"Politicizing" a New Breed of "Legalized" Transnational Political Opportunity Structures: Labor Activists Uses of NAFTA's Citizen-Petition Mechanism

Jonathan Graubart†

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† Assistant Professor of Political Science, San Diego State University. The author wishes to thank Lance Compa, Naoko Kada, Guang Lei, and Monica Schurtman for their very helpful comments. Field research in Mexico in 2003 was funded by the William and Flora Hewlett Foundation. I am also grateful to the numerous labor activists and to officials at the U.S. and Mexican Departments of Labor that generously opened up their busy schedules to speak with me about NAFTA's citizen-petition mechanism.
Once independent labor movements saw considerable value in employing the citizen-petition mechanism established by the North American Agreement on Labor Cooperation (NAALC), North American Free Trade Agreement’s (NAFTA) labor “side” agreement. In the mid to late 1990s, a range of labor movements, including the American Federation of Labor - Congress of Industrial Organizations (AFL-CIO), the Canadian Labour Congress (CLC), and the National Union of Workers (UNT), a reformist Mexican labor federation, engaged in ambitious and sophisticated NAALC petitions to bolster ongoing political struggles, such as independent union-organizing campaigns in Mexican factories. But in the new millennium, interest in NAALC has waned considerably, with some past petitioners ready to write off the process altogether.¹

To be sure, even during the peak of interest, labor movements voiced considerable discontent with NAALC’s limitations. George Becker,

president of the United Steelworkers, remarked in 1999, "This is our strongest weapon to expose the horrors facing workers who try to organize in Mexico, and we vigorously pursue such cases. But at the end of the day, dozens of workers have still lost their jobs." The fundamental limitation of the process is the lack of binding authority. While NAALC liberally allows individuals or NGOs to file petitions before specially created National Administrative Offices (NAOs), the NAOs cannot order changes in state or company behavior nor issue sanctions. Yet labor activists vigorously pursued NAALC petitions. Now, few do; why the change?

To appreciate the plummeting popularity of NAALC's citizen-petition mechanism, one needs a careful conceptual appreciation of such a mechanism. It is, in fact, a quasi-judicial mechanism that offers a transnational political platform for nonstate activists. Quasi-judicial mechanisms involve a mediating process set forth by treaty whereby an administrative body (such as an NAO) reviews claims from a nonstate actor that a state party is not complying with the treaty's commitments. Although it interprets legal norms, the quasi-judicial body is not a court and the process takes place without the formal trappings of an adversarial proceeding. In addition, the findings typically consist of diplomatically framed, nonbinding recommendations, making them a form of "soft law."

Far from being an idiosyncratic creature, transnational quasi-judicial mechanisms have recently proliferated throughout international governance, particularly in connection with international agreements on value-based norms, such as human rights and environmental standards. Their appeal lies in offering a viable compromise between the wants of social activists, who seek strong, legalized international standards on value-based issues, and governments, especially in the South, who oppose international jurisdiction on value-based issues. Examples of such mechanisms outside of NAALC, include the citizen-petition mechanism established by

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4. Id.


6. Weiss, supra note 5, at 3; see generally Romano, supra note 5.

NAFTA’s environmental accord,8 the UN Human Rights Commission,9 the World Bank Inspection Panel,10 and the International Labor Organization’s (ILO) Committee on Freedom of Association.11

Such hybrid judicial-administrative mechanisms reflect the greater complexity of the international legal system. Today, international law is understood as taking on multiple forms rather than just treaties and customary law.12 Similarly, international legal dynamics cannot be viewed in isolation but rather in a dynamic and interactive relationship with international and domestic politics. Accordingly, a more nuanced “law-in-action” process is in order that eschews a narrow legalistic analysis of international law in favor of an approach that closely examines both the influence of law on politics and of politics on law.13

North American labor activists’ experiences with NAALC’s citizen-petition mechanism offer a valuable focus for applying a law-in-action approach. Specifically, this Article assesses the mechanism as a legalized transnational political opportunity and yields the following observations, to be elaborated upon below:

(1) The lack of binding authority does not render a transnational quasi-judicial mechanism ineffective. Rather, the mechanism enables activists to utilize legal dynamics and legal discourse to strengthen their position in a political dispute with a government. By filing a NAALC petition, activists draw the target government into a norm-based legal debate. The NAO, in turn, reinforces the legalization of the dispute by directing the process and pushing the government to explain its behavior according to legal norms of appropriate behavior. If the NAO supports the activists’ claim, it then bestows greater status and legitimacy upon the activists’ cause.

(2) Legalization of the dispute is not sufficient. To gain political results from a favorable NAO decision, activists need to “ politicize” the

13. This law-in-action approach has been especially featured in the “law-and-society” approach. For an explanation and historical overview, see Frank Munger, Mapping Law and Society, in CROSSING BOUNDARIES: TRADITIONS AND TRANSFORMATIONS IN LAW AND SOCIETY RESEARCH 21 (Austin Sarat et al. eds., 1998).
legal process by mobilizing wider support for their cause and disseminating the legal decision. This increases pressure on the target government to make policy changes it had been actively resisting.

(3) Shifts in the broader political context affect the value of a quasi-judicial mechanism as a transnational political opportunity structure. For NAALC, the mid to late 1990s offered a politically favorable terrain given that the Clinton Administration was invested in having NAALC succeed while Mexico’s political system was particularly vulnerable to mobilization of shame campaigns. By 2001, the new Bush Administration was far less supportive of NAALC while the new Mexican president, Vicente Fox, proved much less vulnerable to international shame campaigns.

This Article proceeds to develop a conceptual framework that explains how and under what conditions activists are able to mobilize transnational quasi-judicial mechanisms for domestic gain in an ongoing political dispute. This framework enables a long-overdue synthesis of recent research on transnational political activism with that on international law by identifying the unique opportunities offered activists by a legalized transnational political opportunity structure. This framework is then applied to the NAALC experience. I will show that although the present political climate is unpropitious, NAALC has proved to be a valuable political tool for labor movements in the past and is likely to regain value when political circumstances turn favorable again.

I. LEGALIZING THE TRANSNATIONAL POLITICAL OPPORTUNITY STRUCTURE

A. Social Activists and Transnational Political Opportunity Structures

Social activists are primarily motivated by social justice causes, such as equitable distribution of resources, human rights, and ecological consciousness. They are no less strategic and calculating in obtaining their goals than conventional interest-based actors, like business lobbies. The difference is that social activists derive their identity and influence primarily from a commitment to normative issues rather than from material resources, although the latter certainly helps. Transnational activism involves social activists expanding their activities across state borders through such means as networking with activists in other states, utilizing

transnational institutions, and invoking international norms to advance their political agenda.

Success in transnational activism rarely involves complete policy reversals by the target actor. While activists desire concrete policy changes, they often have more modest goals as well. One goal is advancing their agenda by eliciting a commitment from the government to increase formal attention to activists’ underlying concerns. Examples of agenda-advancing include establishment of a new task force or an increase in citizen accessibility to governing agencies. Such steps boost the legitimacy of activists’ political agenda while providing a concrete new domestic opportunity.\textsuperscript{15}

Transnational political opportunity structures greatly facilitate successful transnational activism.\textsuperscript{16} Political opportunity structures involve a confluence of elements that enable activists to gain greater material and normative support for their cause. These elements generally include heightened attention to cause-based norms, access to elite actors and to the media, and a means for gaining influential allies.\textsuperscript{17} Typical transnational political opportunity structures are an international institution geared to activists’ concerns, like the U.N. Human Rights Commission, or a contentious international initiative, like the World Trade Organization (WTO) or NAFTA.\textsuperscript{18} The latter enables activists to articulate opposing normative visions before an engaged public.

Activists are best equipped to take advantage of political opportunity structures where they have significant mobilization resources, such as expertise in the subject matter and a network of supporters to publicize a cause, recruit allies, and lobby influential actors.\textsuperscript{19} The idea is to employ a mix of persuasion and pressure politics. Persuasion is convincing influential actors, including the target actor and the public, of the


\textsuperscript{18} O’BRIEN ET AL., \textit{supra} note 7, at 67–108 (looking at the WTO as an opportunity structure); Jeffrey Ayres, \textit{Transnational Political Processes and Contention Against the Global Economy}, in \textit{GLOBALIZATION AND RESISTANCE: TRANSNATIONAL DIMENSIONS OF SOCIAL MOVEMENTS} 191 (Jackie Smith & Hank Johnston eds., 2002) (looking at NAFTA as a political opportunity structure).

\textsuperscript{19} Bert Klandermans & Sidney Tarrow, \textit{Mobilizing Into Social Movements}, in \textit{FROM STRUCTURE TO ACTION: COMPARING SOCIAL MOVEMENT RESEARCH ACROSS CULTURES} 1, 11–12 (Bert Klandermans et al. eds., 1988).
appropriateness of following particular normative principles.\textsuperscript{20} Pressure is bringing undesirable consequences upon a resistant actor, such as political censure or removal of material benefits, until the target changes its policies.\textsuperscript{21}

Two valuable tactics for mobilizing transnational political opportunity structures are strategic framing and disseminating information. Strategic framing is articulating one’s cause and desired policy changes according to widely accepted international norms. The goal is to shape the debate as a normative one, rather than a contest for political power or resources, thereby placing the target government on the defensive as a norm violator.\textsuperscript{22} Disseminating information includes actively promoting one’s cause with the help of carefully researched evidence of value to the media, the broader public, supporters, influential allies, and the target government.\textsuperscript{23} Other important tactics include recruiting and mobilizing supporters, protesting, and lobbying of policy makers.\textsuperscript{24}

Having established what transnational political opportunity structures entail and how activists utilize them, I turn to the specific category of “legalized” transnational political opportunity structures.

\textbf{B. “Legalizing” the “Political” and “Politicizing” the “Legal”}

A transnational quasi-judicial mechanism for reviewing compliance with value-based norms is not simply another political opportunity structure for activists. It incorporates the particular legitimating power of law in encouraging norm-based behavior. After all, with some exceptions,\textsuperscript{25} even scholars who focus on the functional and coercive aspects of international law recognize its normative power in setting appropriate standards of behavior for states to follow.\textsuperscript{26} For value-based international legal


\textsuperscript{21} KECK & SIKKINK, supra note 14, at 16–22.

\textsuperscript{22} Id. at 1–3; Richard Price, Reversing the Gun Sights: Transnational Civil Society Targets Land Mines, 52 INT’L ORG. 613, 616–17 (1998).

\textsuperscript{23} Jackie Smith et al., Social Movements and World Politics, in TRANSNATIONAL SOCIAL MOVEMENTS AND GLOBAL POLITICS: SOLIDARITY BEYOND THE STATE 59, 69–73 (Jackie Smith et al. eds., 1997).


\textsuperscript{25} See generally George Downs et al., Is the Good News about Compliance Good News about Cooperation?, 50 INT’L ORG. 379 (1996).

\textsuperscript{26} Judith Goldstein et al., Introduction: Legalization and World Politics, 54 INT’L ORG. 385, 392–396 (2000); see generally Abbott & Snidal, supra note 14.
arrangements, the legitimizing quality of law assumes preeminent importance.  

