THE UNIONIZATION OF THE MAQUILADORA INDUSTRY AND THE NORTH AMERICAN AGREEMENT ON LABOR COOPERATION: STRATEGIES CONCEIVED AND FRUSTRATED

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INTRODUCTION

The North American Free Trade Agreement (NAFTA) has sparked significant controversy among social scientists and policymakers regarding its effects on member nations' economies. However, few observers have systematically examined the potential effectiveness of the treaty's labor side accord for promoting worker rights in the three member countries. Specifically, we are interested in the North American Agreement on Labor Cooperation's (NAALC) potential as a tool for cross-border efforts to unionize the maquiladora industry. Through an analysis of the accord, the political context for union activism in the U.S. and Mexico, and the cases brought before the NAALC to date, we argue that the agreement can only indirectly help organizing efforts. The NAALC has weak enforcement powers that will unlikely counteract entrenched political actors who oppose independent unionism in the maquiladoras. Rather than compelling member countries to enforce their own labor laws, the accord's potential positive role for workers will be its promotion of cross-border alliances and its potential to provide negative publicity for anti-labor policies and employers. In this light, the NAALC is neither a panacea nor an obstacle to cross-border organizing, but a modest tool in workers' uphill battle to organize the maquiladora sector.

Several unions and non-governmental organizations (NGOs) have tried to use the NAALC's provisions to defend labor rights in the member countries. Efforts to support independent unions in the maquiladora industry have been most notable. Indeed, the maquiladora industry has been a thorn in the side of organized labor since its initiation in the mid-1960s. Over the years, U.S. labor initiated a series of strategies to counter the maquiladora industry. Additionally, since the 1980s NGOs and lawyers have entered the fray to support unionization in Mexico's northern border region. Campaigns designed to condemn the industry and catalyze political opposition to it have damned it as a magnet for "runaway shops," a contribution to undocumented migration, a plague of "sweatshops" exploiting Mexican workers,
and a polluter of borderlands air and water, threatening the health and well being of peoples on both sides of the international boundary line. While each of those charges has some validity, none have formed the basis of a successful campaign to stem the industry's growth. The Mexican maquiladora industry continues to flourish.²

The NAALC seemed to offer another opportunity to U.S. unions and labor activists by facilitating the organization of the borderlands assembly plants. Organizing Mexican workers represented an end in itself, of course, but it would also drive up labor costs on the Mexican side, thereby diminishing the comparative advantage of the Mexican location and saving U.S. jobs. Almost immediately, some U.S. and Mexican labor activists attempted to utilize the accord to further the unionization of the maquiladora industry. By mid-1999, labor activists brought twenty cases before the National Administrative Offices (NAOs) of the three countries; seven focused on the maquiladoras.³ At least some groups within the two labor movements saw the NAALC as an opportunity to defend labor rights. After testing the accord, many activists believe their initial concerns about its cumbersome procedures and weak enforcement mechanisms may be correct.

While sharing activists' criticisms of the NAALC's flawed design, we contend the potential for cross-border labor collaboration between U.S. and Mexican activists must be placed in the context of several other factors. During the Cold War, U.S. unions collaborated with their government in its foreign policy objectives, often attempting to manipulate labor activists in Latin America, to pursue the U.S. government's geopolitical goals. In this context, Mexican activists can legitimately question the motives of U.S. activists who now profess the desire to collaborate. In contrast, successful grassroots efforts at cross-border organizing began in the 1980s before the NAALC was established, suggesting that the side accord must be considered within this longer and contradictory historical frame.
Another factor relates to the state-led assault on trade unionism in both countries, today an apparently global trend. President Reagan sparked efforts to undermine the labor movement, while Mexican administrations since the early 1980s have weakened the Partido Revolucionario Institucional's (PRI) historic alliance with the Confederación de Trabajadores Mexicanos (CTM), long favored by the government. Moreover, neoliberal policies in the U.S. and Mexico have battered union strongholds through privatization, downsizing, runaway shops, etc.

Bureaucratization and corruption in the leadership of both labor movements compound this negative scenario. U.S. union leaders watched unionization levels decline after their wartime expansion under the CIO, often focusing on the anti-Communist crusade at home and abroad, "bread-and-butter" demands, and personal gain within the union bureaucracy, rather than mobilization for social change. Likewise, Mexico's official unions suppressed independent sindicatos, often forming an unholy alliance with employers, venal labor inspectors, and local government officials to the detriment of their putative constituents.

Though favorable changes like John Sweeney's election as president of the AFL-CIO, the death of Fidel Velázquez, incipient democratization in Mexico, and a growing sector of U.S. and Mexican unions and non-profits promoting independent unionism and genuine international collaboration offer rays of hope, they do not augur fundamental changes in either labor movement. In the U.S., cross-border organizing is only one of organized labor's many priorities and will unlikely gain the AFL-CIO's full scale commitment. By contrast, in Mexico, independent unions and NGOs need to fight official labor and public authorities every step of the way. Small victories may be outweighed by a trend toward the weakening of genuine trade unions in Mexico, particularly in the maquiladora sector.

Based on a review of complaints brought before the U.S. National Administrative Office (NAO) under the NAALC regarding violations of labor rights in the maquiladora sector, we argue that while cross-border labor activist coalitions have attempted to exploit the agreement to
its fullest extent, the NAALC's lack of enforcement mechanisms means it will have little if any concrete positive effects on Mexico's maquiladora workers. While the U.S. NAO can call for ministerial consultations and educational initiatives if it finds that labor laws regarding the right to organize are not enforced in Mexico, these exchanges will not compel the Mexican government to enforce its own laws. Indeed, independent labor activists in Mexico's maquilas are hostages to a business, judicial, and trade union setting that thwarts their efforts at every turn.

However, by fostering cross-border collaboration between labor activists, the agreement may facilitate the deepening of what Maria Lorena Cook calls the "transnational political arena," where citizens of one country use the political institutions and actors of another to gain political clout at home.⁴ NAO public hearings permit aggrieved Mexican workers to testify in the U.S. regarding labor rights violations in Mexico. They increase their political power at home through the negative publicity that damns Mexico's political system and labor courts. Moreover, U.S. labor and human rights activists can provide Mexican counterparts with resources and prestige that increase their standing at home. Mexico's officials may respond to grievances if they believe negative publicity emanating from NAALC proceedings may hurt the country's political and economic standing. In short, the NAALC may be more useful to union activists as a publicity device and institutional resource than as a supranational adjudication body.

