



**First Meeting of the National Focal Points  
Inter-American Forum on Environmental Law  
Brasilia, Brazil  
May 8-9, 2008  
9:00 a.m. - 4:00 p.m.  
Superior Tribunal de Justiça**

**REPORT**

**I. Introduction and Overview**

The Department of Sustainable Development (DSD) of the Organization of American States (OAS) conducted a meeting of the National Focal Points of the Inter-American Forum on Environmental Law. The meeting was convened, pursuant to a resolution of the Inter-American Commission on Sustainable Development CIDS/CIDI/RES.3 (III-0/02); the mandates issued by OAS member States in the Inter-American Program for Sustainable Development (PIDS 2006-2009), and the Declaration of the First Inter-American Meeting of Ministers and High Level Authorities on Sustainable Development (Santa Cruz 2006). The objective of the meeting was to review progress on the FIDA work plan, and identify priorities and a common work program based on the consensus of the national representatives for the next four years.

Over the course of two days, the National Focal Points (NFPs), NFP representatives, and members of the Environmental Law Advisory Group (See Annex I-Participant List) discussed the objective, structure and progress to date on selected themes for the hemispheric network plan on environmental law and enforcement. Further, environmental law and enforcement issues in the region were considered by addressing selected themes: Legal Frameworks for Water Resource Management; Trade and Environment; Climate Change and Domestic Environmental Law Agenda; Conflict Prevention and Management in Shared Natural Resources; along with Procedural Issues as they pertain to environmental enforcement, market-based instruments, administration of justice, public participation, and alternative dispute resolution.

With a view to prioritizing and designing a strategic Inter-American agenda for environmental law and enforcement, the NFPs and country representatives participated in five group sessions to address these themes. The discussions within these groups were introduced and chaired by a member of the Environmental Law Advisory Group (hereafter “Advisory Group”. See Annex II-Biographies of members of the Environmental Law Advisory Group). The results were then reported and consolidated into recommendations by the plenary for a common work program for the network and the Secretariat, to be implemented in the next four years.



## **II. Moving forward the environmental law and enforcement agenda in the region: consideration of themes**

Members of the Advisory Group made brief presentations on the five aforementioned themes based on the meeting’s background note (See Annex III- Background Note). Following the presentations, the NFPs and country representatives were separated into five groups, each moderated by a member of the Advisory Group, to discuss one of the five themes at issue and after, report to the plenary. The following paragraphs highlight the main issues addressed by the Advisory Group under each theme, and the recommended priorities for a common work program by the five working groups listed below. The working groups were composed of representatives from the following countries:

<i><b>Water Law</b></i>	<i><b>Trade and Environment</b></i>	<i><b>Climate Change and Domestic Environmental Law Agenda</b></i>	<i><b>Conflict Prevention and Management of Shared Natural Resources</b></i>	<i><b>Procedural Issues</b></i>
Costa Rica Mexico Venezuela Saint Kitts and Nevis	Canada Belize Jamaica Saint Lucia	Dominica Argentina Suriname	Ecuador Haiti Panama Brazil	Dominican Republic United States of America Guatemala Honduras

### **2.1 Legal Frameworks for Water Resources Management**

*Chair: Luis Fernando Macias*

When dealing with the management of water resources in the region, two trends are clear in the region: 1) countries apply different approaches when dealing with water issues; and 2) water regulations are not often grounded in a legal framework. Functions related to water management often overlap with other areas including waste management, agriculture, health, forestry, and fishing. Socio-cultural issues also need to be considered in water management, as many water laws fail to do so. For example, in the case of indigenous peoples, their approaches are not always considered in the legal frameworks of mainstream society, thus causing compliance problems.

Moreover, given the trans-boundary nature of many water resources in the region,



jurisdictional issues often arise, including whether property and access rights should be considered. As countries revise their legal systems pertaining to water management they should: develop a proper policy framework to guide the legal framework, as well as a legal framework which specifically addresses water; revise current legal frameworks to address water resources that were not part of earlier water codes, such as sea water; consider the diversities in society in terms of water use; consider water as part of a nation, and understand that effective water management is critical to national security.

The group discussed water ownership and legislation that authorize the right to use water in its natural state. Additional topics of discussions included the institutional handling of access to water, water as a human right<sup>1</sup>, and how to manage water resources. The group also decided on priority topics and began by looking at a conceptual framework. They looked at the economic value of water and its meaning, and observed that, sometimes the resources found in water are the most important to many countries.

In addressing ownership of water resources, the group considered whether water is a public good, and whether this issue should be considered in addressing access to water, concessions and permits. The group then focused on the practices of indigenous cultures, climate change, and shared water resources, as cross-cutting topics.

