

COVALENCE ANALYST PAPERS

Free Trade and Labour Cooperation: A Matching Couple or A Bureaucratic disaster? Analysis of the NAALC

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1. Introduction

The North American Agreement on Labour Conditions (NAALC) is the first of its kind: it is a parallel agreement to the North American Free Trade Agreement (NAFTA). For the first time, an economic convention is linked to a labour rights accord.

First this paper shortly presents the NAFTA. Then we have a look at the NAALC objectives. Furthermore its structure is analysed and evaluated as well as a concrete case of labour rights violation and the NAFTA reaction. In the fifth part Covalence data gives a general view of the labour rights situation in Mexico.

Finally, recommendations made by Human Rights Watch about how to improve NAFTA are discussed, so it can serve as a model for future alliances between economic and labour rights agreements.

2. The NAFTA

NAFTA stands for North American Free Trade Agreement. It was concluded in 1994 between the US, Canada and Mexico and created the world's largest market for goods and services. Building on major liberalization efforts, NAFTA has integrated a region of over 400 million people with an economic output of goods and services in excess of \$ 11 trillionⁱ. Taxes, import limits and other trade obstacles were abolished to encourage free circulation of products and services. Each of the three countries should have the same chances to access to the three markets to promote economic development and to reduce absolute poverty. Further NAFTA objectives are to promote the conditions for fair competition, to multiply the possibilities for inversion and to procure adequate protection for intellectual propriety rightsⁱⁱ.

3. The NAALC

NAALC means North American Agreement on Labour Conditions. It's a parallel agreement to the NAFTA. The goal is to guarantee the respect of the worker's basic rights. It doesn't contain international norms of labour rights but it demands that the three countries apply their norms and that they cooperate with the International Labour Organisation.ⁱⁱⁱ

The preamble of the final draft^{iv} in 1993 says:

The Government of Canada, the Government of the United Mexican States and the Government of the United States of America: RECALLING their resolve in the North American

Free Trade Agreement (NAFTA) to:

-*create* an expanded and secure market for the goods and services produced in their territories, *enhance* the competitiveness of their firms in global markets, *create* new employment opportunities and improve working conditions and living standards in their respective territories, and *protect*, enhance and enforce basic workers' rights [..].

The NAALC wants to work towards general improvements; it is not a legal instance for the dirges of particulars. This can be explained through an example given by Human Rights Watch^Y:

If you are a Mexican worker who was the victim of an unfair judgement, you can not expect to get a better one when you present your case to the NAALC. What you can expect is a general improvement of the working tribunals in Mexico.

The Different Bodies of the NAALC

1. The NAOs

Each of the three state parties creates a National Administrative Office. They exchange information amongst each other and receive the complaints of the petitioners about NAALC violations. They should investigate, publish reports about their findings, and develop and implement cooperative activities.

The consultations between the NAO are necessary to obtain detailed information about cases brought to them by petitioners or about other issues, incited by the NAO itself. If the NAO of a country decides that high level intervention is required, it can contact its labour minister.

2. The Ministerial Consultations

The labour minister on his part can call for consultations on any relevant issue with one or both ministers in the other states. They could theoretically request consultations without first receiving an NAO recommendation to do so, although this hasn't occurred in practice.