Law's legitimizing power derives from legal discourse and process. Legal discourse is communicating according to principled ideas. Participants justify their behavior and propose resolutions based on accepted notions of appropriate behavior rather than on self-interest or functional needs. Participants frame their arguments through referencing terms of the treaty, invoking legal authorities, and reasoning by careful analogy to other principles and fact patterns. Legal process consists of the forum and procedures for mediating the legal discourse. In the international realm, legal process is likely to take place in an administrative or quasi-judicial setting. The process includes reviewing competing legal arguments, gathering evidence, conducting investigations, and issuing findings or recommendations. The effect of legal process is to draw attention to the normative disputes and build authority for normative-based resolutions. In effect, a legal process can "entrap" a government to conform its behavior to accepted interpretations of appropriate behavior.

Integral to directing and advancing the transnational legal process is the review body, be it a court or a quasi-judicial body. Validation by this body substantially enhances the legitimating power of legal discourse and process. A decision to proceed with a full review of an activists' petition sends a message that the argument has merit while drawing the target actor into a normative conversation initiated by the activists. A subsequent favorable finding provides activists further momentum by offering an official benchmark that can be invoked in the future to pressure the government.

Transnational, quasi-judicial structures, then, offer activists an opportunity to initiate a norm-based argument in a ready-made forum in which the government has promised to participate. Yet as most activists well realize, a sound legal argument is not likely to be sufficient. Governments will resist being pulled in too deeply where the legal ruling

30. Cesare Romano, supra note 5, at 710.
32. Franck, supra note 27, at 91–146.
34. Franck, supra note 27, at 50–66.
calls for an unwanted change in state policy. It is up to activists to convert appealing "legal talk" into real political change. Doing so requires politicizing the process, whereby activists recruit a network of supporters, disseminate the petition and any favorable rulings, lobby influential policymakers to accept the findings, and leverage the findings to apply ongoing political pressure on the target actor.

In short, this Article's theoretical framework posits that activists are most likely to mobilize transnational quasi-judicial mechanisms for political gain when they combine sophisticated framing of their cause around well-accepted legal norms with sustained political mobilization and gain validation from the review body. Three principal actors are involved: (1) the activists raising the petitions to effect changes in policy, (2) the quasi-judicial body directing the process and making legal findings, and (3) the target government (and, sometimes, private company) resisting the desired changes. The interaction plays out as follows:

- **Activists**: They employ a mix of political and legal advocacy. Legal arguments are aimed at getting the support of the review body and at putting the government on the defensive. The arguments are also framed with the goal of maximizing political support from the public and influential allies. A range of political tactics are applied to publicize the activists' cause, build support, and pressure the government to make changes.

- **Quasi-judicial Body**: It plays both a reactive and active role. On the one hand, it is the target of persuasion (and, typically, political pressure) from activists and from the target actor. On the other hand, it decides the merits of the arguments. Its validation of activists' arguments can provide considerable legitimacy to activists' cause and increase the pressure on the government to change its behavior.

- **Target Government**: Typically, the target government has been drawn into the legal process reluctantly. Thus, it seeks to end the process by denying the merits of the activists' arguments and the appropriateness of continuing with the petition.

In applying this theoretical framework to the NAALC petitions filed by labor activists, I will lend further sophistication to the framework by factoring in shifts in the overall political context of the member countries, especially the significant changes in government that took place in the United States and Mexico in 2000–2001.
II.
BACKGROUND AND DESCRIPTION OF NAALC

A. Background

While the Seattle protests at the 1999 WTO Ministerial conference dramatized the great tensions between neoliberal and social-justice-oriented views of trade governance, such ideological conflicts surfaced before in response to the proposed NAFTA in the early 1990s. Labor rights, environmental, and human rights activists warned of the negative impact a neoliberal-oriented NAFTA would have on social values, like labor rights and environmental standards. Activists pushed for a firm social agenda but were opposed by private economic actors, who emphasized trade and investment liberalization and the Mexican government.36

Eventually a compromise was reached between pro-liberalization groups and social justice activists. Engineering the compromise was U.S. President, Bill Clinton, who entered office in 1993, after negotiations for NAFTA had been completed. He sought a path that would mollify Democratic Party constituencies of environmentalists and labor unions while placating the Mexican and Canadian governments, who vigorously opposed the inclusion of labor and environmental provisions, and the U.S. business constituency, which preferred a NAFTA free of social regulatory provisions.37

Negotiations led to the North American Agreement on Environmental Cooperation (NAAEC) and NAALC. Each sets forth a broad set of substantive principles on labor or environmental standards, that each member state pledges to promote, and establishes Secretariats to facilitate the advancement of these principles, through such means as gathering and consolidating information on laws, sponsoring new studies, and facilitating trinational dialogue between activists, academics, industry representatives, and government officials.38 What has gained the most prominence in practice for both NAALC and NAAEC are the citizen-petition mechanisms they established.39 Both mechanisms establish review bodies that hear citizen complaints (known as "communications") against member

37. CAMERON & TOMLIN, supra note 36, at 179–207.
38. The text of NAALC can be found at http://www.naalc.org and the text of NAAEC can be found at http://www.cec.org (last visited Feb. 17, 2005).
39. I base this assessment in large part on the impressions of the U.S., Mexican, and Canadian labor and environmental activists I interviewed in the course of a broader study of the political significance of the institutions set up by NAALC and NAAEC. Media coverage I have reviewed of the two accords appears to support this impression as well.
As a concession to the Mexican and Canadian governments, the standard of review is based on the actual domestic laws in place for the complained-of government rather than common regional standards. The idea of the citizen-petition process, then, is to bring enforcement of *domestic* labor and environmental standards to regional scrutiny. The specific steps involved in the NAALC accord are discussed below.

**B. Description of NAALC**

NAALC sets forth eleven guiding labor principles which each country is "committed to promote":

- Freedom of association and right to organize.
- The right to bargain collectively.
- The right to strike.
- Prohibition of forced labor.
- Labor protections for children.
- Minimum employment standards (minimum wage, maximum hours).
- Elimination of employment discrimination.
- Equal pay for women and men.
- Prevention of occupational injuries and illnesses.
- Compensation for occupational injuries and illnesses.
- Protection of migrant workers.

These reflect shared principles each country already honors through its domestic laws. Guided by these principles, NAALC contains three general obligations: (1) to enforce the state's domestic laws on labor rights; (2) to provide any aggrieved individual with "appropriate access to administrative... judicial or labor tribunals" for vindicating one's rights; (3) to ensure "fair, equitable, and transparent" adjudicatory proceedings.

While the Secretariat for NAALC is a single regional body that sponsors cooperative activities to advance NAALC's principles, the NAALC agreement delegates the review of citizen petitions to three separate NAOs. Each NAO is a governmental body, set up as an agency within the labor department of each member state. The NAOs are not...
autonomous from the member governments to which they belong. Rather, each NAO is led by a government-appointed Secretary, who is allotted a small staff. In reviewing a citizen petition, the NAO commissions legal studies receives information from any interested party, and exchanges information with the NAO of the complained-of government. The review process ends with the NAO issuing findings and recommendations.

The most favorable formal "remedy" an NAO can provide petitioners is a recommendation that the member governments conduct follow-up ministerial consultations to address the problems identified in the NAO's final report. The NAO's formal role in the dispute ends at this stage. It is then up to the member governments to arrange ministerial consultations though, in practice, the NAO staff often helps coordinate the ministerial consultations. Typically, the ministerial consultations have involved further studies and investigations, which include public meetings of government officials, companies, labor unions, and other interested parties. As discussed below, activists have managed to utilize these ministerial consultations to further advance their political dispute against the member government.

The reliance on separate government-controlled review bodies was insisted upon by Mexico's long-governing Institutional Revolutionary Party (PRI). It feared that an autonomous regional body with wide investigatory authority would be more likely to interfere with the PRI's longstanding practice of institutionally favoring a federation of allied labor unions, led by the Confederation of Mexico Workers (CTM). To prevent self-investigation—meaning an NAO reviewing a petition against the government to which it belongs—NAOs only review petitions of failure by another government to enforce its own labor laws.

Sanctions for government noncompliance are technically envisioned in the NAALC agreement. They are only possible, however, after a series of lengthy steps that go well beyond the NAO’s final step of recommending ministerial consultations. These additional steps include a follow-up request from a member government to convene a special Evaluation Committee of Experts to review the concerns first raised in the petition and a subsequent filing by a member government of a formal complaint before an ad-hoc Arbitral panel of continuing noncompliance against another member government. Moreover, only a small subset of issues are even permitted to advance to the formal sanction phase: those dealing with child labor, minimum standards, and health and safety. In fact, it is only due to the practical remoteness of the sanction process and the complete exemption of labor union issues that the Mexican government reversed its

46. CAMERON & TOMLIN, supra note 36, at 191–200; see MIDDLEBROOK, supra note 41.
47. NAALC, Article 23.
48. NAALC, Article 29.
initial rejection during negotiations of including sanctions in the NAALC agreement. As one Mexican negotiator happily observed later, "The mechanisms for sanctions are extremely long—a country has to be looking for sanctions to be imposed."\(^{49}\) To date, no government has invoked the sanction process. What stands out, then, is the soft law citizen submission process administered by the NAOs.

III.
INITIAL RESPONSES OF LABOR ACTIVISTS: DISAPPOINTMENT, GREATER CROSS-BORDER SOLIDARITY, AND CAUTIOUS ENGAGEMENT

A. Cross-Border Collaboration

Other than the Mexican PRI-backed CTM, which opposed the very idea of including labor standards in NAFTA, the North American labor movement expressed wide disappointment with NAALC.\(^ {50}\) Then-president of the AFL-CIO, Lane Kirkland, expressed a common sentiment, dismissing NAALC as a "bad joke... a Rube Goldberg structure of committees all leading nowhere."\(^ {51}\) In practice, however, a more complex and pragmatic attitude emerged, especially among reformist and internationally oriented labor unions and labor rights groups. It emerged from a newly developed cross-border awareness.

The proposing of NAFTA served as a symbolic wake-up call to Mexican and U.S. activists of the profound and growing interconnections between the two countries.\(^ {52}\) U.S. activists opposed to NAFTA came to recognize the importance of having a strategy to deal with the reality of jobs being moved to Mexico.\(^ {53}\) In Mexico, a significant popular opposition to the country's political and social institutions was emerging that included dissident labor, democracy, and human rights movements.\(^ {54}\) Because of the PRI's domination of domestic political and social institutions, independent activists were eager to work with allies from abroad, including those from

\(^{49}\) Cameron & Tomlin, supra note 36, at 200.
\(^{50}\) Tom Barry et al., The Great Divide: The Challenge of U.S.-Mexico Relations in the 1990s 323-26 (1994) (discussing workers' discontent with NAFTA).
\(^{52}\) Barry et al., supra note 50, at 323; Maria Lorena Cook, Regional Integration and Transnational Politics: Popular Sector Strategies in the NAFTA Era, in The New Politics of Inequality in Latin America: Rethinking Participation and Representation 517, 518-19 (Douglas Chalmers et al. eds., 1997).
\(^{53}\) Dreiling, supra note 36, at 33-44.
\(^{54}\) Cook, supra note 52, at 517-21.
the United States.\textsuperscript{55} Cross-border collaboration between Mexican and U.S. activists coalesced around the campaign to oppose NAFTA.

