



First Meeting of Environmental Law Advisory Group
Washington, D.C.
March 16, 2007
9:00 a.m. – 5:00 p.m.
Organization of American States, General Secretariat Building 704

Meeting Report

Introduction

On Friday March 16, the Department of Sustainable Development (DSD) of the Organization of American States (OAS) hosted the inaugural meeting of the Environmental Law Advisory Group. The meeting provided an overview of the DSD's international environmental law portfolio, focusing on an ongoing initiative related to Trade & Environment in the Americas. In particular, participants discussed legal frameworks that improve the sound management of chemicals, promote enforcement and compliance of environmental laws, support Payment for Ecological Services, and strengthen the linkages in the area of trade and environment and for public participation mechanisms.

Opening Remarks

Scott Vaughan, Director of the DSD, provided an overview of the DSD's mission and projects and discussed opportunities for the Advisory Group's involvement in this work. He explained that the DSD focuses on issues related to democracy including good governance, institutional transparency, and public participation. In addition, the DSD is currently devoting substantial resources and attention to transboundary water management.

Mr. Vaughan suggested that the Advisory Group could play an important role in the development of a set of environmental law principles similar to the Inter-American Democratic Charter. In addition, the Group could play an important role advising the DSD regarding environmental law aspects of on-the-ground projects. Mr. Vaughan stated that he was excited about integrating the Advisory Group into DSD work in this fashion.

Background and Recommendations of Recent OAS Initiatives in the Area of Environmental Law

Claudia de Windt, Legal Specialist at the DSD, discussed the Department's environmental law mandates and various initiatives executed by the DSD in the area of environmental law. She emphasized the First Inter-American Meeting of Ministers and High Level Authorities on Sustainable Development, which was held in on December 4 to 5, 2006 in Santa Cruz de la Sierra, Bolivia, and which produced a Ministerial Declaration and Inter-American Sustainable Development Program (PIDS) that guide the DSD's work in the area of environmental law, among other mandates. The Declaration and the PIDS build upon previous Summit of the Americas mandates on issues including education, public participation, enforcement of environmental law,



development of sound domestic laws, and alternative dispute resolution in the areas of water, energy and climate change, biodiversity, and land-use change.

Ms de Windt also discussed the Inter-American Forum on Environmental Law (FIDA), which was conceived and established pursuant to 1996 Summit of the Americas for Sustainable Development in Santa Cruz de la Sierra, Bolivia. FIDA serves as a forum of environmental law experts for the exchange of knowledge and experiences in environmental law and to facilitate training and capacity building in environmental law and its implementation and enforcement.

In the context of these mandates and institutions, the DSD executes a set of activities with respect to environmental law.

Trade & Environment in the Americas Initiative

The majority of the Advisory Group meeting was devoted to a review of the environmental law aspects of the DSD's ongoing *Trade and Environment in the Americas* initiative, which is a project designed to respond to trade-related capacity building needs in the area of environmental management in the region.

As a general matter, participants explained that there is perceived antagonism between ministries of environment and their counterparts in ministries such as trade, agriculture, mining, and natural resources. This perception is not, in fact, the case as there are many ways in which environment and these other areas are mutually supportive. Therefore, managing the relationship between trade and environment, for example, begins with re-focusing efforts to understand the physical and economic relationship between the two. In particular, it requires political will to embrace a vision of the compatibility of environment and trade.

Discussions focused on a number of specific substantive matters.

(1) Strengthening capacities in the sound management of chemicals

The DSD is identifying gaps, priorities and potential best practices for the region in areas such as capacity building, normative action and enforcement of laws for the sound management of chemicals. Participants stated that management of chemicals is traditionally not a principal issue or objective of environmental law. Nevertheless there is sufficient regulatory and institutional infrastructure to develop processes and standards for managing chemicals appropriately.

Participants recommended that the DSD continue working towards designing an inventory of persistent toxic substances (PTS) that uses toxicity levels as a key criterion. In order to implement the inventory effectively, criteria must be chosen in order to determine which chemicals will be included and how the inventory will be structured. A key requirement is gathering the required scientific information and toxicity level; however, this process can be difficult because such information is not readily available in all jurisdictions. Indeed, several countries in the region have begun working towards the creating their own chemicals inventories but these attempts have been hindered by numerous obstacles.

