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Transnational Advocacy and Labor Rights Conditionality in the International Trading Order

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DISSERTATION

Submitted in Partial Fulfillment of the
Requirements for the Degree of

Doctor of Philosophy

Political Science

The University of New Mexico
Albuquerque, New Mexico

December, 2009

DEDICATION

This dissertation is dedicated to my husband Francisco
to honor his recuperation from brain injury
as I began to research and write this work.

The truth is he made better progress than I.
Pulling him through recovery was my most complex project,
and my toughest homework.

His Conclusion is my best chapter.

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ABSTRACT

This dissertation examines whether the incorporation of labor rights provisions into trade agreements promotes labor rights enforcement in developing countries. It draws on the international relations literature on transnational advocacy as the starting point to ask how labor's allies engage the trade mechanisms as potential tools for promoting labor rights in supranational arenas. Using original data, field observation, primary documents and interviews with key participants, I examine how transnational labor rights advocates have engaged these institutions through a research design that pairs quantitative analysis of the NAFTA labor side agreement, with qualitative examination of a number of the NAFTA cases and a set of labor violations cases in Puebla, Mexico. The empirical chapters discuss the ways that transnational labor rights advocates engage the labor rights enforcement mechanism as they attempt to secure a review of their petitions from the quasi-judicial bodies charged with investigating labor rights compliance. Transnational support has led to outcomes for labor that include firm-level redress of labor rights violations and institutional changes within Mexico. The implication for this work is that where labor clauses have had an effect on labor rights practices within states, it has been at the intersection of transnational civil society and international institutions. The research suggests that the process of engaging the petitions mechanism can persuade or coerce states into enforcing labor rights commitments, and emphasizes that transnational advocacy provides a crucial element to realizing labor rights enforcement where domestic efforts are weak.

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Violations of the internationally-recognized fundamental rights at work are concentrated among the countries of the Global South.[1] More than 127 million children work in developing countries, especially in the South Asian states, where 60% of child labor is found. Though the sheer number of child laborers is lower for Sub-Saharan Africa, nearly 30% of all African children are put to work, mainly in agriculture (International Labor Organization 2006). Children account for more than 50% of the incidence of forced labor in the world, though modern-day slavery for adults is alive and well for 12 million people, almost 150 years after the United States fought a civil war to end the practice (International Labor Organization 2005). In Latin America, the right to organize is circumscribed in some states by national laws that limit the rights of association among public sector workers, and for those who have the legal right to form unions, economic crisis and reform policies have decimated unions in the region, creating additional limits to worker's organization (García 1993; Infante 1991; Roberts 1996; Weeks 1999b; Weeks 1999a). In the aftermath of neoliberal reform,

[1] While the identification of exactly which labor rights are fundamental rights has itself been subject to intense debate, "labor rights" here refers to those established as fundamental rights by the International Labour Organization's 1998 Declaration on Fundamental Principles and Rights at Work: the rights to freedom of association and collective bargaining, freedom from forced labor, the abolition of child labor, and protection from discrimination in occupation and employment. See Brown, Deardorff, and Stern (2000) for a review of the debate on defining labor rights, Leary (1996) for the argument on minimum definitions of core labor rights as established by the International Labour Organization, and Chan (1998) for the argument for maximum definitions as follows the Universal Declaration of Human Rights.

developing countries across the globe have embraced export orientation and created export-processing zones where freedom of association has been tightly restricted (Frundt 1999; Hathaway 2002a; Gordon 2000; Anner 2007).

What has changed, however, is the degree to which global labor violations have become cause of concern to the general public over the course of the last two decades. A number of highly publicized cases brought the stories of substandard working conditions and wages to a US audience becoming increasingly concerned about how their consumer goods were made in foreign countries (Harrison and Scorse 2003). Across the globe, consumers were suddenly left wondering if children in Bangladesh or Pakistan wove their carpets, or how exactly Indonesian women sewing Nikes for a dollar a day fed their families.[2] Though ratification of the eleven fundamental labor rights conventions on forced labor, child labor, freedom of association, discrimination at work, and minimum standards of employment is nearly universal, these examples give us clues that labor rights practices within states often fall short of the promises governments have made to protect them.

This dissertation investigates the possibilities for protecting labor rights globally by placing labor rights enforcement mechanisms at supranational levels of governance, by linking labor rights conditionality to trade agreements. Using

[2] The cases that are considered milestones in the anti-sweatshop movement of the 1990s are Nike in Indonesia (Hartman and Wokutch 2003, IRCC 1998, Connor 2004), the Gap in El Salvador (Anner 2003), the KIMI/ Kathie Lee child labor campaign in Honduras (Armbruster-Sandoval 2003), Phillips Van Heusen in Guatemala (Frundt 2002), Disney in Haiti (National Labor Committee 1997), Levi's (Radin 2003), and the El Monte raid in California (Su 1997). See also IRCC (1998) and Ross (1997).

trade-based mechanisms to promote labor rights enforcement represents only one way to institutionalize worker protections globally, yet it is a method that is gaining ground as trade policy among the major players has shifted to incorporate labor rights provisions.[3] In both the US and the EU for example, trade-based social clauses have been nearly universally appended to trade agreements since the mid-1990s, and negotiation authority in the US is contingent on securing an agreement on workers' rights protections (Weiss 2003; Hafner-Burton 2009). Even agreements between regional powers feature social clauses, such as the Mercosur agreement in South America.

Though some trade agreements already specify the recourse available for the breach of trade rules that protect intellectual property and investors' rights, the incorporation of labor standards into trade agreements represents an emerging area of trade policy. The integration of a social charter on the rights of workers into the World Trade Organization, as envisioned during the Uruguay Round of negotiations, has failed (De Wet 1995; Alben 2001; Ehrenberg 1996; Moorman 2001). Meanwhile, some states have moved forward by incorporating versions of social charters into regional and bilateral agreements, each with a differing institutional design and enforcement potential.[4] Though a number of

[3] Other methods include the use of corporate codes of conduct and monitoring to promote labor standards for individual firms, strengthening union structures through cross-border union organization, and the use of consumer-based brand boycotts. See Frundt (1998) for a review of these models.

[4] These include multilateral agreements like the North American Free Trade Agreement (NAFTA), Mercosur, the Caribbean Community (CARICOM), the Central American Free Trade Agreement (CAFTA-DR), and the EU Social Labour Declaration; bilateral agreements, including trade pacts between the US and Jordan, Singapore, Chile, Australia, Morocco,

comparative case studies have discussed how the trade-based mechanisms can enhance worker's protections within individual states (Kay 2005; Williams 2003; Williams 1999; Weiss 2003; Finbow 2006; Compa 2001; Graubart 2008; Douglass, Fergusson, and Klett 2004), very few have identified systematically the conditions that lead to the successful resolution of labor rights violations across states under the terms of these agreements, and only a handful of studies have considered how to best engage the mechanisms provided by the trade based institutions to promote the successful resolution of labor rights violations (Frundt 1998b; Finbow 2006; Compa 2001; Graubart 2008).[5]

This study examines whether the incorporation of labor rights provisions into free trade agreements improves labor rights enforcement in less-developed states. If we are most interested in whether these clauses are effective tools for promoting labor rights enforcement, it is imperative to investigate two dimensions of efficacy: implementation and outcomes. Implementation refers to the process by which the rules of conditionality are applied to partner states. This dissertation investigates implementation first to underscore the political dynamics that condition the enforcement of labor rights clauses. As such, it analyzes how the mechanisms that enforce compliance are engaged by states and non-state actors. Second, effectiveness must be measured against the kinds of resolutions

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Oman, Bahrain, and South Korea; pending agreements with Peru, Panama and Colombia; and the Canada-Chile and Canada-Costa Rica agreements. Unilateral trade promotion initiatives with labor clauses include the US and the EU Generalized System of Preferences programs, the Caribbean Basin Initiative, the African Growth and Opportunity Act, and the Andean Trade Promotion Act/ Andean Trade Promotion and Drug Eradication Act.

[5] The notable exception is Frundt (1998).

of labor rights violations that are possible within the agreements. To measure these outcomes, we must understand how states respond at the domestic level once the labor enforcement mechanisms are applied. Once state practices are under scrutiny, do states make an effort to improve compliance with the trade-based labor rights guidelines? Do social clauses have a demonstrable effect on minimizing labor rights abuses among workers, improving enforcement of labor law, or promoting respect for labor standards among trade partners?

This dissertation attempts to unravel the puzzle of whether trade liberalization can lead to greater labor rights protection through linking labor rights enforcement to trade agreements by asking the following questions. First:

> *Under what conditions are social clauses most effective at promoting labor rights enforcement?*

The answer to this question depends primarily on how the clauses are implemented, and therefore calls for an analysis of the enforcement mechanisms of these agreements. Thus, I ask:

> *How are the mechanisms of social clauses engaged by states and non-state actors? What are the factors that determine whether cases of labor rights abuses are accepted for review by states?*

Efficacy depends further on the outcomes these clauses can promote within states. To assess outcomes, I ask:

> *How do states comply with the rules of trade-based labor rights conditionality, to what degree do they implement changes that promote labor rights enforcement, and when?*

To answer these questions, I test the mechanisms that determine whether or not allegations of labor rights violations are accepted for dispute resolution in the North American Agreement on Labor Cooperation (NAALC), the labor side agreement of NAFTA. The analysis of this social clause will uncover not just how the enforcement mechanisms are used, by whom, and to what consequence in a number of specific cases, but will also assess the usefulness of pursuing trade-based labor rights conditionality to protect labor rights in less-developed states more generally.

The Effects of Globalization on Labor Rights Protections

The debate over linking labor rights and trade centers on whether labor rights protections have been weakened by the increased economic interdependence among states. Previous quantitative work on the effect of economic integration on labor rights protection shows different effects across time and country, as well as within different arenas of economic globalization (Mosley 2008; Hafner-Burton 2005). A number of studies have supported the hypothesis that globalization in general exerts positive effects on labor rights

protection.[6] For example, participation in the global economy is positively correlated with government respect for political rights and civil liberties (Richards, Gelleny, and Sacko 2001), and labor rights specifically (Cingranelli 2002; Kucera 2002; Mosley and Uno 2007). Higher levels of foreign direct investment (FDI) in particular is positively correlated with higher levels of labor rights protection (Richards, Gelleny, and Sacko 2001; Cingranelli 2002; Kucera 2002; Rodrik 1996), greater respect for freedom of association and collective bargaining rights (Mosley and Uno 2007), wage compliance (Harrison and Scorse 2003), and increases in income (Bazillier 2007). Other studies show that higher levels of FDI are associated with the reduction of child labor, but partially due to self-selection, as international firms would rather invest in countries where the incidence of child labor is already lower (Kucera 2002; Neumayer and de Soysa 2006). These studies all suggest that the presence of multinational firms in less-developed states may have a positive effect on labor rights, because global firms bring with them international standards of business and corporate best practices that are sensitive to labor rights issues (Santoro 2003; Mosley 2008). As such, globalization, and especially the spread of multinational business into less-developed states, has had a positive effect on labor rights protections.

The counter perspective argues that globalization is not only associated with increased poverty and inequality in less-developed countries (reviewed in

[6] Globalization here refers to the worldwide phenomenon of technological, economic, political and cultural exchanges that describe how states and societies are becoming more intertwined with each other as a result of economic integration. For a review of the debate over defining and measuring globalization, see Kudrle (2004).

Pangalangan 2002), but competition for investment engendered by freer capital flows leads to the erosion of domestic labor standards (Mosley and Uno 2007; Rodrik 1997; Cingranelli and Tsai 2003). The “race to the bottom” thesis suggests that national leaders in developing countries face incentives to relax regulations in order to attract international investors, which exacts downward pressure on labor standards and wage rates globally (Harrison and Scorse 2003; Pangalangan 2002; Elliott 2000a), and creates comparative advantages in labor costs among less-developed states (Rodrik 1996). Some scholars argue that trade competition has already shifted away from primarily North-South to South-South competition for trade and investment, where the dynamics are different (Chan and Ross 2003). Here, countries that already endure low wages and poor working conditions will use lax labor regulation to attract foreign direct investment away from other poor countries competing for the same investment (Gordon 2000; Ross and Chan 2002). What was once the floor on wages and working conditions a government could offer potential investors instead becomes the acceptable ceiling (Klein 2000). Because the “race to the bottom” is triggered by competition for trade and investment, trade agreements are increasingly seen as the best arena for promoting common standards (Ross and Chan 2002).

Empirical support for a race to the bottom thesis is still thin (Kucera 2002; Rodrik 1996; Cingranelli and Tsai 2003; Basinger and Hallerberg 2004), in part because of the difficulty of collecting disaggregated cross-national measurements of labor outcomes, especially wages (Mosley 2008). Moreover, these studies are limited in that the quantitative research is still in its early

stages. Thus far, econometric models have been unable to provide convincing explanations of the effect of globalization on poverty and inequality in general (Wade 2004), much less account for the concomitant erosion of wages and working conditions as capital concentrates in states with selective labor protections, like China (Chan 2001; Chan and Ross 2003; Ross and Chan 2002). Concerns about labor costs are at the core of investment decisions for many firms (Cowie 1999).

Meanwhile, a number of case studies provide evidence from some developing nations that suggests that the "race to the bottom" is speeding up as economic integration moves forward, and especially in labor-intensive models of development. For example, in the processing zones established to facilitate exports, labor standards are sometimes subject to selective regulation, leading to substandard working conditions (Armbruster-Sandoval 2003; Klein 2000; Frundt 1999; Frundt 1998b; Gordon 2000). Testimonial accounts of poor working conditions, artificially low wages, health and safety risks, and labor repression that have accompanied labor rights campaigns against major US brands lend the impression of widespread gross abuses (Hartman and Wokutch 2003; National Labor Committee 1997; Harrison and Scorse 2003). Labor costs can influence firms' decisions to move production from industrialized nations like the United States to Latin American countries and finally to Asia, where the weakest labor protections and lowest labor costs offset increases in transportation expenses (Ross and Chan 2002; Goodman and Blustein 2004). According to this

perspective, globalization is responsible for weakening labor protections in the developing world.

Linking Trade and Labor Rights

The first variant of the argument for linking trade agreements to labor rights conditionality comes as a reaction to the race to the bottom dynamic (Rodrik 1996). The perception in the industrialized states is that labor rights abuses are perpetrated in less-developed states to gain an unfair comparative advantage in trade, not because of wage differentials based in labor productivity, but from policies that artificially suppress wages in less-developed states (Rodrik 1996). Trade-based conditionality is a way to reestablish the minimum standards of employment for all workers party to trade agreements, in an effort to protect the most vulnerable workers from the pressures of competition.

The second variant of the argument for linking trade and labor rights compares the "hard" enforcement mechanisms of trade agreements to the "soft" standards of human rights and labor rights regimes (Graubart 2008; Hafner-Burton 2005; Rodrik 1996; Abbott and Snidal 2000). Compliance with international conventions like the Universal Declaration of Human Rights or the ILO labor rights conventions are strictly voluntary (Collingsworth 2002). By contrast, the membership mechanism of the WTO can enforce the trading rules by making their transgressions punishable (Rosen 1992; Elliott 2000b; Burtless 2001). According to this argument, if labor rights standards are used as a comparative advantage in trade by states, labor standards should be subject to

dispute resolution just like tariff assessments, intellectual property rights, and investment rules (Ehrenberg 1996; Moorman 2001). When labor conditionality is attached to trade agreements, labor rights compliance becomes enforceable through dispute resolution as for other trade issues, and consequences are important enough to discourage breaking the rules. States that relax labor standards face strong incentives to improve labor rights performance and conform to policies supported by industrialized countries, or suffer the potential costs of trade sanctions (Rodrik 1996). Further, trade based conditionality can provide incentives for compliance, as states that meet the prescriptions of labor rights conditionality can be rewarded with market access.[7]

One result of the failure of states to protect labor rights at the domestic level is the emergence of alternative models for protecting workers rights that bypass state involvement. Among these alternatives are consumers' movements, corporate responsiveness, and cross-border labor organizing.[8] These models attempt to enforce state compliance through the efforts of non-

[7] The best example of how market incentives can lead to compliance with labor rights conditionality was the Cambodian-US textile quota agreement. Cambodia was awarded with increased quotas on textile exports to the US when ILO factory monitoring showed improvement on labor rights protections. See Polaski (2003, 2004), Becker (2005), and Wells (2006).

[8] I do not cover these alternative strategies here. For more on brand boycotts, see Klein (2000), Elliott and Freeman (2003), IRCC (1998), and Ross (1997). For corporate codes of conduct, see Compa and Hinchliffe Darricarrere (1996), IRCC (1998), Seidman (2007), Elliott and Freeman (2003), Braun and Gearhart (2004), Hartman and Wokutch (2003), Radin (2003), and Rosas (2003). For cross-border labor organizing in Central America, see Frundt (2002, 1999, and 1998), Anner (2003), Kidder (2002), and Armbruster-Sandoval (2003), and for Mexico, Hathaway (2002), Cook (1997), Kay (2005), Williams (2003 and 1999), and Babson (2002).

state actors, ironically eroding the role of the state further, as they in most cases remove responsibility for labor rights protection from the state to individual companies and manufacturers.[9] The proposal for linking trade to labor rights conditionality seeks instead to strengthen the roles of the state in promoting labor rights by placing the burden of protection, monitoring, and enforcement back in the hands of governments, and thus reestablishes the state as the central actor responsible for protecting labor rights globally (Seidman 2004).

Transnational Advocacy

These strategies offer different approaches to addressing labor rights concerns, but what they share is that all prominently feature non-state actors as key participants in models that seek to strengthen labor rights protections globally. While the rise of non-state actors in the international system is not new (Keohane and Nye 1977), the redistribution of power between states, non-state actors and international institutions in the interstate system is more recent, caused in part by the decline of state power, and the arrival of non-governmental organizations in those areas of social policy where states can no longer manage to provide services (Mathews 1997: 53).

Tarrow (2001) acknowledges that the gap left by the decline of states provides space for non-governmental forms of collective action to develop, whether as social movements, non-governmental organizations, or transnational

[9] They also may weaken unions, usurping the roles unions play in enforcing workplace rules and monitoring workplace practices when they are taken on by NGOs (Armbruster-Sandoval 2003; Braun and Gearhart 2004).

networks (Tarrow 2001: 2). As such, the constituencies of global civil society can include social interaction across many types of actors, including business associations, educational partnerships, and even personal connections (Warkentin 2001). Transnational advocacy networks are emerging as part of this global civil society. These are dense social networks of political activists operating across national borders, differentiated from other transnational groups by their motivation by "principled ideas" and values (Keck and Sikkink 1998:5). They are distinct from other groups, as these "undertake voluntary collective action across state borders in pursuit of what they deem the wider public interest" (Price 2003). Further, "advocates plead the causes of others, or defend a cause or proposition" (Keck and Sikkink 1998: 8), and therefore have an overt political agenda that other networks may not share, even when they too are organized transnationally.

The literature suggests that the purpose of transnational advocacy networks is to multiply the channels of access of domestic groups to international arenas by forming linkages across borders. At the domestic level, groups within states face a government that violates rights, or refuses to recognize rights, creating a political conflict. Keck and Sikkink note that advocacy networks are most likely to form when channels to resolve conflicts between domestic groups and their governments are blocked, or where these channels are insufficient to resolve the conflict. Transnational groups will then actively seek political support outside of state borders to make their plea for redress, a mechanism described as the "boomerang effect" (Keck and Sikkink 1998). Whether these calls will be

answered by advocates is further dependent on whether activists believe that assisting domestic groups will further their missions or campaigns, and are willing to develop networks around them.

In order to mobilize support for domestic groups facing a politically repressive situation, transnational advocacy networks engage in four types of political strategies, only sometimes bringing all of them into play (Keck and Sikkink 1998). Information exchange is at the core of transnational advocacy. When transnational advocacy networks support domestic groups, they serve as the messengers between states and the international system, and between domestic and international actors, in transmitting information about rights violations from one level of governance to another. With access to on-the-ground sources, networks are able to generate politically useful information from within states, and exchange information between local groups facing the repression and international audiences watching the repression unfold. Advocacy networks act as both the messenger and interpreter of that information, able to "quickly and credibly generate politically useful information and move it to where it will have the most impact" (Keck and Sikkink 1998). The credibility of the information about an evolving situation is key to assembling international allies. With access to local sources, transnational advocates can provide first-hand accounts from affected populations that lend legitimacy to their claims.

Framing the information by creating symbols that capture the meaning of the violations is a second strategy (Keck and Sikkink 1998). As networks collect

information from trusted sources within states, they provide interpretations of that information that promote a version of events that will resonate with the intended audience. Transnational advocates try to establish through framing that the rights violation is intentional, that states are ultimately responsible for the violation, and that the issue could be resolved through changes in state behavior. Framing is particularly effective when networks can include an identification of right and wrong, as these issue characteristics evoke strong emotions, which promotes the recruitment of activists (Keck and Sikkink 1998). In order to promote their interpretation, advocates generate visible symbols for abuses that can substitute for complex issues. Symbols that expose the immorality or hypocrisy of state actions can draw the attention of supporters, bring negative publicity to bear on states, and build pressure on states to change their policies.

When faced with transnational pressure, states may gradually implement superficial reforms at first to deflect criticism away from their behavior, even as they continue to violate rights (Risse, Ropp, and Sikkink 1999). When transnational advocates still cannot persuade states to change their policies through normative arguments and pressure, they can then adopt a third strategy, leveraging more powerful actors and institutions, including other states, to increase the costs of non-compliance with the norm (Keck and Sikkink 1998; Cardenas 2004). As governments begin to change their behavior, advocates employ a fourth strategy, accountability politics. Advocates seek ways to keep states consistent between their discourse and actions, holding them accountable to an international audience as promises made by states are kept through

changes in behavior (Keck and Sikkink 1998). Continued pressure from a transnational network can precipitate political learning, and push states to accept international norms (Risse, Ropp, and Sikkink 1999). Eventually, norm compliance becomes habitual practice, and states continue to act in accordance with that norm (Risse, Ropp, and Sikkink 1999).

When applied to labor rights advocacy, some transnational network strategies become more useful than others. While information exchange and framing are again important strategies advocates can use to draw attention to cases of labor rights violations, the linkage of labor rights to trade agreements has special implications for the other two strategies, leverage and accountability. First, the social clause and its conditions provide additional sources of leverage advocates can use to promote changes in labor rights practice, because labor rights performance may complicate trade relations. Even states that prefer to violate workers' rights should begin to respond to calls to improve labor rights practices, if only for instrumental reasons as a way to protect market access. Second, the mechanisms that promote accountability are included in the agreements. Worker protections may be strong on paper but enforcement of the law may be inadequate, whether due to weakened capacity to conduct workplace inspections (Angeles Villarreal 2008), or as tacit government policy. Trade agreements require states to meet those obligations, and then provide the complaint mechanisms that transnational advocates can use to promote accountability.

The application of the transnational advocacy model to trade-based labor rights conditionality underlines how a common purpose among states and transnational advocates -- the improved protection of labor rights-- can emerge from divergent motivations. States may strive to protect labor rights, not because they value them intrinsically, but because they are concerned about how labor rights violations may impact their trade relations with other states. When labor rights are enforced at the supranational level, economic concerns like market access and trade sanctions, and concerns over reputation within the system of states can push states toward norms compliance. The leverage provided through labor conditionality clauses obliges states to respond to the normative arguments presented by transnational advocates, and to commit to stronger labor rights enforcement.

Transnational advocacy networks organize most effectively around issues that feature two especially compelling characteristics; reports of bodily harm to vulnerable individuals, and restrictions on equality of opportunity (Keck and Sikkink 1998). Labor rights advocates understand this as well, and they play up these two characteristics in the ways they frame labor rights abuses. For example, labor rights campaigns routinely feature stories of industrial accidents or the long-term effects of poor safety regulations that put workers' health at risk (Williams 1999), and a number of networks have formed in response the killings of labor unionists (Frundt 1987; US-LEAP 2007). Labor networks stress equality of opportunity to gain support when they emphasize women that face sexual harassment on the job in campaign materials (Hertel 2003), or how migrant

workers endure poor working conditions because their immigration status implicates their access to legal channels (Chan 2001).

Participation at the local level is crucial to lasting labor campaign successes (Anner 2003a; Armbruster-Sandoval 2003; Frundt 2002; Kidder 2002). The nature of cross-border labor solidarity has been that weaker domestic groups are joined by activists from elsewhere to strengthen their hand (Keck and Sikkink 1998), and fostering local level competence in the organization assures that the gains of campaigns can be maintained once partners leave to pursue other issues. Where efforts are made to develop a local base, whether through incorporating local groups in the campaign decisions, organizing workers in the factory, or establishing labor rights organizations, abuses are ended, wages and benefits increase, and unions and workers' organizations are strengthened in the long term (Anner 2003a).

Labor Rights Networks

Most of the research on transnational advocacy favors four issue areas where lasting networks have formed, including human rights, women's rights, the rights of indigenous peoples, and environmental issues. The selection of these issue areas is especially suited to reflect the normative turn in international relations theory in the 1990s emerging at the same time (Tarrow 2001), as examples drawn from these issue areas clearly support the contention that

states' interests could be constituted externally through social learning.[10] Yet, transnational organization is also driven by material interest, as the earliest work on transnational economic relations makes clear (Keohane and Nye 1974; Nye and Keohane 1971).[11] The work on transnational labor rights advocacy attempts to explain transnational networks around material interests at times, but also features dimensions of principled interest in labor rights protection that are fully amenable to the normative bias of the transnational advocacy model.

Keck and Sikkink suggest that the alliances between non-governmental organizations and unions are not transnational advocacy networks.[12] It is not that these authors outright rejected transnational labor solidarity as an important example of transnational advocacy so much as they did not analyze it, mentioning only that labor internationalism is better considered an extension of unionism, except where transitory support groups against union repression formed in the 1980s and 1990s (Keck and Sikkink 1998). We might assume that Keck and Sikkink saw labor rights concerns promoted by labor unions exclusively, and therefore bounded by material interests, not principles and moral values. Yet, when unions form cross-border partnerships, research tells us they

[10] Some important examples include the international land mines ban (Price 2003), compliance with human rights regimes (Risse, Ropp, and Sikkink 1999), environmental campaigns (Bosco and Rivera 2009 and Khagram 2004) and international feminist organizing (Marx Ferree and Tripp 2006, and Mogdaham 2005).

[11] New work in transnational relations that emphasizes material interests include studies on transnational linkages in finance (Park 2005), managerial practices (Roberts, Jones, and Fröhling 2005), and intellectual property rights (Sell and Prakash 2004).

[12] The book devotes just two sentences and one footnote to the subject, on page 15 (Keck and Sikkink 1998). One of the major critiques of the book has been that it ignores analyzing any material-based transnationalism (Tarrow 2001), especially transnational labor (Hertel 2006).

focus their concerns less on wage differentials and more on labor standards and working conditions, much like transnational labor rights advocacy networks (Armbruster-Sandoval 2003; Stillerman 2003).[13]

Organized labor has increasingly pursued transnational solidarity as unions lose numbers as a result of economic integration --and therefore domestic political influence and access to the policy arena (Hathaway 2002a; Kay 2005; Murillo and Schrank 2005; Seidman 2004; Stillerman 2003; Tilly 1995; Boswell and Stevis 1997; Anner 2002). By the 1990s, labor internationalism changed fundamentally when it surfaced as "social movement unionism," by which trades unions reached out to form horizontal alliances with women's groups, environmental organizations and other social actors outside of the workplace context (Babson 2002b; Scopes 1992; Waterman 1991; Nissen 2003). US unions never fully adopted social movement unionism, but still formed linkages with social movements in the early 1990s as a reaction to NAFTA (Hathaway 2002a; Cook 1997; Kay 2005; Boswell and Stevis 1997; Singh 2002), and more so after 1995 with a change of leadership to a more internationally-oriented coalition at the AFL-CIO.

An emphasis on union alliances as the major form of transnational labor advocacy obfuscates the emergence of labor solidarity networks fronted by NGOs, which and may or may not include labor unions as partners and collaborators. The literature on transnational labor rights advocacy has not helped clarify here, as previous work tends to treat unions and NGOs as similar

[13] Interview, AFL-CIO Solidarity Center, Mexico City, Mexico, July 10, 2006.

organizations when they choose transnational strategies (Williams 2003; Williams 1999; Stillerman 2003), when in fact unions and NGOs face very different opportunities and constraints in their decisions to purse transnational linkages. As such, the factors that explain transnational solidarity among labor unions are very different from those that explain transnational linkages among labor rights NGOs.

In contrast to network emergence among NGOs, union transnationalism responds to the domestic structures of labor's relationship to the economic system, rather than ideational factors. Most importantly, the decision to pursue transnational linkages among unions lies in whether union centrals can rely on state structures to weather the consequences of economic pressure, or if the channels of state support for unions are blocked. Therefore, union responses are tied first to domestic political structures, and most importantly, the form of labor incorporation to the political system (Murillo and Schrank 2005; Anner 2002). In countries where systems of labor incorporation were led by states or political parties (Collier and Collier 1991), unions can draw on domestic political structures to navigate the pressures of economic globalization, and so are less likely to adopt transnational strategies (Murillo and Schrank 2005; Anner 2002; Anner 2003b). Not only is respect for labor rights stronger in terms of the industrial relations framework, but unions have access to labor policy as recognized political actors in tripartite structures, and can enjoy substantial influence in the political system through ties to political parties.

The response by labor to the pressures of globalization has been to draw upon these areas of influence to generate protectionist policies or compromises with the state that maintain labor's political influence, even given declining unionization rates (Anner 2002; Anner 2003b).[14] A number of studies of union support for neoliberal economic reform have established that unions turn inward to become more entrenched in state structures to maintain political influence in parties and government as union membership wanes, including in the states most marked by corporatism, like Argentina (Murillo and Schrank 2005; Murillo 2000), Venezuela (Murillo 2001; Burgess 1999), and Mexico (Murillo 2001; Murillo 2000; Burgess 1999; Zapata 1993).

However, not every union central has access to domestic structures to resolve their conflicts. Unions in states where labor was weakly incorporated into state-building projects, or where labor was altogether demobilized, do not necessarily have the same access to domestic political structures (Murillo and Schrank 2005; Anner 2002; Anner 2003b). There may be few domestic institutions to appeal to where the system of labor justice is weak and underfunded, or inspections are rare due to reduced state budgets. Under these conditions, where domestic structures that labor could appeal to either do not exist or are hostile to labor, unions are more likely to choose transnational strategies (Anner et al. 2006, 2002, 2003b; Murillo and Schrank 2005).