Some might argue that the focus on the maquiladora industry as a potential sector for activists' use of the NAALC is misplaced. The accord is not restricted to the assembly plants; fewer than half of the cases have involved maquiladora workers. To be sure, the NAALC covers labor conditions in all work places. However, the maquiladoras define a crucial test case for the accord. The industry is the fastest growing employer in Mexico, a traditional target of U.S. labor, and a setting where workers are particularly vulnerable to employers. Moreover, the insights from this discussion are more broadly applicable to the issue of cross-border activism in the NAFTA era.
The paper divides into several parts. The first section sets out the policy and political context, featuring discussions of the NAALC and the maquiladora industry. The second part describes and analyzes the influence of the political actors involved in the conflict, offering special attention to the Mexican government and Mexican organized labor. The third section details the utilization of the NAALC in seven labor disputes involving attempts to unionize maquiladoras in Mexican border states.

The conclusion centers on two foci. It first examines the influence of political forces in the U.S. and Mexico who oppose unions and the organization of the maquiladora industry. In a rather more hopeful vein, it also examines characteristics of the NAALC that may be developed in the future to lend themselves to the empowerment of unions in the U.S. and Canada and sindicatos (unions) in Mexico.

**THE POLICY AND POLITICAL CONTEXT**

The NAALC and the maquiladora industry form the two major components of the policy and political context. The NAALC may provide labor activists in Mexico and the U.S. an additional tool to form alliances to confront the new challenges created by the NAFTA treaty, but its three-tiered structure, lengthy review process, and weak enforcement mechanisms invite skepticism. We argue the NAALC may only nurture organizing efforts indirectly by shining the public spotlight on labor law violations and encouraging labor activists across borders to develop ties.

The maquiladora industry represents an ideal setting for cross-border organizing. Given its proximity to the U.S., low labor and environmental standards, and weak traditions of militant unionism, the sector represents an opportunity for labor activists on both sides of the border. Moreover, given its reputation for labor abuses and the threat it offers to union shops in North America, the industry is an excellent target for international organizing campaigns. The NAALC could serve a broader campaign to defend worker rights in the assembly plants. It is important to
highlight the provisions of the accord that inspired cross-border unionization efforts in the maquiladora sector during the 1990s.

*The NAALC*

The agreement's objectives and obligations suggest that it may serve as a tool for cross border organizing. The accord seeks to improve working conditions, promote a set of eleven labor principles, encourage information exchanges and cooperation, promote compliance with and enforcement of national labor laws, and foster transparent administration of the law.\(^5\) The eleven labor principles under the NAALC are: freedom of association and the right to organize, collective bargaining rights, the right to strike, the prohibition of forced labor, protection of child labor, the enforcement of minimum employment standards, non-discrimination, equal pay for men and women, prevention of occupational injuries and illnesses, compensation for workplace injury and illness, and protection of migrant workers.\(^6\)

The NAALC's includes a Council composed of the labor ministers of the member countries; an international secretariat to offer technical assistance to the Council; National Administrative Offices (NAOs) based in each country responsible for implementing the agreement, and national advisory committees composed of labor, business, academic, and public-at-large representatives.\(^7\)

The NAALC has a complex, multi-tiered structure for evaluating complaints. Activists submit complaints of alleged violations of the eleven principles to the NAO of another country. One or more parties may file a petition with their own NAO regarding violations in another member country. The NAALC mandates cross-border collaboration between labor advocates by requiring individuals or groups to file complaints regarding violations in another country: the petition process only functions if advocates in more than one country work together.\(^8\) The NAO may call a public hearing if it believes the issue falls under the eleven labor principles. If the hearing suggests that labor laws have not been enforced, the NAO may call for a *second* level
of review: ministerial consultations in the three countries on the issues raised. Under the accord, the process from the submission of the complaint until the NAO's issue of its final report may take as long as 240 days, almost eight months.\(^9\)

The third tier for review is an Evaluation Committee of Experts (ECE). If the matter involves a company that trades with a NAFTA partner and refers to an issue governed by analogous laws in both countries, the matter may go to an ECE comprised of independent experts. However, the first three principles (covering the right to organizing, collectively bargain, and strike) cannot be brought before an ECE. Moreover, the issue must reflect a pattern of practice rather than a one-time violation, and be focused specifically on enforcement. The ECE review and responses from governments can last at least another 240 days.\(^{10}\)

If, after the ECE report, a party finds a persistent pattern of non-enforcement of minimum wage, occupational safety, or child labor laws, further consultation may be requested. If the issue is not resolved in additional ministerial consultations within sixty days (the \textit{fourth} tier of review), one or more of the parties may request dispute resolution by the Ministerial Council, the \textit{fifth} level. If after twenty days, the Council meets and fails to resolve the dispute within an additional sixty days, a party may request arbitration, the \textit{sixth} tier. The process of arbitration can ultimately lead to a fine or suspension of NAFTA benefits (the \textit{seventh} level), taking several years.\(^{11}\)

This brief discussion gives an outline of the NAALC institutions and the complex process of complaint review. We analyze below how they may offer labor activists an effective tool for creating independent unions in the maquiladoras.

\textit{The Maquiladora Industry}

The maquiladora industry defines the second part of the context for labor activists to use the NAALC to as an organizing tool. Several salient characteristics of the industry invite unions and labor rights advocates to utilize it as the test case for the NAALC. It is close by; it is
relatively familiar; and it forms an especially galling affront to organized labor, particularly in the U.S. Moreover, the industry pays relatively low wages, suggesting a milieu conducive to organizational efforts.

