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MEXICO

LABOR RIGHTS AND NAFTA
A Case Study

This report provides an overview of the labor rights side agreement of the North American Free Trade Agreement (NAFTA) in light of a case in which the side agreement has been used to promote labor rights in Mexico. On June 13, 1996, Human Rights Watch/Americas, the International Labor Rights Fund, and Mexico's National Association of Democratic Lawyers (Asociación Nacional de Abogados Democráticos, ANAD) filed a petition that documented three Mexican violations of the side agreement. On July 29, 1996, the United States National Administrative Office (USNAO), an entity created by the side agreement to handle labor rights violations, issued a decision to accept for review the issues laid out in the petition. The USNAO will now gather information on the petition's allegations, with the goal of issuing a public report on the issues within 120 or180 days. The USNAO decision itself does not indicate a judgment on the merits of the matters raised in the document.

SUMMARY

Mexico, the United States, and Canada broke new ground in January 1994 when they brought into force a labor rights side agreement to accompany the North American Free Trade Agreement (NAFTA). Officially called the North American Agreement on Labor Cooperation (NAALC), the labor side accord exists to promote what the signatories termed their "resolve" to "protect, enhance and enforce basic workers' rights."[1] Never before had labor rights standards been so explicitly included in the framework of a trade pact. While highly supportive of labor rights on paper, however, the new and largely untested accord provides weak mechanisms for ensuring their respect.

The signatories to the NAALC voluntarily agreed to have their labor rights practices reviewed by the other Parties, through entities created in each country called the National Administrative Office (NAO). The NAO of the United States, which functions within the Labor Department, can hear cases from Mexico and Canada. The three petitioners in the case joined to challenge three Mexican violations of the NAALC, involving freedom of association and the impartiality of labor tribunals. The petition, which is included as the appendix of this report, also argues that the violations conform to a pattern in Mexico in which the laws and structures of pro-government unions are used to inhibit independent union activity.

The success or failure of NAFTA's labor rights side agreement may have an impact far beyond North America. In December 1996, the new World Trade Organization (WTO) will hold its first ministerial meeting in Singapore. The Clinton administration is urging the WTO to discuss labor rights and to establish a working group on core workers' rights standards at the Singapore meeting. If NAFTA's labor rights provisions are to serve as a guide, the ability of the NAFTA mechanisms to resolve both case-specific and structural limitations on workers' rights in the signatory countries could color the WTO's consideration of the topic.

HUMAN RIGHTS PROTECTIONS UNDER NAFTA'S LABOR RIGHTS SIDE AGREEMENT

From the beginning, the labor rights side agreement came under attack from both proponents and opponents of greater labor rights protections, the former because the NAALC was seen as weak and the latter because the inclusion of labor rights was deemed inappropriately unrelated to trade. In the end, the NAALC was approved containing strong language in support of workers' rights but weak mechanisms for ensuring their respect in the signatories' countries. The agreement focuses on the labor practices of governments, establishing three tiers of protection for labor rights and holding the parties to enforce their own laws with respect to them.

The first level of labor rights protection encompasses freedom of association and the right to organize, the right to bargain collectively, and the right to strike. Violations in these areas lead to a process of review by the National Administrative Office to which the alleged violation was submitted. The NAO may also opt to recommend that the secretary of labor request a "ministerial consultation," a process that entails agreement by the labor departments of the Parties to engage in a specific program of action designed to clarify whatever problem is at issue.

The second level of protection involves forced labor, discrimination, equal pay for men and women, workers' compensation, and protection for migrant laborers. Violations in these areas can lead from a review and ministerial consultations, described above, to an evaluation, which entails the creation of an Evaluation Committee of Experts

[1] North American Agreement on Labor Cooperation, September 13, 1993, Preamble.

made up of individuals outside the NAALC mechanisms who will make "non-adversarial" and non-binding recommendations on the issues.

The final tier of protected labor rights involves child labor, minimum wage, and occupational health and safety. Violations of these rights can progress from review and evaluation to arbitration between Parties and, potentially, sanctions. Arbitration will lead to a report on the problem and recommendations that should be incorporated into a working plan for resolution of the violation. If a Party fails to implement the working plan, a monetary fine can be assessed and, if not paid, suspension of NAFTA benefits may result.

In addition to the side agreement's labor rights protections, the NAALC holds the Parties to ensure that labor proceedings are "fair, equitable and transparent,"[2] including that they comply with due process of law, and that labor tribunals are "impartial and independent and do not have any substantial interest in the outcome of the matter."[3] The NAALC is silent on how to resolve such problems.

Many aspects of the labor rights side agreement remain untested. Prior to the submission documented here, the USNAO had heard only three other cases, all of which involved challenges to labor law violations related to freedom of association and the right to organize. The Mexican NAO has heard only one case, related to freedom of association in the United States. With the case detailed here, the petitioners take on two new areas. First, we challenge the notion that the NAALC's requirement that the Parties enforce their own labor law can mean that labor laws that themselves violate the spirit and letter of the agreement are acceptable under the accord. Thus, we urge the USNAO to take on the issue of Mexico's Law of Federal Workers, which contains provisions that violate the right to free association. Second, the petition directly challenges a conflict of interest in the Federal Conciliation and Arbitration Tribunal (Tribunal Federal de Conciliación y Arbitraje, FCAT), the labor tribunal that hears matters related to federal government employees. This conflict of interest constitutes a direct violation of Mexico's treaty obligations under the NAALC. The petition urges the USNAO to develop an enforceable mechanism to deal with this problem.

NAFTA AND HUMAN RIGHTS IN MEXICO

In previous cases submitted to the USNAO, important benefits were derived from the petition process. For example, the USNAO's work on a case challenging freedom of association violations in a Sony plant in Nuevo Laredo, in northern Mexico's Nuevo León state, has led to important public discussions of labor rights problems in Mexico, and lawyers representing unions independent of the government have been given a forum in which their views can be heard. Freedom of association falls under the first tier of protected labor rights, so non-binding review and consultations were the strongest measures possible. How strong the NAALC will be in resolving the underlying structural problems in Mexico's labor system, though, remains to be tested. In the Sony case, for instance, the USNAO found that the union registration system in Mexico—by which unions receive legal recognition—is used against independent unions, but it is up to the Mexican government to resolve the problem on its own.

The commitment of the Mexican government to human rights reforms will be on display throughout the NAFTA process. As Mexico continues to undergo a major economic transformation, the government's ability to maintain control over independent-minded unions may be key to implementing unpopular economic policies. If committed to human rights reforms, the government of Mexico must correct the long-standing structural problems in the labor sector through which laws, union registration processes, labor tribunals, and pro-government unions stifle independent unions.

[2] NAALC, Article 5(1).

[3] NAALC, Article 5(4).

Mexico's labor movement has been an integral part of the Mexican corporatist political system. The structure of labor unions, federations, and the law have made independent union activity difficult. According to Kevin Middlebrook, an expert on Mexico's labor sector, "Over time, Mexico's governing political elite was able to impose legal restrictions on such centrally important forms of worker participation as union formation, internal union activities, and strikes. These restrictions—backed by the political elite's effective control over the means of coercion and state officials' willingness to use force when necessary to achieve their objectives—established the de jure and de facto parameters of labor action."[4] The case documented in this petition illustrates this pattern.

There is more riding on this, though, than the important Mexico-specific issues that should come to light as the USNAO gathers information on the case. The Clinton administration has adopted the thesis that increased trade will bring improved human rights, a contention that remains unproven today. At the same time, the administration has adopted measures in some trading circumstances, such as NAFTA, to create a direct link between trade and human rights. The NAALC, no matter how weak, represents an attempt to do so. The USNAO, therefore, is being closely watched in many other regions of the world. If the NAALC does not work to address labor rights problems effectively, it will set back the development of a more sophisticated approach to coupling labor rights with trade.

CASE BACKGROUND

In December 1994, the Mexican government reorganized the structure of several government ministries, creating the Ministry of Environment, Natural Resources and Fishing (Secretaría de Medio Ambiente, Recursos Naturales y Pesca, SEMARNAP). The entire Ministry of Fishing and parts of other ministries were combined into the new ministry. The Single Union of the Ministry of Fishing (Sindicato Unico de la Secretaría de Pesca, SUTSP), the independent union of the former Ministry of Fishing, sought to have its name changed to reflect the name of the new ministry. The request was denied by the FCAT, which argued that the Ministry of Fishing disappeared and that, therefore, the union had disappeared. The requested name change is not at issue in the petition; three other court processes are: 1) the registration of a union to replace SUTSP; 2) the cancellation of SUTSP's union registration; and 3) SUTSP's request to have newly elected leaders officially recognized by the FCAT.

In March 1995, a replacement union was formed by the pro-government Federation of Unions of Federal Employees (Federación de Sindicatos de Trabajadores al Servicio del Estado, FSTSE). The FCAT recognized the replacement union and, eventually, canceled the registration of SUTSP. When the FCAT registered the replacement union and then canceled SUTSP's registration, it did not give SUTSP a court hearing, thereby violating Mexican due process guarantees. SUTSP received several favorable court decisions on appeal, including on the due process violations described above. As a result of the appeals victories, the FCAT was ordered to decide about the registration issues after giving SUTSP a hearing. The decisions also obliged the FCAT to reissue SUTSP's registration and cancel the registration of the replacement union.

However, even the appeals court victories did not result in SUTSP members regaining the rights that the decisions should have enabled, since the FCAT is responsible for implementing decisions of the appeals-level courts and the FCAT's actions have limited the impact of the higher court victories. For example, after the FCAT was forced to reinstate SUTSP's union registration in January 1996, it issued a partial recognition of the union's newly elected leadership by saying that the union's leadership only had legal standing to act before the courts, not with the ministry. Higher courts eventually ruled that the FCAT had no right impose such a limitation, but the effect of the FCAT's arbitrary decision was to ensure that the ministry refused to deal with the legally registered SUTSP. This prohibition remains effective today, even though all higher court decisions have been implemented. SEMARNAP refuses to recognize SUTSP, while the replacement union continues to be permitted to operate freely, even without legal recognition.