In particular, participants provided the DSD with a number of key recommendations on its work with respect to sound management of chemicals:



- (a) Analyze which institutions must be strengthened in pursuit of sound management of chemicals.
- (b) Apply a cross-sectoral approach that permits coordination among different economic sectors.
- (c) Focus on gathering and organizing information on chemicals and, in particular, develop thorough scientific knowledge on the environmental and health effects of chemicals.
- (d) Increase regional coordination to establish an inventory of key PSTs. This inventory should identify and classify PSTs according to set criteria. In this way, the OAS could serve as a clearing house on PSTs.
- (e) Use existing examples to assist in the development of such inventories. Examples include:
 - a. Toxic Substances List, which is part of the Environmental Protection Act's Environmental Registry (Canada)
 - b. REACH Program (European Union)
 - c. Toxic Substances Act (United States)
- (f) Work in the context of Stockholm principles, and work with countries in the region to implement Stockholm commitments under its Strategic Approach to International Chemicals Management (SAICM).
- (g) Commit efforts to raising awareness through creation of inventories, monitoring processes and record-keeping measures.
- (h) Emphasize transparency in decision-making to increase accountability and access to information.
- (i) Recognize that governments do not have sufficient resources to be solely responsible for these initiatives and therefore enlist the support and participation of civil society and the private sector.
- (j) Analyze existing management models and adapt these models to regional needs.
- (k) Emphasize the need for sound management practices at all levels: regional, national, and local. Decentralized management is critical.
- (l) Identify and analyze legal models, and, in particular, address issues including:
 - a. The transboundary dimensions of sound management of chemicals;
 - b. The occupational health aspects of sound management of chemicals; and
 - c. Enforcement of waste disposal.



(2) Enhancing public participation and the effective enforcement of environmental laws

The DSD is working towards improving mechanisms related to the effective enforcement of domestic environmental laws and implementation of environmental commitments in trade agreements. This work involves reviewing existing and proposed trade agreements, domestic environmental laws, and mechanisms such as citizen submissions or similar processes that are used in support of the enforcement of domestic environmental laws.

It is recognized that governments in the region must be conscious of enforcement and compliance when they draft environmental legislation. Various structures may be useful in this regard and governments must have the resources to learn from the successes and failures of existing models. Robust environmental laws feature several characteristics: well defined penalties and incentives; well developed processes for implementation and evaluation; clearly identified persons who are responsible for enforcement; and well publicized contents and obligations to facilitate compliance.

Participants urged the DSD to support the process of developing new environmental legislation and programs in the region, suggesting that the Department should provide capacity-building workshops to environmental officials that have a regionally focused comparative approach, which emphasizes best practices in this area. Participants recommended capacity-building in the areas of training government officials and judges, improving public participation mechanisms, and establishing comparative approaches to review regional laws, agreements, and programs.

In particular, participants provided the DSD with a number of key recommendations on its work with respect to enforcement of environmental laws and obligations:

- (a) Identify mechanisms that improve enforcement and compliance of environmental law.
- (b) Collaborate with civil society organizations in order to establish best practices respecting environmental law.
- (c) Determine the economic, political, and social benefits of including civil society organizations in decision-making processes. The inclusion of these organizations increases the force and legitimacy of these processes.
- (d) Conduct surveys of the public to determine their preferences and priorities with respect to enforcement of environmental law and public participation mechanisms
- (e) Devise a strategy for identifying how public participation mechanisms can be used to support other sorts of enforcement mechanisms.
- (f) Develop inventories of public participation mechanisms. One useful reference is that inventory developed under the Inter-American Strategy for the Promotion of Public Participation in Decision-Making for Sustainable Development.
- (g) Train governments on how to implement public participation, including how to empower members of the public to use the mechanisms that are available.



- (h) Develop judicial training seminars to increase the capacity of the judiciary to address public participation mechanisms and enforcement. In this area, several models are instructive, including:
 - a. National Judicial Institute (Canada)
 - b. UNEP
 - c. Johannesburg Judges' Forum (South Africa)
- (i) Strengthen networks, such as the Inter-American Forum on Environmental Law (FIDA) with civil society groups, including non-governmental organizations, law schools, and law clinics to overcome information gaps and to increase the public's access to systems of justice. This would include engaging these groups in the task of publicizing public participation mechanisms.

(3) Enabling conditions for Payment for Ecological Services (PES)

The DSD is supporting the development of a hemispheric approach to payment for ecological services (PES) and other mechanisms such as debt for nature swaps, conservation easements among others. Work in this area involves analyzing existing legal and regulatory frameworks at to determine which provisions facilitate or inhibit this type of mechanisms.

Participants stated that several countries in the Americas are interested in replicating Costa Rica's Fondo Nacional de Financiamiento Forestal (FONAFIFO) program but given that each country has a different legal and institutional structure, the program must be modified in order to be replicable. Moreover, participants emphasized that PES is a policy *tool* and not a policy *objective*: it is a mechanism for achieving broad trade and environment goals such as sustainable resource management, decreases in waste, etc. Thus, in order to replicate a program such as FONAFIFO, not only must the program be modified, but work must be done to ensure that the underlying policies and agendas are in place. To this end, participants suggested that the DSD could be involved in strengthening policies related to sustainable development and could work with officials in the region to develop robust PES that would help achieve policy objectives.

