

SUMMARY OF PANEL 2: THE COMPLIANCE AND ENFORCEMENT MESSAGE

Moderator: Bakary Kante, United Nations Environment Programme, Kenya

Panelists: Sheila Abed, Chair of IUCN (World Conservation Union) Commission on Environmental Law, and IDEA (Environmental Law and Economics Institute), Paraguay

Antonio Benjamin, Law for a Green Planet Institute, Brazil

Ken Cook, Environmental Working Group, United States

John C. Cruden, Deputy Assistant Attorney General, U.S. Department of Justice

Rapporteurs: Matthew Stilwell and Scott Stone, INECE Secretariat and the Institute for Governance and Sustainable Development, United States

1 INTRODUCTION

The purpose of this panel is to provide participants with the tools and messages necessary to foster a culture of compliance and enforcement in their organizations, home countries, and regions. The panelists discussed the benefits/costs of enforcement, tools for promoting success, and new approaches to compliance.

2 PRESENTATIONS

A summary of the presentations of the four presenters to the plenary follows:

2.1 Presentation by Dr. Sheila Abed

Dr. Sheila Abed spoke on challenges facing developing countries in securing better compliance and enforcement. The Millennium Ecosystem Assessment captures the significant challenges facing developing countries. It stresses that key ecosystems on which we rely are under stress, particularly in developing countries that husband the world's biodiversity. Among her main points were the following:

- Crime pays. Enforcement is inadequate in many countries and actors benefit by breaking the law. Compliance needs to be enhanced to address this problem.

- Enforcement systems are only as strong as their weakest link. A first step towards enforcement and compliance is the amendment of frameworks and the building of national capacities. Biodiversity-rich countries are often immersed in an authoritarian culture, marked by corruption and arbitrary procedures. Enforcement and compliance are thus related to good governance and the rule of law.

- Coherent and comprehensive regulatory frameworks require better coordination among institutions.

- Obstacles to compliance and enforcement include insufficient resources, poor staff development, inadequate education of staff and the public, and insufficient access to information and to justice. Addressing these obstacles requires more attention to economic, social, and political issues.

- Economic issues can also be an important vehicle for compliance. Addressing these through economic incentives can promote competitiveness, increase efficiency and level the playing field.

- Social and political issues must also be addressed, such as the essential need to enhance participation and public involvement.

In conclusion, Dr. Abed asserted that frameworks must be adapted to local conditions, where a mix of measures will usually be required, including economic instruments. She further explained that efforts to strengthen compliance should reflect that the inadequacy of financial resources is unlikely to be remedied in the short term, so incentive-based approaches should be promoted. In addition, officers must be better trained and supported, to achieve better compliance.

2.2 Presentation by Mr. Antonio Benjamin

Mr. Antonio Benjamin, a Brazilian environmental lawyer and prosecutor, spoke on shaping the compliance and enforcement message, with a focus on five main points: (1) whether there is a global message; (2) the importance of the message; (3) issues facing developing countries on environmental compliance and enforcement; (4) assessing tools for compliance and enforcement; and (5) the future of environmental compliance and enforcement.

On the first point regarding a global message, Mr. Benjamin stated that a number of elements can be combined to form a coherent and collective message on environmental compliance and enforcement. He discussed three elements in particular:

- Ecologically sustainable development has become a global paradigm and, although often lacking in clarity, provides an overarching goal to which efforts to strengthen compliance and enforcement can be linked.
- The rule of law is essential in promoting progress towards sustainable development and in achieving other important social objectives.
- Law demands compliance and enforcement. Without compliance, the law is deprived of meaning.

Mr. Benjamin asserted that these elements, taken together, could be considered as central components of a more effective global message on compliance

and enforcement. They can help to address a culture of non-compliance as a global problem, which reflects not only a lack of willingness to comply, but more importantly also a lack of capacity to comply. Both civil and common law countries face these challenges.

Second, Mr. Benjamin addressed the issue of the audience for the message and why that is important. To start, we must ourselves have a clear sense of our mission, of the contribution we have made over the last few decades, and that which we will continue to make in the future. He explained that there is a message we want to pass to parliaments, to show that a good piece of legislation can be well-enforced and achieve its goals. There is also a message we want to convey to the business community about fairness in the market place and fair competition, which requires rules to be applied equally to all parties. Finally, there is also a message we want to pass to the non-governmental organizations. Mr. Benjamin further contended that, as well as policies, we need laws with which we can secure compliance. And finally, he declared that there is a message we must convey to the donor community, to ensure that the investments they make result in the objectives they seek.

