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The NAALC's Consultations and Evaluations:

The First Labor Cases

*Leoncio Lara**

I. The North American Agreement for Labor Cooperation.

In spite of its social modesty, the North American Agreement for Labor Cooperation (NAALC) constitutes a true innovation for the following reasons:

a) In the world of international law, it is the first time that an international agreement on labor is derived from and carried out as a result of the direct effects of a treaty of liberalization of commercial interchange.

b) Also, for the first time, NAALC establishes a permanent Commission that has, at its disposal, the mechanisms, the Secretariat of Labor of the three countries with offices in Dallas, Texas, U.S.A., the National Administrative Offices, as well as, the National Advisory Committee and the Governmental Committee to be integrated in each country, and of course, the activities of cooperation and the procedures to solve the conflicts in certain cases (Consultations, Evaluations, and Dispute Resolution).

c) The agreement establishes a disciplinary system for fulfillment of certain matters through economic and financial sanctions to the countries that incur in them.

II. The International Labor Organization.

Since labor issues are important to all of the countries in North America, it is timely to compare the major differences between the International Labor Organization (ILO) and the Commission for Labor Cooperation (CLC).

First, the ILO develops international standards on labor matters and promotes their establishment in the domestic laws of the participating countries. These countries are free to choose whether to follow and ratify these international standards. The NAALC does not duplicate any of these situations because it doesn't create "common standards" and does not check, as the ILO does, the fulfillment of them. Since the countries have agreed on a series of labor principles, the promotion and application of them is of interest to the three countries.

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Second, the NAALC constructs on the foundations of the ILO, since in most cases, when establishing the labor principles, it reflects the ILO standards. These standards are in effect being fulfilled even if the country has not ratified the agreement in this respect. The NAALC creates a disciplinary regime, as we have seen, to promote fulfillment of domestic laws. This situation could be the lost piece of the jigsaw puzzle of the true value of the national law within the international order.

Third, the ILO establishes a type of vertical organization where things are accounted for from the bottom up among the member countries. In its capacity as international organization, the NAALC establishes a horizontal relation among its partners and counts with a secretariat as an international organization that acts only as administrative (support) and expedites relations among the governments of the parties.

Fourth, the ILO promotes in the world a "corpus" of high-quality domestic laws based on international standards. NAALC contributes in promoting the effective application of this "corpus" of domestic laws.

Fifth, the parties of NAALC, in graphic language for our exposition, established a barrier for the problems and temptations that could appear with the application of labor laws. To this effect, they agreed on the "principles for the application of the labor legislation," for which effect they agreed that no disposition of the agreement is to be given an interpretation that would give the right to the authorities of one of the parties to carry out activities of application of its labor legislation in the territory of another party.

The above confirms not only the basic criterion as to the effectiveness and enforcement of domestic laws, but also the principle of the application of the national law by national authority. In other words, the concept of sovereignty was made evident as a natural barrier to the vicissitudes of commercial globalization.

Finally, the NAALC is the first international agreement related to a treaty of commerce that establishes a great innovation on international labor matters by establishing an international discipline relative to the observance and fulfillment of the domestic labor laws of the parties.

III. The NAALC's Basics.

The NAALC sets forth objectives that include promoting eleven basic labor principles, promoting international cooperation, improving working conditions and living standards, and ensuring the effective enforcement of labor laws. Following these objectives, the parties agree to a set of six obligations which relate specifically to the effective enforcement of labor law.[1]

A. NAALC's Six Obligations.[2]

1. Levels of Protection.

Each Party shall ensure that its labor laws and regulations provide for high labor standards consistent with high-quality and productivity workplaces, and shall continue to strive to improve those standards in that light.

1. North American Agreement for Labor Cooperation, Dec. 17, 1992, U.S. - Mex. - Can., arts. 2, 3, 4, 5, 6 & 7, 107 Stat. 2057; *reprinted in* 32 I.L.M. 1499 (1993) [hereinafter NAALC].

2. *Effective Enforcement.*

Each Party shall promote compliance with and effectively enforce its labor laws through appropriate government action.

3. *Transparency and Due Process of Law.*

Each Party shall ensure that persons with a recognized interest under its laws have appropriate access to administrative, quasi-judicial, judicial or labor tribunals for the enforcement of labor law. Each Party shall ensure that its labor law enforcement proceedings are fair, equitable, and transparent.