After the above considerations, the working groups and plenary recommended that the FIDA network (hereafter, “the network”) take the following actions:

- Conduct two meetings in the next four years to discuss water resources for the purposes of specifically developing a conceptual framework for the network to address and work on the topic.
- Analyze legal frameworks pertaining to water and identify best practices in water law and regulation that could be exchanged in the region.
- Discuss cross-cutting issues to water management by analyzing water case law, not just at the country level but at the regional level, from bodies such as the Inter-American Court of Human Rights (IACHR).
- Analyze and issue recommendations for the use of economic instruments to promote conservation, equitable allocation and sustainable use of water.
- Serve as a center of thought to develop doctrine on environmental law and water resources in the region.
- Serve as a clearing house for water law information including updating and maintaining the database on water law.

---

<sup>1</sup> While discussions were held regarding the right to water as a human right, these discussions were merely of an intellectual nature as participants concluded that this was a political rather than a technical issue that should be addressed at another level.



- Develop a conceptual framework on environmental law, and assess to what extent FIDA should try to develop a reference of studies on environmental laws and principles.

## **2.2 Trade and Environment**

*Chair: Isabelle Calle*

*Rapporteur: Silvia Maciunas*

The challenges in the dichotomy of trade and environment were discussed within the objectives of FIDA. The discussion under this theme focused mostly on trade obligations in Multilateral Environmental Agreements (MEAs) and on Free Trade Agreements (FTAs) and their environment chapters. An overview of FTAs and their environment chapters was provided, highlighting that most recent regional trade agreements negotiated with the United States and Canada contain environment chapters. It was noted that these chapters require parties to encourage high levels of environmental protection. However, there are aspects that should be analyzed such as how “levels of environmental protection” should be defined. The importance of Environmental Impact Assessments (EIA) as a tool for environmental management was also discussed in light of investment chapters under FTAs and the different capacity of trading partners in the region. Further, while acknowledging the importance of trade and investment to national economies, the importance of finding ways to encourage investments whilst protecting the environment was emphasized

Many of the countries present at the meeting highlighted the lack of laws in place to implement MEAs, and there was consensus that capacity building for effective enforcement was needed to support monitoring and compliance. A particular area of concern highlighted by participants was encouraging customs to focus on environmental issues.

The issues surrounding labeling requirements for genetically modified organisms were also discussed, along with the need to protect traditional knowledge at the national level through norms and regulation. Further, challenges in bringing legal action for environmental violations were addressed. It was highlighted that often, legal actions do not necessarily restore the environment, but only protect constitutional rights. Thus the need for existing legislation to adequately address environmental crimes was raised, as the penal codes of some countries do not specifically address this issue, or have any real sanctions for environmental violation.

Finally, public participation was highlighted as a way forward in addressing environmental challenges. The participants also indicated the need for coordination among those engaged in trade and environmental issues.

After the above considerations the working groups and plenary of NFPs recommended that the network take the following actions:



- Given that countries are at different levels of development, the FIDA network should support countries in the exchange of information and strategies through meetings, forums and capacity building workshops
- Support countries in assessing the ways in which environmental decisions are made so as to not become a barrier to trade.
- Explore and assess the usefulness of the Biosafety Clearinghouse established under the Cartagena Protocol, for information exchange.
- Support increased understanding on the overlap between trade and the environment.
- Analyze the cases involving countries of the region before the Dispute Settlement Body (DSB) of the World Trade Organization (WTO) that present conflicts in environmental law, the likelihood of a clash of jurisdictions, and the possibility of bringing environment related cases in diverse fora.
- Examine how countries tackle issues regarding levels of environmental protection, loss of traditional knowledge, and genetically modified organisms (GMO), and support the planning process to address them.
- Review how trade and environment issues have been handled during negotiations, and support the exchange of expertise and lessons learned.
- Identify potential areas for south-south cooperation among countries.
- Provide capacity building in ascertaining the effectiveness of environmental legislation and compliance.
- Support countries in developing whistleblower legislation to assist in identifying situations where there are violations of environmental laws.
- Review and analyze environmental provisions in FTAs, particularly the Treaty of Chaguaramas, to ascertain whether they are being sufficiently implemented.
- Undertake special efforts to build capacity in the CARICOM region.
- Exchange information on strategies used by countries to protect biodiversity, particularly from the impacts of investment.
- Support public participation processes in the context of RTAs.
- Build capacity of countries for coordination amongst Ministries of Foreign Affairs, Trade and Environment

### **2.3 Conflict Prevention and Management in Shared Natural Resources**

*Chair: Ricardo Saucedo*

*Rapporteur: Ricardo Saucedo*

This theme was approached by discussing the opportunities, conflicts and crisis. It was agreed that border regions in the Americas should be considered environmental spaces with socio-economic characteristics. As a result of sharing natural resources, countries develop cultural, economic and ethnic relations which go beyond borders. The NFPs agreed that in practical terms, this is representative of the new reality of the concept of borders and it should be reflected in laws and public policies. It was also discussed how



arbitration processes have not been effective in addressing environment related conflicts, hence the need for an Inter-American body for the conciliation of such matters. Moreover, given that there have been political changes in the region, states should be ready for new dynamics, including utilizing new tools to tackle these changes. The NFPs also highlighted the need to consider cross cutting issues when developing activities to address conflict prevention and management of shared natural resources. Therefore, consideration should be given to including justices and auditors, stimulating higher education on the topic, and engaging civil society. Strong emphasis was placed on learning from experiences in previous conflicts in the region by analyzing them and sharing information through the OAS.

