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**Transnational labor regulation in the NAFTA – a Problem of Institutional Design?
The case of the North American Agreement on Labor Cooperation between the
USA, Mexico and Canada**

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Abstract

The paper deals with the conditions and perspectives of institutionalized forms of transnational social policy in an internationalized economy. It is focussing the North American Agreement on Labor Cooperation (NAALC) between the US, Canada and Mexico, one of the two NAFTA- side agreements.

By the NAALC the three governments suscribed the obligation to promote, enforce and improve social standards within the framework of their national labor legislation. In order to foster compliance with the agreement international and national institutions were created as well as procedures for cooperation and complaints. The paper will present some conclusions on the practices and the effects of the NAALC drawn from a empirical research project that has been funded by the Volkswagen Foundation from June,1999 till May, 2002. It outlines some specific problems of the NAALC: the institutional weakness of the international organization, the intergouvernmental game of cooperation and conflict strategies at low intensity; the desillusion of the actors of civil society. It will draw some more general conclusions on the problems of international regulation of labour: the problem of sovereignty and the 'embeddedness' of labor relations; the problem of dominance; the problem of a balance between cooperation and conflict and the problem of participation of civil actors.

I. Introduction

In the wake of globalisation and the spread of free-trade regimes from the 1980s onwards, and in particular following the establishment of the WTO, a heated debate erupted on the international regulation of labour. At the heart of the debate that has been accompanying all international summits from Seattle to Quebec and Porto Alegre lays the question of whether the implementation of social standards on an international level would be conducive to economic efficiency and productivity as well as to well-being and social justice, not only in the industrialised countries but also in less developed countries.

However, more attention has been paid to the theoretical and political justifications for the international regulation of labour than to the existing and developing institutional forms of regulation and their problems.¹

In addition to the multifarious activities of the ILO, the period since the 1980s has seen the development of new approaches to the international and transnational regulation of labour that seek to link employment relationships in the globalised economy to minimum standards or to institutionalised transnational bargaining and compromise-seeking procedures. The aim of these new approaches, which are the result of political controversies around the social risks inherent in the liberalisation of world trade and the draining away of control and authority from national institutions, is to give a social dimension to processes of economic integration. What is new about them is not so much the reference to common values and principles, since for the most part they draw on ILO standards, particularly the core rights or principles that are based on those standards, but rather the institutional mechanisms through which social rights and rights of citizenship in the workplace are to be implemented.

The forms of monitoring and implementation associated with the new forms of transnational labour regulation vary considerably in their degree of institutionalisation and in the reach of their regulatory requirements. In essence, the various forms of international regulation fall into one of two categories: those initiated, negotiated and supported by private actors (such as codes of conduct or product labels, for example) and those agreed between nation states (cf. OECD 1996 and 2000). The latter group includes international regimes that commit governments to the implementation of principles and standards and establish dedicated coordination and monitoring institutions². Some of these agreements also include private actors in the monitoring processes or in the preparatory stages of decision-making. These newer approaches, which constitute alternatives to the classic ILO regulatory system, include the so-called "social clauses" which, since the 1980s, have linked free trade agreements to commitments to maintain social standards³.

One interesting case of an international labor regime is the North American Agreement on Labor Cooperation (NAALC), which was concluded in 1993 as a side agreement to

¹ On the theoretical justifications see in particular Sengenberger & Campbell, 1994.

² International regimes are defined as "social institutions consisting of agreed-upon principles, norms, rules, procedures and programs that govern the interactions of actors in specific issue areas" (Levy & Young & Zürn 1995, 274).

the NAFTA treaty between the USA, Mexico and Canada, and which remains, as Human Watch notices 'for all its deficiencies in practice ... the most ambitious link between labor rights and trade ever implemented' (Human Rights Watch 2001, 1) After the unilateral social clauses incorporated into trade agreements between the USA and individual countries, the NAALC is the first multilateral agreement that links a regional free trade regime to a commitment on the part of the governments involved to implement and improve certain social standards, the so-called labour principles, in their territories. Dedicated international and national institutions were set up in order to implement these principles, together with procedures for complaints and co-operation (Compa, 1997 Garza, 1997; North American Agreement on Labor Cooperation 1993). Although the objective of the NAALC is to establish intergovernmental modes of cooperation and conflict resolution, it leaves it up to civil actors and their transnational networks to bring disputes before the regime's institutions without involving them in the actual process of conflict resolution.