4. *Public Information and Awareness.*

Each Party shall ensure that its laws and regulations are publicly available and that proposed changes are published in advance and open to public comment. Each Party shall promote public awareness of its labor law.

B. THE NAALC'S ELEVEN LABOR PRINCIPLES.

The eleven "Labor Principles"[3] define the scope of the NAALC. Covering nearly all aspects of labor rights and labor standards, they are principles that the countries are committed to promote, but they do not establish common laws or standards. However, the countries agreed to open themselves up to reviews and consultations among themselves on all labor matters within the scope of the NAALC.

C. NAALC LABOR PRINCIPLES.[4]

a. Freedom of association and protection of the right to organize;
b. The right to bargain collectively;
c. The right to strike;
d. Prohibition of forced labor;
e. Labor protections for children and young persons;
f. Minimum employment standards;
g. Elimination of employment discrimination;
h. Equal pay for men and women;
i. Prevention of occupational injuries and illnesses;
j. Compensation in cases of occupational injuries and illnesses;
k. Protection of migrant workers.

The NAALC obligates each government to "effectively enforce [its labor law]" in the eleven subject matters defined in the Agreement.[5] All eleven may be subject to "public submissions" to one country's National Administrative Offices (NAO) concerning labor law

2. *Id.*
3. *Id.* at annex 1.
4. *Id.* at pt. 6, art. 49.
5. *Id.* at art. 49.

enforcement in another country.[6] This is a key distinction; as you recall there are three NAO's , one in each country, charged with consulting and reviewing labor law enforcement matters in the other country or countries. A consultation and/or review may be undertaken on the NAO's own initiative, or in response to complaints from private parties.[7]

IV. Evaluation Committees of Experts and Consultations.

A. LEVELS OF TREATMENT UNDER THE NAALC.

The NAALC creates four levels of treatment of "labor law matters" as defined in the Agreement. These four levels and their subject matter jurisdiction are:

1. NAO Review and Consultation.

a. Scope of NAO Review.

"Labor law matters arising in the territory of another Party" (*the definition of "labor law matters" covers Labor Principles 1-11*).

b. Scope of NAO Consultation.

"The other Party's labor law, its administration, or other labor market conditions in its territory."

Individuals, unions, employers, non-governmental organizations or other private parties may file submissions seeking NAO reviews in accordance with the domestic procedures established by the country's NAO.

2. Ministerial Consultations.

a. Scope.

"Any other matter within the scope of this Agreement."

The labor minister of any NAALC partner may request consultation with another minister, with regard to any labor law matter reflecting Labor Principles 1-11.

Under Article 22 of the NAALC, any party can formally request consultations at the level of the Council of Ministers to consider any matter within the scope of the agreement. Ministerial consultations may address issues pertaining to the enforcement of labor laws, but are not restricted to such issues. Ministerial consultations are a flexible mechanism by which the parties to the agreement can engage one another formally, in a cooperative manner, at the highest political level (involving the Secretary or Minister of Labor) on issues of importance relevant to their agreement. The *Sprint* case, an example of the flexible use of ministerial consultations, will be discussed in Parts VI(C) and VII(B) of this writing.

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6. *Id.* at art. 24(1)(d).
7. For NAALC's provisions governing consultations and evaluation procedures see NAALC's pts. 4, 5 & 6; arts. 10(2), 16(3), 21, 22, 23(2), 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37 & 49.

3. Evaluation Committee of Experts.

a. Scope.

"[P]atterns of practice by each Party in the enforcement of its . . . technical labor standards." Technical labor standards are defined as labor law matters related to Labor Principles 4-11.

These eight principles may advance to the next level – an ECE evaluation. Drawn from a trinational roster of labor experts, a three-member ECE may, at the request of a party (i.e., a government), conduct a review and issue an "Evaluation Report" and recommendations on disputes in these eight principles.

A single country may initiate the establishment of an ECE following a ministerial consultation. The ECE performs independent, non-adversarial analysis and recommendations covering all three NAALC countries' labor law enforcement in the particular subject area raised in the request for an ECE.

b. Rules of Procedure for ECE.

