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**THE G-8 MANDATE FOR EXPANDED COOPERATION TO COMBAT INTERNATIONAL ENVIRONMENTAL CRIME, RECENT DEVELOPMENTS IN THE UNITED STATES, AND A CASE STUDY: PROJECT EXODUS ASIA**DEVANEY, EARL E.<sup>1</sup> AND PENDERS, MICHAEL J.<sup>2</sup><sup>1</sup>Director<sup>2</sup>Special Counsel

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**SUMMARY**

This paper examines the 1997 and 1998 G-8 Summit Leaders' call for expanded environmental enforcement cooperation, their commitment to ensuring access to environmental information and effective administrative and judicial mechanisms, and the Leaders' mandate for improved collaboration to fight international environmental crime. It summarizes recent developments in the United States and internationally undertaken to enhance the types of cooperation called for by the G-8 Leaders and many others around the world.

The paper then describes an U.S. Environmental Protection Agency investigation into US exports of waste to Asian nations following the People's Republic of China alleging violations of their import and pollution control laws in connection with one such shipment. This investigation and the enforcement project that ensued - Exodus Asia - demonstrates the type of cooperative mechanisms between nations that are necessary

to achieve the type of enforcement cooperation called for by leaders and the public alike. It also illustrates the type of networks and integration of information between federal, state and local agencies which are critical to detecting, investigating, and therefore deterring illegal shipments in the first place. Finally, the paper notes the recent deployment of the Center for Strategic Environmental Enforcement designed to improve the United States capacity to detect such environmental violations and conduct the types of sophisticated collaborative investigations necessary to combat environmental crime.

**1 INTRODUCTION: THE CURRENT INTERNATIONAL CONTEXT FOR NATIONAL LEADERS' FOCUS ON ENHANCING ENVIRONMENTAL ENFORCEMENT AND COMPLIANCE MECHANISMS.**

In the last year, the enforcement of environmental laws and the implementation of international agreements have remained prominent issues on the international agenda. For example, last December, in Kyoto, Japan, the nations of the world reached agreement on an historic first step to control greenhouse gas emissions. While the Kyoto Protocol represents a framework for action and is still very much a work in progress, rarely has there been an international effort more ambitious in scope or complex in implementation than developing legally binding targets for the reduction of the various emissions which contribute to global warming.

As nations and governments contemplate how to meaningfully and fairly implement such an agreement, renewed attention is being paid to other international agreements, the workings of their enforcement mechanisms, and the relative merits of different forms of implementing legislation. Increasingly, as governments evaluate the terms of international cooperation, their environmental ministers and diplomats are insisting upon an elaboration of compliance regimes and a thorough understanding of the objective criteria underlying legal obligations before moving forward with new agreements.

Further, recognizing that agreements have little or no effect unless they are enforced, environmental ministers and their governments are calling for strong rules with fair and transparent procedures and the capacity and resources for enforcement in practice to protect existing agreements and lay the groundwork for the expanded cooperation necessary to assure compliance with new agreements such as the Kyoto Protocol.

## **2 THE G-8 MINISTERS STATEMENT ON ENVIRONMENTAL ENFORCEMENT, INTERNATIONAL COOPERATION, AND PUBLIC ACCESS TO INFORMATION**

The Environmental Leaders of the United States, Canada, Italy, France, Germany, Japan, Russia, the United Kingdom, and the European Union convened in Miami, Florida in May, 1997 and addressed environmental enforcement issues for the first time in the context of the G-8 Summit process. U.S. Environmental Protection Agency Administrator Carol Browner chaired the Environmental Leaders Summit of the Eight which produced a strong agreement on environmental enforcement and access by citizens and groups to environmental information.