In the recent debate on social standards and social clauses it is taken for granted that the effectiveness of international regulation depends on the sanctions available under the regulatory regime. Only when pressure is applied through the threat of sanctions, possibly even trade sanctions, will governments be prepared to fulfil their commitment to the establishment of internationally agreed social standards. The NAALC regime is criticised not only on the grounds of procedural shortcomings but especially due to its low potential sanctions with the consequent poor compliance of the governments responsible for the enforcement of international standards in the individual states (Economic Policy Institute, 1997; Harvey, 1997; North American Commission 1999; Scherrer & Greven 2001). As a result, the treaty is often regarded as 'toothless'. Though the NAALC provides for the possibility of arbitration panels that can impose limited trade sanctions, this applies, however, only to cases involving the infringement of specific standards; the penalties for the infringement of such fundamental standards as freedom of association and the right to collective bargaining are weak in comparison.

The paper analyzes the experience of the NAALC presenting some preliminary findings from the fieldwork and particularly from the interviews which were conducted with the

³ Cf. for the development, procedures and effects of the social clauses in US trade agreements: Frundt 1998; Scherrer & Greven 1998.

most important actors in the NAALC process in the USA, Mexico and Canada in 2000 as part of an empirical research project.⁴

It starts from the broadly shared critical assumption that the NAALC cannot be an effective instrument of labor regulation because of the deficits of its institutional design. It casts doubt on this assumption identifying problems of international labor regulation by two steps: It firstly analyzes the game of the actors within the framework of the regime identifying the problems of interaction and communication of state- and non-state actors of the three countries which have to deal with a heavy burden of asymmetric economic and political relations and of historically grown distrust. It secondly analyzes some more general and 'structural' problems regarding institutional forms of international labor regulation: (a) the limitations that Free Trade projects put on the authority of international institutions by cautiously preserving national sovereignty, particularly in the sensitive area of industrial relations; (b) the limitations of institutional approaches with merely regulative agendas that do not offer redistributive and integrative resources and mechanisms to compensate for conflicts and concessions;(c) the problem of political and economic dominance that gives very unequal opportunities of agenda setting and mutual influence; (d) the problem of participation: the inclusion of actors of civil society in regulation.

The central argument of this paper is that, in addition to specific problems that have their roots in the particular design and the interactions and interests of the actors, the NAALC reveals very many more general problems inherent in the international regulation of labour in free trade zones. The NAALC can, therefore, be regarded as an example from which lessons can be drawn in any further debate on the institutional forms of international labour regulation.

The paper draws the conclusion that the critique of the NAALC as a 'toothless' instrument are simplistic: it reduces extremely complex political processes to a simple stimulus-reaction mechanism and is based on implicit assumptions that would require an approach to international regulation with strong supranational institutions and broad political agendas that would go far beyond actually debated Free Trade agreements.

II. The NAALC and regime-specific problems in the international regulation of labour

⁴ The project on the "International regulation of labour and national industry relations systems - the case of the North American Agreement on Labor Cooperation (NAALC) between the USA, Mexico and Canada"

If we wish to understand the workings of the NAALC, it is not sufficient simply to analyse the institutional design of the regime, i.e. the principles and procedures laid down in the agreement. It is also necessary to investigate the interests and strategies that led to the conclusion of the agreement and influenced the “spirit” of the regime, as well as the interests, strategies and patterns of interaction of the actors that have determined the regime’s dynamic. The problems with the effectiveness of the NAALC as a regime that was agreed between sovereign states and establishes a division of labour between international, state and non-state actors lie, on the one hand, in the history and design of the regime and, on the other, in the way in which the actors handle their roles and obligations.

1. The regime’s history and design : an agreement among equal partners?

The NAALC agreement was concluded in 1993 as one of the two side agreements to the main NAFTA treaty. It came into being in order to reduce the political pressure from the US- American public, certain sections of which were hostile to the treaty. Since the Clinton administration feared that it would be unable to obtain a majority in Congress for the main NAFTA treaty that had already been negotiated, it pressured the Mexican and Canadian governments into concluding the side agreements on labour legislation and environmental standards. Thus the NAALC had its roots in the internal politics of the USA and was intended to allay fears that low labour and environmental standards in Mexico might trigger a massive exodus of companies and jobs south of the border.

For these reasons, the agreement was initially very one-sided. In the eyes of the US administration and public, its principal objective was to subject employment relationships in Mexico to international monitoring and to force the Mexican state actually to implement its differentiated labour legislation. However, very little thought was given to the fact that the NAALC might also be used to monitor employment relationships in the USA; even less thought was given to the possibility of creating an instrument that might help to resolve shared labour market and structural policy problems.⁵ Thus, it was the concern of US-internal politics that was the moving force of the agreement, whereas the

has been funded from June, 1999, till May, 2002, by the Volkswagen Foundation.