After the above considerations the working groups and plenary of NFPs recommended that the network take the following actions:

- Analyze multilateral and bilateral agreements through the network in light of national legislation and their implications.
- Work with the countries in understanding a common concept of “border”.
- Develop a methodology for conflict management and general operational principles for action in the management of natural resources.
- Guide public policy towards an integrated focus.
- Strengthen Inter-American instances for conciliation.
- Promote and support the development of environment legislation to promote environmental management.
- Conduct an objective case review of conflicts among countries of the region related to natural resources to extrapolate lessons to be shared.
- Analyze good management practices of resources shared through political borders.
- Analyze, from a legal perspective, experiences of institutional mechanisms for watershed management.
- Create Inter-American spaces for dialogue to address border challenges with a new perspective, and share lessons from case review.
- Analyze laws which address conflicts and shared natural resources.
- Analyze the effectiveness of the Cartagena Protocol, and its implementation.
- Provide technical assistance to Member States for capacity building, particularly in negotiating and implementing international arrangements related to the environment.
- Promote and support the discussion of conservation and the shared management of resources in the political forum of the OAS.



## **2.4 Climate Change and Domestic Environmental Law Agenda**

*Chair: Luiz Fernando Villares and Justice Antonio Benjamin*

*Rapporteur: Guillermo Acuña*

Under this theme the principle of shared but differentiated responsibility was examined by highlighting the experience in Brazilian legislation. However, the need for a balance between an international framework addressing climate change and national legal frameworks was the main focus of the discussion. It was noted that climate change issues are cross-cutting as they relate to sectors with different levels of regulations and environmental resources. Thus, for example, effective water or forest management cannot be achieved without mainstreaming climate change considerations.

Domestically, it is imperative to address climate change. Thus, all domestic legislation related to the environment should be assessed to address their implications for climate change. However, it was highlighted that countries of the region do not really contribute to climate change challenges in terms of emissions. Some sub-regions however, need to be prioritized in terms of adaptation and mitigation challenges. Additionally, by working together, countries of the region could foster actions in particular areas of interest of the international climate change agenda. After the above considerations the working groups and plenary of NFPs recommended that the network take the following actions:

- Provide technical assistance in the implementation of laws to consider climate change issues. There should not be a separation of climate policy and law. The law should reflect the contents of the policy.
- Support countries by analyzing the vulnerabilities they face in dealing with climate change. The OAS should: analyze legislation addressing areas such as land, forest, protected areas, natural disasters and coastal areas; identify best practices, and demonstrate leadership.
- Analyze international discussions and negotiations in order to help countries avoid measures that can cause trade distortions (for example, the Kyoto Protocol).
- Support countries in developing adaptation measures and identifying their priorities.
- Provide support to countries for the introduction of national legislation addressing climate change.
- Conduct workshops/meetings to discuss aspects of climate change.
- Identify ways in which developed countries can assist developing countries, and support exchange of experiences and technologies that could support legal compliance.
- Assess the cost of enacting and implementing legislation and regulation for climate change adaptation, and promote the exchange of experiences, such as Mexico's in the economic cost for regulations.
- Consider emission reductions in climate change strategies and develop actions for national legislation.



- Conduct and disseminate an analysis of the way in which climate change has been incorporated into domestic legislation.
- Share information on regional efforts that address climate change.
- Serve as a clearing house for information related to climate change law, policies and strategies, including their budgets and social cost.
- Support countries in identifying goods and services that would be positive for climate change mitigation and adaptation.
- Support countries in improving legislation and policies that address the human impact of climate change and focus on local communities.
- Support countries in creating incentives within their laws and regulations to improve energy efficiency and alternative energy sources, and explore opportunities for technology transfer.
- Provide assistance for guidance and capacity building for compliance within the private and energy sectors.
- Support countries in considering accountability regarding the effects of climate change.

## **2.5 Procedural Issues**

*Chair: Gustavo Alanis*

*Rapporteur: Gustavo Alanis*

In addressing the various procedural issues, the wide array of sectors and stakeholders that need to be engaged were considered. Additionally, the importance of political will in ensuring enforcement and compliance was emphasized. Moreover, gaps in criminal codes and legislation were highlighted as well as the need for solid institutions to address enforcement. In filling these gaps, the NFPs recommended using fiscal and market based incentives to induce compliance, as they have the potential to engage key stakeholders in conservation efforts.

