

**Of Labor Tragedy and Legal Farce:  
The Han Young Factory Struggle in Tijuana, Mexico**

Heather L. Williams  
Assistant Professor, Pomona College  
[hwilliams@pomona.edu](mailto:hwilliams@pomona.edu)

Paper prepared for the conference “Human Rights and Globalization: When Transnational Civil Society Networks Hit the Ground,” University of California, Santa Cruz, December 1-2, 2000

## **The Han Young Case: Exploring Fear and Organizing on the U.S.-Mexico Border**

A conflict that attracted the attention of many labor rights observers in the Americas in the years 1997 through the summer of 2000 was the struggle to establish an independent, democratic labor union at the Han Young welding factory in Tijuana, Mexico. In retrospect, it was one of the most important tests to date of labor law and institutions across the U.S.-Mexico border. Though a case involving only about one hundred workers at a minor subcontracting firm making truck chassis for the Hyundai corporation, it established a damning public account of collusion among state officials and corrupt unions, consistent failure on the part of the government to enforce labor and workplace law, and unconscionable behavior on the part of contractors doing business with prominent global firms. Drawing international press, the Han Young factory conflict eventually drew in national labor unions, a multinational corporation, state governments, U.S. and Mexican Congress, powerful private sector lobbies, Mexican district courts, labor secretariats, national and regional media in Mexico and the U.S., and eventually President Zedillo and President Clinton. Despite the high visibility of the case, public statements of both presidents calling for basic labor law to be enforced, as well as the tenacity of the workers= movement itself, the Han Young struggle ended in almost total defeat. After nearly two years of conflict, the case ended with all the insurgent workers fired, the factory relocated, and numerous court and government agency decision in favor of the workers flatly unenforced.

In this paper, I examine this case a means of interrogating conclusions I have drawn thus far on cross-border labor rights mobilization on the Mexico-U.S. border. Specifically, this case helps us understand what impact a growing set of high-visibility cross-border labor conflicts may

have on the organizing environment in new industrial areas in Mexico, as well as on the reach of domestic and binational judicial authorities.

Activists have pursued these cases in hopes of extending and further defining the power of national and treaty law. Cases such as the Han Young struggle indicate on the one hand an increasing capacity of activist networks to speak about conflicts in more uniform terms than they did even a decade ago. This departs from an older phenomenon in which groups in the North and South working on a single case used quite different narratives for talking about problems on the U.S.-Mexican border. In addition, the Han Young case also indicates the ability of activists to mobilize action across vast spaces even as cases become highly complex. On the other hand, however, the Han Young case suggests that as conflicts become more complex and drawn out, transnational activists' real influence may decrease as redress of particular demands requires increasingly complex and surgical interventions to resolve problems. When conflicts implicate internecine power struggles among government actors, solving problems requires confrontations not only over social demands, but also over implementation of agreements when they are reached.

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Three years ago, when I was conducting a study of cross-border labor rights mobilization on the U.S.-Mexico border, the first public skirmish at the Han Young factory had occurred in the form of a several-hour wildcat strike. In two works that emerged from that study, I outlined networks= strategies for pressing labor demands in an authoritarian environment in that study, and made tentative arguments about some of the factors determining outcomes of approximately three dozen cases in which activists took up demands with government officials and/or the

private sector.<sup>1</sup> Examining both case records and activists' own accounts of campaigns, I argued that activists appeared more likely to win demands and keep coercion at bay when actors on both sides of the border achieved moderate or high degrees of collaboration. That is to say, when cases unfolded primarily in Mexico *or* in the U.S., even intense protest and meticulously designed campaigns of corporate engagement yielded paltry results. On the other hand, when activists involved in campaigns carefully timed actions on both sides of the border over time-- mixing protest, information gathering, and public education with letter-writing, institutional petitions, and media involvement-- conflicts were far more likely to end with government investigations or plant-level improvements.

The Han Young struggle, which took place largely after I conducted my research, did *not* conform to this pattern that activists attested to and which I tried to document through an event analysis of 30 cases. This does not necessarily negate a previously observed trend, but I think it does invite explanation as an outlier, especially considering the small number of bi-national labor rights cases to date, and the rough nature of my initial comparison. In the Han Young conflict, levels of cross-border collaboration were very high, matched only by cases such as the Stepan Chemical campaign in 1991 in Matamoros.<sup>2</sup> Combining intense workplace and community

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<sup>1</sup> See Heather L. Williams, "Mobile Capital and Transborder Labor Rights Mobilization," *Politics and Society* 27 (1), March 1999 and "Lessons from the Labor Front: The Coalition for Justice in the Maquiladoras," UCSC Chicano/Latino Research Center Working Paper No. 31, July 2000.

<sup>2</sup> For accounts of this struggle, see "Stepan Chemical: The Poisoning of a Mexican Community," documentary by Mark Day, 1991, See also Ralph Armbruster, "Cross-National Labor Organizing Strategies," *Critical Sociology* 21(2), 1995.

mobilization, appeals to various tribunals, with media coverage, public hearings, and publicity in both Mexico and the U.S., workers and solidarity actors in the Han Young case catapulted this conflict into the international spotlight. Posed alternately by workers and their allies as a test of the labor side agreement to NAFTA and a struggle against corporate bullying, and decried by management and state government officials in Baja California as an onerous incursion of foreigners into Mexico's internal affairs, the case became a major bilateral issue by the fall of 1997. The case's notoriety, however, as well as activists' use of Aboomerang@ politics did not produce a victory.<sup>3</sup> In fact, the prominence of the case served in this instance to increase the numbers of repressive actor involved, as well as the breadth of tactics used against insurgent workers. After approximately two years of incessant action and mobilization, and clear legal victories in bilateral fora and Mexican courts, the factory had dismissed its workers, flouted fines assessed to it, and opened business with scabs in a new building a few miles away from its original site.