⁵ One of the few people involved in the shaping of the agreement who wanted to see the NAALC developed as a joint economic and structural policy instrument for all three countries was Stephen Herzenberg, whose ideas were strongly influenced by the model of the European Union (Herzenberg, 1999). However, he was fighting a losing battle.

Mexican and the Canadian governments accepted the agreement only reluctantly and conditionally in the interest to save the NAFTA main agreement. In particular, the Mexican government tried to exclude any possibility of foreign intervention into Mexican labor relations⁶.

It was clear to all the governments involved that the agreement was not intended to restrict their own national sovereignty. No attempt was to be made either to put in place supranational legislation and institutions or to harmonise labour and social standards. Its objective rather was to force all three countries to commit themselves politically to the implementation of certain international social standards called 'labor principles', but to do so within the framework of existing national labour legislation and institutions. It was assumed that national labour legislation complied in theory with international principles but that there were gaps and shortcomings in its implementation that were to be subjected to international monitoring. In this way, direct interventions in national industrial relations systems were to be avoided while at the same time a cooperative solution could be found for what seemed to be the main problem, namely the inadequate implementation of labour legislation by the Mexican state.

The set of social standards laid down in the agreement goes beyond the core rights that are the main focus of attention in most recent approaches to international regulation (cf. Compa 1997, 48; Harvey 1987, 113).⁷

The Commission for Labor Cooperation and its international secretariat was set up as an international, trilateral body charged with implementing the obligations into which the member states had entered. However, the Commission was given only limited decision-making, coordinating and monitoring powers and inadequate material resources; the activities of the Secretariate were limited to administrative and investigative tasks. Special national secretariats were set up within the national ministries of labour, which soon developed into the strategic coordinating points in predominantly bilateral processes of cooperation and conflict resolution.

Since the USA's main objective in pushing through the agreement was to monitor and modify Mexican labour practices, the monitoring and conflict-resolution mechanisms lay

⁶ For the negotiation process and the intergovernmental and the US national interest configurations see Mayer, 1998.

⁷ The core rights include freedom of association and the right to collective bargaining (and to strike), the prohibition of child labour and the prohibition of forced labour and of employment discrimination (cf. OECD 1996). The NAALC, additionally, includes principles such as Prevention of occupational health and safety, compensation in cases of occupational injuries, minimum employment standards, equal pay, and protection of migrant workers (NAALC 1993)

at the heart of the agreement from the outset. Though the agreement was thought of as a base for cooperation guided by the idea of promoting and improving social standards, in practice conflict resolution has in recent years tended to push other cooperative activities to the margins. The concentration on dispute procedures, the specification of the areas covered by the agreement and the laying down in detail of the various procedural steps - all this supports the interpretation of Canadian observers, in particular, that the US model of conflictual, "pluralistic" industrial relations had a decisive influence on the design of the regime. This model is not necessarily consistent with the industrial relations traditions of the other countries, which are more cooperative or corporatist in nature (cf. Damgard, 1999; Gagnon, 2000).

The complaints procedures laid down in detail in the agreement determine the treatment of cases in which a government is accused of failing in its obligations to enforce the 'labor principles'; they are linked to a list of influence measures, graded in accordance with the various standards, that range from obligations to cooperate to outright sanctions.

The weakest of these measures apply to infringements of collective rights, such as the freedom of association and organisation, the right to collective bargaining and the right to strike. Complaints in this area give rise to investigations that can lead at most to (bilateral) consultations between ministers and the agreement of programmes intended to resolve the problems identified.

Infringements of other principles, such as the prohibition of forced labour, non-discrimination, equal pay for men and women, compensation for industrial injuries and occupational diseases as well as protection for migrant workers, may cause an Evaluation Committee of Experts (ECE) to be called in and may, if necessary, provide grounds for a meeting of the trilateral ministerial council, the highest supervisory body provided for under the NAALC regime. Even in this case, the emphasis is on cooperation; thus, for example, any investigations carried out by the expert committee must always adopt a comparative perspective and relate to all three countries.

Only in the event of infringements of principles firmly enshrined in the agreement, such as the prohibition of child labour, protection of health and safety at work and minimum labour standards, do the conflict resolution procedures go as far as the imposition of fines and the suspension of NAFTA trade advantages.

To sum up the process of the construction and characteristics of design of the NAALC: It is an agreement between unequal partners, reluctantly negotiated by Mexico and Canada and only accepted because it preserves national sovereignty in the sensitive area of industrial relations and emphasizes a cooperative approach; at the heart of the agreement are the complaints' and monitoring mechanisms with graded list of obligations and sanctions.