Engaging universities in compliance efforts was considered necessary for the purposes of environmental education. Regarding access to justice, it was considered as critical to ensuring accountability. Special environmental tribunals or units within ministries were mentioned as possible mechanisms to ensure accountability. Also, the need to encourage public participation through a broad publication of the rights and responsibilities of citizens in environmental management was discussed as a means of fostering pro-action rather than reaction. Thus, increased dialogue, consensus, collaboration and cooperation are essential. Further, common elements were identified in almost every country regarding the needs in this area, and after the above considerations, the working groups and plenary of NFPs recommended that the network take the following actions:

- Strengthen the capacity of the judiciary to effectively address environmental law concerns. Further, the OAS, through the network, should develop and implement an educational program addressing the priority areas of the network, particularly climate change.



- Engage universities through their environmental law programmes. The OAS, through FIDA should work with higher education institutions on improving the environmental law curriculum, and encouraging students to write and specialize in environmental legal issues. It was also mentioned that all law schools should make environmental law mandatory in their curriculum. Moreover, an Inter-American environmental law certificate or degree should be established.
- Work with countries to reduce corruption of environmental officers through institutional strengthening, analyzing and proposing creative solutions to address lack of resources.
- Support countries in maintaining transparency and ensuring compliance in EIA procedures and the process of granting environmental permits and concessions.
- Analyze key principles, including those related to public participation, access to justice, and access to information, in the Rio Declaration that could promote transparency in the region.
- Develop a procedural manual to assist citizens in understanding their rights and obligations pertaining to the environment.
- Support countries in incorporating environmental education provisions in all environmental legislation.
- Support countries in addressing matters relating to enforcement and compliance and establish the necessary mechanisms to ensure compliance with environmental conditions.
- Conduct an assessment of the number of mechanisms in the region that facilitate access to environmental justice, and their effectiveness.
- Conduct a comparative analysis of different institutional frameworks for environmental management in the region.
- Create an award for outstanding contributions to the environment and compliance with environmental law.
- Partner with organizations that could contribute in the area of environmental law.
- Develop a methodology to: determine the effectiveness of environmental laws, establish criteria, and enable countries to evaluate critical elements for effective implementation.
- Analyze the linkages between environmental law and other areas of the law given its cross-cutting nature.
- Analyze the possibility of adopting a universal approach to assessing environmental damage with a focus on prevention.
- Facilitate in-depth discussions and dialogue with the NFPs on mechanisms for environmental compliance such as the use of fines, monitoring, engaging the public in the decision-making process, and institutional cooperation.
- Assist the region in strengthening some of its instruments relating to environmental compliance.
- Support countries in developing and implementing market-based instruments and other incentives for compliance.



### **III. Discussion on network process**

#### **3.1 Communication and Information Exchange**

Regarding communication and exchange of information among members of the network, the following recommendations were made:

- Compile email addresses of all the NFPs and other representatives.
- The OAS should inform all the participants of activities related to the topics discussed in the meeting and priorities of the FIDA network.
- NFPs should be able to share relevant information from their countries on the topics discussed and the network priorities, as this would enable the development of a true network.
- The OAS should inform the NFPs and the Permanent Missions in Washington DC of the recommended activities.
- The series of databases on environmental law related topics should be strengthened and made available to all NFPs through the OAS-DSD website.

#### **3.2 Frequency of Meetings**

The NFPs expressed concern over the length of time (nine years) that elapsed since the last FIDA meeting. Recommendations stressed the need for continuous in depth dialogue on environmental law within the OAS. However, a major difficulty to conducting meetings is that funding is usually not allocated for network meetings by the OAS.

Despite the funding caveat, there was consensus that meetings should be held annually, with emergency meetings held more frequently if there are pressing issues or gaps that need immediate attention. The NFPs suggested the appropriation of funding by the OAS to hold network meetings and conducting meetings in parallel with other meetings for cost saving purposes.

#### **3.3 Partnerships**

The following organizations were referred to as potential partners in implementing a work-plan and addressing network priorities:

- The United Nations Environment Programme (UNEP)
- International Union for Conservation of Nature (IUCN)
- The United Nations Economic Commission for Latin America and the Caribbean (ECLAC)
- CEC's Working Group on Environmental Law
- International Network for Environmental Compliance and Enforcement (INECE)

#### **3.4. Financial Support for Activities**

Given the need for funding to address network priorities, the following recommendations were issued by the NFPs:

- Coordinate with other groups/agencies.



- Explore funding possibilities with bilateral cooperation agencies such as the Spanish Agency for International Cooperation and the Japan International Cooperation Agency.

Finally on network process issues, it was agreed that the report of the meeting should be shared with the NFPs and the Advisory Group for input, and afterwards sent to the Permanent Missions to the OAS.