At the conclusion of the Summit, the leaders issued a joint statement, declaring that:

*“Effective enforcement of environmental law is essential to punish and deter environmental violations, ensure fairness for those who pay the costs associated with environmental compliance, and provide a basis and give incentives for voluntary efforts to improve environmental performance. The G-8 leaders agreed to move forward domestically with efforts to improve the integration of environmental enforcement with traditional law enforcement institutions and other agencies.*

*“The environment leaders also committed themselves to support and enhance the emerging international cooperative efforts among their governments and international bodies. They noted the value of compliance mechanisms under international environmental agreements and the importance of individuals and groups having access to environmental information and effective administrative and judicial mechanisms. They agreed to enhance a collective focus on trade which is illegal under international environmental law, including shipments originating in their countries and those that have adverse impacts on developing countries.”*

### **2.1 The Consultation of Environmental Enforcement Officials of the G-8**

On January 21 and 22 of 1998, the environmental enforcement officials of these G-8 nations convened in Washington, D.C. to consider the directive of the Miami Summit and develop a framework and adopt measures to expand their cooperative efforts as called for by the G-8 Ministers. U.S. Environmental Protection Agency Assistant Administrator for Enforcement and Compliance Assurance, Steven A. Herman, hosted and chaired the consultation. Other principals of the United States delegation included Assistant Attorney

General Lois Schiffer, Chief of the U.S. Department of Justice's Environment and Natural Resource Division, and Edward L. Dowd Jr., United States Attorney for the Eastern District of Missouri. In addition to representatives from each of the G-8 nations, there was participation by the U.S. State Department, the European Union, and the Secretary General of INTERPOL, Raymond Kendall. (See Appendix 1)

At the end of the two day consultation, after exchanging information about how environmental enforcement and compliance assurance is organized in each of the nations, examining the existing mechanisms for cooperation, and considering the legal and other constraints on such international processes, the enforcement officials of the G-8 issued a five page Chair's Summary setting forth the practical measures their agencies would take to expand their cooperative efforts to address violations of environmental law and international agreements.

The enforcement officials agreed that among their cooperative efforts, priority must be given to the framework of the existing multilateral environmental agreements and their compliance mechanisms, such as those for the Montreal Protocol, CITES, and agreements dealing with hazardous waste. They also agreed to further develop public access, in accordance with national law, to environmental information, including, where possible, compliance information held by public authorities.

The consultation found that to improve environmental enforcement domestically it was important for countries to establish or improve national networks of officials involved in enforcing environmental requirements and to work with other appropriate agencies, like the approaches developed in the United States to address the smuggling of ozone-depleting substances. The officials also emphasized the need for appropriate resources to support effective environmental enforcement and the promotion of public awareness and training to ensure that law enforcement personnel are prepared to safely and effectively investigate environmental violations.

To improve environmental enforcement internationally, the consultation pledged full support for effective implementation of the existing multilateral agreements and their mechanisms for exchange of information and for achieving compliance. The officials also called for continued informal exchange of information and experience and the establishment of a working international directory identifying responsible officials for particular areas of environmental enforcement. They also agreed to cooperative efforts to detect and prosecute transboundary violations, focusing on illegal shipments originating in the G-8 nations and those that have adverse impacts on developing nations, and to support international training and capacity building efforts.

Finally, the participants of the consultation suggested that the environmental leaders have a full discussion of environmental enforcement in the spring of 1998 when the G-8 ministers reconvened and consider reporting their conclusions to the heads of state and governments.

## 2.2 The 1998 G-8 Environment Ministers Meeting at Leeds Castle, Kent, England and the Heads of State Summit

As the G-8 reconvened in Great Britain this spring with meetings of the environmental ministers and heads of state, international crime and environmental enforcement efforts remained near the top of the agenda. On April 3-5, 1998 the ministers and representatives of the European Union met at Leeds Castle, Kent, to consider progress made since they last met in Miami and to discuss five key environmental issues facing the world. They identified these issues as climate change, environment and employment, protection of marine biodiversity, enforcement of multilateral agreements, and children's environmental health.

Of these issues, most of the press coverage in such places as the BBC, the Deutsche Press-Agentur, and New York Times, as well as the press statements issued by UK Deputy Prime Minister and Secretary of State for the Environment, John Prescott, who hosted and chaired the sessions, focused on the ministers' efforts to combat 'environmental crime'. In the Communique published at the conclusion of the meeting, the ministers introduced the subject of environmental enforcement this way:

*"We recognize the vital role of international agreements in delivering sustainable development at the global scale. However, these agreements will have no effect unless they are effectively enforced. We therefore express grave concern about the ever growing evidence of violations of international environmental agreements, and particularly the involvement of international organized crime. This harms not only the global environment, but also the health and livelihoods of people in developed and developing countries alike. We believe that our Governments must act now to protect existing agreements, and must insist on strong rules and enforcement procedures for international emissions trading under the Kyoto Protocol, recognizing that we must guard against fraudulent activity."*

After negotiations at the castle, the ministers readily endorsed the work carried out by the environmental enforcement officials in Washington DC, and pledged their ministries support in sharing information and cooperation in transboundary investigations, strengthening the capacity of enforcement agencies including international efforts to train law enforcement officials in environmental enforcement, and undertaking national activities to raise public awareness. They noted the progress in coordinating action to combat international crime generally, and called upon the Heads of State to adopt similar approaches in tackling environmental violations.