2. The complaints procedures as the focus of activities

To date, complaints have been the hub around which the activities of the NAALC regime have revolved. Complaints about infringements of labour standards in one country are submitted to the national secretariat of another member state. Generally speaking, complaints are lodged by transnational coalitions of NGOs and/or trade unions (Dombois & Hornberger 1999).

The national offices in the three countries have now received 25 complaints- much less than the US government had expected. After a slow start in the first years the complaints machinery came to a peak with ten 'submissions' in 1998; since then the dynamics has considerably slowed down.

It is noteworthy that the complaints procedure, which was initially put into place primarily for the purpose of monitoring Mexico, has dealt with increasing numbers of cases in the USA and, recently, in Canada as well. Fifteen petitions relate to labor conflicts in Mexico, eight to incidents in the USA and two to events to Canada.

Initially, the complaints related primarily to collective rights, such as the right to freedom of association and the right to collective bargaining.

However, closer investigation reveals that the circumstances surrounding the disputes vary considerably.

At the heart of the Mexican cases are disputes concerning the establishment of independent trade unions; virtually all of them concern assembly plants that are subsidiaries of transnational groups. These disputes follow a typical pattern: Associations such as CTM or CROC, which are closely integrated into the Mexican corporatist system, cooperate with management in their efforts to keep independent unions out of the plants. Their efforts are aided by the closed-shop principle, the so-called *cláusula de exclusión*, which prevails in Mexico and is enshrined in national labour law and collective agreements. The tripartite arbitration and conciliation boards, on

which only corporatist union confederations are generally represented, play an important role here. Independent trade unions constantly find themselves facing an overwhelmingly powerful triad of management, corporatist unions and state authorities that seeks to thwart any attempts to establish independent interest representation by exploiting or even exceeding the provisions of Mexican labour law.

The complaints made against the USA, on the other hand, mainly concern attempts to prevent the establishment of any kind of trade union representation, in the most cases that of migrant workers. Union organisation campaigns encounter fierce resistance from company management and are further weakened by lengthy complaints procedures in the labour courts. The two cases against Canada referred to the right to bargain collectively.

It is worth noting that the range of complaints has increasingly widened, and with it the range of possible procedural steps in the complaints procedures. Whereas the initial complaints related solely to the right to freedom of association, that is to a standard which, if infringed, can lead at most to consultations at ministerial level, it is clear that the main emphasis has shifted to areas in which sanctions are more likely to be imposed. Some of the complaints that have now been lodged relate to occupational health and safety as well as to child labour and can, in theory, lead to the imposition of fines or the suspension of NAFTA trade benefits. The precarious situation of migrant workers in respect of US labour law has also been the object of repeated complaints.

The gradual extension of the agenda beyond the framework laid down in the agreements is also significant. Whereas the initial complaints had related only to legal practice in each of the member states, in accordance with the provisions of the NAALC agreement, individual legal norms themselves have become the object of dispute, too. Although the agreement does not touch on national law and calls for the enforcement of international 'labor principles' within the framework of existing national legislation, legal norms and institutions, such as closed-shop arrangements and the corporatist structure of labour courts in Mexico or the special arrangements for migrant workers in the USA, have been brought up to the agenda making reference to the principles enshrined in the NAALC or other international agreements or to national constitutions and legislation.

3. Conflict solution and cooperation at low intensity: cooperation blockades between the governments

The results of the complaints brought into the NAALC procedures seem to confirm the opinion of the critics like the big union confederations in the US and Canada who point out that the NAALC is a 'toothless' regime. Indeed, up to now all cases ended with ministerial consultations and the joint agreement of action programmes that have not produced visible changes in the legal practices of the countries concerned.

However, is it really the inadequate sanction mechanisms that prevent the NAALC from being effective? It is interesting to note that even more recent complaints relating to alleged breaches of standards covered by stronger sanction potential have not gone beyond the bilateral ministerial consultation phase. Moreover, they are being dealt with very slowly. Indeed, in the last years there is a clear tendency to delay conflict solution: in some more recent cases it took more than two years before cases that had been accepted and investigated by an national office were presented to the first step of international treatment, the bilateral ministerial consultations. Obviously, the complaint procedures have lost dynamics in general, all so more since governments are reluctant to take the decision to deal with disputes through trilateral negotiations and to escalate disputes further by convening an expert committee.