At the most basic level of influences, geographic proximity to the United States recommends the industry as a test case. Organizers find literally thousands of target plants within a mile or so of the international boundary line. They can fly to El Paso or San Diego, cross the line to Ciudad Juárez or Tijuana, and within an hour launch their organizational efforts. The industry's scale underscores its social and economic importance. By 1999, the more than 3000 assembly plants employed over one million Mexican workers.¹²

The logic of U.S. organizers targeting the borderlands assembly plants to test the competence of the NAALC also evolves from a comfort level born of familiarity with the territory and the industry. A number of labor union activists and worker rights advocates have been working the borderlands for years.¹³ Even newcomers from the U.S. find the border area more familiar and less forbidding than other parts of Mexico. English is widely used in Mexican border cities, their spatial patterns and grids approximate U.S. urban areas; even architectural designs tend to be less "foreign".¹⁴

Familiarity with the U.S.-owned companies in the maquiladora industry also provides incentives for U.S. activists to promote unionization of the assembly plants. Union organizers know and work with the Fortune 500 companies that own and operate assembly plants in the Mexican border region. Organizing General Dynamics, General Electric, or General Motors in Matamoros or Nogales is, assuredly, rather different from bargaining with those companies in Indiana or Michigan, but many accouterments of the larger scenario are quite similar. The plants look the same, work organization is familiar. Of course, the use of English by top management in the assembly plants is not the least of those familiar characteristics.¹⁵
Moreover, U.S. labor bears a special antipathy for the maquiladora industry. Beginning with the establishment of Mexico's Border Industrialization Program in 1965, the assembly plants in Mexico counted the first example of significant job movement from the U.S. to Mexico. As labor union analysts see it, the several "runaway plants" of the 1960s presaged massive job losses during the 1980s. Indeed, the significant periods of expansion in the maquiladora sector (in the early 1980s and after 1994) followed peso devaluations that translated into significant wage declines: "Every available indicator of wage performance declined from 1983-1988." and "from 1982 until the present…the ongoing decline in the peso's value has greatly accelerated the tempo of maquiladora investment." During the 1980s and 1990s, U.S. labor activists witnessed the intertwined processes of job decline at home, declining wages in Mexico, and expansion of the maquila industry, all pointing to the need to promote unionization in the assembly plants.

In sum, the apparent opportunities presented by the NAALC combined with special characteristics of the maquiladora industry sparked U.S. and Mexican unions and labor rights advocates to launch initiatives in the mid-1990s to organize the assembly plants in the Mexican borderlands. Several provisions of the NAALC appeared to facilitate unionization initiatives; several features of the maquiladora industry recommended it as the logical locus of their organizational efforts.

THE POLITICAL ACTORS

In addition to the NAALC's formal provisions and the peculiarities of the maquiladora sector, we will now proceed to weigh the larger political context to divine the relative influence of the several political actors and the value they accord the maquiladora industry. In truth, the political scenario appears ominous in both Mexico and the U.S. In both nations, the rise of neoliberalism means that the influence of the labor movement wanes and the prestige and value of the maquiladora program waxes. Moreover, government favors the industry and depreciates organized labor. Additionally, complacent labor leaders have abdicated their role as promoters
of a dynamic and militant labor movement over recent decades, while the largest Mexican union confederation, the Confederation of Mexican Workers (CTM) supports the maquila industry. A survey of the political actors in the two nations illustrates these observations.

*Mexico.*

In Mexico, the labor movement is in decline, the maquiladora program is increasingly valued, and most labor chieftains support the government's line against the organization of the assembly plants. Those three facts lead inexorably to the conclusion that organizing the maquiladora industry is extraordinarily difficult, if not impossible.

The analysis begins with the declining political influence of Mexican organized labor. The causes of the decline emanate from the rise of neoliberalism, leading to a series of post-1982 and post-1994 policies and programs responding to Mexico's economic crises and designed to "modernize" the economy and polity. The policies included wage freezes; a series of privatizations, liquidations and restructurings; and the negative economic fallout of trade liberalization.

Wage freezes began with the austerity programs initiated immediately after Miguel de la Madrid's accession to power in 1982. Real income for Mexico's workers was 50 percent lower in 1990 than in 1982. The workers' economic plight probably improved a trifle in the 1990-1994 period, but even then the data were in dispute. Furthermore, the government reduced subsidies that benefited lower income workers. The economic crisis of 1994/1995 signified more misery for Mexico's workers; the screws tightened on the austerity program and the workers sacrificed.

Mexico's liquidations, restructurings and privatizations spelled more negative outcomes for workers and organized labor. Initiated under de la Madrid, the measures continued into the 1990s when privatization emerged as the most celebrated dimension of President Carlos Salinas' (1988-94) economic blueprint. They figure prominently in President Ernesto Zedillo's (1994-2000) policy plans designed to respond to the mid-1990s economic crisis. Trade liberalization
policies also militate against organized labor and Mexico's workers. As tariffs diminished after the 1986 affiliation with the General Agreement on Tariffs and Trade (GATT) and the NAFTA of 1994, Mexico's protected industries felt the sting of competition -- layoffs and downsizing continued.

The economic logic of the affair is straightforward. The government seeks to create an environment conducive to expanding private foreign investment. In pursuit of that goal, Mexico City has enacted policies that impoverished workers, subjugated the sindicatos, disciplined their leaders, and alienated the union movement from its long-lived association with the government and the PRI.  

While Mexico's ruling elites back off their support of the nation's union movement, they increasingly embrace the assembly industry. From the national level to local municipios, the maquiladora industry's prestige expands. From its origins through the mid-1980s, Mexican policymakers depicted the assembly plant industry as a necessary evil designed to assist Mexico's economy on the margins, but not as an integral element of a long-term economic strategy. That prejudice has been replaced by a sympathetic posture for several reasons. Economic crises have dragged on or been replaced by new emergencies. The experiences of Asian nations like South Korea and Taiwan utilizing assembly plants for industrial take-off have been well advertised. Furthermore, the ideology of Mexico's decision-making elites evolved to a posture more in tune with private sector initiatives. Hence, the maquiladora industry is now a "priority sector" of the economy.

The special characteristics of the Mexican labor movement define the final influence militating against a successful strategy to utilize the NAALC to unionize the maquiladora industry. The movement is government-dominated, nationalistic, and supportive of Mexico's developmental policies. In the first instance, Mexico's labor union leaders operate in a semi-authoritarian system; the heavy hand of governmental power comes quite close to dictating the
policies and programs of Mexico's *movimiento sindical*. Mexico's governing elites mandate the formulation and implementation of the policies and programs formally promulgated by Mexican organized labor. Indeed, the role of government grows more assertive during the 1980s and 1990s. Government purged a number of Mexican labor leaders and imprisoned others. Mexico's labor leaders fell into line, pledging their support to the "modernization" of the Mexican economy.  

More than simply supporting government policy, official union leaders have historically played an instrumental role in suppressing democratic trade unions, a goal often achieved in part through collaboration with employers. *Charro* union leaders helped the government purge independent movements in the railroad and auto unions from the 1940 until the 1970s. In fact, automobile transnationals moved their plants from traditional industrial areas to central and northern Mexico during the 1970s and 1980s to evade independent movements. Many specifically requested CTM representation at the new plants to insure labor peace and exclude independent union movements.  