We do not argue that only one union—SUTSP—should be registered at the new ministry, but object to the FCAT's arbitrary decisions that impede SUTSP members from exercising their rights. Further, we do not take issue

[4] Kevin Middlebrook, *The Paradox of Revolution: Labor, The State, and Authoritarianism in Mexico* (Baltimore: The Johns Hopkins University Press, 1995), pp. 288-298.

with the political views of the replacement union *per se*—the fact that it was formed by a strongly pro-government union federation—but object to the use of the biased FCAT to ensure that an independent union cannot organize while a pro-government union can.

Since the petition was submitted on June 13, 1996, the replacement union has remained active, enjoying benefits not due to it such as official time off for union organizing, despite the fact that the courts have revoked the union's improperly provided registration. Meanwhile, SUTSP has continued to suffer from a lack of full official recognition. In early July, the FCAT held talks with SUTSP and the replacement union and indicated that a run-off vote might be held as early as August.

MEXICO'S VIOLATIONS OF THE LABOR RIGHTS SIDE AGREEMENT

Mexico is in violation of the NAALC's first tier of labor rights protection, regarding freedom of association, and the agreement's requirement that labor tribunals be fair.

- The FCAT, which hears issues related to federal government employees, has violated labor laws involving freedom of association and the right to organize during the process of hearing the case of SUTSP, a union independent of the ruling Institutional Revolutionary Party (Partido Revolucionario Institucional, PRI). Higher court decisions in favor of SUTSP have not resulted in the union's members being able to exercise their rights, because the FCAT has acted arbitrarily in implementing the appeals decisions. Since March 1995, SUTSP members have been unable to exercise their right to freedom of association and the right to organize.

- Mexico's Law of Federal Workers, under which federal government ministries operate, limits to one the number of unions that workers can create in any single government entity, such as a ministry, and prescribes the one and only federation to which such unions can belong. The NAALC requires signatories to uphold their labor law, but the petition argues that this part of the labor rights side agreement cannot be used by Mexico to justify maintaining portions of its law that mandate limits on freedom of association that are barred under other Mexican law, including the national Constitution. Under international law, Mexico cannot interpret a treaty in a way that contradicts the treaty's ends and purposes.

- The FCAT system suffers from a conflict of interest to the detriment of workers independent of the PRI. The NAALC requires the signatories' administrative and judicial labor systems to be fair, which includes the obligation that magistrates have no interest in the outcome of the decisions that come before them. The structure of the FCAT renders it fatally flawed in this regard: the federal government names one of three FCAT magistrates and, according to the law, the FSTSE names the other. These two magistrates name the third member of the FCAT. While in theory the labor federation could name an independent representative to the FCAT, FSTSE openly proclaims its support for the PRI. FSTSE's Action Plan, published along with its statutes, stipulates that members are to "maintain permanent activism within the PRI." Further linking the PRI and the FSTSE is a system of overlapping official positions. For example, at the time that SUTSP lost its registration, Carlos Jiménez Macías was both the secretary general of FSTSE and a senator representing the PRI in Mexico's congress.

RECOMMENDATIONS

The petitioners' first recommendation to the USNAO, that the government agency accept the petition for review, was fulfilled on July 29, 1996. As this report goes to press, the USNAO had yet to announce the process it would follow for soliciting information on the case. The petitioners urge the USNAO to hold public hearings on the issues raised in the petition, preferably in Mexico City, to allow the greatest number of affected individuals to take part, including victims, expert witnesses, and petitioners; take steps to ensure that SUTSP members are able to enjoy all rights to which they are entitled under Mexican law; engage the government of Mexico in a process of public evaluation of the problems documented in this petition, with the goal of developing an enforceable work plan to end

abuses of the registration system; engage the government of Mexico in a process designed to ensure the effective elimination of portions of the Law of Federal Employees that violate the right to freedom of association, including derogation of limitations on the number of unions that can form in a single federal government entity; and initiate steps to compel Mexico to meet its treaty obligations under the NAALC to eliminate the conflict of interest inherent in the FCAT system.

Regardless of the outcome of the USNAO review, Human Rights Watch/Americas believes that the Mexican government must take steps to correct the violations indicated within the petition. After all, even without taking into consideration the NAALC, the violations documented by the petitioners constitute breaches of Mexico's due process and freedom of association obligations under applicable international law. Specifically, the government of Mexico should immediately undertake to eliminate the bias within the FCAT system and the restrictions on freedom of association contained within the Law of Federal Workers. While we recognize that such changes should not be expected from one day to the next, a detailed plan for achieving these goals could and should be made public very quickly, and concrete steps should be taken toward achieving these goals in the near future.

ACKNOWLEDGMENTS

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We also wish to thank Pharis Harvey, executive director of the International Labor Rights Fund and a co-petitioner in this case, whose experience and insight greatly enhanced the petition. We are grateful for the assistance given us by Mark Hager, a professor of law at American University's Washington College of Law and director of International Labor Rights Advocates. We deeply appreciate the time and expertise lent to us by Arturo Alcalde of Mexico's National Association of Democratic Lawyers, another co-petitioner in this case.

The petition is also available in Spanish. We are grateful to Mónica Hurtado, a political scientist with the Bogotá-based Universidad de los Andes, who translated the document. We would also like to thank Alina Rocha Menocal, an Everett Public Service intern, who translated a background memorandum on the petition into Spanish.

Human Rights Watch/Americas

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APPENDIX: Petition Submitted to the USNAO by Human Rights Watch/Americas, The International Labor Rights Fund, and the National Association of Democratic Lawyers

June 13, 1996

ACRONYMS AND ABBREVIATIONS

CAB	Conciliation and Arbitration Board (Junta de Conciliación y Arbitraje)
FCAT	Federal Conciliation and Arbitration Tribunal (Tribunal Federal de Conciliación y Arbitraje)
FSTSE	Federation of Unions of Federal Employees (Federación de Sindicatos de Trabajadores al Servicio del Estado)
ILO	International Labour Office
NAALC	North American Agreement on Labor Cooperation
NAFTA	North American Free Trade Agreement
PRI	Institutional Revolutionary Party (Partido Revolucionario Institucional)
SEMARNAP	Ministry of the Environment, Natural Resources and Fishing (Secretaría de Medio Ambiente, Recursos Naturales y Pesca)
SNTSMARNAP	National Union of Workers of the Ministry of the Environment, Natural Resources and Fishing (Sindicato Nacional de Trabajadores de la Secretaría de Medio Ambiente, Recursos Naturales y Pesca)
SUTSP	Single Trade Union of Workers of the Ministry of Fishing (Sindicato Unico de Trabajadores de la Secretaría de Pesca)
USNAO	United States National Administrative Office

I. INTRODUCTION

In keeping with the resolve of the three signatories of the North American Free Trade Agreement (NAFTA) to "protect, enhance and enforce basic workers' rights,"[5] the petitioners in this case seek to work through the United States National Administrative Office (USNAO) to address violations of such rights in the case of the Single Trade Union of Workers of the Fishing Ministry (Sindicato Unico de Trabajadores de la Secretaría de Pesca, SUTSP). The USNAO has jurisdiction to hear the case. In addition, the USNAO could play an important role in requesting the government of Mexico to end the violations in this case and stop the pattern in which they occur.

This case concerns, at heart, the right of Mexican federal workers to associate and organize freely and, upon denial of this right, to resort to impartial judicial mechanisms. SUTSP, a union independent of the ruling Institutional Revolutionary Party (Partido Revolucionario Institucional, PRI) has been denied both rights. This submission documents three issues of relevance to the NAALC, involving freedom of association and the right to organize and the impartiality of labor tribunals: 1) the Federal Conciliation and Arbitration Tribunal (Tribunal Federal de Conciliación y Arbitraje, FCAT) has violated labor laws involving freedom of association and the right to organize during the process of hearing the SUTSP case; 2) Mexico's Law of Federal Employees, which regulates federal workers such as those in the former Fishing Ministry, mandates a limitation on the number of unions that workers can create and the number of federations to which such unions can belong; 3) the FCAT system suffers from a conflict of interest to the detriment of workers independent of the PRI, in violation of the NAALC's requirement that labor tribunal proceedings be fair. The first of these issues is specific to the SUTSP case. The latter two are structural problems related to the legal framework in which the SUTSP case has unfolded.

Mexican labor laws are in contradiction regarding freedom of association. On the one hand, freedom of association is recognized in the Constitution and a host of international treaties by which Mexico is bound. On the other hand, the Law of Federal Employees restricts the number of unions that can exist in federal government entities and the number of federations to which they can belong. As explained more fully in the Argument section of this submission, the NAALC's requirement that signatories uphold their labor law cannot be used by Mexico to justify maintaining portions of its labor law that mandate restrictions on freedom of association.

SUTSP has won several court decisions on appeal, but even in these instances has been unable to vindicate its rights, since the FCAT, which has shown biased performance in this case and whose structure does not provide a guarantee of impartiality, is responsible for implementing decisions of the appeals-level courts. In this manner, the pro-government union vying to replace SUTSP has been able to gain strength through organizing, collecting union dues, and overseeing union property, while SUTSP has been weakened. The petitioners do not take issue with the politics of the replacement union *per se*, but with the conflict of interest inherent in the matter. Within Mexico, the SUTSP case is *sub judis*, but even if the union is ultimately completely vindicated by the courts, the structural problems documented in this petition—with respect to the Law of Federal Employees and conflict of interest in the FCAT system—will continue to limit freedom of association and due process guarantees in relation to federal government workers. Therefore, Mexico would still be in violation of its NAALC obligations.

[5] North American Agreement on Labor Cooperation, September 13, 1993, Preamble.