On May 15-17 1998, the Heads of State convened in Birmingham, England. The G-8 leaders pledged to help developing countries cut pollution in line with the Kyoto agreement. In the final communique, the leaders devoted much attention to their commitments for greater cooperation in the fight against international organized crime generally. The communique specifically referenced the work of the environmental ministers at Leeds Castle, and endorsed the ministers efforts to achieve greater cooperation in the fight against environmental crime specifically.

### **3        RESPONDING TO THE MANDATE FOR GREATER COOPERATION IN           COMBATING INTERNATIONAL ENVIRONMENTAL CRIME**

While recent cooperative efforts and the growing international attention paid to these matters are encouraging, the technical capacity and resources necessary to investigate potential violations of complex environmental laws have barely coalesced. In many places there remains an extremely limited capacity to enforce environmental laws. Still, governments and the public alike have come to expect vigorous enforcement of environmental laws, particularly with respect to hazardous waste and other dangerous substances that may illegally cross national borders and is illegally dumped or released.

Effective enforcement remains a challenge for all nations in this era of limited government resources and competing priorities. At the very least, enforcement requires the capacity to monitor compliance with environmental requirements, trained personnel to safely

and effectively investigate violations in cooperation with other law enforcement agencies, and sanctions that serve as a credible deterrent to noncompliance and as a basis for remediation and pollution prevention.

Experience in investigating and prosecuting environmental crimes have taught the U.S. Environmental Protection Agency that cooperative efforts are essential in confronting the law enforcement challenges associated with the nature of pollution which, once released to the environment, respects no borders and defies traditional law enforcement jurisdictions. With this in mind, the Agency has worked to promote structures for extensive cooperation between federal, state, local and international law enforcement authorities.

Internationally, the Agency's Office of Criminal Enforcement, Forensics, and Training has worked closely with INTERPOL and its Working Party on Environmental Crime since its inception in 1992. In the last two years, INTERPOL's international network for law enforcement to law enforcement communication has been utilized increasingly to cooperate by nations on both ends of a transboundary investigation into environmental crime. At this writing, the INTERPOL Working Party is nearing completion of an international training video and curriculum for police agencies responding to environmental crimes. It is scheduled to be delivered in Eastern Europe in the fall of 1998.

The U.S. Environmental Protection Agency's office of Enforcement and Compliance Assurance also supports a variety of bilateral, regional, and multilateral networks of environmental enforcers. These include border task forces and working groups, the North American Commission for Environmental Cooperation, and the International Network for Environmental Compliance and Enforcement (INECE).

Domestically, state regulators and enforcement personnel, local police, and other federal law enforcement agencies have long been essential partners with the Agency in environmental enforcement. The Agency's criminal investigators participate in some 90 task forces composed of specialized federal, state, and local law enforcement agencies to pool resources and intelligence and conduct high profile, multi-jurisdictional investigations such as those currently underway to address the illegal smuggling of CFCs into the United States. Another leading example of transboundary cooperative investigations are those conducted under the auspices of the Law Enforcement Coordinating Committee in western New York State and Ontario, Canada, which coordinates investigations and mutual assistance in a wide variety of environmental crimes in the areas surrounding Buffalo and Toronto.

Interagency cooperation has been facilitated by joint training exercises, the sharing of data and intelligence among law enforcement agencies, and formal agreements for cooperation such as the Memorandum of Understanding between the Agency and the US Customs Service for the enforcement of environmental laws at the border. Also important, the Agency's Office of Criminal Enforcement, Forensics, and Training now deploys its special agents in 40 different communities across the United States so that they can work directly in the communities that face the greatest pollution problems in concert with the local authorities in an attempt to achieve a consistent and fair level of environmental enforcement across the nation.