This is difficult to explain unless conflict resolution is understood as a political process and account is taken of the rationalities and contradictory interests of the governments involved. However much the conflict resolution process resembles the various stages of appeal in a court case, it is in reality a very tense process of intergovernmental - normally bilateral - political bargaining, the success of which depends to a large extent on the willingness to cooperate of those involved, particularly on the part of the government against whom the complaint has been lodged.

This can be illustrated briefly by drawing on the examples of the USA and Mexico.

The US administration had negotiated the agreement in order to put in place a public monitoring instrument designed to make visible and treat labor conflicts and reduce the distance between labour law and labour practices in Mexico. The Mexican as well as the Canadian government, on the other hand, have defined the agreement more as an instrument of intergovernmental cooperation rather than of conflict monitoring and solution. The objective of the Mexican government was to defend itself against the complaints coming from the dominant and prepotential neighbour and to shield the

sensitive corporatist power structure from external intervention. Now, however, the US government finds itself in the position of defendant in several complaints, too, which, under the terms of the agreement, could lead as far as to trade sanctions. It has been in the interests of both governments to avoid any escalation in the level of conflict, which could have an adverse impact on themselves in the event of further complaints being lodged. Furthermore, it is to both governments' advantage not to allow relations between the two countries (not least trade relations) to become too bogged down in disputes or even a spiralling of conflict levels. In order to avoid undesired spillovers of labor conflicts, in both countries the activities of the national bureaus, which are incorporated into the ministries of labour, are coordinated with the ministry of trade and/or the trade representative.

As a result, they approach complaints in very ambiguous ways. The US government (at least the Clinton administration) needed complaints against Mexico in order to show the American public that they were truly concerned about social standards and in order to demonstrate the effectiveness of the NAALC; however, it has had little inclination to exploit the potential for conflict and sanctions. For its part, the Mexican government was reluctant to accept the agreement, but it has taken advantage of complaints against the USA in order to escape from its defensive situation. However, it has regarded the complaints procedures essentially as a source of conflict that puts national sovereignty at risk and endangers bilateral relations. Consequently, it has delayed treatment of complaints to a degree that undermines the legitimacy of the procedures and it reveals little information on the complaints to the Mexican public.

In the light of these interest configuration it is hardly surprising that both governments have tended to pursue low-intensity conflict strategies, preferring consensual bilateral forms of conflict resolution to utilisation of the full range of dispute and sanction mechanisms provided for under the terms of the agreement. Strategies of conflict avoidance combined with a deep mutual distrust between unequal partners are limiting the possibilities of an open cooperation on labor problems as well as the use of the use of all steps of conflict and sanctions the NAALC permits. This clashes with the expectations of the NGO and unions which act as complainants.

4. Transnational actors and networks: the trap of disappointment and the declining acceptance of the NAALC

The NAALC accords non-governmental organisations an important role in the complaints procedures: Advocacy organisations and trade unions select conflicts and elaborate the complaints. As complaints normally are accepted and investigated in a different country they form transnational alliances with organizations of the country where the complaint is going to be submitted.

The regime has in fact done much to promote the activities of civil actors and has helped to consolidate and extend transnational relations and networks that also form the basis for co-operation in other areas. Analysis of the complaints lodged to date reveals a number of transnational networks - strategic union alliances, NGO and mixed networks - linked through individuals and 'bridgehead' organisations which channel information and other resources, exchange experiences and interpretations and prepare the submissions.

Nevertheless, there are obvious gaps and asymmetries in the network system: On the one hand, US organisations play a crucial and dominant role in the networks, and there are only few organisations in Mexico, often lacking resources, that take part in NAALC activities. On the other hand, the level of involvement among certain organisations that carry considerable political weight in their own countries and could give the NAALC a good deal of valuable political support is low, and this creates problems of political legitimacy and effectiveness of the agreement. In Mexico, the large trade union confederations, which support the former state party PRI in the corporatist state, take virtually no part in NAALC activities⁸; to date, only one complaint has been lodged by one of these organisations, the CTM, against the USA. One of the reasons for this is that such corporatist organisations are themselves frequently the principal focus of complaints against Mexico. Even more problematic is the reluctance of the AFL-CIO and the Canadian CLC to get involved. Both attacked NAFTA and also rejected the side agreements that were intended to make NAFTA more acceptable. It is true that some important trade unions affiliated to the AFL-CIO have lodged or supported complaints, but the AFL-CIO - even after the opening brought by the new leadership of Sweeney - has persisted with its basic criticism of the NAALC as 'toothless' and ineffectual; it has used the NAALC neither as an instrument for conflict resolution nor as a policy platform.