Moreover, government-aligned leaders have been notorious for setting up "protection" contracts with maquila owners in which a given plant is "unionized" though none of the workers is aware of the fact, nor have any ever seen the contract. When workers attempt to set up an independent union, Labor Conciliation and Arbitration Boards (CABs), allied with official unions and local employers, invariably deny the union its registration because the plant is "already unionized." This practice provides union dues to corrupt labor leaders, satisfies employer desires for labor peace, and keeps effective unionism at bay. Thus, above and beyond government fiat, Mexico's official unions are guilty in their own right for blocking genuine unionism at the source, particularly in the northern assembly plants.  

In addition to their efforts to suppress independent unions, Mexico's government-aligned labor leaders are also nationalists who promote Mexico's development. As early as 1954, the
dominant CTM officially pronounced its obligation to the nation over its duty to support class struggle. As nationalists, Mexico's official labor leaders share a deeply ingrained anti-Americanism, especially the older cadre of leaders who have experienced the humiliation of U.S. imperialistic muscle flexing. Americans are not to be trusted, no matter the color of their collars. Hence, Mexican sindicalistas shrink from joining U.S. unionists to organize the maquiladora industry under the aegis of the NAALC.

Developmentalism also forms part of the analytical scenario. Like other Mexicanos, official labor leaders strive to contribute to the nation's economic growth. Economic growth translates into the creation of jobs for Mexico's massive number of unemployed and underemployed workers. Mexican organized labor correctly observes that the expansion of the maquiladora industry represents the most dynamic source of job creation in Mexico today.

Hence, Mexico's official unions count several splendid reasons to support the industry and refuse cooperation with U.S. unions bent on its organization. Prudent self-interest in an authoritarian system counsels the wisdom of supporting the government on important issues. Moreover, official unions have vested interests in preventing independent unions in the maquiladora sector. Additionally, a history of bi-national interaction teaches that gringos should not be trusted. Finally, the growing maquiladora industry creates jobs for Mexicanos, a goal embraced by Mexico's official unions in light of the collapse of Mexico's traditional industrial base during the 1980s and 1990s.

To draw the obvious conclusion, the balance of political forces in Mexico appears quite unfavorable to a strategy utilizing the NAALC to organize the maquiladora industry. The government is extremely favorable to the maquiladora industry and decreasingly sympathetic to organized labor. Just as significantly, for reasons clear and understandable, most components of organized labor in Mexico toe the governmental line against the unionization of the industry.
The United States

The influence and policy proclivities of political actors in the United States weigh less in the balance of forces than their Mexican counterparts, but they form a part of the larger whole. U.S. organized labor's political punch and the U.S. government's commitment to the NAALC and/or the maquiladora industry define relevant components of the analysis. Obviously, the NAALC would be more salient if U.S. labor wielded mighty political influence, and U.S. federal, state, and local governments disdained the maquiladora industry. As it is, exactly the opposite is true; hence, the NAALC becomes less salient in strategies to organize the maquiladora industry.

As in Mexico, neoliberalism exercises enormous influence in the U.S. Pro-business and anti-labor attitudes pervade the system. U.S. governmental and private interests have been reorganizing the economy in a spree of downsizing, privatization, liquidation, and restructuring, and those initiatives have diminished the strength and influence of U.S. organized labor.

While those strategies contributed mightily to organized labor's relative debility, the U.S. labor movement's own sins weighed in the balance. Since the labor movement's apogee immediately after World War II, its top leadership abdicated the movement's erstwhile goals to prioritize labor organizing. Unions focused on servicing their existing members, neither expanding their base in large manufacturing and the public sector; nor venturing out to organize low-skilled services, light industry, or private sector white collar professionals. Hence, as the economy expanded until the early 1970s, organized labor declined. Moreover, the leadership capitulated to successive administrations' Cold War domestic and foreign policy goals, participating in internal purges of some of the most dynamic activists at home, and pressing anti-Communist objectives abroad, to the detriment of labor movements in many countries.28

Table One sets out the data on U.S. organized labor's decline. Absolute membership increased from 1945 to 1975 with marginal increases continuing through 1980. After that year,
the absolute numbers of union members declined. Data on membership as a percentage of the overall workforce tell the more important tale. After a peak relative membership in 1945, the percentage figure dropped 10 percent in thirty years (1975), and 10 percent more over the next twenty-three years (1998).

Table One

U.S. Union Membership, Selected Years

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<tr>
<th>Year</th>
<th>Union Membership*</th>
<th>Membership as a % of Workforce</th>
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<tbody>
<tr>
<td>1945</td>
<td>14,300,000</td>
<td>35.5</td>
</tr>
<tr>
<td>1975</td>
<td>19,600,000</td>
<td>25.5</td>
</tr>
<tr>
<td>1998</td>
<td>16,200,000</td>
<td>13.9</td>
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</tbody>
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* Rounded to the nearest 100,000.

National, state and local governmental policies and postures on the maquiladora industry in the U.S. define the second half of the NAALC's application to the assembly plants in Mexico. National government in the United States is substantially less concerned with the maquiladora industry than the Mexico City government, but the issue has some relevance in Washington. Traditionally, the issue turned on attempts to amend or abrogate tariff provisions that promoted the maquiladora industry; later the issue centered on the approval of the NAFTA. From the perspective of Washington, any measurable threat to the maquiladora program faded in the late 1970s, diminished further in the 1980s, and definitively passed from the realm of possibility in 1994--the year the NAFTA took effect and the Republican Party took over the U. S. Congress.

State and local governments in the U.S. are much more concerned with and supportive of the maquiladora industry than Washington. Additionally, in that vein, they evidence conscious opposition to any measures that might jeopardize the industry. Such measures might include the
unionization of the maquilas, and/or efforts by Washington or an international bureaucracy to interfere or apply the NAALC to the industry.

