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Mutual Perceptions: Mexico and the United States Five Years after the NAFTA

Narrative Outline of remarks by Mark J. Spalding
on

THE NAFTA'S NEW ENVIRONMENTAL INSTITUTIONS

Thank you to Kevin Middlebrook, the Center for US-Mexican Studies and the Instituto Matías Romero for the invitation to participate in this interesting and useful conference.

The environment, as Ambassador Green said last night is a “non-traditional issue in US-Mexico relations” and until the GATT Tuna/Dolphin case, the environment was certainly a non-traditional issue in trade relations more generally. To highlight this starting point that led to the infusion of the environment into the NAFTA debate please realize that the US public started this new era with TV video images of dolphin (the beloved Flipper) struggling and drowning in tuna fishers’ purse seine nets. Meanwhile, Mexico led off with the image of an imperialist, unilateral action by the US to protect a species of animal that was not endangered and by demanding the alteration of a fishery that was outside its territorial jurisdiction.

There are many environmental problems to be addressed in North America: air, water, and land-based pollution, overconsumption of water and other natural resources, deforestation, loss of biodiversity, and the increasing trade and exploitation of endemic species. While some problems are localized, many are transboundary in nature. The main causes are interlinked, with the growth of urban populations and domestic manufacturing and associated activities. For example, in the US-Mexico Border zone, with the expansion of the maquiladora industry, there has been an increase in industrial waste as well as an increase in human waste from population growth in the area.

The answer was the NAFTA environmental institutions, or the institutionalization of these “non-traditional” relations. I will attempt to answer the following questions: What are these new institutions? What is the perception of their impact? What has been their influence toward change? And what is the way forward look like?

1. What are the new NAFTA institutions?

1.1. CEC

The Commission for Environmental Cooperation (CEC) with headquarters in Montreal Quebec, Canada was formed as part of the NAFTA package which sought to liberalize trade in North America while simultaneously providing some minimal protections for labor and the environment. The CEC is thus an international organization whose members are Canada, Mexico and the United States. Specifically, the CEC was created in 1994 under the North American Agreement for Environmental Cooperation (NAAEC) to address regional environmental concerns, help prevent potential trade and environmental conflicts and to promote the effective enforcement of environmental law. The Agreement complements the environmental provisions established in the NAFTA, and the work of the CEC can be divided into five main areas:

- Protecting human health and the environment.

- Enforcement cooperation and law.
- Environmental conservation.
- Environment, trade and economy.
- Information and public outreach.

1.2. BECC

A Border Environmental Cooperation Commission (BECC) with headquarters in Ciudad Juarez, Chihuahua, Mexico, to assist local communities and other sponsors in developing and implementing environmental infrastructure projects, and to certify projects for North American Development Bank financing. BECC is augmented by \$10 million in grant funds from EPA for its Project Development Assistance Program (PDAP).

1.3. NADBank

A North American Development Bank (NADBank) with headquarters in San Antonio, Texas, capitalized in equal shares by the United States and Mexico to provide \$3 billion in new financing to supplement existing sources of funds and leverage the expanded participation of private capital.¹ The NADBank was augmented in 1997 by the creation of the Border Environmental Infrastructure Fund (BEIF) which can provide grants for water and wastewater projects. The BEIF started with approximately \$170 million available, much of which has now been allocated to projects. The NADBank has also established an Institutional Development Program (IDP) primarily for utility capacity building.² IDP has \$4 million available to give as grants. NADBank made its first BEIF grant recommendations in March 1998, and IDP is currently active in 71 projects in 56 communities.³

The BECC/NADBank institutions are limited to three types of environmental infrastructure development: water supply and treatment, waste water treatment and disposal, and solid municipal waste [and related matters].

2. What is the perception of their impact?

2.1. in the US

During the NAFTA debates, many predictions were made regarding environmental concerns related to Mexico and in particular to the border region. One reason for this is that the U.S. and Canada already had decent environmental protections and enforcement. Mexico's general environmental law (of 1988) was well written, however there were serious questions about its enforcement. Another reason for this focus on Mexico was the ample horror stories regarding environmental harm and its affect on human health in the border free trade/maquiladora zones.

To counter the dire predictions, the advocates of NAFTA made overly generous promises on behalf of NAFTA's environmental institutions.⁴ These promises have now come to roost. The NAFTA environmental institutions look like failures in comparison to the claims made about what they would do. They are pale reflections of the all-powerful institutions they were promised to be.

Anti-NAFTA advocates in both the environmental community and what I will diplomatically call the ultra-nationalist, far right make great use of these "broken promises."⁵ Thus the NAFTA

¹ Mexico and the U.S. will each contribute half of the \$450 million in paid-in capital and half of the \$2.55 billion in callable capital. It has been estimated that leveraging these moneys could produce \$10 to \$20 billion for environmental and social adjustment projects.

² In a parallel move, the EPA has also provided \$17 million in direct grants to tribes for this same purpose.

³ Per Victor Miramontes personal communication.

⁴ I would note that this is ironically the opposite of Ambassador Green's suggestion that government often fails to explain the importance of what it is doing.

⁵ See for example, Public Citizen, *NAFTA's Broken Promises: The Border Betrayed*. (Washington, DC: Public Citizen Publications, 1996).

environmental institutions suffer, in the view of the current Republican majority in Congress, for carrying the double-curse of being both “environmental” and related to “NAFTA.”

2.2. in Mexico

Many in Mexico viewed and still view these institutions more as blackmail than benefit. They were a cost of entering into the NAFTA. Now, and especially after the peso devaluation, they are just plain too costly. How can Mexico justify spending so much on these institutions?

