
ANNEX 3 PROCEEDINGS FROM THE MANAGUA MEETING: CREATION OF THE CENTRAL AMERICAN ENFORCEMENT NETWORK

Editor's Note: The Managua Meeting post-dated the Fourth International Conference. The Managua Proceedings are included to illustrate the networking envisioned by participants at the Americas Regional Meeting -- many of whom were at the Managua Meeting.

OVERVIEW

The First Annual Conference on the Regional Enforcement of Environmental Law was a joint project of the Central American Commission for Environment and Development (CCAD) and U.S. A.I.D. and received support from Nicaragua's Ministry of the Environment and Natural Resources (MARENA). Over a three day period, it brought together key players in the enforcement of environmental law in each of the Central American countries, including Panama and Belize.¹ The conference gave valuable training to 42 public officials, created a network of actors in the enforcement of environmental law, served as a visible sign of support to efforts to create national institutions, and facilitated communication between NGOs and the government officials responsible for developing and applying environmental laws. By the conference's conclusion, the representatives signed a formal resolution to form CCAD's Technical Commission on Environmental Legislation. Participants were lodged in Hotel Las Mercedes where all the sessions took place, and the hotel's relative isolation on the edge of Managua led to greater cohesiveness amongst the participants and contributed to the sense of mutual support fostered by the event.

1 Participants

The primary value of the conference was to bring together a wide variety of officials who are critical to enforcing environmental laws within their respective countries. The group included participants from Public Ministries (including procurators and prosecutors), their Executive Departments ("Controllorias")², their Judicial Branch (including Supreme Court Justices and Judicial Academies), their Environmental Authorities (Ministries of Environment or Legal Advisors) and members of the Legislative Assembly's environmental commissions. Representatives from NGOs in Nicaragua, Costa Rica and Guatemala also attended. Finally, observers and advisors from the US EPA, US AID, Mexico's Environmental Enforcement Agency (PROFEPA) and Mexican Institute of Ecology, representatives of sectorial regional organizations dealing with pesticides, air and water quality, CCAD and PROARCA were present. The participants made important international contacts, and officials from different countries shared their respective experiences. Furthermore, participants from the same country had a rare opportunity to get know their counterparts in the public or private sector.

2 Training Materials

CCAD provided the participants with crucial materials needed to effectively apply existing environmental laws. These materials included: (1) a matrix of international and regional conventions showing each state's degree of legal commitment to it (i.e., signed, ratified, etc.), (2) lists for each country's general environmental legislation and also those statutes specifically applicable

to toxic wastes and solid wastes, and (3) copies of regional conventions, including the foundational convention to CCAD. Potentially, the most valuable material was the personal experiences each participant brought to the discussion.

3 Presentations

The participants' presentations were designed to train the officials, allow them to share experiences, and to discuss resolutions to common problems. These were sectorial presentations on compliance with ALIDES environmental legal commitments.

3.1 Training

The first day was devoted to training the participants. Dr. Marco Gonzalez of CCAD opened by lecturing on the environmental law movement in Central America, detailing the formation of CCAD and national environmental councils. He reviewed the series of obligations undertaken by the states since the 1950's which have led to the present CONCAUSA agreement under which the US and the Central American states have made specific promises to cooperate in environmental protection efforts. He described the founding of the System for the Integration of Central America, the Protocol of Tegucigalpa which first mentioned the duty of the states to collectively protect the environment, the subsequent impulse to form national environmental commissions, the issuance of the Central American Agenda 2000 prior to the Rio conference, the elaboration of regional conventions on specific subjects, the ALIDES agreement which included a detailed list of regional environmental promises and policies, and finally the CONCAUSA agreement signed at the Summit of the Americas. Dr. Gonzalez stressed that the sectorialization of environmental law--whereby the environment is legally-protected only by a patchwork of laws treating specific resources (i.e., Forestry) or specific activities (i.e., Pesticides)--is coming to an end since five states have already passed general environmental acts. In closing, he described the series of enforcement workshops which the EPA and CCAD are offering in each country (so far, in Belize, El Salvador and, in October, in Guatemala)--workshops which are complemented by the Regional workshop itself.