Thus the organisation in the USA best placed to give the NAALC real political 'clout' is not involved at all in the NAALC regime.

In general, participation of non state actors in NAALC complaints has been far below the expectations of the US government. It has, after a first phase of testing NAALC procedures it has even declined to such a low level that the government offices specialized in complaints are running out of work; thus, the complaints procedure as the central element of legitimating NAALC is losing its ground. But why this growing distance of non-state actors?

In the NAALC regime, complaints relate to actual disputes, most of them arising in the workplace, in which social standards have been breached. The complainants, NGOs or trade unions and their transnational partners, select cases with various purposes in mind. On the one hand, they hope that, by internationalising individual disputes, they can find a more satisfactory solution in the specific case than is possible on the national stage. On the other hand, they also seek to use the complaints in order to highlight more general problems with the inadequate enforcement of rights and put governments under pressure from outside to fulfil their obligations.⁹ Apart from these expectations directly related to the complaints procedures there are indirect effects often expected from the complaints like gaining publicity or strengthening transnational connections etc.

However, the NAALC has built-in mechanisms that systematically disappoint actors' expectations.

NGO and unions - those in the US more than those in the other countries - tend to see the complaints procedure like a quasi-judicial instrument with accountable results. As it is rather a political instrument it is difficult clearly to identify effects of complaints and to ascribe changes to the complaints - both on the level of the individual dispute and in terms of more general government practices. In the case of individual disputes, causal relationships may be easier to identify, so when firms change their behaviour after being threatened with a complaint or having a complaint lodged against them. There are various examples of such changes of behaviour, as when assembly plants stopped giving female job applicants pre-employment pregnancy tests. In many cases, however, complaints have no visible effect on the actual dispute that triggered them. As far as government practices are concerned, which is what the complaints are really targeted at,

⁸ It will be interesting to observe how the political transition opened up by the recent elections that finished with the long lasting domination of the PRI will change labour relations in Mexico, and , eventually give more power to the unions up to now beyond or at the margin of the 'official' industrial relations

⁹ Cf the 'Boomerang model' of Risse & Sikkink ,1998

the effects of complaints are even more difficult to ascertain because governments are very insistent on their own sovereignty and the independence of their labour jurisdiction. Moreover, the NAALC is only one of several arenas in which the disputes are notified, discussed and dealt with, and it is not a legal but a political instrument. Even complainants generally use the NAALC only as a supplement to other routes, basically legal proceedings at national level, political channels and publicity campaigns, in order to put additional political pressure on their own governments by internationalising national labour disputes. They then realise that, because of the various combinations of interests involved, the whole procedure gives rise only to limited publicity and generates very little pressure for changes in labour practices.

As a result, complainants and their transnational networks frequently get caught in a trap of disillusionment. They justify and legitimate their activities and the considerable time and money spent on dealing with on-going disputes, to say nothing of the time and effort spent on communications, without being able to hope for any resolution of these disputes. Any successes that might be achieved usually make themselves felt only in the long term, and in any event it is very difficult to ascribe such successes solely to the activities of complainants within the framework of the NAALC regime. At best, they find expression firstly in international publicity, albeit on a limited scale, for local, hitherto unnoticed disputes, in changes in political discourse, in surprising court rulings and only much later, and frequently with the aid of multifarious activities in other arenas, in legal and institutional changes.

All this has contributed a good deal to the discouragement felt by many organisations which have lost hope or feel to be confirmed in their initial scepticism on the NAALC, particularly those in the USA that were expecting visible results from the collective action they had been engaged in. Most of these organisations no longer regard the NAALC as a suitable instrument for labour regulation. Mexican organisations, on the other hand, tend to see the complaints procedures as one of several ways of obtaining political backing for their struggle in the domestic political arena and exerting pressure on the established corporatist structures and to place their faith rather in achieving successes in the long term.

III. General problems with international labour regulation

It should be clear that the institutional design puts specific limitations to the regulatory power and effects of the NAALC. NAALC preserves national sovereignty: it does not constitute supranational legislation and jurisdiction nor does it intend to harmonize social standards in the three countries. It is not a juridical but a political instrument and it does not supersede national institutional patterns of conflict regulation. It can only give way to intergovernmental or public pressures that may exert only a very diffuse and indirect influence on labor practices. Nevertheless, given these limitations, our observations lead us to conclude that the problems of the NAALC lie less in the inadequacy of the regime's sanction mechanisms than in the different rationalities of action, the strategies and patterns of interaction of the actors involved: (1) in the marginal roles conceded to the international organisation and to trilateral cooperation, (2) in the cooperation and conflict strategies of low intensity in the bilateral intergouvernemental relationships based on a paradox combination of distrust and reluctance to cooperate and the need to control and retain conflicts and (3) the low level of acceptance and participation of representative actors of civil society and in the disillusionment that can be experienced by unions and NGO that expect international, quasi-legal solutions to problems.