#### **4 PROJECT EXODUS ASIA: THE INVESTIGATION AND THE PROJECT.**

A recent Office of Criminal Enforcement, Forensics, and Training (OCEFT) effort involved both the coordination of domestic enforcement agencies to identify suspect shipments of waste destined for export and cooperation with law enforcement agencies abroad. The Office named this project 'Exodus Asia' in part because it brought together a network of state and federal law enforcement agencies to focus upon potential illegal shipments of waste from the

United States to Asian nations. An examination of this project illustrates the type of coordinated law enforcement response necessary to track unknown waste shipments and build cases against those who illegally transport waste, particularly those shipments that cross national borders.

Actually, what became the Exodus Asia project was precipitated by urgent diplomatic communications and international headlines that accompanied the arrest of a U.S. citizen in June of 1996 by the People's Republic of China for illegally importing waste into that country. The defendant was responsible for importing shipments of recyclable paper materials originating in the United States. Upon arrival in China, however, the shipments were alleged to contain undeclared hazardous waste materials. The waste was alleged to include garbage, medical waste, and other unknown substances.

It was apparent that the People's Republic of China was intent on prosecuting the importer under laws governing imports and its Law on Solid Waste Pollution Prevention and Control. The immediate concern for the United States government was to determine what facts it could about this incident so that it could respond as appropriate to the Chinese government. Those facts would not only inform any diplomatic decisions that needed to be made in the near term but also whether there was a potential violation of U.S. law as well related to the illegal export of waste.

First questions for U.S. investigators included whether these shipments in fact contained a "waste" and whether the waste was "hazardous" as defined by U.S. law. If the shipments contained an illegal export of hazardous waste, without proper notification and acknowledgment of consent by the receiving nation as required by U.S. law, then the Environmental protection Agency and other federal authorities would have jurisdiction to pursue charges for illegal export of waste.

Under U.S. law, these questions are not always easily answered even when there is knowledge of the source of the waste and the industrial process which produced it. In order to establish that a waste is hazardous in the U.S. for enforcement purposes, the government must prove that the substance first is a waste and then that it is either one of the thousands of listed hazardous wastes under federal regulations or exhibits the characteristics of a hazardous waste as defined by law, almost always by scientific sampling and analysis.

If the shipments were merely wastepaper intended for legitimate recycling, however, then there would be no violation of U.S. law. Indeed, the massive volume of wastepaper generated by U.S. consumers is attractive to certain Asian nations where trees are scarce, making it one of the nation's top export commodities. In 1995 alone, the United States shipped more than 6 million tons of recyclable paper overseas, most to Asia. U.S. industry standards do not permit wastepaper to contain more than 10 percent trash, but overseas mills are often willing to buy loads that contain 20 percent or more. Relative labor costs often make it cheaper for businesses to ship it mixed and have the receiving nations sort it out according to their standards.

Of course, it is illegal under U.S. law to mix hazardous waste in with this waste paper and it may be illegal under the receiving nations laws to import waste paper when mixed with other types of waste or too much trash beyond specification. Thus, the fundamental questions for this investigation became: (1) what exactly was in the rejected containers?; and (2) how did these shipments get contaminated and who was responsible?

Accordingly, the investigation proceeded along two tracks. First, to find out where these shipments originated, it was necessary to track them back to their point of origination in the U.S. by investigating everyone involved in the transaction: the brokers, the shippers, the exporters, and finally a recycling center where the shipping containers were loaded with waste paper.

At the same time, it was also important to establish precisely what the Chinese law enforcement authorities were alleging and what exactly was discovered in the containers. It was appropriate, therefore, that the Office of Criminal Enforcement, Forensics, and Training made a formal request of the People's Republic of China law enforcement officials through INTERPOL of the details of China's accusations and the facts they were alleging. The Chinese government responded to this request with information about the charges and specifics of the allegations. In turn, they requested information about the business operations of the defendant in the U.S.. These communications demonstrated the utility of INTERPOL's international system of law enforcement to law enforcement exchange in cases where it is essential for nations to cooperate in an international investigation and learn the facts in the possession of another nation.