The violations documented in this petition conform to a pattern of violations of Mexican labor law. First, taken together, the FCAT's repeated violations constitute a pattern as defined in Article 49 of the NAALC.[6] Second, the arbitrary elimination of SUTSP's union registration falls into a broader pattern in Mexico in which arbitrary denial of union registration stifles the organization of unions independent of the PRI. Third, the SUTSP case fits a pattern in Mexico in which the law and structure of union federations are used for suppressing independent or dissident unions.

The NAALC's signatories voluntarily agreed to have their own labor rights practices reviewed by the other Parties, with the goal of promoting compliance with labor law and fostering transparency in the administration of that law, among other objectives. Toward these ends, the petitioners urge the USNAO to: 1) hold public hearings on this matter, preferably in Mexico City, to allow the greatest number of affected individuals to take part, including victims, expert witnesses, and petitioners; 2) take steps to ensure that SUTSP members are able to enjoy all rights to which they are entitled;[7] 3) engage the government of Mexico in a process of public evaluation of the problems documented in this petition, with the goal of developing an enforceable work plan to end abuses of the registration system; 4) engage the government of Mexico in a process designed to eliminate sections in the Law of Federal Employees violating the right to freedom of association, and specifically to abolish limitations on the number of unions and federations allowable in federal government entities; and 5) initiate steps to compel Mexico to meet its treaty obligations under the NAALC to eliminate the conflict of interest inherent in the FCAT system.

II. THE PETITIONERS

A) Human Rights Watch/Americas, a division of Human Rights Watch, is a nonprofit organization founded in 1981 to promote internationally recognized human rights in Latin America and the Caribbean. Based in New York, Human Rights Watch/Americas has worked extensively in international legal fora, such as the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, to protect human rights in the region.

B) The International Labor Rights Fund (ILRF) is a nonprofit organization representing human rights, labor, religious, consumer, academic, and business groups dedicated to ensuring that all workers labor under humane conditions and are free to exercise their rights to associate, organize, and bargain collectively. It was founded in 1986, and concentrates heavily on issues of workers' rights and international trade.

C) The National Association of Democratic Lawyers (Asociación de Abogados Democráticos, ANAD) is a network of legal professionals in Mexico committed to providing legal services, analysis and litigation in the defense of democracy and human rights. Its approximately 230 members include some of the most prestigious human rights authorities in Mexico, including noted specialists in labor law, arbitration, and collective bargaining.

III. JURISDICTION

The petitioners present this submission pursuant to Sections C, F, and G of the procedures established by the Department of Labor in Revised Notice of Establishment of U.S. National Administrative Office and Procedural Guidelines [hereafter "USNAO Guidelines]. Section C holds that the USNAO "shall receive and accept for review, and review submissions on labor law matters arising in the territory of another Party" and "may, at the discretion of the Secretary initiate a review of any matter covered by the Agreement."[8]

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[6] NAALC, Article 49. "'Pattern of practice' means a course of action or inaction beginning after the date of entry into force of the Agreement, and does not include a single instance or case." In the SUTSP matter, the FCAT has repeatedly violated freedom of association guarantees in separate legal issues.

[7] Mindful of Article 5(8) of the NAALC, which says that "for greater certainty" final or pending decisions by labor tribunals shall not be reviewed or reopened under the provisions of the Agreement, the petitioners urge that court decisions that should have enabled SUTSP to enjoy the right to freedom of association and to organize be *implemented,* not reviewed.

[8] Bureau of International Labor Affairs; North American Agreement on Labor Cooperation; Revised Notice of Establishment of U.S. National Administrative Office and Procedural Guidelines, *Federal Register*, April 7, 1994, Vol. 59, No. 67, Section C (4)(5), p. 16661.

A. Section F of USNAO Guidelines

The USNAO has jurisdiction over this complaint, given that the requirements of Section F of the USNAO Guidelines have been met, as the following five points establish.[9]

First, the violations documented here constitute a violation of Part II of the NAALC. The Agreement holds that each Party shall "promote compliance with and effectively enforce its labor law through appropriate government action."[10] This requirement has been violated by the Mexican government though FCAT decisions that have limited the rights of SUTSP members to associate and organize freely, and provisions of the Law of Federal Employees that violate Mexico's treaty obligations under Convention 87 of the International Labour Office (ILO) and other binding international law related to the rights of all workers, including federal government employees, to associate freely. According to Mexico's constitution, these treaties are "The Supreme Law of the Union."[11]

Related to freedom of association, the government of Mexico has violated the following: Articles 9 and 123 of the Constitution of Mexico; Articles 2, 4, and 7 of Convention 87 of the International Labour Office (ILO); Article 22 of the International Covenant on Civil and Political Rights; Article 16 of the American Convention on Human Rights; and Article 8 of the International Covenant on Economic, Social, and Cultural Rights.

In addition, the government of Mexico has violated the NAALC's provision that obligates it to "ensure that tribunals that conduct or review [labor] proceedings are impartial and independent and do not have any substantial interest in the outcome of the matter."[12]

Second, incalculable harm has been caused to the members of SUTSP, who have been deprived of the democratically elected representation they enjoyed before the illegal dissolution of SUTSP and benefits of official union registration, such as the collection of union dues.

Third, the violations conform to a pattern of labor law violations by the Mexican government. Registration is needed by any union to pursue its work legally. The government of Mexico manipulates what should be a simple administrative process of registration, ensuring that independent unions do not obtain registration, or are hindered in obtaining it. The limitations on freedom of association mandated by the Law of Federal Employees and the inherent conflict of interest in the FCAT system also fall into a pattern of state control over independent union activity.

Fourth, SUTSP has sought relief under Mexican law. Matters are pending in several courts. While SUTSP has won three of these matters in appeals to the highest appropriate court, it has been unable to exercise the rights that the higher court decisions should have enabled, because the FCAT has acted to limit the union's ability to do so.

Fifth, following a November 1995 decision by the International Labour Office regarding the initial dissolution of SUTSP, the violations complained of are not pending before an international body.[13]

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[9] Ibid., Section F.

[10] NAALC, Article 3(1).

[11] Constitution of Mexico, Article 133. "This Constitution, the laws of the Congress that are based on it and all treaties that are in accord with it . . . will be the Supreme Law of the Union."

[12] NAALC, Article 5(4) .

[13] International Labour Office, Freedom of Association Committee, decision in Case No. 1844, November 1995.

B. Section G of USNAO Guidelines

The petitioners urge the USNAO to accept this submission, because review of this petition will "further the objectives of the Agreement," as required by Section G of the USNAO Regulations.[14] NAALC objectives include promoting "compliance with, and effective enforcement by each Party of, its labor law" and "transparency in the administration of labor law." Moreover, the NAALC is explicitly aimed at promoting freedom of association: "The right of workers exercised freely and without impediment to establish and join organizations of their own choosing to further and defend their interests."[15]

Acceptance of this petition will further these objectives by spurring the Mexican government to resolve the problems documented here. This will entail better enforcement of labor law and freedom of association in Mexico. It should also yield greater transparency as Mexico responds to concerns raised here. If Mexico can ignore its treaty obligations under the NAALC, violating both the letter and the spirit of the accord, then the viability of the NAALC will be in question.

IV. THE UNIONS AND UNION FEDERATION INVOLVED IN THIS CASE

Single Trade Union of Workers of the Fishing Ministry (Sindicato Unico de Trabajadores de la Secretaría de Pesca, SUTSP). SUTSP has been independent of the ruling PRI since it was founded in 1977.[16] With some 2,300 workers before the ministerial reorganization, it was the largest independent union of government employees in Mexico and the only union of federal workers that voted for its leaders though direct and secret ballot.

National Union of Workers of the Ministry of the Environment, Natural Resources and Fishing (Sindicato Nacional de Trabajadores de la Secretaría de Medio Ambiente, Recursos Naturales y Pesca, SNTSMARNAP). The union was founded in 1995 to represent workers in the newly established ministry. The Action Plan of the new union calls for its members to support the political work of the Federation of Unions of Federal Employees, FSTSE, which itself calls on its members to support the PRI.[17]

Federation of Unions of Federal Employees. Founded in 1938,[18] FSTSE is a major union within the Congress of Labor (Congreso del Trabajo, CT), which is itself a key confederation loyal to the governing Institutional Revolutionary Party. The petitioners establish in the Argument section below that the FSTSE is a key part of the unfairness of Mexico's labor rights system for federal workers.

V. THE TRIBUNAL AND COURTS INVOLVED IN THIS CASE

[14] USNAO Guidelines, Section G(2).

[15] NAALC, Part I, Article 1(e)(f) and Annex 1(1).

[16] Tribunal Federal de Conciliación y Arbitraje, Case No. 15/77, October 10, 1977.

[17] Sindicato Nacional de Trabajadores de Medio Ambiente, Recursos Naturales y Pesca, "Programa de Acción," point 25, in *Estatutos 1995-1998*.

[18] Kevin J. Middlebrook, *The Paradox of Revolution: Labor, the State, and Authoritarianism in Mexico* (Baltimore: The Johns Hopkins University Press, 1995), p. 91.

The Federal Conciliation and Arbitration Tribunal (Tribunal Federal de Conciliación y Arbitraje, FCAT[19]). The FCAT has jurisdiction over federal government employees, as opposed to the Federal or State Conciliation and Arbitration Boards (CABs), which hear matters related to private sector employees.[20] Constituted by ten magistrates, the FCAT is divided into three chambers, each with three magistrates. (The president of the Tribunal does not sit on a particular chamber.) For each chamber, the federal government names one magistrate, FSTSE names one magistrate, and these two magistrates together name the third.[21]

District Labor Court of the Federal District (Juzgado de Distrito en Materia de Trabajo). This is the court of first appeal for decisions made by the FCAT.

