO submission (the Echlin submission) and later publicly ended its exclusive relationship with the CTM.

In 1998, the AFL-CIO, CLC, and FAT organized a trilateral conference in Mexico City to evaluate the NAALC process and the effects of NAFTA in each of its

55. Robin Alexander, director of international labor affairs for the UE, personal interview with author, December 21, 2000.

three countries. The meeting, which included the participation of over 115 labor law activists, or “laboralistas” as they became known, formalized the growing transnational network of labor lawyers and activists who had trailblazed the use of the NAALC process in their countries. During the conference, the laboralistas shared their experiences and developed international labor rights strategies. A US labor lawyer who attended described the historic alliance and noted: “In an extraordinary meeting in Mexico in early December 1998, labour lawyers from Canada, Mexico, and the United States who have been involved in NAALC cases formulated a common strategy for working together in new NAALC cases challenging the three governments to live up to the 11 labour principles they adopted. Elements of their strategy include: case selection that targets systematic problems, not just single-workplace incidents; more use of simultaneous complaint filings with 2 or 3 NAOs on the same topic; more consultation among advocates from all three countries prior to filing a complaint” (Compa 1999, 210). Laboralistas also agreed on a strategy to push the NAALC process to its limits while drawing attention to its deficiencies. They privileged NAO submissions that alleged freedom of association violations because if workers could organize, they could fight for all other rights themselves through their unions. It is therefore not a coincidence that the violation most often cited in submissions is one that cannot reach the highest level in the NAALC process. And by filing submissions based on health and safety violations, they hoped to reach the highest level in the NAALC process and obtain sanctions.

The NAALC process, then, did not simply generate a flurry of legal paperwork. As with the Han Young case, many unions involved in NAO submissions used them to complement campaigns, joint projects, or other actions and thereby to promote and demand labor rights across the continent. This suggests that the NAALC’s effects go beyond its procedural rules. Indeed, the NAALC’s passage created a tangible institutional arena in which the rules of regional economic integration could be contested.

ADJUDICATION AND ENFORCEMENT (REDRESS EFFECTS)

The final dimension of legal transnationalism—adjudication and enforcement—emphasizes the ability of activists to invoke legal protections and remedy their grievances at the transnational level. As has been discussed, the NAALC lacks strong enforcement mechanisms. It grants some labor rights violations less protection than others, prohibits all types of violations from reaching the highest level in the adjudicatory hierarchy, and provides weak penalties. Every labor activist I interviewed (with the exception of most in official Mexican unions) agreed that the NAALC is woefully inadequate as a tool for redressing labor rights violations across the continent. The NAALC’s lack of enforcement mechanisms, or teeth, is their primary criticism. As former CLC President Bob White commented in the NAALC’s four-year review, “Under the terms of the labor side agreement, even when the workers have proven their case satisfactorily, the remedies have been inconsequential and the abuses have continued. . . . [T]hus, a minimum condition for any expansion of NAFTA must be that it include enforceable labor and environmental standards in the agreement itself. The side-agreement approach has not worked” (Commission for Labor Cooperation 1997).

During the first seven years of its existence, the NAALC process was one of the key arenas of cross-border labor cooperation and a significant indicator of its persistence. However, during the second seven years under NAFTA, unions used the process less frequently. While unions and labor organizations filed fourteen submissions with the US NAO during the first seven years, they filed half that number—seven—during the second (see Table 2). The primary reason for the paucity of submissions is a general feeling among union leaders and strategic decision makers that, with minimal enforcement mechanisms, the NAALC yields few concrete results in terms of directly improving wages and working conditions.

The election of the more conservative, antilabor George W. Bush administration further eroded unions' confidence about the NAALC's enforcement. While labor activists believed that the rather progressive Robert Reich and the team he put in place at the US NAO and secretariat were sympathetic to, if not supportive of, labor, they held no such hopes for Republican Elaine Chao, Bush's secretary of labor, a former fellow at the conservative Heritage Foundation. The evidence suggests that labor activists' concerns with the administration's enforcement of the NAALC were well founded: of the fourteen submissions filed during the Clinton administration, the US NAO recommended ministerial consultations for eight and only denied review to two. In contrast, of the seven NAO submissions filed under President Bush, the US NAO recommended ministerial consultations for only one, and four were not accepted for review.

