

**International Labor Standards and Hemispheric Integration:
Evaluating the North American Experience**

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INTRODUCTION

With increased international economic integration new challenges have surfaced in many complementary areas, perhaps none more important than labor and social standards. As countries enter into closer economic relationships, they are faced with the dilemma of ensuring that international commercial activity does not flourish at the expense of the rights of workers or the lowering of social standards.

The recent proliferation of trade agreements in the Western Hemisphere has raised questions of not only how to structure a regional trade agreement but how to deal with related labor and social concerns in coordinated way. One approach, and a possible model for further hemispheric integration, is the North American Agreement on Labor Cooperation (NAALC) signed as one of the supplementary accords to the North American Free Trade Agreement (NAFTA).

The NAALC is a unique international agreement, and the Commission it creates is the only international body since the founding of the International Labor Organization (ILO) in 1919, to be devoted exclusively to labor rights and labor related matters. It is the first international agreement on labor to be linked to an international trade agreement. and provides a mechanism for member countries to ensure the effective enforcement of existing and future domestic labor standards and laws.

Through the NAALC, the continental trading partners seek to improve working conditions and living standards, and commit themselves to promoting eleven Labor Principles to protect, enhance and enforce workers' basic rights.² To accomplish these goals, the NAALC creates mechanisms for cooperative activities, the development and exchange of information and analysis, and intergovernmental consultations, as well as for independent evaluations and dispute settlements related to the enforcement of labor laws.

The public response to the NAALC has been mixed. Many argue that it has been effective, while many others have been highly critical of its structure and implementation.

¹ The views expressed in this paper are solely those of the author and do not represent the position of the Secretariat of the Commission for Labor Cooperation, nor any of the governments that are Parties to the NAALC. All information used for this paper is in the public domain and no confidential information was included in this paper. Any errors or omissions are solely the responsibility of the author.

² The eleven principles are: 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; 11) protection of migrant workers.

This paper attempts to review some of the arguments made regarding the effectiveness of the North American model.

Assessing the Effectiveness of the NAALC

In the interest of evaluating the Agreement's success to date, and as part of the Council's functions under Article 10, Section 1(a) of the NAALC requires that the Council:

“..oversee the implementation and develop recommendations on the further elaboration of this Agreement and, to this end, the Council shall, within four years after the date of entry into force of this Agreement, review its operation and effectiveness in light of experience..”

To carry out this mandate, the three countries agreed on a process to carry out the NAALC review. Since the NAALC entered into force on January 1, 1994, the above review was initiated in its fourth year (1997) and includes information from January 1, 1994 through August 1998.

As part of the NAALC-review process agreed upon by the three Parties, the Secretariat was requested to draft a report summarizing the “highlights of the inputs received in the review process”. These highlights included: public comments, an experts committee report, reports from National Advisory Committees, and finally a review of NAALC-related literature. Each of these inputs will be discussed in turn, followed by a discussion of the major issues raised by all of the inputs.

The Review and Public Input

Given the important role of public participation in the NAALC, a strategy for receiving input from outside the Council was developed. This consultation was carried out in a number of ways. First, Parties consulted National Advisory Committees to provide advice and input. The main issues raised by these reports are summarized below.

Secondly, the Council issued an invitation for written public comments to be submitted to the Secretariat and each country's NAOs. Numerous comments were received from the public in all three countries. These public comments were reviewed by the Secretariat and are summarized below. In addition, the Mexican NAO sent out a survey to more than 100 public officials, labor and business representatives and academics, to assess their reaction to the NAALC generally and cooperative activities that have taken place to date. The results of that survey are summarized in a section below.

National Advisory Committee Reports

Articles 17 and 18 of the NAALC allows for the use of National Advisory Committees and Governmental Committees to advise the Parties on the implementation and further elaboration of the Agreement.

Both the United States and Mexico organized a National Advisory Committee (NAC) within the first year of operation of the NAALC to receive advice on matters related to the NAALC. Given Canada's system whereby provinces have primary authority for labor law and enforcement, and the fact that only three provinces had signed on to the NAALC at the time of this review, a NAC was only recently organized in Canada and therefore no report was issued.

The U.S. NAC is composed of twelve members, including four business representatives, four labor representatives, and four "at large" or academic representatives. The Mexican NAC is composed of eight members, with five members from the labor sector and three members from the business sector. The Canadian NAC was set up under the Canadian Intergovernmental Agreement which governs Canada's participation in the NAALC. The Canadian NAC is composed of ten members representing labor, business, government, academia, and non-governmental organizations.