Collegiate Labor Tribunal (Tribunal Colegiado en Materia de Trabajo). This is the court of second appeal for decisions made by the FCAT. In the SUTSP matter, its decisions are final.[22]

VI. LAWS RELEVANT TO THIS CASE

In analyzing Mexico's labor laws, the petitioners have reviewed Mexico's compliance with the Law of Federal Employees and its Constitution. In addition, Mexico's international obligations on freedom of association and the right to organize have been reviewed, since the NAALC's definition of labor law includes all "laws and regulations, or provisions thereof, that are directly related to freedom of association and the right to organize."[23] Under the Mexican Constitution, international treaties are the "Supreme Law of all the Union"[24] and are therefore considered to be part of Mexico's labor law. Accordingly, Mexico's NAALC obligation to "promote compliance with and effectively enforce its labor laws"[25] extends to these treaties. Each of the international documents cited is binding on Mexico.

A) Law of Federal Employees:

Article 68—"In each state entity there will only be one union."

[19] To be consistent with other acronyms used for Mexican labor institutions when writing in English, this petition will use the acronym that stems from the English translation of the Tribunal's name: FCAT.

[20] This division between the FCAT and the CABs mirrors the division in the Mexican Constitution between private and governmental employees. Article 123(B)(12) of the Constitution, under the section devoted to government workers, holds, "Individual, collective or inter-union conflicts will be submitted to a Federal Conciliation and Arbitration Tribunal made up as established in the implementing law."

[21] Ley Federal de los Trabajadores al Servicio del Estado, Article 118.

[22] In matters in which the Collegiate Tribunal is reviewing the constitutionality of laws, its decisions can be appealed to the Supreme Court.

[23] NAALC, Article 49, definition of "Labor Law."

[24] Constitution of Mexico, Article 133. "This Constitution, the laws of the Congress that are based on it and all treaties that are in accord with it . . . will be the Supreme Law of the Union."

[25] NAALC, Article 3(1).

Article 71—"In order to create a union, it is necessary that twenty or more workers form it and that within the entity there is no other group of workers that has a greater number of members."[26]

Article 72—"The Federal Conciliation and Arbitration Tribunal, upon receiving the [union] registration request, will verify by the means it deems most practical and effective that there is no other union association within the entity in question and that the petitioner has the majority of the workers in the unit in order to proceed, if merited, with the registration."

Article 73—"The registration of a union will be canceled if the union dissolves or when a different union group with a majority of workers registers. A request to cancel the registration can be made by an interested person and the Tribunal, in cases of conflict between two organizations that vie for the majority, will order the corresponding recount."

Article 78—"Unions can join the Federation of Unions of Federal Employees, the only federation recognized by the state."

B) Constitution of Mexico:
Article 9—"The right to association or to hold meetings for any legal purpose cannot be curbed."

Article 123(B)(10)—"Workers will have the right to association to defend their common interests."

C) Convention 87 of the International Labor Organization (ILO):[27]
Article 2—"Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation."[28]

Article 4—"Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority."

Article 7—"The acquisition of legal personality by workers' and employers' organisations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of Articles 2, 3, and 4 hereof."

D) The International Covenant on Civil and Political Rights:[29]

[26] The issue for the purpose of the petition is not the number of workers required to form a union, but the legal prohibition on forming a second union.

[27] Mexico ratified the Convention on April 1, 1950, effectively making the Convention part of Mexican law. ILO conventions, when ratified by a member State, create binding obligations on the signatory. *See* Louis Henkin, *et al.*, *International Law Cases and Materials* (St. Paul: West Publishing, 1987), p.1403.

[28] Convention Concerning Freedom of Association and Protection of the Right to Organise (Convention 87), Article 2.

[29] The Covenant entered into force on March 23, 1976. Mexico ratified it on March 23, 1981.

Article 22—"Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests. Nothing in this article shall authorize States Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice the guarantees provided for in that Convention."[30]

E) The American Convention on Human Rights:[31]
Article 16—"Everyone has the right to associate freely for ideological, religious, political, labor, social, cultural, sports, or other purposes."[32]

F) The International Covenant on Economic, Social and Cultural Rights:[33]
Article 8 (1)—"The States Parties to the present Covenant undertake to ensure: (a) The right of everyone to form trade unions and join the trade union of his choice. . . ; (b) The right of trade unions to establish national federations or confederations. . . ; and (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law. . . ."

G) North American Agreement on Labor Cooperation
Article 3(1)—"Each Party shall promote compliance with and effectively enforce its labor law through appropriate government action."

Articles 5(4)—"Each Party shall ensure that tribunals that conduct or review [administrative, quasi-judicial, judicial and labor tribunal] proceedings are impartial and independent and do not have any substantial interest in the outcome of the matter."

VII. STATEMENT OF FACTS

A. The Court Processes

Freedom of association and due process violations during the FCAT's handling of the SUTSP matter involve four issues: 1) SUTSP's attempt to change its name to reflect a change of name and function of the Fishing Ministry; 2) registration of a pro-government replacement union; 3) cancellation of SUTSP's union registration; and 4) SUTSP's request to have newly elected leaders officially recognized.

[30] International Covenant on Civil and Political Rights, Article 22(1) and (3).

[31] The Convention entered into force on July 18, 1978. Mexico ratified it March 24, 1981.

[32] American Convention on Human Rights, Article 16(1).

[33] The Covenant entered into force on January 3, 1976. Mexico ratified it on March 23, 1981, but issued a reservation to Article 8, indicating that it would be applied within the form and procedures established in the Mexican Constitution and related laws. [See Comisión Nacional de Derechos Humanos, *Las Reservas Formuladas por México a Instrumentos Internacionales Sobre Derechos Humanos* (México, D.F.: Comisión Nacional de Derechos Humanos, January 1996), p. 55.] Therefore, Mexico is in violation of this right with respect to the actions of the FCAT but not regarding the Law of Federal Employees' restriction on the number of unions and federations that can be established in the federal workers' sector.

On December 28, 1994, an amendment to Mexico's Organic Law of Federal Public Administration (Ley Orgánica de la Administración Pública Federal) reorganized the structure of Mexico's federal ministries, creating the Ministry of the Environment, Natural Resources and Fishing (Secretaría del Medio Ambiente, Recursos Naturales y Pesca, SEMARNAP), into which the work, personnel, and resources of the Fishing Ministry were subsumed. Parts of the Ministry of Agriculture and Water Resources and the Ministry of Development were included in the restructured SEMARNAP.[34] The petitioners do not allege that the ministerial reorganization was designed with the goal of eliminating SUTSP.

On January 12, 1995, SUTSP sought before the FCAT to change its name to reflect the name of the transformed ministry. The FCAT denied the request, arguing that the old ministry had disappeared completely and therefore that its union no longer existed.[35] SUTSP was given no opportunity to be heard prior to this ruling. SUTSP appealed twice but lost both times. The second appeal was lost before the Collegiate Labor Court, so the ruling is final.

Unlike Mexican labor laws analyzed in other USNAO submissions, the Law of Federal Employees does not permit two unions to exist in the same government entity.[36] At issue, then, is not just the right to certain benefits accorded to the largest union, such as collective bargaining rights, but also the right to obtain legal recognition. The International Labour Office has expressly rejected the inability of unions to obtain legal status as a violation of Mexico's freedom of association obligations.[37]

On January 27, just days after the Collegiate Labor Court's ruling refusing to change SUTSP's name to reflect the ministerial change, the Federation of Unions of Federal Workers (Federación de Sindicatos de Trabajadores al Servicio del Estado, FSTSE) called for a national congress of SEMARNAP's employees to elect the leaders of a new union, to be called the National Union of Workers of the Ministry of the Environment, Natural Resources and Fishing.[38] FSTSE has been established by law as a union monopoly, and its Plan of Action, published with its statutes, proclaims its support for the ruling PRI. This creates a direct conflict of interest in the SUTSP matter.

[34] The Ministry of Agriculture and Water Resources spun off the National Water and Forest Commission into SEMARNAP. The Ministry of Agriculture and Water Resources became the Ministry of Agriculture, Livestock and Rural Development. According to an accounting by the FSTSE, the new ministry received more than 20,000 workers from the Ministry of Agriculture and Water Resources, 3,000 from the Ministry of Development, and 2,300 from the Fishing Ministry (Andrea Becerril, "Aclara la FSTSE: no hay mala fe con los sindicalizados de Pesca," *La Jornada*, February 2, 1995, p. 17.) Estimates placed the total number of employees in SEMARNAP between 25,000 and 34,000 people.

[35] Tribunal Federal de Conciliación y Arbitraje, Case No. R.S. 15/77, January 25, 1995. The FCAT ruled, "In the present case we are not dealing with a simple name change, but with the creation of a new ministry of State. This circumstance leads to the conclusion that changing the name of the Fishing Ministry union in the way requested is not founded."

[36] In the private sector system, more than one union can exist in the same business, but only the one with the greatest representation would have collective bargaining rights.

[37] For a full discussion of this issue, see "Decision of the International Labour Office," within the "Statement of Facts" section of this petition.

[38] Federación de Sindicatos de Trabajadores al Servicio del Estado, "Convocatoria para la celebración del congreso nacional constitutivo del Sindicato Mexicano de Trabajadores de la Secretaría de Medio Ambiente, Recursos Naturales y Pesca," *La Jornada*, 1995.

Before the congress was held, SUTSP and the replacement union held talks to see if they could amicably resolve their conflict.[39] SUTSP insisted on five points: 1) that the new union's structures be developed by workers from all unions entering SEMARNAP from other ministries; 2) that the union's internal by-laws be developed in consultation with rank and file members; 3) that the union's national and state executive committees be elected by direct and secret ballot; 4) that the new union's membership be open to all workers from all of the ministries that were combined to form SEMARNAP; and 5) that the new union negotiate with authorities on working conditions.