Although many unions utilized and tested the NAALC process during the Clinton administration, fewer were willing to invest the time and resources into invoking it after 2001. The NAALC's failure to provide meaningful redress on core issues such as freedom of association not only undermines its ability to protect workers, but also to serve as a mechanism to build labor transnationalism. Scholars and activists must therefore be attentive to *how* new legal mechanisms and legal institutions are constructed, because the legal architecture has significant implications for transnational social movement development.

The importance of an international law's redress effects for movement building is reflected in how Mexican independent union activists view and use the NAALC process. Although the NAALC's enforcement mechanisms are weak, activists argue that the support of US and Canadian unions through the NAALC process has helped undermine violence and government indifference. According to a Mexican labor leader: "Through openings provided by these trade agreements . . . we've had the opportunity to denounce the Mexican government's antidemocratic practices: the repression of popular movements, systematic violation of human rights, and this has made [the government] care about its international image. For us international condemnation is very important because the eyes of NGOs and unions internationally can influence things."⁵⁶

A Mexican labor lawyer suggested the NAALC process provided a disincentive for the Mexican government to tolerate violence during labor struggles. He explained,

56. Antonio Villalba, former coordinator of international relations with the FAT, personal interview with author, April 26, 2000.

“We had another case where there was a recount in another workplace, and it began with a lot of violence. But physical violence didn’t happen [here] because they knew that [there could be a case built around it]. Now the owners are not as obvious and violent, it’s now more indirect coercion such as promising people things. But this is a benefit to workers. Now voting isn’t with rifles and pistols. So maybe we’ve obtained something. So it’s worth it to use these processes through the NAO.”⁵⁷

Mexican independent unionists’ assertion that the NAALC is useful to them despite its weak enforcement mechanisms suggests the importance of defining an international law’s redress effects broadly. In particular, the concept of redress should include a law’s leverage potential. Mexican independent unions find the NAALC process useful primarily because obstacles to organizing are frequently the result of state intervention and opposition. Thus, while US and Canadian unions usually target companies in their labor rights struggles, independent Mexican unions usually target the state. During the Han Young struggle, for example, the Campaign for Labor Rights, on behalf of the FAT, argued, “The Mexican Government is the Issue: Although there are many players in the cast of the Han Young drama, one bad actor in particular has the role of villain. That player is the Mexican federal government” (Campaign for Labor Rights 1998). The NAALC process is therefore particularly useful to Mexican independent unions because they, like the side agreement, focus on the state’s enforcement of its own domestic labor laws.

The importance of an international law’s redress effects for movement building is demonstrated by US and Canadian unions’ willingness to support independent Mexican unionists’ use of the NAALC. Gerry Barr, a former leader of the Canadian Steelworkers, explained that although his union is skeptical of the NAALC’s ability to remedy labor rights violations, its leaders decided to participate in the Echlin NAO case in order to support the FAT:

[W]e thought and to some extent still think that this is a procedure designed to not work and designed to be inaccessible and designed for inefficacy not efficacy, and to some extent we still think that, but it does remain true that it was a venue, right? It was a place to engage and so because the FAT was interested in that we became interested in it. And because they valued it we suspended some of the critique with respect to the non-utility of the platform and were prepared to accompany them, . . . and to sort of give some weight to their interest in having it aired in Canada, and we became the lead agency as it were.⁵⁸

The Canadian Steelworkers’ decision to participate in the process was significant. The submission required a large amount of time and money and yet did not directly involve the violation of Canadian workers’ rights. The union made the decision because, as Barr explains, it came to see its interests as linked to those of the FAT. This suggests that even transnational legal mechanisms with minimal redress effects can have an effect on movement building.