In the U.S. borderlands, traditional local business elites coalesce with a newly evolved "transnational capitalist class" to support the maquiladora industry. The traditional merchants grow prosperous as the Mexican borderlands expand their populations. Large numbers of mexicanos cross the line to shop, many of them maquiladora workers who spend significant shares of their wages in U. S. borderlands cities. An early study by Mexico's Banco Nacional de Comercio Exterior estimated that maquila workers spent 60 to 75 percent of their wages on the U. S. side.29

The Borderlands "transnational capitalist class" is a direct product of the maquiladora industry. The group counts an assortment of entrepreneurs, developers, executives, managers, bankers and brokers who work in the industry or service it. These men and women owe their livelihoods to the assembly plants, and they doggedly support the maquiladora industry.

The traditional commercial groups and the newer interests affiliated with the maquiladora industry count comparatively few members, but they exercise significant political influence in the border states and, especially, in communities located on the boundary line. They are relatively rich, well educated, and politically sophisticated in a milieu characterized by poverty, inadequate public education, and low levels of political mobilization.

In sum, the political equation in Mexico and the United States offers little succor for a strategy designed to test the efficacy of the NAALC to facilitate unionization in the maquiladora industry. In both countries, national and local governments support the industry, while organized labor wanes in political influence. In Mexico, even the mainstream of the movimiento sindical supports the maquiladora industry and eschews efforts to organize it. The NAALC in itself cannot compensate for this inhospitable setting, as a review of the several cases pursued under the agreement will demonstrate.
THE NAALC AND ORGANIZATIONAL INITIATIVES

The initial practice of the agreement offers little reason to believe that the NAALC will directly contribute to a campaign to organize the maquiladoras in the Mexican borderlands, or, for that matter, any Mexican industry anywhere in the Republic. Submissions to the U.S. NAO regarding the Mexican maquiladoras point to a persistent and unholy alliance between official unions, Conciliation and Arbitration Boards (CABs), local government, and employers that has thus far effectively crushed several efforts to establish independent unions in the maquila sector. Growing participation among a broader spectrum of unions and NGOs in cross-border organizing represents a more positive sign; though this process can only be seen as an indirect result of the treaty.

To date, there have been twenty submissions to NAOs under the NAALC, twelve of which involve cases in Mexico. Of these twelve, seven involved the maquiladora industry, and two of the seven complaints were withdrawn. In the discussion below, we focus on the latter cases. The complaints examined revolved around U.S. and Mexican labor activists’ collaborative attempts to organize maquiladoras in the cities of Ciudad Juárez, Ciudad Chihuahua, Nuevo Laredo, Cananea, and Tijuana; as well as a complaint regarding pregnancy testing in plants across the border region. Except for the latter case, all of the complaints raise the issue of the right to organize, pointing to the NAALC’s lack of adequate enforcement mechanisms in this area noted above.

After failing in 1994 to win the CTM’s cooperation, the United Electrical, Radio, and Machine Workers of America (UE) and the International Brotherhood of Teamsters (IBT) recruited Mexico’s small Frente Auténtico del Trabajo (FAT), an independent union federation, to launch organizing efforts in two assembly plants in Chihuahua, owned by Honeywell and General Electric. In the Honeywell case, activists sought to affiliate with an independent steel union, STIMAHCS, that later participated in several other complaints under the NAALC.
During the organizing efforts, the employers fired workers active in the campaign and pressured them to accept severance payments, thereby losing their right to seek legal redress for their unjust dismissals through the CABs.

In the GE case, the company tried to prevent independent union activists from distributing campaign literature. In February, 1994, they appealed the cases to the U.S. NAO arguing that the Mexican government colluded with management in frustrating the organizing efforts because it did not apply its own labor code that protects the right to organize unions without employer or government interference. The U.S. NAO ruled that U.S. petitioners’ evidence did not prove the Mexican government in violation of its own labor code. Because the fired workers did not pursue their case through the Mexican CABs, there was no evidence that the law had not been enforced. The NAO argued that it was not within its jurisdiction to scrutinize company behavior; rather, it was charged with verifying that governments enforce their own laws. For this reason, the NAO did not call for ministerial consultations.

The third case under consideration appeared to signify qualified success for Mexican and U.S. petitioners, though their gains may have been only symbolic. Filed in August, 1994, it dealt with Mexican workers in a Sony maquiladora in Nuevo Laredo, Tamaulipas. In this case, four U.S. and Mexican human/worker rights groups filed the petition with the U.S. NAO: the International Labor Rights Fund (ILRF), the American Friends Service Committee (AFSC), the Coalition for Justice in the Maquiladoras (CJM), and Mexico's Asociación Nacional de Abogados Democráticos (ANAD, National Association of Democratic Lawyers).

Sony workers attempted to replace their CTM union, but management responded with layoffs and intimidation, police repressed a work stoppage following the representation election (apparently requested by management), and the CAB denied the independent unions' request for legal recognition based on both technicalities and the CTM's pre-existing representation of the workers. The U.S. NAO found the Mexican CAB in violation of Mexican laws and called for
Ministerial Consultations between Mexico and the United States. The consultations called for remedial measures including three seminars to educate interested parties on proper union registration procedures. The decision clearly censured the Nuevo Laredo CAB for failing to register the aspiring Mexican unionists.\textsuperscript{32}

In late 1996, indications surfaced that the complainants in the Sony dispute might return to the U.S. NAO with another petition. They contended that CAB continued to obstruct the dissidents from challenging the official \textit{sindicato}. Hence, Mexico remained in violation of its own labor code and, of course, stood in violation of the NAALC. Secretary Reich requested a follow-up report on the issue, lending some hope to the dissidents' ongoing complaint. However, to date, no concrete measures in the workers' favor have occurred.\textsuperscript{33}

If these initial submissions indicate that the NAALC has little direct influence on the fate of unionization drives in the maquilas, two withdrawn cases suggest that, in some cases, the submission process itself may nudge employers and local officials to recognize independent unions. The UE filed a petition against a GE plant, but withdrew the complaint in January, 1995 before the review process was completed. They made this decision in response to the release of an NAO-commissioned report regarding the labor law issues at stake in the case.\textsuperscript{34}

Likewise, on October 11, 1996, the Communications Workers of America, the Mexican Telephone Workers Union (STRM), and the Mexican Federation of Goods and Services Employees (FESEBES) filed the fifth petition, a complaint regarding Maxi-Switch, a computer switchboard producer in Cananea, Sonora. Like the Sony case, the unions accused the company and an official union of signing a protection contract preventing the formation of an independent union. Though the NAO review was pending, the CWA withdrew the petition after the Mexican government agreed to recognize the STRM union. In this case, it appears that the threat of an unfavorable NAO review nudged the Mexican government into action. However, the CWA believes that the strikers' just demands, not the NAALC, led to the government's intervention.
Though these cases suggest that the threat of an NAO review may improve conditions for Mexican workers, their success should not be overestimated. Though the STRM was registered, workers fired for organizing the union were never reinstated.\textsuperscript{35}