3. The Evaluations

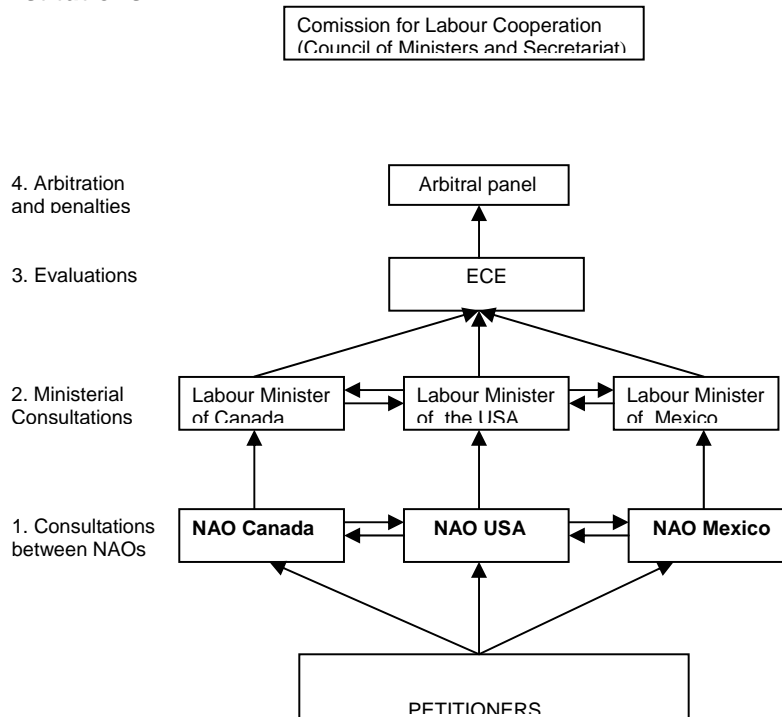
There are five obligations under the NAALC concerning Levels of Protection, Private Action, Procedural Guarantees, Publication and *Government Enforcement Action*. If a country fails to comply with the "government enforcement action", and only then, (see p.2) can a state demand that an Evaluation Committee of Experts is formed. It is composed of experts in the concerned domain. They are neutral, which means they are not part of the NAALC organisation. They analyse the case and make recommendations.

4. The Arbitration and Penalties

If there still aren't any results, the labour ministers can convene an arbitral panel. It will issue a report, and if there have been failures by the government concerned to effectively enforce the laws in question, it will make recommendations. If the government doesn't undertake any improvements, a financial penalty can be assessed. If the accused government doesn't pay, the complaining government can suspend NAFTA benefits.

The Commissions for Labour Cooperation is composed of the Council of Ministers and the secretariat, functions as the governing body.

Institutions^{vi}:



4. Concrete Example: Han Young

Han Young assembles chassis for Hyundai Precision America, a subsidiary of Hyundai Corporation of Korea. It runs factories producing for export ("Maquiladoras") in Tijuana, Mexico, Baja California. The automobile sector is one of the biggest foreign investors.

The US NAO^{vii} informs that on October 30, 1997 a Submission was filed by different workers associations and NGO's. It concerned the freedom of association at the Han Young factory.

On February 9, 1998, an addendum on health and safety issues to the submission was filed. The US NAO found that four of the 11 labour principles were affected^{viii}.

- **Freedom of Association and Right to Bargain Collectively**

In 1997, workers of Han Young factory tried to organize a union to defend themselves against multiple grievances. As they attempted to register their association, they were given notice that there was already such a thing as an "independent union" that was supposed to represent them. Petitioners wrote^{ix} "the [existing union] had never held a meeting with workers, never shown workers a copy of the contract with Han Young, and did not make its existence as contractual representative known to the workers."

Registering turned out much more difficult than it should be under the law. According to the US NAO "This review indicates that a group of 120 workers at Han Young obtained union representation only after extensive litigation, intervention by the Mexican Federal labour authorities, two representation elections which they won, international public attention, and extensive media coverage."^x

Although the independent union started to communicate with the factory's direction, irregularities haven't disappeared. Repression and difficult work circumstances persisted.

The US NAO's conclusion of the analysis says: "Article 3 of the NAALC commits the Parties to enforce their labor laws. The Mexican Federal Labor Law provides for a representation election as a means to determine the majority union in the workplace."

However, irregularities that were permitted to take place in the first representation election and questionable legal determinations made by the Tijuana National Office of the Conciliation and Arbitration Board (CAB) in initially awarding representation rights raise questions about Mexico's enforcement of its labor law and its impartiality in protecting workers from employer retaliation for union activities^{xi}.

The US NAO initiated a ministerial consultation in 2000, which resulted in a "commitment from the Mexican Department of Labour to promote collective bargaining rights [...]". This potentially important outcome has been hampered by a lack of follow-up at the local level. None of the collective bargaining activities promised under the agreement have been carried out on a local state level, according to the Han Young union's lawyer^{xii}

- **Fairness of Labour Tribunals**

The U.S. NAO also found problems with individual labour tribunals in Mexico, but failed to insist on remedial action. In a broad finding in the Han Young case, for example, the U.S. NAO determined, "The placement, by the Tijuana CAB, of obstacles to the ability of workers to exercise their right to freedom of association, through the application of inconsistent and imprecise criteria and standards for union registration and for determining union representation, is not consistent with Mexico's obligation to effectively enforce its labour laws on freedom of association in accordance with Article 3 of the NAALC." The U.S. NAO also found that the CAB's actions "appeared inconsistent" with Mexico's obligations to ensure impartial tribunals.^{xiii}

The Government of Mexico seems to acknowledge that there were some irregularities in its labour tribunal system and adopted a statement of principles entitled "The New Labor Culture" and a five-year policy and planning document entitled "Program for Employment, Training and the Defense of Labor Rights"^{xiv}.