57. Eugenio Narcia Tovar, labor lawyer with ANAD, personal interview with author, April 4, 2000.

58. Gerry Barr, former official of the Canadian Steelworkers, personal interview with author, March 1, 2001.

THE ARCHITECTURE OF INTERNATIONAL LAWS AND ADJUDICATORY MECHANISMS

Although it is impossible to predict the landscape of labor transnationalism in NAFTA's absence, it is highly likely that it would have resembled its pre-NAFTA precursor, characterized by distant and formal union relations. An analysis of the coincidence of NAFTA with the emergence of labor transnationalism therefore illuminates how critical NAFTA was to its stimulation; to the extent that transnational relationships emerged in North America, they did so in response to NAFTA's nascent transnational legal arenas and mechanisms that had *political, not simply economic* effects by constituting transnational actors and interests and creating incentives for collaboration.⁵⁹

The case of NAFTA also suggests, however, that all international laws and legal mechanisms are not created equal—equally useful to social movements, that is. It reveals important mechanisms that facilitate transnational mobilization and interest formation. Legal mechanisms that require transnational contact and collaboration through procedural rules can be essential to the stimulation of transnationalism. Governance institutions that lack rules to promote collaborative filing of complaints generally have not fomented transnational relationships among North American unions. The procedural rules of the ILO and the Inter-American Court of Human Rights (IACHR) do not encourage complainants to file jointly, require central filing of complaints, and do not permit public hearings. Like the NAALC, the ILO and IACHR procedures lack enforcement mechanisms. And instead of encouraging North American unions to file complaints together, the labor clause of the Generalized System of Preferences (GSP) actually pits them against each other: US unions file complaints unilaterally against other governments requesting the United States to withdraw trade preferences to nations that do not comply with their labor laws.⁶⁰ This unilateral mechanism did little to build collective power among North American unions.⁶¹ Although unions utilized the ILO, IACHR, and GSP mechanisms prior to NAFTA's passage, they did not use them collectively or as part of larger transnational campaigns for North American workers' rights.⁶² Most important for the analysis here, unions' use of these transnational mechanisms did not help catalyze transnational relationships.

A comparison of the NAALC to NAFTA's environmental side agreement, the North American Agreement on Environmental Cooperation (NAAEC), highlights the

59. For decades prior to NAFTA's passage, trade, investment, and market openings increased among North American countries (see "Direction of Trade" dataset compiled by the International Monetary Fund. <http://www2.imfstatistics.org/DOT/> (accessed December 15, 2010). North America's unions, however, did not respond by building transnational relationships.

60. Beginning in 1984, US unions could file petitions with the Office of the US Trade Representative to request that a country's preferential GSP status be reviewed and suspended if that country violates labor rights.

61. Schrank and Murillo (2005) and Piore and Schrank (2008) suggest that some countries improved labor rights under the threat of losing trade preferences. NAFTA eliminated the use of GSP preferences for and complaints against Mexico by the United States.

62. A few US unions worked with their counterparts in other Latin American countries on GSP petitions to deal with extreme violations of labor and human rights (e.g., under dictatorships).

importance of institutional structure on transnational social movement building. Unlike the NAALC, the NAAEC does not have NAOs or their equivalents in each country, and submitters *are not* required to file in a country other than the one in which the violation occurred. Rather, submitters file complaints of environmental law violations centrally to one entity, the secretariat of the Commission for Environmental Cooperation (located in Canada).

Although environmental activists have filed more than twice the number of NAAEC submissions than labor activists have filed through the NAALC, they rarely have done so jointly. Of the sixty-five NAAEC submissions filed between 1994 and 2008, only two were filed by submitters from all three NAFTA countries (compared to fourteen NAALC submissions). Thirty-three submissions were filed by sole Mexican environmental organizations and/or individuals (compared to two NAALC submissions), forty-eight by organizations in only one country (compared to three NAALC submissions), and three were filed by combinations of US/Mexican and Canadian/Mexican organizations (compared to thirty-three NAALC submissions). In addition, very few of the NAAEC submissions emerged from or developed into large trinational environmental campaigns with grassroots involvement.

Finally, most relevant to the analysis here, there is little evidence that any strong permanent transnational relationships among environmental organizations emerged and developed in response to the NAAEC. According to Jonathan Graubart, who analyzed the NAAEC submissions and interviewed environmental activists across North America, “No one was talking about the importance of collaboration.”⁶³ The very different outcomes of the two NAFTA side agreements suggest that the construction of transnational governance institutions has effects on transnational movement building. The NAALC, which requires collective adjudication, has helped stimulate it.