## Annex 1 – List of Participants



## *National Focal Points/Representatives*

### **ARGENTINA**

**Maria-Esther Teresa Bondanza**  
Embajador- Directora General de Asuntos Ambientales  
Dirección General de Asuntos Ambientales  
Ministerio de Comercio  
Buenos Aires, Argentina  
Tel: (5411) 4819-7405/ 7414  
Fax: (5411) 4819-7413  
Email: [met@mrecic.gov.ar](mailto:met@mrecic.gov.ar)  
[xgm@mrecic.gov.ar](mailto:xgm@mrecic.gov.ar)

### **BELIZE**

**Jeavon Hulse**  
Environmental Officer  
Department of Environment  
Ministry of Natural Resources and Environment  
10/12 Ambergris Avenue  
Belmopan City, Belize  
Tel: (501) 822-2816  
(501) 822-2862  
Email: [envirodept@btl.net](mailto:envirodept@btl.net)  
[jeav\\_hulse@yahoo.com](mailto:jeav_hulse@yahoo.com)

### **BRAZIL**

**Antonio Herman Benjamín**  
Justice  
Superior Tribunal de Justiça  
SAFS Quadra 6, Lote I, Trecho III  
Brasília, DF, Brasil  
CEP 70095-900  
Tel: 55-61-3319-6464 [w]  
55-61-3319-6085  
Tel: 55-61-3244-3263 [h]  
Email: [planet-ben@uol.com.br](mailto:planet-ben@uol.com.br)

**Fernando Lyrio**  
Head of the Office of International Affairs  
Ministry of Environment  
Brasilia, Brazil  
Email : [fernando.lyrio@mma.gov.br](mailto:fernando.lyrio@mma.gov.br)

### **Luiz Fernando Villares**

Consultor Jurídico do Ministério do Meio Ambiente  
Ministério do Meio Ambiente  
Esplanada dos Ministérios Bloco B, Brasília  
- DF- CEP:70.068-900  
Tel: 55 61 3317 1421  
E-mail: [Luiz.Villares@mma.gov.Br](mailto:Luiz.Villares@mma.gov.Br)

### **CANADA**

#### **Silvia Maciunas**

Legal Officer,  
Oceans and Environmental Law  
Foreign Affairs and International Trade  
Canada  
Tel: (613) 992-1990  
Email: [silvia.maciunas@international.gc.ca](mailto:silvia.maciunas@international.gc.ca)

### **COSTA RICA**

#### **Marianela Montero Leitón**

Jefa del Departamento de Asesoría Jurídica  
Ministerio de Ambiente y Energía  
(MINAE) San José, Costa Rica  
Phone: (506) 233-4533 x113 o 153  
Fax: (506) 255-1492  
E-mail: [marianelam@minae.go.cr](mailto:marianelam@minae.go.cr)  
Personal: [marianelam67@hotmail.com](mailto:marianelam67@hotmail.com)

### **DOMINICA**

#### **Kathy Buffong**

State Attorney  
Ministry of Tourism and Legal Affairs  
Government Headquarters, Kennedy  
Avenue  
Roseau, Dominica  
Tel: (767) 266-3013/ 3003/3006  
Fax: (767) 448-6200  
Email: [kathybuffong@hotmail.com](mailto:kathybuffong@hotmail.com)

### **DOMINICAN REPUBLIC**

#### **Marisol Castillo**

Directora Legal  
Secretaria de Estado de Medio Ambiente



Santo Domingo, República Dominicana  
Tel. (809) 567-4300 ext. 352  
Cel. (809) 467-5008  
Email: [marcastillo@hotmail.com](mailto:marcastillo@hotmail.com)  
[marisol.castillo@medioambiente.gov.do](mailto:marisol.castillo@medioambiente.gov.do)

## **ECUADOR**

### **Federico Meneses**

Ministro, Director General de Medio Ambiente, Punto Focal Nacional  
Ministerio de Relaciones Exteriores, Comercio e Integración  
Carrión 10-40 y Av. 10 de Agosto  
Quito, Ecuador  
Telf: 593-2-299-3234  
Fax: 593-2-299-3234  
Email: [dgmedamb@mnrree.gov.ec](mailto:dgmedamb@mnrree.gov.ec)

## **GUATEMALA**

### **Ana Beatriz Tello de Pacheco**

Directora General de Cumplimiento Legal  
Ministerio de Ambiente y Recursos Naturales  
Ciudad de Guatemala, Guatemala  
Tel. (502) 24-230-512 ext. 2312  
Cel : (502) 59-781-265  
Email : [abdepacheco@marn.gob.gt](mailto:abdepacheco@marn.gob.gt)

## **HAITI**

### **Frederic Aupont**

Planning Director  
Ministry of Environment  
181 Turgeau  
Port au Prince, Haiti  
Tel: (509) 2245-1787/3400-6000  
Fax: (509) 2245-6291  
Email: [fredericaupont@yahoo.com](mailto:fredericaupont@yahoo.com)