Throughout 1996, the Secretariat provided support to the working group from the three parties, which had been instructed by the Council to draft rules of procedure, a code of conduct, and disclosure statements for the ECE's and related independent experts. NAALC Article 24 calls for the Council to develop rules governing the work of any ECEs established to conduct independent trinational analyses of specific matters regarding the administration of labor laws in the three countries. On December 19, 1996, the Secretariat submitted the working group's draft rules of procedure, code of conduct, and disclosure statements to the Council for its approval. In the September 18 Ministerial Council Meeting, the Rules of Procedure were approved with minor changes. The working group had finalized the Spanish and French versions. The Secretariat is planning to publish the Rules of Procedure in a trilingual edition.

4. Dispute Resolution by an Arbitral Panel.

a. Scope.

"[A]lleged persistent pattern of failure . . . to effectively enforce occupational safety and health, child labor or minimum wage technical labor standards."

Only those three subjects – child labor, minimum wage and hour laws, and occupational safety and health – can go on to the final enforcement stage. A country that is found by the ECE to demonstrate "a persistent pattern of failure . . . to effectively enforce such standards" can be brought before a five-member arbitration panel for a ruling on whether it has complied with recommendations from the ECE. If not, the country is subject to a fine of up to $20,000,000 or a re-imposition of pre-NAFTA tariffs up to the amount of the fine if it fails to pay.

The five-member arbitral panels examine effective enforcement of the laws related to Labor Principles 5, 6, and 9, and develop an "action plan" to remedy a persistent pattern of failure. Failure to implement the plan may result in fines or trade sanctions.

NOTE: Matters subject to evaluation and dispute resolution must be trade-related and/or covered by mutually recognized labor laws.

V. NAO Reviews: Example of Mexico's Submission Procedures.[8]

Which countries do public communications (submissions) received and reviewed by the Mexican NAO refer to? Receipt and review of Public Communications by the Mexican NAO refer to labor law matters arising in the United States or Canada. They are regulated by the rules that the Mexican NAO established, which were published in *Diario Oficial de la Federación* on April 28, 1995.

How shall Public Communications be presented? According to Article 1 of these rules, public communications shall:

a. be forwarded to NAO's address;
b. be written in Spanish;
c. identify the petitioner, who is the person interested in presenting a public communication before the Mexican NAO;
d. specify whether they include any confidential information; and
e. itemize the labor law matters arising in the territory of the United States or Canada.

Upon receipt of a Public Communication, the NAO shall notify the petitioner of:

a. the admission of such Public Communication for review; and
b. the absent data, if those requirements are not fulfilled.

How does the Mexican NAO collect information to analyze the public communication? The Mexican NAO collects information in several ways depending on the nature of the public communication. The following methods may be employed:

a. request additional information from the petitioner;
b. request it from experts, consultants, and from people interested in the review of the Public Communication;
c. organize informative sessions to better understand and obtain more information related to the Public Communication under review; and/or
d. request consultations with the Canadian or U.S. NAO . These kinds of consultations are a means provided by NAALC to solve, through cooperation, the labor law matters that arise between the countries. The NAOs of the other countries and the Secretariat of the Commission for Labor Cooperation will be notified of a request for consultations.

On which topics may the Mexican NAO request consultations with the NAO of the country where the problem arose? Consultations with other NAOs will focus on labor law. The information to be obtained will consist of descriptions of labor laws, regulations, procedures, policies or practices, proposed changes to such procedures, policies or practices, and such clarifications and explanations that may serve to better understand the issues raised.

Once the Mexican NAO has the necessary elements for the analysis of the public communication, how does it process information? After collecting information through one or several of the methods, it issues a report including:

8. *See What is the Mexican National Administrative Office for the North American Agreement on Labor Cooperation?*, Secretaría del Trabajo y Previsión Social (Mexico, 1995). For U.S. *see* the Revised Notice of Establishment of U.S. National Administrative Office and Procedural Guidelines, 59 Fed. Reg. 16,660 (1994). For Canada, *see* the Canadian NAO Guidelines for Public Communications under Articles 16.3 and 21 of the NAALC.

a. the labor law matters arisen in the territory of the United States or Canada;
b. the relation between such matters and the obligations established by NAALC;
c. the recommendation on whether to request ministerial consultations, pursuant to Article 22 of NAALC; and
d. any other measure that facilitates the attainment of the objectives of NAALC.