Human Rights Watch (HRW), ILRF, and the National Association of Democratic Lawyers (ANAD) submitted the sixth complaint on May 16, 1997. Their submission protested maquiladoras' common use of pregnancy testing on female workers. In a study of assembly plants in several border cities, Human Rights Watch found that officials in thirty-eight of forty-three factories studied routinely administered pregnancy tests to applicants, asked them intrusive questions about sexual activity and contraception, refused to hire pregnant applicants, and intimidated or dismissed female employees who became pregnant. Relevant to our discussion, the women offered testimony that their union representatives ignored this legal and human rights violation. The NAO found that while the Mexican NAO denied that these practices were either widespread or illegal, Mexico City's Human Rights Commission was aware of the problem and was working to end the practice. The NAO recommended ministerial consultations and informational seminars will be pursued.\textsuperscript{36}

The seventh and final submission referred to the most highly publicized case of any discussed. It regards the Han Young subsidiary of Hyundai in Tijuana, Baja California. On October 30, 1997, ANAD, ILRF, the Support Committee for Maquiladora Workers (SCMW) and STIMACHS petitioned the U.S. NAO on behalf of workers in the plant. Later, Work Safe Southern California, the United Steelworkers (USWA), and the U.S. and Canadian autoworkers unions joined the case.

In the petition, the groups argued that the local CAB actively conspired with the CTM and the Confederation of Revolutionary Workers and Peasants (CROC, another official Mexican federation) to block the formation of an independent union to replace the CROC's protection contract. In this sordid tale, the CAB illegally called for two separate representation elections in
order to insure a CROC or CTM victory. Both were plagued by irregularities, but the independent union, affiliated with STIMACHS, prevailed in each. In an addendum, the NAO found serious health and safety violations that the Mexican government penalized, though there is no evidence that fines were assessed. The NAO called for ministerial consultations, and subsequently, the independent union held a strike that was initially ruled illegal, though later successfully appealed in the Mexican courts. The Han Young workers' fragile victories were due, in part, to pressure brought to bear on President Clinton to raise the issue with President Zedillo. In spite of this success, the union faces ongoing intimidation from management.  

CONCLUSIONS

The petitions and hearings to date under the NAALC suggest several tentative conclusions. They pertain to both the NAOs' official activities in the U.S. and Mexico and to the unions and labor rights advocates in the two countries. First, despite a Democratic administration in Washington, the decisions of the U.S. NAO reflect no conspicuous partisanship in favor of unions or labor rights advocates. The U.S. Office found in favor of labor in several of the cases, though the only result was ministerial consultations, due to the NAALC's design. The Clinton administration did not take a more activist stance on labor's behalf (with exception of the Han Young case, largely due to intense pressure from the Teamsters). This outcome is unsurprising given the president's emphasis on free trade and efforts to reduce the Democratic Party's traditional support for unions and the welfare state.

Moving to labor activism and strategies, the petitions thus far brim with implications for the NAALC and efforts to organize the maquiladora industry. Looking first to Mexico, the dominant government-aligned unions eschewed participation in initiatives to unionize the assembly plants. Indeed, the local CTM and CROC affiliates, in league with the municipio and CAB authorities, opposed bi-national organizing in the Sony, Maxi-Switch, and Han Young cases.
In the Mexican borderlands, the FAT has been the most active participant in the bi-national efforts. The FAT is small and fairly radical; it is as much social movement as *sindicato*. Most important for this analysis, the FAT is one of Mexico's few independent *sindicatos* -- it does not toe the governmental line. The labor rights groups active on the Mexican side also boast an independent posture. Though the FAT's work is promising, it is still a marginal actor within Mexico's still largely state-controlled union movement.

Mainline labor unions in the U.S. proved rather more forthcoming, but their ranks were incomplete and their enthusiasm for the NAALC clearly limited. We do witness an increasing number of unions involved in the complaints over time. The Teamster's' and UE's initial participation later extended to the CWA, UAW, CAW and USWA, suggesting that a broader coalition of U.S. and Canadian unions may emerge around these issues in the future. The labor and rights groups on the U.S. side rallied to the initiative more energetically, but, like the Mexican FAT, they are far less significant in the overall panoply of political forces.

The evidence in the petitions suggests a set of problems that the NAALC, in its current form, cannot overcome. Independent union organizing in the maquiladoras faces a powerful Mexican alliance of government aligned unions, CABs, local authorities, and employers. The Mexican government has intervened to flagrant labor rights violations in a weak and ephemeral fashion, engaging in temporary "damage control" until negative publicity caused by the complaints fades from the public eye. Independent organizing efforts and cross-border ties are widespread, but the opponents of genuine labor activists are overwhelmingly powerful. Because the NAALC does not offer mechanisms to enforce the rights to organize, collectively bargain and strike, it can provide no concrete support in resolving this negative scenario. Indirectly, the NAALC has created a forum and a set of institutions promoting the expansion of pre-existing
cross-border organizing initiatives, and has publicized the hurdles independent unions face in Mexico. In the balance, however, the cards are clearly stacked against the objective of organizing the maquilas.

While we anticipate that these broader economic, political, and legal impediments will remain in place for the foreseeable future, we also observe a number of modest, but hopeful signs worth noting. Positive changes among U.S. and Mexican labor activists as well as potential indirect effects the NAALC may have on labor organizing represent modest countertrends to the general picture we have described. With regard to the U.S., as noted above, since 1994, a growing number of unions and labor rights groups have participated in the NAALC submission process, creating a ripple of cross-border collaboration and activism in conjunction with the NAO public hearing process. Many of these same groups responded to the U.S. NAO's 1997 request for comments on the NAALC's effectiveness. Specifically, the UAW, IAM, AFL-CIO, ILRF, CWA, and Jerome Levinson (lead lawyer for the Sony Nuevo Laredo case) all sent detailed comments to the NAO.