For the workers involved, the Han Young case is a tragedy. It is also something of a

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<sup>3</sup> Margaret Keck and Kathryn Sikkink describe the Aboomerang@ pattern of influence characteristic of transnational networks as such: ADomestic NGOs bypass their state and directly search out international allies to try to bring pressure on their states from outside.@ *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca, NY: Cornell University Press 1998), p. 12.

paradox. As I will argue, the paradoxical outcome of the cases suggests that our understanding of evolving forms of transnational contention may be contingent on identifying the connections among the various leverage strategies that Keck and Sikkink have identified in network-based, transnational issue-oriented politics. That is to say, I am convinced that the framework laid out in *Activists Beyond Borders* does provide a powerful analytic lens for labor rights activism. Namely, the description of activists= use of information, their practice of bypassing autocrats in target governments through institutional channels in other countries, and their means of pooling information and generating new resources through networks has been enormously productive in thinking about cross-border organizing in the labor field.

As pointed out by the book=s authors, the nature of advocacy across borders is anything but stable over time. AThe agility and fluidity of networked forms of organization,@ they write, Amake them particularly appropriate to historical periods characterized by rapid shifts in problem definition.@<sup>4</sup> Therefore, it stands to reason that observers would do well to analyze the source of changes in the scope and effectiveness of network-based organizing on any given issue. The Han Young case may help us to think about the implications of networks becoming more skilled and more agile over time. As I will argue, the outcome of the Han Young struggle had much to do with to the maturing nature of an issue network itself. Labor on the border became over time an issue increasingly defined by the people on the front lines of the struggle. In many ways, this was a marvelous achievement, and a testimony to years of exchange and learning. In this

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<sup>4</sup> *Activists Beyond Borders*, p. 200.

way, activists in issue networks have become able to publicize cases not only more rapidly and to larger audiences, but also in a manner more consistent with the concerns of insurgents rather than external audiences and activists outside the country where original conflict is occurring. However, there is also a downside to this harmonization. This very capacity will inevitably draw networks into more complex domestic politics in the country where the conflict is occurring. This may dampen the ability of networks to exercise power because their leverage is blunt and indirect, and resolution of demands may require much more deft internal maneuvering in domestic bureaucracies, courts, and labor arenas.

Before I expand on these ideas, let me summarize the case chronologically. In brief, my account illustrates several phenomena that are crucial to understanding labor activism on the U.S-Mexico border. The first is the maturation of networks across borders. Here, I illustrate the ability of activists to disseminate information across borders in a narrative more consistent with a long-running grass-roots struggle for democracy and governmental accountability inside Mexico. The second is the making of a precedent. With the case framed as historic, a wide variety of political and institutional actors became involved. Many had few stakes in the case itself, but did have some interest in shaping the manner in which the case was handled. As a case that stood to establish a binational precedent, the outcome of the case would establish the reach of both activists and the legal fora they used for pressing their demands. Finally, I discuss the implications of complex narratives for transborder networks. On the one hand, network members were capable of mobilizing effectively over time despite an increasingly labyrinthine set of

grievances involving not only corporate abuses, but also government actors and unscrupulous police and private associations. On the other hand, due to unclear jurisdictions and repeated instances in which activists won rulings but faced resistance on the part of government authorities to enforce the law, the leverage exercised by groups in the Han Young case was fairly weak. As the case became bogged down in extended conflict, media coverage declined, and activists exhausted nearly every possible fora for arbitration available to them.

## **The Han Young struggle and maturing solidarity networks across the U.S.-Mexico border**

The incident that began the struggle for an independent union for a few dozen welders in Tijuana, Baja California was an unremarkable incident. It was just another complaint—not terribly different or worse than many among the tens of thousands of workers in assembly plants along the border. Ermentario, a worker for the Han Young factory was nursing numerous burns and lacerations on his arms. They were injuries from the welding machinery at the factory, he told people at a new workers' center installed in a squatters' *colonia* east of the city. He wanted to quit, he said, before he got hurt worse. The equipment wasn't safe, and other workers had been injured. The cranes in the plant were faulty—often dumping their loads all of a sudden in areas where workers were operating; speedups in the last couple of years, too, had made workers less able to attend to safety. Worse still, he related, a friend of his who had quit the factory recently had not received the severance pay he was due under the law. Instead of the mandated 100 days' salary, he had received barely more than 10 days' pay—about \$70 U.S. What Ermentario needed at the time, he said, was help getting out of the factory with his severance pay.

Talking with Ermentario that day in late spring of 1997 was Mary Tong, a San-Diego-based organizer and the founder of the Support Committee for Maquiladora Workers. Tong was the veteran of several very significant campaigns in the Tijuana area, including the Emosa case, in which workers had gained standing in a U.S. federal court on counts of sexual harassment in a Mexican factory. At this point, Tong had been experimented with a number of different organizing strategies, including individual casework. At this point, Tong reported that she had

become convinced that handling grievances one by one had limited impact.<sup>5</sup> Thus, she shared her reservations with Ermentario about pursuing his case alone. Did others also fear for their safety, she asked, and might it be possible for Ermentario to organize others? While not committing that day to the project, Ermentario thought about it for a time, and then decided to go ahead and speak with his co-workers. Though communication outside the earshot of management was no easy feat, the word traveled fast. Within a few weeks, three organizers working on each of three lines, 118 workers were contacted. Clandestine meetings were arranged in houses, the office of a sympathetic lawyer, and even in the streets. On the second of June, 1997, workers arrived an hour ahead of schedule for work. At 8 a.m., workers refused to enter the factory. Citing health and safety problems, low wages and anomalies in seniority and job classification, workers remained at the factory gate, making it clear to management that they wanted a union and would call upon labor authorities to recognize one established on their own terms in accordance with Mexican labor law.

According to Tong, the workers who walked out intended to form a union. Unaware that a government-affiliated labor confederation, the CROC (Regional Confederation of Workers and Peasants), already held a union registration at the plant, many were surprised when a representative from that confederation arrived on the scene. Informing the workers that he headed their union local, he told workers that he would take their demands to the labor authorities.