To be sure, there remained and continue to exist notable tensions between U.S. and Mexican labor activists. They have readily united, however, in a campaign to eliminate systematic discrimination against independent labor movements. With the NAFTA campaign over, those activists who had developed cross-border links were looking for new avenues to work together. Although frustrated with NAALC's nonbinding features, the citizen petition process did offer a concrete avenue for cross-border collaboration. Given the typical futility of pursuing domestic political and legal channels, the independent Mexican labor movement was happy to test NAALC's value in collaboration with willing U.S. groups.\textsuperscript{56}

In the first two years of NAALC's existence, four petitions were pursued, three before the U.S. NAO against the Mexican government in 1994 and one before Mexico's NAO against the U.S. government in 1995.\textsuperscript{57} Each were filed by either labor unions with substantial cross-border contacts or by labor rights and human rights groups. Although none of these petitions attained concrete results, they were closely observed by labor activists and prompted greater interest in the NAALC process. They served as valuable learning experiences in what the petition process could and could not do and on how to use the process most effectively for political gain. For a helpful illustration, I examine closely the first set of petitions filed in 1994 and assess why the petitioners engaged NAALC, how they framed the petition, what political mobilization was used, the response of the NAO, and the results attained.

B. The First Petitions: Honeywell and General Electric

The strongest cross-border labor alliance to emerge from the fight against NAFTA was between Mexico's Authentic Labor Front (FAT) and the U.S.-based United Electrical, Radio, and Machinist Workers (UE). The unions share an activist, social-union philosophy based around a strong commitment to rank-and-file democracy and community activism.\textsuperscript{58} The FAT has strongly opposed the CTM and the selective favoritism that Mexico's corporatist-style political system bestowed upon allies of the PRI.

\textsuperscript{55} Id.

\textsuperscript{56} Interview with Bertha Lujon of FAT, in Mexico City, Mex. (Mar. 16, 1999); interview with Arturo Alcalde, labor attorney for FAT and other independent Mexican labor movements, in Mexico City, Mex. (July 22, 2003); interview with Alfonso Bouzas, Professor of Industrial Relations, Universidad Nacional Autónoma de México, in Mexico City, Mex. (Feb. 22, 1999).

\textsuperscript{57} As discussed infra, a fourth petition was filed in 1994 but soon withdrawn. For a summary of petitions filed, see http://www.dol.gov/ilab/programs/nao/public_submissions.htm.

\textsuperscript{58} Robin Alexander, Experience and Reflections on the Use of the NAALC, in MEMORIAS: ENCUENTRO TRINACIONAL DE LABORALISTAS DEMOCRÁTICOS 139, 140-41 (Universidad Nacional Autónoma de México ed., 1999).
The two movements formed a Strategic Organizing Alliance in 1992 for organizing plants along the Texas-Mexico border, especially those connected to UE-organized plants.\textsuperscript{59}

These first two petitions were filed by the UE and the International Brotherhood of Teamsters, who had been collaborating with FAT in organizing a Honeywell subsidiary in Mexico. The goal for the petition was to boost FAT-led organizing drives at a General Electric plant in Juárez and a Honeywell plant in Chihuahua.\textsuperscript{60} There was not much thought on how best to use or shape this new mechanism. According to Robin Alexander, lead coordinator of the complaint for the UE, it was an available mechanism that the movements hoped would focus added public attention on the "egregious" abuses.\textsuperscript{61} She had no major expectations about what the process could accomplish but did hope to "prompt a vigorous investigation" by the NAO.\textsuperscript{62} The U.S. NAO consolidated the Honeywell and GE petitions.

1. Legal Framing of Petition

Although lacking in binding power, NAALC's forum offered petitioners an opportunity to bypass the often inhospitable and inaccessible administrative and legal domestic channels in Mexico and secure a more equal exchange before an outside forum free of PRI influence. Moreover, by initiating the process, petitioners had the advantage of shaping the exchange. Accordingly, the manner in which the petitions are framed is of considerable importance both in persuading the NAO to respond favorably and in putting the target government (and/or private company) on the defensive in terms of having to justify their behavior according to the standard formulated in the petition.

Petitioners, however, had some difficulty in putting together an effective framing appropriate for this new type of hybrid judicial-political forum. Accordingly, Robin Alexander, an attorney herself, settled on a familiar format, a U.S. unfair labor practices legal action.\textsuperscript{63} This format worked well in highlighting illegal behavior of the companies in obstructing union-organizing efforts, discharging workers for union activities, and forcing workers to resign.\textsuperscript{64} It was less effective, however, in making


\textsuperscript{60} Interview with Robin Alexander, Director of International Labor Affairs for the UE, in Pittsburgh, Pa. (June 11, 1999).

\textsuperscript{61} Id.

\textsuperscript{62} Alexander, supra note 58, at 145.

\textsuperscript{63} Id.

connections to the underlying purposes of NAALC, of promoting broad governmental enforcement rather than stopping individual violations of labor laws by companies. The petition mentioned governmental nonenforcement but did not develop the theme. Nor did it build a case for connecting the problems at the local Honeywell and GE subsidiaries to broader, systematic problems in Mexico.

The petitioners did manage to sharpen their arguments as the NAO review proceeded. Prior to the hearing, they submitted a follow-up brief that added allegations of systematic governmental failures to uphold the rights of workers to organize and associate with independent labor unions and the wide presence of biased administrative labor boards. Moreover, with the help of the International Labor Rights Fund (ILRF), the petitioners attempted to shape the nature of the review process more generally by advocating for a judicial, adversarial format that included public hearings, cross-examination, and power to subpoena evidence and testimony.

2. Politicizing the Legal Action

Knowing that a good legal argument would not be sufficient given the soft law nature of the process, petitioners developed a complementary political strategy to promote the NAALC action. Part of the political strategy was the very selection of abuses by U.S. subsidiaries in Mexico for the U.S. NAO to review. Petitioners calculated that such an angle would elicit added and sympathetic U.S. press attention and, thus, put both the U.S. and Mexican governments further on the defensive in justifying their actions. Networking took the form of cross-border collaboration between the UE, FAT, and Teamsters. Each signed on as co-petitioners and mobilized political support from members and supporters. Further political mobilizing took place in the public hearing. To give a human face to the violations, the petitioners presented testimony from workers at the two plants who suffered retaliations from the companies for union organizing and/or were forced to resign. To convey broader labor solidarity, the petitioners solicited supporting statements from leaders of national and

67. Interview with Alexander, supra note 60
international labor federations and packed the hearing with labor union supporters.\textsuperscript{69}

The overwhelming themes advanced at the hearing were Mexico’s consistent repression of independent labor movements and NAALC’s inadequacies. The UE’s General Secretary, Amy Newell, challenged the NAO to move beyond symbolism and become an effective voice for labor rights:

The North American Agreement on Labor Cooperation is the only forum we have for raising the issue of workers’ rights in the context of NAFTA.... If you choose to do so, I believe the NAO can... elevate the question of respect for workers’ rights far beyond the level that your actual enforcement power would lead one to expect. You have the ability to create big-time headaches for corporations and government bodies that disregard labor rights, to focus the spotlight of public attention and condemnation on their behavior.\textsuperscript{70}

3. \textit{Response of the U.S. NAO: Declining to Validate Argument}

The U.S. NAO faced conflicting demands on how to proceed with the review. While petitioners advocated aggressive adjudication, GE and Honeywell representatives opposed reviewing these complaints because they did not allege a “pattern of non-enforcement by the government of Mexico.”\textsuperscript{71} The U.S. Council for International Business went even further, arguing that petitions must be purely cooperative in terms of discussing labor standards more broadly rather than making specific allegations of misbehavior.\textsuperscript{72} It opposed holding a public hearing and requested that individual company names be omitted from NAALC petitions.\textsuperscript{73} The Mexican government, for its part, has generally opposed using the process to review disputes, favoring a purely cooperative approach.\textsuperscript{74}

The petitioners won the heart of this battle. The NAO reviewed the two petitions, finding no problem with the targeting of specific companies so long as the petition raised issues relevant to labor law enforcement matters.\textsuperscript{75} It also decided that public hearings would be a standard practice.\textsuperscript{76} Rather than simply receiving information, the NAO solicited

\textsuperscript{69} Id.
\textsuperscript{70} Id. at 17.
\textsuperscript{73} Id.
\textsuperscript{74} Interview with Mara Salazar, long-time attorney at Mexico’s NAO, in Mexico City, Mex. (Mar. 18, 1999); \textit{see also} Report of the Mexican National Advisory Committee on the First Four Years of the Operation of the NAALC (1999), \textit{available at} http://www.naalc.org/english/review_annex2.shtml.
\textsuperscript{76} \textit{See} 59 Fed. Reg. 16660.
information from petitioners, the companies, and the Mexican government and commissioned a report from expert consultants on Mexican labor law.\textsuperscript{77} The NAO did, however, refrain from demanding evidence or allowing cross-examination at hearings, arguing that "the hearing is informational rather than adversarial" and that only the NAO Secretary is entitled to ask questions.\textsuperscript{78}

Substantively, however, the U.S. NAO took a very deferential approach toward the Mexican government. Robin Alexander recalls sensing open skepticism from the NAO staff at the hearing and elsewhere toward the petitioners' allegations as well as general ignorance of Mexico's labor situation.\textsuperscript{79} The NAO largely ignored the companies' behavior in both the hearing and final report and effectively absolved the Mexican government of any wrongdoing: "the information available to the NAO does not establish that the Government of Mexico failed to promote compliance with or enforce the specific laws involved."\textsuperscript{80} The report concluded that ministerial consultations were not warranted.

4. Results: Failure

From the petitioners' perspective, these petitions were failures. The negative ruling from the NAO was regarded by all parties, and the press, as a validation of the Mexican government's behavior.\textsuperscript{81} Given the continued resistance of management and the Mexican federal and local governments, it was not surprising that FAT ultimately lost the battle to organize at the two plants singled out in the petition.\textsuperscript{82} The UE lost confidence in any political value to using NAALC and withdrew a follow-up petition. They stated, "We do not choose to further legitimize this process by further participation and will have no further dealing with the NAO until such time as we have reason to believe that your office is seriously prepared to effectuate its mandate of protecting workers rights."\textsuperscript{83}

Failure of the process to help the independent organizing campaigns can readily be attributed to lack of NAO validation for the principle allegations raised in the petitions. In turn, the petitioners hurt their case by paying insufficient attention to NAALC's legal mandate. They started out emphasizing company violations rather than nonenforcement by the

78. U.S. NAO Hearing, 6 (Sept. 12, 1994).
79. Interview with Alexander, \textit{supra} note 60.
82. Interview with Alexander, \textit{supra} note 60.
NAFTA'S CITIZEN-PETITION MECHANISM

Accordingly, the petitioners gave the U.S. NAO little legal justification to take a more assertive, judgmental stance. The NAO repeatedly stated at the hearing and in its final report that its interest was in governmental enforcement rather than specific violations committed by companies. It did, however, point out the way in which petitioners could elicit greater scrutiny out of the NAO: through careful and sustained connection of company abuses to problems with governmental enforcement.