Not only was such international cooperation critical to this investigation, but coordination with state and local authorities was required as well. Indeed, the State of California and The California Environmental Protection Agency were concerned about this matter in their own right. The shipments in question had departed from ports in California and wastepaper export for recycling purposes had become an important business in the state. This incident had raised questions about the legitimate trade in recyclable paper and for a time the People's Republic of China authorities suspended all such trade.

In fact, there was a high ranking delegation of California officials and businessmen in Beijing when the publicized arrest was made. Ironically, this delegation was promoting, among other things, expanded trade in paper recycling. Upon their return, California officials requested a U.S. Environmental Protection Agency investigation into these allegations and readily offered their support when they learned that such an investigation was underway.

#### 4.1 The Project

As the investigation unfolded, several concerns became apparent about the capacity of the different governmental agencies to detect or track suspect shipments intended for export and recycling, which may include waste materials. First, the U.S. State Department, the Customs Service, the Environmental Protection Agency, and different agencies within California may receive information relevant to potential illegal shipments, but there was limited capacity to investigate such allegations by any one agency acting alone.

Second, in an era of increasing global trade, mechanized transport with containerized shipping, and a high priority assigned to keeping shipments moving, it is more difficult than ever to have meaningful inspections of material intended for export or import. To the extent that Customs Services focused on illegal trade, most resources and technology were devoted to investigating incoming shipments, not those intended for export. Even then, only a small percentage of incoming traffic is actually inspected at the border.

In the modern era, it is not uncommon for shipments to be loaded in a container in the middle of America, sent by trucks or rail to ports in California, and then packed on ships which are underway without the container being opened or its contents inspected. Many of these containers are never opened until they reach their final destination, perhaps in the middle of China.

With more international trade, and relatively fewer opportunities for meaningful inspection, the potential for those to abuse the system by sending illegal substances increases. Thus, it is more important than ever that all levels of government work effectively together to detect and respond to suspect shipments.

These different law enforcement agencies must integrate or at least coordinate their data, intelligence and technology, and build joint capacity by developing routine mechanisms for cooperative operations. Moreover, these domestic agencies must establish a network with

their law enforcement counterparts in other nations, particularly their most frequent trading partners, to facilitate international investigations. Otherwise, there is small deterrent to those who would export waste illegally to avoid the costs associated with disposing of it in an environmentally sound manner at home.

#### 4.2 The Network

As it became clear that a broader and more coordinated approach was necessary to identify, interdict, and prosecute illegal exports, OCEFT found it necessary to initiate and structure a network of state, local, and federal agencies to pool their resources and combine their authorities to cooperate in the enforcement of laws which govern waste and the export of waste products. This network then needed to solicit and establish the active cooperation of other nations' agencies abroad. This became the genesis and mission of the project known as 'Exodus Asia'. By this effort, OCEFT set out to establish an enforcement network with a particular focus on exports from the USA to Asia.

A first step was to establish a compilation of domestic and diplomatic data about potential illegal shipments and obtain a baseline of information from other governments and regions about shipments which they had rejected in recent years because they contained waste products not correctly identified in manifests or which violated laws of the receiving nation. To this end, OCEFT made a formal request through INTERPOL of the appropriate authorities in Taiwan, Korea, Hong Kong, and the People's Republic of China to identify all suspect and illegal shipments rejected or investigated by their agencies since January 1, 1995.

Next, meetings were arranged with senior managers in the U.S. State Department, Customs Service, State of California, different offices within the Environmental Protection Agency, and local waste regulators to obtain all relevant data their agencies maintain about waste processing, including waste or by-product that may be intended ultimately for export. It was necessary for these agencies to then establish a coordinated liaison function in order to bring their respective information together for periodic analysis in order to identify potential illegal shipments before they left the U.S.. Review of this data was also essential so as to enable cooperation with other nations law enforcement in cases discovered abroad or in transit.

To date, largely by bringing together these various levels of government with different functions and the information they manage about waste, there have been numerous cases of suspicious waste management practices identified. Also, as a result, several cooperative investigations into illegal exports of hazardous waste and other dangerous substances have been initiated.

#### 4.3 The Investigation and its Aftermath

With respect to the original investigation, on January 13th, 1997, the Chinese government reported that the defendant was sentenced to 10 years imprisonment and ordered deported for illegally importing 238 metric tons of garbage and medical waste from California in shipping containers falsely labeled as scrap paper. After these shipments were returned to the U.S., and the shipping company repatriated them as they were obligated by contract to do, subsequent OCEFT investigation at the U.S. port confirmed that these shipments contained large amounts of garbage and other waste, though not necessarily hazardous waste under U.S. law. The waste was then lawfully disposed of in the United States.