While talks progressed, replacement union representatives offered SUTSP three spots on the new executive committee, which had not yet been elected.[40] This proposal was rejected by SUTSP representatives. The offer highlighted important differences between the two unions. The offer of executive committee positions prior to an election for those positions could only mean that the election outcome was predetermined; SUTSP is the only union of federal government employees that elects its leaders through direct and secret ballot. During a meeting with Human Rights Watch/Americas, Pedro Ojeda, FCAT president and the arbiter of the talks, confirmed that the offer had been made, explaining, "We have a long way to go in our democracy."[41]

The FSTSE-sponsored assembly was held on March 2 and 3, 1995.[42] Mario Santos Gómez, who holds an official FSTSE position, was elected secretary general.[43] On March 20, 1995, the FCAT officially registered the replacement union.[44] The FCAT carried out an investigation into the status of unionization at SEMARNAP, as per the Law of Federal Employees, which requires the FCAT to prove that "no other union association exists within the entity"

[39] Human Rights Watch/Americas interview with Arturo Lelevier Grijalva, member of the executive committee of SUTSP at the time of the meeting with FSTSE, Mexico City, August 30, 1995.

[40] Ibid., and Human Rights Watch/Americas interview with Pedro Ojeda, president of the FCAT, Mexico City, February 28, 1996.

[41] Human Rights Watch/Americas interview with Pedro Ojeda, Mexico City, February 28, 1996.

[42] In its annual human rights report, the United States Department of State inaccurately characterizes the SUTSP issue, including the origins of this congress. The State Department report states that the FCAT ruled in January 1995 that FSTSE should apply its statutes and hold an election for a new union. If true, this point might bolster the impression that the FCAT simply acted according to the law and that the FSTSE was merely acting in support of court mandates. In fact, the FCAT's ruling never mentioned that the FSTSE should get involved in forming a union at SEMARNAP. FSTSE's involvement in the formation of the replacement union merely underscores this petition's contention that the conflict of interest inherent in the FCAT system has compromised the FCAT's fairness in the SUTSP matter. This is the case because the pro-government FSTSE formed a new union then asked the FCAT, to which the FSTSE appoints half the magistrates, to recognize its legitimacy and thereby pave the way for the elimination of SUTSP. The State Department also reported that an election would be held between SUTSP and the replacement union to determine which would represent SEMARNAP's workers. This point, too, might give the impression that a democratic solution was in the making for the union conflict. In fact, such a vote was never scheduled or held. United States Department of State, *Country Reports on Human Rights Practices for 1995* (Washington, D.C.: U.S. Government Printing Office, April 1996), p. 475.

[43] Santos Gómez is the FSTSE delegate to the Workers' Institute of Social Security and Services (Instituto de Seguridad y Servicios Sociales de los Trabajadores, ISSST), a government social security agency. Prior to his election as secretary general of the replacement union, he was head of the union of the Ministry of Agriculture and Water Resources, part of which was spun off into SEMARNAP after December 28, 1994.

[44] Tribunal Federal de Conciliación y Arbitraje, File No. R.S. 3/95, March 20, 1995.

prior to registering a union.[45] The FCAT did not consider SUTSP a union, so it registered the replacement union, even though SUTSP still had a valid union registration.[46]

[45] Ley de Trabajadores al Servicio al Estado, Article 72(4).

[46] Tribunal Federal de Conciliación y Arbitraje, File No. R.S. 3/95, March 20, 1995.

On April 18, 1995, SUTSP challenged the FCAT's decision to register the replacement union, raising due process and freedom of association objections. The first appeal was denied, but, on March 29, 1996, the Second Collegiate Labor Court ruled favorably on a second SUTSP appeal.[47] It ordered the FCAT to cancel the replacement union's registration, finding the FCAT at fault for not giving SUTSP a hearing.[48] The Second Collegiate Labor Court decision had the effect of returning to the FCAT responsibility for making the decision about whether or not to register the replacement union, but to do so after hearing SUTSP's position on the matter.[49] On May 15, 1996, following the higher court's order, the FCAT canceled the replacement union's registration.[50] The FCAT's decision on whether or not to re-register the replacement union is pending.[51] Even though the registration was canceled because of the FCAT's earlier due process violation, the replacement union has continued to work with the benefits of registration, allegedly because SEMARNAP has permitted it to do so even after it lost its registration.

Since March 1995, the replacement union has operated with the benefits of official union registration.[52] The existence of two unions with registration in SEMARNAP created a legal anomaly, since the Law of Federal Employees establishes that only one union can exist in any one federal government entity. SEMARNAP acted to remedy this situation. Soon after the replacement union was registered, SEMARNAP wrote to the FCAT that two unions were registered in SEMARNAP and that such a situation "violated the principle of exclusivity of union representation" contained in the Law of Federal Employees.[53] The replacement union then sought de-registration of SUTSP. Its June 22, 1995, de-registration brief argued that neither the Fishing Ministry nor SUTSP continued to exist and that Article 73 of the Law of Federal Employees allows registration to be canceled if a union disappears.[54]

On June 27, 1995, the FCAT accordingly canceled SUTSP's registration.[55] On July 25, SUTSP challenged the FCAT's decision for violating due process guarantees by canceling its registration without a hearing. SUTSP argued further that, by determining that SUTSP had "disappeared," the FCAT had violated requirements established in the Law of Federal Employees regarding grounds on which registration can be canceled.

[47] SUTSP had urged that the Supreme Court of Mexico to hear this case, but the Supreme Court did not do so. Instead, it gave the issue to the Second Collegiate Labor Court to hear, which resulted in this decision.

[48] Segundo Tribunal Colegiado del Primer Circuito en Materia de Trabajo, File No. RT-472/95, March 29, 1996.

[49] The FCAT gave SUTSP ten days to present to it any information that was pertinent to whether or not the replacement union should be registered. SUTSP did so, arguing in part that FSTSE was not entitled to organize the union.

[50] Tribunal Federal de Conciliación y Arbitraje, File No. R.S. 3/95, May 15, 1996.

[51] On June 4, 1996, the FCAT gave the replacement union ten days in which to make its case on why its registration should be returned. Tribunal Federal de Conciliación y Arbitraje, File No. R.S. 3/95, June 4, 1996.

[52] In fact, even after losing its registration, the replacement union has been permitted by SEMARNAP to carry out official union activities.

[53] Letter from Martín Díaz y Díaz to the Federal Conciliation and Arbitration Tribunal, April 17, 1995.

[54] Sindicato Nacional de Trabajadores de la Secretaría de Medio Ambiente, Recursos Naturales y Pesca, brief submitted to the Federal Conciliation and Arbitration Board, June 22, 1995.

[55] Tribunal Federal de Conciliación y Arbitraje, Case No. R.S. 15/77, June 29, 1995.

On January 12, 1996, the Seventh Collegiate Labor Court of the First District ruled that the FCAT had erred in canceling SUTSP's registration without a hearing.[56] As a result of the ruling, SUTSP regained its registration. On January 22, the FCAT reversed its de-registration decision and gave the union five work days to present information on whether its registration should be canceled.[57] On June 4, 1996, the FCAT gave the replacement union three days to present their position on the matter.[58] The FCAT's final decision on whether to leave SUTSP with its registration is pending. While the FCAT reconsiders this new information, SUTSP has its registration but has been unable to exercise its right to free association or right to organize, because the FCAT was slow in notifying SEMARNAP of the re-registration and then arbitrarily limited the kinds of work the union's leaders could do, as described below.

Based on re-registration, SUTSP petitioned the FCAT on January 25, 1996, to recognize the union's executive committee that had been elected June 30, 1995. Official recognition gives the leadership legal standing to represent the union's members and to receive time off to organize members, among other benefits. An earlier request for leadership recognition had been denied on the grounds that the union was not registered. In light of the court-ordered re-registration, the FCAT recognized the new leadership on March 11, 1996, one and a half months later. Without legal authority, however, the FCAT arbitrarily limited the nature of its recognition. The FCAT established that the recognition was valid only "for the effects of representing and defending the workers of the Union in the conflict promoted by the National Union of Workers of the Ministry of the Environment, Natural Resources and Fishing."[59] In other words, the leaders could not engage SEMARNAP on union business.

The FCAT president later denied that he had limited the leadership's recognition. The FCAT decision was issued, "without restricting the rights that the law gives to the complainant,"[60] he wrote in a court document. In fact, however, the March 11, 1996, limitation was completely consistent with a view expressed to Human Rights Watch/Americas by the FCAT's president during a meeting in Mexico City on February 28, 1996, prior to the ruling. The President, Pedro Ojeda, explained that the registration returned to the union on January 22, 1996, was effective only for the purposes of representing the union in court.[61] Regardless, SEMARNAP refused to deal with SUTSP's leadership after of the March 11 decision. As of the submission date of this petition, SUTSP members were still unable to exercise their freedom of association rights.

On April 1, 1996, SUTSP filed an appeal challenging the FCAT's limited recognition. The Second District Labor Court found for SUTSP on April 30, ruling that the FCAT had "unduly" restricted the SUTSP leadership's recognition "without there existing a legal or doctrinal basis that could justify" its doing so.[62] The replacement union appealed this decision to the Second Collegiate Labor Court, but lost in a June 6 or 7 decision, the result of which should be that the FCAT has to issue a clearly unrestricted recognition of SUTSP's leadership. As of the submission of this petition, SUTSP had not yet received official notification of the Collegiate Labor Court's decision.

B. Legal Relief Has Not Led to the Enjoyment of Rights by SUTSP

[56] Séptimo Tribunal Colegiado en Materia de Trabajo del Primer Circuito, File No. R.T. 767/95, January 12, 1996.

[57] Tribunal Federal de Conciliación y Arbitraje, Case No. R.S. 15/77, January 22, 1996.

[58] Tribunal Federal de Conciliación y Arbitraje, Case No. 1284/96, June 4, 1996.

[59] Tribunal Federal de Conciliación y Arbitraje, Case No. R.S. 15/17, March 11, 1996, p. 5.

[60] Tribunal Federal de Conciliación y Arbitraje, Informe Justificado, April 19, 1996.

[61] Human Rights Watch/Americas interview with Pedro Ojeda, Mexico City, February 27, 1996.

[62] Second District Labor Court, Pral. 252/96, April 30, 1996, p. 4.