In particular, participants provided the DSD with a number of key recommendations on its work with respect to conditions for PES:

- (a) Perform a detailed study on the legal, regulatory, and institutional frameworks that are necessary to support PES programs.
- (b) Draft a research paper including a survey of existing PES programs and the relative strengths and weaknesses of each program. Participants emphasized that this sort of research paper has not yet been produced by any organization.
- (c) Develop training materials, including a web portal, that could be used a reference for governments seeking to implement PES programs.



- (d) Develop clear objectives for PES programs. This includes recognizing that PES is not an end but rather a means of environmental conservation and protection. Once the objectives of a given PES program are clarified, its means can be calibrated so as to facilitate the achievement of the main objective.
- (e) Develop clear means of valuing ecological services such as water, forestry, etc., in order to facilitate the implementation of a given PES program. The valuation process should include assessments of the public's interest in PES programs and its willingness to pay for such programs. Without a well-designed framework for valuing the resource, it will not be possible to establish the incentives necessary to make the program successful.
- (f) Perform a political role as a participant in discussions between governments, the public, and other stakeholders on the benefits and usefulness of PES programs.
- (g) Coordinate with other international agencies, such as the Global Environment Facility (GEF), to develop funding for PES programs.

(4) Trade and Environment Capacity Building Tool Kit

The DSD is designing and implementing a Trade and Environment Tool-Kit, which aims to strengthen and improve educational capacity of government officials, private sector, civil society and academia in the area of trade and environment. In particular, the Tool-Kit will outline the basic structures of trade and environmental law and their interaction. It will also underscore the rationale for environmental protection within trade agreements and provide economic and physical reasons to design effective legal frameworks for environmental management.

It is recognized that training courses on trade and environment are lacking in the region and that the Tool-Kit serves a pressing educational need. The DSD has an opportunity to work with various groups in the region to develop content that will be of considerable use.

In particular, participants reviewed the methodology and substance of the Tool-Kit and provided the DSD with a number of key recommendations on its work:

- (a) Carefully select the representatives who will be invited to participate in pilot training sessions. Selection of participants will have a dramatic effect on the scope, content, and methodologies that should be used in this Tool-Kit. Consideration should be given to:
 - a. The level/credentials of participants;
 - b. The substantive background of participants (trade, environment, etc.)
 - c. The sector from which participants are chosen (government, private sector, etc.)
- (b) The Tool-Kit should be designed as a series of models that will be implemented in a coordinated fashion; however, each training module should be self-sufficient so that it may be deployed individually.
- (c) Participants will devote no more than 1 week for training and the information must fit into a 1-week format (at maximum).



- (d) Currently, the Tool-Kit includes too much information and is overwhelming. Several possible solutions include:
 - a. Reducing the information and focusing on the “core” training modules (III, IV, V, VIII);
 - b. Splitting the Tool-Kit into two distinct Tool-Kits wherein one focuses on trade negotiation and another on drafting domestic environmental laws;
 - c. Condense background modules (I, II).
- (e) The Tool-Kit should feature more balance between trade and environment issues
- (f) A glossary of key terms should be prepared to accompany the Tool-Kit.
- (g) Utilize existing materials as references for preparing the content of the various modules in the Tool-Kit. This includes materials taken from:
 - a. Canada’s National Judicial Institute;
 - b. International Network for Environmental Compliance and Enforcement, including, in particular, materials from its two-day enforcement course;
 - c. Trade & Environment University courses

Recommendations for Potential Engagement of the Advisory Group

A number of suggestions were raised regarding future engagement of the Advisory Group in DSD activities. These include:

- (a) Establishing a dialogue between the Advisory Group and government officials in the Americas on environmental law and compliance. In this regard, it would be useful to hold 1 or 2 meetings per year.
- (b) Working with the DSD to set an agenda for the Inter-American Forum on Environmental Law (FIDA). This would include convening an Advisory Group meeting in Summer, 2007 to set the agenda for an upcoming FIDA Focal Point meeting.
- (c) Involving the Advisory Group in conference and seminars hosted by the OAS on various environmental law issues in the region.
- (d) Inviting the Advisory Group to attend meetings at the OAS in order to share views on environmental law with OAS officials
- (e) Arranging a meeting of the Advisory Group that will be chaired by the OAS Secretary General



Discussion on Next Steps and Close

The meeting provided many useful insights regarding DSD ongoing projects including, in particular, the *Trade and Environment in the Americas* initiative. The participants are welcome to provide the DSD with written comments regarding any matter discussed during the meetings.

The DSD will contact the Advisory Group to arrange the next meeting, likely to be held in Summer, 2007.