Mexico is the only one of the three countries that convened a Governmental Committee under Article 18 of the NAALC. The Committee is composed of representatives from the Ministries of Labor, Commerce, Foreign Affairs and state and local representatives. The Mexican Governmental Committee submitted a report as an input the this review.

Independent Experts Report

An important aspect of the review process was the formation of an independent review committee comprised of three independent academic experts, one from each country. The Council believed this kind of outside, high-level advice was an important aspect of a thorough evaluation of the NAALC. In forming this experts group the Parties sought collective non-governmental academic advice and reflection on how this new international governmental instrument was perceived to be functioning. The report, which was submitted to the Council in August, will be published along with the Council's final report. None of its results are discussed in this paper.

Public Comments

There were a total of 32 written comments received by the NAOs and the Secretariat. Those who submitted comments represented a broad range of the public including academics, labor organizations, employer groups and private individuals. The highlights of these comments will be discussed along with the other inputs.

Mexican Survey

In the later part of 1997, the Mexican NAO distributed a questionnaire to a wide variety of commentators. In general, the respondents had direct or indirect involvement with NAALC-related issues. The respondents included public officials, academics and representatives from labor and management.

The survey consisted of two parts. The first part was comprised of two sets of statements. First, ten statements focused on the respondents' opinion on a variety of NAALC-related issues. Among others, the topics included whether the NAALC has furthered the cooperation and interaction between the governments, workers and employers, the effectiveness of NAALC activities, and the dissemination of NAALC principles to the public. Part two of the questionnaire focused on what areas of increased NAALC activities would interest the respondents. Some of these topics included child labor and security and health in the workplace.

The second part of the survey asked the responder to freely comment on the NAALC. No general format was proposed for this section, but a few lines were reserved on the survey for these comments. The results of the survey are still confidential, and therefore are not discussed in this paper.

NAALC-related Literature Summary

As part of the NAALC review process, the Secretariat conducted a review of published material related to the NAALC. The Secretariat initially reviewed approximately 200 articles. From these, a more targeted NAALC-specific list of articles was selected (see attached bibliography). The criteria used for article selection included timeliness (only articles published after the NAALC came into effect); relevance (only articles that specifically addressed the NAALC); and finally, emphasis was placed on those published articles that provided analysis on the operation and effectiveness of the NAALC. Despite this attempt to be as thorough as possible, a few articles may have been inadvertently excluded. However, the list of articles reviewed and summarized, presents a very representative sample of most, if not all, published NAALC-related literature.

The articles came primarily from academic journals. However, other sources were trade publications, books, hearing testimony and short reports. A great deal of the literature was authored by individuals who were very familiar with the NAALC, including current and former government officials involved in the negotiation and implementation of the NAALC, non-governmental officials who have participated in the NAALC processes such as public communications or cooperative activities, and finally academics who have followed trade and labor issues in North America for many years. Therefore, the NAALC literature represents a very learned useful analysis of the operation and effectiveness of the Agreement.

Highlights of Key Issues and Common Themes Raised

General Perspectives

Aside from the specific issues raised in the input sources discussed below (i.e. National Advisory Committee Reports, public comments, and published literature), there emerged three general streams of thought on the NAALC that cut across all four of these input sources. Of course there were exceptions and individuals who fell into more than one category, but to generalize, the NAALC-related inputs broke down into three categories: (1) the “institutional” or “optimist” observers, which included those who argue the NAALC is working as designed, and/or that its significance has been underestimated; (2) the “creative use” perspective, which included those who acknowledge flaws in the NAALC but argue that the Agreement must be “tested” and used to the extent possible, within its current parameters before making a final judgement; and (3) the “renegotiation” perspective, which included those who argue the NAALC is fundamentally flawed and should be amended or renegotiated.

The “Institutional” Perspective

One major point of view comes primarily from those who have had some direct experience in the negotiation or implementation of the NAALC. This perspective argues that the NAALC is more misunderstood than inadequate. They argue the historic agreement, which for the first time links labor rights to an international trade agreement, is designed to be a government-to-government approach to resolving labor rights problems. In their search for the perfect Agreement, many NAALC critics have overlooked a very important new instrument for improving labor law enforcement, according to many of these “institutional” observers.