Workers and activists loudly rejected the representative's offer. Most were familiar with

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<sup>5</sup> Author's interview, June 20, 1997, San Diego, California.

the widespread practice of *Aghost* unionism,<sup>10</sup> a practice whereby union confederations preemptively file registrations with labor authorities, and demand payment from factory owners as a guarantee against strikes or union activity. Indeed, the Han Young struggle early on reflected a confluence of workers= first-hand knowledge of corruption and racketeering, as well as activists= evolving knowledge of how repression worked in the factories. Workers not only knew that corrupt union officials arrived weekly at the plant to pick up payments. The same workers also dealt with corruption in the *colonias*, or irregular housing settlements, where officials often offered services or titles to land in exchange for political support. U.S.-based activists<sup>11</sup> in this case associated with the Support Committee for Maquiladora Workers-- had learned from numerous previous conflicts what to expect in such circumstances. For example, knowing that workers might face police or official union violence by walking out, activists arrived for the action beforehand. The walkout at the factory, for example, was filmed by 8 observers from the U.S. in red and black vests who had received 3 days= training from the Lawyers= Guild. Most workers at the factory had little or no experience of labor activism in Mexico. However, all were familiar with myriad forms of coercion on workplaces, and understood corruption as a routine phenomenon.

After several hours, workers and activists went to the Conciliation and Arbitration Board (known by its Spanish acronym, the JLCA), the government agency in charge of labor and employment affairs. Many were surprised when the local chief of the Board assented to their demand for a union election. The case soon assumed more predictable dimensions shortly thereafter, however, when Governor Hector Terán Terán railed that he would never allow an

independent union on his watch, and fired the head of the JLCA.<sup>6</sup> Han Young also dismissed twelve workers in the ensuing weeks on flimsy pretexts, but presumably for union organizing.

During weeks of standoff, workers and activists scrambled to lay the legal groundwork for an independent election. In great part, activists worked from experience from similar struggles in Tijuana and elsewhere. In this case, the closest reference for the Support Committee was a 1993 conflict at a plant called Plásticos de México, in which they had organized solidary backing for workers demanding an independent union at that plant. In that case, authorities consented to an election, although the insurgent workers= slate lost, largely due to threats of violence and election irregularities. Working in conjunction with the movement and the Support Committee were numerous other groups, all of whom had been involved in previous conflicts on the border and inland. In subsequent months, groups such as National Association of Democratic Lawyers in Mexico, United Electric, U.S. Steelworkers, the Maquiladora Health and Safety Network, and the International Labor Rights Fund would play crucial roles in backing the workers= struggle, donating money, organizing letter-writing campaigns, and filing petitions for hearings with the arbitrating institution created under the NAFTA labor side agreement, the National Administrative Office.

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<sup>6</sup> This is hearsay gathered from author=s interview with Mary Tong, June 1997.

Very shortly after the first worker action, activists called in the assistance of colleagues in the small but internationally prominent Authentic Labor Front, or FAT.<sup>7</sup> The FAT, which encompassed a number of grass-roots organizations representing workers, peasants, and cooperatives, offered not only experience and broad connections throughout Mexico, but also in the U.S., Canada, and Europe. The labor entity linked to the FAT which, at least in theory, had the legal means to offer workers an official registration was the STIMAHCS, a metal-workers= union headed by Benedicto Martinez, who resided in Mexico City.

Between legal pressure exercised by the STIMAHCS and its allies, and negative publicity generated through actions, authorities reversed their decision about the union elections once again and scheduled an election for October 6, 1997. The vote, widely watched by observers and reported in the New York Times, the San Diego Tribune, La Jornada, as well as local papers in Tijuana, appeared to settle the issue. Rejecting the claims of the government-backed CROC to rightful ownership of the contract, workers voted 2-to-1 (54-34) for the independent slate.

A cautious optimism over this victory gave way to new rounds of conflict, however.

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<sup>7</sup> The FAT, or Authentic Labor Front, represents a small number of workersBsomewhere in the tens of thousands. However, in prominent news outlets, such as the New York Times or the Associated Press, the FAT is often featured as prominently as the PRI-backed CTM, with over a million workers. This has partly to do with the FAT=s conscious strategy of building alliances abroad. It has an official alliance with United Electrical workers and has collaborated with U.S. and Canadian unions in numerous cases. In addition, its links with the RMALC, or the Mexican Action Network on Free Trade, brought it to prominence in the early 1990s as perhaps the only labor voice opposing free trade on the Mexican side of the border. This stance also brought it into contact with many prominent U.S. and Canadian laborites, who in turn viewed the FAT as a major union presence. The FAT also has close ties to the Mexico-based National Association of Democratic Lawyers, who include prominent social critics who are often called by international press for statements about issues of democratization and labor justice.

Despite a dozens of witnesses present at the voice-vote, labor authorities delayed in making the results official. Little more than a month after the ballots were tallied, state labor authorities with the Conciliation and Arbitration Board (or the JLCA, as it is known in Mexico), issued a bizarre ruling. Refusing to certify the election, the board stated that STIMAHCS union lacked the legal facilities to represent workers<sup>8</sup> and abruptly awarded title of the factory union registration to Jose Maria Larroque, an official with the CROC.<sup>9</sup>

The ruling precipitated a standoff that spilled over borders. First, organizers had staked much on the election victory. Publicizing the Han Young collective as the only independent union registered among Mexico's 3,000 or so partial assembly plants (maquiladoras), organizers and onlookers declared that this victory constituted a turning point in labor power on the border. To approve this union would be to open the doors to the unionization of all the maquiladoras...It would be historic,@ declared Enrique Hernandez, a community organizer collaborating with the workers, to the press.<sup>10</sup> Second, the movement was extraordinarily tough-skinned, and appeared to have the resources to withstand an extended battle. Despite ten further dismissals, police threats, strikebreakers, and even thugs brought in as extra votes in the October 6<sup>th</sup> election, unity among workers did broken down.

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<sup>8</sup> ATijuana Workers= Election Nullified,@ *San Diego Union Tribune* 12 November 1997.

<sup>9</sup> Jorge Alberto Cornejo, AComienzan ayuno cuatro empleados de una maquiladora coreana en Tijuana,@ *La Jornada*, 21 November 1997.

<sup>10</sup> Anne-Marie O=Connor, ATijuana Union Fight Highlights NAFTA Fears,@ *Los Angeles Times*, 7 November 1997.