My findings on North America suggest that the limited scope and lack of legal mechanisms and procedures that require collaboration could be a contributing factor to the paucity of European labor transnationalism.⁶⁴ There are relatively few Europe-wide labor standards that can form the basis of a labor rights complaint with the European Court of Justice (ECJ). Because collective bargaining, union organizing, and the right to strike are not covered by EU-wide standards, only less contentious issues such as health and safety, parental leave, and employee works councils can form the basis of a complaint, leading a prominent labor lawyer to note, “the EU social dimension is not nearly as strong as its institutional framework suggests” (Compa 2003, 2). Moreover, complaints are filed centrally rather than collectively. Although the EU presents a strong case for the emergence of international laws across a wide variety of issue areas—from agriculture to consumer protection—NAFTA provides a stronger case for the emergence of labor transnationalism *in relationship to the law*.

63. Jonathan Graubart, phone conversation with author, September 24, 2009.

64. Relatively few transnational relationships exist among European unions (Dølvik 1997; Tarrow 1995), a fact that scholars largely attribute to competition, divergent interests and cultures, and vertical divides between leadership and membership (see Gajewska 2009). Some research documents more recent transnational coalition building in Europe (see Caporaso and Tarrow 2009; della Porta and Caiani 2009; Joachim and Locher 2009).

CONCLUSION

In 1994, when the NAALC went into effect, labor activists hoped it would protect the rights of workers across the continent. More than a decade after its passage, however, activists in all three NAFTA countries agree that the NAALC has met neither their expectations nor workers' needs. In an ironic historical twist of fate, the most significant (and unforeseen) tool the NAALC provided North American labor activists was the ability to work toward improving labor rights protections collectively. The FAT's Bertha Luján captured the simultaneous irony and promise of the NAALC when she commented,

The labor side agreement was an achievement for unions and workers in the three countries. Unions in the three countries wanted NAFTA to include the protection of labor rights and wanted an agreement that would improve the conditions of workers. Transnational cooperation and collaboration began before NAFTA was passed to try to include these social clauses in the agreement. Unfortunately NAFTA was signed without these guarantees in the body of the agreement. . . . But the side agreements were passed in part due to the pressure of organizations in civil society. From the beginning we've seen the side agreements as a mechanism for defending the rights of workers against capital and the excesses of free trade. And from the beginning we've decided to use them in any way possible in our struggles and for those objectives.⁶⁵

The story of the NAALC and labor transnationalism illuminates one of the unintended consequences of regional economic integration in North America and provides a heuristic lens through which to examine how international laws and legal mechanisms constrain and expand transnational social movements.

My primary contribution in this article is to introduce a new concept of legal transnationalism that expands our understanding of law and movement building to the transnational arena by identifying three dimensions of international laws that make them more or less conducive to movement building. I also illuminate the underlying processes and mechanisms that facilitate movement building. The first dimension of legal transnationalism highlights the constitutive effects of international laws and legal mechanisms. Although the process of constituting transnational interests and identities is important at the national level, it is particularly critical to the emergence of transnational social movements because they must overcome geographic and cultural barriers as well as interests that are frequently constructed in opposition to each other. NAFTA allows me to evaluate transnational social movement building in relationship to the law both before *and* after a law's passage because initial constitutive processes began during the agreement's contestation phase and continued once the NAALC went into force. How labor activists came to view the law as the source and generator of common interests expands our understanding of legal consciousness within movements and transnationally across them.

65. Bertha Luján, former national coordinator of the Authentic Labor Front (FAT), personal interview with author, August 3, 1999.

International laws' mobilization effects foreground how the content and structure of international laws can facilitate collective action. In terms of content, those that define and recognize transnational rights (thereby creating new rights claims) can facilitate mobilization by legitimizing activists and their collective interest to invoke legal protections. In terms of structure, international laws that create adjudicatory arenas that require (either *de facto* or *de jure*) activists to engage each other have even stronger mobilization effects than those that do not. Unlike domestic activists who may come into contact regularly or participate as members of national organizations or their affiliates, transnational activists live and work in different countries, making ongoing interaction difficult. Creating legal incentives helps change the calculus by which transnational actors choose to work collaboratively across borders.

Finally, a law's redress effects emphasize the ability of activists to invoke legal protections and remedy grievances at the transnational level. Strong adjudicatory and enforcement mechanisms are particularly important at the transnational level because activists have fewer targets, opportunities, and venues for collective protest. Having a responsive transnational legal institution to engage can help maintain transnational mobilization. An often ignored yet critical value-added of binding rules and adjudicatory mechanisms that extend across national boundaries, then, is their ability to help develop collective identities and stimulate mobilization.