Institutional observers argue that it is premature to judge the Agreement and its institutions. A fair assessment of the NAALC can only come after first understanding its objectives and allowing time for the NAALC to be used. When measured against its own goals, they argue, the NAALC has been useful in promoting labor rights in North America. Some institutional observers argue, for example, that the NAALC was not designed to resolve individual employee problems, nor was it designed to be a continental labor inspector. Instead, they say, Agreement opens each Party’s domestic enforcement to international public scrutiny.³

The “Creative Use” Perspective

³ See “Comentarios en Relacion a la Revision del Acuerdo de Cooperacion Laboral de America del Norte (ACLAN) al Cuarto Año de su Entrada en Vigor,” Norma Samaniego de Villareal, Santa Fe Consultores, February 6, 1998, pg 2 and *Informe del Comite Consultivo Nacional sobre el ACLAN a los cuatro años de su entrada en vigor*, pg. 6.

A second major perspective in the NAALC review inputs is shared by those who argue that the NAALC should be used in more creative ways. The creative use perspective suggests that despite its flaws, the NAALC could be harnessed in ways that foster labor rights. Ideas include self-initiation of trilateral evaluation panels (ECEs) by Parties, engagement in more extensive cooperative programs, codes of conduct and the filing of public communications in areas untouched by the NAALC thus far.

Many of these observers see the NAALC as a product of difficult international negotiations among sovereign nations. Given each Party's political constraints, the resulting document, while disappointing to some, is not surprising. Instead of stopping at criticism, creative use observers suggest governments, unions and labor rights activists should think of ways to use the existing NAALC structure to achieve labor rights goals.⁴

The creative use perspective has become more popular as new groups make use of the NAALC mechanisms and as more issues are raised in the public communications process. Even critics of the NAALC would concede that the Agreement has brought heretofore unparalleled public scrutiny to labor issues in the three countries.⁵

The “Renegotiation” Perspective

Finally, several observers line up on the side of fixing what they see as the fatal flaws in the current NAALC or just starting over. These observers argue that without improvements in the NAALC, such as coverage of all labor principles equally, or addressing individual company behavior and employee losses, the Agreement is severely limited. These perceived flaws in the NAALC make it necessary to consider adjustment of the Agreement in the context of the four-year review, or in future accessions to the NAFTA.

While some in the renegotiation school give some credit to the NAALC for improving continental labor law enforcement, most dismiss the Agreement as being ineffectual. They detail minimum changes that must be made to the Agreement ranging from including the NAALC as a chapter of the NAFTA, thus subjecting it to the latter Agreement's dispute settlement mechanisms -- to suggesting a code of conduct from multinational companies as part of the NAALC.⁶ Many of these observers refuse to participate in the activities or processes provided by the Agreement for fear of

⁴ See Compa, Lance.- “NAFTA's labor side accord: a three-year accounting.”- NAFTA: law and business review of the Americas, Vol. III, no. 3, Summer 1997; Cook, Maria Elena; et. al.- “Making free trade more fair: developments in protecting labor rights.”- Labor law journal, April 17-19, 1997 [Final Report of the NAFTA Committee of the Industrial Relations Research Association, May, 1997]; see bibliography for other articles by Compa, Cook, Verma, Herzenberg.

⁵ To date 15 cases (public communications) have been filed under the agreement raising issues ranging from freedom of association, to protection of migrant workers. For a summary of cases see Annex 2.

⁶ For example, the United Auto Workers in their public comment wrote: “To rectify some of the deficiencies of the NAALC we have described would require renegotiation of the agreement itself.”

“legitimizing” what they see as a “smoke screen” that provides the illusion of a serious labor rights enforcement tool, while lacking any real results.

Specific Issues Raised

There were several recurrent issues raised throughout the NAALC inputs. Some of these related to possible ways to better utilize the NAALC. Others were observations about how NAALC institutions, namely the NAOs, have managed the process so far.

The following three major issues were raised most frequently in the inputs received:

- structural issues related to the scope and nature of NAALC procedures;
- concerns about the public communications process and how this process has been implemented; and
- cooperation and information exchange under the NAALC.

Structural Issues

“Structural issues” such as those related to the scope, nature, process and mechanisms in the NAALC were among the most common areas of comment. Foremost among these structural issues was the issue of coverage. A significant number of inputs suggested that all eleven NAALC principles should be subject to dispute settlement. Such inclusion was argued on different grounds including the fact that the first three principles are the most important, that they are the most problematic in the three countries, or that any distinction between the eleven principles is artificial.