## **HONDURAS**

### **Yessenia Moncada Ponce**

Subsecretaria de Ambiente  
Secretaria de Recursos Naturales y Ambiente

Edificio de la Secretaría Recursos Naturales y Ambiente  
100 metros al sur del Estadio Nacional  
Apdo. Postal 1389,4710  
Tegucigalpa, M.D.C.  
Honduras, C.A.  
Tel: (504) 235-3356  
Fax: (504) 232-6250  
E-mail: [yesseniamoncada@yahoo.es](mailto:yesseniamoncada@yahoo.es)

## **JAMAICA**

### **Gilroy English**

Director, Legal and Enforcement  
National Environment & Planning Agency  
10 Caledonia Av. Kingston 5  
Jamaica  
Tel: (876) 754-7540/50  
Fax: (876) 754-7595  
Email: [genglish@nepa.gov.jm](mailto:genglish@nepa.gov.jm)

## **MEXICO**

### **Wilehaldo Cruz Bressant**

Titular de la Unidad Coordinadora de Asuntos Jurídicos  
Secretaría de Medio Ambiente y Recursos Naturales (SEMARNAT)  
Blvd. Adolfo Ruiz Cortines 4209  
México DF, México  
Tel: (5255) 5628 0831  
Email: [wilehaldo.cruz@sermanat.gob.mx](mailto:wilehaldo.cruz@sermanat.gob.mx)

## **PANAMA**

### **Harley Mitchell**

Jefe de la Oficina de Asesoría Legal  
Autoridad Nacional del Ambiente de la República de Panamá  
Albrook, Edificio 804, 1 piso  
Panamá, Panamá  
Tel: (507) 500-0813  
Fax: (507) 500-8020  
Email: [h.mitchell@anam.gob.pa](mailto:h.mitchell@anam.gob.pa)  
[harleymitchellm@hotmail.com](mailto:harleymitchellm@hotmail.com)

## **SAINT KITTS & NEVIS**



**Allison Isaac**  
Parliamentary Counsel  
Legal Department  
Ministry of Justice  
PO Box 164  
Basseterre, St. Kitts and Nevis  
Tel: (869) 467-1189  
Fax: (869) 465-5040  
Email: [allisonisaac@yahoo.com](mailto:allisonisaac@yahoo.com)

### **SAINT LUCIA**

**Caroline Eugene**  
Sustainable Development and  
Environmental Officer  
Ministry of Economic Affairs  
American Drywall Building, Vide Bouteille  
Castries, Saint Lucia  
Tel: (758) 451-8746  
Fax: (758) 451-9706  
Email: [caroline.eugene@gmail.com](mailto:caroline.eugene@gmail.com)  
[caroline.eugene@yahoo.com](mailto:caroline.eugene@yahoo.com)  
[ceugene@sde.gov.lc](mailto:ceugene@sde.gov.lc)

### **SURINAME**

**Farzia Hausil**  
Legal Advisor  
National Institute for Environment and  
Development in Suriname  
Onafhankelijkheidsplein 2  
Paramaribo, Suriname  
Tel: (597) 520-042  
Email: [fhausil@nimos.org](mailto:fhausil@nimos.org)

### **UNITED STATES OF AMERICA**

**Anne Braghetta, Ph.D.**  
Director, Regional Environmental Office  
US Embassy Brasilia, Brazil  
Office: +55-61-3312-7417  
Cellular: +55-61-9965-1319  
Email: [BraghettaA@state.gov](mailto:BraghettaA@state.gov)

**Larissa Stoner**  
US Embassy Brasilia, Brazil  
Office: +55-61-3312-7417

Email: [StonerLA@state.gov](mailto:StonerLA@state.gov)

### **VENEZUELA**

**Dulce María Parra Fuentes**  
Ministra Consejera de la Embajada de la  
Republica Bolivariana de Venezuela  
SES Av. da Nações  
Qd. 803, Lote 13  
CEP 70451-900  
Brasilia, Brasil  
Tel: (61) 2101-1011  
Cel: 8183-0827  
Fax: (61) 3226-5633  
Email: [min@embvenezuela.org.br](mailto:min@embvenezuela.org.br)  
[parradulce@hotmail.com](mailto:parradulce@hotmail.com)

### ***Comité Asesor/Advisory Group***

**Gustavo Alanís**  
Presidente  
Centro Mexicano de Derecho Ambiental  
Atlixco 138,  
Colonia Condesa, México, D.F., 06140  
Tel: 52-55-5211-2457 ext.13 [w]  
Tel: 52-55-5286-3323 [w]  
Fax: 52-55- 5211-2593  
Email: [galanis@cemda.org.mx](mailto:galanis@cemda.org.mx)