To give the participants a sense of the parameters of their mission, Erwin Garzona of PRIDE/PROARCA presented the results of the just-completed Comparative Risk Assessment (CRA) project for the region. He explained the concept of CRA and how the study was carried out to identify the most pressing needs particular to the region. The project gleaned that "brown" issues are the most pressing in Central America and specifically hierarchized the problems according to the regional urgency: 1) water treatment, 2) solid wastes, and 3) pesticides. Next, he explained how they chose the most adequate and cost-effective responses, depending on regional capabilities and predilections, identifying two key strategies for counteracting each of the three problems. This CRA project marks the first time ever that a region has collectively identified the problems that they want to tackle. One participant raised concerns about the fact that Costa Rica's number one priority, air contamination, was not included as one of the three regional priorities. Garzona explained that the CRA procedure verified that air contamination was in fact a problem most pressing in Costa Rica, but that the other three problems had more regional importance and also were severe in Costa Rica as well. Additionally, he noted that Costa Rica already has programs in place to combat this particular problem.

Mexican and US environmental protection officials completed the training phase by suggesting theories and strategies for implementing environmental law. The Mexican PROFEPA participants, headed by Humberto Ortiz Wetzell, the General Director of Coordinating Delegations,

summarized the Mexican system, including diagrams showing the institutional structure and the role of inspectors in the process. Most questions treated the issue of building an institutional framework that was capable of carrying out inspections and enforcement actions, and the Mexican representatives explained how they have progressed in this work.

Two EPA attorneys, Peter Lallas and Lawrence Sperling, and one DOJ litigator, James MacAyeal, suggested theoretical approaches to enforcement. Lallas distributed a 50-page outline of the institutional and legislative parameters which are potentially part of an effective environmental legislative regime. Although the document was too expansive to cover in a brief presentation, he raised several salient points, and, over the subsequent days, several Central American participants commented on the usefulness of the outline for their work and understanding of such regimes. Lallas encouraged feedback on the outline, emphasizing that it was a work-in-progress and intended to leave space for inputs from regional actors. MacAyeal focused on an explanation of the particular relationship between U.S. courts and the EPA in applying environmental regulations. Finally, Sperling discussed the theoretical importance of enforcement actions, or at least the importance of creating a culture of obedience whereby parties believe it is in their interest to comply with the law, and therefore regularly do so.

3.2 Experiences

The second day was dedicated to sharing experiences--first, the regional efforts in specific areas, and, second, national efforts to act through certain institutions.

3.2.1 Technical Experts on Regional Programs

First, technical experts spoke about regional programs to counteract some of the most pressing "brown" issues: water quality, air pollution, and pesticides. Mario Gutierrez, the Regional Secretary of Technical Committees from the Regional Coordinating Committee of Potable Water Institutions (CAPRE) opened by describing the growth and strengthening of CAPRE and its creation of regional water quality norms and model laws. First, he emphasized that national regulations on potable water should use WHO guidelines as a benchmark. Next, he explained the key aspects of regulation, and reviewed the current status of such regulation in each of the Central American states--El Salvador and Nicaragua have recently adopted as law the CAPRE statute. Finally, he reviewed the articles of the CAPRE statute which imposes a duty on the State to supply water meeting specific minimum criteria within five years, except in special circumstances. CAPRE's work has contributed greatly to the passage of uniform and effective water quality laws in many countries, and has led a greater harmonization of standards in the region.

Ronald Flores of Swisscontact ProEco, an organization supported by the Swiss government and private sector which offers technical support and advice in controlling air quality, reviewed the obligations relating to air quality improvement undertaken in ALIDES, and he reported on the state of compliance with those promises. In ALIDES, Central American governments subscribed to two air quality obligations: (1) to eliminate the use of leaded gasoline and (2) to regulate the vehicular emissions. In terms of leaded gasoline, Guatemala has prohibited its sale since 1992, and in 1996 the rest of the countries, except for Panama, legislated the gradual elimination of leaded gas use. He noted that several countries are prohibiting the import of automobiles without catalytic converters and encouraged Nicaragua and Honduras to follow suit, or risk becoming the dumping grounds for obsolete and dangerous motors. In terms of vehicular emissions, only Costa Rica is enforcing a program of Inspection and Maintenance (I/M) for all motor vehicles. Flores reviewed the current preparations for such I/M regulations in other countries, noting that all countries have the legal basis needed to emit regulations, but that

Nicaragua, Panama and Guatemala seem far from putting an I/M program in place. Finally, he reviewed the key aspects of an I/M program, noting that the simultaneous elaboration of these programs in Central America makes it possible to create a uniform regulatory system.

Roosevelt Gonzalez Vasquez of the International Regional Organization of Agropecuario Sanitation (OIRSA) described the growth of the movement to create adequate and uniform pesticide registration and labeling practices throughout the region. While OIRSA has existed since 1953 with the goal of promoting the harmonization of agropecuario legislation, regional efforts to harmonize pesticide regulation did not begin until 1979. First, he reviewed the series of meetings that have contributed to the drafting of model regulations for the labeling and registration of pesticides. In the September 1996 conference of the Application Committee, it was agreed that all labeling would be done according to the guidelines approved in the conference, and that any label approved by one country would be accepted by the others. While there are hopes of creating a single, comprehensive Central Americana registry, Vasquez noted that current efforts are focussed on the passage within each state of pesticide legislation that follows the guidelines of model legislation which the FAO helped draft.