The Communications Workers of America in their public comment wrote:

“...because the NAALC relegates protection of these rights to the third tier of its enforcement structure, there is no effective remedy for workers whose rights are violated.”⁷

Another important structural issue raised in the inputs is that the NAALC should rely on international versus domestic standards. As section one of this report explains, the basis for the NAALC is domestic enforcement of domestic standards, rather than harmonization of standards or the creation of international standards. Those who favored another approach argued that there was a need to ensure upward harmonization of standards and that the use of domestic standards made it difficult to determine whether an individual country’s domestic standards were sufficient.

The Lawyers Committee for Human Rights wrote:

⁷ Review of the North American Agreement on Labor Cooperation, Comments of the Communications Workers of America, January 30, 1998, pg. 1.

“Despite the merits of the NAALC, it is a second-best alternative because of its failure to expressly tie enforcement to the ILO core rights conventions. The NAALC rejects the use of international standards in favor of requiring countries to enforce their own domestic labor laws.”⁸

Professor Ozay Mehmet, of Carleton University, wrote in his public comment to the Canadian NAO:

“It is puzzling that under NAALC these standards are different than the core labour standards the ILO has singled out as central to the trade context, including freedom of association and forced labour.”⁹

Some argued that the use of national versus international standards is one of the positive innovations of the NAALC. They suggest that by avoiding strong disagreements among the three Parties as to which international standards to use, the NAALC meets the larger objective of improving domestic enforcement.¹⁰

Still another important structural issue raised by the inputs relates to the dispute settlement process. Many observers argue that the dispute resolution procedure is complicated and onerous. These observers suggest that a streamlining of the process is necessary for true justice. In addition, procedural hurdles such as requirements that issues be “trade related” or demonstrate a “persistent pattern” of non-enforcement, make it unlikely that many issues will reach the sanctions stage. Others argue that the long process is not unusual for international agreements and mirrors the NAFTA process in many ways.

The AFL-CIO in their public comment wrote:

“Even in the areas subject to dispute settlement, the consultation and dispute resolution procedures are so lengthy and tortuous as to discourage complaints and petitions.”¹¹

On this point, Norma Samaniego, the lead negotiator of the NAALC for Mexico, wrote in public comments submitted to the Secretariat:

⁸ Lawyers Committee for Human Rights, “In the National Interest: 1996 Quadrennial Report on Human Rights and U.S. Foreign Policy” pg. 35.

⁹ “Some Suggestions for Strengthening the NAALC: An Input Under Art. 10 Review Process,” Professor Ozay Mehmet, Carleton University, December 23, 1997, pg. 4.

¹⁰ See Bread for the World Institute. – Labour standards in a global economy: a summary of the issues and options, Draft, Nov. 1995. See also Compa and McKennirey.

¹¹ “Comment to the Secretariat, Commission for Labor Cooperation on Review of the North American Agreement on Labor Cooperation by American Federation of Labor and Congress of Industrial Organizations (AFL-CIO),” January 30, 1998, pg. 3.

“..[Mexico] categorically rejected inclusion of the rights of freedom of association and union formation as subject to dispute settlement because they would likely lend themselves to “planted” cases by organizations or protectionist special interests whose real motivation was opposing free trade.”¹²

One Mexican academic presents a different perspective:

“By agreeing to these exclusions, negotiators left untouched what are in the long run the gravest threat to workers under NAFTA ... the continued denial of free choice of unions and free collective bargaining to Mexican workers, and the continued dominance of an official labor movement by a government willing to hold labor costs below productivity gains to lure business from the United States.”¹³

The Mexican National Advisory Committees suggested no changes in this area, given the newness of the Agreement, and the ways in which it has been in their opinion potentially misinterpreted by the United States. The Mexican NAC sees the NAALC review process as separate from any discussion of amending the NAALC.¹⁴ The U.S. NAC did not suggest any specific changes to the Agreement, other than ensuring that ECEs and dispute panels could consider matters arising under Part Two (Obligations) of the NAALC.¹⁵

Public comments and published literature, for the most part argued most often for changes in the NAALC structure, ranging from expanding the scope, to relying on international versus domestic standards. Some public comments and published articles suggested the NAALC was functioning fine as is. However, most of the public comments and literature made some recommended changes.¹⁶

Public Communication Process

The second major issue raised by the inputs relates to the public communications process established under Article 16 of the NAALC.¹⁷ While there seemed to be a majority among those observers who suggested some structural changes to the NAALC were necessary, such a level of agreement did not exist with regard to the public communications process. Observers within each of the three major input sources disagreed about the public communications process. Most commentary received from employers and from Mexican observers suggested that the public communications process

¹² “Comentarios en Relacion a la Revision del Acuerdo de Cooperacion Laboral de America del Norte (ACLAN) al Cuarto Año de su Entrada en Vigor,” Norma Samaniego de Villareal, Santa Fe Consultores, February 6, 1998, pg 2. [unofficial translation].