C. The Next Petition: Sony

The petitioners for the next petition, Sony, carefully articulated from the outset these connections between company abuses at the plant level and a broader pattern of governmental collusion. The petition was filed August, 1994 by the following groups: the Coalition for Justice in the Maquiladoras (CJM), a trinational coalition focused on improving working conditions in the maquiladora zone; the U.S.-based ILRF, a group promoting global workers' rights through domestic and international litigation; the U.S. chapter of Human Rights Watch; the American Friends Service Committee; and Mexico's National Association of Democratic Attorneys (ANAD), a network of Mexican attorneys working for greater democracy and human rights in Mexico.

This petition arose out of CJM involvement in challenging the labor practices at five Sony Electric-operated plants in Nuevo Laredo, along the Texas-Mexico border. As part of its effort to assist the organizing campaign of an independent labor movement, the CJM enlisted the assistance of the other three parties to file a NAALC petition, with the ILRF drafting the petition.

1. Legal Framing of the Sony Petition

This time, the petitioners took better advantage of being able to frame the dispute. Like GE-Honeywell, the petition featured company abuses of workers. It accused Sony of interfering with the workers' attempts to form an independent union through manipulating the election and intimidating workers.

84. The maquiladora zone refers to industrial areas in Mexico close to the U.S. border, where plants (known as maquilas) produce goods for the U.S. consumer market and tariffs have been limited to the value added provided by the Mexican labor force.
86. Id. For background on the CJM which includes reference to the Sony campaign, see Heather Williams, Mobile Capital and Transborder Labor Rights Mobilization, 27 POL. & SOC. 139, 156 (1999)
87. Interview with Jerome Levinson, Lead Coordinator of Petition for ILRF, in Madison, Wis. (Oct. 13, 2000).
workers who supported the independent union. Unlike the GE-Honeywell petition, this one developed the important role of the Mexican government in facilitating such harassment and abuses of independent union organizing drives. To begin, the petition faulted the government in general for failing to enforce the free association rights of the independent workers. It also accused the government-sponsored labor board, which is responsible for giving labor movements official license to represent and bargain on behalf of workers, of improperly denying such registration to the independent movement. The petition cited as relevant law domestic Mexican labor provisions and conventions (87 and 98) of the International Labor Organization (ILO) ratified by Mexico, dealing with freedom of association. The requested actions were a public hearing in Texas (close to the plants), and ministerial consultations focused on attaining an explanation from the Mexican government for its failure to enforce its labor laws.

The petitioners elaborated upon their legal and factual arguments at the subsequent public hearing convened by the NAO in Texas. The arguments extended beyond the specific situation with the Sony plants to a broader, systematic collusive relationship between the CTM, the Mexican labor boards, and private companies. Mexican experts testified to the practical and legal obstacles to independent union registration. The argument concerned the structural bias of Mexico’s tripartite system of labor boards, made up of a government representative, a business representative, and a union representative. Because the union representative is invariably drawn from the CTM or one of the other official labor unions, while the government representative is allied to the official union and the business representative generally opposes independent unions, the result is that the independent unions are profoundly disadvantaged. The petitioners connected the problems at Sony to this systematic pattern through the testimony of dismissed workers and independent union organizers.

2. Politicizing the Legal Action

As in GE-Honeywell, the underlying factual patterns of stark abuses at U.S. subsidiaries, including harassing and intimidating of workers and

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88. U.S. NAO Public Submission 940003, supra note 85.
89. Id. at 17–20.
90. Id. at 17–20.
91. Id. at 17–20.
92. Id. at 21–23.
94. Id. (see testimony by Maria Estela-Rios starting at 152).
95. Id.
illegal dismissals, were chosen for maximum political effect. The degree of political mobilization, however, was stepped up a notch from GE-Honeywell. There was considerable cross-border networking, facilitated by the CJM, given that it is a trinational coalition sponsored by the AFL-CIO.\textsuperscript{96} Such networking helped attract international press attention to the petition (and subsequent ministerial consultations). The petitioners were able to enhance media coverage further by widely disseminating the results of the NAO review to the U.S. and Mexican press.\textsuperscript{97} The hearing was used for dramatic political advocacy of the problems faced by Mexican workers seeking representation by independent labor movements. Moreover, the NAO was prodded to engage in a serious scrutiny of the allegations at Sony and the structural obstacles faced by independent labor movements in Mexico.\textsuperscript{98}

3. Response of the NAO: Furthering the Legal Discourse and Legitimating the Cause

The sharp advocacy by petitioners paid off in a U.S. NAO Report that was very critical of Mexican practices. The NAO effectively validated the arguments that workers seeking independent association consistently suffer costly reprisals, including pressure to resign and that they have little legal redress.\textsuperscript{99} Following the petitioners' argument, the Report highlighted NAALC's procedural obligations to both provide access to legal tribunals for enforcing one's labor rights and to ensure fair, impartial, and transparent judicial procedures.\textsuperscript{100} This recognition was accompanied by specific criticism of Mexico's performance: "... the economic realities facing these Mexican workers make it very difficult to seek redress from the proper Mexican authorities for violations of Mexican labor law.... More importantly, the workers repeatedly articulated their concerns about impediments to obtaining impartial legal remedies."\textsuperscript{101} The Report also criticized Sony's behavior, observing that "it appears plausible that the workers' discharges occurred for the causes alleged, namely for participation in union organizing activities."\textsuperscript{102} The Report recommended

\textsuperscript{96} See CJM website, http://www.coalitionforjustice.net.
\textsuperscript{98} U.S. National Administrative Office Public Hearing, supra note 93.
\textsuperscript{100} Id. at 17.
\textsuperscript{101} Id. at 27.
\textsuperscript{102} Id.
ministerial consultations to discuss the "serious questions... raised herein." \(^{103}\)

4. **Results: Failure at Sony But Opening a Crack for Independent Labor**

The NAO endorsement brought greater momentum, prominence, and legitimacy to the petitioners’ arguments. After all, the NAO had reached its decisions as an outside, neutral body that adopted legal procedures and reasoning and based its findings on the evidence and information obtained from a commissioned independent report. Such validation attracted the attention of the media and pressured Mexico to defend its system of industrial relations. \(^{104}\) The subsequent intergovernmental ministerial consultations that took place in response to the NAO’s recommendations were particularly useful for this purpose. They focused on the systematic problems in Mexico concerning the treatment of independent labor unions by the governmental labor boards. \(^{105}\) Of greatest significance, the consultations presented a rare public opportunity for independent Mexican labor activists to appear at a forum with their own governmental officials, challenge the biased labor board system in Mexico and pressure the officials to justify state behavior. \(^{106}\)

There were less promising subsequent results as well. At the most immediate level, the independent organizing campaign at the Sony plants was ultimately defeated, although the independent union activists at Sony credited the momentum from the NAALC case for helping sustain their movement for a substantial period. \(^{107}\) In response, the AFL-CIO expressed bitter disappointment at the lack of concrete results, arguing in the fall of 1995 that the process has shown itself to be "worthless." \(^{108}\)

In the long term, however, the *Sony* case proved valuable to activists in assessing how to attain U.S. NAO support and how to take advantage of the political opportunities ensuing from NAO support. A variety of skeptical activists, including the director of the AFL-CIO’s Latin American affairs, Stanley Gacek, recognized the value of the *Sony* case in opening political

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103. *Id.*
105. For a discussion of the ministerial consultations, see U.S. NAO Report on Ministerial Consultations on NAO Submission #940003 (June 7, 1996) (on file with author).
106. Interview with Maria Estela Rios, attorney with ANAD involved in petition who testified at public hearing and at ministerial consultation, in Mexico City, Mex. (Aug. 12, 1999).
debate in Mexico on its system of union recognition.\textsuperscript{109} Even the UE came to reassess its previous rejection of this process and engage the NAALC process again.\textsuperscript{110} Moreover, this petition was important in generating new cross-border contacts, such as those between ANAD and the CJM.\textsuperscript{111}

\section*{IV. Move to Period of Peak Interest in NAALC}

Notwithstanding the disappointing concrete results in the \textit{Sony} case, the experience persuaded a broader community of labor activists that the process had value and educated them on how best to use the process. One lesson was that the process was not a straightforward legal instrument of producing rulings that translate into immediate behavioral changes. After all, the favorable NAO finding in \textit{Sony} failed to stop the underlying objectionable practices. Yet observers saw a notable political boost from the petitions in giving more status to the underlying dispute. Thus, \textit{Sony} established NAALC as a forum that could prod the Mexican government to justify its system of industrial relations before an international audience. A NAALC petition also proved of some value in holding up objectionable U.S. labor practices to outside scrutiny, as seen in \textit{Sprint}.\textsuperscript{112} Brought by the Mexican Telephone Workers (STRM) and the Communication Workers of America (CWA) to the Mexican NAO, this petition addressed the weakness of U.S. enforcement with respect to a Sprint subsidiary unlawfully relocating in response to a successful union drive.\textsuperscript{113} While refraining from finding fault, the Mexican NAO recommended subsequent ministerial consultations.\textsuperscript{114} Part of these consultations included a high profile public seminar in San Francisco on the relationship of NAFTA to illegal plant relocations done to avoid unionization.\textsuperscript{115} Labor activists used this seminar to dramatize its argument that NAFTA has harmed workers.\textsuperscript{116} Also arising from the ministerial consultations was a study finding a marked post-NAFTA increase in threats by U.S. employers to relocate to Mexico if workers voted for a union.\textsuperscript{117} The AFL-CIO used the report to buttress its
successful lobbying campaign of Congress in 1997 to reject Fast-Track extension.\footnote{118}

By 1997, North American labor advocates stepped up their engagement in the NAALC process. A number of new labor groups and activists took part in petitions, including the AFL-CIO, the CLC, and the United Steel Workers. There was also wide trinational strategizing on NAALC, marked by two large AFL-CIO-sponsored conferences in Mexico and in the United States.\footnote{119} As a result, a series of legally sophisticated and well-researched petitions were filed, all of which involved extensive political mobilization and the participation of multiple actors. While repression of independent labor movements in Mexico continued to be the chief focus of the petitions, the targets extended to treatment of migrant workers in the United States,\footnote{120} and gaps in Canadian federal and provincial laws in protecting the rights of labor organizing.\footnote{121}

Most of these petitions enjoyed some success in terms of advancing an ongoing domestic campaign, typically a union-organizing drive. Moreover, three of the petitions even produced notable concrete results, consisting of the following:

(1) The Mexican government launched a new informational campaign in the \textit{maquiladora} zone to educate female workers on laws against pregnancy discrimination coupled with several U.S. companies agreeing to discontinue pregnancy-screening;\footnote{122}

(2) The Quebec government set up a special council to address how to prevent companies like McDonalds from illegally closing plants to avoid unions;\footnote{123}