While SUTSP won from the courts re-installation of its registration, unlimited recognition of its executive committee, and the right to hearings on its registration and the registration of the replacement union, SUTSP has been unable to exercise the rights that these rulings should have enabled. This is still the case. Each ruling has been followed by a new FCAT action limiting freedom of association:[63]

1) After reinstating SUTSP's registration, the FCAT failed to notify SEMARNAP for almost two months. During this time, the Ministry told SUTSP that no official relations could take place because, as far as the Ministry was concerned, the union no longer existed.[64] This state of affairs continued until sometime in March, when the FCAT notified SEMARNAP of SUTSP's re-registration.

2) Not until March 11, 1996, did the FCAT recognize SUTSP's leadership, a necessary step before SEMARNAP could engage with SUTSP's representatives on issues such as working conditions and to permit the leaders official time off to attend to union business, such as organizing current and potential members. The FCAT waited one and a half months to carry out a simple administrative procedure that would have enabled the union to conduct union business. But when the FCAT finally did recognize the leadership, it limited the recognition so as to preclude official dealings with SUTSP. In a May 22, 1996, statement, SEMARNAP said, "The Ministry is not in a position to recognize either of the union organizations," because the FCAT canceled the registration of the replacement union and "SUTSP has not received a response related to its request for recognition as the single workers' union of SEMARNAP."[65] It is unclear how long it will take the appeals court to process its decision and, once it does, how long the FCAT may take in issuing a corrected recognition.

C. Decision by the International Labour Office

On May 31, 1995, SUTSP filed a complaint with the Freedom of Association Committee of the International Labour Office (ILO), which exists to determine "whether any given legislation or practice complies with the principles of freedom of association and collective bargaining laid down in the relevant Conventions."[66] Mexico is bound by ILO Convention 87, regarding freedom of association. The Committee is the ILO's authoritative body responsible for interpreting compliance with the Convention.[67]

At its session in November 1995, the Committee found Mexico in violation of Convention 87 by restricting the types and number of trade unions permitted to organize, and added,

[63] The petitioners in no way mean to suggest that only one union -- SUTSP -- should be registered in SEMARNAP. This petition argues, in fact, that as many unions should be able to register as workers deem to be in their interest and fit reasonable criteria for becoming so. Rather, the petitioners take issue with the fact that the FCAT has acted to limit the rights of SUTSP members to associate freely and has refused to enforce appeals-level decisions that should have enable the unions' members to do so.

[64] Human Rights Watch/Americas interview with Pedro Ojeda, Mexico City, March 17, 1996.

[65] Secretaría de Medio Ambiente, Recursos Naturales y Pesca, press release, May 22, 1996.

[66] International Labour Office, *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO*, (Geneva: International Labour Office, 1996), p.8.

[67] International Labour Conference, 81st Session, Report III (Part 4B), *Freedom of Association and Collective Bargaining* (Geneva: International Labour Office, 1994), pp. 7-8.

> The Committee . . . stresses the need to eliminate as quickly as possible, all the legal and practical obstacles so that the complainant organization may acquire legal personality and carry out the trade union activities provided in Convention No. 87.[68]

The Committee of Experts linked the actions of the FCAT to the Law of Federal Employees itself: "Indeed, the Committee notes that the major problem lies in the fact that there cannot be more than one trade union within one department."[69] The ILO decision closely resembled prior ILO analyses of the Law of Federal Employees in Mexico. The law has previously been held to violate Convention 87 by the Committee of Experts on the Application of Conventions and Recommendations.[70]

The Committee of Experts has clearly explained why the single-union system violates the principle of freedom of association and the right to organize:

> The difficulty arises where the legislation provides, directly or indirectly, that only one trade union may be established for a given category of workers. Although it was clearly not the purpose of the Convention [87] to make trade union diversity an obligation, it does at the very least require this diversity to remain possible in all cases. There is a fundamental difference between, on the one hand, a trade union monopoly established or maintained by law and, on the other hand, *voluntary* groupings of workers or unions which occur (without pressure from the public authorities, or due to the law) because they wish, for instance, to strengthen their bargaining position, coordinate their efforts to tackle ad hoc difficulties which affect all their organizations, etc. It is generally to the advantage of workers and employers to avoid proliferation of competing organizations, but trade union unity directly or indirectly imposed by law runs counter to the standards expressly laid in the Convention.[71]

The Committee has repeatedly rejected the Mexican government's justifications for maintaining the single-union system. The Committee rejected, for instance, the Mexican government's contention that, in fact, the Law of Federal Employees does not make it impossible for several trade union associations to exist in the same federal government entity. The government of Mexico has argued that all the law does is mandate the exclusive registration of the most representative union, implying that other minority groups can organize.[72] The ILO's Committee of Experts does not agree with this reasoning:

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[68] International Labour Office, Freedom of Association Committee, decision in Case No. 1844, November 1995, paragraph 244(B).

[69] Ibid., paragraph 238.

[70] See, for example, International Labour Conference, 76th Session, "Report of the Committee of Experts on the Application of Conventions and Recommendations," (Geneva: International Labour Office, 1989), p. 192; International Labour Conference, 78th Session, "Report of the Committee of Experts on the Application of Conventions and Recommendations," (Geneva: International Labour Office, 1991), p. 190; and International Labour Conference, 80th Session, "Report of the Committee of Experts on the Application of Conventions and Recommendations," (Geneva: International Labour Office, 1993), p. 211.

[71] International Labour Conference, *Freedom of Association and Collective Bargaining,* p. 42.

[72] International Labour Conference, 73rd Session, "Report of the Committee of Experts on the Application of Conventions and Recommendations," (Geneva: International Labour Office, 1987), p. 205.

> The Committee is bound to point out that, although the fact that the laws of a country grant certain exclusive rights to the organisation that is most representative is not in itself objectionable from the point of view of the application of the Convention, such privileges must not deprive the other organisations of the essential means of furthering the interest of their members.[73]

Without legal status, a union in Mexico would not have certain means of carrying out its union work, such as official time off for union leaders to organize their members. The ILO Committee of Experts has deemed that the situation suggested by the Mexican government would fail to meet the standards of Convention 87.[74]

The Mexican government has also argued before the ILO, with an equal lack of success, that legal restrictions on the number of unions that can exist strengthen the trade union movement, and that multiple views have play because anyone can be elected to leadership positions in existing unions.

D. Decision by the Supreme Court on an Analogous Issue

On May 21, 1996, the Supreme Court of Mexico ruled unconstitutional a law in the state of Jalisco that, like the Law of Federal Employees, limited the number of unions that could form in government entities.[75] The Supreme Court decision favors freedom of association and is in line with the arguments laid out in this petition regarding the federal system. In the analogous state labor system, the Supreme Court found that limiting the number of unions that could organize was unconstitutional. However, because the ruling dealt with state, not federal, workers, it will not have any direct impact on the SUTSP case or the FCAT system, unless this decision becomes the basis for a challenge of the federal law.

E. Other Concerns

SUTSP has expressed concern about a link possibly being made by the replacement union between affiliation with the replacement union and the receipt of government benefits. SUTSP has also raised concern about conditions for any election that might eventually be held between the two competing unions.

According to SUTSP, the replacement union is requiring its members to obtain a photo identification proclaiming their affiliation and is telling members that in order to obtain financial benefits due to them, such as loans and access to retirement funds, they will need their photo identification. This fraudulently links affiliation with the replacement union with the right to benefits. Hence, workers might wrongly view a union contest as a threat to their benefits. This has continued even after the replacement union lost its registration.

Moreover, SUTSP fears that at some point in the future the FCAT will call for an election to decide between the two unions, a procedure known as a "recount," or *recuento*. Union officials fear that the FCAT might call snap elections and that, since SUTSP has been unable to exercise its rights to free association for more than a year, while the replacement union has been able to organize freely even after loosing its registration, it would be at a disadvantage.

F. Harm Caused to SUTSP

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[73] International Labour Conference, 69th Session, "Report of the Committee of Experts on the Application of Conventions and Recommendations," (Geneva: International Labour Office, 1983), p. 139.

[74] International Labour Conference, 71st Session, "Report of the Committee of Experts on the Application of Conventions and Recommendations," (Geneva: International Labour Office, 1988), p. 167.

[75] Suprema Corte de Justicia, Amparo en Revisión 337/94, May 21, 1996.

SUTSP has lost needed dues, estimated at roughly 35,000 pesos a month,[76] and opportunities to organize. There is no way to calculate the extent of the harm caused to union members who have been deprived of their democratically elected leadership.

Every day that the replacement union enjoys these benefits while SUTSP is prohibited from doing so, it will be more difficult for the SUTSP to reorganize. Even after the replacement union lost its registration, its leaders were permitted by SEMARNAP to carry out official union activities. According to SUTSP, this is the case because SEMARNAP has given replacement union officials a certain amount of time to attend to union work after the cancellation of their registration.

VIII. ARGUMENT

A. Overview

This petition establishes that the government of Mexico is in violation of two interrelated NAALC obligations: 1) to uphold its labor laws regarding freedom of association and 2) to ensure the fairness of its FCAT system. These NAALC violations can be elaborated as follows:

1) Mexico has violated the NAALC's requirement that it uphold its own labor laws on freedom of association and the right to organize. Violations occurred in the SUTSP case by arbitrarily dissolving SUTSP and then barring it from exercising its full rights when the union was re-registered.

While the NAO cannot be asked to function as a constitutional court regarding problems of compatibility of Mexican labor law and Mexico's constitution, it must be pointed out that Mexican labor laws are in contradiction regarding freedom of association. On the one hand, freedom of association is recognized in the Mexican Constitution and several international treaties Mexico has signed. On the other hand, the Law of Federal Employees restricts the number of unions that can exist in federal government entities and the number of federations to which they can belong. The NAALC cannot be used by Mexico to justify upholding labor laws that mandate restrictions on the fundamental labor rights that the NAALC is designed to protect.

2) Mexico has violated NAALC requirements that labor-related judicial processes be fair and independent. Bias flows from the conflict of interest inherent in the FCAT: the government and the pro-government union federation control who sits on the FCAT. The conflict of interest in this case consists of the fact that FSTSE—which proclaims its support for the PRI—organized a congress to elect a union to replace SUTSP, elected a FSTSE official to head the replacement union, and requested the FCAT to cancel SUTSP's union registration. This bias is consistent with analyses of the Mexican government's long-term control over the labor sector.