¹³ Fuentes, Manuel.- “The NAFTA labor side accord in Mexico and its repercussions for workers.”- Connecticut journal of international law, Vol. 10, no. 2, Spring 1995.

¹⁴ *Informe del Comité Consultivo Nacional sobre el ACLAN a los cuatro años de su entrada en vigor*, pg. 6.

¹⁵ Report of the United States National Advisory Committee, pg. 38.

¹⁶ The Mexican survey did not expressly address structural issue, and therefore is not included here.

¹⁷ For a list of public communications received under the NAALC to date, see Annex 2.

has been misused and overemphasized.¹⁸ They contend that the essence of the NAALC is cooperation and that the contentious process created by the public communications reviewed to date, has undermined that spirit of cooperation.

In their submitted public comment on the NAALC review, the U.S. Council for International Business (USCIB) wrote:

“Overall, the USCIB believes that the implementation of the NAALC has unduly emphasized the compliance and effective enforcement of labor law obligations of the NAALC over positive cooperative activities.”¹⁹

Related to the public submission issue is the criticism by several observers that the Agreement has been ineffective in providing remedies (reinstatement, etc.) for individual workers. The response to this criticism by other observers suggests that the NAALC is not designed to provide individual remedies or act as an appellate body for national courts.

The issue of public hearings is among the most contentious among observers of the public communications process.²⁰ As discussed in chapter one of this review, each NAO is allowed under the NAALC to draft its own procedures for receiving and reviewing public communications. The three Parties have taken a very different approach to public hearings. In the United States, public hearings have been used in every case accepted for review.²¹ In Canada, there has only been one case accepted for review as of September 1998, so it is impossible to determine to what extent they will be used in the Canadian case. In Mexico, NAO guidelines and Mexican legal tradition do not rely on public hearings, and thus none have been used nor are expected. These differences have brought rise to the concern that the use of public hearings in the U.S. process has misinterpreted the purpose of public communications.²²

In their submitted public comment on the NAALC review, the Mexican National Advisory Committee to the NAFTA, wrote:

“We consider it against Mexican sovereignty that public hearings held in the territory of other Parties judge the actions of the Mexican government and the companies

¹⁸ See Mexican National and Governmental Advisory Committee reports, both of which focus primarily on the U.S. NAO's treatment of public communications.

¹⁹ Comments on Operation and Effectiveness of the NAALC, United States Council for International Business, pg. 2.

²⁰ Based on inputs to the review process and with the exception of some NGOs and independent unions, there seems to be a strong consensus among the public and private sector in Mexico that U.S. NAO hearings have been detrimental to the cooperative spirit of the NAALC.

²¹ U.S. NAO procedural guidelines require that a public hearing be held unless such a hearing “would not be a suitable means for gathering information”.

²² See public comments received from U.S. Council for International Business, Report of the National Advisory Committee to the Mexican NAO, or public comments received under Mexican survey.

operating in Mexico. We suggest finding information gathering mechanisms that reduce confrontation to preserve the spirit of cooperation among the Parties.”²³

This sentiment is echoed by the U.S. Council for International Business:

“...public hearings as means of gathering information is too confrontational and not in keeping with the purposes of the NAALC.”²⁴

Still others argue that the public communications process has provided an opportunity for the public and interested parties to place pressure on the three governments to address areas of concern in labor law enforcement.²⁵ Given the avenues for public scrutiny, including hearings and public reports, the NAALC has made government officials more careful in their administration of labor law. This openness has been important to “exposing” labor rights violations, according to observers.²⁶

Cooperation and Information

The third major issue area raised by several different observers in the review process, relates to the cooperative and informative role of the NAALC and its institutions. This is perhaps where there is the greatest deal of consensus among those who participated in the input process. Most, if not all observers agreed that the cooperative aspects of the NAALC are important and provide hope for addressing common labor law enforcement concerns in the three countries. While there were differences among observers regarding the relative emphasis that should be placed on cooperative programs versus oversight and dispute settlement, almost all observers agreed that there was a need to keep the cooperative aspect alive and well.