(3) The State of Washington's government increased the amount of full-time staff enforcing health and safety regulations of migrant workers. In addition, Stemilt, a large apple growing company, agreed to accept card signing in place of formal elections to determine union certification. The Teamsters subsequently gained registration of the plant.\footnote{124}

\begin{itemize}
\item \textsuperscript{118} Interview with Thea Lee, Public Policy Director of AFL-CIO, in Washington, D.C. (June 10, 1999).
\item \textsuperscript{119} See generally \textit{MEMORIAS: ENCUENTRO TRINACIONAL DE LABORALISTAS DEMOCRÁTICOS} (Universidad Nacional Autonoma de Mexico ed., 1999).
\item \textsuperscript{120} These include \textit{Solec} (Mex–9801), \textit{Apple Growers} (Mex–9802), and \textit{Decoster Egg} (Mex–9803).
\item \textsuperscript{121} \textit{McDonalds} (US–9803) and \textit{Rural Mail Couriers} (US–9804).
\item \textsuperscript{122} Interview with Rios, supra note 106; Farhan Haq, \textit{NAFTA Body Gets Mixed Reviews}, \textit{INTER PRESS SERVICE}, Mar. 10, 1999.
\item \textsuperscript{123} \textit{McDonalds} (US–9803). Letter from Claude Melancon, lead coordinator of petition, to U.S. NAO Secretary Irasema Garza (Apr. 14, 1999) (on file with U.S. NAO and with author).
\end{itemize}
Effecting these results was a combination of sharp legal framing, sustained political mobilizing, and NAO support. Together, these elements increased the pressure on the target actors to justify their behavior and show some commitment to change. In the Apple Growers' petition, for example, Stemilt negotiators expressed their hope to the Teamster negotiators that a concession on card signing would free them from further NAALC scrutiny.\textsuperscript{125} In addition, the labor activists that lobbied at the state level for increased enforcement found that the NAALC petition notably opened lines of communication with the Washington's Occupational Safety and Health Administration body.\textsuperscript{126} Similar experiences in prodding constructive dialogue and initiatives occurred in the McDonalds and Maquiladora petitions.\textsuperscript{127}

Overall, however, petitions yielding notable concrete results were the exception even in this most promising phase of NAALC petitions. The majority of petitions ended in mixed outcomes: modest concrete results but advancement of the status of an ongoing cause onto the government's policy agenda. Such petitions should not be downplayed, however, because they best illustrate the limitations and most likely benefits to activists of incorporating a NAALC petition as part of a broader political campaign. Accordingly, I turn to a case study of an especially prominent and representative petition of this period, Echlin (US–9703), along with a petition filed close in time of it (Han Young, US–9702). Echlin reflects the most sustained effort by a wide trinational coalition of labor movements and human rights groups to confront a preeminent labor concern in North America and dominant theme of NAALC petitions: systematic repression of independent labor movements in Mexico. The Echlin petition illustrates well the dynamics involved in utilizing a nonbinding, quasi-judicial mechanism for domestic gain. It also merits close analysis because it manifests a mix of high hopes, considerable accomplishments, and great disappointment and frustration experienced by activists dealing with the NAALC process. Moreover, the postscript history offers a cautionary tale on how a deteriorating political climate guts the political value of quasi-judicial, nonbinding mechanisms.

\textsuperscript{125} Interview with a lead drafter, Lance Compa, supra note 66. Earlier an apple industry executive complained that “NAFTA’s labor side agreement is an open invitation for specific labor disputes to be raised into an international question.” Evelyn Iritani, *Mexico Charges Upset Apple Cart in U.S.*, L.A. TIMES, Aug. 20, 1998, at D1.

\textsuperscript{126} Telephone interview with Becky Smith, supra note 124.

\textsuperscript{127} Interview with Jim Sauber, National Association of Postal Workers who helped coordinate the Quebec-McDonalds petition, Washington D.C. (June 9, 1999); interview with Rios, supra note 106.
A. Deciding to File the Echlin Petition

This petition followed a fiercely contested and internationalized organizing drive by a FAT affiliate at ITAPSA, a Mexican auto parts subsidiary of the U.S. based Echlin company (now operating as Dana).\textsuperscript{128} As part of its resistance to the organizing drive, ITAPSA produced a “protection” contract—a secret collective bargaining contract with an absentee, compliant labor union used to preempt genuine union-organizing—with a CTM affiliate.\textsuperscript{129} The petition was filed on December 15, 1997 by the Echlin Workers’ Alliance, a trinational coalition of labor movements supporting organizing drives at non-union Echlin plants in North America.\textsuperscript{130} Members included UE, Teamsters, United Steel Workers, Canadian Auto Workers, and FAT. The ITAPSA organizing campaign was the Alliance’s first project.\textsuperscript{131} It filed the petition to help the organizing campaign by interjecting greater outside scrutiny and pressure on Echlin and the Mexican government.\textsuperscript{132} Coordinating the petition again was Robin Alexander, UE’s director of international affairs. Impressed by subsequent U.S. NAO reviews since \textit{GE-Honeywell}, Alexander now believed the NAO to be much better informed and politically interested in demonstrating the value of NAALC to U.S. labor movements and Democratic members of Congress.\textsuperscript{133}

B. Legal Framing of the Petition

Benefiting from the collective knowledge accumulated on the NAALC petition process, the \textit{Echlin} petition was expertly crafted. It connected allegations of labor violations occurring at ITAPSA to systematic failures of the Mexican government to uphold the free association rights of workers. The petition narrated a series of stark labor rights abuses, including: intimidation and discharging of FAT supporters, manipulation of the union election, a biased labor board, rampant exposure of workers to asbestos and other harmful chemicals, malfunctioning equipment, and structurally inadequate governmental inspections.\textsuperscript{134} These violations were connected to a broader pattern of collusion between Echlin management, the CTM affiliate, and government officials:

Through these abuses, which were perpetrated by a U.S. corporate subsidiary in conjunction with Mexico’s largest government-sanctioned

\begin{itemize}
  \item \textsuperscript{128} Interview with Robin Alexander, \textit{supra} note 60.
  \item \textsuperscript{130} \textit{Id.}
  \item \textsuperscript{131} Interview with Alexander, \textit{supra} note 60.
  \item \textsuperscript{132} \textit{Id.}
  \item \textsuperscript{133} \textit{Id.}
  \item \textsuperscript{134} U.S. NAO Submission 9703, \textit{supra} note 129.
\end{itemize}
labor union, the independent union campaign was crushed... Rather than act
to prevent the abuses or deny them legal effect, Mexican authorities
participated in some of the challenged conduct.\textsuperscript{135}

The \textit{Echlin} petition advanced on \textit{Sony} by having thorough factual
documentation and detailed legal analysis of Mexican obligations under
statutory law, constitutional law, and international treaty commitments.
The petition was further noteworthy in that it included a developed, long-
range plan of resolution for the NAO to recommend that would restructure
Mexican labor practices to comply with existing Mexican legal obligations.
The plan included the following: a neutral labor board, secret-ballot union
elections, a public registration of unions, the elimination of worker-
exclusion clauses, and an effective health and safety enforcement system.\textsuperscript{136}

Each remedy was justified according to Mexico’s domestic and
international legal commitments.\textsuperscript{137}

These factual and legal arguments were further developed at the
subsequent public hearing convened by the U.S. NAO.\textsuperscript{138} Workers
recounted abuses suffered at the plant and physical intimidation
experienced at the labor board-sponsored union-certification election.\textsuperscript{139}
Mexican labor attorneys testified as to Mexico’s biased labor boards and
how they violated statutory law.\textsuperscript{140} They also articulated the justifications,
based under existing Mexican labor laws, for giving workers the right to
demand a secret ballot election to determine union certification. A Mexican
toxicologist discussed the country’s inadequate enforcement of health and
safety regulations.\textsuperscript{141}

\textit{Echlin} further stands out for prominently including state failures on
upholding health and safety standards. Such allegations not only added a
new powerful charge that the companies and Mexican government would
have to somehow explain, they also formally elevated the stakes of the
petition. Unlike labor union violations, health and safety violations are
subject to further scrutiny beyond the NAO level, including, as a last resort,
sanctions.\textsuperscript{142}

\begin{itemize}
  \item \textsuperscript{135} \textit{Id.} at 2.
  \item \textsuperscript{136} \textit{Id.} at 71–73.
  \item \textsuperscript{137} \textit{Id.}
  \item \textsuperscript{138} Public Hearing on NAO Submission 9703 (on file with U.S. NAO and with author).
  \item \textsuperscript{139} \textit{Id.}
  \item \textsuperscript{140} \textit{Id.}
  \item \textsuperscript{141} \textit{Id.}
  \item \textsuperscript{142} To be clear, the NAO is still limited to issuing its own report and recommending ministerial
consultations. Further levels of scrutiny are determined at the intergovernmental level.
\end{itemize}
C. Politicizing the Legal Action

The petitioners invested considerable political efforts to make "talking the talk" of principled obligations translate into actual gains for independent labor movements. As in Sony, the decision to file a NAALC petition was based on the political appeal of a dispute implicating a U.S. subsidiary and involving dramatic abuses. Similarly, petitioners judged the overall political context of the time to be opportune because the Clinton Administration was seeking "fast track" approval from the U.S. Congress, meaning the right to negotiate the full terms of a subsequent free trade agreement, with Congress simply voting yes or no to the entire package, rather than adding amendments. It was understood that NAALC would be the basic model for follow-up trade agreements. Accordingly, to get some pro-labor union House members to acquiesce to fast track, they would have to be convinced of NAALC's practical value. Petitioners, thus, reasoned, that a Clinton-Administration-led NAO would be well disposed to reviewing the petition sympathetically.

Upon the actual filing of the petition, the petitioners employed a range of political tactics common to transnational activism: networking, disseminating information, protesting, and using symbolic politics. Networking took the form of assembling an impressive coalition of co-petitioners, including the AFL-CIO, the CLC, the recently formed UNT, and dozens of human rights groups, advocacy groups, and faith-based supporters from all three countries. Pragmatically, the networking enabled much greater dissemination of the dispute and, later, of the favorable NAO report to the media, public officials; and supporters. It also increased the voices pressuring public officials to take action. Symbolically, the networking helped frame the petition as more than a labor-management dispute but one promoting broad public interests. This broader public value was reinforced at the hearing through packing the room with workers and prominent union activists from multiple countries. The petitioners interjected further pressure by picketing outside of Echlin headquarters in Connecticut.

143. Interview with Alexander, supra note 60; interview with Lee, supra note 118.
144. Id.
145. See First Amended Submission (Feb. 13, 1998)(adding a number of co-submitters)(on file with U.S. NAO and with author).
146. See Jose Manuel Nava, Permite el TLC que se Pisotee a los Trabajadores Mexicanos, EL EXCELSIOR, Dec. 16, 1997 LEXIS MEX. PUBLICATIONS; see also Sam Dillon, Abuses Reported in Mexico At American-Owned Plant, N.Y. TIMES, Aug. 5, 1998, at A10.
147. Interview with Alexander, supra note 60.
148. Id.
As discussed below, such sustained political engagement proved especially useful for converting a legal victory into long-term political significance.

D. Response of the NAO: Overwhelming Legal Validation

The strong legal advocacy resulted in a ringing NAO endorsement. The NAO’s final report was particularly harsh on the collusion between the CTM and the state labor board: “The testimony and other evidence is consistent, convincing, and disturbing.”149 The report agreed that “the exclusion clause may constitute a serious threat against the rights of workers and the principle of freedom of association.”150 Moreover, the NAO expressed concern at the low fines assessed by the government for serious health and safety violations at ITAPSA and the confusion as to whether the fines were ever enforced.151 The report concluded by making a pointed finding on the multiple violations at ITAPSA and called for intergovernmental consultations on virtually all of the issues requested by the petitioners, including application of the exclusion clause and use of the secret ballot.