The fact that these groups agreed to comment on the NAALC reflects their sustained concern about the issues at stake. More importantly, their analyses identify significant flaws in the NAALC's design and functioning and include alternative proposals that could form the platform for a campaign to redesign the agreement or press for the renegotiation of NAFTA. In addition to the design flaws we detailed above, these comments offer several additional insights. First, activists argue that during NAFTA's negotiation, many unions called for the inclusion of a clause defending core labor standards in the treaty itself, thereby permitting sanctions of labor rights violations that were as strong as those penalizing trade violations. In this regard, the NAALC not only has weak enforcement powers, but the trade benefits member countries gain from the treaty would not be jeopardized in any way by an individual country's violation of or withdrawal from the NAALC. Thus, apart from its design flaws, since the NAALC is a side
accord, it can have little influence in the workings of the NAFTA.

Second, activists argue that the agreement respects each country's sovereignty, and thereby does not challenge existing labor laws in member countries. Thus, for example, the downward spiral of wages in Mexico after the 1995 peso crisis and U.S. employers' use of threats to close factories in order to cow union activists are not sanctioned in either country. NAALC institutions can do nothing to reverse these self-evident affronts to workers' rights and living conditions, and propose no absolute minimum of internationally recognized labor rights.

In a related point, because the side agreement is charged with promoting the enforcement of existing laws. Therefore, it cannot directly sanction those who most often violate workers' rights -- companies. This problem was evident in the first two submissions to the U.S. NAO. There was substantial evidence in both cases that employers had vitiated workers' rights to free association and to choose their collective bargaining representative without interference. However, the NAO is charged with scrutinizing governments' adherence to and enforcement of their laws. Since the companies successfully pressured workers not to pursue their cases in the CABs, there was no record that Mexico's legal institutions had operated incorrectly. Thus, the NAO ruled that the complaint was outside its jurisdiction, even though there was evidence that the companies violated Mexico's laws. The problem with focusing exclusively on state-level compliance with and enforcement of laws is that it does not hold corporations accountable for their actions.

Fourth, activists argued that the NAOs and international secretariat have not taken adequate advantage of the opportunities presented by the public hearings and studies commissioned under the accord. Specifically, except for the Han Young case, companies involved in the disputes did not appear at the public hearings, and there is no evidence that the U.S. NAO made a special effort to insure their attendance. Moreover, the NAO placed strict
time limits on Mexican activists' testimony. Additionally, in the first two cases, the media was denied access to the public hearings. Likewise, cabinet-level officials have been conspicuously absent at seminars the NAO organized as part of ministerial consultation. Finally, after commissioning a report on U.S. employers' threats to close their factories in order to prevent unionization, the international secretariat delayed its release for nine months and only devoted one and one-half pages of the 110-page report in a secretariat publication. In short, the U.S. NAO and Dallas secretariat have not used the NAALC's limited institutions to gain the maximum possible results for aggrieved labor activists.

In response to the NAALC's flawed design and implementation, these activists suggest a number of alternatives. Ideally, they call for the renegotiation of the NAFTA with the inclusion of core labor principles in the treaty, permitting trade sanctions against companies and countries that violate these labor standards. They also call for a number of other ambitious changes: the creation of a code of conduct for U.S. multinationals modeled after existing Organization for Economic Cooperation and Development (OECD) and International Labor Organization (ILO) institutions, annual audits of the labor practices of companies operating in two or more NAFTA countries, a provision in the NAALC permitting workers to take legal actions against corporations, and permitting sanctions for violation of any of the eleven labor principles. At a more modest level, activists call for opening up the public hearing process for NAO reviews to the public and granting it greater publicity, making the submission process less costly and cumbersome, and compelling companies involved in complaints to attend public hearings.39

Both the criticisms and recommendations reflect U.S. labor activists' growing sophistication in thinking about labor rights in international context. The comments do not evidence U.S. unions' Cold War-era paternalism toward workers in the developing world, nor do they reflect protectionist sympathies. Rather, these comments are similar in tenor and conception to recent U.S. labor and student activists' platforms regarding codes of conduct and monitoring
for sweatshops in the developing world subcontracted by U.S. apparel manufacturers. In this regard, they call for the international enforcement of fundamental labor rights rather than protection of U.S. jobs. This greater maturity, though evident in only a handful of unions and NGOs, could form the rationale for more ambitious international organizing campaigns of which reforming the NAALC could form a part.

While Mexican activists face greater hurdles, recent events give rise to cautious optimism. The passing of the CTM's ninety-six year old jefe, Fidel Velázquez, and/or a split within Mexico's union movement might increase the influence of the independent (and generally more democratic) sindicatos. Specifically, the FAT and other independent unions may be less restrained in their attempts to organize the assembly plants. There is evidence of this process in the NAALC submissions. For example, the STIMACHS steel federation, which collaborates with the FAT, was consistently involved in NAALC submissions throughout the border area, suggesting that independent unionism is not merely a local, isolated phenomenon. The democratic lawyers' association's involvement in several submissions also suggests that independent unions are finding allies within civil society that may strengthen their political clout.

Moreover, activists have used favorable outcomes of NAALC submissions to call for broader organizing campaigns. After the Mexican government intervened on behalf of Maxi-Switch workers, "the 'Forista' movement of independent unions in Mexico announced a plan to launch large-scale organizing drives in the maquiladora manufacturing areas." Likewise, after winning legal recognition of their strike, Han Young Workers called a consulta (similar to a citizens' referendum) for May 30, 1999 in Baja California asking maquiladora workers their opinions about wages, benefits, the right to organize, and economic policy. While we have argued that these groups are still marginal in the Mexican labor movement, and the Mexican government still opposes their efforts at every turn, the geographic expansion of their efforts and the extension of their concerns to broader policy questions are encouraging signs.
While we have focused much of our discussion on political impediments to activists' effective use of the NAALC as well as the agreement's flawed design, we do believe the accord can have indirect positive results. Specifically, the NAO review process can focus "sunshine" on egregious legal violations, mobilize cross-border activists, and promote studies and exchanges that activists may use to their own advantage. As noted above, in the second GE case and the Maxi-Switch case, activists withdrew their complaints after the threat of an NAO proceeding or the release of an NAO report brought them favorable outcomes. Likewise, international publicity and the Teamsters' political advocacy for Han Young workers led President Clinton to raise their concerns with President Zedillo, leading to the Mexican government's intervention on the workers' behalf. Finally, the submission process itself requires more intensive coordination and communication between labor activists on both sides of the border than might otherwise occur, potentially leading to more durable ties between U.S. and Mexican activists.  