A theoretical framework centered on an international law's constitutive, mobilization, and redress effects is important for three reasons. First, it highlights the relevance of a law's content and structure for movement building. Sociolegal scholarship focuses on how movements struggle to change legal rules and legislative content rather than on how the structure of the law and nature of procedural rules and adjudicatory mechanisms create opportunities for or constraints on collective action. Movement building under the NAALC emerged not only from the agreement's content, but also from its procedural rules that made individual action impractical and inefficacious. The NAFTA case shows that creating legal mechanisms that require transnational contact and collaboration are incredibly useful for generating transnational relationships *and* demonstrates the importance of having transnational legal institutions to engage.

Second, a theory of legal transnationalism underscores the importance of legal enforcement for movement building. Although scholars have convincingly demonstrated that legal regimes that lack strong enforcement mechanisms rarely change norms or legal compliance, they do not address a different, and no less important, question: how do legal regimes that lack strong enforcement mechanisms affect movement building? (see Downs, Rocke, and Barsom 1996). Although the analysis here shows that many unions were willing to use the new legal mechanisms the NAALC built, they were not always willing to consistently remain engaged with them. To the extent that the NAALC fails to provide meaningful redress on core issues such as freedom of association, its ability to serve as a mechanism to build labor transnationalism is compromised. But unions' reluctance to engage global governance institutions such as the NAALC and demand that they have not simply teeth but fangs also undermines their ability to protect workers' rights and build cooperative transnational relationships. *How* new legal mechanisms and governance institutions are built is critically important to transnational social movement development.

Finally, a theory of legal transnationalism helps explain variation in movement building outcomes by accounting for characteristics of international laws that catalyze *and* limit transnational movement building. If international laws rank high on constitutive, mobilization, and redress dimensions, they will more likely help facilitate transnational movement building. Conversely, those that rank low on each of these dimensions are unlikely to help generate transnational cooperation and collaboration. And, in cases in which an international law ranks high on one or two dimensions and low on the other(s), the results on movement building can be mixed. The theory, then, incorporates a predictive element or a way to test the likelihood that a particular law will generate transnational movement building or not.

The NAALC, however, suggests that even a mixed case (i.e., one that ranks high on its constitutive and mobilization dimensions and low on its redress dimensions) can have a positive effect on movement building. Indeed, the NAFTA case illuminates how even international laws with weak enforcement and policy outcomes can have strong movement building outcomes. My analysis, however, only provides the first step in understanding the dynamics of legal transnationalism. An examination of other laws and movements will help confirm the generalizability of the dimensions that I have detailed and ascertain whether additional dimensions are at work. More theoretical and empirical work is also needed in order to determine whether particular dimensions are relatively more important than others (i.e., is there a hierarchy of dimensions?) and whether there are critical thresholds for each dimension to have an effect on movement building. While the NAFTA case illuminates the importance of constitutive, mobilization, and redress effects, additional cases are needed to better explore the ways in which organizational identities, interests, and constraints vary across movements.

A theory of legal transnationalism also has critical implications for sociolegal research on other international legal mechanisms and governance structures that are already in place or emerging around the world and their effects on different kinds of social movements. The NAALC suggests that a new legal mechanism—a transnational system for adjudicating labor conflicts—can create an arena that generates transnational movement building. New legal mechanisms are likely to create arenas in which other transnational movements can emerge, from environmental movements agitating for climate change policies to citizen groups demanding international banking regulation. Indeed, international climate change coalitions began to emerge and coalesce in response to the United Nations Kyoto Protocol process and environmental activists' contestation over the measurement, abatement, and enforcement mechanisms the treaty would have. Although the conditions under which the international climate change movement are forming are very different from those that birthed NAFTA, the role of international laws and legal mechanisms that facilitate the creation of transnational interests, actors, and rights remain central to the process.

As the data presented here suggest, however, the most significant changes will most likely be achieved through transnational collaboration, not trade agreements or international laws themselves. Indeed, perhaps the most significant (and unexpected) tool international laws can provide activists around the world is the ability and opportunity to work collectively to improve rights protections themselves.

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