[14] In turn, unions receive a payoff for continued support of state policies, even when they hurt labor, first through union-friendly labor reform (Murillo and Schrank 2005; Anner et al. 2006) and second through the continued distribution of political favors to unions. See Murillo (2001, 2005) for Mexico and Argentina.

Persuasion and Coercion in the Trade and Labor Linkage

Transnational pressure, organizational dynamics, and actor strategies may predict when transnational labor rights advocacy is effective in pressuring states to promote labor rights, but these factors cannot predict which states will give in to transnational pressure. While normative concerns about the need to protect labor rights may drive transnational labor activism, states may be far more instrumental in the ways that they respond to these arguments. State response to transnational pressure varies according to the degree to which states are susceptible to moral pressure and material leverage from the outside (Keck and Sikkink 1998), and how domestic policymakers weigh the incentives for compliance against the costs of continued violation (Cardenas 2004).

State compliance with labor rights guarantees, especially when tied to trade conditionality, responds to a different logic than state compliance with human rights treaties. Human rights treaties lack clear channels for enforcement as the councils established to monitor compliance often lack the capacity to do so, or the mechanisms to induce compliance are absent (Hill 2009). Instead, states are allowed to self-monitor and report, with predictable results. Even when states report violations, international organizations are powerless to punish violations other than to file a formal complaint. Essentially, the enforcement of compliance is voluntary, and states could sign onto human rights commitments without ever intending to comply with their recommendations. Recent work on human rights compliance indeed shows that government ratification is followed by either no change in human rights protections (Camp Keith 1999; Hafner-

Burton and Tsutsui 2005; Hathaway 2002b), or worse, some countries that ratify human rights treaties commit more human rights violations than before ratification (Hill 2009; Hathaway 2002b).

Though commitment to labor rights conventions suffer from the same enforcement weaknesses overall (Olson 2001; Collingsworth 2002), once tied to trade agreements, labor rights commitment follows the hard enforcement mechanisms provided by trade regimes to protect commercial rights, intellectual property, and investors rights.[15] Worker protections may already be written into constitutions and domestic labor law, but might not be enforced by states. Trade agreements compel states to meet those obligations, and often provide the complaint procedures that transnational advocates can use to keep states accountable to their public commitment to improve labor rights enforcement.[16] Because signing onto labor rights conditionality is the price of admission to trade cooperation, even states that disregard labor rights would cooperate here, because non-compliance can potentially have serious implications for trade relationships, especially market access. As such, establishing labor rights

[15] Though certainly labor rights and environmental standards are not protected as vigorously as the rights of commercial actors.

[16] Even when there are no established institutions for citizen participation in the review process, advocates find creative ways to push for reviews of state practices. For example, the US-Jordan Free Trade Agreement did not establish either a review process or an institution to receive requests for review. Yet the AFL-CIO and the National Labor Committee, working separately, were able to convince the Office of the US Trade Representative to take a closer look at labor rights in Jordan in 2006 by publishing an exposé of the Jordanian garment sector while concurrently sending petitions for review to each of the US offices that had reviewed labor rights conditionality in previous agreements (Greenhouse and Barbaro 2006; National Labor Committee 2006). The AFL-CIO petition is on file with the author.

conditionality through trade regimes supplements the persuasive aspects of transnational advocacy with a coercive capacity to enforce state compliance.

Coercion is likely to provide stronger incentives for compliance than persuasion alone, as persuasive tactics require that advocates successfully convince actors to change their preferences for violation (Hafner-Burton 2005). Coercion induces compliance by shifting the costs of continued violation and changing the gains from adopting better practices for states, without the attendant, more difficult condition to also change actor's preferences (Cardenas 2004; Hafner-Burton 2005). Labor conditionality clauses oblige states to accept the normative arguments presented by advocates, and to commit to stronger labor rights enforcement, whether or not they embrace the norm itself. Where they are compelled by treaty to enforce labor laws, and where the cost of not doing so involves important economic consequences like potential trade sanctions, states may at least take note.

Whether or not transnational advocacy networks are successful in promoting political change is in part determined by the calculations made by states of the perceived costs of continued violation and the benefits of norm compliance presented by transnational advocates (Cardenas 2004). Advocates can raise the costs of non-compliance for states, while at the same time generating social support for positive changes. Continued social pressure by transnational civil society can precipitate political learning and push states to either accept international human rights and labor rights norms (Risse, Ropp,

and Sikkink 1999), or lead them to at least implement their prescriptions in order to retain preferential trade relations.

The Mexican Case

Freedom of association has long been tumultuous in Mexico because of the historically close ties between the state and PRI-affiliated unions. The legacy of the political incorporation of labor, the corporatist system, and union rivalries all appear in the NAALC cases against Mexico, where violation of freedom of association is by far the most common complaint. Mexico's history of labor incorporation during the 1930s is a classic example of incorporation through radical populism (Collier and Collier 1991).[17] In the unstable years following the Mexican Revolution, the popular sectors were organized into mass associations and linked to the post-revolutionary Mexican state through alliances that both constrained mass politics and provided political support and revolutionary legitimacy for the new government. As the best-organized social actor, labor's support was crucial to regime consolidation in Mexico (Collier and Collier 1991; Middlebrook 1995). By the 1930s, unions allied with the state were consolidated into a united confederation of trade unions, the *Confederación de Trabajadores Mexicanos* (CTM), and incorporated during the Cárdenas years into the mass party, eventually known as the *Partido Revolucionario Institucional* (PRI).

Unions benefited considerably for their acquiescence to state control over organized labor and their political cooperation in state-building. Among these

[17] Of the 24 cases filed in Mexico, 18 list the right to freedom of association as the main labor principle raised in the case.

benefits, state support for union organization was sustained through two favorable labor clauses. An exclusion clause mandated that employers could only hire unionized workers, effectively creating a closed shop (Middlebrook 1995). Only one union was recognized in each workplace in practice, and that union held exclusive rights to bargain the collective contract. While these two clauses favored the consolidation of union representation among state allies, they also created limits on the right to organize outside of the state corporatist structure dominated by the CTM.

The relationship between labor unions and the State suggests that unions in Mexico would continue to draw on state channels to solve labor disputes, rather than turn to transnational allies. Mexico is thus an unlikely case to show the embrace of transnational alliances among unions, yet transnational relationships between US and Mexican unions and NGOs have increased since the negotiation of the NAFTA invigorated cross-border alliances in the three countries (Boswell and Stevis 1997; Singh 2002; Kay 2005, Hathaway). One explanation is that not all unions are incorporated to the state-labor nexus. Since the 1990s, a number of unions independent from government sponsorship have emerged, culminating in the establishment of a rival union central, the *Union Nacional de Trabajadores* (UNT), in 1997 (Hathaway 2002a). The labor relations system in Mexico, designed to favor unions allied to the state, both creates conflict over freedom of association that appears in the NAALC cases, but also pushes independent unions to seek transnational support. Unions that exist outside of the corporatist structure often face discrimination at Mexico's tripartite

labor board structure in cases that challenge collective rights, as the labor representative often is designated by the state Governor from leaders of the CTM. Thus, workers wishing to register an independent union, contest election irregularities, or otherwise challenge the conduct of the official unions must confront those same unions at the labor board. Nascent worker organizations face two of three votes against them before they even approach the board with the specifics of their case.[18] In these cases, domestic channels for workers redress are blocked due to political rivalries, leading some unions to pursue transnational linkages with other unions, and labor rights and human rights NGOs.

The corporatist unions derail attempts to form independent unions in economically important industries through the use of protection contracts, collective bargaining agreements negotiated by CTM union bosses for plants before they begin to hire workers. These contracts fulfill the single unionized workforce clause (Quintero Ramírez 2001; Curtis and Gutierrez 1994), but nevertheless, the union only exists on paper (Cornelius and Craig 1991). Workers may not know they are represented by a union until they have a legitimate complaint against the firm and the union representative appears and steps in to negotiate at terms favorable to the company. Under these conditions, dissident unions may reach out to transnational allies. Not surprisingly, the workers organizations that tend to pursue transnational NGO linkages in Mexico are often those in consumer-driven production chains in the *maquiladora* sector,

[18] Interview, AFL-CIO Solidarity Center, Mexico City, Mexico, July 10, 2006.

and especially in textiles, where protection contracts are widely used. I turn to these examples in Chapters Three and Four.

Methods, Data, and Research Design

The research design allows for the investigation of these issues by locating the study at global, interstate and domestic levels of analysis. First, investigating how pressures on states from the international level are filtered into domestic politics at federal, subnational, and local levels of governance offsets the level of analysis problem by which the preponderance of global and interstate approaches masks domestic variance in the response to these pressures (Singer 1961). Second, the dissertation consciously employs mixed methods to maximize the explanatory power of analyses located at both international and domestic levels. The quantitative portion of the dissertation analyzes the enforcement of one trade-based social clause, the North American Agreement on Labor Cooperation (NAALC). A small-N quantitative study is designed to test the role of transnational advocacy on case acceptance and outcomes. Under the NAALC, any citizen or group can file a complaint with a National Administrative Office (NAO) regarding labor law enforcement in Canada, Mexico, or the United States. This model is a small-N statistical analysis relying on cross-tabulations and probits of the factors that predict case review, meant to draw out the patterns of enforcement of the clause based on the record of 37 cases through 2005.

One advantage of analyzing a small data set is that the study allows for more refined collection of data on the cases in question than would be possible in

a large-N study. For example, the petitions on NAFTA provide information about the individual cases that can be collected and tested systematically for their effects, such as the depth of transnational organization, the comparative level of labor rights violations in each factory or workplace, and qualitative assessment of the petition information. As such, the patterns of interaction uncovered by the statistical analysis can be further developed through case study. Nesting comparative case studies at the subnational level within statistical analyses allows for the disaggregation of national level data that may mask local variation, allows unique case factors to come through the explanation, and overall guards against the limitations of using quantitative and qualitative methods alone (King, Keohane, and Verba 1994; Snyder 2001).

Locating the qualitative analysis in one state, Mexico, controls for a number of historical, cultural, socio-economic and political variables (Snyder 2001). Most of the cases analyzed here center on Mexico's experience with NAFTA's labor side agreement, and as such, the system of labor relations is similar for all cases. Workers in most of these cases were organized under collective contracts held by unions of the CTM. In response to deteriorating working conditions and the inability of the corporatist unions to provide effective representation to solve them, efforts to organize independent unions surfaced during the late 1990s, bringing the attention of US, Canadian, and European labor rights solidarity groups. The differences among these cases are the degree of transnational support available to local worker's organizations, the strategies and venues that workers and their supporters employed to realize the

unionization effort, and the ways that Mexico responded to varied transnational strategies in different cases. The case studies further disaggregate how labor leaders and transnational actors selected the strategies they used to press their claims on labor rights abuses, how they chose among different venues for making those claims, and the conditions under which some strategies were more effective than others for addressing violations, especially the consequences of using trade-based mechanisms compared to other available venues.

The data for the dissertation was collected from a number of original and secondary sources. Primary material includes open ended interviews with key participants in the NAALC cases analyzed here, including US labor unions; US, Mexican and Canadian labor rights solidarity groups, and the Commission for Labor and Human Rights of the Tehuacán Valley; the National Administrative Offices of the NAFTA labor side agreement in the US and Mexico, and representatives of the tri-national Committee for Labor Cooperation, and the leadership and rank-and-file members of the nascent workers' organizations that appear in Chapters Three and Four.

Primary documents include union registration documents, newspaper accounts of the NAALC process and case filings in the US and Mexican press, published interviews and written testimony from workers collected by others, and transcription of correspondence between advocacy network members. The NAFTA data set and chapters on the NAFTA cases draw on the original petitions submitted to the NAALC process and supporting documentation, including

supplementary annexes, public hearing transcripts, and correspondence between NAOs, case sponsors and targeted companies.

Organization of the Dissertation

The dissertation is organized into six chapters. Following this introductory chapter, Chapter Two, "Transnational Actors and Labor Rights Enforcement in the North American Free Trade Agreement," speaks directly to the role transnational advocates play in enforcing labor rights at the interstate level of analysis. In this chapter, I analyze the factors that determine whether cases are reviewed by the tri-national labor dispute bodies established by the NAFTA labor side agreement. I test rival hypotheses on transnational participation, case merits, and case framing to show that while transnational advocacy is a key factor that explains which cases are reviewed by the national NAFTA panels, case framing can help secure a review during the NAALC process.

Chapter Three, "Persuasion, Coercion and the Domestic Costs of Compliance: Evaluating the NAALC Resolutions," presents a comparative study of five cases brought to NAFTA labor arbitration to look more closely at the interaction between interstate and domestic levels of analysis. It reviews the transnational sources of pressure on Mexico to promote labor rights enforcement in the NAFTA context to explain why Mexico acceded to transnational pressure in some cases, but not in others. It examines the domestic factors that may explain Mexico's uneven response to the NAFTA process, especially democratization and the role played by the labor clause mechanism as the vehicle for crystallizing

domestic labor rights demands, to explain the reform of labor rights policy and practices within Mexico in some of the cases, and government intervention in others.

Chapter Four, "The Impacts and Limitations of Transnational Labor Rights Advocacy: Lessons from Puebla, Mexico," presents a comparative case analysis culled from the Mexican fieldwork and is located at the subnational level of analysis. The cases include three maquiladora assembly plants that manufacture footwear and apparel for the US. The chapter analyzes how transnational support and the choice of strategies transnational networks followed conditioned the outcomes in the selected attempts to organize independent unions in the garment export sector. While the struggle at Kukdong/Mexmode was the center of an international labor rights campaign, a joint petition regarding Tarrant and Matamoros was ultimately submitted to NAALC arbitration.[19] Comparison of how these strategies unfolded in each case clarifies the roles of transnational actors in promoting labor rights enforcement, and evaluates the contribution that trade-based mechanisms may add to the realization and process of local level labor struggles as compared to other available strategies.

Finally, the conclusion will review the evidence presented in the quantitative and qualitative analyses to more fully assess the efficacy of the

[19] The Kukdong factory changed its name to Mexmode after the independent union was granted registration. It is popularly referred to as Kukdong. Tarrant Ajalpan and Matamoros Garment are separate firms, but are the subject of a single NAALC petition, referred to here as the Puebla case.

trade-labor linkages in promoting labor rights enforcement, and the roles that transnational advocates play in enforcing them. It also discusses why the trade-based methods are more promising avenues for protecting labor rights globally than other transnational strategies, especially those that target firms, not states, and suggests that further research on the institutional design of enforcement clauses is in order.

Conclusions

Following Mexico's experience with the NAALC from case submission to review, and from resolution at the domestic level to local level impact sheds light on the broader questions of the dissertation. One, the analysis of the review of cases presented in the next chapter investigates when and how specific instances of labor rights violations may provoke an investigation into a country's labor rights practices. The review of Mexico's response to transnational advocates at the domestic and subnational levels in Chapter Four illustrates the completing interests in compliance that condition whether a state will improve labor rights enforcement. Finally, the review of local-level effects that are included in Chapter Five assess the extent to which institutional remedies translate into gains for workers, thus allowing us to measure the efficacy of the NAALC across both measures, implementation and outcomes.

More generally, this research holds important implications for the theoretical literature on the effects of globalization on labor rights and the role of transnational advocacy in promoting labor rights enforcement, and it promises to

offer new insights on the value of linking social clauses to trade agreements. The project bridges the work on transnational advocacy and labor rights, expanding the transnational advocacy framework to include cross-border labor solidarity, and applying the models to trade-based social clauses. This work also addresses the theoretically significant interaction of transnational labor rights advocacy and international institutions associated with economic cooperation, and brings them together to understand the roles that non-state actors can play in enforcing international institutions.

The dissertation offers an in-depth study of how less developed states manage pressures to improve labor rights enforcement at the global, interstate and subnational levels of analysis. Methodologically, the research bridges methods of inquiry to offset some of the limitations of any of them alone. Quantitative analysis establishes the broad patterns of labor rights enforcement, while the comparative case studies explore in greater detail the role of actors and strategies in labor rights enforcement at the domestic level in Mexico. Mixing methods connects the research to other disciplines, and draws in ideas from a number of areas, including political economy, democratization, and human rights.

Finally, the research offers an argument for pursing the trade and labor linkage through trade policy. Proposals that focus on the state potentially cover a wider range of workers than just those that work in factories that produce goods for well-known consumer brands, or make the most compelling cases that attract the attention of Northern activists. This work will evaluate the effectiveness of labor conditionality clauses as one possible method for protecting labor rights

globally, potentially prescribing ways to interconnect less-developed nations with the industrialized world as economic integration blazes forward, without also sacrificing labor rights.

Chapter Two:
Transnational Advocates and Labor Rights Enforcement in the North American Free Trade Agreement

In considering the impact of trade-based social clauses on domestic labor rights protection more broadly, I investigate the enforcement mechanisms of these clauses in the context of one agreement, the North American Agreement on Labor Cooperation (NAALC), the labor side agreement to the North American Free Trade Agreement. Negotiated by Mexico, the United States and Canada at the end of the NAFTA trade negotiations, the NAALC agreement on labor and a sister agreement on environmental cooperation are the supplemental agreements that promote tri-national cooperation on trade-related aspects of areas not normally considered trade issues.

Though labor unions and their allies in the US and Canada pressed for a labor side agreement that would create new North American labor standards and include hard enforcement mechanisms like the ones that were attached to NAFTA's commercial provisions, the agreement that was eventually ratified fell short of their expectations. The NAALC only mandates that labor protections already established under national labor laws are enforced, and does not create new labor standards (Franco Hijuelos 2001; Compa 2001).[20] The NAALC does specify formal complaint proceedings and dispute resolution for labor rights violations. Under the NAALC statutes, any citizen or group can file a complaint with a National Administrative Office regarding labor law practices by a NAFTA

[20] Though the NAALC mandates that states must only uphold their own labor laws, some authors argue that the NAALC establishes regional labor standards in practice. See Kay (2005).

partner.[21] Once the allegations of labor rights violation are reviewed, states can mandate resolutions meant to promote compliance with the NAALC's 11 labor principles, including meetings between Ministers of Labor, evaluation by a Committee of Experts, formal panel arbitration, and in some cases, trade sanctions.

I evaluate the possibilities for enforcing the NAALC agreement by analyzing the mechanisms that determine whether or the not petitions alleging labor rights violation are accepted for review by the NAOs, as established in the NAALC agreement. As such, the analysis attempts to answer two major questions. First, how are the mechanisms of social clauses engaged by states and non-state actors? Second, what are the factors that determine whether cases of labor rights abuses are accepted for review by states?

The chapter draws on the roles that transnational advocacy networks play in promoting political change within states, especially in the area of labor rights advocacy. Labor rights solidarity groups, US, Mexican, and Canadian unions and their transnational allies are at the forefront of testing the labor rights clause through the petitions process established by the NAALC. Though most theories on transnational advocacy shun interpretations that center on actors that are motivated by material interests, I show that linking trade and labor rights guarantees combines material interests with normative pressures, and that the

[21] These offices were established by the NAFTA agreement to promote consultation and cooperation on labor issues in all three states. In the US, the NAO is now known as the Office of Trade and Labor Affairs (OTLA). I will refer to it as the US NAO to stay consistent with the parallel institutions in Mexico and Canada.

ideational frameworks of transnational advocacy are suitable for explaining transborder political action around labor rights issues. The NAALC is an appropriate case to use to study these issues because nearly all US trade-based labor clauses since the NAALC respond in some way to the NAALC structure and institutions (Weiss 2003), allowing us to anticipate how these mechanisms may and may not function in subsequent agreements. Further, because the agreement was signed 15 years ago, it yields a number of cases from which to draw conclusions, and an opportunity to examine NAO decisions over time.

Using original data constructed from all petitions submitted to NAALC arbitration since 1994, I present an empirical analysis that establishes the broad patterns of case acceptance through 2005. I pose rival hypotheses about the petitions process, proposing that when transnational advocates are involved in labor rights arbitration, petitions will be reviewed more often than when submitted by groups without such linkages. I then consider the content of the petitions to discuss how the presentation of information in them, especially violence and the use of worker testimony, accounts for decisions to accept some cases for review but not others. While the social clause has been criticized for its limited jurisdiction, inadequate enforcement mechanisms, and failure to redress firm-level grievances (Singh 2002; Hovis 1994; Robinson 2002; International Labor Rights Fund 1995; Bensusán 2002), this analysis concludes that even weak social clauses produce their own political dynamics that can lead to greater attention to workers' rights protections within states.

Norms, Transnational Advocacy and Political Change

As contact between states has deepened with the expansion of international trade, contact between citizens has coalesced around economic, social, cultural and political issues. Transnational advocacy networks have emerged as part of this internationalization of civil society. These are networks of political activists operating across national borders, differentiated from other transnational groups by their motivation by "principled ideas" and values (Keck and Sikkink 1998). Network participants have taken advantage of the opportunities for cross-cultural communication afforded by globalization to forge relationships with those who share a commitment to these political causes, wherever they are located.

Transnational advocacy networks serve three purposes in the international system: they provide information on rights violations within states; they legitimate the claims of opposition groups, thus strengthening those claims; and they challenge states to change their behavior (Risse, Ropp, and Sikkink 1999:5). As such, transnational advocates play an important role in disseminating information about rights, and the violation of rights by states, from international audiences to states at the domestic level. While working to establish international support for opposition groups facing rights violations, transnational advocates serve as conduits of information to a larger community about political conditions within states, offering a credible alternative to government sources (Keck and Sikkink 1998). In engaging violating states, transnational advocacy networks provide information about international norms, socializing them to adopt behaviors that

are more acceptable to an international community (Risse, Ropp, and Sikkink 1999:5). By showing states that international audiences perceive their behavior negatively, networks can persuade states to change their policies and behavior.

The authors of this framework conclude that the process of state socialization around human rights practices is generalizeable across regions and political regimes (Risse, Ropp, and Sikkink 1999). As such, the transnational advocacy model can be extended theoretically to describe norm socialization around other issue areas, as anticipated by the authors themselves (Risse, Ropp, and Sikkink 1999). Though Keck and Sikkink questioned whether alliances between trade unions are representative of transnational advocacy networks (Keck and Sikkink 1998), such networks have emerged around labor rights and labor standards much as they have around other "principled issues", like human rights. For transnational labor rights advocates, labor rights *are* human rights, and provide a natural extension to the model.[22]

Labor Side Agreement Arbitration

Each state is bound to manage the NAALC process according to the procedural guidelines established by the Agreement (NAALC 1993). As consultative bodies, the NAOs of each state see their roles as primarily one of

[22] The labor rights listed by the Universal Declaration of Human Rights include the right to work under favorable conditions, including equal pay for equal work, pay that supports human dignity, and the right to rest; prohibition on slavery or servitude; and the right to free association and the right to join and form trade unions to protect these rights (UDHR 1948: articles 23-24). For more on maximum versus minimum definitions of labor rights and human rights, see Leary (1996) and Chan (1998, 2001).

information sharing and tri-state cooperation around technical issues, rather than as adversarial bodies ready to assign blame to states or firms for workers rights abuses.[23]

Individual NAO offices do have some independence to interpret states' obligations under the agreement. As such, participation by the Mexican government in cooperative activities has been hampered by an especially narrow interpretation of Mexican responsibilities, suggesting that the tensions between integration and sovereignty presented by the NAALC still color Mexico's cooperation with the United States around labor rights.[24] In contrast, the US takes a broad interpretation of the kinds of actions that the office may take while reviewing petitions, including holding public hearings and conducting in-country investigations (much to Mexico's protests), neither of which are included in the text of the agreement.[25] Canada takes a lesser role in the NAALC, as much of Canadian labor law is left to the provinces that have ratified the NAALC agreement, resulting in fewer cases overall against Canada.[26]

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[23] Interviews, US NAO, Washington, D.C., 2007, the Committee for Labor Cooperation, Washington D.C., 2007, and the *Secretaría del Trabajo y Previsión Social* (STPS), *Subcoordinación de Política Laboral Hemisférica* (the Secretariat for Labor and Social Security, Sub-coordinator for Hemispheric Labor Policy, referred to subsequently as the Mexican NAO), Mexico City, Mexico, 2006. See also Franco Hijuelos (2001).

[24] Interviews, Commission for Labor Cooperation, Washington, D.C., and the Mexican NAO, Mexico City, Mexico, 2006. Weiss (2003)discusses how the NAALC agreement was very carefully crafted to reference the protection of state sovereignty in the language and design of the agreement.

[25] Interviews, Commission for Labor Cooperation, Washington, D.C., and the Mexican NAO, Mexico City, Mexico, 2006.

[26] Though the principles of NAALC nominally hold across the country, and the Canadian NAO participates fully in the review process, jurisdiction for complaints depends on provincial

In filing a complaint, petitioners must show that cases meet procedural criteria for adjudication, demonstrate that the allegations form a pattern of abuse, and establish that the government failed to uphold its domestic labor law through its actions. Complaints cannot be filed with the NAO in the state where the alleged violation takes place, to ensure an independent review.

If the petition is accepted for review, the NAO starts a formal investigation of the case and the allegations, collecting more information from the petitioners and from the NAO of the targeted country. The NAOs at times hold public hearings on the submission and the issues raised within it, which can include testimony and written affidavits from witnesses and experts, statements from the firms involved, and reports on the relevant labor laws from the NAO of the targeted state. Finally, the NAO makes a public report on how issues raised in the petition should be addressed under the auspices of the agreement.

NAO offices can suggest four types of redress, which are in turn limited by the category of violation. For submissions involving child labor, wage disputes, or health and safety violations, the full range of remedies is available, including Ministerial Consultations, further evaluation by a Committee of Experts, formal panel arbitration, and if still unresolved, trade sanctions (NAALC 1993: 15-24; US Department of Labor n.d).[27] Submissions concerning forced labor, minimum employment standards, discrimination, workers' compensation, or protection of

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cooperation, and only Manitoba, Alberta and Prince Edward Island have ratified the agreement.

[27] Franco Hijuelos (2001) offers a more detailed discussion of the significance of the Committee of Experts.

migrants are limited to Ministerial Consultation and expert evaluation (NAALC 1993). Freedom of association, the right to collective bargaining, and the right to strike are afforded the least redress, as they are subject only to Ministerial Consultation. In effect, the different categories of resolution mean that the process favors the protection of individual rights, rather than collective labor rights. There are no provisions in the NAALC agreement that allow the NAALC institutions to intervene in labor disputes in other states.

The petition acceptance stage is important to the process because not only does acceptance determine whose claims will be heard, potentially legitimizing the allegations made by groups about labor rights violations (Frundt 1998b; Graubart 2008), but a number of studies of transnational labor advocacy have argued that just filing a petition presents a threat to alter the trade relationship, and thus is the part of the process where states seriously consider making policy changes. In states as diverse as Guatemala, the Dominican Republic, Bangladesh, and Swaziland, the pressure on states marshaled by just the filing of a labor rights petition brought about significant changes in how labor rights are enforced within those states (Frundt 1998b; Douglass, Fergusson, and Klett 2004). For these reasons, this analysis addresses the filing and review stages of the NAALC process. Chapter Three analyzes the outcomes of the NAALC cases in detail.

Data and Indicators

The NAALC is one of the few trade-based labor rights clauses that include formalized institutional mechanisms for dispute resolution. Thirty-seven cases of labor code violations were filed under the labor side agreement through 2005. The unit of analysis for the data is a petition filed at an NAO in the US, Mexico or Canada. Overall, twenty-six petitions claim challenges to freedom of association, 16 petitions concern health and safety violations, either exclusively or as part of a range of issues, six petitions involve the rights of migrant workers in the US, and two concern child labor. In four cases, submissions were filed simultaneously in two NAO offices for concurrent reviews. Petitions filed in separate NAOs are considered separate cases in the data. Cases where secondary issues were added in a later submission are also included as separate cases.[28] Every petition that has been submitted for review through 2005 is included in the data. A full list of the cases, where they were submitted, the issues presented in them, and their resolutions appear as Appendix A.

To test the importance of transnational advocacy on the decision to review a case, cases are coded by whether or not the petition was filed by transnational advocates. Cases are coded as transnational when either of the following two conditions holds. First, petitions are co-sponsored by groups that while based in one country, have an organizational presence, such as a field office or staff, in

[28] For these cases, the NAOs considered the additional claims as separate issues, even if they occurred in the same factory or workplace already under review. For example, Han Young is included in the data set once for the original submission on freedom of association and again for the later addendum on health and safety.

another country. This rule categorizes as transnational those cases where petition sponsors are non-governmental organizations based in Canada, for instance, but have programs in Mexico, as well as petitions sponsored by groups that have a global presence, such as Human Rights Watch. The second condition is that petition sponsors have formed an organizational linkage with another group in a different country, even if both groups are nominally based in a single country themselves.[29] Co-sponsorship of the NAALC petitions assumes a working relationship between filing groups, including the sharing of information and institutional resources to produce the petition, and local participation in the case in the country where the violations allegedly occurred. Cases are coded as national cases when neither of these conditions hold. For example, when sponsors are based wholly in the US, Canada, or Mexico they are coded as nationally based groups. They are also coded as nationally based groups when sponsors do not demonstrate organizational ties to groups in another country. A dichotomous variable was created where petitions sponsored by transnational advocates are coded as 1, and all others are coded as 0.[30]

Information on petition sponsorship is drawn solely on the petition sponsors list provided in every *Public Submission*. It is possible that the petition

[29] One example would be a petition jointly sponsored by a group based only in Mexico and a group based only in Canada.

[30] Data was collected from the *Public Submission* for each case, the petitions submitted by the sponsors to the NAOs for a possible review. Information on whether or not a complaint was accepted for review appears in abbreviated form in *Status of Submissions under the North American Agreement on Labor Cooperation*, published by all NAOs, but in this case collected mainly from the US office, and continuously updated on their website at http://www.dol.gov/ilab/programs/nao/status.htm#iia16.

sponsorship information influences whether the NAO takes the submission under review, and filing groups certainly are aware of this. For example, the US groups who developed the Washington Apples petition refrained from formally sponsoring the petition as a matter of strategy (Compa 2001). Also, the AFL-CIO Solidarity Center in Mexico is often involved in developing and even writing petitions that they then do not sponsor publicly, to remove any possible negative influence that AFL-CIO sponsorship of petitions might have in Washington.[31] For this reason, information on formal petition sponsorship is part of the filing strategy among groups, and therefore coded only from the petition as presented to the NAO.