On the opposite side, labor officials and representatives of the private sector staked much on the suppression of the movement, denouncing the conflict as the work of foreign subversives. This is an attempt by the United States labor movement to destabilize Mexico's maquiladora industry, said one consultant to Tijuana business sector.<sup>11</sup> Insisting that the Han Young affair distorted industrial affairs on the border, the Tijuana head of the national Chamber of Manufacturing Industry railed against the strikers. There are no labor problems in the maquiladora industry in Tijuana, he maintained. The reason Tijuana has developed its industry so much in recent years is because labor relations are superb, much better than the rest of the country.<sup>12</sup> As the labor conflict became more and more visible, the Mexican Secretary of Labor, Javier Bonilla, began attacking the Han Young workers in a guarded, but very calculated manner. Notably, in a meeting with reformist workers attempting to form a more autonomous central union, who had made demands on behalf of the Han Young workers, he attempted to establish the same point. The case is in the courts, he said, But what is worrisome is the link with foreigners, because I think that...a game is being played with something that does not correspond to the interests of Mexico.<sup>13</sup> Weeks later, in a positively postmodern moment, the attorney for the South Korea-based Han Young plant would justify his company's unrelenting stand on the conflict by saying that the dispute had been stirred up by non-governmental organizations from

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<sup>11</sup> Sam Dillon, "Union Vote in Mexico Illustrates Abuses," *New York Times*, 13 October 1997, p. A8.

<sup>12</sup> "Tijuana Union Fight Highlights NAFTA Fears."

<sup>13</sup> Jesusa Cervantes, "Bonilla, contra el ingreso de la UNT a pactos y comisión de salarios"

abroad, trying to put pressure on the Mexican government.<sup>14</sup>

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mínimos, @ La Jornada, 16 December 1997.

<sup>14</sup> Campaign for Labor Rights, A Report on February 18 NAO Meeting, @ 20 February 1998.

Meanwhile, the case had a meaning of its own among observers in Mexico City and in Washington. For activists long involved in the struggle for union democracy, the case was important insofar as it was *typical* rather than extraordinary. In this sense, it served as another example of how many of them believed that liberalized trade would widen inequalities and slow real political opening. "The country has changed at the electoral level, but at the workplace, authoritarianism remains a fact of daily life," commented Arturo Alcalde, a Mexico City lawyer with a long history of activity on campaigns throughout the country.<sup>15</sup> Alcalde's remark was echoed by Oregon Representative Peter DeFazio, a longtime critic of the NAFTA project, who said of the labor board's ruling, "This exposes the labor guarantees for the fraud they always were."<sup>16</sup>

For still others, particularly in Washington, D.C., there was increasing incentive to make this into a special case, an extraordinary crisis that received appropriate attention. Notably, for example, the same week the U.S. Congress voted on the issue of extending "fast-track" negotiating authority to President Clinton on a free trade pact for the Americas, Vice President Al Gore took up the Han Young issue in meetings with President Ernesto Zedillo. Responding to complaints from Minority Leader Richard Gephardt of Missouri and Minority Whip David Bonior of Michigan, Gore let it be known that issue had been raised by prominent members of the U.S. Congress and urged President Zedillo to look into the matter. As Harley Shaiken, a

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<sup>15</sup> "A Union Vote in Mexico Illustrates Abuses."

<sup>16</sup> "A Tijuana Union Fight Highlights NAFTA Fears."

prominent labor scholar and voice on labor matters noted of the conflict as it gained prominence, AWhat happens at Han Young is not simply a statement about whether or not NAFTA is working. It will be an issue in any new fast track the President proposes.<sup>17</sup>

Thus, in the highly-charged atmosphere that prevailed in the summer and fall of 1997, the Tijuana labor officials' ham-fisted ruling on the union election had not ended the struggle, but instead had propelled it into international prominence. Coming on the tail of numerous other instances of labor repression, and coinciding with a similar struggle at the Echlin factory in the interior of Mexico, the case captured media attention because it appeared to exemplify the claims of several sets of actors. Insofar as the case was like other union conflicts, it was important to workers as well as many onlookers in Mexico and the U.S. Conversely, insofar as the case was not yet settled, it represented an important test case for those who sought to maintain the status quo in industrial relations as the maquiladora industry boomed. Finally, it appeared to be an opening for those who sought to demonstrate the power of liberal trade with a soft side agreement to prompt the Mexican government to make real reforms in labor practices.

Seasoned by far more defeats than victories on issues of union democracy, a set of Mexican and U.S. groups took the issue before the arbitration board established by the North American Agreement on Labor Cooperation (the NAFTA side agreement), known as the National Administrative Office. Two Mexican plaintiffs and two American plaintiffs filed a petition for a

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<sup>17</sup> Elisabeth Malkin, AA Mexican Standoff Jolts Capitol Hill, @ *Business Week*, 8 June 1998, p. 36

hearing with the board, claiming that the Mexican government had failed to enforce its own labor laws regarding freedom of association and rights unionize. Some time later, activist groups added a second part to the petition charging health and safety violations.

In late November, with the case gaining coverage in Mexico and the U.S., and with four workers carrying on a hunger strike, clear fissures inside the Mexican state materialized. In the Han Young case, local and sectoral rather than central authorities linked to Zedillo were most resistant to any concessions. Interestingly, party affiliations played a part in creating a hard impasse. In the face of pressure from President Zedillo to resolve the case, PANista Governor Hector Terán appeared to be setting up the case as a test of his own prerogative in this border city. Meanwhile, local papers in Tijuana hinted at the concessions federal officials were making in order to soften corrupt local labor unions' positions. The veiled compromise that appeared to be reached among the various parties involved was to schedule a second union election, remove government support for the CROC, and arrange for a spontaneous worker movement in favor of a third union option. Instead of the CROC or the STIMAHCS slate, workers would then have the option of another official union, this time affiliated with the officialist Confederation of Mexican Workers (better known as the CTM). Key to such a diversion was allowing the Han Young to rebuild its ranks by bringing in new workers from out of state. According to the Committee for Labor Rights, when the federal government did intervene on December 16<sup>th</sup>, it was clear that they had already worked out a deal with Han Young management and the state government. One day before federal mediators arrived in Tijuana, the secretary general of the CROC in Mexico City flew in from Mexico City and met with the Baja governor to discuss the

Han Young situation. According to an article on the front pages of the Tijuana newspapers the next day, the CROC official was given 600 hectares of land. “The gift clearly was a payoff for agreeing to withdraw the CROC as the PRI union at Han Young so that another PRI union...could move in,” commented observers<sup>18</sup>

With reported bribes 1,000 pesos (a little over \$100, or about two and a half weeks= pay) being dispensed to workers before the elections, and yet more union supporters fired, officials were fairly certain that a controlled union slate would prevail. Of the new workers brought in from Veracruz, Han Young manager glowed, “They don’t make trouble. They work harder. They want to work overtime...they don’t care about the union. It’s all the same to them.”<sup>19</sup> Nonetheless, the independent slate still prevailed, albeit with drastically reduced numbers: 30 to 28 to 2.