3.2.2 Panel on Enforcing Environmental Law

Second, five panels of officials related their experiences in connection with enforcing environmental law in their own countries. These sessions sparked the greatest number of questions, with frequent lively interchanges between the speakers and their audience. The panelists were encouraged to explain concrete experiences, and many participants recognized their own difficulties and could ask detailed questions to compare the two.

The first panel generally considered the impact of citizen participation in enforcement. As a prelude, a legal advisor from Belize, Dr. Winston McCalla, explained the Belizean common law system and environmental regime. He offered particular examples of environmental problems, and how legislation has directly responded to them. Participants followed up with questions about the common law system, and the general interest raised appeared a valuable contribution in the process of recognizing Belize to be a Central American country. Next, Guido Cubero, the legal advisor for Costa Rica's Ministry of Environment and Development, described the Costa Rican experience with citizen participation, and was followed by brief descriptions made by panelists from the other countries. The most common experience was having a new legal provision that allowed for complaints, but little public awareness of the channel and little institutional capacity for handling complaints.

The second panel was composed of prosecutors of environmental laws. Carlos Solozano of El Salvador was the lead panelist, opening with a speech lamenting the escalating devastation of his country's environment, which is already in a critical state. He complained that Salvador has an "infinite" of laws and his office receives a "landslide" of complaints of all sorts, but that there is no political will or institutional ability to prosecute these charges. Fundamentally, he charged, the problem is the impunity of officials that allow the environmental devastation, despite the immediate health consequences that a great majority of the population is suffering. Many prosecutors echoed his comments. Zorayada Calix from Honduras emphasized the fact that attorneys in this field need the support of technical advisors in order to prosecute cases which can often be complex and difficult to define. Furthermore, she reported that there are only six prosecutors for such cases in the country, that they never leave the capital, and that the majority of the cases they handle are against small farmers who are cutting wood for subsistence needs. Alvaro Vasquez of Guatemala gave a fiery speech about the role of a prosecutor and the need to pursue cases in the face of personal intimidation. While inspirational and widely appreciated by

the participants, his speech and the reaction to it underlined a fundamental problem with creating effective environmental regimes in the region: these few prosecutors face enormously powerful private and state interests which take violent measures to ensure that laws are not enforced.

3.2.3 Panel on Vigilance Over the Environment

The third panel was composed of officials in the executive branch agency responsible for vigilance over the environment (e.g., the Procurador of the Environment, the Procurador of Human Rights, the Attorney General's office). Teresa Centeno of Guatemala made the opening presentation, and was followed by representatives from Nicaragua, El Salvador and Honduras. Carlos Canas, who is responsible for the Environmental Rights division of El Salvador's Human Rights office, explained the most pressing problems that commonly concerned regional officials in his position. He and his three staff members are responsible for protecting the right to a healthy environment of all Salvadorans. While there are plenty of laws which they may invoke (both national and international), there are too few people to handle the wide variety of complaints and too little technical expertise to properly analyze problems, both from a scientific and legal point of view. Canas reported that, when he himself took the job in 1992, he knew nothing of law since he was an engineer trained in solid waste management. He stressed the importance of having personnel who are both versed in scientific fields and the law. Additionally, he offered a few sample cases of the work they have done, including the successful closure of a small factory which had been discharging aluminum wastes into a river in a densely-populated area for several years, despite the repeated complaints of residents. Nevertheless, his message, like most of the panelists, was one of deep worry due to their inability to stop the devastation of the environment.

Due to time limitations, the fourth and fifth panels had to give brief presentations. The fourth panel was composed of members of the national courts or of the Judicial Academy responsible for the training of judges. The panel emphasized the need not only for technical support in scientific fields, but also the comprehensive training of judges in environmental law, considering that most were unaware of the statutes and obligations already in force. The fifth panel was made up of members of the "Contraloria" offices of Nicaragua, Costa Rica and Panama--the only states which have such an office. These panelists lamented the lack of political support for environmental programs. Augustin Jarquin Anaya of Nicaragua headed the panel and specifically complained that his office lacked the scientific-technical expertise to handle many environmental issues.