Worse yet, some analysts have suggested that Mexico is unfortunately not getting its fair share of benefit, given its fifty- percent support of the BECC/NADBank institutions.

Many argue that the CEC has become a think-tank, that is not helping Mexico’s development or its environment. Further, its dispute resolution system creates an unneeded tax on the environmental ministry’s budget that Mexico can ill afford.

There is a lack of congruence between perception and reality. A very few perceive these institutions for what they are – limited first steps toward broad North American cooperation on environmental issues – institutions which are working toward that lofty goal in a slow but sure fashion (although truly with some rocks in the path). Although we sit here looking at NAFTA plus 5, for these institutions we are really limited to examining about 3 years or less (it took a while to get them started, they did not magically appear fully formed on 1 January 1994).

3. What has been their influence toward change?

3.1. CEC

To quote from a recent independent review of the CEC,⁶ it has been:

- Developing regional action plans for the reduction and elimination of widespread and persistent pollutants, including DDT, PCBs, chlordane and mercury, to protect public health and the environment. [MJS – a demonstration of the ability to innovate and find solutions]
- Providing the public with important regional environmental information. This includes pollutant emissions data shown on a regional basis in the CEC's annual Taking Stock report, and an on-line comprehensive summary of the environmental law of the three NAFTA partners. [MJS – an increase in the knowledge base]
- The sharing of scientific information on biodiversity among the three Parties. [MJS – an increase in the knowledge base]
- Identifying the cause of waterfowl mortality in the Silva Reservoir in the State of Guanajuato, Mexico, and providing capacity building and planning activities that have assisted the state and federal government in rehabilitation of this important wildlife area.
- Establishing an elaborate process of public participation through the JPAC and national advisory committees, as well as public meetings at the Council sessions, and with working groups. [MJS – institutionalization of cooperation]
- Working with the three governments to help develop an open and transparent means of conducting transboundary environmental impact assessments for government projects that may adversely affect the environment of a neighboring NAFTA country. [MJS – an increase in predictability, or at least the elimination of surprises]
- Promoting cooperation among the environmental enforcement agencies of the three countries by exchanging information on current policies and practices, and by conducting several capacity building and training exercises.
- Implementing the innovative public submission procedure empowering citizens to allege that a party to the NAFTA is failing to effectively enforce its environmental laws. [MJS – engaging the public]

⁶ An Independent Review Committee appointed in 1997 by the three environment ministers has presented its report on the operations and effectiveness of the North American Agreement on Environmental Cooperation at the Fifth Regular Session of Council, Merida, Mexico, 26 June 1998

3.2. BECC/NADBank

- As of January 1999, 24 projects have been certified with a combined estimated cost of nearly \$600 million dollars [NB: there have been a couple more certified since then, but I don't have the figures on them]. The NADBank has authorized loans, guarantees and/or grants totaling \$105 million and leveraging over \$400 million in total financing for 14 projects. Fourteen of the 24 projects are under construction, and one has been completed. When complete, the projects will provide at least some benefit to an estimated seven million border residents -- approximately sixty- percent of the border's population.
- Public participation [engaging the public]
- Transparency and access to information [no surprises]
- Bottom up decision-making [trickle up, not top down business as usual]
- BECC Certification Criteria [clear predictable rules]
- Some improvement of environmental indicators through faster process – more infrastructure built

4. The way forward

4.1. Obstacles

- Some will continue to label the NAFTA institutions as failures and claim they are not doing anything constructive.
- Increasing fragmentation or compartmentalization of US-Mexico relations may limit leverage in linking environmental protection to trade liberalization.
- As the result of the recent resignation of its general director, the CEC is in a management transition. Significant changes are under consideration to fix management problems. It would be most advisable for the CEC to work toward a structure that increases its independence and thus its credibility. In this way, it can improve its relevance. The CEC should augment its otherwise excellent studies with more applied actions in communities. This might be accomplished by an increase in funding for NAFEC, which supports grass-roots activity.
- The CEC can also be said to suffer from a pattern of neglect or at least indifference by the US and an interestingly large role by SECOFI in Mexico's participation in the Commission.
- The BECC and the NADBank need to do more to plan ahead. They can use their entry into communities to promote planning, reduce perverse resource subsidies and to stimulate more involvement by the private sector. The BECC and the NADBank need to work to eliminate the unproductive competition with the states for money, without compromising project criteria standards.
- The ultimate barrier to the success of these institutions is financial. For example, reasonable estimates for border environmental infrastructure in the three areas of the BECC/NADBank mandate are between \$8 and \$10 billion. At best the NADBank can only leverage \$1 to \$2 billion. More grant funds for project design, capacity building, planning, etc. are crucial.

4.2. Opportunities

- Unilateralism will decrease. We can expect better outcomes from a more interactive, reciprocal relationship on environmental issues between the US and Mexico.
- But the golden rule still applies – the nation with the gold rules. In other words, “who decides” and “who pays” are inextricably linked. This said, as suggested by Abe Lowenthal there is plenty of room for better management of the status quo.
- Slow upward harmonization of environmental standards.
- There is an opportunity to do more to consolidate and expand joint work on issues of environmental protection and conservation on which there is consensus.
- Slow opening of Mexico's political system.
- Slow improvement of environmental conditions/indicators.
- The NGO community is taking a greater lead in innovation and in finding workable solutions [For example, at the same time as this meeting is the Ford Foundation's Second Annual Meeting on the Border Environment which last year included the participation of 400

environmental NGOs from the border region alone. The campaigns to stop the construction of a low level nuclear waste facility in Sierra Blanca, Texas and a solar salt evaporation facility in Laguna San Ignacio, Baja California Sur also indicate a maturation of the North America network of environmental NGOs into effective binational coalitions.]