E. Results: Modest at the Plant Level But Significant to the Cause of Independent Labor

The Mexican government was displeased, accusing the U.S. NAO of being too intrusive and acting contrary to the cooperative purpose of NAALC.152 It was most upset at the strong substantive findings. Referring both to Echlin and Han Young, a petition with similar allegations and similar findings decided upon a few months earlier, the government accused the U.S. NAO of exceeding its authority by questioning Mexico’s system of industrial relations and intervening in its internal politics on behalf of the critics.153

Initially, the Mexican government threatened to stop cooperating in the NAALC process.154 Yet it was effectively entrapped to continue given the momentum already gained as a result of both the political advocacy of the petitioners and the legal support given to their cause of action. After all, as in Sony, the NAO had justified its decision based on a formalized process of

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150. Id. at 45.
151. Id. at 68.
152. Report of the Mexican National Advisory Committee on the First Four Years of the Operation of the NAALC, supra note 74.
153. Id.
analyzing evidence. It was careful to connect its findings to a combination of documented evidence and well-researched legal analysis of Mexican law, as well as accumulated expertise. Activists were then able to promote the NAO findings to the media and to government officials as an authoritative, neutral benchmark for evaluating Mexico’s treatment of independent labor movements.

Thus, on May 18, 2000, the Mexican government signed on to a joint Ministerial Declaration, addressing Echlin and Han Young, in support of secret-ballot union elections and public registration of collective bargaining contracts (to dissuade the use of protection contracts).\footnote{Agreement on Ministerial Consultations, U.S. NAO Submissions 9702 and 9703 (May 18, 2000), available at http://www.dol.gov/ilab/media/reports/nao/minagreement9702-9703.htm.} The Declaration further committed the governments to hold trilateral public meetings on promoting the principles of freedom-of-association and collective bargaining, ensuring impartial labor boards, and improving health and safety enforcement.\footnote{Id.}

Mexican labor activists promoting structural democratic labor reforms give Echlin and the Ministerial Declaration much credit for boosting their cause. Alfonso Bouzas, a leading scholar-activist of labor reform in Mexico, who spoke at the subsequent public meetings, argues that the Ministerial Declaration and activists’ promotion of it shifted the terms of the internal policy deliberations on how to reform Mexico’s labor system.\footnote{Interview with Alfonso Bouzas, Professor of Industrial Relations, Universidad Nacional Autónoma de México, in Mexico City, Mex. (July 22, 2003).} Previously, as Bouzas explains, the internal discussion in Mexico focused on instituting greater labor flexibilization, meaning more contract workers and less job security. With the Declaration in hand, democratic labor reformers secured a commitment from the government to include freedom of association and public registration of collective bargaining contracts into the policy agenda of labor reform.\footnote{Id. While less explicit in drawing a one-on-one correlation, Mexico’s NAO coordinator, Claudia Anel Valencia, credits the NAALC ministerial declarations with shaping the specific content of the labor reform negotiations and the inclusive nature in which all parties, including the UNT, were invited to participate. Interview with Claudia Anel Valencia in Mexico City, Mex. (July 24, 2003).}

Activists also leveraged the Declaration to persuade opposition presidential candidate, Vicente Fox, of National Action Party (PAN), to sign onto a statement of “20 Compromisos” produced by labor activists promoting democratic labor reforms.\footnote{Interview with Hector Barba, a labor attorney negotiating for the UNT in reform talks with the government, in Mexico City, Mex. (July 27, 2003). Barba also represents the left-of-center Democratic Revolutionary Party (PRD). For background on the 20 Compromisos, see Patricia Carrillo Alejandro, La Libertad Sindical En la Agenda De los 20 Compromisos, in DEMOCRACIA SINDICAL 19 (Alfonso Bouzas ed., 2001).} Arturo Alcalde, a prominent Mexican labor attorney and leading advocate of democratic labor reform, who would like to see more teeth to
the NAALC citizen-petition process, nevertheless argues that the secret ballot elections for union representation is likely to become law because of the momentum sparked by Echlin.\textsuperscript{160}

There are indications, as well, that Echlin along with Han Young made U.S. companies more sensitive about their health and safety records in Mexico. The director of the U.S. NAO's information room, John Mondejar, recalled receiving six to eight inquiries in the summer of 1998, shortly after the Echlin and Han Young reports, from U.S. companies operating in Mexico about Mexico's health and safety regulations.\textsuperscript{161}

The concrete results at the plant level, by contrast, were less impressive. To be sure, there were notable improvements in health and safety at the ITAPSA plant, although the causes are disputed given that the plant had been taken over by another U.S.-based company, Dana.\textsuperscript{162} There is reason to believe the improvements were prodded in part by the NAALC petition, given that Dana has shown concern for the petition process's shame potential by vigorously defending itself at a follow-up petition filed before the Canadian NAO.\textsuperscript{163} The chief concern, however, the independent organizing drive, ultimately collapsed.\textsuperscript{164}

Overall, then, the results of Echlin are mixed. The broader lessons to be derived from the Echlin experience regarding the political opportunities and limitations of utilizing the citizen-petition process are explored below.

V.

ASSESSMENT OF OVERALL RECORD OF NAALC’S CITIZEN PETITIONS

Looking just at concrete results, it is tempting to call Echlin a failure and proof of NAALC's impotence.\textsuperscript{165} After all, considerable resources were expended, yet the workers remained dismissed and the independent union drive failed. Such a conclusion, however, fails to appreciate properly the nature of transnational, nonbinding quasi-judicial mechanisms. By design, such fora are unlikely to be effective at producing immediate, concrete changes in behavior. The best measure of their effectiveness is whether they are able to boost ongoing political campaigns. By this measure, Echlin did prove effective, albeit with mixed results (especially in light of recent developments discussed below). Consistent with the conceptual framework

\textsuperscript{160} Interview with Alcalde, supra note 56; interview with Barba, supra note 159 (sharing Alcalde’s sentiment).

\textsuperscript{161} Interview with John Mondejar, (June 8, 1999, Washington D.C.).

\textsuperscript{162} Interview with Alexander, supra note 60.


\textsuperscript{164} Interview with Bouzas, supra note 157.

\textsuperscript{165} David Bacon, Beating Home a Message, L.A. WEEKLY, June 30, 2000.
of this article, Echlin illustrates the mutually important roles of sustained political activism and legal validation in gaining political value from a nonbinding quasi-judicial mechanism. If petitioners had not received the strong NAO validation, the shame value would have greatly diminished, as occurred in GE-Honeywell, and there would have been no authoritative benchmark by which to elicit new commitments from the Mexican government. By the same token, failure to have aggressively promoted the petition and underlying allegations to supporters, the press, and politicians would have given the NAO finding much less status and made it easier for the Mexican government to ignore the report as, in effect, “mere talk.” Similarly, it was activists’ wide dissemination of the NAO report and joint Ministerial Declaration to the press and labor rights supporters that prodded the government and opposition figures to commit to a new dialogue on labor reform.¹⁶⁶

Up to a certain point, the experiences of Echlin are consistent with this Article’s framework of the roles played by political activism and legal validation in facilitating domestic political value out of nonbinding, quasi-judicial petitions.¹⁶⁷ To assess the role of these dynamics, I performed process-tracing of all activist-initiated petitions filed up to 2003.¹⁶⁸ This method involves closely following each petition from the time activists first considered utilizing the citizen-petition mechanism through the actual filing of the dispute, the response of the NAOs, and the ultimate political outcome. I have done the process tracing through field research and archival work. My primary data has come from in-depth interviews and analyses of documents generated by the petition process. I have interviewed lead coordinators for the petitions, staff at the NAOs, and others with first hand knowledge of the petitions. I have analyzed the petitions, the NAO reports, transcripts of public hearings, responses from governments and private firms, strategy papers of submitters, and relevant correspondence. I then rated each petition according to the degree of political activism employed by petitioners, the level of NAO validation, and the results.

A. Coding

Political activism and NAO validation are coded on a three-tiered scale of low, medium, and high. Petitions coded high on political activism are those like Echlin, which build off ongoing, extensive domestic political efforts and employ a range of political tactics common to transnational

¹⁶⁶. See, supra Section III.E.
¹⁶⁷. See, supra Section I.B.
¹⁶⁸. Activist-initiated petitions refer to all petitions raised by labor unions, labor rights groups, and human rights groups. Such groups have filed all but two of the NAALC petitions.
activism, such as highlighting dramatic political facts, promoting the petition, assembling broad coalitions, and mixing in protest and symbolic politics. A low ranking conveys few petitioners and few political tactics. Medium rankings, such as in GE-Honeywell, indicate a modest but not extensive range of political tactics and only light networking.

Petitions rated as low for NAO validation involve an early dismissal or a rejection of the substantive allegations, as in GE-Honeywell. High validation applies to petitions like Sony and Echlin where the review body effectively agrees with the major substantive claims and recommends further action. Medium NAO validation applies to two situations: (1) where the NAO has deemed the petition worthy of a full review but holds back from directly criticizing the behavior of the target government, which is the standard practice of the Mexican NAO; (2) where petitions were resolved before the review body could make a final report.

For a fuller assessment of results, I include ratings for both concrete, plant-level results and for broader agenda advancing, such as promoting the cause of independent labor movements in Mexico. Here, I have chosen the terms none, modest, and significant to convey the level of expectations activists should have toward NAALC-like mechanisms. Modest concrete results refer to petitions like Echlin where some type of positive step resulted, such as health and safety improvements or registration of a union, but where the step did not address a central concern or was later effectively neutralized, such as union registration at a Han Young plant not leading to plant representation. Significant concrete results are more enduring and substantial, as in the Maquiladora and Apple Growers petitions. Petitions rated as modest under agenda-advancing are those like Sony where the petition provided some boost to the underlying cause but where the effect was not long lasting. Significant ones are those that did have a noticeable long-term impact, as in Echlin, for shaping debates on labor reform.