Theoretical Expectations on the NAALC Process

The transnational advocacy literature and its application to labor rights advocacy generates a number of rival hypotheses for the study. Drawing directly from the theoretical insights, we would first expect that when transnational labor advocacy groups sponsor petitions, these petitions are more likely to be accepted for review. Further, theory suggests that transnational groups have access to the most current information about an unfolding situation in another country through their contact with the affected groups. The discussion on transnational strategies in Chapter One suggests that this information will be framed in the petitions in ways that persuade NAOs to take the petitions under

[31] Interview, AFL-CIO Solidarity Center, Mexico City, Mexico, July 2006.

consideration. Therefore, the second hypothesis for this study is that that framing of information in the petitions will also determine NAO outcomes.

At the same time, if the intent of the NAALC process is to promote discussion around recurrent labor rights violations in any of the participating states (Franco Hijuelos 2001), we would expect that the petitions reviewed by the NAALC would include those with the most egregious cases of labor rights abuses, or those cases where labor rights violations are particularly pervasive. A third, rival hypothesis for the study is therefore that petitions about cases with merit would be more likely accepted for review. In sum, though we expect that transnational advocates should be more effective at engaging the NAALC mechanisms compared to other groups as in hypothesis one, we diverge on the underlying reasons for that expectation around the questions of effective tactics, as in hypothesis two, or the sponsorship of more severe cases of labor rights abuse, as in hypothesis three.

Simply having a petition accepted for review in the NAALC process is an important stage both theoretically and empirically, and may have an effect on labor rights practices independent from any resolution or outcome of the process. Petition filing or acceptance generates political dynamics at the local level that can provoke changes in state behavior (Hathaway 2002a; Finbow 2006; Graubart 2008). For example, once state practices have been opened up to international scrutiny by networks, states focus their energies on denying those charges, or otherwise maneuvering to diffuse international criticism (Risse, Ropp, and Sikkink 1999). In the resulting relaxation of state repression, a space for

organization opens. Domestic groups begin to mobilize again, but this time with the support of transnational advocates and their allies, who are watching how governments will respond. By placing violating states on the defensive, transnational advocates widen the opening for domestic mobilization, reinforcing pressure on states from the international community with pressure from its own citizens (Risse, Ropp, and Sikkink 1999). For these reasons, this analysis will focus on petition acceptance, though I will review the general outcomes of cases at the end of the chapter, and in more detail in Chapter Three.

Case Acceptance

In the first stage of the process, advocates decide to file a petition at an NAO alleging the violation of any of the eleven labor rights principles of the NAALC agreement. To date, thirty-seven petitions have been filed, 24 about Mexico, 11 about the US and 2 about Canada. Transnational actors filed twenty-seven petitions, while nationally based groups filed 10.[32] The NAO has made a decision on whether or not to review the petitions in thirty-five cases, while two cases are pending. Twenty-five of the petitions, or 68.6%, were accepted for review, while ten petitions were rejected.

At its most general, the transnational advocacy literature suggests that transnational support bolsters domestic groups as they attempt to reach their political goals. As such, the first hypothesis is that it is more likely that petitions sponsored by transnational groups are accepted for review than petitions

[32] National actors submitted 4 cases on the US and 6 cases on Mexico, while transnational advocates submitted 7 cases on the US, 18 on Mexico, and two on Canada.

sponsored by nationally based groups. Table 1 features the cross-tabulation of petition acceptance by the sponsor, including national or transnational groups:

Table 1: Petition Acceptance

	transnational	**national**	
accepted	22 88.0%	3 30.0%	25
declined	3 12.0 %	7 70.0%	10
	25	10	35

Pearson X^2 (1)= 11.77, p=.001

There are important differences in acceptance rates when we consider the sponsorship of the NAALC petitions. Petitions submitted by transnational advocates were accepted for review almost three times more often than for nationally based groups. As the table shows, twenty-two of the total twenty-five petitions submitted by transnational advocates were accepted for review, or 88% of petitions. By contrast, petitions filed by nationally based groups were accepted for review only 30% of the time. Nationally based groups had three petitions accepted, while seven petitions were denied review. These results are statistically significant, at $p < .001$ for the chi-square test.

The data lend support to the first hypothesis, and establish that transnational advocacy groups are more successful than other groups in securing reviews from an NAO, a finding that bolsters the results of other studies of transnationalism. However, it also presents the challenge of accounting for

this outcome across competing explanations. Are transnational advocates somehow more effective at crafting petitions and framing the information presented in them, as theory suggests? Or, are they choosing to sponsor especially strong cases of labor rights abuse?

Case Selection

During the total fifteen years that the labor side agreement has been in effect, just 37 petitions have been filed, mostly about Mexico. This is surely not indicative of the total breadth of labor code violations in Mexico, or the United States for that matter, but symptomatic of how submitters determine which cases to bring to arbitration. Because developing a petition uses resources and a substantial time commitment, one might assume that cases are chosen based on the expectation of positive resolutions by their submitters.[33] Yet, this is not necessarily the only motivation, as groups that have filed at the NAALC

[33] The common wisdom is that as legal proceedings, cases require professional consultation and legal services, extensive fact checking and interviews with involved individuals, transcription and translation, as well as other tasks that divert organizational resources. Additionally, cases may languish for two years or more as the proceedings move from submission, to acceptance, to resolution and implementation. Groups in Mexico may be concurrently engaging domestic channels, appealing to federal or state courts outside of the labor board system, and filing injunctions. In sum, filing a petition and waiting for resolution assumes a significant outlay of resources, time and energy. Although this surely describes the experience of a few groups, others describe the process as generally simple and straightforward, especially when they have the information and evidence to build a case readily available, because they tend to file on those cases they already know intimately. Interviews, Maquila Solidarity Network, Toronto, Canada, 2005, AFL-CIO Solidarity Center, Mexico City, Mexico, 2006, Centro de Apoyo al Trabajador (CAT), Puebla, Mexico, 2006, and International Labor Rights Forum, Washington, D.C., 2007.

sometimes also submit petitions in order to test the process, whether to ask the NAOs to consider labor issues previously ignored, or to push the process toward higher-level resolutions, such as invoking a panel of experts (Finbow 2006). Further, submitters may use the NAALC only as a forum to attract publicity to specific labor struggles, without any expectation that the NAALC process might solve the local labor dispute, which is ultimately out of its scope.[34] In any event, not all petitions are accepted for review.

If the NAALC process is designed to promote cooperation among states on labor rights enforcement issues, we would expect that an NAO would be more likely to take petitions under consideration based on the merits of the case. Given the many reasons petitioners may bring cases, if transnational advocates have their petitions reviewed more often than other groups, it may be due to their case selection criteria, and that transnational advocates are selecting more viable cases for arbitration. Therefore, the second hypothesis for the study is that cases that have the most merit should be most often accepted for review. Here, I operationalized case merits across two dimensions: the severity of abuses, and the degree of labor rights violation. To measure the degree of violation, I generated a count variable of the number of NAALC principles allegedly violated in each petition, of the eleven labor rights principles established in Annex 1 of the agreement (NAALC 1993:32-34). The number of violations listed range from one principle to 10, with the mean number of violations at 3. Across the second dimension, severity of abuses, I coded any

[34] Interviews, Centro de Apoyo al Trabajador (CAT), Puebla, Mexico, and AFL-CIO Solidarity Center, Mexico City, Mexico, 2006.

mention of violence in the petition as a proxy measure for the degree of labor rights violation. A report of violence in a petition-- meaning any act of bodily harm inflicted on workers, or threat of bodily harm to workers-- indicates that the labor situation may have become serious enough to provoke violent acts against workers.[35] While 25 petitions do not mention violence, violence was cited in 12 petitions.

Table 2 shows the results of a cross-tabulation of the perceived severity of abuses on petition acceptance. The table also lists each case across these two variables, where the petitions that were sponsored by transnational actors appear in ***bold italics*** print. Thirty-five cases are included in the model, as an additional two cases have not yet been decided.

The left side of the table lists the petitions that mention violence. Of the eleven petitions that report violence, ten were accepted for review, as in the top left cell.[36] As expected, when cases where labor rights violations seem particularly serious are submitted to the NAALC, they are more often accepted for review. Of the eleven petitions that mentioned violence, all but one was sponsored by transnational advocates. This relationship is statistically significant at the 10% level with a chi-square of 2.98.

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[35] This is a dichotomous measure, and specifically includes verbal or physical threats; coercion, intimidation and surveillance; beatings and assault; the use of weapons; and targeted acts of violence.

[36] The one petition that was rejected was the Yale/ INS immigration case, submitted to both the Canadian and Mexican NAOs by transnational advocates in 1998. Canada rejected the petition after the US committed to revise a Memorandum of Understanding between the US Department of Labor and Immigration and Naturalization as part of the resolution with the Mexican NAO, prior to the Canadian review.

Table 2: Petition Acceptance, Violence and Case Selection

	VIOLENCE	
	violence cited	no violence cited
ACCEPTANCE		***Sprint***
	Sony	***North Carolina***
	Yale INS	***Mc Donald's***
	SOLEC	***Gender***
	Puebla	***SUTSP***
	ITAPSA	***Auto Trim***
accepted	***ITAPSA Canada***	***Puebla Canada***
	Maxi-Switch	***Honeywell***
	TAESA	***H2B Visa Workers***
	Han Young I	***GE I***
	DeCoster Egg	***GE II***
		Han Young II
		Hidalgo
		NY State
		Apples
	10/11	**15/24**
		Duro Bag
	Yale INS Canada	Tomato
		ASPA Canada
		ASPA
declined		Flight Attendants
		LPA
		Coahuila
		Rural Mail Carriers
		Labor Law Reform
	1/11	**9/24**

The data show that even for the 24 petitions that do not mention violence, as on the right side of the table, transnational advocates still seem to have greater success in securing a review by the NAO. Among the petitions where there was no violence reported, just two of the nine petitions filed by nationally-based groups were accepted for review, while the remaining thirteen petitions that were accepted were filed by transnational advocates. This suggests that while citing violence may make a case more viable for NAO review, transnational actors are still more successful at getting their petitions accepted, whether or not violence is reported in the petition, and that transnational advocates may craft petitions that are ultimately more likely to be accepted for review.

The Role of Worker Testimony

If transnational advocates are not necessarily backing the worst cases of labor rights abuse at the NAALC, what explains the comparative success of transnational advocates in engaging the NAALC process? The theoretical framework suggests that transnational advocates not only have direct access to local groups, but also engage in different strategies to mobilize that information. The presentation of information about the case and the framing of its meaning in a petition should convince the NAO that the case is worth investigating.

In field interviews, US NAO officials described their general criteria for considering petitions. Among these, the US NAO privileged the legitimacy and accuracy of the claims made by petitioners. The US office tends to pursue cases only if they have a sense that they will be able to substantiate the claims in the

petition with evidence once a full review is under way.[37] The petition gives the first indication of whether the claims presented within could be confirmed. Testimony by workers provides especially relevant information. Not only do workers provide the most accurate and credible source of information on violations from the affected parties for any NAO, but worker testimony in itself signals the possibility of corroborating the allegations with credible evidence during a subsequent full review.[38] If a petition features testimony by workers in the text, or includes signed affidavits, the US NAO assumes that the filing groups already have workers on hand to provide additional information to them, submit evidence, or to testify at public hearings.[39]

Given these claims, we would expect that the use of testimony would affect whether or not petitions are accepted for review, leading to a third hypothesis for the study. We expect that petitions that feature worker testimony should more often be accepted for review than petitions that do not feature testimony. Table 3 illustrates the relationship between the inclusion of worker testimony and petition acceptance:

[37] Interview, US NAO, Washington, D.C., 2007.

[38] Interview, US NAO, Washington, D.C., 2007.

[39] Interview, US NAO, Washington, D.C., 2007.

Table 3: Worker Testimony and Petition Acceptance

	worker testimony	no testimony	
accepted	14 93.3%	11 55%	25
declined	1 6.7%	9 45%	10
	15	20	35

Pearson X^2 (1)=6.17, p= .013

The use of testimony in the petitions is very much associated with transnational advocates, yet only about half of all transnational petitions feature testimony.[40] According to the table, 55% of the petitions that do not feature worker testimony to support their claims were accepted for review. By way of contrast, of the 15 petitions that featured worker testimony, all but one was accepted for review, or 93.3%. These include not just 13 petitions filed by transnational groups, but also the two petitions filed by nationally based groups. These cases, the 1998 Apple case and the 2001 New York State case, represent two of the three cases filed by nationally based groups that were accepted for review by an NAO for the entire NAALC case set. This finding supports the

[40] Only two out of ten petitions submitted by nationally based groups include testimony. A cross-tabulation of the relationship of transnational sponsorship and use of testimony was positive and statistically significant at the 10% level, with a chi-square of 3.02. Thirteen cases filed by transnational actors included testimony, while 14 cases did not.

hypothesis that framing tactics affect outcomes, operationalized here by the use of worker testimony. [41]

Groups without a transnational organizational reach may be able to furnish the same kinds of "on the ground" information about violations that is the hallmark of transnational strategies, but they cannot obtain direct access to affected workers to testify about the violations without first developing strong organizational ties to groups in the targeted state. Nationally based groups have not developed the relationships with workers in another country that would allow them to collect and document labor rights violations through worker testimony, and thus their petitions do not include it.

Multivariate Models

Thus far, the analysis has investigated the competing hypotheses of case framing and case merit, and suggests that the comparative success of transnational groups in securing a review is due to the way cases are crafted, and especially by including worker testimony in the petitions. However, testimony, violence, and transnationalism may overlap in significant ways in the case set, as workers who testify to working conditions in the petitions may mention violence as part of that testimony. Drawing attention to physical violence in workplace disputes, for example, may be used as a framing technique by transnational advocates, to either cast labor rights violations more directly as

[41] The limitations posed by a small case set preclude testing the contextual information presented in petitions, such as word choice or word counts, that would be necessary to evaluate more directly the content of the petitions.

human rights violations, or to distill complex workplace issues into visible, simple symbols for an international audience (Seidman 2007). For these reasons, I performed multivariate models to analyze the independent effects of transnationalism, testimony and violence. The first model is a three-way cross-tabulation of these variables, as shown in Table 4:

Table 4: Three-Way Tabulations

			transnational	**national**
violence	**accepted**	violence cited	90%	100%
		no violence cited	86.7%	22.2%
	declined	violence cited	10%	0%
		no violence cited	13.3%	77.8%
testimony	**accepted**	testimony	92.3%	100%
		no testimony	83.3%	12.5%
	declined	testimony	7.7%	0%
		no testimony	16.7%	87.5%

First, the table shows the clear differences in acceptance rates between sponsors when petitions included citations of violence or testimony and when they do not. When petitions mention violence, both groups have higher acceptance rates. Here, nationally based groups had all submitted petitions accepted for review, while transnational advocates had a 90% rate of acceptance. When petitions include testimony, again nationally based groups have all their petitions accepted, and transnational groups had 92% of their petitions accepted.

The picture is very different, however, for petitions that do not include worker testimony or mention violence. For these cases, transnational involvement is clearly important. Even when no violence is cited, 87% percent of petitions sponsored by transnational groups are accepted for review, while only 22% of petitions sponsored by nationally based groups are reviewed. Similarly, without testimony, transnational groups have an 83% acceptance rate, while nationally based groups only have 13% of their petitions accepted for review. Together the data show that while inclusion of either violence or testimony in petitions is associated with higher rates of acceptance for transnational advocates, these groups already enjoy high rates of acceptance, even when they do not include testimony or violence. For nationally based groups however, the mention of either testimony or violence in the petitions is key to securing an NAO review: without this information, the majority of their petitions are denied.

This analysis establishes that even when controlling for testimony and the mention of violence, transnational sponsorship conditions petition acceptance. Table 10 shows the results of a probit analysis that looks further at these relationships. In this model, the dependent variable is again whether or not the petition is accepted by an NAO, and the independent variables are transnationalism, testimony, and both dimensions of case merit: the severity of abuse and the degree of violation.

Table 5: Probit Analysis of Petition Acceptance

	Model 1		Model 2		Model 3		Model 4	
	β	**mfx**	**β**	**mfx**	**β**	**mfx**	**β**	**mfx**
transnational advocates	**1.65**** (.61)	**.54**** (.19)	**1.50**** (.57)	**.51**** (.19)	**1.66**** (.60)	**.55**** (.19)	**1.73**** (.58)	**.58**** (.18)
worker testimony	**1.15*** (.67)	**.30*** (.15)	1.00 (.64)	**.28*** (.16)	**1.24*** (.66)	**.32**** (.15)		
severity of abuse (violence)	.47 (.72)	.12 (.17)	.21 (.64)	.06 (.18)			.75 (.68)	.20 (.15)
degree of violation (principles)	-.21 (.14)	-.05 (.04)			-.19 (.14)	-.05 (.04)	-.16 (.13)	-.05 (.04)
constant	-.29 (.59)		-.80 (.48)		-.29 (.60)		-.178 (.54)	
	log likelihood =-12.4		log likelihood=-13.5		log likelihood=-12.7		log likelihood=-14.1	
N=35							**=p <.05	*= p <.10

The table shows both the full model and the restricted models, along with the marginal effects of each variable. In the full model, Model 1, transnationalism is statistically significant at p< .05, as expected. Testimony is significant at the 10% level. In the marginal effects, the likelihood that a petition is accepted increases by 54% when petitioners are transnational groups, all other variables held constant at their mean. Testimony is significant in the marginal effects as well. When petitions include worker testimony, the probability that the petition is accepted for review increases by 30%, all other variables held constant at their

mean. Neither measure of labor rights abuse is significant in either the probit estimation or the marginal effects.[42]

These results generally hold for the restricted models as well. In the first restricted model, Model 2, the degree of violation variable is removed, leaving a multivariate model that includes transnationalism, testimony and violence. In this model, while transnationalism is significant and remains a strong predictor of petition acceptance in the marginal effects, testimony is not significant in the probit estimation, though it is again significant in the marginal effects, at the 10% level. When petitions feature worker testimony, the probability that the case is accepted increases by 28%, all other variables held constant at their mean. In this restricted model, transnationalism and testimony are both significant predictors of petition acceptance, though transnationalism is the dominant factor. As before, violence is not significant.

In the next restricted model, Model 3, violence is removed. Again, transnationalism is a significant and strong predictor of petition acceptance. Testimony is again significant in the estimation, and becomes significant at the 5% level in the marginal effects, meaning that when petitions feature testimony, the probability that they are accepted for review increases by 32%, all other variables held constant at their mean. As in the full model, the principles variable is not significant either in the model, or in the marginal effects.

[42] Including the degree of violation was never significant in any probit, either alone or with violence, or in alternative forms, such as an interaction with violence, or as a dichotomous variable. Nor are they collinear. The correlation value for transnational and testimony is .29, for testimony and violence is .39, for transnational and violence is .23, and for violence and principles is .20.

In the final model, Model 4, testimony is removed. Here, transnationalism is significant in both the estimation and the marginal effects, and here is where transnationalism has its greatest effect on petition acceptance. When a petition is sponsored by transnational advocates, the probability that it is accepted for review increases by 58%, all other variables held constant at their mean. Neither violence nor the principles variables are significant in the estimation, or in the marginal effects.

The probit model provides further support for the hypothesis that groups with transnational organizational reach are more successful in engaging the NAALC process. This analysis shows that even when controlling for case merits and testimony, transnationalism is still the most important factor in predicting whether a petition will be accepted for review by an NAO. Further, the effect is increased through the inclusion of worker testimony.

The probit model gives insight to the explanatory role of the rival hypotheses. According to these models, transnationalism and case framing differentiates between successful and unsuccessful attempts to secure a review from an NAO. The data suggest that it is unlikely that case merits, whether measured as severity or prevalence of labor rights abuses, affect whether or not petitions are reviewed under the NAALC process. Rather, transnationalism, and the use of framing strategies employed by transnational advocacy networks, can overwhelm any potential effect of the merits of the case.

Case Resolutions

Once petitions are filed and cases are reviewed, how are labor rights violations resolved within states? The most common resolution in the NAALC process for petitions that are reviewed is an agreement between states to conduct Ministerial Consultations. Twenty-two cases of the 32 that have reached this stage of the process have resulted in Ministerial Consultations. No cases have moved beyond the Consultations stage to others that would require stronger public commitments to labor rights enforcement by states, but neither are most cases submitted to the NAALC thus far eligible for resolution beyond Ministerial Consultations, including the majority of cases about Mexico.[43] In nine of the 22 cases that were resolved through Ministerial Consultations there has been no further action. Yet, in the 13 that remain, there have been plant-level resolutions that favor labor, important outreach programs mandated by NAALC to inform citizens about their rights at work in the US and Mexico, and in some of these cases, governments made institutional changes to their labor policies and practices that favored labor. I review these resolutions and speculate as to why they were resolved with outcomes that provoked policy changes while other cases did not in the next chapter.

Some evidence from Mexico suggests that simply engaging the NAALC process might precipitate on-the-ground improvements for workers. In interviews, workers and labor organizers expressed that once the factory owners

[43] The majority of cases filed against Mexico allege violations of the freedom of association, which under the NAALC statutes are resolved only through Ministerial Consultations. No other levels of arbitration apply to these cases.

knew that a petition had been submitted to the NAALC, conditions began to improve inside the factories.[44] Labor organizers reported that they were no longer harassed at work, while workers said that the petition submission led to better treatment by supervisors, and marked the end of forced overtime, a major issue in some cases.[45] Groups that have participated in the NAALC process have stated that though they may believe the NAALC as an enforcement body is "toothless," the process itself is helpful for garnering international attention to the labor rights violations or union drives as they unfold.[46] The labor clause thus provides at minimum another avenue to broadcast the labor rights abuses to outside audiences, even when there is little chance that the NAALC will solve the incident on the factory floor.[47] That channel for mobilization points to the usefulness of the process to local workers, regardless of whether of not the NAALC can resolve labor rights violations at the plant level.

Conclusions

This chapter investigates how the trade mechanisms meant to protect labor rights are enforced, and discussed how these institutions are engaged by different social actors. I reviewed the cases brought to arbitration under the NAALC to show that when transnational advocates sponsor petitions they are

[44] Interview, AFL-CIO Solidarity Center, Mexico City, Mexico, July 10, 2006; CAT field organizer, Puebla, Puebla, Mexico, July 25, 2006; and interview, SUITTAR leader, Altepexi, Puebla, Mexico, August 20, 2006.

[45] Interviews in Ajalpan, Altepexi, Puebla, and Tehuacán, Mexico, 2006.

[46] Interview, AFL-CIO Solidarity Center, Mexico City, Mexico, 2006.

[47] Interview, Maquila Solidarity Network, Toronto, Canada, 2005.

more often accepted for review. Further analysis of the effects of transnational organizational ties, case selection, and the framing of petitions suggested that the different rate of success was due not to case selection, but by including information in the petition that signals to an NAO that a formal review is feasible. The data analysis discusses the use of testimony and the case merits to show that transnational partnerships can make some cases viable through the use of information, especially by including worker testimony. Though transnational groups are successful in securing reviews whether or not the labor rights violations were extensive or severe, or whether or not testimony was included in the petition, for nationally based groups the mention of either testimony or violence in the petitions is key to securing a review. Finally, the probit analysis further investigated the rival hypotheses of the paper to show that it is unlikely that case merits have an effect on petition acceptance. Rather, framing strategies were much more important to explaining patterns of petition acceptance among transnational advocates.

This analysis implies that the usefulness of the NAALC is not in the strength or weaknesses of its enforcement mechanisms, but in the way that different groups engage the process to shed light on labor rights issues and cases. The analysis presented here cannot predict how cases would have been resolved in the absence of the labor clause, or if case outcomes are due to the labor clause rather than other strategies simultaneously employed by non-state actors, it is limited to describing the ways that the labor clause has been engaged

by civil society, and why some groups are more successful at getting their claims reviewed than others.

This chapter also shows that the emergence of a transnational civil society and the linkage of labor standards to trade agreements are complementary processes. Trade agreements focus efforts around common goals and provide political opportunities for activists to come together over trade issues (Stillerman 2003; Adams 1997). As networks emerge, they can mobilize social, political, and economic pressure on states in support for greater labor rights protections. Social clauses give legal standing to the allegations made by non-state actors, thus legitimizing their claims in international arenas (Graubart 2008), and provide an institutional mechanism for redress that groups can access. Furthermore, violating states have incentives to respond to complaints in order to retain preferential trade relations. Linking labor standards to trade agreements can create the dynamics that could lead to stronger labor rights enforcement, even among states that prefer to violate workers rights.

Labor guarantees have become an enduring feature of trade agreements. However, in the current models, governments do not enforce the labor clauses until asked to do so by civil society, transnational or otherwise. As such, the potential efficacy of trade-based labor clauses in strengthening labor protections depends in some ways on the inclusion of mechanisms for citizen input, even though the complaint process may be insufficient to protect workers rights as much as labor and its allies might have hoped. This analysis of the NAALC argues that the labor clause reaches its highest potential for protecting labor

rights when transnational labor rights activists engage the mechanisms, and that therefore the enforcement mechanisms offered by trade-based social clauses can be important tools for labor advocates. They will become more important as trade agreements --and with them, labor rights clauses—continue to multiply.

Chapter Three:
Persuasion, Coercion and the Domestic Costs of Compliance: Evaluating the NAALC Resolutions

The previous chapter investigated the factors that determine whether petitions filed under the dispute mechanism of the North American Agreement on Labor Cooperation are accepted for review by the offices charged with labor rights compliance in NAFTA. That analysis established that petitions filed by transnational advocacy networks were more likely to be accepted for review than petitions filed by other actors, and further, that the comparative success of transnational groups lies in the framing of information in the petitions. The transnational advocacy model, with its emphasis on case framing and information politics, can help explain why some cases attract the attention of the tri-national labor dispute offices, causing them to look further into the allegations of labor rights abuses with a formal review. Yet, can transnational organization also influence whether or not *states* respond to calls for labor rights compliance in the outcomes stage? Once under review, how are these submissions resolved by state actors?

There are two schools of thought regarding the effectiveness of the NAALC labor side agreement in promoting labor rights enforcement. The more prominent arguments are negative, and based largely on the experiences of filing the first few test cases, when the United States refrained from punishing Mexico for freedom of association violations, and the legitimacy of the process itself was called into question. Since these early cases, critics of the NAALC continue to argue that the side agreement has made few inroads in protecting workers

because the mechanism lacks sanctioning power, that resolutions such as Ministerial Consultations do not go far enough in mandating changes to labor practices, and that governments lack the political will to enforce it (Singh 2002; Hovis 1994; Robinson 2002; International Labor Rights Fund 1995; Bensusán 2002).

More recently, a second school of thought has emerged to make the case that the outcomes of the NAALC may not have provided the direct redress of local level labor rights disputes that advocates and unions initially hoped would materialize, but nonetheless, the agreement is still useful for promoting labor rights within states. The adherents of this school argue that the NAALC lacks enforcement power due largely to its institutional design, where each partner was more interested in negotiating an agreement that respects state sovereignty, rather than one that had real sanctioning power (Weiss 2003; Dombois 2002; Bensusán 2004). As such, avenues of redress are limited for collective rights like freedom of association, and trade sanctions are underspecified and limited in application. Others note that even though the enforcement mechanism is weak, a major accomplishment of the NAALC is that the agreement precipitated cross-border solidarity among unions and groups in civil society that has been unprecedented in US-Mexican relations (Hathaway 2002a; Cook 1997; Kay 2005; Williams 1999; Babson 2002b; Compa 2001; Stillerman 2003; Bandy 2004; Babson 2002a; Juárez Núñez 2002a).

A number of scholars of the NAALC have worked past the emphasis on outcomes to investigate the ways the cases have moved through the process, to

demonstrate that the NAALC process itself matters in promoting labor rights enforcement, especially in Mexico (Compa 2001; Graubart 2008). While the range of case resolutions in the NAALC so far have been limited to government–to-government consultations and cooperative activities, in a number of instances domestic level political dynamics spurred by the cases produced outcomes that went beyond the kinds of resolutions envisioned by the agreement. In some cases, the political dynamics that emerged out of individual NAALC cases has opened dialogue about labor rights in Mexico, legitimizing actors within Mexico that had previously been excluded from policy discussions (Graubart 2008), allowing them to push for --and secure-- reforms in specific aspects of labor rights enforcement (Finbow 2006; Hertel 2006a).

In a few cases, the NAALC process helped to promote resolutions that solved labor disputes at the local level. In some, the NAALC process promoted important reforms in Mexican labor rights policies and practices. In many other cases however, there was no remedy to affected workers, let alone a policy response. The puzzle lies then in assessing why some NAALC cases against Mexico resulted in favorable outcomes for labor, while other cases did not. This chapter analyzes the NAALC case outcomes to answer the third set of questions of the dissertation: *Which states comply with the rules of trade-based labor rights conditionality, to what degree do they implement changes in positive directions for labor, and why?*

The transnational advocacy literature again provides some clues. Transnational advocacy networks can shift the costs to states of continued

violation on one hand, or the benefits of compliance on the other, by applying both ideational and material strategies. Transnational advocacy networks pressure states to improve labor rights practices using moral arguments that emphasize norms, shared values, and beliefs to persuade states. By filing at the NAALC, transnational advocates can also engage the trade mechanisms that enforce the conditionality clause, introducing additional material costs in the form of trade sanctions, as a way to coerce states into compliance. While persuasive tactics require that advocates convince governments and agents to change their preferences for violation (Hafner-Burton and Tsutsui 2005), coercion induces compliance by changing the cost-benefit calculations by states for continued violation (Cardenas 2004). In turn, policymakers will respond to these moral and material pressures according to political preferences and domestic incentives for compliance. Thus, the outcomes in the cases filed against Mexico vary according to how the federal government responds to international demands for labor rights enforcement on one hand, and domestic preferences to continue to violate labor rights on the other.

This chapter begins by presenting the set of resolutions of all the NAALC cases through 2005, and problematizing why some cases receive little redress, while other cases have precipitated changes in labor rights protections within the three NAFTA states. I then discuss how transnational advocates combine both persuasion and coercion to induce states to conform to international norms around labor rights, and how those pressures are received differently at the federal and subnational levels of government. An analysis of the freedom of

association cases filed against Mexico illustrates the causal mechanism that I propose for predicts compliance through policy change at the federal level, continued violation at the local level, and interventions by federal actors in specific cases. The chapter then looks further into the content of these policy changes by presenting case studies drawn from the set of NAALC cases filed against Mexico.