This report shall be made available to the petitioner. What happens if the review of the public communication has begun and the petitioner is no longer interested in its review by the Mexican NAO? If the petitioner states in writing before the NAO that they have no interest in pursuing the review of their public communication, NAO shall conclude the review.

VI. The First Nine Labor Submissions.[9]

A. First two cases: Honeywell and General Electric Cases – U.S. NAO Submissions Nos. 94001 and 94002.

Submissions involving alleged discharge of workers for attempting to form unions at Mexican subsidiary *maquiladora* facilities, which produced electronic controls and electric motors in Chihuahua (city) and Ciudad Juarez, Chihuahua of the U.S.-based Honeywell and General Electric companies, were reviewed by the U.S. NAO in 1994.

1. Petitioners.

The first submission was from the International Brotherhood of Teamsters, AFL-CIO. It involved workers who sought to be represented by the union of workers of the steel, metal, iron and related industries, *Sindicato de Trabajadores de la Industria Metálica, Acero, Hierro, Conexos y Similares* (STIMAHCS). The STIMAHCS is a union affiliated with the Authentic Labor Front, *Frente Auténtico del Trabajo* (FAT). The second submission was from the United Electrical Workers (UE) involving workers seeking representation by the FAT.

2. Procedures.

The U.S. NAO treated the two submissions in a single proceeding. The U.S. NAO Public Report of Review dated October 12, 1994, did not conclude with a recommendation for ministerial consultations. It did, however, provide for an agreed series of cooperative activities coordinated by the NAOs of the three NAALC parties regarding freedom of association and protection of the right to organize pursuant to NAALC Article 11. In March and September 1995, trinational government-to-government workshops were held in Washington, D.C. Experts from each country's labor authorities discussed union organization and representation issues, protection against anti-union discrimination, procedural guarantees, and union democracy issues.

9. *See* CLC-Secretariat Annual Report 1995-1996, first 6 cases.

In March 1996, a trinational Conference on Industrial Relations in the Twenty-first Century was held in Montreal, Quebec, bringing together representatives of government, labor, and business, as well as academics and other researchers. This conference included discussions of freedom of association and protection of the right to organize, but ranged beyond them to take up issues of new employment structures and the challenge they present to union organization and representation in the years ahead.

Summaries and proceedings of the 1996 conference are available from the Canadian NAO.

B. THE THIRD CASE: SONY CASE – U.S. NAO SUBMISSION NO. 94003.

A submission involving alleged discharge of workers and discrimination against dissident unionists at a Mexican subsidiary facility of the Sony Corporation in Nuevo Laredo, Tamaulipas, which manufactures videocassette recorder magnetic tapes, was reviewed by the U.S. NAO in 1994-1995. U.S. NAO recommended ministerial consultations in its Public Report of Review dated April 11, 1995.

1. Petitioners.

The submission was from the International Labor Rights Fund, the *Asociación Nacional de Abogados Democráticos* (National Association of Democratic Lawyers), the Coalition for Justice in the Maquiladoras, and the American Friends Service Committee.

2. Consultation.

Ensuing consultations resulted in: a two-year program of activities including trinational workshops, seminars, meetings, and studies on union registration and certification; a special study by independent Mexican experts on labor law dealing with union registration and its implementation; and a series of meetings by officials of Mexico's Secretariat of Labor and Social Welfare with workers, local labor authorities, and company representatives.

3. Program of Activities.

Seminars on union registration and certification procedures in the three countries were held with public participation in Mexico City, D.F., and San Antonio, Texas, in September and November 1995, and in Monterrey, Nuevo Leon, in February 1996.

In February 1996, the NAO of Mexico published documents related to the seminars, the special study by independent experts, and the meetings called for in the agreement on ministerial consultations.

In June 1996, U.S. NAO released a report summarizing and analyzing the results of the seminars and other aspects of the program resulting from ministerial consultations about Submission No. 94003. The U.S. Secretary of Labor directed the U.S. NAO to monitor developments in Mexico regarding union registration, and to report on the implications of decisions by the Supreme Court of Mexico on constitutional issues involving union registration in the public sector.

In December 1996, the U.S. NAO delivered the follow-up report requested by the U.S. Secretary of Labor. It reported on the current status of Sony workers, initiatives in Mexico to change the federal labor law, and decisions of the Mexican Supreme Court. It concluded that "potentially significant developments continue to take place in Mexico in a wide range of labor matters, including labor legislation, labor-management relations, labor-govern-

ment relations, and within labor organizations themselves."