On October 1, 1997, the People's Republic of China reported that traffic in illegal dumping declined in the past year due to the threat of imprisonment and more rigorous inspections of foreign waste shipments. "Large-scale U.S. waste exporters now take more care with the quality of China-bound waste," the People's Republic of China State Administration of

Import and Export Commodity Inspection said in a statement. The Administration said less than 1 percent of foreign waste imported since January failed to meet federal standards, according to random inspections by Customs agents. "Imports of harmful waste have been successfully prevented," the administration reported.

It is hoped that with a continued cooperative law enforcement focus on illegal imports and exports at home, and enhanced coordination with law enforcement agencies abroad, that the U.S. and all nations may collectively be in a better position to detect, respond and therefore deter illegal shipments.

## **5 CONCLUSION**

The United States environmental enforcement efforts must continue to emphasize and improve the cooperative networks that reach every municipality and extend beyond our national borders. In addition to building alliances with other nations and international organizations, Environmental Protection Agency is stepping up its cooperative work with state and local officials.

In October of 1997, OCEFT, in collaboration with the Department of Justice, opened the Center for Strategic Environmental Enforcement in Denver, Colorado as a centralized office for the compilation and analysis of data and intelligence for the purpose of identifying environmental crimes, both domestic and transnational, which have historically gone undetected. The Center is designed to function as a resource for local, state, federal, and international law enforcement agencies or prosecutors who require assistance in developing criminal investigations of environmental laws and related violations.

It is hoped that the Center will further enable interagency cooperation in the investigation and prosecution of environmental crime by generating targeting techniques, and providing link analysis of data and intelligence from a wide variety of sources, so that each of these agencies' information may be more efficiently utilized to identify potential violations and trends of illegal activity. In this way, law enforcement agencies should be in a better position to carry out the type of labor and resource intensive investigations required to combat international environmental crime, and fulfill the mandates from national leaders for greater cooperation.

## **APPENDIX 1 THE DELEGATES AND ENFORCEMENT OFFICIALS REPRESENTING THE G-8 NATIONS AND OTHER ORGANIZATIONS**

### Canada

Mr. Ian McGregor, Director General, Environment Canada

Mr. George Webb, Chief, Export Control and Counter-Terrorism Section,  
Customs Canada

Mr. Dale Kimmet, Director, Enforcement Branch, Environment Canada

### European Commission

Mr. Guy Chauvin, Principal Administrator, International Affairs Unit

Mr. Georges Kremlis, Head of Legal Affairs Unit

## France

M. Jean-Pierre Thebault, Diplomatic Counsellor, Ministry of the Environment

Mme. Marie-Laure Tanon, Legal Counsellor, Ministry of the Environment

## Germany

Herr Kriminaldirektor Claus-Peter Holz, Director, Federal Office of Criminal Investigation

Frau LMR Edeltraud Boehm-Amtmann, Assistant Director, Bavarian Ministry

Dr. Julia Werner, Assistant Director, Federal Ministry for Environment

## Italy

Min. Valerio Augusto Astraldi, Diplomatic Counsellor

Dr. Corrado Clini, Director General, Ministry of the Environment

Colonel Nicola Raggetti, Commander, Nucleo Operativo Ecologico, L'Arma Dei Carabinieri

## INTERPOL

Mr. Hiroaki Takizawa, Assistant Director, Economic and Financial Crime Sub-Directorate

## Japan

Mr. Satoshi Tanaka, Assistant Director, Global Environment Department, Environment Agency

## Netherlands

Mr. Pieter Verkerk, Inspector General, Inspectorate for the Environment, Ministry of Housing, Spatial Planning and the Environment

## Russia

Mr. Denis Evgenyevich Dymov, Director, State Committee for Environmental Protection

## United Kingdom

Ms. Claire Brialey, Department of the Environment

Dr. Alan Duncan, Acting Director of Environmental Protection

Mr. David Slater, Department of the Environment

Mr. Bill Townend, Chair of the UK Interpol Environmental Crime Group.