The results of all activist-initiated petitions are summarized below, broken up by the separate NAOs.169

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169. Besides the two non-activist petitions (US–9802 and Can–9901), these tables do not include a petition withdrawn early (US–9404) and one (Can–9802) that was an exact duplicate of another petition (Mex–9804) and, thus, not reviewed by the Canadian NAO.
Table 1: NAALC Petitions Before the U.S. NAO

<table>
<thead>
<tr>
<th>Number, name: target</th>
<th>Issues</th>
<th>Political Activism</th>
<th>NAO Support</th>
<th>Concrete Results</th>
<th>Agenda Advance</th>
</tr>
</thead>
<tbody>
<tr>
<td>9401, Honeywell</td>
<td>Suppressing independent organizing campaigns</td>
<td>med</td>
<td>low</td>
<td>none</td>
<td>none</td>
</tr>
<tr>
<td>9402, GE:Mex</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9403, Sony:Mex</td>
<td>Suppressing independent organizing campaign</td>
<td>high</td>
<td>high</td>
<td>none</td>
<td>mod</td>
</tr>
<tr>
<td>9601, SUTSP:Mex</td>
<td>Limiting workers in federal agency to one union</td>
<td>med</td>
<td>low</td>
<td>none</td>
<td>mod</td>
</tr>
<tr>
<td>9602, Maxi-Switch:Mex</td>
<td>Suppressing independent organizing campaign</td>
<td>med</td>
<td>med</td>
<td>mod</td>
<td>mod</td>
</tr>
<tr>
<td>9701, Maquiladora:Mex</td>
<td>Discriminating against pregnant workers and applicants in maquiladora zone</td>
<td>med</td>
<td>high</td>
<td>signif</td>
<td>signif</td>
</tr>
<tr>
<td>9702, Han Young:Mex</td>
<td>Suppressing independent organizing, violating health &amp; safety (h&amp;s)</td>
<td>high</td>
<td>high</td>
<td>mod</td>
<td>signif</td>
</tr>
<tr>
<td>9703, Echlin:Mex</td>
<td>Same as above</td>
<td>high</td>
<td>high</td>
<td>mod</td>
<td>signif</td>
</tr>
<tr>
<td>9801, flight attendants:Mex</td>
<td>President’s use of national security powers to stop a strike</td>
<td>med</td>
<td>low</td>
<td>none</td>
<td>none</td>
</tr>
</tbody>
</table>

170. The first two numbers indicate the year the petition was filed.
<table>
<thead>
<tr>
<th>Number, name: target</th>
<th>Issues</th>
<th>Political Activism</th>
<th>NAO Support</th>
<th>Concrete Results</th>
<th>Agenda Advance</th>
</tr>
</thead>
<tbody>
<tr>
<td>9501, Sprint:US</td>
<td>Plant closing to avoid a union</td>
<td>high</td>
<td>med</td>
<td>none</td>
<td>mod</td>
</tr>
<tr>
<td>9801, Solec:US</td>
<td>Violating h&amp;s and organizing standards</td>
<td>med</td>
<td>med</td>
<td>mod</td>
<td>mod</td>
</tr>
</tbody>
</table>

**Table 2: NAALC Petitions Before the Mexican NAO**
B. Assessing Overall Results

Looking at the overall results, one sees a fair amount of success on the part of activists in using the petitions, particularly in terms of agenda-advancing. Putting aside the undetermined status of NY (Table 2), the petitioners have attained at least modest concrete success in eight out of twenty completed petitions and at least modest agenda-advancing success in fourteen petitions. Six petitions have produced significant agenda-

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171. This petition is unusual in that it was filed by the CTM, at the behest of the Mexican government. Thus, the Mexican NAO is coming close to reviewing its own petition.
advancing results. Moreover, success has occurred against all three governments, showing the value of such mechanisms against quite distinct political-societal systems.

Also noteworthy in overall trends has been the considerable degree of political savvy employed by the activist-petitioners and the marked receptiveness of the NAOs. In none of the twenty-one petitions has there been low political activism, while ten have involved extensive political activism comparable to that in *Echlin*. This pattern reflects an understanding from the start among interested labor activists that NAALC’s primary value is political, in terms of giving further status to an ongoing dispute rather than legal, in the sense of simply gaining a favorable NAO finding. Developing politically sophisticated mobilization campaigns around the NAALC petitions has benefited from extensive strategizing, especially among repeat petitioners, on best uses of the petition process. Political savvy has also played a role in selecting causes of action that appeal to the political concerns of the reviewing NAO. Thus, most petitions before the U.S. NAO have implicated the behavior of U.S. affiliates in Mexico while most before the Mexican NAO have included abuses of migrant workers in the United States. These political appeals may partially explain petitioners’ favorable record overall with the NAOs. In fifteen of the twenty-one petitions, NAOs have given at least a medium level of validation to the petitions while only denying review three times.

With respect to correlations between the variables of political activism, NAO validation, and results, there is no perfect linear relationship. Sometimes, for example, petitions with only medium ratings of political activism have produced better results than those rated as high. There are, however, notable gaps in results between petitions on the high end of combined political activism and NAO validation and petitions on the low end. The five petitions rated high for both political activism and NAO validation attained modest or greater agenda-advancing results four times (twice modest, twice significant) and modest concrete results three times. Of the four high on one variable and medium on the other, modest or greater agenda-advancing was achieved every time with three being significant. Two of those four also attained significant concrete results, the other two none. By contrast, of the six petitions rated as low on NAO validation, none attained concrete results and only one even attained modest agenda-advancing results.

Overall, then, there has been considerable correlation between the independent variables of political activism and NAO validation and the

dependent variable of results. This correlation is especially pronounced on the high and low ends, with petitions marked by high political activism and NAO validation generally attaining favorable results and those marked by lower levels of political activism and NAO validation attaining minimal results. Explanation of why these correlations have resulted is discussed below.

**C. How Political Activism and NAO Validation Matter**

Beyond showing a general correlation, a close process tracing enables a more nuanced qualitative examination of how political activism and NAO validation further successful utilization of the NAALC petitions for domestic political gain. Thus, process tracing shows the importance of NAO validation as a legitimator of petitioners’ political cause and as a forum for drawing governments into an unwelcome legal-normative discussion. The influence of NAO validation plays out in multiple phases. The first is deeming the petition worthy of a full review, thereby legitimating petitioners’ cause as meriting serious attention. With this step, a previously domestic political dispute becomes a subject of formal intergovernmental deliberations, increasing the possibility of attracting outside attention, including from public officials and domestic and international media. Such validation and increased scrutiny has been particularly welcome for long marginalized and repressed Mexican labor activists. Moreover, accepting the petition for review draws the target government into a legal discourse of justifying its behavior. Thus, the Mexican government has had to give an accounting on such matters as how its labor boards operate and whether its activities conform to the country’s labor rights laws while the U.S. and state governments have had to explain how their administrative and judicial institutions ensure prevention of migrant labor abuses.

In a few petitions, the decision, alone, to give a full review raised enough status and attention to the underlying dispute to prompt concessions. Maxi-Switch (Table 1) was jointly filed by the CWA and STRM to boost an independent organizing campaign at a maquiladora plant. A day before the U.S. NAO was scheduled to convene a public hearing along the border, the state governor pressed the local labor board to register the independent affiliate in exchange for withdrawal of the petition. In Han Young (Table 1), the Mexican government imposed a $9000 fine on the Han Young plant the day after a public hearing was

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176. This point was stressed in interviews by Estela Rios, supra note 106 and Bouzas Interview One, supra note 56.
In McDonald’s (Table 3), a coalition of Canadian and U.S. labor unions, along with the ILRF attacked the Quebec government for not implementing any affirmative legislation to prevent companies from closing plants to avoid unions. Before a public hearing could be held, the Quebec government worked out a favorable settlement with the petitioners, agreeing to set up a council that would address how to prevent anti-union-motivated plant closings.179

The importance of NAO validation continues with the issuing of a final report calling for ministerial consultations. In addition to often drawing press attention, the report extends the process of accountability and dialogue by which governments have to justify their behavior according to their legal commitments. And, as seen in Echlin, activists then gain leverage to press for additional concessions. Notwithstanding initial threats from Mexico, no government has refused to engage in ministerial consultations. In the Maquiladora petition (Table 1), activists used the ongoing public studies and seminars on the status of women workers in the maquiladora zone to strengthen governmental commitments to educating women workers of their rights and to prompt U.S.-based companies, like General Motors, Zenith, and Motorola, to stop pregnancy-screening.180

By the same token, a negative NAO decision hurts activists’ cause in two fundamental ways. First, as shown in GE-Honeywell (Table 1), it conveys an impression that the petitioners’ political dispute has no real merit, implicitly validating the target actors behavior. Second, a negative NAO finding allows governments to stop “talking the talk” of their legal commitments to an outside audience. Obviously, initial dismissals are the most harmful to activists in this regard as the legal discussion is cut off early.

The important effect of NAO validation in determining overall success should not obscure the fundamental role of activist-petitioners in providing the legal and political foundation. After all, obtaining NAO validation requires petitioners to compose legally sound arguments. All the instances of strongly critical NAO reports of governmental behavior involved legally rigorous, well-documented petitions, like those seen in Echlin. Moreover, the petitioners in such cases established the specific legal discourse for characterizing the dispute. In a series of petitions against Mexico, the petitioners framed the right to join a union of one’s choice as requiring a neutral labor board, transparency in registration of unions, secret-ballot elections, and elimination of worker exclusion clauses (that allow for

178. Compa, supra note 107, at 197.
179. See supra Section III.
180. Interview with Rios, supra note 106; see Haq, supra note 122.
dismissal of workers not affiliated with the representing labor union).\textsuperscript{181}

Thus, the petitioners formulated the terms of the debate and, at times, persuaded the NAO to adopt their interpretations.

But merely obtaining a favorable legal ruling from the NAO has not been sufficient. Although such rulings provide openings, they need to be exploited through sustained political activism in order to convert appealing talk into substantive changes. The most politically engaged petitions have been active at multiple phases in boosting the legalized forum provided by NAALC. Thus, at U.S. NAO hearings, the petitioner have brought in union leaders from multiple countries to highlight the international solidarity behind the underlying dispute and have presented testimony from actual worker victims of the labor abuses to increase the moral power of their dispute. In the \textit{Apple Growers} petition (Table 2), the AFL-CIO worked with Mexican groups to attract U.S. and Mexican press attention to the special information session with migrant workers convened by the Mexican NAO.\textsuperscript{182} Indeed, while the session, itself, was closed, the workers and the lead organizers of the petition were interviewed by the press right after the session.\textsuperscript{183}

Similarly, as seen in \textit{Echlin}, political engagement by the petitioners is needed to take advantage of legal validation from a favorable NAO report to maintain the pressure on the target actors and push for changes. Indeed, post-report political mobilization is all the more important for Mexican NAO petitions, given that the Mexican NAO avoids any judgmental language. The principle value of the Mexican NAO reports are recommending follow-up ministerial consultations and, thus, allowing the public scrutiny and legalized conversation to continue with ongoing public studies and seminars. Accordingly, the petitioner in \textit{Apple Growers} (Table 2) focused at the outset on how best to use these new fora to promote their unionization drives for migrant labor.\textsuperscript{184}

By contrast, inattention to political mobilization after a favorable NAO action can prove quite costly, as illustrated in \textit{Maxi-Switch} (Table 1). The petition was initially quite successful in leading to a labor board registration of a STRM affiliate. But, the STRM leadership neglected to follow up on this victory by helping the subsequent campaign to gain collective bargaining rights. As a result, the union eventually disbanded in the face of continuing resistance from Maxi-Switch and the state government.\textsuperscript{185}

\textsuperscript{181} These petitions include \textit{Honeywell}, \textit{GE}, \textit{Sony}, \textit{SUTSP}, \textit{Maxi-Switch}, \textit{Han Young}, \textit{Echlin}, \textit{TAESA}, \textit{Auto Trim}, and \textit{Duro Bag} (all in Table 1).

\textsuperscript{182} Interview with Tim Beatty, AFL-CIO representative, in Mexico City, Mex. (Aug. 9, 1999); interview with Compa, \textit{supra} note 66.

\textsuperscript{183} Interview with Compa, \textit{supra} note 66.

\textsuperscript{184} \textit{Id}.