The February 1996 NAO of Mexico report is available in Spanish from the Mexican office, and in English from the U.S. NAO. The June and December 1996 reports by the U.S. NAO are available from the U.S. office.

C. THE FOURTH CASE: SPRINT CASE - NAO OF MEXICO SUBMISSION NO. 9501.

A submission involving the sudden closing of a Spanish-language telemarketing facility of the Sprint Corporation in San Francisco, California, alleged to be motivated by anti-union bias, was reviewed by the NAO of Mexico in 1995. The NAO of Mexico recommended ministerial consultations in a Report of Review of the Public Communications issued in May 1995.

1. Petitioner.

The submission came from the *Sindicato de Telefonistas de la República Mexicana* (Telephone Workers Union of the Republic of Mexico).

2. Consultations.

Ensuing consultations resulted in an agreement among the labor secretaries of Mexico and the United States and the labor minister of Canada dated February 13, 1996, calling for a three-part program: (1) a public forum to be held in San Francisco, California; (2) a special study by the Secretariat on the effects of sudden plant closings on the principle of freedom of association and protection of the right to organize in the three countries; and (3) an update by the U.S. Secretary of Labor to Mexico's Secretary of Labor and Social Welfare on developments in the case that prompted the submission and the ministerial consultation.

On February 27, 1996, the public forum called for by the ministers was held in San Francisco, California, with presentations by many workers affected by the plant closing. Among those presenting were: union representatives from Mexico, the United States, and Europe; by a law professor speaking on behalf of the company; academic analysts; and labor and business representatives in the Canadian and Mexican delegations. A transcript of the forum in English is available from the U.S. NAO; English, Spanish and French versions of the transcript are available from the Secretariat.

In October 1996, the Secretariat submitted a draft report, "Plant Closings and Labor Rights," to the Commission's Council. A revised draft, responding to comments from the Council, was submitted in December 1996. The report was approved for publication in April 1997.

In December 1996, the U.S. National Labor Relations Board (NLRB) ruled that the plant closing was motivated by anti-union animus. It ordered the employer to rehire affected workers into openings in other divisions of the company and to provide back pay for lost wages. The company filed an appeal against this decision in a federal court.

D. THE FIFTH CASE: FISHING CASE – U.S. NAO SUBMISSION NO. 9601.

A submission involving union registration and representation rights in a merged ministry of the federal government of Mexico was received by the U.S. NAO in June 1996 and accepted for review in August 1996. The merger consolidated three government min-

istries—fisheries, environmental, and natural resources—into a single ministry. The union representing former fisheries ministry employees, *Sindicato Unico de Trabajadores de la Secretaría de Pesca* (Single Trade Union of Workers of the Fishing Secretariat), was no longer authorized to represent employees within the merged ministry. The submission raised issues concerning the federal labor law requirements that unions of government employees must be members of a specified central labor organization, and that union representatives, who might have a conflict of interest in ruling on disputes with another union, participate in labor tribunals.

1. Petitioners.

The submission was made by Human Rights Watch/America, the International Labor Rights Fund, and the National Association of Democratic Lawyers.

2. Procedure.

As part of its review, the U.S. NAO held a public hearing in December 1996. At this hearing, statements were given by representatives of the submitting organizations, by union representatives and counsel from the contending union organizations, by interested public citizens, and by a representative of Mexico's Secretariat of Labor and Social Welfare.

As part of its review, the U.S. NAO also commissioned special studies on labor law enforcement in the Mexican federal government sector. Extensive information was also supplied by the NAO of Mexico. A transcript of the public hearing and copies of special reports and information from the NAO of Mexico are available from the U.S. NAO.

After an election, the employees' representation (SUTSP) lost the majority. Currently, the union keeps its own negotiation under Mexican labor laws, but is no longer authorized to represent workers within the merged ministry.