Red-faced about the outcome, government officials said that they would certify the election results. In a yet a stranger turn of events, however, management officials mysteriously refused to show up for a contract signing ceremony. Rumors had it that state government officials, along with maquiladora industry officials, had met with the owner of the Han Young factory in the interim, informing him that if he negotiated with the independent union, they would shut his factory down and never let him run a factory again in the city.

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<sup>18</sup> Committee for Labor Rights communiqué, 12 January 1998.

<sup>19</sup> “Tijuana Union Fight Highlights NAFTA Fears.”

## **The Making of a Precedent**

It is possible to identify two sorts of actors in the case or any other of its type: those with an overriding interest in the direct outcome of the case, and those with an interest in controlling the manner in which the case is adjudicated in bilateral or domestic fora. Notably, while there is some overlap in these interests, these actors will operate somewhat independently of one another. In general, the former are smaller actors with less official power, whereas the latter have greater powers or broader scopes of authority. The former in this case would include worker insurgents and their network allies on the one hand, and the Han Young management and local officialist labor representatives who stood to lose the factory payoffs on the other. The latter would consist of NAALC labor authorities, actors in the White House and Los Pinos (the Mexican Presidential residence), state government authorities in Mexico, higher-ranking federal and state labor authorities, manufacturers= associations, and national labor representatives in the U.S. and Mexico. Of these latter actors, there are those who seek to make the recommendations of bi-national authorities appear binding (e.g. NAALC authorities and the White House), and those who seek to render the decisions of such institutions meaningless in the exercise of power in industrial arenas (e.g. state-level government authorities in Mexico and manufacturer=s associations).

Presumably, as the case appears to be one which set a visible precedent in judicial or diplomatic arenas, greater numbers of actors are likely to become involved, and mobilization targets may shift from one authority to another very rapidly. This phenomenon was evident at Han Young in the period spanning the fall of 1997 to the spring of 1998, when the disallowed

elections propelled the case into the spotlight and prompted a set of investigations on workers' demands. As the Han Young case moved in and out of different official arenas in Tijuana, San Diego, and Washington, D.C., activists were compelled to change their mobilization strategies and the way they presented the case and their goals to audiences. Roughly speaking, while the case was pending in diplomatic channels and especially in a quasi-judicial forum such as the National Administrative Office, the focus of activists remained predominantly on the failure of governmental actors to enforce the law. When the case proceeded beyond that with clear rulings but no clear enforcement, the narrative shifted back to local police, union bosses, the Han Young company, and the Hyundai corporation.

Ironically, the visibility of the case actually increased pressure on management to harden its stance against workers. Han Young, which manufactured chassis exclusively for Hyundai Precision America, held an immediate interest in the outcome of the case. However, the relative cost of settling such a dispute may well have been far lower than that incurred by a rigidly opposing recognition of an independent union. By firing dozens of welders—many of them skilled workers with years of experience—the company lost money through lost production. In addition, its better-known corporate patron, Hyundai, was even more eager to dispense with the case and the attendant bad publicity. Faced with the prospect of sidewalk pickets outside its dealerships and embarrassing press coverage (to add to its troubles on the heels of the 1997/98 East Asian financial crisis), Hyundai reportedly had pressured Han Young to improve its health and safety standards and to deal with workers' demands. However, the Han Young company itself was being squeezed on the other side, facing compound pressure by those with an immediate interest

in the case, and those who sought to make a clear precedent of this case in one way or another. Reportedly, at one point in December of 1997, the state Secretary of Commerce and COPARMEX (an association representing large business interests, and a clearinghouse for maquiladora pressure in Tijuana) met with the owner of Han Young and told him that if he negotiated with an independent union, they would shut his factory down and not allow him to operate in Tijuana.

This escalation of involved parties greatly complicated the factory conflict and blurred the lines of apparent control. At certain points, officials from Hyundai and Han Young were conciliatory, with state government officials remaining hostile. At other points, the roles would shift, with management officials carrying out repressive actions. For example, on December 13, 1997, workers won an agreement with Han Young and Hyundai to reinstate the fired workers and recognize the union. In this instance, the state government played the heavy, consenting at first then finally refusing to sign the agreement. Then within a month, the company had brought in additional replacement workers from Veracruz and had taken on a new human resources manager who harassed workers affiliated with the union. Though nominally an employee of the company, workers alleged that he was a well-known labor boss, and that he wore a CTM baseball cap to underscore his ties to the union. His presence, in fact, was a clear drama being played out by officialist union bosses to demonstrate that they were in fact even more powerful than private sector management. By this point, the number of different actors participating in repressive actions made for a very complicated case indeed, making it difficult for different actors to establish who was to blame.

This confusion made it difficult to establish a clear but thorough storyline for badly-needed publicity. After months of standoffs, the story became something like this: *the Mexican government was the problem, but certain parts* (circuit courts in May 1998, or the JLCA in June of 1997, health and safety inspectors in 1994-97 who had assessed fines to the company) *were apparently not as bad as others. In fact, some agencies and judges were good, but only at certain times, and then certain people got fired or intimidated, and then the same agencies couldn't be counted on* (the JLCA in September 1997). *In addition, the private sector was the problem, but certain parts were sometimes helpful, like Hyundai, which was a good corporation trying to pressure its subcontractors to do the right thing* (in December and January)<sup>20</sup>, *but sometimes it appeared to fall through on promises* (in February).