\textsuperscript{185} Alicia Sepulveda, an executive board member of STRM, believes the leadership was uncomfortable engaging in adversarial grass roots organizing in the \textit{maquiladora} zone. Interview, (Aug.
Having demonstrated in detail both the successes attained by activists in utilizing the NAALC petitions for domestic political gain and the general importance of combining sustained political activism and legal validation, I turn now to the challenges posed by significant political changes in recent years in North America.

VI.
MOVING TO PRESENT PERIOD OF REVERSALS AND DISILLUSIONMENT

The overall results indicate that the NAALC petition process has been a moderately positive transnational political opportunity structure for North American labor activists with potentially far-reaching implications for reforming Mexican industrial relations. Enabling this reasonably successful track record has been the assembling of legally and politically sophisticated petitions from petitioners and the resulting support from NAOs. What the overall record partially obscures, however, is the great level of disillusionment that has prevailed in recent years, even among once supportive and skilled participants.186 Causing this disillusionment are negative follow-up developments in the Echlin petition and the failure of sophisticated petitions filed since 2000 to make much political headway. Exploring the recent negative turn of events merits close analysis both to explain the importance of shifting political contexts and to caution against a hasty dismissal of the process.

Setting the tone for the present period of disillusionment was the first public meeting arranged in response to the Joint Declaration for Han Young and Echlin. Held in Tijuana in June of 2000, it ended in a disaster when a group of local independent union organizers at Han Young were physically beaten by members of the audience as they protested the forum’s failure to specifically address their experiences. Ominously, those doing the beatings belonged to a longtime PRI-allied labor federation, the Revolutionary Confederation of Workers and Campesinos (CROC) that had switched local allegiances to PAN, the party governing the state.187 A second public meeting held in March, 2002, also provoked great frustration. Mexico’s Secretary of Labor switched the location from Mexico City to Monterrey one day before the meeting.188 Leading independent labor activists Arturo Alcalde and Alfonso Bouzas managed to attend, along with a delegation of

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187. Bacon, supra note 165.
188. Interview with Alcalde, supra note 56.
workers, but the Mexican government tightly controlled participation and refused to allow Alcalde or Bouzas to make statements. Finally, through the intervention of the Canadian and U.S. participants, Bouzas managed to make a statement but the process was still found to be worthless.  

Equally frustrating was the failure to reverse the problems at the plant level, as discussed above in Section IV.E. Finally, the hope that raising and thoroughly documenting health and safety violations would lead to a follow-up investigations beyond ministerial constitution fizzled out. As in every later petition including health and safety or other violations subject to higher scrutiny, the review has stopped at ministerial consultations.

Furthering the overall disillusionment are the experience of two subsequent petitions filed in 2000 and 2001 that involved considerable effort from a cross-border coalition of activists. In Auto Trim (Table 1), the petitioners enlisted the input of a trinational range of labor movements and activists in alliance with insurgent workers challenging poor health and safety conditions at two plants. Despite gaining strong NAO support and involving impressive follow-up political mobilization, little was accomplished beyond some cosmetic changes enacted before an NAO inspection. The petitioners' proposals of addressing specific health and safety topics as part of ministerial consultations and incorporating input from Auto Trim workers were ignored. In fact, the petitioners were kept uninformed of the consultations.

Duro Bag (Table 2) was filed by the AFL-CIO in conjunction with Arturo Alcalde and FAT activists conducting an independent organizing drive at a Mexican subsidiary of the U.S.-based Duro Bag. The petition directly followed up on the Joint Declaration of Han Young and Echlin, in which the Mexican government stated its support for secret ballot union elections. The petition faulted the state authorities for rejecting a request from union organizers for a secret ballot. To the regret of the petitioners,

189. Interview with Alcalde, supra note 56; interview with Bouzas, supra note 157. "We believe that the NAO process has deteriorated into a farce . . . ." Letter from John Hovis, UE President, to Elaine Chao, U.S. Secretary of Labor (July 24, 2002), available at http://mhssn.ige.org/naftal1.htm.


193. Interview with Schurtman, supra note 191; letter from Monica Schurtman et al. to Elena Chao, U.S. Secretary of Labor (Mar. 20, 2002) (on file with author).

194. Interview with Alcalde, supra note 56.

the U.S. NAO declined to review this petition, seemingly reversing its prior support for pursuing this matter.\textsuperscript{196}

These reversals reflect a notable shift in the overall political context. One major shift is the change in U.S. presidential administrations. Given its political investment in NAALC, the Clinton Administration offered considerable support for the petition process. Thus, the Clinton-appointed NAO was willing to be quite critical of Mexico and supportive of opening up Mexico’s system to international scrutiny despite the great discomfort this provoked in the Mexican government. The Bush Administration, by contrast, has no real stake in NAALC and much less of a political incentive to placate U.S. labor movements. Thus, one would expect an NAO under Bush to be less aggressive and the Labor Secretary to be more deferential to the Mexican government and U.S. business subsidiaries.\textsuperscript{197} The recent lack of success, then, in shaping ministerial consultations or in getting the governments to call for higher levels of scrutiny on health and safety issues is not surprising.

The other major political shift is the transition from a PRI-led government in Mexico to one governed by President Vicente Fox of PAN. To be sure, the PRI government strongly opposed independent labor movements.\textsuperscript{198} It did, however, wish to improve its international image as a democratic government upholding fundamental human rights.\textsuperscript{199} The party, also, prided itself on being pro-worker, having enacted into Mexico’s Constitution and legislation some of the most pro-worker laws in the world.\textsuperscript{200} It could, thus, not deny the normative arguments of petitioners in favor of upholding labor union and health and safety rights. Such contradiction between its rhetoric and record in practice made the PRI susceptible to “mobilization-of-shame” campaigns.\textsuperscript{201} The Fox Administration is much less vulnerable. As a new governing party, its international democratic credentials are far less open to challenge. Although PAN has shown some receptivity to democratic labor law reform, its primary interest in the area of labor reform, as a pro-business party, appears to be reversing the pro-worker laws on the books and promoting “flexibilization.”

\textsuperscript{196} Interview with Alcalde, \textit{supra} note 56.

\textsuperscript{197} It bears noting, however, that the acting NAO secretary, Lewis Karesh, was a deputy secretary in the Clinton Administration and was considered reasonably supportive of the process. Thus, the bigger changes are manifest at the intergovernmental consultation level.

\textsuperscript{198} \textsc{Middlebrook}, \textit{supra} note 41 (historical account of the PRI’s relationship with Mexican labor movements).

\textsuperscript{199} \textit{See Jorge Chabat}, \textit{La Nueva Agenda Internacional y la Política Exterior Mexicana}, in \textsc{La Política Exterior de México: Enfoques para su Análisis} 103 (1997).

\textsuperscript{200} \textsc{Kevin Middlebrook}, \textit{supra} note 41.

\textsuperscript{201} \textit{See Keck & Sikkink}, \textit{supra} note 14, at 206 (noting that governments that internalize a liberal rights rhetoric with obvious contradictions are most vulnerable to activist campaigns).
As a result, the momentum generated by the Han Young and Echlin petitions for enacting secret ballot elections and public registrations of collective bargaining contracts has stalled. While the Fox Administration has accepted input from a wide variety of actors, including Hector Barba and Arturo Alcalde, the latter have felt shut out of substantive talks. The initial proposals circulated by Secretary of Labor, Carlos Abascal, argue Barba and Alcalde, stressed flexibilization reforms and gutted democratic labor ones. The general consensus among independent labor activists is that the Fox Administration has sided with backers of the corporatist labor system in hopes of forging a neoliberal-oriented reform package.

VII.
TIME TO ABANDON THE NAALC PETITION PROCESS?
NOT JUST YET.

Some activists following NAALC's developments over the years argue that NAALC has outlived any usefulness. There are strong reasons, however, not to write off NAALC, as concluded by the United Students Against Sweatshops (USAS). Assisted by the AFL-CIO Solidarity Center in Mexico, USAS recently assembled with Mexican activists and workers a sophisticated pair of petitions before the U.S. and Canadian NAOs, alleging a continuing pattern of labor organizing and health and safety violations. USAS hopes to give a political boost to ongoing advocacy efforts at two Mexican plants producing college athletic apparel and to increase pressure on the NAOs to take firmer stands. USAS efforts reflect the fact that NAALC petitions continue to have some value. Similarly, activists working on the aftermath of the Apple Growers petition have used the fora sponsored by ministerial consultations, particularly one in the Summer of 2001, to get the state of Washington to devote more staff to enforcing health and safety requirements in the migrant worker industry.

Further reason not to abandon the NAALC petition process is that it has proven its political worth. Petitioners have shown how a skillful legal framing combined with vigorous political mobilization and NAO support can pressure target governments (and private companies) to devote more attention to labor problems they would rather ignore and even, at times,
change their practices. Perhaps most noteworthy of all has been NAACL’s role in boosting the cause of structural democratic labor reform in Mexico. Recent backsliding from Fox has by no means killed this cause. What exists is an impasse between those favoring neoliberal, flexibilization reforms and those favoring democratic labor reforms. Any attempt to pass labor reforms without including secret ballots and public registration of collective bargaining contracts is very unlikely to pass, due, in large part, to the momentum following the Echlin and Han Young Declaration.209

Such lessons on how to exploit NAACL most effectively for domestic political reform will be particularly important to apply if and when the overall political climate becomes more favorable to labor interests again. To be sure, the short-term future does not look promising, given President Bush’s reelection and the continuing control of Congress by the Republican Party. Perhaps prospects will improve by 2006 if the Democratic Party gains significant Congressional seats. Moreover, in Mexico, the political situation is in flux with all sorts of governing arrangements possible, including the popular PRD mayor of Mexico City winning the presidency in 2006. Accordingly, there may be sufficient incentive for labor activists to resume notable political investment in the petition process in a few years. Moreover, even under the present unfavorable political climate, an occasionally well-crafted use of the NAACL petition process may nudge resistant governments toward pro-labor concessions on a given issue.

While stronger enforcement mechanisms are preferable, they appear unlikely anytime soon. For now, the NAACL petition process at least offers a very accessible, legalized transnational political opportunity structure. To be sure, engagement of the petition process should continue to be used selectively and only by those with access to significant resources, given the considerable expenditure in legal and political efforts required to give such petitions political effect. Activists should also have no illusions about the extent to which even successful utilization can boost ongoing political efforts; success rarely amounts to dramatic policy changes. It usually takes the form of boosting a political dispute by forcing the target actor to give more attention to the issue and engage in mediated talks with the activists. Accordingly, it only makes sense to pursue a NAACL petition in conjunction with an ongoing political struggle. Moreover, activists need to assess the likelihood of actually boosting their struggle through filing a NAACL petition, whether they can follow up on such agenda-raising gains, and if such benefits merit the substantial efforts required to attain them.

This is not to suggest that labor activists should be complacent about the limitation to NAACL’s petition process. Rather, a continued multi-

209. Interviews with Alcalde, supra note 56, Bouzas Interview Two, supra note 157, and Barba, supra note 159.
track approach is merited of condemning the mechanism’s limitations, insisting on a range of improvements to the process, and strategically incorporating the process in politically opportune circumstances. To their credit, North American activists have readily pursued this nuanced approach and, in so doing, have provided a valuable lesson to activists and scholars, alike, about the unique political opportunities and limitations to nonbinding transnational quasi-judicial mechanisms.