I consider mainly Mexico's experience with the NAALC in this chapter because of the three states, Mexico needed the most improvement in promoting collective labor rights under its industrial relations regime, and so the discussion of regional standards during the NAALC negotiations focused on raising labor standards in Mexico to the US and Canadian levels (Cook 1997; Mayer 1998). While the Mexican Federal Labor Law (LFT) is more ambitious than either Canadian or US labor codes in terms of protecting workers' individual and collective labor rights, Mexico suffers most from uneven enforcement.[48] This is reflected in the NAALC case set as well, where most of the cases --24 of 37-- are filed against Mexico. If NAFTA has any effect on how governments enforce labor rights, it is best measured in the Mexican case, and the number of NAALC cases available about Mexico can be analyzed to trace the domestic dynamics of labor rights improvement under the agreement.

[48] Even Mexico recognizes this as such. In interviews, the Mexican NAO stated that labor rights enforcement is one area where it was acknowledged that improvement is needed, but that the Secretariat for Labor and Social Welfare was working towards better enforcement by increasing the number of workplace inspections each year. Interview, the Mexican NAO, Mexico City, Mexico, 2006.

The chapter demonstrates that even when the NAALC cannot address workplace concerns in the short-term, the filing process can create the political dynamics within states that generate long-term effects, including changes in labor rights policy and practice. In effect, the side agreement created opportunities for transnational advocates that arguably set Mexico on a path to better labor rights enforcement through generalized norms compliance, independently of how strong or effective the agreement itself was in terms of sanctioning poor compliance. This chapter seeks to account for these effects.

The NAALC Case Resolutions

Once petitions are filed and reviewed at the NAALC, how are cases of labor rights violations resolved? Through 2006, 25 cases of 37 have been accepted and have passed through the resolution stage, while another 10 cases were rejected by an NAO for review.[49] As described in Chapter 2, NAOs can mandate a number of possible outcomes, but these are limited further by the categories of violation charged in the petition. These resolutions include Ministerial Consultations, evaluation by a committee of experts (the ECE), panel arbitration, and if still unresolved, trade sanctions. Table 6 below shows the distribution of these resolutions across all of the cases submitted to the NAALC.

[49] Two cases are pending the decision on review, and are not included here.

Table 6: Distribution of NAALC Case Resolutions

Resolutions		
	frequency	***percent of cases***
Declined Review	**10**	27.1%
Ministerial Consultations	**22**	59.4%
consultations with no further action	9	
outreach	3	
policy change	6	
firm level redress	4	
Evaluation by Committee of Experts	0	0
Panel Arbitration	0	0
Trade Sanctions	0	0
Pending cases	**5**	**13.5%**
	37	100%

One of the most important critiques of the NAALC process has been that the resolutions do not go far enough in punishing states when they contravene the NAALC labor rights principles (Hovis 1994; Robinson 2002; Bensusán 2002). Certainly, the table bears this out, as no cases to date have moved to review by a panel of experts, or discussion of trade sanctions, or any other resolution that would require stronger actions to promote labor rights enforcement by governments. As the table illustrates, the most common resolution is to conduct Ministerial Consultations. These are meetings called between the Ministers of Labor of the relevant states to discuss issues specific labor rights enforcement issues, such as health and safety standards or freedom of association.

Ministerial Consultations sometimes result in cooperative activities to

address how the violations presented in the case might be resolved, including binding tri-national agreements (US Department of Labor n.d. [a]). Though Ministerial Consultations are the weakest option for enforcing labor rights, they are firmly within the spirit of the NAALC as a consultative, rather than adversarial body.[50] In addition, most of the cases submitted to the NAALC thus far have not been eligible for resolution beyond Ministerial Consultations, including the majority of cases about Mexico.[51] Under the NAALC statutes, freedom of association cases can be resolved only through Ministerial Consultations (NAALC 1993), and no other levels of arbitration can apply to these cases.

The table shows that even among the cases that have resulted in Ministerial Consultations, the resolution that occurs at the domestic level can go beyond the scope of the NAALC formal resolutions. In nine of the 22 cases that were resolved through Ministerial Consultations, there has been no further action on the cases beyond discussion and dialogue between governments.[52] Yet, in the 13 that remain, the NAALC submission may have helped precipitate improvements in labor rights protections in the short and long-term, and especially in Mexico. For example, in three cases that formally ended in

[50] Interviews, Commission for Labor Cooperation, Washington, D.C., July 2, 2007, and the Mexican NAO, July 2006.

[51] Seventy- two percent of all cases submitted to NAALC list freedom of association as the core violation.

[52] In two of these cases, the Puebla submissions to the US and Canadian NAOs, Ministerial Consultations on freedom of association are still pending between the US and Mexico (Interview, Commission for Labor Cooperation, Washington, D.C., July 2, 2007). In the additional cases, the NAO determined that Ministerial Consultations would resolve the issues for varied reasons specific to the case in question.

Ministerial Consultations, the governments agreed to hold public outreach sessions where the labor rights conflict occurred.[53] Though most forums mandated by Ministerial Agreements are conferences and workshops for government officials, academics and practitioners, the outreach sessions –often led by the groups that filed the original complaint-- are used to publicize workers' rights under the federal labor law, and are directed at workers. This is significant, not just because the outreach sessions imitate the kind of outreach workers' rights organizations and community groups have been trying to do for years at the factory gates or in workers' homes, but now these efforts are practiced at the invitation of the Mexican government.

Further, in four cases, the labor rights situation at the plant was resolved in ways that favored labor once advocates filed NAALC petitions. In these cases, independent unions won legal recognition, yet they were not always successful in bargaining the collective contract with management. Finally, the table shows that in six cases, the US or Mexico committed to a change in labor policy or enforcement practices, which I argue here were precipitated as a result of discussions around specific violations showcased in the NAALC submissions. As the table illustrates, some cases were resolved through concrete reforms, others through plant-level changes, and still others had little resolution aside from promises to talk about labor rights enforcement. How do we account for this wide range of resolutions, and what can the NAALC process tell us about how states choose to respond to transnational pressures?

[53] Examples include "The Protection of Labor Rights of Women in North America" in Puebla, Mexico in 2000, and "Women Workers, Know Your Rights!" in Washington State in 2000.

Coercion and Compliance in the Mexican Case

Shared ideas about state identities –what types of states engage in what sorts of practices- can lead states to choose among policy prescriptions (Jepperson, Wendt, and Katzenstein 1996). Shifting state identities can theoretically cause policy change within states alone, but often advocacy for policy change is the mechanism that causes real transformation (Finnemore 1996). Using persuasive strategies, advocates encourage some state identities and not others by creating in- and out-groups, stating clearly that states that continue to break norms will be treated as outcasts in the international system, while states that accept and practice shared norms will be considered full members of the international community (Keck and Sikkink 1998; Price 1998; Kowert and Legro 1996). Transnational advocates promote behavior change by politicizing issues, and disseminating norms around what sorts of behavior can be expected from liberal states, thus allowing states to signal their preferred identity by taking on those behaviors (Keck and Sikkink 1998; Price 1998; Joppke 1998; Haas 1989).

Transnational pressure can be effective in pressuring some states to change their behavior towards greater respect for citizens' rights, including labor rights (Keck and Sikkink 1998), but pressure alone cannot predict which states will give in to transnational arguments. While transnational advocates are motivated by normative concerns about labor rights protection, and have developed sophisticated strategies to push states towards norms compliance, states vary considerably in the ways that they respond to these arguments. The

"crucial determinant" for assessing whether and when transnational networks influence states is determined by how vulnerable those states are to transnational pressure (Keck and Sikkink 1998). Sources of transnational pressure include ideational strategies, where advocates provide moral arguments to persuade states to change their preferences for violation, as well as material strategies by which they leverage material costs on states for continued violation.

States are more susceptible to the persuasive strategies presented by transnational advocates when they are sensitive to their international reputation in the international community of liberal states. These states are acutely aware of how they are perceived by other states, and will change their own behavior in order to reflect an image more in line with international standards (Keck and Sikkink 1998; Finnemore 1996; Price 1998; Clark, Friedman, and Hochstetler 1998; Gurowitz 1999). Further, the states most susceptible to international persuasion are the newly democratic states and those in transition, like Mexico, as these states are the most eager to establish democratic legitimacy in the international system (Keck and Sikkink 1998; Graubart 2008).

Transnational pressure can also include material strategies designed to present costs to states that do not respond to the persuasive strategies. In these cases, the inclusion of the labor side agreement to the trade accord provides the source of economic leverage. At the same time that transnational advocates apply moral pressure on states to convince them to change their preferences towards labor rights protection, they can also engage the dispute resolution mechanisms to threaten states with market sanctions unless they improve labor

rights enforcement. Because labor rights violations can have consequences for the trade relationship, and in NAFTA, potential trade sanctions, the labor clause supplements the persuasive aspects of transnational advocacy with the coercive capacity to enforce compliance.

Whether or not persuasion or coercion is effective in promoting compliance with labor rights protections further depends on competing domestic interests, including first, incentives for compliance as calculated by policymakers, and second, the preference for continued violation (Cardenas 2004). Within states, individual policymakers compare calculate the costs of compliance within the persuasive/ coercive framework presented by transnational advocates. However, interest in compliance at one level of government may clash with the objectives of political actors at subnational levels of government, and further, may cut across material and ideational impulses.

Mexico's Democratic Evolution

This analysis argues that as democratization takes root, Mexico has become more vulnerable to international pressure to protect labor rights, and in turn, more open to responding to international criticism through labor reform. To test this argument, we first must establish that Mexico is sensitive to its international image. The evolving democratic transition, especially during the Zedillo *sexenio*, can provide clues as to how Mexico's interest in generating a favorable international reputation is reflected in the shift from hegemonic party rule to electoral democracy.

During the presidency of Carlos Salinas de Gortari (1988-1994), the guiding foreign policy interest was to develop the evolving political and economic relationship with the United States, of which the negotiation of NAFTA was the crowning achievement of the administration (Covarrubias Velasco 1999; Alejandre 1995). Prior to the Salinas *sexenio*, bilateral relations were marked by conflict, rather than cooperation. Politically, Mexico continually defended itself from US criticism of the domestic policies of most concern to its neighbor, including immigration policy, drug interdiction, security, and rule of law (Dominguez and Fernandez de Castro 2009). Economically, Mexico was preoccupied with maintaining import substitution industrialization than trade with the US, almost until the ISI project collapsed in the early 1980s (Baer and Weintraub 1994). Only after the shift to neoliberal economic reform in the middle of the 1980s was Mexico interested in an economic partnership with the US, and only then, to avoid being locked out of a trade relationship given that the US was actively cultivating bilateral relationships with Central American and Caribbean States (Dominguez and Fernandez de Castro 2009). Thus in the late 1980s, the Salinas administration oversaw a complete reversal of Mexican foreign policy principles into a new diplomacy (Alejandre 1995). Where Mexico's participation in international forums and in its relationships with individual states had been limited by the guiding principles of non-intervention and state self-determination in foreign policy, by the end of the 1980s Mexico had instead started to emerge as an important player in regional politics.[54]

[54] For Mexico's participation in the Contadora group, see Castañeda (1985), and for Mexico's

Salinas wanted to change the character of US-Mexican relations as well, but believed it would only be possible if he could sanitize Mexico's international image (Dominguez and Fernandez de Castro 2009). First, reliance on electoral fraud as the mechanism of PRI political control was becoming increasingly difficult to sustain as domestic electoral conflicts became internationalized. In 1989, the *Partido de Acción Nacional* (PAN) filed a complaint with the Inter-American Human Rights Commission on electoral fraud in the 1985-1986 state elections (Annual Report of the Inter-American Commission on Human Rights 1989-1990) and approached a number of Republican senators in the US to discuss the conduct of elections in Mexico (Dominguez and Fernandez de Castro 2009; Baer and Weintraub 1994). The *Partido de la Revolución Democrático* (PRD) followed suit, approaching the Democrats about electoral fraud in the controversial Presidential election of 1988 (Dominguez and Fernandez de Castro 2009). Given the highly politicized context of the trade agreement, it was almost natural that the ensuing debates in the US would touch on whether the United States should be awarding authoritarian governments with trade accords (Mayer 1998; Baer and Weintraub 1994). Thus, Mexico's authoritarian tendencies were getting in the way of more important policy objectives, especially economic integration.

While Salinas was mostly interested in promoting only economic liberation, the momentum for political liberation was difficult to slow (Covarrubias Velasco 1999). It was becoming increasingly clear that Mexico would have to

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addition to the US-Cuba debate, see Covarrubias Velasco (2003).

pull back its adherence to non-intervention as the pretext for avoiding criticism and permit a discussion of its domestic policies, including democratization (Chabat 1997). The Zedillo administration (1994-2000) responded in 1996 with a sweeping electoral reform that promoted free and fair elections, and in effect widened the democratic opening (Klesner 1997).

This discussion suggests that Mexico would be especially susceptible to moral pressure for change on labor rights practices given its demonstrated interest in creating and maintaining a democratic image during the late 1990s through changes in human rights policy (Covarrubias Velasco 1999; Alejandre 1995; Negrín 2008). However, the effects of economic leverage on preferences within Mexico may be mixed in the NAFTA case. Though theory suggests that trade-based conditionality serves as the more effective coercive element than persuasion (Hafner-Burton and Tsutsui 2005), and especially so in the Mexican case, the dispute mechanism of the NAALC in some ways was never designed to lead to trade sanctions in practice.[55] References to cooperation and consultation run throughout the text of the side agreement, and the spirit in which it is invoked is one of fact-finding rather than condemnation. Governments instead emphasize that there are many steps of negotiation and cooperation between states to solve disputes before trade sanctions are discussed, and so far, these channels have been adequate to resolve labor issues in NAFTA, without resorting to trade sanctions.[56] Even then, the section on when and how trade

[55] Whereas 68.2% of Mexican exports were destined for the United States in 1970, by 2007, 82.1% of all Mexican exports went to the US (Dominguez and Fernandez de Castro 2009).

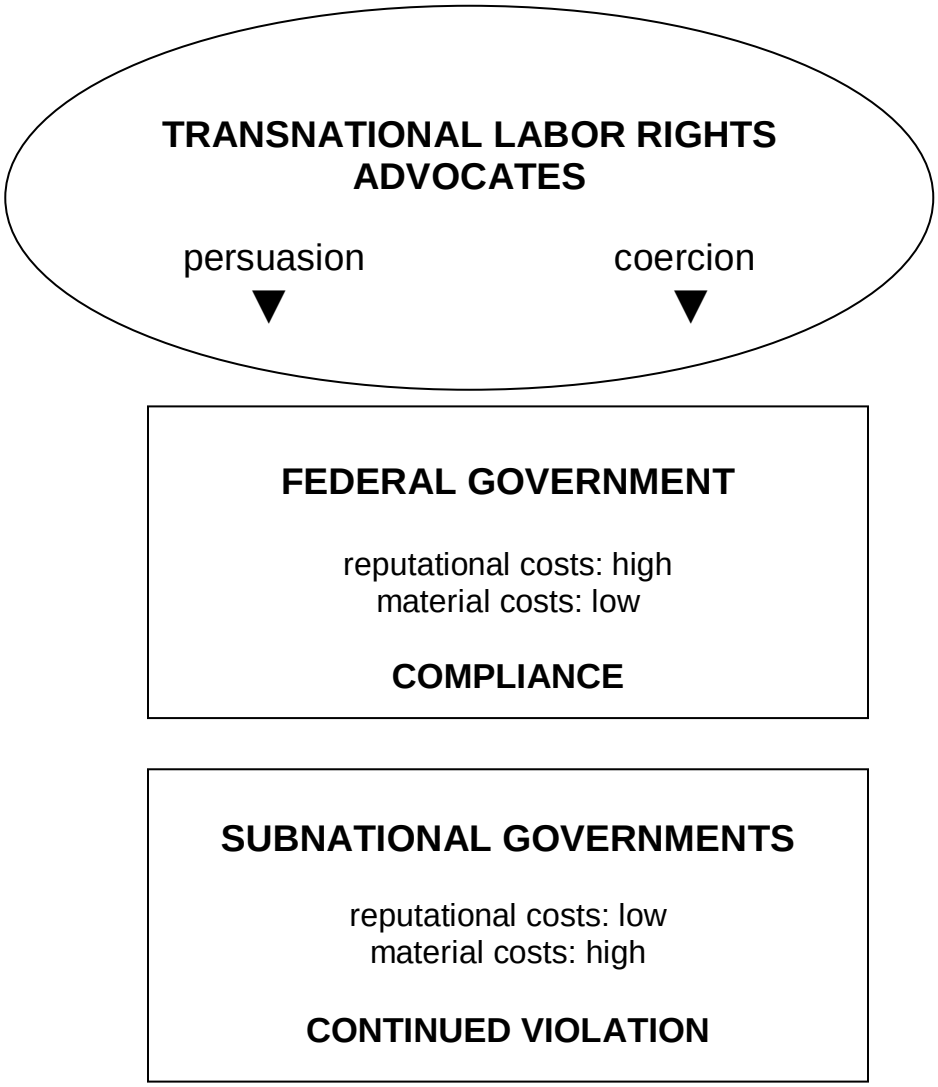
[56] Interview, US NAO, November 2006, and the Mexican NAO, July 2006.

sanctions will be applied for labor conditionality is the least detailed section of the agreement (NAALC 1993). At the same time, if the design of the agreement and the implicit understanding among states is to avoid trade sanctions, their inclusion in the agreement gives all states reason to be cautious. The anticipation of possible trade sanctions may at least moderate behavior and encourage compromise during negotiation over labor issues.

Where economic leverage may come into play more forcefully is at the subnational level, where foreign investors encourage local leaders to allow labor rights violations when doing so promotes business interests. NAFTA, and the economic reforms that groomed the Mexican economy for its passage, opened the Mexican economy further to foreign investment. In this, corporate control of labor unions has been an important factor in attracting foreign investment, in part by guaranteeing labor peace (Quintero Ramírez 2001; Sklair 1989). Labor relations in Mexico are dominated by the corporatist unions, and to the extent that governments can control labor relations through the CTM, they are able to establish a favorable climate for foreign investment. Thus at least at the state level, governments face incentives to continue to violate labor rights, and most notably, limit the right to organize a union of workers' choosing, to continue to attract and keep foreign investors.

Figure 1 presents a graphic representation of transnational pressures, and the competing preferences around norm compliance that can result from differing political interests at the national and subnational levels:

Figure 1: Transnational Strategies and State Response



By filing at the NAALC, transnational advocacy groups present Mexico with incentives for compliance using both persuasive and coercive strategies. On one hand, transnational advocates can put forth an array of strategies to persuade Mexico to improve labor rights enforcement, including publicizing abuses, or mounting labor rights campaigns. At the same time, advocates can mobilize coercive strategies by filing a NAALC case, which in addition to

reinforcing the persuasive strategies (in that the NAALC publicizes rights abuses), introduces coercive strategies based in economic leverage. Mexico should be susceptible to these coercive strategies because trade with the US is the engine of the Mexican economy, and Mexico's most important concern in its bilateral relations with the United States (Dominguez and Fernandez de Castro 2009; Alejandre 1995). We should assume that the Mexican government would rather address any critiques from international bodies on issues that are less important to them, like labor rights, rather than risk threats to economic integration.

However, transnational pressure is experienced differently at national and subnational levels within Mexico because the reputational costs and material costs that transnational advocates leverage on the Mexican government are borne differently by federal and state agents. In the NAALC, states have signed onto an agreement committing them to enforce their labor laws, but the cases center on examples where practices contradict those commitments. In effect, a NAALC filing increases the reputational costs for states. While at the federal level, an interest in maintaining the veneer of democracy, or alternatively, an interest in avoiding reputational costs, may motivate the central government to choose compliance, among subnational actors, the costs to reputation for non-compliance are minimal. Advocates may blame the central government for lack of enforcement, or the very firms where violations occur, but rarely are state governments implicated in labor rights abuses. Reputational costs are low for

state-level agents, leading these actors to prefer to continue to violate labor rights.

The material costs for violation, as applied by transnational advocates, reinforce the preference for continued violation at the subnational level. While the allegations of labor rights violations in almost all cases centered on actions that occurred at a workplace factory or firm, the NAALC agreement holds *states* responsible for enforcing labor rights protections, not the firms that violate them. In essence, case filings take federal actors to task for irregularities in the enforcement of labor laws once labor conflicts erupt, and state governments can easily avoid the blame for violations that happen in their jurisdiction. Further, while federal governments may take the threat of trade sanctions seriously because trade is an important component of economic growth, at the state level, leaders instead face incentives to maintain a favorable climate for foreign investment (Sklair 1989), and will continue to violate labor rights when they believe that doing so helps attract capital. Even when federal actors prefer compliance, state-level governments are more concerned with the immediate effects of losing foreign investors if they cannot maintain control over labor, which perversely creates high costs for compliance, and provides the incentives to continue to violate labor rights (Sklair 1989; Quintero Ramirez 1997).

State Response across the Mexican Cases

The NAALC process thus presents the Mexican government with the dilemma of how to weigh the costs and benefits of compliance against other

domestic political concerns and the interests of actors at subnational levels. As pressures from transnational advocates to comply with the labor rights clause mount, central governments must decide how to respond to both their international critics and political subordinates.

If the labor rights event that provokes transnational pressure is caused by actions at the federal level, the democratizing center considers the international criticism as a sign that some improvement is in order.[57] Because federal agents bear responsibility for actions that caused transnational advocates to become involved, and because federal actors ultimately have policy control over resolving these situations, they will use policy tools to respond to charges levied by transnational advocates. By answering international critics with reform of policy or practices, and ultimately, compliance, Mexico sends the signal that its intention is to improve labor rights enforcement, even if in practice, the reforms are limited.

These interests are complicated by the relationships between federal and state governments. Though Mexico is on the path of an evolving democratization, there is little to suggest that the emergence of political pluralism at the national level translates automatically to democracy at the state level (Gibson 2005). Rather, one common aspect of the last wave of democracy has been that national level transitions resulted not in further democratization among state governments, but in the consolidation of authoritarianism at the subnational level (Gibson 2005). Mexico is no exception to this process, as the slow

[57] Interview, Commission for Labor Cooperation, Washington, D.C., July 2, 2007; Interview, NAO of Mexico, Mexico City, Mexico, July 16, 2006.

weakening of political control by the center reduced the accountability of local actors to those elites in a number of states. In Mexico, authoritarian local actors tightened control in some states, but these states exist side-by-side with democratic state governments, resulting in a patchwork of democratic and authoritarian enclaves within a nominally democratic federal system (Cornelius and Craig 1991; Gibson 2005).

Even given democratization at the federal level, PRI ties to labor have not unraveled, and the CTM is still by far the most important labor central.[58] As such, democratization has had a weak effect on labor politics at the local level. Local authoritarians are more likely to use union support to bolster their political influence, and thus more likely to try and maintain control over labor relations in their states. This control is exercised first through the labor relations system, as the selection of the union representative at the labor board is almost exclusively drawn from the corporatist unions, given their preponderance in Mexican organized labor. Where PRI governors use their right of appointment to the labor board system to shore up political influence, the other two seats on the board may also be appointed from the ranks of PRI officials, thus creating an overlap in political alliances that reinforces interest in minimizing competition over union representation when doing so favors PRI-backed unions.

Where the central power is charged with representing Mexico in the international system, but the actions of state-level authoritarians complicate efforts to create the image of an emerging liberal democracy, local actors create

[58] Nearly 90% of the unionized workforce is represented by unions affiliated with the *Congreso de Trabajo* (CT) labor central, and nearly all of these are CTM unions (O'Boyle 2002).

a disjuncture between official discourse and domestic practices. In turn, the inconsistencies between governmental promises and actions are easy targets for transnational advocates, who can use them as examples it their attempts to promote consistent norm adoption (Risse, Ropp, and Sikkink 1999). When state-level actors complicate efforts to comply with labor rights conditionality, federal actors could take the opportunity to upbraid their political subordinates (Gibson 2005), and force compliance. This suggests that federal actors will intervene in local level struggles when those states' practices create reputation costs for the federal government, especially when they impugn the image of a democratic Mexico, creating reputational costs that the federal government wishes to avoid.

It is not that federal agents wish to promote union democracy, but the international costs to the democratic project are higher than the domestic costs of intervention. Further, intervention creates a welcome opportunity to discipline political subordinates, moreso if the state executive represents a rival political party. If the labor rights event occurring at the state-level does not create reputational costs for the federal government, as when it does not become internationalized by transnational advocacy groups, it is less likely that federal agents will intervene, especially when continuing to violate labor rights creates political stability for foreign investors.

Table 7 presents the full set of freedom of association cases against Mexico that passed through the entire NAALC process to test these propositions:

Table 7: Resolutions of Freedom of Association Cases Against Mexico

NAALC case	State	Subnational Authoritarians		jurisdiction	campaign	government action
		state executive	sector			
SUTSP	Mexico City	PRI (1995)	government	federal	no	reform (reversal)
ITAPSA	Mexico	PRI (1996)	maquila	federal	yes	reform (policy change)
TAESA	NATIONAL	(1996)	airlines	federal	no	reform (change in practice)
Maxi-Switch	Sonora	PRI (1996)	maquila	local	no	reform (intervention)
Han Young	Baja California	PAN (1997)	maquila	local	yes	reform (intervention)
Sony	Tamaulipas	PAN (1993)	maquila	local	no	none
Honeywell/ GE I, II	Chihuahua	PAN (1992)	maquila	none	no	none
Puebla	Puebla	PRI (2000)	maquila	local	yes	none
Hidalgo	Hidalgo	PRI/ PVEM (2005)	maquila	local	yes	none

First, each of the cases here lists freedom of association violations as the major claim. The second column identifies which state the labor rights violation took place. We would expect that freedom of association violations would emerge in PRI states, given the political interest of the PRI in maintaining hegemonic control over organized labor. However, reliance on foreign investment as the model of Mexican development suggests that even in states held by the PRD or PAN, executives still prefer to maintain control over organized labor to stabilize the investment climate --especially where foreign investment is concentrated, including the maquiladora sector-- and would support efforts to limit union competition through the labor board system. A second aspect of subnational authoritarianism therefore encompasses sectors where foreign investment is concentrated.

Jurisdiction refers to the jurisdiction of the labor board, which is divided among federal or state jurisdiction according to industrial sector. The campaign column identifies whether or not a brand-based campaign coincided with the NAALC filing, and therefore describes whether labor rights advocates attempted to mobilize persuasive strategies in addition to coercive ones. This variable is complicated by transnational support, as the persuasive strategies would almost universally be applied only for cases where transnational labor rights advocates are involved. The last column describes the response from the federal government in resolving these cases.

First, the table shows that the response by the Mexican government to resolve the cases includes either policy reform, or no response, and further, the

policy response includes resolutions from intervention, to policy reversal, to policy change.

The table illustrates first that freedom of association cases indeed emerge in those states where there are important maquila sectors, where foreign investment is highly concentrated. As expected, party rivalry between federal and state executives, or political incentives are less important for explaining variance in the ways Mexico responded to the cases than economic incentives. The first cases listed are those cases where jurisdiction for the labor rights event is federal, and responsibility for labor rights violations was caused by actions by federal level actors. The expectation for these cases is that because the responsibility for the violation lies with federal officials, federal agents will respond to transnational pressure using the policy tools available to them. In the SUTSP, ITAPSA and TAESA cases, the federal labor board was responsible for limiting freedom of association in each case, and whether or not persuasive strategies were also mobilized, the NAALC process led the Mexican government to respond with policy reform. In the SUTSP case, this meant the reversal of an earlier labor board ruling on union representation. After ITAPSA, the Mexican government mandated changes in the use of secret ballot elections and began the public union registry, and after TAESA, allowed separate craft union representation for airline stewards.

Across the cases where the local labor board was responsible for the violation of the right of association, the response by the federal government was mixed. The causal mechanism suggests that the Mexican government would

force policy change by intervening at the labor board in cases where state-level actors created reputational costs for the federal government for their actions. This mechanism explains the intervention at Han Young, where the NAALC petition was accompanied by a widespread consumer campaign against the Hyundai Corporation in the United States, which publicized the Han Young case to an international audience (Williams 2003), but does not explain the Maxi-Switch resolution, where an intervention was least likely, yet occurred. I explain these two cases in greater detail in the case study section.

Among the remaining local cases, Sony and Honeywell/ GE I and II, we would expect that given local preferences to continue to violate freedom of association, as long as state-level actors did not increase reputational costs of the government, federal agents would not get involved in these cases. The two Honeywell/ GE cases are slightly different in that as the first NAALC cases, submitters prepared petitions that implicated firms' actions, not the Government of Mexico as the NAALC requires, and so the NAO could not identify whether the local labor board was at fault. Even so, where there was no campaign to raise the costs for the Mexican government for allowing violations, the violations continued and there was no attempt to rectify them in all three cases, as expected.

Most of the NAALC cases, and almost all analyzed here, take place in the years before 2000, when the PRI holds the presidency. Under hegemonic party rule, we would expect the federal government to support CTM prerogatives and act in ways to limit challenges to CTM representation. The last two cases, the

Puebla and Hidalgo cases, are two cases where the dynamics may be different because they occurred in the years after party rotation, when the PAN, rather than the PRI, held the presidency. The theory suggests that motivations to limit freedom of association through the labor board would be especially strong in these states, as party rivalry between federal and state executives would reinforce the incentives of state actors to limit unionization for economic reasons.

In these two states, even with consumer-based campaigns leading the NAALC submissions and raising the reputational costs to the federal government, neither state nor federal agents stepped in to resolve the conflict during or after the NAALC process. The PAN might have tried to find ways to isolate the CTM as the main base of popular support for the PRI, if it were not a party backed by business interests. The Fox Administration's proposal for labor reform, the Abascal Plan, suggested little to change the tripartite labor board structure or the use of the secret ballot, and instead sought to introduce flexibilization into labor contracts in ways that were so blatantly hostile to unions that the proposal provoked its own NAALC petition.[59]

In sum, the table shows that the causal mechanism described here predicts policy response by the Mexican government across the range of cases. As expected, federal agents will use policy tools to promote labor rights compliance when violations are the result of federal actions, and will force compliance at the state level when those actors increase reputational costs for

[59] The case was filed by the Washington Office on Latin America and 21 additional labor rights and human rights NGOs alleging that the Abascal proposal violated the principles of the NAALC. The US NAO rejected the petition for review.

the federal government. When the federal government does not face these costs, which here simply means when transnational advocates do not also apply persuasive strategies, like campaigns, the federal government does not attempt to force compliance, and local actors are free to continue to violate labor rights. Finally, the analysis here also suggests that these dynamics can explain case resolutions across the range of freedom of association cases against Mexico under conditions of PRI hegemony, but the Puebla and Hidalgo outliers tell us that under conditions of party competition, state response may be different, and we could test these propositions with additional cases when and if they become available.