E. THE SIXTH CASE: MAXI-SWITCH CASE – U.S. NAO SUBMISSION NO. 9602.

1. Petitioners.

In October 1996, the U.S. NAO received a submission from: the Communications Workers of America (CWA), AFL-CIO; Union of Telephone Workers of Mexico (*Sindicato de Telefonistas de la República Mexicana)*; and the Federation of Unions of Goods and Services Companies (*Federación de Sindicatos de Bienes y Servicios (FESEBES), Mexico*). The submission involved alleged violations of workers' freedom of association when they attempted to form a union at the Maxi-Switch facility in Cananea, Sonora, Mexico. Maxi-Switch, a computer keyboard manufacturer, is a subsidiary of the Silitek Corporation of Taipei, Taiwan. The submission raised issues related to NAALC Part Two Obligations, including levels of protection, government enforcement action, and procedural guarantees.

2. Procedure.

On December 10, 1996, the U.S. NAO announced that it accepted the submission for review and would issue a Public Report of Review within 120 days, as required under the NAALC.

The U.S. NAO scheduled a public hearing for April 18, 1997 in Tucson, Arizona. The CWA withdrew its complaint filed under NAALC after the Mexican Government recognized an independent labor union at Maxi-Switch; subsequently, the April 18 hearing was cancelled.[10]

F. THE SEVENTH CASE: PREGNANT WOMEN - U.S. NAO SUBMISSION NO. 9701.

Submission No. 9701 involved issues of pregnancy discrimination in employment in Mexico's maquiladora export industries along the U.S. border. The submitters alleged that maquiladora employers required pregnancy tests for female job applicants, and that some employers mistreated or discharged pregnant employees.

1. Petitioners.

This submission was filed by the International Labor Rights Fund, Human Rights Watch, and the National Association of Democratic Lawyers.

2. Procedure.

The submission was filed on May 16, 1997; the U.S. NAO agreed to review it on July 14, 1997. On November 19, 1997, the U.S. NAO conducted a public hearing in Brownsville, Texas as part of its review process.

The U.S. NAO concluded in a report released on January 12, 1998, that post-hiring pregnancy discrimination does occur in Mexico and that it violates Mexican law. This report recommended ministerial consultations between Mexico and the United States. It also recommended that Mexico launch "awareness programs" for women workers so to increase awareness of the Mexican Constitutional and federal labor law protection from post-hire pregnancy discrimination and of the channel for redress through Mexican labor tribunals.

On January 14, 1998, the U.S. Labor Secretary requested ministerial consultation with the Mexican Labor Minister. Currently the Mexican Labor Minister is reviewing the U.S. NAO report and the consultation request.

G. THE EIGHTH CASE: HAN-YOUNG - U.S. NAO SUBMISSION NO. 9702.

Submission No. 9702 involved issues of freedom of association, alleged discharge of workers, and discrimination against dissident unionists at the Han-Young plant in Tijuana, Baja California, Mexico. This plant produces trailer platforms exclusively for Hyundai Precision of America, a subsidiary of the Hyundai Corporation of Korea.

1. Petitioners.

This submission was filed by the Support Committee for Maquiladora Workers, the National Association of Democratic Lawyers, the International Labor Rights Fund, and STIMAHCS.

10. *See* BNA's Daily Labor Report 74, Apr. 17, 1997, at A8.

2. Procedure.

The submission was filed on October 30, 1997; the U.S. NAO agreed to review it on November 11,1997. The U.S. NAO will conduct a public hearing on February 18, 1998, in San Diego, California, as part of its review process. U.S. NAO, pursuant to Article 21 of NAALC, requested consultation with Mexican NAO on February 10, 1998 in obtaining additional information on issues related to the case.

H. THE NINTH CASE: ECHLIN - U.S. NAO SUBMISSION NO. 9703.

The *Echlin* case is a submission involving issues of freedom of association. The submitters allege that when workers at the ITAPSA export processing plant near Mexico City, Mexico, owned by the U.S. multinational Echlin, attempted to organize an independent union, they faced intimidation and harassment from the company and the existing union.

1. Petitioners.

This submission was filed by the International Brotherhood of Teamsters, United Electrical, Radio and Machine Workers of America, Canadian Auto Workers, Union of Needletrades, Industrial, and Textile Employees, United Paperworkers International Union, and United Steelworkers of America and the Steelworkers' Canadian National Office.

2. Procedure.

The submission was filed on December 15, 1997; the U.S. NAO agreed to review it on January 30, 1998. The NAO has up to 180 days to review the case and issue a public report.