**Isabel Calle**  
Directora, Programa de Política y Gestión  
Ambiental  
Sociedad Peruana de Derecho Ambiental  
Prolongación Arenales 437, San Isidro  
Lima 27, Perú  
Tel: 51-1-421-1394  
Fax: 51-1-442-4365  
Email: [icalle@spda.org.pe](mailto:icalle@spda.org.pe)

**Luis Fernando Macías**  
Director Ejecutivo  
Instituto Colombiano de Derecho Ambiental  
Calle 100 No.8ª-49 World Trade Center  
Torre B Of. 701  
Bogotá, Colombia  
Tel: 57-611-4444



Fax: 57-634-6275

Email: [lufemago@maciasabogados.com](mailto:lufemago@maciasabogados.com)

**Ricardo Saucedo Borenstein**

Executive Director

Sociedad Boliviana de Derecho Ambiental  
Calle Velasco #700, Edif. La Riva Of. 304  
Santa Cruz, Bolivia 4193

Tel: 591-3-333-9956

Fax: 591-3-3434774

Email: [ricardo@sbda.org.bo](mailto:ricardo@sbda.org.bo);

[rsb@cotas.com.bo](mailto:rsb@cotas.com.bo)

***Invitados Adicionales/Additional Invitees***

**Guillermo Acuña**

Asistente Legal en Asuntos Ambientales  
División Medio Ambiente, CEPAL  
Av. Dag Hammarskjöld 3477

Vitacura, Casilla 179-D

Santiago, CHILE

Tel: (+56-2) 210-2000

Fax: (+56-2) 208-0484

Email: [gacuna@eclac.cl](mailto:gacuna@eclac.cl)

**Beatriz Martim Carneiro**

WWF-Brasil

SHIS EQ QL 6/8

Conjunto E

Lago Sul

Brasilia-DF

CEP 71620-430-Brasil

Tel: 5561-3364-7499

Fax: 5561-3364-7474

Email: [beatriz@WWF.org.br](mailto:beatriz@WWF.org.br)

**Eladio Lecey**

Desambargador aposentado

Tel: 55 51 9237 0030

Brasilia, Brasil

***Departamento de Desarrollo Sostenible  
OEA/OAS Department of Sustainable  
Development***

**Cletus I. Springer**

Director

Department of Sustainable Development  
Organization of American States (OAS)

1889 F. Street, Suite 715

Washington, DC 20006

Tel: 202-458-3567

fax: 202-458-3560

[cspringer@oas.org](mailto:cspringer@oas.org)

[www.oas.org/dsd/](http://www.oas.org/dsd/)

**Claudia S. de Windt**

Senior Legal Specialist

Chief, Environmental Law, Policy & Good  
Governance

Department of Sustainable Development  
Organization of American States (OAS)

1889 F. Street, Suite 710

Washington, DC 20006

Tel: 202-458-6914

fax: 202-458-3560

[cdewindt@oas.org](mailto:cdewindt@oas.org)

[www.oas.org/dsd/](http://www.oas.org/dsd/)

**Michelle-Ann Williams**

Legal Specialist

Environmental Law, Policy & Good  
Governance

Department of Sustainable Development  
Organization of American States (OAS)

1889 F. Street, Suite 796-A

Washington, DC 20006

Tel: 202-458-6455

fax: 202-458-3560

[Usdecons11@oas.org](mailto:Usdecons11@oas.org)

[www.oas.org/dsd/](http://www.oas.org/dsd/)

**Gabriela Solines**

Consultant

Department of Sustainable Development  
Organization of American States

1889 F Street NW

Washington, DC 20006

Tel: 202-458-3007

Fax: 202-458-3560

[gsolines@oas.org](mailto:gsolines@oas.org)

[www.oas.org/dsd/](http://www.oas.org/dsd/)



## Annex II – Biographies of Environmental Law Advisory Group Members





### **Gustavo Alanís Ortega**

Lic. Gustavo Alanís-Ortega is President of the Mexican Environmental Law Center (Centro Mexicano de Derecho Ambiental—CEMDA). Lic. Alanís is a lawyer from the Universidad Iberoamericana in Mexico City, where he teaches the environmental law course at the law school. He is also co-director of the university's post-graduate diploma program in environmental law and policy. Mr. Alanís holds a master's degree in international law from the Washington College of Law, American University, Washington, DC. Since August 1993, he has been president of CEMDA, a public interest environmental law firm based in Mexico City. He is also active as a columnist for “Reforma”, one of Mexico's most read and influential newspapers. He is a member of the seventh cohort of the Leadership of Environment and Development Program (LEAD) and part of The Joint Public Advisory Committee (JPAC) under the North American Commission for Environmental Cooperation.