Federal Response: Changes in Policy and Practice

What kinds of policy responses did Mexico choose to pursue in the federal cases? The ITAPSA and TAESA cases were two submissions that were formally resolved through Ministerial Consultations, but the NAALC process began a dialogue around labor rights in Mexico than ultimately led to policy reforms and changes in labor practices that encouraged freedom of association.

ITAPSA

At ITAPSA, workers were concerned about the unsafe and unhealthy working conditions they experienced inside the factory. Workers described routine exposure to solvents, asbestos, and unsafe levels of noise in the plant, and were denied proper safety equipment to protect themselves. The machinery

in the factory was not properly maintained, causing a number of grisly industrial accidents (US Department of Labor 1997c). Even though the Mexican Secretariat for Labor and Social Security (STPS) inspected the plant twice a year and imposed fines and restrictions, the firm refused to make the improvements that would create safer working conditions. The CTM plant union was wholly unresponsive to worker's concerns, so they began to negotiate representation with the independent industrial union STIMAHCS in 1997.

In the weeks leading to the election, STIMAHCS supporters were fired for supporting the independent union drive, and in the days before the election, some were threatened with bodily harm if they voted against the CTM (US Department of Labor 1997c). At the election itself, STIMAHCS supporters were threatened with violence and a number of voters were beaten, all of which was witnessed by the local labor board, which not only did not intervene, but also certified the election in favor of the CTM (Hathaway 2002a). In the months that followed, workers won an injunction allowing them to return to work, but the labor board refused to reinstate them, which the workers attributed to political bias.

The ITAPSA workers filed a petition at the US NAO citing violations of freedom of association in the conduct of the labor board during the organization drive, election and aftermath, and added the health and safety concerns that sparked the union drive. The ITAPSA case has the distinction of featuring the greatest number of sponsors, as a tri-national Alliance of workers at Echlin plants in the US, Mexico and Canada joined the petition, along with a number of human rights and labor rights groups from all three states. A second petition was filed

with the Canadian NAO on April 6, 1998, and accepted for review on June 4, 1998, as the US investigation went forward.

While in the course of the review the US NAO recognized that the allegations of labor board impropriety were both accurate and outside the letter of Mexican labor law (US Department of Labor 1998a), the highest level of resolution for freedom of association cases under the NAALC is Ministerial Consultations. Both the US and Canadian NAOs suggested Ministerial Consultations to resolve the issues, and the Mexican Minister of Labor, Carlos Abascal, met with Ministers from both states repeatedly through 2003 (US Department of Labor n.d. [b]). At the plant, health and safety conditions improved after the plant was purchased by another company, the Dana Corporation, but the union organizing drive ultimately collapsed (Graubart 2008).

While the resolution of the case at the plant level fell far short of what the submitters and workers had hoped for, in the long term, the ITAPSA case helped to promote important changes in labor policy within Mexico. As part of the Ministerial Consultations, Ministers of Labor from Mexico and the United States drafted a joint Ministerial Declaration. In it, the Government of Mexico agreed to an action plan where the promotion of the secret ballot in *recuento* union elections, and a publicly available collective contract registry were the first two points of accord. The STPS developed two websites for the contract registry. One allows the public access to union registration lists and documents.[60] The other is a searchable database of collective contracts, so that anyone can

[60] http://registrodeasociaciones.stps.gob.mx/regaso/consultaregasociaciones.asp. Accessed October 16, 2007.

investigate who holds bargaining rights within individual factories, and in some cases, access copies of the registration paperwork and organizational statutes.[61]

The validation of this perennial issue by the Mexican Minister of Labor in an NAO Joint Declaration changed the debate on labor reform in Mexico in ways that favored the independent labor movement (Graubart 2008). Whereas discussion of labor reform had always previously been an internal matter conducted among the STPS policy elites, the CTM, and the Mexican business peak association Coparmex, now the UNT was invited to participate in the policy discussions (Zapata 2006; Graubart 2008).[62] Citing the Joint Declaration and Mexico's stated intention to promote the secret ballot, labor lawyers were able to extract a commitment from the government to include freedom of association in any policy agenda around labor reform (Graubart 2008). The secret ballot has not been addressed in formal labor reform proposals, as the Mexican government continues to argue that nothing in the federal labor law currently prevents the use of secret ballots if all actors in elections agree. Even so, the Federal Labor Board in Mexico City started to employ secret ballots consistently by 2002 (Hathaway 2002a), and there is some evidence to suggest that local labor boards are allowing the use of the secret ballot more readily (Maquila Solidarity Network 2002).

[61] http://contratoscolectivos.stps.gob.mx/RegAso/legal_contratos.asp. Accessed April 23, 2009.

[62] Interview, the Mexican NAO, Mexico City, Mexico, July 16, 2006.

TAESA

In 1999, flight attendants at TAESA Airlines filed an NAO petition in the US alleging freedom of association violations over the ongoing struggle to establish a separate craft union for flight attendants. According to the petitioners, mismanagement caused working conditions to deteriorate after the transfer of ownership of the airline in 1994, leading not just to workplace conflicts, but grave disregard for passenger safety (US Department of Labor 1999b). In response, some flight attendants sought union representation with ASSA, the flight attendants union affiliated with the UNT. The federal labor board, whose labor representative was selected from the CTM, ruled repeatedly against ASSA's request for an election on separate craft union representation for flight attendants at TAESA (US Department of Labor 1999b; Alcalde 2004). After two years, the labor board relented, but scheduled an election that would include all TAESA employees, not just the flight attendants. At the March 22 election, flight attendants voted overwhelmingly for ASSA, but the majority of the 1500 TAESA workers, already represented by the CTM, voted against them. As in other NAALC cases, the vote was a public voice vote, and ASSA supporters were subsequently harassed, threatened, and fired over their union vote after the election (US Department of Labor 1999b).

The TAESA flight attendants eventually took their claims to NAALC arbitration, filing a petition jointly with the AFL-CIO's Association of Flight Attendants on November 10, 1999. The public hearings in Washington revealed not just a litany of attempts to block the independent union from registering and

stories of worker intimidation on the day of the vote, but shocking accounts of grave disregard for passenger safety and alarmingly inadequate airplane maintenance (US Department of Labor 2000). The NAALC process ended in Ministerial Consultations, but there were some important secondary effects on Mexican practices in the craft representation cases that followed TAESA, even though the immediate labor situation at TAESA was not resolved favorably. For example, when flight attendants at Aerocaribe went on strike in 2000 over the same issues flight attendants faced at TAESA, the Mexican government allowed separate voting on craft union representation for the flight attendants "to avoid a new round of international scrutiny" (Compa 2001). Workers at Aerocaribe stated that the TAESA petition gave them added leverage with the company to take their claims seriously when they too went on strike over craft representation (Graubart 2008).

On the day before ASSA submitted the NAO complaint, a TAESA plane crashed after takeoff en route to Mexico City, killing 18 people (Martínez 2001). The resulting federal inquiry in Mexico corroborated the fight attendants' allegations of extreme disregard for passenger safety and careless plane maintenance that was listed in the petition (US Department of Labor 2000). Though vindicated, the flight attendants were further hurt when TAESA's license to operate was suspended until the company met the safety requirements ordered by the government after the crash. TAESA did not attempt to address these concerns, but instead suspended operations, fired half the workforce, and fell into bankruptcy (Martínez 2001). In 2001, as the NAALC case ended, the

flight attendants were still fighting to collect the full severance pay legally mandated under the federal labor law, rather than the three months pay offered by the CTM.

At both ITAPSA and TAESA, actions taken by the federal labor board to deny freedom of association motivated the decision to file the NAALC submissions. As the cases went through the process, the NAALC outcomes informed how the Mexican government dealt with future cases. By addressing the issues through a change in policy in union registry procedures, and changes in practice in the handling of subsequent disputes, the Mexican government could demonstrate to the international community that it was aware of the freedom of association issues, and was addressing them where they were directly responsible for their resolution, through policy reform.

Local Interventions

In both of these cases, the central government intervened in the labor conflict to resolve them in ways that favored the independent unions. These cases show that plant-level resolutions are possible in the NAALC, but that these kinds of short-term gains may be limited, given international capital mobility and the ability of investors to circumvent both state regulation and transnational pressure.

Han Young

Workers at Tijuana's Han Young plant began a campaign to affiliate with the independent union STIMAHCS in 1997. Although workers at the plant were represented by the CROC, a corporatist protectionist union, workers believed this union did not accurately represent them in a dispute over the payment of profit sharing during May of 1998 (US Department of Labor 1997a). Eventually, they contacted the STIMAHCS union about an affiliation under the union's national registry. On August 6, STIMAHCS filed paperwork with the local labor board requesting an election to assign the collective contract. After two aborted hearings, the election date was set for October 6.

Even with massive election irregularities designed to favor the official union, the independent union won enough votes to win title to the collective contract, but the local labor board refused to certify the election results (Williams 2003). The attorney general's office then intervened, issuing injunctions against the labor board to prevent them from certifying the election in favor of the CTM, a move that is highly irregular in Mexico (Williams 2003). This prompted the union, the Support Committee for Maquila Workers, Mexico's National Association of Democratic Lawyers, and the International Labor Rights Fund to file a petition with the US NAO on October 28, 1997 alleging violations of the freedom of association in the conduct of the labor board (US Department of Labor 1997a). The case was accepted for review by the US NAO on November 17, 1997.

Under pressure from the federal government to find a solution, the governor of Baja California met with the Secretary General of the CROC to work

out a compromise, which included his accepting a parcel of land for personal use in exchange for removing the CROC from Han Young (Williams 2003:534-535). The federal government and state government of Baja California then mediated a solution with representatives from the October 6 union, the Tijuana labor board, and Han Young management. In exchange for dropping the NAO complaint and all other legal proceedings --most of which revealed how the local labor board colluded with the factory owner to prevent the independent union from registering-- a second union election was to be held. Han Young was to reinstate all workers dismissed for union activities (US Department of Labor 1998b). With the CROC out of the picture, and with the labor board agreeing to certify the election results, STIMAHCS was declared the winner of the second election, and the labor board registered the independent union in January (Faulkner 2004). Han Young thus marked the first successful bid by an independent union to gain collective bargaining rights in the border region.

However, it became clear very quickly that the plant did not intend to negotiate a contract with the independent union, possibly under pressure from the *maquiladora* association to limit independent unionization in the sector, or from the local CTM (Williams 2003). Williams cites that rumors circulated in Tijuana charging that state officials and *maquila* industry representatives met with Han Young's owner, threatening to push him out of Tijuana if he negotiated with the union (Williams 2003), triggering a "war of attrition" between the factory owners and local government. The independent union went on a two-year strike

over contract negotiations, but to avoid more strife, Han Young closed and moved to another part of Tijuana.

Submitting a case set off a series of events that led the federal government to intervene at the local level. In the context of subnational authoritarianism, a democratizing federal government faces incentives to contain local conflicts and keep them private (Gibson 2005). The Han Young case featured an extensive mobilization to publicize the violations in the US, and the participation of transnational advocates in the case made that privacy impossible. Once the NAALC process presented the stories of systematic harassment of independent unionists in the international arena, the federal government faced reputation costs brought on by actions taken at the state level. Seeing an opportunity to challenge peripheral authoritarians, and further, challenge the PAN Governor, the federal government exercised its political prerogatives to intervene at the local labor board.

Activists involved in the Han Young case credited cross-border pressure given the impending NAALC hearings with the success in persuading the local board to give in and recognize the union (Faulkner 2004). Although Han Young workers seem to have lost this case in a "long, slow defeat" as the factory eventually closed and relocated (Williams 2003), the case was considered a success by some observers because the union and its allies were able to push the local labor board to grant its registration even under in the context of outright repression and illegal firings (Hathaway 2002a; Campaign for Labor Rights 2004). In the review of the case, the US NAO made a scathing critique of the

Mexican labor board system, noting that the Mexican government in Baja California has used these tribunals to favor the PRI-affiliated unions (US Department of Labor 1998b). Many of the subsequent NAALC submissions against Mexico have used this critique to remind the NAO of its position on the bias in the labor board system.

Maxi-Switch

The Maxi-Switch case was brought as a joint effort by the Communication Workers of America and their Mexican counterparts, the *Sindicato de Telefonistas de la República Mexicana* (STRM) to challenge the local labor board's efforts to deny legal recognition to an independent union at a *maquila* in Cananea, Sonora, Mexico. In 1995, workers at the plant began to consider forming a union in affiliation with the Federation of Unions of Service Companies (FESEBS), an independent union that represents service workers in Mexico. On November 22, 1995, the nascent union formed and adopted bylaws, which they submitted to the state labor board on November 24 (US Department of Labor 1996). On January 23, 1996, they learned that the petition for legal registration of the union had been denied on the grounds that a collective contract was already registered at Maxi-Switch. Workers later learned that once the union organizing drive became public at the plant, management had signed a classic protection contract with the CTM (US Department of Labor 1996). When FESEBS lawyers protested, the labor board changed its ruling to deny the union

registration instead on technical grounds in the bureaucratic procedures of the filing paperwork (US Department of Labor 1996).

Supporters of the independent union were quick to call the denial on technical grounds a pretext for denying union recognition for political reasons. At this local board in particular, the government and labor representatives were both were drawn from the membership of the official union confederation, the CTM, and appointed by the PRI Governor (US Department of Labor 1996). With nowhere left to turn, the Maxi-Switch workers approached the Communication Workers of America about filing a petition with the US NAO. The petition alleged complicity by the local labor board in denying freedom of association, improper conduct surrounding the union registration, and the refusal to reinstate workers fired for union activity (US Department of Labor 1996). The case was accepted for review by the US NAO on December 10, 1996, and a public hearing on the matter was set for April.

After the NAO accepted the case, the labor board ruling was reversed. The state labor board changed their ruling under federal pressure to award the independent union legal registration, in order to avoid holding the public hearing (Borderlines 1997; Pantin 2002). On April 16, two days before the hearing was to take place in Washington, the US NAO received the request to withdraw the petition, as the labor dispute had “ended favorably” with the recognition of the independent union (Graubart 2008; Borderlines 1997; US Department of Labor n.d. [b]). Organizers of this campaign credited cross-border cooperation and the

pressure the NAALC hearing leveraged on the Mexican government as the deciding element in the positive outcome (Borderlines 1997; ICFTU 1997).

This success was not to last, however, as the company owners opened a new plant in Hermosillo during the labor dispute, transferred the work to the new, non-union workforce, and then sold the original plant a few months later, requiring that the registration process start over again (Finbow 2006; Borderlines 1997). Eventually, the plant closed in 1999, and during the interim three years, the newly recognized union was never able to negotiate the collective contract with the company (Pantin 2002; Daamgaard 1999).

The Maxi-Switch case is an interesting outlier because the federal government chose to intervene even when we would predict that there would be no federal response. The local labor board was responsible for the denial of freedom of association in this case, and no international campaign accompanied the case that would have publicized the violations, or otherwise raised the reputational costs to the federal government to respond. Though party rivalry may have had some effect on the decision to intervene, as it may have at Han Young, Sonora at the time was ruled by the PRI, suggesting that the local government and state executive would nominally share an interest in promoting the CTM, and thus would use the board to limiting union organizing. Though additional research on this case could establish further why the federal government intervened when the causal analysis predicts it would not, one possibility may be that this case came after a string of cases against Mexico, including SUTSP, ITAPSA and TAESA, each of which included public hearings

that were very critical of the Mexican government. The timing of the withdrawal of the petition suggests that the government wished to avoid a public hearing and the condemnation of Mexican practices that had accompanied them in previous cases (Borderlines 1997; Pantin 2002).

Finally, these two cases show that even though the NAALC is not designed to award plant-level resolutions of labor rights violations, these were possible, even if these gains were short-lived when the factories closed and reopened in other areas. Closing operations to evade union activity repeats a pattern from other labor campaigns that focus on a single plant (Anner 2003a), and underscores that capital mobility and the power of multinational capital to avoid regulation can complicate attempts to use international pressure to protect worker's rights. [63] While plant-level resolutions seem to be the kinds of outcomes that labor rights advocates hoped the NAALC would produce at the outset (Finbow 2006; Compa 2001; Hovis 1994), these are ironically the outcomes with the least impact on labor rights enforcement. What the case studies analyzed here show is that Ministerial Consultations can sometimes advance important political processes within Mexico that create more effective changes over the long term, even when short-term, immediate resolutions are unlikely given the design of the institutions of the agreement.

[63] For a review of firm specific versus industry-wide campaigns and their outcomes, see Anner (2003).

The Gender Case

After completing a major study on pregnancy testing as a pre-hire screening procedure in Mexico's *maquiladora* sector, Human Rights Watch, the International Labor Rights Fund and Mexico's Association of Democratic Lawyers filed an NAO petition on the issue in May of 1997 (Hertel 2003). The US NAO took the case under review the next year. The Gender case serves as a test case here for three reasons. First, while the mechanism presented in the other cases centers on violations of freedom of association, the Gender case charged violations of discrimination based on sex, and so serves as to test the causal explanation in additional issue areas that are not as politicized as freedom of association in Mexico. Second, discrimination is one of the labor rights violations that is open to trade sanctions, and therefore, the threat of economic sanctions is more credible in this case than for freedom of association cases, where trade sanctions cannot be applied. Third, the federal government in Mexico is fully responsible for labor law, and so the process of resolving the issues raised in the case illustrates federal level response to both persuasive and coercive transnational strategies.

The NAALC petition underscored the results of the Human Rights Watch report. Mexican labor law allows for twelve weeks of paid maternity leave, but the researchers found that in the *maquiladora* plants they visited, managers attempted to avoid paying these benefits by weeding out workers with pre-hire pregnancy tests (US Department of Labor 1997b). They also found that once workers were found to be pregnant, they were routinely subjected to work that

was more difficult, in order to force them to resign. Discrimination based on gender is illegal in Mexico, and though theoretically any worker could approach the labor board to ask for an investigation on pregnancy as the reason for being denied employment, in practice, the labor boards ruled that since the pregnant women were never hired, there was no work relationship, and therefore no basis for the case. It was this last point of contention that submitters argued showed government complicity in allowing individual firms to discriminate against pregnant women in hiring practices (US Department of Labor 1997b).

During the investigation, the Mexican NAO protested the review of the case in that it challenged Mexican law, not its application. In fact, Mexican labor law did not explicitly prevent pregnancy screening (US Department of Labor 1998c). Filers then used the set of ILO conventions, UN declarations and other instruments of international law to show that Mexico had made commitments on gender discrimination in international forums that were contradicted by its actions at home, and to show that simply outlawing pregnancy testing would resolve the issues (US Department of Labor 1997b).

Once the US and Mexico were engaged in bilateral talks over these issues, the Mexican government made public commitments to eliminate gender discrimination in line with the international agreements Mexico had signed. For example, Mexico created special issues offices in 1998 to investigate child labor, women in the workforce, and the needs of disabled workers (US Department of State 2000), and a separate office for equality and gender issues was created in 1999. Though the US NAO eventually suggested Ministerial Consultations in

October of 1998, even after the case was over at the NAALC, the federal government continued to make public commitments to end pregnancy testing. Women's groups in Mexico City had pushed the mayor to criminalize pregnancy testing in the capital, and pushed the teacher's union to negotiate with the Ministry of Education and end to the practice for teachers (Hertel 2006a). By 2002, the government of Mexico had signed an agreement with the National Council of Maquiladora Industries committing members to end the practice, and a number of US companies publicly committed to ending pregnancy testing as well (Compa 2001). By 2003, the STPS signed 13 agreements with state governments committing them to the same (US Department of Labor 2007). Finally, in 2003, the Federal Prevention and Elimination of Discrimination Act came into effect, which includes protections against mandatory pregnancy testing throughout Mexico, thus formally prohibiting the practice for the first time (US Department of Labor 2007).

Over the course of this case, transnational advocates showed Mexico that its labor code not only contradicted its prior international commitments to prevent gender discrimination, but also sent a clear message that allowing pregnancy testing was morally unacceptable regardless of what national laws allowed. The way that transnational advocates emphasized the gap between Mexico's international commitments and domestic practices in the treatment of women made Mexico especially vulnerable to the moral arguments publicized by transnational advocates through both the initial report and the NAALC case. In filing at the NAALC, advocates raised the costs of continued violation by adding

the possibility of trade sanctions. Further, the slow evolution of the end of the practice by firms, the *maquila* sector, and subnational governments created the demand for a federal response. Facing high costs to its reputation and credible economic threats, Mexico responded by giving in to transnational pressure --by now supplemented by domestic calls for reform-- and outlawed the practice.

Conclusions

This chapter reviewed the outcomes of cases submitted to the NAALC to illustrate that even though the agreement itself is weak in sanctioning labor rights violations, at times, case resolutions went beyond the scope of the NAALC agreement to generate resolutions that were favorable to labor. Transnational pressures on states to conform to international labor rights norms can take the form of either moral persuasion or coercion. While transnational advocacy networks pressured Mexico with normative arguments as to why labor rights protections were necessary, and why Mexico should allow independent union organizing, they also introduced coercive elements by filing petitions on these cases at the NAALC. While trade sanctions are the least likely outcome for labor violations in the NAALC, in some cases, like Han Young and the Gender case, sanctions were still possible (Compa 2001). The specter of sanctions may have increased the costs of continued violation in Mexico to the extent that they believed the threat. At the state level, however, the need to maintain a stable investment environment created a preference for continued violation. For example, the economic interest in maintaining labor control through monopoly

representation by official unions led the CTM to get involved at Han Young once the CROC left, to prevent the STIMAHCS union from holding the collective contract. In effect, the corporatist unions would rather that enterprises close than allow independent unions into Tijuana.

Whether or not these strategies led to policy change further depended on how these pressures shifted the costs of compliance within states and on the decisions that domestic policymakers take. In Mexico, the incentives to comply were further complicated by evolving democratization. In some cases, the federal government stepped in to force resolutions when doing so would help them rein in government actors in the authoritarian periphery, which had a secondary effect in promoting union democracy at the local level. In all other cases, the NAALC process pointed out the major issues and areas where Mexico could improve its labor rights enforcement, and Mexico addressed these gaps with efforts to improve labor rights protections.

Participation in the NAALC process in turn shifted the political dynamics within Mexico so that independent unions and their supporters gained access to policymakers, and were able to better lobby for reform. Filing a case conferred legitimacy on local Mexican groups, because when they were backed by transnational advocates, they became more important actors within Mexico (Kay 2005; Graubart 2008). As such, the Mexican government could no longer ignore the efforts by domestic groups to gain their attention and discuss these issues (Graubart 2008; Hertel 2006a). Because local advocates were now legitimated by the NAO as having important complaints, they become important actors in

policy process. They then gained an opening into that dialogue from within Mexico, effectively pushing the government to address labor rights issues (Graubart 2008). As these political dynamics unfolded domestically and over time, local labor advocates were able to contribute to policy dialogue and lobby for important reforms, even after the NAALC review process had ended.

My analysis of selected NAALC case resolutions shows that even in the face of criticism that the NAALC cannot adequately address domestic labor struggles, the filing process has its own leverage that can promote even firm-level redress of workers' complaints, outside of the boundaries of the tripartite agreement. Also, long-term effects were possible in the policy changes that took effect once the NAALC opened up dialogue on specific labor rights violations inside Mexico. Even groups that have participated in the NAALC process have stated that though they may believe the NAALC as an enforcement body is "toothless," the process itself is helpful for garnering international attention to the labor rights violations or union drives as they unfold.[64] The labor clause provides at minimum another avenue to expose the labor rights abuses to outside audiences, even when there is little chance that the NAALC will solve the incident on the factory floor, and that channel for mobilization points to the usefulness of the process to local workers .[65]

It is difficult to assign the cause and effect of NAFTA to events in Mexico, especially when the evolution of democracy also informs state decision-making. It is difficult as well as to attribute these changes to the NAFTA cases alone

[64] Interview, AFL-CIO Solidarity Center, Mexico City, Mexico, 2006.

[65] Interview, Maquila Solidarity Network, Toronto, Canada, 2005.

when concurrent citizen advocacy meant some of the NAALC cases were met with high levels of political support in the US, Canada and Mexico. While this chapter traces the effects of the NAALC process on changes in Mexican policy, it is possible that the pressure on Mexico was felt from transnational civil society in forums complementary, but separate, from the NAALC channels. What does the trade-labor linkage add to pressure for political change that sets labor conditionality apart from other possible transnational arenas? Was it the trade clause alone that precipitated these changes in Mexico? I turn to these questions in the next chapter.

Chapter Four: The Impact and Limitations of Transnational Labor Rights Advocacy: Lessons from Puebla, Mexico

Previous chapters employed both quantitative and qualitative methods to show that trade-based labor rights clauses are most effective in promoting labor rights when paired with transnational labor rights advocacy. Yet, the current discussion of trade-based mechanisms has yet to consider that pursuing policy changes through these mechanisms is just one of a number of venues available to workers to press their claims. Nor has the work addressed that attempts to promote changes in state behavior though trade-based mechanisms can often work in tandem with other concurrent methods, such as those associated with international labor rights campaigns. Often, workers and advocates that engage the trade-based mechanisms are pursuing different options all at once, including domestic remedies, transnational campaigns, and international institutions. Since advocates can pursue labor rights enforcement in both domestic and international arenas at the same time, it is difficult to assess whether case outcomes are largely due to pressure provided by the NAALC process, or through other possible strategies.

This chapter looks at these issues more explicitly. It provides a qualitative analysis of three attempts to organize independent unions in *maquiladora* plants in the apparel export sector in Puebla, Mexico. Working conditions within the factories worsened when the contraction of export markets in the US after 2001 led to job losses in the *maquila* sector, and in turn, led to the intensification of production and increased competition for orders (Yanz and Jeffcott 2003).

Workers in each plant organized to address their concerns, only to find that they were already bound through a protection contract to a corporatist union willing to sacrifice worker's interests for managerial prerogatives. Efforts to replace these unions clashed with the historical political alliances between the Mexican State, the PRI, and the unions of the corporatist system. In each of the factories, a transnational labor rights network stepped forward to support local workers in the unionization effort. While the struggle at Kukdong resulted in the registration and recognition of the independent union in the plant, when this network strategy failed to provoke changes at Tarrant Ajalpan and Matamoros Garment, a joint petition regarding them was ultimately submitted to NAALC arbitration. By comparing how the strategies and outcomes unfolded when transnational advocacy groups pursued brand campaigns as when those when those same advocacy groups pursued the NAALC, this chapter attempts to evaluate the contribution that trade-based mechanisms may add to the realization of labor struggles compared to other available strategies.

The comparison of campaigns and trade-based mechanisms as possible strategies for protecting labor rights calls for a case selection that can investigate both strategies while also minimizing the effects of any contextual factors that may also influence outcomes. Further examination of the possible cases to be drawn from the NAALC identified additional factories in Puebla that were not brought to the NAALC, allowing for a research design that could investigate the effects of these different strategies across factories that were otherwise similar. Locating the study at the local level in one state controls for a number of

historical, cultural, socio-economic and political variables as well (Snyder 2001). In these three factories, the corporatist unions of the *Confederación de Trabajadores Mexicanos* (CTM), the *Confederación Revolucionario de Obreros y Campesinos* (CROC) and the regional *Federación Revolucionario de Obreros y Campesinos* (FROC-CROC) hold the collective contracts, and each factory is under the jurisdiction of the same local labor board, the Puebla Council for Labor Conciliation and Arbitration (JLCA). Further, politics in Puebla are dominated by the PRI at the state level where these labor struggles take place. These variables, so important to case outcomes in Chapter 3, are assumed to hold little explanatory power for the divergent outcomes in Puebla because they are similar, if not the same, for each case.

The chapter begins by introducing the political economy of *maquila* production in Mexico, discussing how the North American Free Trade Agreement fostered changes in the sector, including geographical dispersion into greenfield investment, the introduction of new innovations in production schemes, and massive increases in foreign investment. It includes a discussion of union registration in Mexico to show why registering unions outside of the corporatist system in Mexico in general, but in Puebla in particular, constitutes a political threat to both foreign investment and local political prerogatives. The chapter then follows the course of the three cases and discusses how a transnational labor rights network was able to mount brand-based campaigns that resulted in union recognition in one of the cases. I then turn to the process of filing the NAALC petition on Puebla to show that engaging the labor mechanisms of the

trade accord did not substantially alter the outcome at any of the factories, but complemented the campaign strategies by corroborating network claims, assigning blame for violations, and compelling Mexican officials to answer for the violations in a public forum. I end with an assessment of these strategies based on how they evolved in Puebla that emphasizes that while transnational labor rights networks can support workers in their attempts to secure labor rights protections, the choice of the materialist strategies to do so is an important factor that conditions success.

The research draws on fieldwork completed in Canada, Mexico and the US from 2005 to 2007, and uses a number of original sources. These include in-depth, open-ended interviews with key participants in these cases, including US and Mexican NAO officials and the staff of NAFTA's tri-national Committee for Labor Cooperation (CLC), US and Mexican labor organizers, staff at the AFL-CIO Center for International Labor Solidarity in Mexico City, US, Mexican and Canadian labor rights and human rights groups, rank and file workers and their representatives at each of the Puebla factories, and workers from other *maquilas* of the Tehuacán region not analyzed here. These interviews are supplemented with worker testimony that appears in the NAO case files on Puebla, documents produced by the Centro de Apoyo al Trabajador (CAT) in Puebla, and local newspaper articles. The interviews and testimonies are paired with original documents relating to each NAALC case, including the original submissions and public reviews, public hearing transcriptions, and NAO correspondence. I include

labor rights campaign materials, including e-mail alerts, web-based updates, and personal correspondence with network participants as sources as well.