Similarly, Stephen Herzenberg argues that the cooperative activities mandated under the agreement may also contribute to organizational initiatives in the future. In hierarchical order of potential effectiveness, they include 1) cooperative programs and special studies launched by the several NAOs and the Dallas international secretariat; 2) public seminars designated by the labor ministers as a means to rectify complaints certified by the NAOs; and 3) initiatives by Evaluation Committees of Experts (ECE), called into existence to assist the several labor ministers to resolve issues. Though we have argued that thus far, the U.S. NAO has not vigorously exploited these resources, activists may learn to use them to greater advantage.

Since the NAALC's formation in 1994, the NAOs have organized cooperative programs. They usually involve informational seminars and workshops on topics like industrial safety and hygiene, worker training, quality and productivity, etc. The programs never consciously focus upon industrial relations; they have practically nothing to do with union organization, per se. However, they do tangentially touch on issues of representation and organization in an
educational setting. More importantly, they bring together *sindicalistas* and unionists from all three NAALC member nations who may be interested in more than merely cooperating to further safety and hygiene. Like the complaint process, they provide a vehicle for cross-border fertilization and collaboration.

The international secretariat's special studies, first appearing in 1996, also imply potential for organizational efforts. They provided excellent statistical data on North American labor markets, though they had little influence on organization on the ground. A second report issued in 1997 studying the effects of sudden plant closings on freedom of association and workers’ right to organize in the three countries packs more political punch. The Mexican NAO's censure of Sprint's plant closing in California prompted the Mexican and U.S. labor ministers to commission the study. Though the secretariat delayed the study's release and gave it scant publicity, it may serve activists in the future.44

Reviewing the first several years of the NAALC's experience, a public seminar in Mexico City best exemplifies how the Agreement's procedures might catalyze effective organizational efforts with real significance for unionizing the maquiladora industry, or other industries in the three member nations. Then secretaries Sergio Onate and Robert Reich ordered the seminar in response to their finding that the Mexican CAB in Nuevo Laredo had unlawfully prohibited Mexican dissident *sindicalistas* from registering their union. Sparked by the presentation and discussion of "Union Registration and Certification: Current Law and Practice in Mexico," and probably emboldened by their U.S. and Canadian sympathizers' attendance, Mexican critics and dissidents roundly and vociferously condemned Mexican law and practice in a rare demonstration of open defiance.45

Finally, the Evaluation Committee of Experts (ECE) may have potential for invigorating the NAALC in the future. The committees have not yet been employed, though they may be called upon to analyze the issues raised in Case #9701 regarding pregnancy testing in the
maquilas. The labor ministers may appoint the ECEs to assist in dispute resolution. On the positive side, they may be appointed at the request of any one country. Though the ECEs cannot undertake explicit studies and reports on freedom of association, collective bargaining, and the right to strike, their competence is quite broad. Even more than the cooperative programs, their studies possess the potential for criticism, advocating remedial action, and rallying the faithful to the cause.

While not quite designed to resolve all issues, the skillful exploitation of those several provisions of the NAALC, and simultaneous efforts to mobilize the accord's critics on both sides of the border might promise a more vigorous agreement in the future. Combined with effective political strategies and transformation, friends of the NAALC argue that it may yet contribute to the unionization of the maquiladora industry and other initiatives in the next few years.

While the optimists may be correct, present trends and currents give pause. The political milieu in Mexico and the United States remains hostile to organized labor, the unionization of the maquiladora industry, and the vigorous application of the North American Agreement on Labor Cooperation. All of the complaints reviewed to date offer troubling indications that the NAALC is essentially impotent. Despite several favorable decisions at the U.S. NAO level and at the bi-national level of ministerial consultations including Mexico's labor minister, it appears that the situation on the ground remains unchanged. Local government and CAB officials, employers, and government-allied union leaders continue to block dissident unionists' organizational initiatives, operating with little interference from the Mexican state or NAALC institutions.
ENDNOTES


4 Maria Lorena Cook, "Regional Integration and Transnational Politics: Popular Sector Strategies in the NAFTA Era."


6 Ibid., Annex 1, 33-35.


13 See: Williams and Passé-Smith, The Unionization of the Maquiladora Industry; Cook, "Regional Integration and Transnational Politics."


15 Cook, "Regional Integration and Transnational Politics."


17 Kevin Middlebrook, The Paradox of Revolution: Labor, the State, and Authoritarianism in Mexico (Baltimore, MD: Johns Hopkins University Press, 1995), 265. See, also, Economic Policy Institute, ibid.


20 Economic Policy Institute et al., The Failed Experiment.

On the erosion of the corporatist pact between labor and the state during the 1980s and 1990s, see: Williams and Passé-Smith, The Unionization of the Maquiladora Industry; Middlebrook, Paradox of Revolution; Cook, "Mexican State-Labor Relations"; LaBotz, Mask of Democracy.


37 U.S. NAO, Public Report of Review of NAO Submission No. 9702 (Washington, DC: U.S. Dept. of Labor (April 28 1998); "News Alert from the October 6 Union of the Han Young Maquiladora" e-mail communication
from the Center for Labor Rights, May 3 1999; International Labor Rights Fund, "Comments for NAALC Review," January 30 1998. A more recent submission to the U.S. NAO involved the independent union at ITAPSA, a subsidiary of the Connecticut paper manufacturer, Echlin, located outside Mexico City. Because the available information is unclear regarding whether or not this plant is a maquiladora, we excluded it from this discussion. Like most of the other cases reviewed, it concerns CABs' and official unions' efforts to block independent unions' right to organize and collectively bargain. The U.S. NAO's review recommended ministerial consultations on the case. See: U.S. NAO, Public Report of Review of NAO Submission #9703 (Washington, DC: U.S. Dept. of Labor, August 21 1998).

38 Compa, "NAFTA's Labor Side Accord"; Cook, "Regional Integration and Transnational Politics."

39 This discussion is based on comments sent to the Commission for Labor Cooperation by the AFL-CIO (January 30 1998), International Association of Machinists (January 29 1998), UAW (December 22 1997), Jerome Levinson (December 18 1997), CWA (January 30 1998), and ILRF (January 30 1998).


42 Compa, ibid., and Cook, "Regional Integration and Transnational Politics."


45 Edward J. Williams's interview with anonymous who was present at the event.

46 "Comment to the Secretariat on Review of NAALC by AFL-CIO."