A crucial juncture for the movement that helped define the case as a struggle against unscrupulous governmental actors came in February 1998, when the National Administrative Office held its hearing on the Han Young case. The results of the investigation and the hearing, however, were not released in April and August of that year, by the end of which time the Han Young factory would have already moved its installations and fired the last of the insurgent workers. Ironically, the NAO report laid out damning verdicts on the government's behavior the

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<sup>20</sup> On January 8, 1998, for example, a crane accident occurred, nearly killing several workers. This backed workers' claims that machinery was faulty, and that the factory had failed to comply with earlier directives by government health and safety inspectors. In this instance, however, Hyundai took responsibility for repairing the cranes, and sent engineers into the Han Young factory to inspect the faulty cranes.

year before.<sup>21</sup> On issues of freedom of association, the April report found favoritism toward unions aligned with the PRI. Criticizing the labor board, it stated that the conciliation and arbitration boards have not been consistent and have not applied uniform criteria in adjudicating disputes between established unions aligned with the ruling political party, or PRI, and independent unions. Citing health and safety violations, the report noted despite eleven safety and health inspections since 1993, and despite \$9,400 levied in official fines for these violations, little had changed at the factory. There is no information as to whether the fines were actually

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<sup>21</sup>The reports on this case, NAO Submission No. 9702, were released at separate times because the petition against Han Young was submitted in two parts. Notably, the report dealt with two separate classes of offenses, only one of which (health and safety violations) could possibly have ended with trade sanctions. The first part dealt with freedom of association issues, and was filed by the Support Committee for Maquiladora Workers, the International Labor Rights Fund, the National Association of Democratic Lawyers, and the STIMAHCS union. The second part, an addendum to the case, addressed unsafe work conditions and was filed in February of 1998 by the Maquiladora Health and Safety Support Network, Worksafe! Southern California, the United Steelworkers of America, the United Auto Workers, and the Canadian Autoworkers.

collected or if the cases were otherwise disposed of,@ the report stated on this count.<sup>22</sup> Despite findings on this last count that technically empowered the U.S. Department of Labor to assess monetary sanctions on the Mexican government for failure to enforce its health and safety laws, the NAO recommended only ministerial consultations on the matter.<sup>23</sup>

Ironically, the NAFTA labor side agreement, which was supposed to have provided a real governmental incentive for all trading parties to curb or even prevent industry abuses, probably accelerated them in the Han Young case. In March, after the NAO hearing but before the release of the NAO=s official report on the case, Han Young=s management announced that it would close the factory and began firing the last of the insurgent workers remaining at the plant. Notably, even the replacement workers brought in from Veracruz had turned against the company, testifying in front of NAO officials that they had been brought to Tijuana with no understanding that they were to replace striking workers, and no understanding that the cost of their bus fare would be deducted from their pay. In addition, workers testified that they were compelled to remain at the factory because of a contract clause that stated that they had to work for at least a year at the factory or pay compensation at the rate of 200 percent for all the costs

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<sup>22</sup> U.S. Department of Labor, U.S. National Administrative Office Bureau of International Labor Affairs, *Public Report of Review of NAO Submission No. 9702*.

<sup>23</sup> Regarding sanctions, see Article 22 of the North American Agreement on Labor Cooperation.

incurred by the company.

### **The Deepening Struggle: Complex Narratives and Transborder Networks**

By May of 1998, the case had subsided somewhat as an issue at high levels, and had polarized the actors remaining in the struggle. Tensions over internal control of legal affairs in the movement had also shredded some important alliances inside the solidarity network.<sup>24</sup> With Han Young intent on closing the factory and local authorities in Tijuana digging in their heels against the insurgent workers, Mexican federal authorities had all but ceded control over the situation to actors in Tijuana. Few options remained for the workers = movement.<sup>25</sup>

In May, facing a shutdown of the factory, workers decided to try and salvage what they could through a final strike. In Tijuana, the workers faced direct resistance primarily from officialist labor bosses, who considered any such movement a dangerBinside or outside a working

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<sup>24</sup> In December and January, tensions between the STIMAHCS leaders from Mexico City and the workers in Tijuana produced a damaging permanent break between the two. This was particularly significant because it split the FAT and its backers from the Support Committee for Maquiladora Workers and its backers. This then stood to further fracture border organizing because the FAT and Support Committee had been key players in the Coalition for Justice in the Maquiladoras, which been an significant forum for generating support among religious, labor, and community groups in the U.S. and Canada.

<sup>25</sup> The will of the federal government to intervene in this case does appear to have varied over time. Whereas the federal government took steps in December of 1997 to intervene in the case, it later seemed to wash its hands of it. Then, it took a stance of defiance on the case altogether. When the NAO released the first part of its investigation in April, the Mexican government bristled at its conclusions, issuing a statement that the U.S. labor department was Asupporting the demands of one side in this dispute, stirring up emotions and generating hopes that go beyond the terms of the North American Free Trade Agreement.@

factory. Claiming provisions in Mexican labor law, which states that workers may declare a strike when a factory closes (thereby entitling them to sell the remaining industrial equipment for distribution *in lieu* of severance pay), workers began preparing to take over the factory, despite reported death threats by the CTM. On May 21, 1998, the night before workers had planned to strike, however, CTM thugs were bused into the factory in order to make it look as if the factory was still in operation, though none even knew how to operate the remaining equipment. On schedule, labor inspectors arrived, and in a farcical fashion, declared that workers' claims that the factory had been shut down were false. Then, the local labor board officiously declared that it had held a new strike vote among workers, and announced that workers had voted to have the CTM represent them. This vote, of course, approached the absurd. Even the numbers cited by the labor board were impossible. 116 worker votes that had been tallied would have been an impossibility; fewer than 70 workers were remaining on the Han Young payroll at the time.<sup>26</sup>

As in the events of the previous fall, the thuggish nature of local police and the labor authorities provoked some visible dissent inside the various parts of the Mexican government. The maneuver of the labor board in this instance was so ridiculous that it precipitated judicial action in Mexico on behalf of the workers' movement. An almost unheard-of intrusion of the judiciary into local labor matters. A federal court judge in Mexicali issued an injunction against the election. Ruling the strike legal, 15<sup>th</sup> Circuit Court Judge María Lourdes Villagómez Guillón ruled the strike legal, and ordered the labor board to respect the workers' strike. As workers tried

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<sup>26</sup> David Bacon, *A Maquiladora Mayhem*, @ *In These Times*, 12 July 1998, p. 5.

to occupy the Han Young building, local authorities in Tijuana balked. Policemen arrived at the factory and ousted the workers, declaring that the courts could try and enforce their injunction if they liked. Additionally, the police issued arrest warrants against one of the worker leaders and the union's attorney, and secured a restraining order against the workers, barring them from approaching the factory.