The Maquila Boom…

Like other developing countries, since the 1980s Mexico has pursued economic development through export led industrialization, foreign investment, and technology transfer via foreign partnerships (Sklair 1989). The passage of NAFTA in 1994 changed the incentives for *maquila* production considerably, especially in textiles. While Mexico already successfully competed for textile investment against the Asian producers, and especially China, because of its proximity to the US, the new rules for duty-free importation of apparel provided the last component to win the competition for the North American market.[66] What resulted was a massive influx of new investment in apparel production in Mexico. In 1994, the total value of FDI in the textile sector in Mexico was valued at 254 million dollars, rising to 343 million by the last year of the post-NAFTA *maquila* textile boom in 2000 (Juárez Núñez 2004). Over the same period, the number of textile *maquila* workers registered at the Mexican Social Security Institute increased 144%, rising from 542,073 in 1993 to 1,291,231 employees by 2000 (ITAM 2004).

[66] Annex 300B of the NAFTA Agreement essentially nullified the 1974 Multifiber Arrangement for textile and apparel trade between Canada, the United States and Mexico, maintaining the import quotas for states outside the North American market, but removing quotas within the market (Juárez Núñez 2004). Section 2 replaced the rules of origin requirements of the 806/807 tariff schedule, removing tariffs for garments assembled in Mexico from inputs manufactured in any of the three countries (Juárez Núñez 2004).

At the same time, the decimation of Mexican agriculture in general after NAFTA, and its effects in the state of Puebla and the Tehuacán region in particular, led to an employment crisis that the state government met by promoting the area for *maquila* investment (Barrios Hernández and Santiago Hernández 2004; Juárez Núñez 2002b; Hermanson 2004).[67] As other viable options disappeared, the Tehuacán Valley could offer *maquila* investors access to a labor force desperate for the work that would keep them from migrating to the US (Juárez Núñez 2002b), and at a lower cost than in other Mexican states.[68]

The government of Puebla was willing to facilitate greenfield investment in a number of ways, such as by donating the fallow farmland that the government had purchased from farmers at low cost, generous tax relief, and an expedited legal registration of businesses (Barrios Hernández and Santiago Hernández 2004).[69] State and local authorities were willing to relax social and environmental protections to attract investment as well. For example, though the

[67] Interview, AFL-CIO Solidarity Center, Mexico City, Mexico, July 10, 2006. In Puebla, as in other parts of Mexico, farmers could not compete with lower-priced, subsidized US sugar and corn crops coming in under NAFTA, and the local farming communities have been decimated (Dellios 2003). Without access to credit to buy inputs, farmers have opted instead for subsistence production or abandoned their lands altogether, migrating into the city of Tehuacán for work, or as in the Mixteco region, survive on the remittances from the Poblano migrants of New York (Barrios Hernández and Santiago Hernández 2004).

[68] Interview, SUITTAR executive committee member, Altepexi, Puebla, Mexico, August 21, 2006. Puebla is classified by the Mexican tax authority as Zone C, where minimum wages are set at an average 5 pesos per day lower than in Zone A (Secretaría de Hacienda y Crédito Publico 2009).

[69] Huberto Juárez Núñez first described the Tehuacán investment as greenfield investment, meaning primary industrial investment in a new area where little infrastructure exists previously (Juárez Núñez 2002).

altiplano region just north of the city of Tehuacán is semiarid, it is famous for its underground mineral aquifers, bottled since 1928 as Peñafiel mineral water. The water was nationalized by the federal government in 1992. In 2002, concessions were then transferred to the *maquila* consortiums at low cost, which use the water in the jean laundries. In doing so, they polluted the aquifers, creating a major environmental crisis for *campesinos* using blue-tinted water to grow crops (Barrios Hernández and Santiago Hernández 2004).

The last part of state assistance to potential investors was a tutorial on labor relations in Puebla, which included an introduction to the selected labor leaders that would handle union representation at the new plant, and access to a labor lawyer to facilitate the contract (Hermanson 2004). Mexican labor law in practice recognizes only one union at a time in a workplace, and since workplaces are run as a closed shop, investors were told that an agreement with a labor leader would meet the legal requirements to open the plants (Hermanson 2004).[70] Protection contracts were awarded by the Secretary of Economic Development to the local PRI-affiliated *Federación Revolucionario de Obreros y Campesinos* (FROC-CROC) at Kukdong, while the contract at Matamoros Garment was given to the *Confederación Revolucionario de Obreros y Campesinos* (CROC), and the contract passed between these and the CTM at Tarrant Ajalpan. The FROC-CROC is a regional union central that already had control over some of the unions in the *maquilas* producing automotive parts for the Volkswagen plant in Puebla. With the exception of Matamoros Garment,

[70] Interview, AFL-CIO Solidarity Center, Mexico City, Mexico, July 10, 2006.

each of the three municipalities where the maquilas under study are located were led by the *Partido de Acción Nacional* (PAN), who were resistant to allow their political rivals in the *Confederación Regional de Obreros Mexicanos* (CROM) a foothold in local politics (Juárez Núñez 2002). For the PRI state government, the FROC-CROC represented a compromise. While the PRI-affiliated CROC union could take on the maquila contracts in PRI-controlled Izúcar de Matamoros, its weaker local representative, the FROC-CROC, would hold the contracts for PAN-controlled Atlixco, Ajalpan and Tehuacán.

The garment sector in Puebla grew exponentially between 1995 and 2001. By 2001, the last year of growth, 1,032 registered apparel *maquilas* employed 60,555 people in the areas of the state outside of Puebla city, and 13,000 more workers in the city itself (Juárez Núñez 2004; Barrios Hernández and Santiago Hernández 2004). Demand for workers was so high that Tehuacán, where an estimated 700 *maquilas* were located, boasted of zero unemployment rates (Juárez Núñez 2002a). Workers reported improvements in working conditions during the boom, including increased health and safety protection and improvements in ventilation and lighting (Yanz and Jeffcott 2003). Though workers reported that the high demand allowed them to supplement their wages with overtime pay, wages remained low overall, leading to high turnover rates as workers moved from job to job seeking better benefits (Yanz and Jeffcott 2003).[71]

[71] Interview, fired Tarrant seamstress, Tehuacán, Puebla, Mexico, August 22, 2006.

During the boom years, factories provided transportation and cafeteria facilities, costs that otherwise would eviscerate weekly paychecks.[72]

…And Bust

Because nearly 60% of the apparel *maquilas* in Puebla produce for the US market, the economic decline in the US after the September 11 attacks on Washington and New York resulted in mass layoffs for Mexican workers. Levels of FDI to the sector nationally contracted by 31% from 2001 to 2002, and sales registered negative growth for the first time, down 8% from 2000 to 2003 (ITAM 2004). At first, plant managers responded to the lack of orders with temporary work stoppages (*paros técnicos*) and mandatory furlough days, which quickly led to mass layoffs, and eventually the closure of a number of factories (Juárez Núñez 2004). In the Tehuacán Valley, 20,000 workers were fired in 2001, and about half of the registered *maquiladoras* shut their doors (Barrios Hernández and Santiago Hernández 2004; Yanz and Jeffcott 2003).

The workers that remained found that with fewer employees to complete the daily quotas, production intensified. Seamstresses missing the quotas during the normal work day then had to stay at the plants until 8 or 9 pm most nights to finish, and were forced to work overnight to complete orders on Fridays (Yanz and Jeffcott 2003; Rivas Zerón 2003a).[73] Labor conditions within plants eroded

[72] At the time of my visit, transportation was no longer provided free to workers, but a privatized system had taken its place. Transport to work is a major cost that can run between 28 and 40 pesos per day, or at minimum, 16% of the wage of 1000 pesos for a 6-day workweek.

[73] Testimony, male ironer at Kukdong, and SITEKIM leader, in *La Lucha Sigue*, pamphlet published by CAT, Puebla, Puebla, Mexico. Also, testimony of three sisters employed at

and took on some of the characteristics endemic to piecework in textiles, where plant managers face incentives to minimize the fixed costs of production over a greater number of units (Piore 1997). In order to maintain the high productivity of the factory, plant supervisors increased their control over individual workers to limit the time they were not working. This included restricting access to drinking water and bathroom breaks, and a reduction of the lunch break to a half hour on a ten to twelve hour day.[74] Plant owners rolled back some of the benefits to cut costs, including subsidized transportation[75], medical services, safety equipment[76], and paper supplies for bathrooms.[77] The quality of the foodservice began to suffer[78], and overall sanitary conditions within the factories deteriorated.[79] Workers hated the treatment they received by the supervisors and owners, who would yell or swear at them to increase their speed[80], and sometimes engaged in sexual harassment of the female sewers.[81]

Kukdong, in *La Lucha Sigue.* Interview, fired Tarrant seamstress, Tehuacán, Puebla, Mexico, August 22, 2006.

[74] Testimony, male ironer at Kukdong, in *La Lucha Sigue*, and interview, SUITTAR worker's coordinator, Altepexi, Puebla, Mexico, August 23, 2006.

[75] Written testimony, SITEKIM leader, collected by CAT, and testimony, female cutter at Kukdong, in *La Lucha Sigue*.

[76] Testimony, fired Tarrant worker, US NAO hearing, Washington, D.C., April 1, 2004.

[77] Testimony, Kukdong seamstress, in *La Lucha Sigue*, and interview, SUITTAR worker's coordinator, Altepexi, Puebla, Mexico, August 23, 2006.

[78] Testimony, male ironer at Kukdong, and testimony, SITEKIM leader, both in *La Lucha Sigue*.

[79] Testimony, Kukdong supervisor, and Kukdong seamstress, in *La Lucha Sigue*.

[80] Testimony, male ironer at Kukdong, in *La Lucha Sigue*, and interview, SUITTAR leader, Altepexi, Puebla, Mexico, August 20, 2006.

[81] Testimonies, Kukdong supervisor, and three sisters employed at Kukdong, both in *La Lucha Sigue*.

Workers saw irregularities in the payment of their wages. Not only were workers not now paid overtime for extra hours on contracts based on piece rate quotas, but checks were docked for undisclosed reasons[82], or were incorrectly added.[83] At Matamoros Garment, workers received their checks weeks past the designated payday. Some workers discovered upon seeking medical care that though deductions were taken from their checks, they were never paid to the national social security institute (Juárez Núñez 2004; Barrios Hernández and Santiago Hernández 2004). Finally, though workers stayed overnight to finish orders, plant owners claimed economic losses to avoid paying federally mandated profit sharing, Christmas bonuses, and severance.[84] The Tehuacán labor board was inundated with denunciations from workers who had never been paid severance (Juárez Núñez 2004).

Politicization of Union Representation

When workers in Puebla began to complain about eroding labor conditions, they collided with an array of powerful interests determined to preserve the labor relations system and the use of protection contracts. First, the state government of Puebla faces economic incentives to resist efforts to establish unions outside of the protection system. Maquila production in Puebla was established as a development program for the economically depressed

[82] Interview, SUITTAR worker's coordinator, Altepexi, Puebla, Mexico, August 23, 2006.

[83] Testimony, three sisters employed at Kukdong, in *La Lucha Sigue*.

[84] Interview, SUITTAR worker's coordinator, Altepexi, Puebla, Mexico, August 23, 2006; US Department of Labor (2004), and testimony, Tarrant worker, US NAO hearing, Washington, D.C., April 1, 2004.

areas of the state as the answer to job creation. Investment in these areas was predicated on lower labor costs than in other regions of Mexico, allowing Puebla to compete for textile investment more handily than other areas where labor costs were higher. Guaranteed labor peace was one additional aspect of maintaining a favorable investment climate for textile companies, and to keep that investment flowing into Puebla. With workers' interests controlled by subordinate unions, any aspect of production involving the labor relationship, including strikes, compensation, or labor costs, remained stable and predictable for the established *maquileros* and potential investors.

There are important vested political interests to maintain the labor relations system as well, at both the state and local levels. One of the answers for the decline of PRI dominance nationally is the loss of economic resources to support political patronage after the economic crises of the late 1980s and early 1990s (Shirk and Edmonds-Poli 2009). With fewer resources, the party is less able to provide material benefits and government subsidies to corporatist unions.[85] As political pluralism evolves, PRI unions are under pressure to play the historical role as a mass base for the party, loyal voter bloc, and supporter of government initiatives, but with fewer material and political resources nationally to offer in exchange for party loyalty. The CTM unions are unwilling to allow independent unions to gain ground in areas where they maintain monolithic

[85] While the CTM was still able to maintain political representation (Murillo 2001), the declining electoral fortunes of the PRI over time means even that channel of power is in jeopardy. Whereas in the 1970s and 1980s the CTM held around 90 of the seats awarded to the PRI, by 2000 they never held more than 19 (Shirk and Edmonds-Poli 2009).

control over contracts, partly to maintain what remains of the political base of party power locally, but also to maintain the party's fortunes more broadly. At the local level in Puebla, unions are an important source of political influence for the PRI in the state, and the union leadership is unwilling to allow competition that challenges their political influence and personal power base in local politics. These impulses became more important as the PRI lost municipalities to the PAN, while still retaining the executive office.[86]

The best tool at the state's disposal for limiting independent unionization in Puebla is control over the administration of the labor boards that regulate the labor relations system. Jurisdiction for textile industries is reserved at the state level, and therefore the *maquila* cases studied here are under the jurisdiction of the *Junta Local de Conciliación y Arbitraje* (JLCA) of Puebla.[87] As tri-partite structures, the state labor board is composed of three members, including a Government representative that serves as the President, a representative from the business sector, and a representative from organized labor, each appointed by the Governor (Curtis and Gutiérrez 1994). The labor representative is nearly always chosen from the ranks of the most influential union confederation, which in the Mexican context almost always results in union representation from the

[86] The PRI has always held the state executive in Puebla, and holds a majority in the state Congress, while at the local level the PAN has made important inroads in holding the seat of municipal governments (Luna Silva 2007).

[87] The jurisdiction of the labor board system is divided between State and Federal level boards according to industrial sector (Curtis and Gutiérrez Kirchner 1994). At the state level, there are also conciliation boards that serve as mediators only, and Special Boards for claims around specific industries, such as for construction workers' claims.

corporatist ranks.[88] This arrangement can have two effects. First, with government directly influencing the selection the three representatives to the boards, executive branch interests can potentially guide the outcomes of board arbitration (Sanner Ruhnke 1995). Second, the selection of the union representative generates conflicts of interest at the board, especially in states governed by the PRI, like Puebla. Given the historical ties between labor and the PRI, political conditions are generally unfavorable for independent unions seeking resolution at the board, allowing the government to maintain control over unions in the state.

Union Recognition at Kukdong/Mexmode

The Kukdong factory is the first of the factories in this study to attempt to organize an independent union, and as such, is also the factory where the transnational network that became active in Puebla first crystallized. The Kukdong factory, located in Atlixco, Puebla, is a state-of-the-art textile assembly factory. Its 30 million dollar investment was one of the largest capital inversions to date in the area (Barrios Hernández and Santiago Hernández 2004; Wells and Knight 2007). The Korean owners, Kukdong International, were part of the wave of Korean manufacturing investment in Mexico that opened after NAFTA's tariff wall created incentives for Koreans to import to the US directly from factories producing in Mexico (Choi and Kenney 1997). As was customary in Puebla, the plant managers signed a labor agreement with the state government in the fall of

[88] In Puebla, this is the FROC-CROC. Interview, AFL-CIO Solidarity Center, Mexico City, Mexico, July 10, 2006.

1999 before the factory opened, which gave the rights to the collective contract to the FROC-CROC union (Hermanson 2004).

Working conditions in the factory were acceptable when the plant opened, but they began to deteriorate during the summer of 2000.[89] The daily quotas were set so high that workers finished each piece in less than a minute, and were not allowed to take bathroom breaks. Managers limited access to drinking water to limit the need for the breaks, even in hot weather.[90] Though seamstresses put in extra hours to make the production quotas, the raises that were promised every three months never materialized.[91] Some female workers reported that managers hit them and screamed at them to work faster, and that they faced humiliating checks of personal belongings and clothing when they entered and left the factory (Bacon 2004).[92] But by nearly all accounts, worker complaints converged around the cafeteria, where they reported that the food was poorly made, sometimes improperly cooked or rotten.[93]

A few of the supervisors approached the FROC-CROC representative about the quality of the cafeteria, who ignored their complaints. After a number of workers became ill, the supervisors again raised their concerns, and the union representative suggested a boycott of the cafeteria (Hermanson 2004). The next

[89] Written testimony, SITEKIM leader, collected by CAT.

[90] Testimony, male ironer at Kukdong, in *La Lucha Sigue*, pamphlet published by CAT, Puebla, Puebla, Mexico.

[91] Written testimony, SITEKIM leader, collected by CAT.

[92] Testimony, three sisters employed at Kukdong, in *La Lucha Sigue.*

[93] Testimony, Kukdong supervisor, three sisters employed at Kukdong, and a Matamoros Garment worker, all in *La Lucha Sigue*, and written testimony by a SITEKIM leader, collected by CAT.

day, nearly all of the workers brought their own lunch and refused to eat from the plant's subsidized cafeteria.[94] When the FROC-CROC representative was called to account, he blamed the supervisors for the action, who were then fired (Juárez Núñez 2002b).

Meanwhile, a new labor advocacy network coalesced in Puebla. In November of 2000, United Students Against Sweatshops (USAS) sent a delegation to Puebla to investigate working conditions in some of the *maquilas* in the area that produced university-labeled apparel.[95] As a supplier to Nike and Reebok, Kukdong was on the USAS disclosure list. The AFL-CIO Solidarity Center office in Mexico City introduced USAS students to two local labor organizers to help with the investigation (Hermanson 2004). A nucleus of people had already formed at Kukdong around the cafeteria boycott, and the AFL-CIO brought these workers together with the USAS students to discuss how to move workforce discontent from cafeteria issues to replacing the union.[96] From these meetings, the *Centro de Apoyo al Trabajador* (Workers' Support Center, CAT) was formed.[97]

[94] Testimony, Kukdong supervisor, in *La Lucha Sigue*.

[95] This student group pressures universities to sign commitments to source university apparel from suppliers that meet internationally recognized labor standards. In 1999, USAS created a codes of conduct monitoring organization, the Worker's Rights Consortium (WRC), to conduct inspections for USAS and its universities.

[96] Interview, AFL-CIO Solidarity Center, Mexico City, Mexico, July 10, 2006.

[97] Interview, CAT field organizer, Puebla, Puebla, Mexico, July 25, 2006.

Workers Take Action

The Kukdong workers responded the next Monday with a two-hour work stoppage and a set of demands: a reinstatement of the supervisors by the end of the day, and the FROC-CROC removed from the plant (Bacon 2004; CILAS n.d.). After receiving no response from the company, around 600 workers of the 850 in the plant occupied the factory yard, threatening to stay on strike until the supervisors were reinstated (Wells and Knight 2007; CILAS n.d.). Newspapers spread word of the Kukdong strike outside of Atlixco (Meza 2001; 2001d), attracting the support of Mexican labor activists (Hermanson 2004). The next morning the strike was declared illegal, and by nightfall, workers were violently removed from the factory grounds by the state anti-riot battalion (Juárez Núñez 2002b; Hermanson 2004; CILAS n.d.).[98]

The violent police response to the strike was one of the factors that catalyzed support for the workers within the community, and mobilized the transnational network (Bacon 2004). At the core of the support network that emerged, each group played a specific role. Though the AFL-CIO office had been crucial to bringing the network together, they were wary of any perception that they were helping to organize unions in Mexico, and stepped back to serve as advisors. In Atlixco, the CAT would assist in organizing the workforce and help the union apply for legal recognition. USAS would use its contacts in the US, Canada and Europe to put pressure on the factory to accede to the worker's demands.

[98] Under Mexican law, unions must file a notice to strike at the labor board, and have it approved, before actually carrying out a strike.

The strategy they developed followed the core logic that was common to other worker's rights campaigns from the 1990s: the network would engage the major clients to get involved in the plant dispute by putting economic leverage on them through threats of a boycott. In turn, client promises to pull orders would push the plant owners to allow an independent union. The USAS interns had identified that both Nike and Reebok had corporate codes of conduct, and USAS would use codes violations to involve both brands in the Kukdong struggle, but would start by pressuring Nike. USAS would also inform student groups on college campuses about Kukdong and organize a number of actions against the brands, and would approach university administrations about using Nike and Reebok for college apparel. In effect, the USAS strategy was to use economic leverage to make Nike and Reebok responsible for the violations at the plant, and responsible for getting them resolved, whether or not Nike or Reebok had any role to play in workers' discontent with the protection contract or working conditions inside the plant.

Transnational Support

The network inside Puebla publicized the violations at the plant immediately. By January 15, the *Maquila* Solidarity Network (MSN) in Canada had not just posted news of the strike on their website and email list serve, but had started a letter-writing request to inform Nike and the President of Mexico of the events at Kukdong (Maquila Solidarity Network 2001b). Meanwhile, USAS organized a series of student actions, both on and off campus. Among these

were creative acts, like mock fashion shows (Carty 2004), and shopping protests at Niketown (Featherstone 2002), but the students were also able to organize a mass action of 25 simultaneous sit-ins on campuses, demanding universities break Nike contracts for school apparel (Hermanson 2004; Carty 2004). These first actions drew international attention to Kukdong that provoked a response from the brands. Both Reebok and Nike sent representatives to Kukdong immediately (Hermanson 2004). The president of Kukdong International came to Atlixco personally to inspect the factory, apologized to workers for their treatment, and promised to renovate the cafeteria (*Sintesis* 2001). USAS requested that their monitoring group, the Worker's Rights Consortium (WRC) come to Kukdong to start an investigation. As the WRC arrived for its preliminary workplace report, so did a number of additional solidarity groups, including the Maquila Solidarity Network (MSN) and Global Exchange *(La Jornada de Oriente* 2001:5). Other prominent labor rights groups disseminated the news from Puebla on their websites and email exchanges, including US-LEAP in Chicago, Sweatshop Watch in Los Angeles, the Clean Clothes Campaign across Europe, and the Campaign for Labor Rights in the US.

As events unfolded, transnational advocacy provided crucial support to workers that helped them win small gains at key points in the struggle. First, the fired supervisors had attempted to return to work each Monday since the strike, but were unable to enter the plant. On February 13, Nike sent a letter to the Governor of Puebla, asking him to intervene in the situation (García 2001). The following Monday, February 19, the factory came to an agreement with the

Governor, and the supervisors were allowed to enter the factory and take their places on the sewing line (CILAS n.d.). Second, the reports on factory conditions helped sustain the workers' protests. As the situation unfolded, network participants conducted number of additional investigations, including a second WRC report, an analysis by leading labor attorney Arturo Alcalde, and a Verité audit for Nike (Verité 2001b; Alcalde 2001). Each of these reports corroborated the claims made by Kukdong workers about working conditions and the cafeteria, giving them legitimacy, and rallying more international support around them. Following the Verité report, Nike submitted a plan of action for Kukdong management and a timeline to complete the changes, demanding that they implant the plan of action or risk losing Nike's orders (Bandy 2004).

Union Registration and Resolution

In March, the Kukdong workers held an assembly to constitute the union as SITEKIM, the *Sindicato Independiente de Trabajadores de la Empresa Kukdong International de Mexico* (SITEKIM). Once the application for registration was submitted, the FROC-CROC intimidated SITEKIM supporters inside the factory with renewed vigor (CILAS n.d.; Maquila Solidarity Network 2001). After one SITEKIM leader was assaulted on company property, the network reinforced their support in Mexico by sending more USAS observers (*La Jornada de Oriente* 2001), and in the US, arranged for letters about Kukdong to be delivered by hand to each of the 45 Mexican Consulates (Bandy 2004; Committee for Labor Rights 2001).

On June 18, 2001, the Puebla JLCA denied SITEKIM's application for union recognition (CILAS n.d.). Some of the line workers who had signed the application had been quietly reclassified as confidential employees after the application was filed, which disqualified them from the bargaining unit (CILAS n.d.). Without these workers, the list of signatories dropped to fewer than the 20 required to form a union under Mexican labor law, and the petition was denied. Though workers had received an outpouring of support from the network that allowed them to maintain the movement, they fell short of the achieving the goal that was most important to the workers themselves: replacing the FROC-CROC with a union of their own choosing.

Though there was still active support for the SITEMEX union, the labor situation inside the factory reached a stalemate. The ongoing conflict made production difficult, and Nike started to pull orders from the factory (Bandy 2004). Meanwhile, the Kukdong owners were facing pressure on all sides: from the transnational network who blamed them for the violations, from the workers who blamed them for allowing FROC-CROC to hold the contract in the first place, and from Nike to get past the conflict and fill the orders. Though Kukdong's owners certainly acted in ways to protect their business interests as the campaign wore on, some evidence suggests that the owners were actually amenable to allowing the SITEKIM union in, but were under pressure from the FROC-CROC and local government not to do so.[99] As they began to lose orders, Kukdong recognized

[99] For example, when Verité arrived at the factory, the Head of Administration took one auditor aside and told him that the company did not like the union, but it had been imposed on them from the beginning, and that they actually preferred to replace it (Verité 2001a).

that the union, and the government that put it there, were jeopardizing their investment. In order to resolve the situation, it was the state leadership that had to be convinced that removing FROC-CROC was necessary. The government was not willing to set a precedent for independent unionization in the *maquila* sector, but neither could it afford much longer to be seen as an interference, especially to the Korean community that had invested heavily in Puebla. The JLCA would have to concede to replace the union.

The AFL-CIO stepped in to moderate negotiations between the company, the state government, the JLCA, and SITEKIM (Hermanson 2004).[100] In order to facilitate the registration of the union, Kukdong International resorted to a tactic that is usually reserved for attempts to block independent unionization, like at Maxi-Switch and Han Young. The owners agreed to close the factory and reconstitute it as a legal entity under a new name, Mexmode, thus nullifying the existing collective contract with the FROC-CROC. SITEKIM would then apply for registration under a new name, SITEMEX. The JLCA would approve the registration, allowing SITEMEX to apply for title to the bargaining rights, and the workers would win their union.

The JLCA approved the registration on August 18, 2001 (CILAS n.d.). Because there was no opposition to SITEMEX taking the contract, they were awarded bargaining rights, and negotiated a collective contract with the help of the CAT (Juárez Núñez 2002b; CILAS n.d.).[101] On October 2, SITEMEX

[100] Interview, CAT field organizer, Puebla, Puebla, Mexico, July 25, 2006 and interview, AFL-CIO Solidarity Center, Mexico City, Mexico, July 10, 2006.

[101] Interview, CAT field organizer, Puebla, Puebla, Mexico, July 25, 2006.

submitted the contract to the JLCA, and became the first independent union in Mexico's garment export sector (Juárez Núñez 2002b; Sanchez Hernández 2001; Maquila Solidarity Network 2001a). In a final act of solidarity, the MSN organized a letter-writing campaign to push Nike to fill new orders at the factory, recognizing that without orders, the union would not survive, and Nike obliged (Juárez Núñez 2002b; Maquila Solidarity Network 2001a). Mexmode reopened contract negotiations again in April, and SITEMEX bargained for a 38% wage increase, making them the highest paid textile workers in Puebla (Hermanson 2004; Maquila Solidarity Network 2001c).

Transnational Tensions and the Kukdong Aftermath

By all accounts, the mobilization of a transnational advocacy network around the Kukdong workers is credited for the unprecedented resolution of this labor struggle. Transnational groups provided support at key points during these events in ways that favored the workers. First, the groups that came to Puebla gave the workers access to new ideas and new strategies that were unknown to them. Workers were totally unaware of the codes of conduct that were in place at Kukdong, but USAS and the network of US advocates were intimately familiar as to how these codes commitments could be used to engage the brands at the factory (Wells and Knight 2007).[102] Second, they had the contacts available to quickly pass the information coming out of the factory to influential audiences,

[102] It is very common that workers are unaware of the codes. Barrios also shows that in Tehuacán, the majority of workers in apparel maquilas do not know that the codes exist (Barrios Hernández and Santiago Hernández 2004).

including a network of labor rights and human rights advocates in the US and Canada. In turn, the brands were responsive to network demands, commissioning independent reports on labor conditions within the factory, and stepping in where they could, such as during the standoff over the supervisors. More than supplying ideas and organizational resources to get the word out, the network also had a physical presence in Atlixco that indicated to local actors that the workers were being taken seriously outside of Mexico, and it forced them to respond as well.

Though this case led to the successful bid to establish an independent union, it also created tensions between local Mexican groups over the fundamental question of how to parlay the Kukdong victory into a bigger movement to spread independent unionization to other *maquilas*. While the CAT was ready to organize other unions under the SITEMEX *registro* at the state level and expand into other factories in Puebla, SITEMEX was not against the idea so much as they were more interested in maintaining their union first.[103] Once they won the contract, workers wanted to make decisions about strategy and union leadership on their own (Bacon 2004), ultimately creating independence from their supporters, and distancing themselves completely from the CAT.

Eventually SITEMEX won its independence, both from the FROC-CROC and the network that helped them to consolidate union, but independence had its consequences. The campaign had relied on transnational networking for its success, and the CAT, which had been close to USAS, was the conduit for much

[103] Interview, SITEMEX union leader, Puebla, Puebla, Mexico, July 1, 2006.

of that support. Without the CAT, SITEMEX had limited connections to those supporters and few resources of their own to draw on. Though the union believed that the best way to survive was to develop their organizational capacity, in the end, they were mistaken. In June of 2008, a legitimate concern over union leadership resulted in a take-over of the union by *Antorcha Campesina*, a peasant group organized by the PRI. Though the AFL-CIO contacted the WRC for an investigation (Worker Rights Consortium 2008a), and the International Labor Rights Fund began a letter writing campaign (International Labor Rights Fund 2008), there was very little international mobilization around the event, and the groups that earlier had worked to get the union recognized were noticeably absent. The union has still not been able to challenge the takeover, and the only independent union in the garment sector has lost its presence in the factory.

Pushing Puma Around at Matamoros Garment

A new case then appeared at an apparel *maquila* in Izúcar de Matamoros, about 20 miles south of Atlixco. Matamoros Garment had been sold in 1999 to an American investor and his Mexican business partner, and after signing a protection contract with a CTM union, the *Sindicato Francisco Villa de la Industria Textil y Conexos*, began production in 2000 (United Students Against Sweatshops and Centro de Apoyo al Trabajador 2003). Working conditions deteriorated quickly, and the new owners were unable to supply some of the benefits the previous owners had supplied to workers, including the

transportation routes. The cafeteria flooded under heavy rains, but the owners could not arrange a permanent fix. The machines in the factory were older models, and workers struggled to make the quotas using them, sometimes staying late into the night to finish (United Students Against Sweatshops and Centro de Apoyo al Trabajador 2003). Wage irregularities were the most important complaint, as workers were constantly missing payments, or being paid after the designated paydays (United Students Against Sweatshops and Centro de Apoyo al Trabajador 2003).