3.3 Alternative Approaches and Resolutions: Creating an Environmental Law Action Network.

Dr. Marco Gonzalez of CCAD led off the third day with a brief explanation of the importance of strengthening the environmental law action network which was forming in the region. He noted that in the ALIDES agreement, the Central American countries undertook specific obligations to counteract the problems of water treatment, solid wastes and pesticides. He stressed the importance of harmonizing national approaches to these problems, and reviewed the present status of regional efforts in the three fields.

Next, Alejandra Sobenes of IDEADS gave a brief history of her organization and their formation of RODA, the Network of Central American Environmental Organizations. IDEADS' original work was promoting cooperation amongst regional technical experts, but has evolved into a network that includes legal experts and aims to assist lawyers from all member countries. IN 1996, IDEADS formed RODA by bringing together founding environmental organizations from Mexico, Guatemala, Honduras, El Salvador, Nicaragua and Costa Rica, and, by the end of

the conference, Sobenes reported that Panama had just committed itself to join RODA. IDEADS' first project is monitoring compliance with the international convention on biodiversity and is working on strengthening ties between NGOs and government offices.

Participants questioned Dr. Gonzales and Sobenes about the future of the network, remarking that the network should include more organizations and involve formalized training. Dr. Gonzales noted that moving in these directions would be an improvement, but that the network should remain flexible—that is, that it is called a “net” for the very good reason that it includes spaces that allow for movement, for comings and goings, for creativity, and for a wide range of commitments to the environmental effort. He emphasized the need to first form a critical mass of lawyers with knowledge of environmental law.

Subsequently, NGOs from Nicaragua and Costa Rica had the chance to reflect on the networking process, emphasizing that environmental protection is necessarily an interdisciplinary practice, including anthropology, sociology, and psychology as well as technical sciences.

4 Closing

In closing, participants from each country expressed their reactions to the materials presented throughout the conference and suggested which directions that future efforts in enforcement of environmental laws should take.

Honduran delegates voiced great satisfaction with the conference and emphasized that future efforts should stress the strengthening of Technical Commissions to give legal support to their enforcement arms. They also noted that in the future, more environmental legal advisors should be included in such seminars. Finally, they commented on the value of seeing how other countries confront the common problems that they share and remarked that the conference helped to show that environmental problems do not respect political borders and so resolutions must surpass those borders as well.

Panama stressed the need for a follow-up conference on the same topic and drafted a declaration for all participant countries to sign, outlining future goals: the strengthening of an environmental law network, increasing the Technical Commission's capabilities, holding a workshop in Panama in December, and gaining more support for prosecutors. The delegates pledged to continue working on environmental protection upon their return to Panama.

Costa Rica focused on worries raised by the conference. The participants recommended that for the next seminar, each country should prepare a report which describes each organism's ability to enforce environmental laws, listing statistics and giving sample cases.

Guatemala noted that the conference will help to legitimate the enforcement of environmental provisions, making it a recognized field of law. The delegates voiced their extreme satisfaction with the meeting, reiterating the importance of overcoming intimidation in order to properly enforce the law.

El Salvador reported that the conference had supplied them important tools needed to apply the law, yet noted that much training and conscience-raising is still sorely-needed. “Our eyes still need opened,” the delegates said, pointing out that more lawyers need to get used to thinking in terms of environmental protection and rights. They noted that the political actors are prone to constant change, but the institutional actors (such as lawyers working in the government and NGOs) are less prone to such changes, and therefore the education of the latter can have a real and lasting effect.

Mexico expressed satisfaction in being able to share its experiences with its neighbors, and repeated the importance of having a deep conviction to further environmental protection.

U.S. EPA participants spoke about particular future plans, stressing the need for specifying five and ten year goals. They described the on-going project to create a databank of Central American environmental law that will allow easy access to critical knowledge for anyone with the use of a computer. They spoke of their intention to sponsor future cooperative workshops, both on the theme of enforcement and on specific topics such as pesticides and solid wastes.

In closing, the participants proposed, discussed and approved of a unanimous declaration. The statement, signed by all participating nations, formally created the Regional Environmental Law Enforcement Network, supported CCAD's new Technical Commission on Environmental Law, and welcomed the course on environmental law to be given in Panama in the second week of December.

REFERENCES

1. The Contraloria is potentially a very powerfully government official due to his control over budgetary matters and his relative autonomy. The Contraloria is elected by the Parliament and controls the execution of the national budget. He oversees the management of governmental offices and has the power to impose civil and administrative liability on those which are not properly meeting the legal requirements of their duties. He may also press for penal sanctions. Only the governments of Nicaragua, Honduras and Costa Rica feature Contralorias; these functions are carried out by the Tribunal of Accounts in El Salvador and the Court of Accounts in Guatemala.