VII. The First Two Ministerial Consultations.[11]

Under Article 22 of the NAALC, any party can formally request consultations at the level of the Council of Ministers to consider any matter within the scope of the NAALC. Ministerial consultations may address issues pertaining to the enforcement of labor laws, but are not restricted to such issues. Ministerial consultations are a flexible mechanism by which the parties to the agreement can engage one another formally, in a cooperative manner, at the highest political level (involving the Secretary or Minister of Labor) on issues of importance relevant to their agreement.

Article 22 of the NAALC allows any party to request consultations with another party at the ministerial level regarding any matter within the scope of the NAALC. These consultations aim to resolve issues in a cooperative manner in the spirit of the NAALC. So far, Article 22 has been invoked on two occasions; once by the United States, and once by Mexico. Both of the cases concerned freedom of association issues. These two ministerial consultations are summarized below.

11. *See* Bulletin, Labor in NAFTA Countries, of the Commission for Labor Cooperation, Vol. 1, No. 1, March 1996, at 6.

A. U.S. REQUEST – SONY CASE (U.S. NAO SUBMISSION NO. 94003).

The ministerial consultations on U.S. Submission No. 94003 resulted in an agreement to conduct a series of three public seminars on union registration and certification, conduct an internal study on union registration by the Mexican authorities, and hold a series of meetings between Mexican authorities and the parties concerned.

The first public seminar was held in Mexico City on September 13-14, 1995. The second was held in San Antonio, Texas, on November 8-9, 1995. It was agreed that the third seminar would involve panels from each of the three countries representing labor, management, and government. This program was held in Monterrey, Mexico, on February 29-March 1, 1996.

In compliance with the second part of the agreement, the Mexican Secretariat of Labor designated a team of independent experts to conduct a study of labor law and practice related to the registration of unions.

Finally, in accordance with the third part of the agreement, officials of the Mexican Secretariat of Labor and Social Welfare met with management representatives of the company on June 26 and with the local labor authorities and a number of the workers directly involved in the case in Nuevo Laredo on August 23, 1995.

The U.S. NAO contracted a team of experts to conduct a study on selected Mexican CAB cases involving allegations of unjustified dismissals.

B. MEXICO REQUEST – SPRINT CASE (NAO OF MEXICO SUBMISSION NO. 9501).

On May 31, 1995, upon concluding its review of Submission No. 9501, the Mexican NAO released a report recommending to then Secretary of Labor and Social Welfare, Santiago Oñate, that he request consultations with the U.S. Secretary of Labor, Robert Reich. This report is available from the Mexican NAO.

On June 2, 1995, Secretary Oñate requested ministerial consultations with his U.S. counterpart, Robert Reich, regarding the effects of the sudden closure of a workplace on the freedom of association and the right to organize. Secretary Reich accepted the request for ministerial consultations. On July 26-27, officials from the two labor ministries met to define the scope of the consultations and the plans to carry out the Ministerial Consultations.

On December 15, 1995, the U.S. and Mexican Governments reached an agreement spelling out a three-step plan addressing the public submission. The agreement, signed by Secretary Reich and new Mexican Secretary of Labor, Javier Bonilla, states:

a. Secretary Reich will keep Secretary Bonilla informed of any further legal developments outside the Labor Department in the case;
b. The Secretariat of the Commission for Labor Cooperation will study the effects of sudden plant closing on the principle of freedom of association and the right of workers to organize in all three countries;
c. The U.S. Department of Labor will hold a public forum in San Francisco to allow interested parties an opportunity to convey to the public their concerns about the effects of the sudden closing of a plant on the principle of freedom of association and the right of workers to organize (The forum took place on February 27, 1996).

Subsequently, Canada's Minister of Labour, Alfonso Gagliano, agreed to participate in this follow-up program of activities.

The Ministers announced the results of their consultation on February 13, 1996. They called for a trinational study to be completed within six months by the Secretariat on "the effects of the sudden closing of a plant on the principle of freedom of association and right of workers to organize in the three countries." An extension was provided until September 30, 1996, in order to permit the inclusion of important empirical data from survey research.

The Agreement does not provide the basis for any "rehearing" on the merits at an international level for any particular case that has been treated by domestic authorities. The approved Secretariat's report, Plant Closing and Labor Rights, does not re-examine the original case, but generally examines practices in all three countries over a period of years on general or systemic issues posed by that specific case, especially as they relate to the administration of labor law. The Secretariat has already released the study through Bernan Associates in Washington, D.C.