However, limitations due to the design of the NAALC as well as the limitations due to the divergent interests, expectations and strategies of the actors indicate and reflect some more general problems of international labour regimes.

: the sovereignty problem, the dominance problem, the cooperation-conflict problem and the participation problem.

The sovereignty problem

International labour regimes can be effective only if they are able to monitor compliance with the obligations into which the various national actors, primarily governments, have entered into, and to impose sanctions in case of non-compliance. However, an effective system of sanctions is conceivable only in two alternative sets of circumstances: First, one state has the economic and political power to enforce compliance with international standards. This is the case with the unilateral social clauses provided for in US trade legislation (such as GSP etc.), which link the granting of trade advantages to the observance of certain minimum social standards. However, the requirement that international minimum labour standards should be observed is regularly filtered through,

and frustrated by, commercial interests and considerations of political expediency, and does not apply to the more powerful state. Thus it is only economically and politically weak and dependent states that have to fulfil their obligations (cf. Frundt 1998). Second, the obligations acquire the force of supranational legal norms enforced by international or supranational institutions, possibly by means of sanctions. However, this requires states to relinquish sovereignty in the area of industrial relations not only over the enactment of legislation but also over its enforcement. However, this is a highly sensitive area because industrial relations are a central element in national political and institutional forms of the regulation of processes of social exchange and conflict.

In a very restricted way, rights of sovereignty in the area of employment policy have been relinquished in the EU. This has taken place as part of a very wide-ranging programme of economic and political integration in which, in the course of a multi-level decision making process involving national and supranational institutions, supranational legislation has been put in place that is enforced by an independent judicial authority, namely the European Court. Even here, however, the question of whether supranational regulatory competences should take precedence over national regulations remains highly controversial. Even under the terms of the Amsterdam treaty, core areas of national industrial relations systems, principally social security and social protection, the collective representation and protection of interests and dismissal protection, continue to be protected from regulatory interventions since they still require unanimous decisions (Leibfried & Pierson 1995)

However, a regional agreement like the NAALC, which merely seeks to put in place social measures in support of a free trade agreement, does not directly infringe national sovereignty in the social policy sphere or create international legal standards or an international judicial authority to which the individual states involved would be prepared to subordinate their own labour legislation. It is highly debatable, therefore, whether even the introduction of harsher sanction mechanisms could give the NAALC greater authority and regulatory powers, since none of the three states involved – least of all the USA - would be prepared to accept an international regulatory body with powers to enforce changes in national labour legislation and jurisdiction. Under these circumstances, the only way to implement an international labour regulation regime is through political negotiation and moral persuasion.

The dominance problem

All approaches to international and transnational labour regulation have to deal with the problem of asymmetrical relations: individual states or groups of actors tend to dominate simply by virtue of their political or economic power. This is also a problem in the EU, although it is mitigated to some extent by the number of states involved, the greater opportunities for forming coalitions and exercising rights of veto and the pressure to accept compromises.

Right from the outset, however, the dominance of the USA has meant that the NAALC has been characterised by an asymmetrical relationship that has not necessarily enhanced the regime's effectiveness. While it is true that the dominant position of the USA increases the pressure on the Mexican government to fulfil its obligations in the labour policy sphere, it also gives rise, in what is already an historically charged relationship, to misgivings, resistance and obstructionism, which should not be interpreted simply as strategies for enforcing corporatist control. These agreements between unequal partners lack a counterweight to the USA that would help to soften the image of the NAALC as a monitoring instrument designed and administered in accordance with American interests and rules and to break down resistance to cooperation.

However, there are also asymmetries in the transnational networks. The NGOs in the USA form the strategic core; unlike their partner organisations in Mexico, they have material resources at their disposal, are linked in a variety of ways to other organisations and enjoy access to far better and more diverse channels through which to influence politicians and the media. At the same time, they are involved more as advocates for their Mexican partner organisations than as the targets of the regime's activities.