Third, Mr. Benjamin discussed the main challenges facing developing countries on environmental compliance and enforcement. He addressed a number of issues:

- Regulatory systems in all parts of the world have been improved. Modernization of the regulatory process is an essential part of strengthening the rule of law and must continue.
- There is growing public demand for better environmental compliance and enforcement. The public is becoming progressively aware of the need for environmental compliance and enforcement and progressively more supportive of it.
- Drafting good laws remains a problem in all countries. The United Nations Environment Programme (UNEP), INECE,

and other actors can provide model laws and other tools to assist countries to improve their regulations.

- All developed and developing countries face financial and human resources challenges that must be addressed.

Fourth, Mr. Benjamin argued that the assessment of environmental compliance and enforcement tools should also be a priority in strengthening compliance and enforcement:

- In many cases, there is a lack of systematic environmental compliance and enforcement strategies and priorities, which can be addressed through the activities of UNEP, INECE, and others.
- There is a continuing focus on a bureaucratic model of environmental compliance and enforcement, and poor generation and management of environmental compliance and enforcement information. It is difficult to develop environmental compliance and enforcement indicators when you lack information.
- Another challenge that must be addressed is the career insecurity of environmental compliance and enforcement personnel, as well as capture of agencies.

Mr. Benjamin concluded by stating that we must strengthen environmental compliance and enforcement if we are to leave our children and future generations a world we desire.

2.3 Presentation by Mr. Ken Cook

Mr. Ken Cook spoke on how to present a message – or set of messages – that help to create a culture of compliance and enforcement. He made three main points: first, as environmental law has improved so has the message of those who oppose these developments; second, this tendency is challenging the work of compliance and enforcement officials and others; and third, we need to think about how to communicate better to address this opposition and make room for our work.

Mr. Cook first addressed how we can

shape better messages. He asserted that the best messages come from culture. We are not simply trying to establish a message of compliance and enforcement. We are also thinking about how our cultures receive information about compliance and enforcement. He maintained that concepts such as “compliance and enforcement” inspire some, but cause resistance in many; therefore we need to reframe our message to connect with a broader public.

Mr. Cook also contended that culture comes from many sources, including the family. He mentioned these statements as examples: “pick up after yourselves”, “stop tracking mud through the house”, “if you break it, you buy it”. These statements embody values – fairness, equality, opportunity, respect for nature, respect for heritage and the past. He argued that these values in many ways are at war with modernity, commerce, and ideology, but they remain fundamental. Mr. Cook further declared that when we stray from these values, we do so at our peril, and find ourselves using technocratic arguments that people do not understand or relate to. He explained that people without a specialized background (similar to the participants’) may not understand the language we use. To communicate with the public, we need to use common language that connects with their core values. Mr. Cook presented some metaphors to draw on: (1) The sheriff riding into town is fair, but tough, and keeps the town orderly; (2) The cop on the beat keeps the order, knows people, and secures the peace. In contrast, describing the EPA as the Gestapo, as has been done by some in the United States, presents an unfavorable image.

Mr. Cook also contended that organized opposition stays on message to dilute technical information and present a positive and acceptable message to the public. While some of their messages are “negative”, most strike a more engaging and positive tone. Some examples of these messages are: “making progress but having a long way to go”, “science is not settled”, and “risk reduction is probably not worth the costs”. They stay positive and connect

with people's values. He stated that the regulatory community, by contrast, has a negative message that causes people to disconnect. We describe problems as overwhelming, and the solutions as long-term. We use technical language. We thus need to reframe our message. Examples of more positive messages are: we take care of the planet for our future; we are investing; and the problems are not insoluble.

Mr. Cook offered three suggestions as we move this forward:

- Keep it simple. Messages should be tested out on people who do not work in the field, to ensure that they connect.
- Teach first. We need to raise awareness as a first step towards building trust and understanding, and before securing compliance and enforcement.
- Give credit where credit is due. We need to be better at recognizing achievement and reward it as a way of expanding the circle of people who are interested in protecting the environment.

2.4 Presentation by Mr. John Cruden

Mr. John Cruden drew on his extensive experience as the person responsible for all civil environmental enforcement in the United States and presented three significant points: the concept of compliance and enforcement; lessons learned from the last few years; and next steps to communicating our ideals and passions to the public and citizens we serve.