B. Violations of Freedom of Association and the Right to Organize

1. Arbitrary De-Registration and Refusal to Reinstate Full Rights

It was reasonable for SUTSP to assume that its petition for name change would be accepted in January 1995, since workers from the Fishing Ministry continued to perform the same jobs in the transformed SEMARNAP and the change in the law that created SEMARNAP referred to the *transfer* of the "human, financial and material resources" from the old ministry to the new ones.[77] Further, the Minister of Fishing, Julia Carabias, remained as minister of SEMARNAP; the new ministry was headquartered in the same building as the old one; and the new ministry continued to maintain official dealings with SUTSP, such as providing union dues and accepting SUTSP as the intermediary for union business, until the FCAT recognized the replacement union.

[76] Human Rights Watch/Americas interview with SUTSP executive committee, Mexico City, February 27, 1996.

[77] *Diario Oficial*, December 28, 1994, Transitory Article 6, p. 11.

In fact, the Second Collegiate Labor Court wrote on March 29, 1996, in ordering the FCAT to cancel the replacement union's registration, that SUTSP ". . . was indeed in the position to continue representing the interests of its members" even after the December 1994 reorganization that gave rise to SEMARNAP.[78]

At the time of the reorganization, SUTSP was a registered union with full legal right to represent its workers. At a minimum, then, it should have received a hearing before the FCAT regarding its de-registration and the registration of the replacement union. To do otherwise would be to eliminate the union administratively. This is, in fact, what the FCAT did, violating the union members' due process and freedom of association rights. Though this due process violation was corrected by higher courts, the freedom of association violation has never been corrected.

The union has been unable to represent its workers effectively since the replacement union was registered. The problem is not the registration of another union, *per se*, but rather the law's prohibition on multiple unions in any one government entity. Even after SUTSP's registration was reinstated, the single-union model impelled SEMARNAP's unwillingness to engage officially with SUTSP, provide union dues to it, or give its leaders official time off for union business such as organizing its members. At two key stages, the FCAT has reinforced this violation. First, the FCAT waited months to notify SEMARNAP of the re-registration of SUTSP. Second, the FCAT limited the court-ordered recognition so that the union could not exercise its full rights. SUTSP is still unable to exercise these rights, pending fulfillment of a recent appeals ruling that should lead the FCAT to recognize fully SUTSP's leadership.

Article 3(1) of the NAALC holds that each Party shall "promote compliance with and effectively enforce its labor law through appropriate government action."[79] The government has failed to ensure fully SUTSP's rights to freedom of association, guaranteed by Articles 9 and 123(B)(10) of the Constitution of Mexico; Article 2 of Convention 87 of the International Labour Office; Article 22 of the International Covenant on Civil and Political Rights; Article 16 of the American Convention on Human Rights; and Article 8 of the International Covenant on Economic, Social and Cultural Rights. Therefore, the government of Mexico is in violation of Article 3(1) of the NAALC.

2. Mexico's Failure to Revise Law to Meet International Standards

For decades, the government of Mexico has perpetrated another violation of freedom of association, one that effects every worker in the federal public sector, not just workers in SUTSP. Articles 68, 71, 72, and 73 of Mexico's Law of Federal Employees prohibit the establishment of more than one union in any government dependency. Article 68 states, "In each state entity there will only be one union," and Articles 71, 72, and 73 reinforce this stricture by making single-union contexts an explicit requirement of union registration. Article 78 of the Law of Federal Employees designates the FSTSE as the only recognized federation to which these unions can belong.

[78] Segundo Tribunal Colegiado del Primer Circuito en Materia de Trabajo, Case No. RT 472/95, March 29, 1996, p. 18.

[79] NAALC, Article 3(1).

Mexican labor law includes freedom of association obligations found in treaties by which Mexico is bound: the ILO's Convention 87; the International Covenant on Civil and Political Rights; and the American Convention on Human Rights.[80] Mexico's constitution gives the status of "Supreme Law of the Union" to treaties, making them part of domestic law.[81] The NAALC is considered a treaty in Mexico.[82]

The Law of Federal Employees mandates limitations on the right to freedom of association within the federal government workers' sector. Therefore, Mexico is in violation of Article 3(1) of the NAALC, which obligates the government to uphold its labor laws, including those regarding freedom of association.

Mexico might argue that the NAALC cannot be used to challenge existing labor law, only the enforcement of that law. However, if those labor laws constitute a violation of binding international law, the NAALC must be applicable to the laws themselves. The restrictions on freedom of association contained in the Law of Federal Employees in fact do violate binding international agreements. The ILO's Committee of Experts on the Application of Conventions and Recommendations has consistently found the Law of Federal Employees to be in violation of Convention 87. Union monopolies, asserts the ILO, deprive "the other organisations of the essential means of furthering the interest of their members."[83]

While the NAALC requires its signatories to "effectively enforce its labor law," under no circumstances can the Mexican government be permitted to uphold labor law that undermines freedom of association. To allow this would violate a guiding labor principle behind the NAALC[84] and give greater priority to laws that violate freedom of association than to laws that protect it. It would also violate Mexico's duty under international law to interpret treaties in good faith in the light of their object and purpose, which in this case clearly includes the protection of freedom of association.[85] Therefore, the NAALC cannot be used by Mexico to justify the fact that the Law of Federal Employees mandates restrictions on freedom of association.

The USNAO has the important opportunity to clarify that the labor rights principles undergirding the NAALC and the NAALC's obligation that the Parties promote freedom of association are stronger than a Party's ability to maintain laws that blatantly prohibit an entire class of people from exercising their free association rights.

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[80] The International Covenant on Economic, Social and Cultural Rights is not included in this list because Mexico reserved the relevant article of the Covenant. See footnote 29.

[81] See footnote 20.

[82] In Mexico the NAALC has the force of a treaty. This point was explained by Eduardo Ruiz Vega, director of legal affairs of the Mexican National Administrative Office, to workers of a Sony plant during ministerial-level consultations in August 1995. Referring to the NAALC, he explained, "This agreement is considered a Treaty by Mexico, because we do not differentiate between treaties and conventions." *See* Mexican Secretariat of Labor and Social Insurance, National Administrative Office of Mexico, "Ministerial Level Consultations," Public Document No. 940003, distributed by the Mexican NAO on February 16, 1996, p. 42.

[83] International Labour Conference, 81st Session, Report III (Part 4B)*, Freedom of Association and Collective Bargaining* (Geneva: International Labour Office, 1994), p. 42.

[84] The NAALC lists freedom of association as a "guiding labor principle:" the right of workers "exercised freely and without impediment to establish and join organizations of their own choosing to further and defend their interests." NAALC, Annex 1(1).

[85] The Vienna Convention on the Law of Treaties, Article 31, holds, "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."

C. Violations of Mexico's NAALC Obligation to Provide Impartial Labor Tribunals

Mexico's FCAT system is not impartial. Even if a complainant were to win an appeal of an FCAT decision, the decision would have to be implemented by the unfair FCAT. The conflict of interest inherent in the FCAT system, based on the relationship between FSTSE and the PRI and the FSTSE's role in naming half the magistrates to the FCAT, does not guarantee that the FCAT will be impartial. The FCAT's actions in the SUTSP case show that this potential conflict of interest actually exists.

This structural bias exists because none of the FCAT members can be considered independent of the PRI. Two of three magistrates in each of the Tribunal's three chambers are named by a pro-government body, and these two magistrates name the third and final member of the chamber. The federal government names one magistrate and, according to the law, the FSTSE names the other.[86] While in theory the FSTSE could name independent magistrates to the Tribunal, the FSTSE is, by its own admission, pro-PRI. FSTSE's Action Plan stipulates that members are to "maintain permanent activism within the PRI."[87] Further linking the PRI and FSTSE is a system of overlapping official positions. For example, at the time that SUTSP lost its registration, Carlos Jiménez Macías was both secretary general of FSTSE and a senator representing the PRI in Mexico's congress.

The results of this conflict of interest are clear in the SUTSP case. Mario Santos Gómez was elected to head the replacement union and signed the official letter from the replacement union to the FCAT asking that SUTSP's registration be canceled. Santos Gómez, however, is also a FSTSE official, the federation that names half the FCAT magistrates. Santos Gómez currently holds the position of FSTSE delegate to the Workers' Institute of Social Security and Services (Instituto de Seguridad y Servicios Sociales de los Trabajadores, ISSST), a government social security agency. If this were not conflict of interest enough, the FSTSE called for elections to designate the leadership of the replacement union and then the replacement union was registered by the FCAT. In fact, according to SUTSP, the minister of SEMARNAP and at least one FCAT magistrate attended the congress that elected the replacement union's leadership.

This overlapping conflict of interest may explain why the FCAT acted so persistently to restrict SUTSP's right to freedom of association and to organize.

It is a NAALC obligation to ensure that proceedings of "administrative, quasi-judicial, judicial and labor tribunals" are "impartial and independent and do not have any substantial interest in the outcome of the matter."[88] The FCAT cannot be considered disinterested in the outcome of matters before it. Therefore, the government of Mexico is in violation of Article 5(4) of the NAALC.

D. Pattern of Abuse

Taken together, the FCAT's repeated violations constitute a pattern of labor rights abuse as defined in Article 49 of the NAALC. In addition, SUTSP's de-registration falls into a broader pattern of arbitrary registration denials that stifle independent unions. The SUTSP case fits a pattern in Mexico in which the law the structure of union federations are used to the same ends.

1. Registration

[86] Ley Federal de los Trabajadores al Servicio del Estado, Article 118.

[87] Federación de Sindicatos de Trabajadores al Servicio del Estado, "Declaración de Principios," in *Documentos Básicos*, July 1993, p. 16.

[88] NAALC, Article 5(4).