The Mexican public survey focused on these cooperative aspects, and the response was largely positive about the range, frequency and content of cooperative activities carried out to date. In written comments, the survey respondents focused mostly on the need to more broadly publicize the planning and results of cooperative activities and information about the NAALC generally.

A number of observers suggest the NAALC has created more cooperation not only between the three Parties, but between labor and other non-governmental groups in the three countries. The NAALC requirement that public communications relate to actions in the territory of another Party has spurred this cross-border cooperation in the non-

²³ Coordinacion Empresarial para el Tratado de Libre Comercio, letter to John S. McKennirey, February 25, 1998, pg.2.

²⁴ Comments on Operation and Effectiveness of the NAALC, United States Council for International Business, pg. 4.

²⁵ See public comments received from the AFL-CIO and from various published articles including those by Cook, Compa, Verma, and Smith.

²⁶ See U.S. National Advisory Committee Report.

governmental arena. This is cited as one of the most positive “side-effects” of the NAALC.²⁷

Professor Russell Smith of Washburn University wrote:

“As a NAALC by-product, there are indications of strengthened cross-border alliances and increased NAFTA-wide activities among various labor, labor-interest, and professional groups...”²⁸

Many observers also emphasized the comparative research work currently being carried out by the Secretariat. Jim Carter, President and CEO of Syncrude, a Canadian multinational corporations wrote:

“Syncrude Canada Ltd. Supports the early initiatives of the three National Administrative Offices and the Secretariat of the Commission for Labor Cooperation to promote the publication of comparative studies on the labor laws of Mexico, United States and Canada. Works such as Comparative Labor Law Report will give readers valuable insights into labor laws of other countries.”²⁹

The Mexican National Advisory Committee report echoed this sentiment, suggesting:

“...the number of events that have been carried out in the three countries on a broad variety of subjects... demonstrate the success of the NAALC, considering the goals of the Agreement which include cooperation, improving working conditions and the right of each country to establish its own labor standards.”³⁰

Despite the overwhelmingly positive feedback received from observers regarding the cooperative work program, there were several suggestions to improve these activities. The suggestions ranged from broader dissemination of the results of these activities, to more diverse representation at cooperative events. The Canadian Labour Congress in its public comment to the Canadian NAO wrote:

“Given the current changes in the Mexican labour movement as described above, the NAALC Cooperative Workplan could contribute to the raising of labour standards in Mexico (as per the obligations of the NAALC) if efforts could be made to ensure that all sectors of the Mexican labour movement could participate in the cooperative agenda.”³¹

²⁷ See articles by Herzenberg, Compa.

²⁸ Smith, Russell “An Early Assessment of the NAFTA Labor Side Accord” Proceedings of the 49th Annual Industrial Relations Research Association, January 1997, pg. 234.

²⁹ Four Year Review of North American Agreement on Labor Cooperation, letter to May Morpaw from Jim Carter, January 27, 1998, pg. 2.

³⁰ Informe del Comité Consultivo Nacional sobre el ACLAN a los cuatro años de su entrada en vigor, April 1998.

³¹ Canadian Labour Congress, letter to the Honourable Lawrence MacAulay, Minister of Labour, Human Resource Development Canada, December 4, 1997, pg. 3.

Miscellaneous Issues

The number of individual concerns that were raised less frequently in the three major input sources discussed in this paper were not highlighted above for reasons of space. However, there were a few issues that were raised by several observers that warrant at least a brief review.

Canada's special arrangement in Article 46, which allows Canada's obligations under the NAALC to be phased in as provinces sign on is described as inherently unfair and unjustifiable by some authors. Several authors cite this as one of the major shortcomings of the NAALC.³²

There was a suggestion by a few observers that the Council consider implementing a trinational advisory committee to better coordinate and open public input into the NAALC activities.³³ A number of observers question the NAALC's usefulness given that none of the major unions in any of the three countries has participated fully in the Agreement's processes.³⁴ Whether cooperative activities or the public communications process, major labor groups seem to be disengaged. Other observers attribute this not to flaws in the Agreement, but to domestic political issues and the shortsightedness of the labor movements in the three countries.

Concluding Observations

In 1998, the NAALC entered its fifth year of operation. As institutions have been established and fortified over the past four years, the NAALC has slowly become fully functional. Despite the significant progress that has been made in the past four years, any analysis of the NAALC should bear in mind the time it takes to set up an institutional structure comprised of a trinational Secretariat and a new office in each labor ministry. Most of the NAALC apparatus, therefore, is still in its infancy.