With the struggle having devolved into a slugging match of sorts, the Han Young case became an emblem of sheer lawlessness in the maquiladora sector. No longer did White House actors or Department of Labor officials seem to have much interest in the case. It would no longer serve under any circumstances as an example of bi-national labor cooperation, and the abuses committed throughout the case laid bare the toothless nature of the NAO process and the inability of diplomatic pressure to produce even minimal compliance. The case was of interest, however, to labor actors in Mexico and the U.S., as well as pro-labor U.S. Congressmen who saw this case as a typical example of what happened to democratic workers' movements in Mexico. This issue is near and dear to the heart of everyone in organized labor in America, declared Larry Reilly, the president of United Auto Workers' 1268 in Illinois, as he delivered a letter to President Zedillo signed by 500 auto workers to the Mexican Consulate in Chicago. We feel strongly that all workers have the right to be represented by a union of their choice, without interference from local authorities. Mexican federal labor laws are very strong, but they need to be enforced by President Zedillo.<sup>27</sup>

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<sup>27</sup> Campaign for Labor Rights communique, 18 August 1998.

What is particularly significant about the Reilly=s comments is that the wording attests to a fairly sophisticated understanding of the sensibilities of workers in the conflict. By highlighting this as an issue of worker democracy, Reilly=s comments were a long way from the xenophobic and/or paternalistic statements of many U.S. labor leaders in the early 1990s. There were no statements about Mexicans Adesperate for our jobs,@ or the Agiant sucking sound@ of the Mexican labor market or even Asocial dumping.@ Additionally, protests that took place throughout the U.S. and Canada in the summer and fall of 1998 suggested that electronic postings and lateral communication conducted throughout the struggle had framed the debate over Han Young in terms much closer to what workers themselves saw at stake in the struggle.<sup>28</sup>

Also significant in the myriad protests that took place was the capacity of groups involved in solidarity efforts to shift the focus back onto Hyundai after focusing on the actions of the government for some months. From July through September of 1998, solidarity actions on the west coast of the United States and Canada were sequenced with visits of Han Young workers to various locales. In Portland, interestingly enough, some of the protests presaged much larger actions which would take place in Seattle in November 1999 at the anti-WTO demonstrations. Union workers protested outside Hyundai=s shipping office in Portland=s World Trade Center. They also picketed a ship unloading at the Hyundai dock at the Port of

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<sup>28</sup> One notable exception to this is the ongoing use of the term Asweatshop@ in transnational labor organizing. In Portland, for example, workers on the Cross-Border Labor Organizing Coalitions picketed Hyundai dealerships, using signs saying Ahonk if you hate sweatshops.@ Whether or not Mexican workers see themselves as relegated to something akin to 19<sup>th</sup> century garment factories in New York City is debatable. There is no cognate for Asweatshop@ in Spanish, nor is there any word for a particularly bad factory.

Portland. Members of the International Longshore and Warehouse Union refused to cross the line to unload the ship, which remained sitting for 24 hours, costing Hyundai tens of thousands of dollars.<sup>29</sup>

Distressingly, even as momentum on the Han Young case prompted more and more actions in the U.S.,<sup>30</sup> government and company officials in Mexico acted with increasing impunity. By September, Han Young had opened a new factory in the eastern part of Tijuana, in blatant violation of Mexican laws prohibiting factory owners from doing so. Meanwhile, a resolution was entered in the U.S. House of Representative by Representative Zoe Lofgren, and signed by Reps. Gephardt, Bonior, Filner, DeFazio, Kaptor, Brown, Sanders, Frank, and others calling on President Clinton to urge the Mexican federal government to intervene in the Han Young situation to bring about a resolution. Even more outrageous, the relocated factory

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<sup>29</sup> Campaign for Labor Rights communique, 18 August 1998.

<sup>30</sup> The number of protests and the groups involved is impressive. The Han Young Action Day called by the Campaign for Labor Rights on September 19, 1998 produced demonstrations in SF (with Global Exchange, UNITE, Marin Inter Faith Task Force, the Gray Panthers, the Unitarian Church, Economic Justice and California Fair Trade Camp), Salt Lake City, Chicago (Labor Rights Task Force of the Nicaragua Solidarity Committee, Jobs with Justice, Democratic Socialists of America, and several unions), Knoxville (the Tennessee Industrial Renewal Network puts protest in front of TRA auto imports in west Knoxville; includes people from UNITE, IUE Local 796, Steelworkers, OPEIA, Grainmillers, SEIU, Teamsters, the local labor council, Jobs with Justice, Highlander Center, Knoxville Ministerial Alliance, Commission on Religion in Appalachia, SICK, NOW, the Alliance for Hope, and other community organizations.) Around the same time a Han Young worker toured the U.S. Northeast, going to New York City (visiting CUSLAR; The Global Sweatshop Coalition, NY CISPES, Nicaragua Solidarity Network of Greater NY); Springfield, MA (Pioneer Valley Labor Council); Keend, NH (American Friends Service Committee); Montpelier, VT (AFSC, Teamsters); Burlington, VT; Providence, RI (Brown U. Student-Labor Alliance); Newtown, PA (Bucks County Community College Federation of Teachers, AFT local), Philadelphia, PA (IWW); Baltimore (IWW); Washington,

continued to operate in violation of three federal court rulings issued in Mexicali, which held that the workers' strike was legal, and that the company violated Constitutional norms by employing strikebreakers without resolving the conflict.

By and large, the Han Young case ended in a long, slow defeat. Workers did continue to carry out actions, including a bold attempt in May of 1999 to occupy and shut down Han Young's new factory, and a citizen referendum in Tijuana in June of 1999. The referendum, or *consulta* calling on workers to express their support for a one-day general strike action demanding a minimum wage of \$10 day, plus enforcement of profit-sharing laws.<sup>31</sup> Workers also organized support for several other nascent union struggles, including one standoff at a magnetic print head factory where workers were collaborating with groups in Ithaca, New York and Philadelphia, where the Axiohm company had a factory and its headquarters respectively.

After 1998, the actions of October 6 militants and supporters across the border did little to further the case itself, but did serve to demonstrate beyond all doubt a climate of absolute

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DC (50 Years is Enough). Source: Campaign for Labor Rights communique, 16 October 1998.