First, Mr. Cruden stated that the concept of environmental enforcement and compliance is the engine that drives the train towards environmental improvement and success. Compliance means achieving our standards, and failing to comply lowers the real standards we are setting. He argued that we must do a better job at explaining our roles and promoting our values and messages. In particular, we must communicate that when we do not adequately enforce, companies that are complying with the law are put at a competitive disadvantage and the environment suffers.

Second, Mr. Cruden explained that

over the last few years, enforcement experts in the United States have learned at least three crucial lessons. First, as enforcers, we work better when we partner with other entities – citizen groups, states, and local entities. Partnerships are an essential part of building better compliance and enforcement. Second, clarity in goals and objectives is required. Those closest to the event must feel part of the process. We must cut through our complex vocabulary to connect with real people. Setting out simple rules clearly – as is often done in children's classrooms – is essential. Third, we must use our own resources wisely in achieving the goals we are seeking. We lack resources, so we must use them effectively and efficiently.

Third, in terms of next steps, Mr. Cruden asserted that we must:

- Develop a clearer message. What are the elements of a clear and successful message? We need to send a simple message that people must “clean up their mess” and behave responsibly.
- We need to deter future misconduct. Industry players want compliance to ensure a level playing field. Like a good soccer game, the rules should be enforced fairly upon all players.
- We need to improve our communication to all actors: we must improve communication to citizens, non-governmental organizations, and the media; we need to communicate accurately to the regulated community; and we must communicate effectively to others in government that our work is important not just to the environment, but also to the economy and other sectors of society.

3 DISCUSSION

During discussion in plenary, participants in the meeting asked a number of relevant questions:

- What is the importance of international environmental agreements in shaping domestic environmental agendas and

rules? (Dr. Iwona Rummel-Bulska, Switzerland)

- Are we optimistic or pessimistic about getting the concept of compliance and enforcement across, and why? (Mr. Paul Gavrel, Canada)
- Is it possible to create a good future for future generations with our current efforts? (Mrs. Zahia Ibersienne, Algerian NGO representative)
- Do our institutional models – the establishment of formal environmental agencies and so forth- make them easy to attack and fail to connect us with more fundamental values and approaches? (Mr. Paul Gavrel, Canada)
- Do you think that implementation of multilateral environmental agreements would be improved by seeking funding for implementation before ratification?
- Does communication with those who should comply also imply cooperation? What is the appropriate balance?

Remark by Mr. Ken Cook (United States): To reconnect the environment with our values, we need to focus on how to better communicate with the public. We need to be careful about the model we pick. We should not, for instance, refer to those that government works with as “customers”, such as “the customer is always right”.

Remark by Mr. John Cruden (United States): People are fundamentally concerned with the air, water, and land, and are willing to sacrifice their other goals to achieve these goals. We are doing well at communicating the problems, but badly at communicating our successes. We need to be better at showing the value we create.

Remark by Dr. Sheila Abed (Paraguay): Enhancing national capacities for enforcement is crucial. We must also make simple and clear messages that address all stakeholders in society. We must do better at making our goals – the goals of securing compliance and enforce-

ment – those of the broader political process.

Remark by Mr. Antonio Benjamin (Brazil): Legal frameworks that stress prevention and precaution must be built and strengthened. The stronger they are, the easier our job. We need therefore to work on the legislative side, but also within our community to create a culture of precaution and prevention. He expressed optimism in the area of pollution control but noted that green environmental law, biodiversity, and habitat protection are more of a challenge – the impacts are irreversible and the effects often fall further from the acts causing them. We have not yet realized the relevance of international agreements in shaping national legislation. The main role is not only that of hard international law, but also in guiding the development of other softer practices. The Stockholm Declaration, for instance, has been included into national law in many jurisdictions.

4 CONCLUSION

In conclusion, the moderator Mr. Bakary Kante summarized discussions and offered the following key points:

- Working together in achieving environmental compliance and enforcement is a crucial message – we must work together to achieve our goals.
- Clarity is essential if we are to communicate better with the public.
- The rule of law plays a critical role, as well as economic incentives, in achieving environmental compliance and enforcement.
- UNEP and other agencies have been called on to develop tools and models to support and strengthen environmental compliance and enforcement. UNEP is ready to respond to this call, which addresses one of the core areas of its mandate.