The CAT read about Matamoros Garment in the local paper (*La Jornada de Oriente* 2003), and approached the AFL-CIO and USAS about the possibilities of making this plant their next case. They contacted the Matamoros Garment workers, offering to help.[104] With CAT advice, workers held a one-day work stoppage at the plant over the wage irregularities (*El Cambio* 2003), and negotiated a resolution with the owner of the factory: if they went back to work, the owner would pay back wages and vacation pay the next day, and reinstate the transportation benefit (*El Cambio* 2003).

Though this seemed to resolve the immediate concerns of the workers, the CAT shifted quickly to the next issue: resolving the other workplace complaints by establishing an independent union within the factory. The workers knew that they sewed garments for a number of brands, but the two most important clients were Angelica, a division of the uniform company Cintas, and the German sportswear company Puma. Since Puma was the more visible

[104] Interview, AFL-CIO Solidarity Center, Mexico City, Mexico, July 10, 2006.

brand and had a code of conduct in the factory, they chose to organize a campaign around them, and the CAT contacted the Clean Clothes Campaign in Germany for assistance.

The network forming around Matamoros Garment was led by the CAT and the German Clean Clothes Campaign, but also included some of the groups once involved at Kukdong, like US-LEAP, the Maquila Solidarity Network, and No Sweat. USAS took a much less visible role in this network than at Kukdong, because Matamoros Garment did not hold university apparel contracts. The AFL-CIO also stepped back to allow the CAT to gain more organizing experience. The network decided to follow the strategy that had been successful at Kukdong: engage the brand over violations of the code of conduct with the help of transnational allies, and apply for the *registro* of an independent union.[105] As at Kukdong, they hoped that by making Puma responsible for the conditions in the factory, the company would not just pressure the plant owner to improve the working conditions and reinstate the benefits package, but also support the independent union.

Meanwhile, the workers formally constituted a union, SITEMAG, the *Sindicato Único Independiente de Trabajadores de Matamoros Garment*, and filed an application for registration as a legal entity-- at the same JLCA as at Kukdong-- on January 20, 2003 (SITEMAG 2003). When the owner then harassed some of the workers for union activity later that week, the CAT took the lead on publicizing the events (Centro de Apoyo al Trabajador 2001a), contacting

[105] Interview, CAT field organizer, Puebla, Puebla, Mexico, July 25, 2006.

allies to list Matamoros Garment news on their websites (Maquila Solidarity Network 2003).

Puma Pushes Back

The Clean Clothes Campaign contacted Puma about the events at Matamoros Garment. Puma responded with a corporate statement rejecting that they were in any way responsible for the events at the plant (Santjer 2001). Matamoros Garment had serious financial difficulties after a major client had declared bankruptcy without paying for the last shipment of a half-million units, and the owners were struggling to make payroll as well as other costs (Santjer 2001).[106] The financial crunch impeded their ability to deliver orders on time, and Puma claimed to have subsequently cancelled its production contract with the factory. Puma simply stated they were not responsible for working conditions in a plant where they had no longer had a business relationship.

When the CAT countered that the plant was still sewing the last of the contract in January, Puma relented, and sent representatives to make an inspection.[107] Yet, when the interviews began, the CAT learned that not only had the Puma team singled out workers and interviewed them inside the factory, but that they had videotaped the interviews, which SITEMAG leaders reported to have seen in the manager's office. When Puma sent an email to the CAT with the results of the inspection, they found that none of the 22 workers they interviewed could corroborate the claims about forced overtime and lock-ins, that

[106] Interview, AFL-CIO Solidarity Center, Mexico City, Mexico, July 10, 2006.

[107] Interview, CAT field organizer, Puebla, Puebla, Mexico, July 25, 2006.

all had said there was a union in the plant, and that they denied physical abuse by supervisors (Hengstmann 2003a). Puma also revealed that they had paid the owner nearly $15,000 each week in October and November above their contract liability to cover these expenses in order to get their last order out of the factory (Hengstmann 2003a). Ironically, though the CAT was blaming Puma for the wage irregularities, among other issues, it was actually Puma that was paying the workers' wages.

The CAT categorically rejected the results of the inspection given the interview methods, and denounced Puma and their investigation in a shrill email (Centro de Apoyo al Trabajador 2003b). In response, Puma promised to place new orders only if Matamoros Garment could become a functional factory again, and if the CAT could convince additional clients to return (Hengstmann 2003b). Still angry about the discovery of the video tapes, the CAT and their allies became more determined to smear Puma's name as a brand that abandons workers once they demand their rights, even as Puma offered a compromise (Centro de Apoyo al Trabajador 2003b). The CAT decided to create their own report on Matamoros Garment to counter the Puma inspection, interviewing SITEMAG supporters in their homes where they would be free to talk about the factory. With the help of student interns, they created a report corroborating each of the workers' complaints (Centro de Apoyo al Trabajador 2003c). When they published it through the network, Puma invited the CAT to Germany to discuss the situation again (Centro de Apoyo al Trabajador 2003a).

This time, Puma was even more conciliatory. During the meeting, Puma agreed to send new orders to Matamoros Garment, consented to independent monitoring through COVERCO, the well-respected NGO-based codes monitor, and agreed to support the use of a secret ballot in the anticipated union election (Centro de Apoyo al Trabajador 2003a). The CAT went back to Mexico knowing it had won the battle with Puma.[108] However, Puma would never fulfill these promises. On March 17, the owners of Matamoros Garment announced it would close the plant temporarily through a *paro técnico,* and asked workers to return the next week for their paychecks (United Students Against Sweatshops 2003). In the interim, the Mexican Social Security Institute entered the plant and confiscated the sewing machines for debts accrued on medical insurance contributions, and the American owner fled back to the US to escape a lawsuit.[109] The plant would never reopen.

With the collapse of the factory, the brand campaign had essentially ended, but SITEMAG still waited for news on the application for the union *registro*. The JLCA of Puebla denied the registration on March 21st on a number of procedural issues, and noted that with the factory closed, the requirement of 20 active employees could not be met (United Students Against Sweatshops and Centro de Apoyo al Trabajador 2003a). The JLCA knew that Matamoros Garment would be closing as of March 17 after their own approval of the *paro técnico*, and stalled for the full 60 days allowed by Mexican law to issue a ruling based on the closure, but only after the closure itself. Further, the ruling was

[108] Interview, CAT field organizer, Puebla, Puebla, Mexico, July 25, 2006.

[109] Interview, AFL-CIO Solidarity Center, Mexico City, Mexico, July 10, 2006.

sent to the wrong address, and when the union finally received it on the 26th, half of the 15 days allowed to file an appeal had passed (United Students Against Sweatshops and Centro de Apoyo al Trabajador 2003a). Though the CAT vowed to follow through on the appeal, organize the workers, and get Puma to help reopen the factory (United Students Against Sweatshops 2003), the union drive was over. The campaign strategy had been wholly unsuccessful, and workers were denied the union, lost their jobs, and never recouped their severance pay.

Evaluating Failure at Matamoros Garment

Transnational advocates attempted to recreate the successes at Kukdong by following the strategies that had worked well in that factory. Though the logic of the brand campaign strategy was similar, the structural factors that led to success at Kukdong were largely missing at Matamoros Garment. First, the transnational network at Matamoros Garment was weaker than the network that participated at Kukdong because a number of key players were missing. The CAT acted as the broker between SITEMAG workers and the transnational network, essentially replacing the role USAS played in the earlier case. Because they had less experience, it was also more difficult to clearly identify the network's objectives. It was never made explicit what exact steps the network expected out of the owners or Puma, when at Kukdong, the two objectives were always clear in every action: rehire the supervisors, then expel the FROC-CROC.

Second, though the CAT may have had support from a number of groups, it did not have any independent economic pressure to leverage on Puma. The CAT and their allies could release allegations that damaged the reputation of the company, but they had no credible way to threaten the brand economically through boycotts. Matamoros Garment did not hold university apparel contracts, and USAS was missing as a key player in the network. In turn, Puma had little economic leverage with the owners, as the owners of Matamoros Garment were too preoccupied with their financial problems to respond in any meaningful way to workers' concerns, favorably or otherwise. The potential loss of Puma business to the owner was not enough for him to respond to worker demands, and in fact Puma had already canceled its contract with the plant months before the work stoppage occurred. The brand was much more resistant to pressure from the network because they credibly rejected that they were responsible for working conditions in a plant they no longer used. Yet, the network still had to focus on Puma because they were the most visible brand at the factory, and they used codes of conduct that could be used to promote their position. When the Puma investigation was published, the network was less able to inflict damage to their reputation, as Puma had evidence that they believed was accurate to deny the allegations against them. When Puma finally recognized the flaws in their investigation, their change in position came too late to save the factory, if that in fact were possible.[110]

[110] Some core network participants knew the extent of the financial problems, and approached the previous owners to arrange a transfer of the property to keep the factory open, given the promises by Puma to reinstate orders. That too was another unworkable solution.

Organizing the Consortiums: Tarrant Ajalpan

In June, the CAT learned of another labor struggle unfolding south of Puebla city in the Tehuacán region. Nearly 700 workers staged a work stoppage at the Tarrant sewing facility in Ajalpan over the payment of profit sharing (Centro de Apoyo al Trabajador 2003a). Although workers at the plant had been staying overtime, even overnight, to meet the daily production quotas, the plant manager told workers that the plant had not made any profits for the third year in a row, and would not pay profit sharing for 2003. The walkout turned into a three-day strike.

Tarrant Ajalpan was one factory in a vertically integrated full-package production chain. Under full-package assembly, all inputs to the manufacturing process are sourced by a single consortium, including textiles, thread and hardware, and a series of factories handles the production of the garments including cutting and assembly, laundering and quality control, and in some cases, distribute the finished garments directly from the plant to the point of sale (Bair, Martinez, and Gereffi 2002). The Azteca International consortium owned seven sewing facilities and one laundry in the Tehuacán area (Juárez Núñez 2004), along with packaging operations in the neighboring state of Tlaxcala, additional sewing operations in Oaxaca, Tlaxcala and Guerrero, and two textile mills in the region (Tarrant Apparel Group 1999; 2001). Tarrant Ajalpan was the largest of the sewing operations in the consortium, capable of producing 6 million units each year (Tarrant Apparel Group 2001). In 1999, Los Angeles-based Tarrant Apparel Group (TAG) entered full-package production in Mexico by

purchasing some for these holdings from Azteca International. With the purchase of the Azteca plants in Tehuacán, including the Ajalpan plant, TAG became the largest and most complete fully integrated manufacturer, able to source even the fabric that other Puebla consortiums had to import from China (Juárez Núñez 2004).

The CAT learned of the walkout, and determined that the labor situation at the Ajalpan plant created the opportunity to organize one of the four full-package consortiums then operating in Puebla. In gaining the *registro* for a single plant along the chain, they could affiliate the other factories under the first union registration and skip the highly politicized registration process that derailed Matamoros Garment.[111] The CAT approached the workers with an offer to help on the second day of the strike (Centro de Apoyo al Trabajador 2003a).

Transnational Support

By the first of August, the transnational labor rights network that had been involved at Kukdong and Matamoros Garment was informed of the events at Ajalpan (Centro de Apoyo al Trabajador 2003f). As before, the CAT took the lead on reporting information about Tarrant Ajalpan to their allies, which included the Clean Clothes Campaign, US-LEAP, the MSN in Canada, Sweatshop Watch, No Sweat, and the Central American Women's Network. Again, the AFL-CIO took a lesser part in the day-today strategizing of the campaign, a role that was

[111] Interview, CAT field organizer, Puebla, Puebla, Mexico, July 25, 2006.

assumed by the CAT.[112] International allies would disseminate the information from Puebla on list-serves and websites, and publicize the calls for action outside of Mexico. Within Mexico, the core union supporters from the plant, now fired for union activity, would work with lawyers from the *Red de Solidaridad y Derechos Laborales* to submit the registration paperwork for the union, the *Sindicato Único Independiente de Trabajadores de Tarrant* (SUITTAR) (Centro de Apoyo al Trabajador and United Students Against Sweatshops 2004).

The CAT hoped that a brand campaign would publicize the Tarrant factory outside of Mexico, reveal how poorly foreign investors were treating Mexican workers, and engage the brands to step in at the factory, if not over violations of Mexican law, at least over compliance with their own codes of conduct.[113] They advanced the two-pronged campaign strategy for Tarrant Ajalpan that had once been successful at Kukdong. The CAT thought material leverage from brand pressure might be more effective on a consortium than a stand-alone factory, because the entire production chain would be put in jeopardy if orders were pulled. At the same time, economic pressure and international support and would help them pressure the JLCA to recognize the independent union.

The transnational strategy ultimately took the form of a letter writing effort to disseminate information about Tarrant among allies in the US and Canada, combined with a number of protest actions in the US and Mexico. The CAT identified a number of current clients that could serve as the targets of the campaign, each of which already had codes of conduct that could be used. Levi

[112] Interview, AFL-CIO Solidarity Center, Mexico City, Mexico, July 10, 2006.

[113] Interview, CAT field organizer, Puebla, Puebla, Mexico, July 25, 2006.

Strauss and Company was chosen as the first target for the campaign, because they were the plant's major client, and their sourcing agreement is considered uniquely progressive among codes of conduct (Centro de Apoyo al Trabajador 2003f). The Ethical Trading Initiative, the fair trade organization Levi's used to help to monitor their codes, contacted them to apprise them of the labor situation inside the plant (Centro de Apoyo al Trabajador and United Students Against Sweatshops 2004). Meanwhile, the CAT disseminated a review of the events, asking national and international allies to write letters to Tarrant Apparel Group and Levi's, asking them to recognize SUITTAR and reinstate the fired union leaders (Centro de Apoyo al Trabajador 2003d). Additional clients were identified, and by the middle of August, the campaign had widened to include three additional brands: Tommy Hilfiger, Limited Brands, and The Gap.

The Brands Respond

Levi's sent a representative to Tehuacán to visit the plant and conduct an inspection (Centro de Apoyo al Trabajador 2003g). The CAT worked closely with her throughout September, hoping that Levi's could encourage the other clients to pressure Ajalpan management to concede to the workers' demands. However, focusing on Levi's backfired when Tarrant refused Levi's investigators access to the plant (Centro de Apoyo al Trabajador 2003b). The Levi's code mandates that the company must pull orders when factories could not come into compliance, and they did so at Tarrant Ajalpan. While the letter campaign at first caused most of the brands to contact the CAT, it also had the unintended

consequence of provoking mass firings of SUITTAR supporters: 150 workers in the first two weeks of the campaign, 228 by the end of the month, and 500 by December (Centro de Apoyo al Trabajador 2003g; Centro de Apoyo al Trabajador 2003b).[114]

The network then learned that Tarrant Apparel Group had leased the plant back to the original owner Azteca months earlier, and the plant was in transition from subcontracting for TAG clients to the clients of a new joint venture, United Apparel Ventures. The four original brands targeted by the network suddenly were no longer clients. The CAT shifted campaign focus away from these original brands to those associated with the new company (Centro de Apoyo al Trabajador 2003a). The CAT asked its allies to escalate the letter-writing campaign and disseminated instructions via e-mail each week for sets of letters to be sent to each of the brands, Tarrant and Azteca International --the partners in United Apparel Ventures-- the Puebla Governor's office, the JLCA, and the Secretary of Industrial Promotion for the State of Puebla (Centro de Apoyo al Trabajador 2003b; Centro de Apoyo al Trabajador 2003c). By November, these action alerts became extremely complex, including 20 letters for primary and secondary campaign targets, each with eight identifiable talking points and 5 additional urgent faxes (Centro de Apoyo al Trabajador 2004a). Though each time the alerts urged readers to "step up the pressure" on the brands, after so many weeks, these action alerts were no longer the tools of

[114] Workers reported that while management blamed the economic slowdown in the United States and lack of orders for the firings, they were still advertising, and hiring, new workers in August (Centro de Apoyo al Trabajador 2003b).

brand pressure so much as weekly check-ins about progress as the network struggled to find brands to make responsibility for the factory stick.

Further, none of these new brands stepped in, even as the CAT switched among them as primary targets. Meanwhile, United Apparel simply subcontracted orders for Ajalpan to local *maquilas* owned by Azteca International in the area (Centro de Apoyo al Trabajador 2003o), or shifted the work out from Ajalpan to the factories in the neighboring state of Tlaxcala, where there were no independent unions (Centro de Apoyo al Trabajador 2003f; Centro de Apoyo al Trabajador 2003o).[115] Tarrant then pulled out of Mexico, closing a number of the plants and firing hundreds of workers from other plants in the chain (Centro de Apoyo al Trabajador 2003a). By November, only Ajalpan and Plant 4 were still open, both leased to United Apparel Ventures (Centro de Apoyo al Trabajador 2004b). With so much primary focus on finding a brand to engage, the network never switched strategies to confront the last major issues: the closing of the factory, severance payments, and the pending *registro* decision.

The Union Denied

SUITTAR eventually signed 736 workers to the union during a house-to-house organizing drive that unfolded over the following weeks, and submitted the *registro* request (Centro de Apoyo al Trabajador and United Students Against

[115] Interview, CAT field organizer, Puebla, Puebla, Mexico, July 25, 2006, AFL-CIO Solidarity Center, Mexico City, Mexico, July 10, 2006 and Martin Barrios Hernández, Coordinator of Human Rights and Labor Rights Commission of the Tehuacán Valley, Tehuacán, Puebla, Mexico, August 20, 2006.

Sweatshops 2004b).[116] The network was fully expecting that the JLCA would wait until the last minute to issue a ruling, and then list technicalities in the denial as the easiest way to prevent unionization, as they had at Kukdong and Matamoros Garment.[117] On the 59th day, the Puebla JLCA ruled against the SUITTAR union, denying the petition on procedural requirements as expected (Centro de Apoyo al Trabajador 2003l).[118] The CAT responded by filing an appeal at the JLCA Special Board #3 (Centro de Apoyo al Trabajador 2003m), and an injunction (*juicio de amparo*) against the JLCA at the Third District Court in Puebla, which if awarded, would force the labor board to award the union its registration.

With the Tarrant chain closing around them, SUITTAR interjected in the campaign, wanting to discuss an exit strategy that could extract full severance payments for the workers fired during the course of the campaign and the employees who would ostensibly lose their jobs when Ajalpan finally closed (Centro de Apoyo al Trabajador 2003o). The CAT instead was intent on following up on the *amparo* filing. Tensions between the workers and the CAT surfaced over the direction the movement would now take after the denial, and the place of the workers in it. The CAT determined that given the impending closure of the plant, the union drive was over, but with the *amparo,* they would at

[116] Because of the risk of retribution to workers who publicly claim support for the independent union, it is rare that more than the minimum 20 people would sign a registration petition.

[117] Interview, CAT field organizer, Puebla, Puebla, Mexico, July 25, 2006.

[118] In the denial, the JLCA noted that the collective contract was already held by the *Sindicato Juvenil*, a union that was totally unknown (Rivas Zerón 2003). It was the third union rumored to hold the contract.

least force the government to formally recognize JLCA collusion to prevent independent unionization. For the workers, as long as the plant was still open, the movement had not folded, yet they felt that the CAT had abandoned them once the workers demanded a more active role in decisionmaking.[119]

In the end, most of the workers could not wait for the *amparo* decision to come. Some workers were unable to get another *maquila* job due to a rumored blacklist circulating in Tehuacán.[120] With economic pressure mounting and the registration now denied, a number of workers fired in August opted for severance payments (Centro de Apoyo al Trabajador 2003m). As the district court pushed the *amparo* hearing back until December, plant managers approached the worker who was named as the sponsor of the filing, threatening that no one would receive severance if he did not desist on the *amparo*. He caved to the pressure, and signed the documents to revoke the *amparo* in exchange for full severance for the rest of workers at the plant (Centro de Apoyo al Trabajador and United Students Against Sweatshops 2004). This of course had implications for the *amparo* strategy. When the district court finally made its decision, it ruled against the workers: since they had been paid severance the week prior, there was no longer a pending labor conflict (Centro de Apoyo al Trabajador 2003q).

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[119] Interview, SUITTAR executive committee member, Altepexi, Puebla, Mexico, August 21, 2006.

[120] The blacklist rumor had been circulating since Kukdong, but the WRC actually found one in the management office at the Mazara maquila during a 2008 audit (Worker Rights Consortium 2008). Interviews, SUITTAR worker's coordinator and SUITTAR executive committee member, Altepexi, Puebla, Mexico, August 21 and 23, 2006.

In the dispute over the direction the movement would take, SUITTAR and the CAT had both lost.

Switching Strategies: The NAALC Submission

During the Matamoros Garment campaign, the AFL-CIO suggested to the CAT that filing with the NAALC might be one additional way to publicize the events at the factory.[121] The AFL-CIO stressed that the NAALC could not force anyone to reopen the factory, but there could be important benefits to submitting a case that might make it worth the effort, especially if that effort was minimal. For one, filing a case was an important event that generated media coverage in the United States, so a submission would publicize the issues at Matamoros Garment. It was an opportunity to tell a wider audience what had happened at Matamoros Garment, beyond who the network could reach in the campaign, and an opportunity for the CAT to embarrass the government over the JLCA's conduct.[122] If accepted fro review, filing a case could show that the US thought the allegations of partiality at the labor board were important to resolve, and would take them seriously, something that no one in Mexico had yet done.

Further, the scope of the NAALC is to discuss whether the governments of states party to the agreement are enforcing their own labor laws, not to discuss company activities. A NAALC submission would allow the network to break away from blaming companies as in the campaign to demonstrate the larger issues of freedom of association in Mexico. Because the focus of NAALC was dialogue

[121] Interview, AFL-CIO Solidarity Center, Mexico City, Mexico, July 10, 2006.

[122] Interview, CAT field organizer, Puebla, Puebla, Mexico, July 25, 2006.

between governments, if the petition were accepted for review, the network would for the first and possibly only time be able to exploit a direct channel to federal officials to challenge them over the labor board system (Graubart 2008), whereas during the campaign, their attempts to speak with STPS officials and others beyond Puebla had been continually rebuffed. Finally, the NAO process would force the Mexican government to answer directly to its counterparts in the US government to the charges of partiality in the labor board system in a public forum.

The AFL-CIO did not consider the tasks of filing especially difficult or time consuming, but rather straightforward.[123] Because SITEMAG had already gathered all the important information and documentation needed to file the *registro* and had created their own report on working conditions to counteract the Puma audit, the outlay of additional resources to construct a petition would be minimal. They could fold in the work required to make the petition with the other tasks they were already doing to expand the transnational network.[124] The CAT would decide what information to include, and would write it with help from USAS, whose interns would gather additional worker testimony. The AFL-CIO

[123] Interview, AFL-CIO Solidarity Center, Mexico City, Mexico, July 10, 2006.

[124] When I asked CAT organizers who paid, for example, for the office equipment and paper, international phone calls and faxes required to develop the NAALC case, they had not thought of the NAO expenses separate from the workings of the office more generally. There were no any additional costs to filing at the NAO for them, these were the costs of "the movement". Interview, CAT field organizer, Puebla, Puebla, Mexico, July 25, 2006.

would translate the documents and help the group meet the filing requirements.[125]

The submission they wrote was carefully crafted to establish that the Mexican government acted in ways that failed to enforce national labor laws, one of the procedural requirements of the NAALC process. They established a pattern, a second requirement, by arguing that Matamoros Garment was not an isolated case, but rather shows that "repeated core labor rights violations in Mexico are the effects of a systematic problem on the part of Mexican labor authorities to maintain a competent and independent labor law enforcement system" (United Students Against Sweatshops and Centro de Apoyo al Trabajador 2003:10). The section on freedom of association underscored the pattern of JLCA collusion in derailing independent unions through a discussion of the Matamoros Garment case, references to Kukdong, and a review of other freedom of association cases from Mexico before the NAO, including ITAPSA, TAESA and Han Young.

In order to qualify for a review by a panel of experts (the ECE), the CAT included violations to NAALC Article 6 on minimum standards of employment regarding the wage irregularities, and Article 9 on occupational health and safety, referring to the lack of safety equipment, medical staff and plant inspections at Matamoros Garment. Sixteen appendices were attached to the submission, including affidavits from six workers, the *registro* petition and denial, and network letters between the CAT and USAS and Puma, the JLCA of Puebla, the US

[125] Interview, AFL-CIO Solidarity Center, Mexico City, Mexico, July 10, 2006.

Embassy in Mexico, the Izúcar agent for the Attorney General's office, and pleas to President Fox of Mexico.

The CAT then approached the MSN in Toronto about filing a second case on Puebla at the Canadian NAO, in the event that the US office declined to review it. Though the MSN considered the NAALC to be completely worthless as a venue for protecting labor rights, they did have experience filing earlier NAO cases in Canada, and knew a number of people in Canada who could help with the filing procedures. They arranged for the United Steelworkers of America counsel to write up the petition, and only later requested to be included as a submitting party.[126] After the denial of the SUITTAR registro, the CAT decided that the case would provide timely new evidence that further established pattern, and filed an amendment to the Puebla Submission at the US NAO regarding events at Tarrant Ajalpan (United Students Against Sweatshops and Centro de Apoyo al Trabajador 2003a).

The structure of the Canadian submission was different than the petition submitted to the US NAO. While the main idea of this submission was again to draw general patterns of collusion to deny independent unionization in Mexico, it referenced the ITAPSA case --the last freedom of association case to be reviewed in Canada-- as the starting point. After reminding the NAO how ineffective they had been in facilitating freedom of association in that case, they drew similarities to Matamoros Garment to show that the Mexican government was still interfering in union recognition ten years later (United Steelworkers of

[126] Interview, Director of Maquila Solidarity Network, Toronto, Ontario, Canada, July 1, 2005.

America 2004). Like the US submission, the Canadian petition asked the NAO to take the opportunity to go beyond Ministerial Consultations to invoke a panel of experts to review the labor board system in Mexico. After a number of exchanges with the Mexican NAO and the submitting groups, the US NAO accepted the case for review, starting with a public hearing in Washington scheduled for April 1. The Canadian NAO accepted the additional petition on March 12, with a public hearing scheduled for May 28 in Toronto.

The Review Process and NAO Resolution

Representatives from the CAT, MSN, USAS, the AFL-CIO, and the WRC prepared written statements for each NAO, and invited Tarrant workers to present testimony at the hearings (US Department of Labor 2004a). While the transcripts of the Canadian public hearing have never been made public, written testimony from the witnesses and worker testimony from both Matamoros Garment and Tarrant Ajalpan was published by the MSN (Maquila Solidarity Network 2004). In it, witnesses discuss the use of protection contracts in Mexico and general and Puebla in particular, and retell how the union registrations were denied on technical grounds. The MSN representative reinforced how the events in Puebla were endemic to labor relations in Mexico by recounting some the results of their 2001 investigation of the *maquilas*, effectively establishing that lock-ins, irregularities in wage payments, the use of protection contracts, and

JLCA collusion in preventing unionization was endemic not just to the cases at hand, but to nearly the entire textile sector in Puebla.[127]

The US NAO followed the public hearing with a series of questions for their Mexican counterparts. When they refused to answer, the US NAO took the highly controversial and unprecedented step of visiting Puebla to gather more information from the submitters, the labor board, and STPS officials.[128] The Mexican NAO protested vigorously, citing that the NAALC does not allow for site visits.[129] They refused to help the US delegation schedule meetings with STPS and JLCA officials, which the network then framed as Mexico's unwillingness to participate in the NAALC process. The US NAO accepted still traveled to Puebla from April 22-28, and the CAT arranged interviews with *maquila* workers, rather than government officials, to collect additional evidence (US Department of Labor 2004a).[130]

The US NAO issued a public report of review of the Puebla case on September 22, 2004 (US Department of Labor 2004a). In it, the NAO generally corroborated the claims made by transnational advocates, but also was surprisingly critical of the Mexican government in the review. In it, the US noted that worker testimony collected during the site visit and public hearing supported workers' contention that it was nearly impossible to register an independent union in Mexico given the structure of the labor board system The evidence

[127] Testimony, Lynda Yanz, Coordinator, Maquila Solidarity Network, Canadian NAO hearing, Toronto, Canada, May 28, 2004.

[128] Interview, US NAO, Washington, D.C., July 1, 2007.

[129] Interview, NAO of Mexico, Mexico City, Mexico, July 16, 2006.

[130] Interview, CAT field organizer, Puebla, Puebla, Mexico, July 25, 2006.

supported the workers' allegations that the denials were based justifications outside of the bounds of Mexican labor law, and that the JLCA did not inform the workers of the technical mistakes, or give them a chance to correct them, contrary to the labor code (US Department of Labor 2004b). The NAO went further to characterize the denial criteria as "hyper-technical" and commented on some of the justifications as transparently convoluted, and further, that if Mexico had done anything to fix these shortcomings in the years since the prior cases, that it was not immediately apparent. On other questions, the US NAO lamented that they had not received the requested information from the Mexican NAO to be able to evaluate whether allegations from either side could be corroborated. The lack of information from the Mexican NAO further impeded US understanding of the health and safety and minimum standards issues included in the petition.

Without a response from the Mexican ministries, the NAO relied instead on worker testimony as evidence. While workers repeatedly stated violations of both health and safety and minimum standards as regards to payments and working hours in their testimony, the NAO did not find evidence that workers had filed complaints with any Mexican agencies to resolve these issues. Yet, the NAO noted multiple instances where the petitioners had shown through campaign documents and letters sent by the network to Mexican officials at all levels of government that those officials did in fact know about the violations taking place at both factories, even when no formal complaints were filed, but had not acted to either prevent or rectify them (US Department of Labor 2004b).

For their part, the Canadians echoed the main concerns about freedom of association as the US NAO, but added two additional points in their May 11 review. The Canadian NAO noted that the delay by the JLCA in adjudication of labor rights concerns was especially troubling because at times the delays precluded how workers could proceed. The inability of the unions to file for appeal at both Matamoros Garment and Tarrant Ajalpan were taken as examples where unnecessary delays precluded appeal in the first case, and led workers to desist from reinstatement in the second (Government of Canada 2005). The NAO cited the lack of reporting of either health and safety issues or wage payments as evidence that workers had become reluctant to pursue their rights in *any* forum given prior interaction with labor authorities.