<sup>31</sup> The citizen *consulta* is an increasingly prominent form of non-violent protest used in Mexico. The consultas are run as secret-ballot elections, carried out with official voting credentials. All citizens are asked to participate, and are permitted to vote only once. Provisions are taken to prevent fraud. Votes are also tallied in a carefully monitored fashion, and the results are announced. Generally, however, the questions asked on the consultas are fairly unexceptionable, such as "Should the government take steps to stabilize the banking system and prosecute criminals?" or "Should the government take steps to make a just peace in Chiapas and enforce the accords it has signed?" Consultas have been used as a means of reaching the public, especially at times when issues appear to be fading from the press, or failing to get adequate television coverage. The Alianza Civica has held consultas, as has the Barzon movement, and the Zapatista Army of National Liberation.

impunity on labor rights issues. In July 2000, after repeatedly ignoring requests by Alexis Herman for ministerial consultations on the Han Young case as ordered by the NAO, Mexican Minister of Labor Javier Bonilla and Herman issued a short joint declaration stating that both were committed to promoting the principle of freedom of association in the workplace, and to preventing occupation injuries and illnesses. The statement called for a public seminar to be held in Tijuana on such subjects with representatives from federal and local labor authorities in attendance. Absurdly, when the seminar was held in Tijuana in July 2000 at a downtown hotel, it ended in violence. During the initial presentation by Undersecretary of Labor Javier Moctezuma Barragan (in which Han Young was never mentioned), two dozen workers from the October 6 union entered the room carrying banners calling for “libertad sindical”—the right of workers to designate their own union. Immediately, members of the audience—largely from government-affiliated unions—began beating the protesters. The beating of Enrique Hernandez, the secretary general of the October 6 union, was particularly brutal, as assailants beat him to the ground three times, kicking him in the head and face and swinging at him with a pedestal. As the workers nursed their wounds in the lobby, Moctezuma briefly came out of the meeting room and explained that the problem had been a “lack of space” in the seminar.

What is most worrisome about this final incident was that instead of generating press and creating a major bilateral scandal, the incident went virtually unreported outside Tijuana and one piece in a Los Angeles tabloid. With all the outrage that had been summoned in earlier stages of the case, U.S. Department of Labor officials not only remained at the meeting, but even tried to put a positive face on it. Deputy Secretary of Labor and head of the NAO Louis Karesh

commented to reporters afterward that while he was “disappointed to see what happened,” he stated that he believed that the NAO process would have an impact on labor rights in the hemisphere.<sup>32</sup>

## **Conclusions**

In short, I argue here the Han Young struggle teaches us some important things about cross-border contention, about the possibilities and limitations of launching political demands backed by loose-knit networks. To date, analysis has focused on technologies of resistance, and on reasons most people do not resist. Here, I diverge somewhat from that by highlighting the course of suppression, with specific attention to the way that networks= ability may become exhausted. As difficult as it is for us to say, the hard fact of the matter is that some the most important cases have yielded paltry results for people. What is more, as cases approach setting legal or institutional precedents (e.g. having an independent union rather than simply a material settlement), the power of the most retrograde elites in a fractured government arena appears to grow relative to other elites= power. Notably, some of the highest-profile conflicts which have gone to the National Administrative Office have gone nowhere in terms of real reforms.

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<sup>32</sup> David Bacon, “Strikers Beaten at NAFTA-Sponsored Hearing,” *L.A. Weekly*, July 23, 2000.

So what does this bode? In the best of scenarios, the weight of pro-labor pressure in prominent federal fora may finally provoke reluctant elites to stake more on institutional change in industrial arenas.<sup>33</sup> Similarly, the record of cases may have a pre-emptive effect on would-be labor violators. Companies themselves may adopt better practices in order to protect brand capital. In a less rosy scenario, however, networks = power may decline as conflicts become weighed down by complex domestic politics. Media coverage of such involved cases may also decline. In the worst of all scenarios, defeats might well create sterile zones for labor mobilization, characterized by burnout among organizers and generalized fear and disillusion among workers.

By framing this paper on the outcome of the Han Young struggle, I do not mean to dismiss it as a cut-and-dried defeat. Indeed, the meaning of this conflict is yet unclear. As Maria Alves has pointed out, categorizing social struggles as clear victories or defeats is not a straightforward task. Recalling the struggle of workers in Sao Bernardo do Campo in Brazil in strikes of 1980, for example Alves states that technically, workers suffered a terrible defeat. None of their demands were granted. Workers lost their union, and leaders of the rank and file in insurgent plants were summarily dismissed without compensation. Additionally, blacklists circulated in all the major plants. And yet, she writes, in Sao Bernardo do Campo itself there

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<sup>33</sup> In an interview in May of 1997 with the author, for example, Pharis Harvey, the founder of the International Labor Rights Fund, felt that this was a real possibility. While each individual case brought before the NAO produced weak governmental response, he felt that by demonstrating the very ineffectiveness of the NAO process *as a whole*, labor advocates eventually could make a strong case for more comprehensive linkage of trade and labor rights in treaty law.

was a strong feeling of victory. Public debates were organized almost every night, in the churches or in headquarters of neighborhood organizations. People participated in analyzing the movement. The military police were still everywhere but the fear had disappeared. There was a new sense of dignity, of self-respect, of independence in relation to the coercive power of the state.<sup>34</sup> Likewise, the Han Young struggle has left an important legacy of tenacious struggle. Its record in verbal accounts, Congressional resolutions, and legal briefs, will continue to impact bi-national affairs on labor matters. What we must be attentive to in the meantime is the interplay of insurgency with the political technologies of labor suppression. I argue that soft-authoritarian circumstances may present real dilemmas of mobilization on U.S.-Mexican border. With overlapping jurisdictions and divided elites, cases are likely to become complex and drawn out, and outcomes are likely to be ambiguous at best. The complexity of cases and ambiguity of the outcomes may put people into a war of attrition, which the most unscrupulous among the powerful are posed at this moment to win.

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<sup>34</sup> Maria Helena Moreira Alves, *A Culture of Fear, Cultures of Resistance: The New Labor Movement in Brazil*, in *Fear at the Edge: State Terror and Resistance in Latin America*, ed. by Juan E. Corradi, Patricia Weiss Fagen, and Manuel Antonio Garretón (Berkeley: University of California Press 1992).