- **Prevention of Occupational Injuries and Illnesses**

In the Han Young factory safety and health standards are in an alarming state. Injuries, burns, broken bones, respiratory illness and loss of hearing and vision are only some examples.

According to the petitioners, this is a consequence of the direction's non compliance with the Mexican labour laws that would obligate them to adopt measures for the worker's protection. The petitioners see this as a violation of the NAALC obligation of the "Government Enforcement Action", which forces a government to control the compliance of its labour laws. The NAO found several inspections and financial penalties during the last years, but it ignores the quality of the inspections and if the penalties have been paid. Besides, indecencies continue at the work place. In an effort to improve health and safety in the workplace, Mexico implemented a new "Federal Regulation on Safety, Health, and the Workplace" in April 1997. The US NAO recommends a ministerial consultation on these topics.

Outcomes

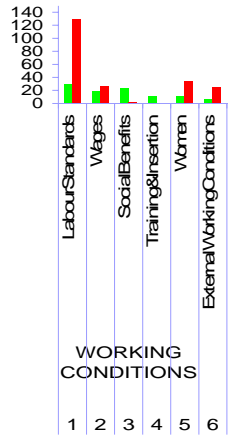
The Han Young case is regarded as one of the most successful cases, because thorough analyses included all aspects of the case and because some changes were brought about..

But as discussed above, although some improvements are apparent, nuisances continued: The independent union is still being outcast from governmental conferences concerning their case. The factory managers are not cooperating sufficiently and do not accept the union fully. Laws and other projects to improve the situation are not put in practice.

Health and safety standards may have become better but they are still far away from complying with the actual law. Obviously, labor tribunals are not doing enough to enforce the labor laws.

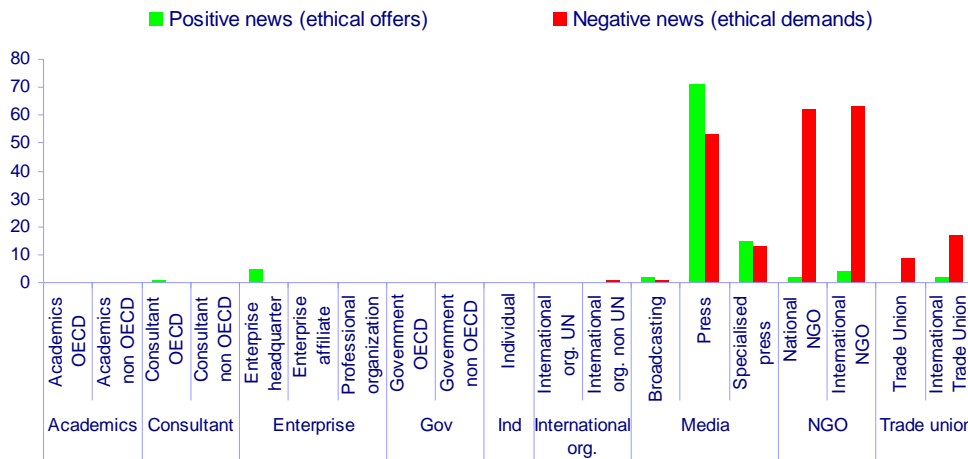
Most other cases filed by petitioners to a NAO were rejected or analyzed taking into account only some of the cases aspects, again others were analyzed but no recommendations for improvements were forthcoming.

5. The Covalence view of Mexico and the NAALC



The first graphic from the Covalence data base shows general working conditions. Negative alerts concerning labour standards are significantly more common than positive ones. If the NAALC were really efficient, this would not occur.