In the end, the lack of information from the Mexican NAO did not allow the US NAO to take concrete evaluations around Article 6 and Article 9 issues, and so the US recommended Ministerial Consultations, rather than a review by a committee of experts that submitters had asked for. The Canadian NAO was also unable to provide complete reviews of the health and safety allegations due to the lack of information by their Mexican counterparts, and ended the review by asking for more information about health and safety within 30 days before making additional recommendations on Ministerial Consultations (Government of Canada 2005). In recommending these government-to-government talks, the US

again took the NAO to task for not fully participating in the review process.[131] The review ends with this statement:

> *During the submission review process, the US NAO requested consultations with the Mexican NAO under Article 21 of the NAALC with a view towards engaging the Government of Mexico in effective and frank consultations that would lead to a full understanding of the relevant issues and potential resolution of the submission. Regrettably, the Mexican NAO declined the request of the US NAO to arrange meetings with the various authorities in Mexico responsible for enforcement of the relevant labor laws and limited contact to responding in writing to questions submitted by the US NAO. While written exchanges are important to the consultations process, limiting consultations to written communications is not the most effective method for successful consultations* (US Department of Labor 2004b:45).

The submitters' response to these reviews was mixed. Though they noted the critical language used in the report as a positive new development in the NAALC process, they were disappointed that the case would not move to expert review, and took this as evidence that US pressure on Mexico through the NAALC was becoming inadequate (US-LEAP 2004). Though US-LEAP noted that the report generally supported workers' allegations, with the plants closed, Ministerial Consultations would come too late to make any difference in the cases themselves.

[131] The Mexican NAO noted that it had passed the information requests on to the various ministries for answers, but had no power to ask them to fulfill the requests, or to respond in a timely manner. Interview, NAO of Mexico, Mexico City, Mexico, July 16, 2006.

It would take another two years for the three NAOs to come to agreement about what areas the Consultations would cover. Five years after the initial petition was filed, the first government-to-government meetings were held in December of 2008 to discuss union-motivated dismissals, the registration process and access to collective bargaining agreements in the three states. The meeting was followed by a "stakeholder seminar" with functionaries of the Mexican state and local Puebla government, but none of the submitters were invited to attend, and the meeting was closed to the public (Centro de Apoyo al Trabajador, United Students Against Sweatshops, and Maquila Solidarity Network 2008). To date, the three Ministers have not signed Ministerial Agreements on freedom of association for the Puebla, or any other NAALC case.

Complementary Strategies?

In the Puebla factories analyzed here, neither strategy was fully effective in achieving what workers wanted most, the right to establish a union of their own choosing. When the campaign strategies that had been successful at Kukdong were transposed onto Matamoros Garment and Tarrant Ajalpan, they were wholly inadequate against an owner already in deep financial trouble on one hand, and one with the ability to isolate the plants with nascent union drives on the other. In the end, workers lost not just the unions, but the factories themselves, including Kukdong when the union was unable to maintain its claim to the collective contract.

It is fully out of the scope of the NAALC to force owners to pay back wages, severance, vacation pay and bonuses as the submitters had asked (United Students Against Sweatshops and Centro de Apoyo al Trabajador 2003a). Nor can the NAALC independently force the labor board to investigate the closure of Matamoros Garment, or force the Mexican Government enforce its own labor laws, only identify where these actions were not done. The CAT did not expect that the NAO would solve the labor struggles in Puebla.[132] Yet, for them, filing the complaint was part of a larger campaign strategy of which the NAO *process*, and not the outcome, had its own use in terms of pressuring the Mexican government, addressing officials, and attracting attention to both these cases and larger issues of freedom of association in Mexico. Engaging the NAO process as a secondary strategy therefore complemented the work of the campaign, and the goals of the transnational network, in a number of ways.

First, the CAT filed the petitions as a last resort effort to force the government of Mexico to listen to them, as all of the attempts to engage the government had failed at the time the labor struggles took place. Filing provided a direct channel to the federal officials that the campaign could not reach, and placed those officials in the position of having to not just listen to the allegations, but answer for the actions of the Puebla labor board in denying union representation. Though the NAALC process may not have resulted in a positive local level resolution, it at least forced the Mexican Government to respond to the situation in Puebla. Further, when the Mexican NAO did not provide the

[132] Interview, CAT field organizer, Puebla, Puebla, Mexico, July 25, 2006.

requested information, the US NAO took them to task for their unwillingness to participate. Though the Mexican government is not obligated under the NAALC to participate in any activities, not doing so damaged their credibility in the US.

Second, the NAO process legitimized the workers' complaints in a number of ways. When the Mexican NAO was less than forthcoming with information, the US staff traveled to Puebla to ask workers directly about their experiences, and collected the additional information from the filers and workers directly, rather than from the NAO.[133] Those testimonies, and the written affidavits that accompanied the submissions, were referenced throughout the report of review as evidence of violations of Mexican labor law, which is the only time this was ever done by any NAO. Including worker testimony in the review materials signaled to the Mexican government that even if these workers were not being taken seriously by the local officials, that the NAO certainly was listening to them. Also, the course of the review clarified where the labor board had overstepped its legal obligations, and where the Mexican Government, in its various capacities, knew about the labor rights violations but declined to act. For once, workers, the CAT, and their allies were vindicated in that their allegations were not just credible, but accurate, and that their concerns were valid. Although the NAALC emphasizes a cooperative spirit in the relationships between NAOs (US Department of Labor Public 2004a), the Puebla reports assigned blame for the

[133] Interview, US NAO, Washington, D.C., July 1, 2007.

violations, and were so critical that the Mexican NAO felt the need to defend itself against the allegations of not cooperating fully.[134]

However, the resolution of this case underscores the most important limitation of the NAALC, in that it suffers from the failure on the part of both the Mexican Government and US officials to make international labor rights issues a policy priority.[135] On both sides, the NAO offices are struggling to establish an effectual presence within their respective Departments of Labor that would allow them to respond more forcefully. In Mexico, the NAO has a very small role in the overall structure of the STPS, itself an agency where the international aspects of labor policy are both very recent and very minor. In the US, the international bureau at the Department of Labor is more extensive, but it suffers from at best bureaucratic stalemate when an administration does not value pursuing international labor rights issues, and at worst, outright scandal when an administration uses the office to house political appointees. The US NAO in recent years has endured reorganizations that have increased the workload but decreased funding resources, which has affected the office's ability to function effectively (Buchanan and Chaparro 2008).[136] As a result, the current perception is that the governments of Mexico and the United States are both uninterested in promoting international labor rights enforcement, and in turn, submissions to the NAALC process have dropped considerably since the Puebla case was filed.

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[134] Interview, NAO of Mexico, Mexico City, Mexico, July 16, 2006.

[135] Not so for Canada, whose participation in the NAALC is much more conscribed.

[136] Interview, US NAO, Washington, D.C., July 1, 2007. Buchanan and Chaparro (2008) note that one submission was actually lost by the US office during a reorganization. It has not been recovered.

The general perception among labor rights groups is that the NAALC process has stalled, and until the US and Mexican governments commit to labor rights enforcement as a policy priority, even these modest results may not be forthcoming.

Conclusions

A review of the transnational strategies pursued at Kukdong, Matamoros Garment and Tarrant Ajalpan described here showed that first, brand-based campaigns can be effective tools in the struggle to gain union representation in Mexico, but that the outcomes are uneven and limited. At the Kukdong factory, transnational support was crucial in pressuring the plant owner and the brands to lobby the state government to remove the protection union. Transnational advocates stepped in at key points that helped workers meet their demands to get the supervisors rehired, and allowed them to negotiate a departure for the FROC-CROC union. However, once the network attempted a campaign against Puma at Matamoros Garment, this strategy was less effective. While Puma eventually relented and offered to come back to the factory, the economic problems facing the plant were already too advanced, and the owner was not able to respond in any meaningful way to network pressure. At Tarrant Ajalpan, the brand strategy backfired completely when networks either could not identify an important brand for the campaign as ownership of the factory changed, or pressured brands whose codes of conduct allowed them to leave the factory.

Under pressure to allow the independent union in, the owner simply divided orders across the production chain to isolate the unionizing plant.

These varied outcomes emphasize that even when transnational advocates are present in local labor struggles, transnational pressure is not always effective at promoting political change within states. Sometimes transnational advocacy groups fail to reach their goals of promoting worker rights, even when networks are visible, well funded, credible and determined. Firms can sometimes deflect pressure to unionize by closing and relocating production, as they did in Tarrant Ajalpan, and in Han Young and Maxi-Switch in Chapter 3. Once transnational advocates switched to strategies that targeted the state by filing an NAO petition, there was at least an opportunity to take states to account for their behavior, even when the outcomes fell short of what workers wanted.

The Puebla case is not the first NAALC case to allege that the structure of the labor board system denies freedom of association in Mexico. However, the NAO review may be the most comprehensive investigation thus far on how the labor board has been used to advance local political interests. In turn, the NAALC process on the whole has created new opportunities for independent unionists and their allies to use the resolutions to open a wider political debate in Mexico about freedom of association, which otherwise would not have been possible in the absence of US-Mexico dialogue in the context of NAFTA (Graubart 2008).

If the Matamoros Garment and Tarrant campaigns failed, submitting them to the NAALC process still did not resolve any of the labor struggles discussed in the course of the events. Yet, to the workers, these cases were not failures. Transnational support was important to the labor struggle in ways that are more subtle than can be captured in analysis focused solely on case outcomes. The support that workers received from transnational groups gave them the spark to start a workers' movement that still affects these communities, even though the factories never reopened. In the aftermath of Tarrant, labor relations improved in the *maquilas* that remained. Tarrant workers that I spoke to said that because of the movement, the *maquila* owners took note of the way that the community supported the workers, and started to respect the work contract. Among the changes were that *maquilas* in the area stopped keeping workers overtime, overnights stopped completely, the lunch hour was extended, transportation improved and most importantly to them, supervisors stopped swearing and spoke to them with respect. [137]

While the workers of Ajalpan and even their families were blacklisted from working in other factories in the region, the workers received full severance pay, a major victory in a region where other factories use the *paro técnico* to avoid severance, or the protection unions negotiate payments at a percentage of the legal value (Juárez Núñez 2002b).[138] Moreso than this, the practice of forming a

[137] Interview, SUITTAR executive committee member, Altepexi, Puebla, Mexico, August 21, 2006.

[138] Nearly everyone I met in Tehuacán made mention of extracting severance from Kamel Nacif, owner of the Azteca consortium and Puebla's "King of Denim", as a major symbolic victory for the *maquila* workers.

union, and especially going house to house to organize the workers, gave them a sense of power as a community that they had not experienced since the *maquilas* came to Tehuacán. Though a number of SUITTAR leaders were never able to work in the *maquilas* again, they felt that overall, they had scored a victory against the *maquila* owners because they had stood up for their rights against an array of powerful actors determined to deny them, and were taken seriously.[139] As one blacklisted SUITTAR leader said to me, "A few of us lost out, for sure. I can't ever get another job. I do what I can. But in the end it was the community that won, all of us. Because they can't do this to us anymore, they know that we are watching them."[140] I suggest that we evaluate the success of any method for achieving global labor rights protections through a metric that also includes these local level effects, rather than the current measures that emphasize institutional outcomes above all other possible measures of success.

[139] Interview, SUITTAR leader, Altepexi, Puebla, Mexico, August 20, 2006.

[140] Interview, SUITTAR executive committee member, Altepexi, Puebla, Mexico, August 21, 2006.

Chapter Five: Conclusions

Labor rights commitments have been appended to regional and bilateral trade agreements in recent years, each with a differing institutional design and enforcement potential. This dissertation examines the actors, strategies and institutions for promoting labor rights in the context of increased economic integration, and is one of the few studies that systematically explores the incorporation of labor rights conditionality into trade agreements as one potential method for promoting labor rights enforcement within states. I argued that the potential for protecting labor rights through trade-based social clauses depends as much as on how the clauses are implemented by states, as the kinds of outcomes they can encourage within them. I measured implementation by investigating which cases are submitted for arbitration in the quantitative study of the NAALC, and developed statistical models that predicted the factors that determine whether cases of labor rights abuses are then accepted for review. To assess outcomes, I investigated how states comply with the rules of trade-based labor rights conditionality at the domestic level, once they are reviewed for labor rights violations through the qualitative study of a range of NAALC cases.

In each of the cases explored in these chapters, transnational labor rights advocates were involved in developing the strategies used to pressure states to improve labor rights protections, whether through brand-based campaigns that utilized corporate codes of conduct, as in Chapter Four, or in filing the petitions to engage the trade mechanisms as in the other empirical chapters. In the NAALC process there is important variance in the depth of organizational ties and degree

of transnational support across cases, and these differences conditioned the outcomes. The results of the quantitative analysis in Chapter 2 showed that transnational support was an almost necessary but not sufficient condition for predicting which cases are reviewed by the tri-national arbitration boards. I argued that transnational success in the NAALC was due to case framing and the use of worker testimony, two strategies associated with transnational advocacy groups. Transnational groups had contact with workers that they could use to collect evidence and corroborate the allegations in the petition, which I argued was key to securing a review from an NAO. Only when actors without transnational ties employed these strategies --including worker testimony or mentioning acts of violence against workers in their petitions-- were their cases accepted as well.

Chapter Three discussed the ways that the persuasive capacity of transnational advocacy networks to promote norms compliance among states was supplemented with the coercive capacity to apply material leverage once advocates turned to using the trade clauses. In addition to pressuring Mexico with persuasive arguments that exposed the disconnect between Mexico's efforts to develop an international reputation as a democratic country while limiting union democracy at home, advocates also introduced coercive elements by filing petitions at the NAALC. Transnational advocates were then able to use the NAALC process to compel the Mexican government to explain the inability of the labor board system to provide impartial decisions, and answer for their acquiescence to violations of the right to freedom of association. Even as the

outcomes of the NAALC led to resolutions that were very modest in almost all other cases, at Maxi-Switch and Han Young the federal government stepped in to force resolutions when doing so would help them rein in actors in the authoritarian periphery, and they responded to the issues raised in the TAESA, ITAPSA and Gender cases with policy changes. More importantly, the NAALC process unleashed political dynamics within Mexico that shifted the balance of power towards the independent unions in negotiating with the federal government around labor rights reforms (Graubart 2008), and ultimately made the government more responsive to labor.

Chapter Four analyzed how the choices of strategy by transnational labor rights networks affected the outcomes of three union drives in Puebla. This chapter asks whether engaging the trade mechanisms complements other transnational strategies for promoting labor rights, which in the Puebla maquilas included the use of corporate codes of conduct to develop brand-based consumer campaigns. When the campaign strategy that was successful in achieving union recognition at Kukdong failed at Matamoros Garment and Tarrant Ajalpan, transnational advocacy groups then submitted petitions on these cases to the NAALC. After analyzing how plant owners were able to resist transnational pressures and thus avoid unionization, I discussed how using the NAALC process supported network goals, even when these strategies failed to reopen the plants, force the payment of severance, rehire the workers, or otherwise change the course of the labor struggle. While the Puebla case was representative of others, in that the institutions of the NAALC created little

change within Puebla, the NAALC case had its own function in terms of pressuring the Mexican government through international institutions. Also, the NAO review legitimized the claims of violations of freedom of association made by the workers, attracted attention to these cases and larger issues of freedom of association issues in Mexico, and gave workers and their allies an opportunity to address Mexican officials over the systemic discrimination of independent unions in the labor board system, none of which had been achieved in the course of the campaigns.

While this dissertation establishes in each chapter that transnational support to local workers in dealing with labor rights abuses was an important factor that led to network successes in some cases, transnational involvement in labor rights cases also has its limitations. For one, transnational strategies are located outside of the countries where they occur by design, which limits worker participation in the campaigns. Brand-based campaigns are constructed to reach consumers outside of the state where the labor rights violations take place. Because knowledge about corporate codes of conduct are limited in Mexico, transnational advocacy was crucial to contacting the brands to spur an investigation, and even then, auditing came from outside the factory, further removing worker participation in resolving the labor rights situation. Finally, transnational strategies that focused around firms could backfire when global capital can simply evade regulations by relocating, as they did in Han Young, Maxi-Switch and Tarrant Ajalpan, and many other cases.[141]

[141] Interview, Director of Maquila Solidarity Network, Toronto, Ontario, Canada, July 1, 2005.

Transnational advocacy networks have been criticized for usurping roles reserved for local participants, and for not developing the local institutions that would help workers maintain the gains of transnational campaigns (Armbruster-Sandoval 2003; Braun and Gearhart 2004; Anner and Evans 2004; Roman 2004; Jordan and van Tuijl 2000). Transnational labor rights campaigns are much less able to produce political change if the major labor rights violations concern the right to organize, as in the Mexican cases, because union recognition is a domestic process, and one not easily reached with proven network strengths in developing consumer campaigns. As in the Kukdong and Tarrant cases, campaign strategies may move closer to emphasizing the issues that help keep the network functioning, like negotiating with the brands, rather than the issues that workers want, partly because the right to organize makes for a less sympathetic frame for network organizing and is missing from the codes networks use to engage the brands.[142] Yet, if transnational advocates instead helped to develop the local workers base by allowing them to take a larger role in determining strategies, workers might be able to maintain improvements in wages and benefits, working conditions and so on after campaigns are over and transnational groups move onto other factories. Instead, in case after case, the gains of transnational networks in individual factories have not been sustainable,

[142] Corporate codes almost never refer to wages or freedom of association because companies are loathe to include anything in their codes that encroach on domestic laws. Levi's has standards on the selection on country partners in their sourcing agreements (Radin 2003), and even they were unwilling to get involved in the conflict over union recognition at Tarrant Ajalpan, preferring to pull their orders.

and unions have been pushed out once transnational support evaporates, including at Kukdong (Anner 2003a; Armbruster-Sandoval 2003; Kidder 2002).

This analysis of the trade and labor linkage points rather to some of the advantages of transnational strategies that engage states over those that target firms. First, if we are interested in impact, the trade and labor linkage has the potential to affect more workers because of its wider coverage. Campaigns and cross-border union organization efforts are usually concentrated in single factories or on single brands, as in the cases analyzed here, and in many others (Anner 2003a; Armbruster-Sandoval 2003; Frundt 2002; Kidder 2002). Any successes from the efforts centered on one factory are likely to be shared only among workers in that single factory. Private efforts like corporate codes of conduct suffer from the same limitations in that labor protections may extend to only the workers that happen to produce certain brands of clothing, if in fact they know what the codes are to be able to use them. The trade-based methods in contrast are likely to cut through the limitations of other transnational strategies because they largely hold states, not firms, accountable for labor rights violations. Further, if reforms to address labor rights abuses are forthcoming, these are long-term effects that reach every worker, not just those that happen to produce for a well-known brand, or work for a subcontractor that is held to a code of conduct. Though the outcomes of the NAALC process were generally inadequate, when they addressed changes in labor rights policy or practices -- such as when pregnancy testing was outlawed, or when the union registry was made public-- they would potentially affect more workers in the long-term, than

the few who won the right to be represented (for a time) by a union of their choice.

Linking trade and labor rights can provide the incentives that increase labor rights enforcement while providing market access to developing countries (Rodrik 1996). Even states that are willing sacrifice labor rights in the quest for economic growth are not willing to do so when it implicates market access. By making trade benefits contingent on respect for labor rights, developing countries get the preferential treatment that they want, and the industrialized countries receive if not the labor rights externalities they say they desire, then fair competition in trade that is not based on the "race to the bottom" on wages and working conditions.

This review of the NAALC process also suggests that the weaknesses of the NAALC agreement lie in its institutional design. As a treaty between governments, the NAALC agreement responds first to concerns over state sovereignty, which is so important to Mexican foreign policy, and was their major interest in the negotiation of the agreement. The NAALC was written in ways that emphasize state sovereignty, while at the same time limits its enforcement capacity (Weiss 2003). The agreement does not allow any government to mandate changes in policy and practices in another state, and the stages of resolution of issues are based on negotiation and cooperative consultation, not penalties. Further, in establishing separate resolutions for different categories of rights, and by reserving Ministerial Consultations for the resolution of freedom of association issues, the design of the NAALC limits any real resolution of the

major barrier to collective rights in Mexico. Finally, the NAALC lacks avenues for the genuine application of trade sanctions, which are poorly defined in the agreement, and extend only to a small category of rights violations only after a long series of prior resolution stages. With stronger recourse to trade sanctions in the design of the institutions, the coercive capacity of the labor rights clause would be strengthened, and might lead to more tangible outcomes. Would a Mexico subject to stronger trade sanctions finally allow union democracy?

This research illustrates that concern over labor rights protections are subsumed by other foreign policy interests between the US and Mexico, which affects implementation of the agreement. Where conflicts over labor rights could bleed into other bilateral issues in the NAALC, both the US and Mexico find reasons to avoid dealing with them. As a result, Mexico makes small reforms where and when necessary to maintain the approval of the United States, without having to make major reforms to its labor relations system, build its regulatory capacity, or even participate in the labor clause any more than necessary. Because the NAALC is embedded in the relationship between states, the US is also less able to dissuade Mexico from taking these positions, even when they limit the agreement's effectiveness, as the NAALC review of the Puebla cases illustrated.

Further work on the trade and labor linkage should investigate the design of the labor rights enforcement mechanisms to understand how institutional design can foment stronger outcomes while at the same time minimizing the political context of the NAALC that hampers its effectiveness. One avenue

suggested by this dissertation is to focus on ways that transnational strategies can be used within international institutions, where the norms of sovereignty are mediated by states' membership and there is more potential for enforcement. This dissertation also demonstrates that citizen participation is a key component of the enforcement mechanisms, as it is the petitions process that draws government attention to individual cases of labor rights violation that could be investigated through the trade clause.

As I argued in Chapter Two, governments do not enforce the labor clauses until asked to do so by civil society, transnational or otherwise. Future research could describe the ways that the citizen petition mechanisms have been included in the labor rights clauses currently available, and how different forms of citizen participation have affected compliance among states within them, to identify the best institutional designs for promoting enforcement. Where social clauses have mechanisms for policy advocacy, changes in state behavior are possible. It is because of the spillover effects generated by transnational pressure that advocates might well continue to pursue labor rights protection through trade agreements, as one additional path to improving labor rights enforcement in the era of globalization.

Appendix A: NAALC Cases and Resolutions 1994-2005

Filed against Mexico

Case Number and Name	*Sponsor*	*Issues*	*Resolution*
US 940001	Honeywell/ General Electric	International Brotherhood of Teamsters	freedom of association, minimum standards	Joint hearing with 940002 Insufficient information provided to rule
US 940002	Honeywell/ General Electric	United Electrical, Radio, and Machine Workers of America (UE)	freedom of association, minimum standards	Cooperative program to resolve freedom of association issues suggested for three countries, never convened
US 940003	Sony	International Labor Rights Fund (ILRF), four worker's rights and human rights organizations	freedom of association, minimum standards	Ministerial Consultations
US 940004	General Electric	UE	freedom of association	withdrawn prior to review
US 9601	SUTSP	International Labor Rights Fund (ILRF), Human Rights Watch, Mexican Association of Democratic Lawyers (ANAD)	freedom of association, impartiality of labor tribunals	Ministerial Consultation; public seminar

US 9602	Maxi-Switch	Communications Workers of America, Union of Telephone Workers of Mexico, Federation of Goods and Services Companies (FESEBS)	freedom of association	withdrawn "favorable resolution" of issues prior to public hearing; Independent union registration granted, plant closes.
US 9701	Gender	Human Rights Watch, ILRF, ANAD	discrimination (pregnancy testing in maquiladoras)	Ministerial Consultations; conference on the rights of working women. Four outreach efforts on worker's rights. Individual firms pledge to stop practice, Mexican government "renews commitment" to end practice after 1998; federal law passed in 2003
US 9702 (I)	Han Young (I)	Support Committee for Maquila Workers, ILRF, ANAD, Union of Metal Industry Workers (STIMAHCS)	freedom of association	Ministerial Consultations; public outreach seminar Independent union wins bargaining rights, plant moves
US 9702 (II)	Han Young (II)	Maquiladora Health and Safety Support Network, Work safe! Southern California, United Steelworkers of America, United Auto Workers (UAW), Canadian Auto Workers (CAW), 4 petitioners from US 9702	Health and safety standards	*addendum to US 9702* Ministerial Consultations; Found in violation of health and safety codes, fined $9400 in penalties by STPS

US 9703	ITAPSA	66 sponsor groups, including Echlin Worker's Alliance (includes Teamsters, UAW, CAW, UNITE, UE, Steelworkers, Paperworkers), AFL-CIO, CLC (CAN), UNT (MX), additional human rights and labor rights groups	freedom of association, health and safety standards, impartiality of labor tribunals	Ministerial Consultation; public seminar held on secret ballot elections; collective agreements registry made public
CAN 98-01	ITAPSA	Canadian submission for US 9703		Ministerial Consultations pending
US 9801	Flight attendants	Association of Flight Attendants- AFL-CIO	freedom of association, right to strike	declined review
US 9802	Tomato/ Child Labor	Florida Tomato Exchange	Child labor in Mexico	declined review
US 9901	TAESA	Association of Flight Attendants-AFL-CIO, Association of Flight Attendants of Mexico	freedom of association, health and safety, minimum standards, impartiality of labor tribunals	Ministerial Consultation
US 2000-01	Auto-trim	28 labor rights, human rights and religious groups from MX, CAN and US, US unions	Health and safety	Ministerial Consultation; binational working group on occupational safety established
US 2001-04	Duro-bag	AFL-CIO, PACE	freedom of association	declined review; independent union allowed representation on plant workers' committee
US 2003-01	Puebla	United Students Against Sweatshops, Centro de Apoyo al Trabajador (CAT)	freedom of association, impartiality of labor tribunals, health and safety, minimum standards	Ministerial Consultations pending

CAN 2003-1	Puebla	Canadian NAO submission for US Puebla; UAW Canada		Ministerial Consultations pending
US 2004-01	Yucatán	Unite-Here, Centro de Apoyo a los Trabajadores de Yucatán	Minimum standards, health and safety	withdrawn
US 2005-01	Labor Law Reform	Washington Office on Latin America, 22 US, Mexican and Canadian unions	Abascal labor reform proposal as violation of NAALC principles on freedom of association, impartiality of labor tribunals	declined review
US 2005-02	Mexican Pilots- ASPA	Airline Pilots Association of Mexico	freedom of association, impartiality of labor tribunals	declined review
CAN 2005-01	Mexican Pilots- ASPA	CAN submission for US 2005-01		declined review
US 2005-03	Hidalgo	WOLA, US-LEAP, Progressive Union of Textile Industry Workers (MX)	freedom of association, minimum standards, health and safety, child labor, discrimination, impartiality of labor tribunals	Ministerial Consultations advised
US 2006-01	Coahuila	United Steelworkers	freedom of association, health and safety, minimum standards, impartiality of labor tribunals	declined review

Filed against the US

MX 9501	Sprint	Union of Telephone Workers of Mexico (Communication Workers of America filed concurrently with the National Labor Relations Board)	Unfair labor practices (union motivated closure), freedom of association	Ministerial Consultations; public forum. Study into effects of plant closings on freedom of association published; National Labor Relations Board ruling to reinstate workers appealed, reversed
MX 9801	SOLEC	Oil, Chemical and Atomic Worker's Union Local 1-675, "October 6" Industrial and Commercial Worker's Union, Labor Community Defense Union, Support Committee for Maquila Workers	freedom of association, health and safety, minimum standards, discrimination	Ministerial Consultation; to discuss application of US laws as concerns union organizing and bargaining rights
MX 9802	Apple Growers	National Worker's Union (UNT-MX), Authentic Workers' Front (FAT-MX), STIMAHCS, Frente Democrático Campesino	freedom of association, protection of migrant workers, health and safety, discrimination, minimum standards	Ministerial Consultation; public outreach sessions; Washington state implements policy changes
MX 9803	De Coster Egg	Mexican Confederation of Labor (CTM)	Protection of migrant workers, health and safety, discrimination, minimum standards	Ministerial Consultations, public forum held in Maine as joint resolution with MX 9802

MX 9804	Yale/ INS	Yale Law School Workers' Rights Project, 16 legal defense and immigrant's rights associations, SEIU and UNITE unions	protection of migrant workers	Ministerial Consultation; US DOL and INS revise Memorandum of Understanding
CAN 98-2	Yale/ INS	Canadian submission for MX 9804		Case dismissed based on implementation of Memorandum of Understanding
CAN 99-1	LPA	Labor Policy Association, EFCO Corporation	Enforcement of Labor Relations Act	declined review
MX 2001-01	New York State	Chinese Staff and Workers' Association, National Mobilization against Sweatshops, Workers Awaaz, Tepeyac Association, 13 named individuals	workers compensation delays in NY State	Ministerial Consultations pending
MX 2003-1	North Carolina	Farmworker Justice Fund, Independent Agricultural Workers CIOAC (MX)	treatment of migrants, discrimination, freedom of association	Ministerial Consultations pending, ongoing cooperation on compliance with workplace laws between DOL and Mexican consulate in Raleigh.
MX 2005-1	H-2B Visa Workers	Northwest Workers Justice Project, Andrade Law Office, NYU Law School	Forced labor, minimum standards, rights of migrant workers	case accepted, resolution pending
MX 2006-01	North Carolina Public Employees	FAT (MX), unions of CAN, MX and USA		case acceptance pending

Filed against Canada

US 9803	Mc Donald's	Teamsters, Teamsters Canada, Quebec federation of Labor, Teamsters Local 973 of Montreal, ILRF	Unfair labor practices (union motivated closure), freedom of association	case moved to study by provincial council
US 9804	Rural Mail Carriers	Organization of Rural Route Carriers, Canadian Union of Postal Workers, National Association of Letter Carriers AFL-CIO, Canadian Labour Congress, American Postal Workers Union, 16 other Canadian, US and Mexican unions, ILRF	freedom of association	declined review

Name and case number refer to the year and NAO code assigned to the case under the NAALC arbitration process, as well as the firm, claimants, or issue that identifies the case. Sponsors here refer to the group or groups that sponsored the submission. Issue identifies the labor code violations submitted to arbitration. Resolution describes outcomes of each case within the parameters of the NAALC process and subsequent events, as of July 2009, according to the US Department of Labor *Public Report of Review*.

Source: US Department of Labor Bureau of International Affairs, " Status of Submissions", available online at http:www.dol.gov/ilab/programs/nao/status.htm, and interviews at US DOL, July, 2007.

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