

SUMMARY OF WORKSHOP 1D: COMPLIANCE AND ENFORCEMENT THEORIES AND DESIGN PRINCIPLES

Facilitators: Lee Paddock, International Union for the Conservation of Nature;
Pace Law School, United States
Marcia Mulkey, Temple University, United States

Rapporteur: Dave Grossman, INECE Secretariat

GOALS

To explore ways participants can evaluate and apply in their home organization a wide variety of compliance and enforcement theories and program design principles that have emerged, considering the unique circumstances in each particular program and in each cultural setting.

1 INTRODUCTION

The workshop began with opening comments from the facilitators laying out the idea of first principles, underlying theories and beliefs, and the need to have a common system of beliefs or values in order to design effective programs and to strategically direct limited resources to raise compliance and influence the drivers of human behavior. Facilitators provided participants with two sheets of questions intended to provoke discussion. The workshop then opened up into discussion of national experiences and participant thoughts on design principles. Participants shared experiences of designing enforcement systems and discussed enforcement and compliance design problems in the Netherlands, Bahrain, Tanzania, Turkey, Italy, England & Wales, and Canada. There was frequent discussion of the need for those who write laws to consult with those who enforce them in the course of drafting environmental laws.

2 DISCUSSION SUMMARY

2.1 Asking the Key Questions and Finding Common Beliefs

Ms. Marcia Mulkey contended that a key design challenge is determining the

functions to co-locate within a common reporting chain and with common personnel, as opposed to functions located elsewhere that require coordination. She explained that it is impossible to put all relevant programs together, such as the dilemma of whether to locate an environmental enforcement program in an enforcement agency or an environmental agency, and how to maintain coordination with the agency into which the program is not integrated. She also asserted the need for a common belief system and asked what the underlying theories and beliefs are that we collectively accept to be truths.

Mr. Lee Paddock presented the issue of how to raise compliance levels, such as through direct enforcement, inspections, permitting, targeting, compliance assistance, or a strategic approach combining all of the above. He also inquired about the drivers of human behavior and stated several possibilities, such as regulatory systems, economics, values, and traditions.

In response, Mr. Wout Klein asserted that it was more important that enforcement officials ask themselves these questions than that the workshop participants find “the answers.” Ms. Marcia Mulkey concurred, noting that it is more important that all those working together in the same

agency share the same core set of beliefs than that the workshop participants find a common set of answers. Mr. Ryan Levitt contended, however, that it was desirable to have some global commonality as well.

Justice Amadeo Postiglione maintained that the participants also needed to clarify their own philosophy for constructing solutions. He asked if institutions were the answer or if other social or scientific solutions would be more effective, and whether states should be trusted as mediators for the environment. If not, then the alternatives and the other actors that should play a role need to be considered.

2.2 Effective Message Sending

Mr. Renzo Benocci asserted that the most important question is how to maximize the effectiveness of enforcement activities in the face of limited resources, considering the appropriate role for deterrence and message sending. He contended that you must market what you do within your own organization, getting buy-in from people in your own departments, and then must move the marketing efforts up to the agency's political masters and to the public. He asserted that this marketing must be done in a way that conveys what was done, why it was done, and why it was essential. This approach attempts to get all members of your enforcement community to share the same vision.

Ms. Marcia Mulkey responded that message sending is very important in order to achieve common buy-in, but that we must recognize that how to do the message sending differs between agencies. Mr. Lee Paddock offered that it was also important to consider how to better send this message to lawmakers and policymakers.

Mr. Renzo Benocci declared that it was also key to develop a better enforcement message, which requires gathering the information to explain why certain actions are being taken, how they are effective, how they could be improved, and what the consequences are of not improving them. Decisionmakers cannot resolve agency problems if they do not know about

them. What this means is that agencies cannot have everyone on staff doing only enforcement, because then no one is doing the reporting that lets the agency and policymakers know where the gaps are.

Mr. Ryan Levitt maintained that the ongoing message should be about protecting the environment and how the regulators' actions help to do this, rather than about compliance and enforcement.

2.3 Country Experiences

Ms. Ozge Karadeniz stated that when Turkey announced multi-media inspection regulations, it was a big shock for the industry. As a result, Turkey engaged in a two-year preparation period, with training programs for industry and for inspectors. Reports were sent to industry, and real inspections began this year. She asserted that the preparation period was important.

Mr. Chris Howes explained that revisions to the Environment Agency (England & Wales) have been based around basic principles, such as risk screening. The concern is less about principles and more about resource balancing, since the agency tends to put lots of effort into creating perfect permits at the expense of implementing and verifying compliance with them.

Mr. Ebrahim Ali shared that in Bahrain, a warning letter is sent first when a violation is found, and if no response is received, then the facility is shut down until it replies. He asserted that there needed to be legislation for enforcement that allows for other options.

Mr. Palamagamba Kabudi stated that Tanzania has enacted a lot of environmental acts and that the Environmental Management Act (EMA) has recently been approved to help coordinate among them all. Local authorities need to be taken into account because Tanzania is a big country, and an effective national environmental protection agency would only be effective in the main city of Dar es Salaam. The biggest difficulty is figuring out how to coordinate among all the authorities, which is

why the EMA was created and passed. Heads of the key Tanzanian governmental departments form a National Environmental Committee that meets twice a year. Now that Tanzania has all the environmental acts, enforcement is the key issue. Economic incentives are now being explored, as well as how to harmonize them with the traditional “command and control” programs that Tanzania is used to. “Command and control” programs have actually had a negative impact on forests in Tanzania, where local communities are assisting the poachers. Public cooperation is therefore key, which is why Tanzania took two years to draft a law – workshops were held throughout the country in an attempt to involve everyone in Tanzania. The goal was to attain legitimacy, seek common values, and involve the stakeholders to get common buy-in to the core principles. Tanzania has also instituted a reward system in the act that covers wildlife, and has arranged for compensation to officers and informers who are injured in the cause. There are also rewards in the Forest Act and Fisheries Act. Given the government's limited resources, the public's help is needed to enforce the laws, but systems of public involvement that involve telephones and the internet are not feasible because most people in the country do not have access. Tanzanian NGO civil society is still in an infant stage. Furthermore, Tanzania's consensus-based culture, in which people are happy to talk regardless of how long it takes to achieve consensus, can make enforcement difficult.

Justice Amadeo Postiglione noted that in Italy there were too many laws, and that the water law had 63 articles and 7 annexes. This illustrates the point that the drafting of laws is very important.

2.4 Input Into Drafting of Laws

Ms. Marcia Mulkey stated that people who write environmental standards are often not writing those standards with the issue of ease of detection in mind.

Mr. Terence Shears suggested that the “experts” writing the laws may not be the ones best-suited to designing laws that are enforceable. Mr. Renzo Benocci added that it is also important to draft the laws and regulations so they can be understood by laymen.

Mr. Albert Koehl contended that clear values and knowledge of what is meant to be achieved by the laws make it easier to create and implement standards and to communicate them to the public.

3 RECOMMENDATIONS FOR INECE

It was suggested that INECE could investigate areas of cooperation in capacity building not only in the form of exchanging ideas and sharing experiences, but also by providing human resource assistance to those now designing enforcement systems so that they do not repeat the same mistakes already made by others. In other words, INECE should investigate capacity building not just in terms of field implementation, but also in terms of strategies and design principles.