The problem of the balance between cooperation and conflict

Regimes whose purpose it is to manage and guide behaviour require not only institutional arrangements for monitoring compliance with and punishing deviations from the established norms but also incentives to encourage cooperation and conformity to norms and principles. International labour regulation regimes, in particular, cannot be constructed solely on the basis of conflict resolution, complaints and the exertion of pressure on governments, since the implementation of standards and principles requires more general changes in the labour practices of state bodies as well as of firms, and hence a willingness to cooperate. However, cooperation tends to be hampered if the

agenda is restricted to areas of conflict and the actors cannot expect either joint problem-solving or material advantages or quid pro quos in other spheres. International labour regulation regimes need a balance between conflict and cooperation. Indeed, cooperative conflict resolution may not be possible unless it is embedded in a wider-ranging agenda that includes areas, mechanisms and resources for integrative and distributive bargaining.

In the EU, this problem of the balance between cooperation and conflict is alleviated to some extent because there are major, thematically wide-ranging areas of joint policy-making in which regulatory functions are combined with redistributive mechanisms, thereby opening up considerable scope for compromises and trade-offs. It is precisely the structural funds as well as the diversity of areas in which compromise can be reached that provide incentives for cooperation and make disputes and concessions tolerable, because they can be compensated for in other spheres and in other situations. However, the very design of the NAALC regime reveals a bias in favour of conflict processing. The whole regime is designed in such a way as to be issue-specific. It is not embedded in a broader development, structural and social policy agenda, nor are the conflict resolution procedures supplemented and offset by joint labour policies from which all three countries could benefit equally. In fact, the design seems to be heavily influenced by the system of industrial relations in the USA. It is conflict processing that largely determines the practices of the NAALC regime and introduces a “zero-sum” logic into the largely bilateral process of conflict resolution. Domestic disputes are internationalised; in each case, one government (in addition to the firms involved) stands in the dock and has to justify itself to others who have received the complaint. The accused government will seek to refute complaints of breaches of labour principles in its territory or deny responsibility for them. The imbalance between conflict and cooperation in the regime and the lack of common policy spheres, procedures for “integrative bargaining” and redistributive mechanisms causes the mutual distrust between government representatives to be exaggerated and the stereotypes to remain sharply drawn: on this side, those interested in cooperation, on the other, the *gringos* who want to get their own way in the dispute; here, those interested in putting in place high-quality standards, there, inflexible and corrupt state bureaucracies.

The Participation Problem

Though international regimes are intergovernmental agreements, non-state actors and their transnational networks have become a dynamic force of action- in particular in areas of 'positive regulation' that imposes institutional constraints on the market. They provide for the continuity of regime activities and try to influence public opinion, parliaments and government in order to draw attention to the problems submitted to the regime institutions. Not only human -rights regimes are embedded in such governance systems. International Labor regulation, too, requires participation from non- state actors, because labor relations and practices are defined and set not only by the state but include multiple civil actor groups. Where actors in the national political arenas do not have sufficient 'voice' to draw attention to the violation of social rights and to demand correction, where economic globalization results in social and ecological problems ignored or played down by national governments, it is the role of non-state actors, in particular international advocacy organizations and transnational networks to claim institutional forms of international regulation.

Nevertheless, participation of non-state actors in the regulation process is very limited. The NAALC assigns a rather paradox role to the non-state actors: On the one hand, unions and advocacy organizations are of vital importance for the regime, as they select the problems to be submitted to the regime procedures and thus support the legitimacy of the regime. On the other hand, they are excluded from the further complaint procedure. The NAALC indicates a more general problem, even present in the EU: the lack of institutionalized participation rights of non-state actors and the risk that regimes lose their legitimacy if non-state actors are instrumentalized as legitimation facade.

All four problems – the sovereignty problem, the dominance problem, the problem of the balance between conflict and cooperation and the participation problem– are fundamental to any international labour regulation regime that seeks to introduce a social dimension into free trade agreements. The economic and political asymmetries and dependency relationships that characterise the globalised economy, which also considerably restrict willingness to cooperate in the political sphere, make it seem doubtful whether regulatory approaches founded on conflict resolution can actually be effective forms of international labour regulation unless they are embedded in wider-ranging cooperative policy and redistributive relationships.

For these reasons, the discussion on 'social clauses' and institutionalized sanction mechanisms that would enforce international labor standards seems rather abstract: It is neither reasonable nor realistic to ask for institutional forms of regulation that are based either on relations of dominance (like the unilateral social clauses in the US commercial systems, e.g. GSP) or on a delegation of sovereignty rights to supranational bodies that would transcend by far the actual free trade projects. It will be more adequate to institutionalize obligations of communication and cooperation between governments, to combine monitoring and incentives (like social funds), to create rights and channels for the articulation and participation of the actors of the civil society - that is to say to establish communication and cooperation networks and systems of incentives and mutual and symmetric obligations.

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