Despite the varied observations about the NAALC, most of the inputs were constructive and demonstrated at least a reasonable familiarity with the Agreement. The body of literature and amount of public discourse surrounding the NAALC is impressive given the Agreement's relatively recent creation. Regardless of individual opinions, the universal perspective in the inputs was the idea that the three countries should be cooperating in some capacity on labor issues.

The NAFTA has created a more integrated North American labor market and brought with it new challenges in the area of labor law and workers rights. While some

³² See articles on Secretariat bibliography by Bright and Robinson.

³³ See for example Hinojosa-Ojeda, Raul.- Latino review of President Clinton's NAFTA package: Part 1: NAFTA's labor market impacts and the side agreements on labor and environmental standards.- William C. Velasquez Institute, 1997 [Inter-Mestic Initiatives Paper 1].

³⁴ See article by Canadian Labor Congress.

see sanctions as the only road to increased enforcement of those laws, others argue that through international cooperation and public pressure, the NAALC will achieve its goals of improving labor standards enforcement in North America.

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Annex 1
NAALC-related Articles

Adams, Roy J.; Parbudyal Singh.- “Early experience with NAFTA’s labour side accord.”- Comparative labor law journal, Vol. 18, no. 2, Winter 1997

Anderson, Sarah; John Cavanagh; David Ranney.- NAFTA’s first two years: the myths and the realities.- Institute for Policy Studies, 1996

Barbieri, Catherine T.- “Women workers in transition: the potential impact of the NAFTA labor side agreement on women workers in Argentina and Chile.”- Comparative labour law journal, Vol. 17, Spring 1996

Bazar, Jason S.- “Is the North American Agreement on Labor Cooperation working for workers’ rights?”- California Western international law journal, Vol. 25, No. 2, Spring 1995

Befort, Stephen F.; Cornett, Virginia E.- “Beyond the rhetoric of the NAFTA treaty debate: a comparative analysis of labor and employment law in Mexico and the United States.”- Comparative labor law journal, Vo. 17, no. 2, Winter 1996

Bensusan, Graciela.- “Regional integration and institutional change: labor reform in North America.” – Paper presented to the symposium on International labor rights and standards after NAFTA, Rutgers University, New Jersey: May 2-3, 1996

Bierman, Leonard; Rafael Gely.- “The North American Agreement on Labor Cooperation: A new frontier in North American labor relations.”- Connecticut journal of international law, Vol. 10, no. 2, Spring 1995

Bouzas Ortiz, Jose Alfonso.- “Balance del Acuerdo de Cooperación Laboral de América del Norte.”- Momento económico 91.- Información y análisis de la coyuntura económica.- Mercado laborales.- Instituto de Investigaciones Económicas, UNAM, mayo-junio 1997

Bread for the World Institute.- Labour standards in a global economy: a summary of the issues and options.- Draft.- Nov. 1995

Breger, Marshall J.- “Hitting Mexican industry with NAFTA rules: U.S. labor unions are trying to turn the procedures established under a NAFTA side agreement into a mechanism for halting job flight south of the border.”- Legal times, Vol. 17 no. 26, 1994

Bright, Rich.- NAFTA’s labor side agreement muscle: can moral suasion work?- Biennial Conference of the Middle Atlantic and New England (11th).- Conference for Canadian Studies (MANECCS).- Rochester, NY: October 13-15, 1994

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Annex 2
Public Communications Received through August 31, 1998

Table 1
Summary of Public Communications Under Article 16

Communication	Submitted to	Submitter	Issue/Principle	Ministerial Consultations	Outcome/Follow-up Activities
940001	U.S. NAO	International Brotherhood of Teamsters (IBT)	Freedom of Association/Right to Organize	No	Seminar
940002	U.S. NAO	United Electrical , Radio and Machine Workers of America (UE)	Freedom of Association/Right to Organize	No	Seminar
940003	U.S. NAO	International Labor Rights Fund, American Friends Service Committee, Association of Democratic Lawyers	Freedom of Association/Right to Organize	Yes	3 Conferences on Union Registration; Study; Officials met with private parties involved; Study by Mexican experts
940004	U.S. NAO	United Electrical, Radio and Machine Workers of America (UE)	Freedom of Association/Right to Organize	No	Withdrawn
9501	Mexican NAO	Telephone Workers Union	Freedom of Association/Right to Organize	Yes	Public Forum and Secretariat Special Study Information by U.S. Labor Secretary on the case before domestic authorities
9601	U.S. NAO	International Labor Rights Fund, Human Rights Watch/America, National Association of Democratic Lawyers	Freedom of Association/Right to Organize	Yes	Conference on International Treaties and Labor Law
9602	U.S. NAO	Communications Workers of America (CWA)	Freedom of Association/Right to Organize	No	Withdrawn
9701	U.S. NAO	International Labor Rights Fund, Human Rights Watch/America, National Association of Democratic Lawyers	Employment Discrimination	Requested	Pending
9702	U.S. NAO	National Association of Democratic Lawyers, Support Committee for Maquiladora, International Labor Rights Fund, Union of Metal, Steel, Iron and Allied Workers (STIMAHCS)	Freedom of Association/Right to Organize Occupational Safety later added	Requested	Pending