Registration is the key administrative step in official union recognition. While supposedly a simple administrative act,[89] it has become a crucial component in Mexico's restrictions on independent union formation. The FCAT is the entity responsible for registering federal workers' unions.[90] Its magistrates may be strongly biased by the institutional entities that appoint them, the FSTSE and the government, which are allied with or made up of supporters of the ruling PRI. SUTSP ran into just such a problem.

The USNAO has recently completely a detailed study of Mexico's private sector registration system, finding, "It is difficult for workers to register an independent union at the local level in Mexico."[91] The key registration-related factors identified by the USNAO as limiting freedom of association in the private sector are present as well in the public sector. In fact, they may even be stronger in the FCAT system, given that only two entities are responsible for naming the FCAT's three magistrates, while three parties name the magistrates of the public- sector tribunals. These factors include the composition of the FCAT and the role of pro-government union federations in restricting independent union activity.

2. Pattern of Use of Legal Measures and Union Structures to Limit Freedom of Association

For many years, the International Labour Office has criticized Mexico's Law of Federal Employees as restrictive of freedom of association and in violation of ILO standards. Documents published by the ILO's Committee of Experts on the Application of Conventions and Recommendations detail the ILO's analyses and Mexican government's refusal to correct the problems.

Noting the Mexican government's failure to provide information in response to ILO observations in 1985, for example, the Committee of Experts wrote:

> In these circumstances, the Committee can only express once more the hope that the Government will re-examine its legislation in the light of the principles of freedom of association and that it will communicate information on any measures taken or under consideration to bring the Federal Act on State Employees [Law of Federal Employees] into conformity with the Convention[92]

Ten years later, the Committee of Experts issued a substantially similar rebuke.[93] The Committee rests its criticism on the violation of Convention 87, which is binding on Mexico. The government's insistence upon maintaining the offending portions of the Law of Federal Employees constitutes a pattern of freedom of association violations.

Detailed academic analyses of Mexico's labor sector confirm that the difficulties faced by SUTSP flow from a system in which independent labor organization has been discouraged for decades. The Mexican government's control over organized labor has been critical to the ruling PRI's role in society and maintenance of political power. In a detailed study of the relationship between the Mexican state and Mexico's labor sector, Kevin Middlebrook described that government control and power:

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[89] Néstor de Buen L., *Derecho del Trabajo* (México: Porrúa, 1994), p. 746.

[90] Ley de Trabajadores al Servicio del Estado, Article 124(3).

[91] U.S. National Administrative Office, "Report on Ministerial Consultations on NAO Submission #940003 under the North American Agreement on Labor Cooperation," June 7, 1996, p. 9.

[92] International Labour Office, *Report of the Committee of Experts on the Application of Conventions and Recommendations* (Geneva: International Labour Office, 1985), p. 167.

[93] International Labour Office, *Report of the Committee of Experts on the Application of Conventions and Recommendations* (Geneva: International Labour Office, 1989), p. 180.

> As in most revolutionary situations, mass mobilization and structural transformation in Mexico gave rise to a new form of authoritarian rule as the revolutionary leadership strove to expand and centralize political power. Establishing effective political control over organized labor was a crucial step in this process. Over time, Mexico's governing political elite was able to impose legal restrictions on such centrally important forms of worker participation as union formation, internal union activities, and strikes. These restrictions—backed by the political elite's effective control over the means of coercion and state officials' willingness to use force when necessary to achieve their objectives—established the de jure and de facto parameters of labor action.[94]

Legal restrictions and administrative practices both play important roles in this scheme. Fernando Franco González Salas, labor lawyer and former president of the Federal Conciliation and Arbitration Board, which deals with federal-level private sector issues, observes:

> Labor law in Mexico was born spontaneously in response to working-class demands for social justice, but it automatically became linked to the political regime arising from the Mexican Revolution. Like the structure of the organized labor movement itself, labor law is conditioned by a system whose central characteristic is continued domination by the governing coalition.[95]

Another important component of the symbiotic relationship between unions and the government is the union-federation system, dominated by pro-government institutions. Middlebrook writes,

> The formation of the Congreso del Trabajo (Labor Congress, CT) in February 1966 culminated CTM and government efforts to unite the labor movement in a single organization closely identified with the Institutional Revolutionary Party. The CTM . . . the FSTSE, major national industrial unions, and numerous other labor organizations signed the "Pact of Definitive and Permanent Unity of the Working Class" leading to the creation of this new peak organization.[96]

During the late 1970s, when SUTSP formed independently of the government, the Labor Congress encompassed most of the organized labor movement, the largest single sector of which came from the FSTSE,[97] the federation representing workers in government ministries such as the Fishing Ministry.

The government of Mexico has justified the requirement that federal employees' unions can belong to only one federation—FSTSE—by submitting to the ILO's Committee of Experts on the Application of Conventions and Recommendations FSTSE's own logic on the issue. As paraphrased by the ILO, this argument holds, "the similarity in the interest of workers in the service of the State means that it is necessary to consider procedures and forms of organisation which are effective when bargaining with the employer." FSTSE pledges allegiance to the PRI, however, so the law in effect mandates that the similar interests of all federal employees include support for the ruling party.

IX. CONCLUSION

Throughout the long and detailed court battles in the SUTSP case, one thing has remained constant: SUTSP members have been unable to exercise their right to freedom of association. No matter how many justifications the government of Mexico may give for the state of affairs detailed in this petition, and regardless of how many hearings the government of Mexico can point to in this case, nothing can change the fact that Mexico has violated this right and, thereby, the NAALC's requirement that Parties to the agreement enforce their own labor laws.

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[94] Middlebrook, *The Paradox of Revolution,* pp. 288-298.

[95] J. Fernando Franco, "Labor Law and the Labor Movement in Mexico," in Kevin Middlebrook, ed., *Unions, Workers, and the State in Mexico* (San Diego: University of California, 1991), p. 119.

[96] Middlebrook, *The Paradox of Revolution,* pp.151.

[97] Ibid., pp. 151-152.

This petition not only details the freedom of association violations committed by the FCAT in handling the SUTSP case, it focuses on structural problems in the law and labor tribunals that also violate provisions of the NAALC: restrictions in the Law of Federal Employees on the number of unions that can form and the number of federations to which they can belong and conflict of interest in the FCAT system.

If the SUTSP case were an isolated issue, the petitioners would still be disturbed by the violations that have taken place. The case falls into a pattern, however, one in which the laws, labor tribunals, and pro-government union federations limit the rights of independent unions. Inhibiting or blocking the registration of independent unions is one part of the pattern. The ability for pro-government unions and union federations to limit independent competition is another component of the pattern. And here, the conflict of interest in the FCAT system becomes key. In the SUTSP case, the pro-government FSTSE that named half the members of the FCAT formed a union to replace the independent SUTSP and elected a FSTSE leader to head the replacement union. Then, the leader of the replacement union asked the FCAT to cancel the registration of the independent union, which the FCAT did. When the FCAT was ordered by higher courts to reinstate the rights of SUTSP, it acted arbitrarily to ensure that SUTSP members were not able to enjoy their rights.

Just as we cannot forget the consistency of the government's violation of the free association rights of SUTSP, neither can we overlook the fact that another union has been permitted to organize without competition while SUTSP has fought for its rights. The petitioners do not take issue with the rights of non-SUTSP workers to form unions in SEMARNAP, or for union members to proclaim affiliation with the PRI. Rather, the problem resides in the use of laws and labor adjudication structures to prohibit or inhibit independent union activity.

The petitioners have argued that in order for Mexico to come into compliance with the NAALC it will have to eliminate provisions of the Law of Federal Employees that limit to one the number of unions that can form in any government entity, and prescribes the one and only federation to which they can belong. The International Labour Office has repeatedly condemned these restrictions, but they remain on the books and continue to violate ILO Convention 87 and several other binding agreements related to freedom of association, all of which are considered Mexican law and must be viewed as labor rights obligations under the NAALC. The law prohibits federal government workers from associating freely. Though the NAALC holds Parties to enforce their labor law, the NAALC cannot be used to excuse this blatant violation of the right to free association, since Mexico is prohibited under international law from citing domestic legislation as a justification for failing to live up to its treaty obligations, such as the NAALC. Doing so would undermine the very principles upon which the NAALC is based.

With the goal of ensuring that Mexico fulfills its obligations under the NAALC, the petitioners urge the USNAO to examine the problems detailed here and engage the government of Mexico in processes designed to eliminate them.

X. RELIEF REQUESTED

The petitioners urge the USNAO to:

1) hold public hearings on this matter, preferably in Mexico City, to allow the greatest number of affected individuals to take part, including victims, expert witnesses, and petitioners. Such a meeting would have the benefit of providing access for the greatest number of participants and observers from within Mexico, which would, in and of itself, promote greater understanding of labor-law issues in Mexico.

2) take steps to ensure that SUTSP members are able to enjoy all rights to which they are entitled under Mexican law. The petitioners point out in this regard that SUTSP has been unable to enjoy the benefits of union registration even after winning a court victory that returned to the union its previously canceled registration.

3) engage the government of Mexico in a process of public evaluation of the problems documented in this petition, with the goal of developing an enforceable work plan to end abuses of the registration system. The process of evaluation and correction should be public, so that all concerned parties are able to evaluate the progress made. Input should be sought from such parties at reasonable intervals throughout the process.

4) engage the government of Mexico in a process designed to ensure the effective elimination of portions of the Law of Federal Employees that violate the right to freedom of association, including derogation of limitations on the number of unions that can form in a single federal government entity. Without elimination of these provisions of the law, Mexico will remain in violation of the NAALC.

5) initiate steps to compel Mexico to meet its treaty obligations under the NAALC to eliminate the conflict of interest inherent in the FCAT system. The conflict of interest undermines due process guarantees. It creates a situation in which such guarantees are in doubt. However, the SUTSP case highlights that the conflict of interest is not only a possibility. In this case, an official of the union federation that names half the magistrates on the FCAT requested that the FCAT act to the benefit of the union of which the federation official is secretary general.

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