The second graphic shows that these negative reports are almost only NGOs and Trade Unions denouncing grievances. Government communications concerning labour rights in enterprises don't show up in the Covalence data, although this would actually be one of the NAO's important tasks. The press mostly informs about positive developments.



5. Human Right Watch Recommendations^{xv}

To reach a general advancement of NAALC, HRW recommends defining standards and norms for the NAOs and the Ministerial Consultations, so they are forced to treat every aspect of a case. There must be obligations to make recommendations on how to improve the situation. NAOs should be prevented from merely repeating the petitioner's complaints without finding remedies. Furthermore, they should inform publicly about the outcomes of the cases.

NAOs should actively search for violations of the NAALC. Up to the present, only NGOs and worker's unions have filed complaints.

HRW recommends further that the structure of the NAALC be improved in that the institutions of the NAALC should contain an independent body. Government control is currently exercised through the NAOs and the Ministerial consultations. Their decisions are influenced by strategic and economic reasons.

The Evaluation Committee of Experts can only be formed as an answer to violations of the government enforcement action. It should be possible to call for one for violation of other obligations as well.

7. Conclusion

Discussions about free trade agreements are being held all over the world: The US are in negotiations with Ecuador, Peru, Centro American Countries and others and the Doha Round attempts to find ways to liberalize markets equitably.

The relation between labour rights and commercial accords are crucial for the promotion of labour rights in the world. Not only it is an important goal to make the countries respect the International Labour Law, but it is also a protection against the abuse of labour laws for commercial gain.

NAALC was the very first labour rights agreement that was parallel to a free trade agreement. It can serve as an example for future free trade agreements. It must improve its structures, so they can be efficient and can show that the connection between worker's protection and free trade is possible in

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ⁱ Kennedy Kevin C(2004), *The first decade of NAFTA: The Future of Free Trade in America*, Ardsley Park, Transnational Publishers, inc., p.xi,

ⁱⁱ Hernández Carlos (2000), *Recopilaciones sobre el tratado de libre comercio de América del Norte, Objetivos del TLC*, www.monografias.com/trabajos5/librecom/librecom.shtml, last visit october 2006

ⁱⁱⁱ Human rights watch, “*Comerciar con los derechos – la promesa incumplida del acuerdo paralelo al TLC*”, “Resumen”, www.hrw.org/spanish/informes/2001/nafta.html, 2001, last visit october 2006

^{iv} Human Resources and Social Development Canada (1993), *North American Agreement on Labour Cooperation (NAALC) between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America 1993*, <http://www.sdc.gc.ca/en/lp/spila/ialc/02NAALC.shtml>, last visit October 2006

^v Human Rights Watch (2001), *Comerciar con los derechos – la promesa incumplida des acuerdo paralelo al TLC*, <http://hrw.org/spanish/informes/2001/nafta.html>, last visit october 2006

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- viii Human Rights Watch (2001), *Canada/ Mexico/ United States: Trading away Rights - the Unfulfilled Promise, The Accord's Institutions*, http://www.hrw.org/reports/2001/nafta/nafta0401-06.htm#P821_125516, last visit October 2006
- vii US Department of Labour, *Executive Summary for Public Report of Review of NAO Submission No. 9702*, <http://www.dol.gov/ilab/media/reports/nao/exesum9702.htm>, last visit October 2006
- viii Comission for Labour Cooperation, *Objectives, Obligations and Principles, Labour Rights Principles*, <http://www.naalc.org/english/objective.shtml>, last visit October 2006
- ix International Labor Rights Fund, et al., "The Case of Han Young," p. 7.
- x U.S. Department of Labour, *Public Report of Review of NAO Submission No. 9702*, <http://www.dol.gov/ilab/media/reports/nao/exesum9702.htm>, last visit October 2006
- xi dito
- xii Human Rights Watch (2001), *Trading away rights - The unfulfilled promise of NAFTA's Labor Side Agreement, Right to bargain collectively*, http://www.hrw.org/reports/2001/nafta/nafta0401-06.htm#P821_125516 p.11/12, last visit October 2006
- xiii Like 10
- xiv dito
- xv Human rights watch (2001), *Comerciar con los derechos – la promesa incumplida del acuerdo paralelo al TLC , Conclusions and recomendation*”, www.hrw.org/spanish/informes/2001/nafta.html, last visit October 2006