Communication	Submitted to	Submitter	Issue/Principle	Ministerial Consultations	Outcome/ Follow-up Activities
9703	U.S. NAO	United Steelworkers of America, AFL-CIO/CLC, United Electrical, Radio and Machine Workers of America (UE), International Brotherhood of Teamsters	Freedom of Association/ Right to Organize, Right to Bargain Collectively, and Prevention of Occupational Injuries and Illnesses	Requested	Pending
9801	Mexican NAO	Oil, Chemical & Atomic Workers International Local 1-675, OCAW; Sindicato de Trabajadores de Industria y Comercio "6 de octubre"; Unión de Defensa Laboral Comunitaria; Comité de Apoyo para Los Trabajadores de las Maquiladoras	Freedom of Association/Right to Organize, Right to Bargain Collectively, and Prevention of Occupational Injuries and Illnesses	None announced as of 8/98	Pending
98-1	Canadian NAO	United Steelworkers of America, (Canada Office), and 11 other unions & 31 concerned organizations	Freedom of Association/ Right to Organize, Prevention of Occupational Injuries and Illness	None announced as of 8/98	Pending
9802	Mexican NAO	Frente Auténtico de Trabajo (FAT); Unión Nacional de Trabajadores(UNT); STIMAHCS	Freedom of Association/ Right to Organize, Prevention of Occupational Illness and Injuries, Protection of Migrant Workers	None announced as of 8/98	Pending
9803	Mexican NAO	Confederation of Mexican Workers (CTM)	Protection of Migrant Workers, Minimum Employment Standards, Elimination of Employment Discrimination, Prevention of Occupational Injuries and Illnesses, Compensation in Cases of Occupational Injuries and Illnesses		

Table 2
Public Communications Overview

Year	No. of Public Communications	NAALC Principle Cited	Ministerial Consultations
1994	4	1, 2	1
1995	1	1, 2	1
1996	2	1, 2	1
1997	3	1, 2, 6, 7, 9	3*
1998	3	1, 6, 7, 9, 10, 11	0
Total	14	7	6

*Ministerial Consultations have been requested but not held in the three 1997 communications.

International labour standards are supported by an internationally unique supervisory system that ensures that countries implement the conventions ratified. The ILO evaluates and defines areas in which norms can be best enforced annually in member states. If the application of standards does not present problems, the ILO seeks to help nations by means of social dialogue and technical assistance. Following its adoption by the International Labour Conference and its ratification by the States, the ILO developed numerous ways to track the implementation of conventions and guidelines in law and practice.

NAFTA Flaws The social dimension of North American economic integration is thin. NAFTA is primarily a commercial agreement giving lucrative privileges to multinational firms, banks and investors. It does not produce a North American commission, parliament, or court of justice; these features of the European Union create a strong institutional framework to address social issues. Moreover, the EU has carried out extensive programs of economic assistance to less-developed member states, especially benefiting Ireland, Greece, Spain and Portugal, and soon to benefit the eastern accession countries.

North American integration is the process of economic and political integration in North America, particularly integration of Canada, Mexico, and the United States. While Ronald Reagan was organizing his run for the 1980 U.S. presidential election, two of his policy advisers, Richard V. Allen and Peter Hannaford, were traveling with him in Europe. They developed and proposed to him an idea regarding cooperation in North America, especially in the energy sector. A few months later, another colleague

Since 1919, the International Labour Organization has maintained and developed a system of international labour standards aimed at promoting opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and dignity. In today's globalized economy, international labour standards are an essential component in the international framework for ensuring that the growth of the global economy provides benefits to all.