### **Antonio Herman Benjamín**

Antonio Benjamín was appointed in 2006 by President Luiz Inacio Lula da Silva as a Justice of the Supreme Federal Court of Brazil (Tribunal Federal). Prior to his appointment as Justice he served as senior Assistant Attorney General of the State of São Paulo in Brazil, where he was responsible for consumer and environmental litigation. Justice Benjamín received an LLB from the Federal University of Rio de Janeiro and an LLM from the University of Chicago. He teaches a course on Comparative Environmental Law and a seminar on Biodiversity Law at the University of Texas Law School where he has been a Visiting professor for the past eleven years. He has lectured in a number of international countries, including Belgium, Portugal, Argentina, Germany, Italy, Peru, Chile, Mexico, Canada, China, Malaysia, New Zealand, Spain and Egypt. He served as Chair of the Brazil- US Society and as former President of the Brazilian Full Bright Alumni Association. Justice Benjamín is also the founder of the Brazilian Consumer Law and Policy Institute and the Law for a Green Planet Institute. He was a member of the legal expert committee that drafted several Brazilian Statutes including the Brazilian Consumer Protection Code, the Competition Act and the Crimes against the Environment Act. Justice Benjamín was also a member of the UN Secretary General Legal Experts Group on Crimes Against the Environment, appointed by president Fernando Henrique Cardoso and reappointed by President Da Silva as a member of CONAMA (Brazilian Council for the Environment). Justice Benjamín also served as the special advisor for judicial affairs to the president of the Brazilian Senate and the editor-in-chief of the *Brazilian Environmental Law Journal*.

### **Jutta Brunnée**

Jutta Brunnée is Professor of Law and Metcalf Chair in Environmental Law, University of Toronto. She studied in Germany, France and Canada and holds an LL.M. from Dalhousie University, Canada, and a Doctorate in Law from Johannes Gutenberg University, Germany. Before joining the University of Toronto's Faculty of Law, she



taught at McGill University's Faculty of Law (1990-1995), and at the University of British Columbia's Faculty of Law (1995-2000). Her teaching and research interests are in the areas of Public International Law and International Environmental Law. Her recent work has focused on international law and international relations theory, compliance with international law, the inter-state use of force, domestic application of international law, multilateral environmental agreements, climate change issues and international environmental liability regimes.

Professor Brunnée is co-editor of the *Oxford Handbook of International Environmental Law* (Oxford University Press 2007). She is the author of *Acid Rain and Ozone Layer Depletion: International Law and Regulation* (1988), and of numerous articles on topics of international environmental law and international law, both in collections of essays and in journals such as the *American Journal of International Law*, *Columbia Journal of Transnational Law*, the *International & Comparative Law Quarterly*, the *Harvard International Law Journal*, the *Leiden Journal of International Law*, the *Netherlands International Law Review*, and the *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*. She is a member of the International Law Association's Committee on the Use of Force and of World Conservation Union's (IUCN) Environmental Law Commission. She was a member of the International Expert Group on the "Programme for the Development and Periodic Review of Environmental Law for the First Decade of the 21st Century (Montevideo Programme III)" of the United Nations Environment Programme, and an Editor-in-Chief of the *Yearbook of International Environmental Law* (1997-2001). In 1998-99, Professor Brunnée was the "Scholar-in-Residence" in the Legal Bureau of the Canadian Department of Foreign Affairs and International Trade, advising, inter alia, on matters under the Biodiversity and Climate Change Conventions. She serves on the Board of Editors of the *American Journal of International Law*.

### **Isabel Calle Valladares**

Isabel Calle Valladares is the Director of the Policy and Environmental Management Program of the Peruvian Society of Environmental Law, which was established in 1998. She studied law at the Pontificia Universidad Católica del Perú (PUCP), where she obtained a specialized Certificate of Environmental Management. In the period of 2000-2006, Ms Calle was actively involved in designing the normative environmental framework in Peru and lead the public consultation process for the establishment of the current Peruvian General Environmental Law. She also has significant experience in the area of local and regional environmental management mechanisms, and has participated in concrete environmental management initiatives in locations including Huarney, Carhuaz, Huarz, and Pacasmayo, among others. As part of her professional activities, Ms Calle has led the processes of identifying, systematizing, and monitoring the impact of public participation processes in Peru and has analyzed the environmental and regulatory effect of free trade agreements on the Peruvian forestry and textile sector.



### **Lynn Pyfrom Holowesko**

Lynn Pyfrom Holowesko received her undergraduate degree at the Catholic University of America, studied law in the Bahamas and was called to the Bahamas Bar in 1985. She is a practising Attorney-at-Law, member of the Bahamas Bar Association, the International Bar Association and a Justice of the Peace. She has been an outspoken defender of the environment since 1976, before environmental matters became popular causes. She served as a Senator in the Government of the Bahamas from 2000 to 2002 and currently serves as President of the Senate. Prior to that Ms Holowesko was Ambassador for the Environment and headed the Bahamas' delegations at the Conference of the Parties for the Convention on Biological Diversity, the Framework Convention on Climate Change and at the UN Commission on Sustainable Development. Ms Holowesko was a member of the Ad Hoc Committee for the Protocol on Biosafety and was elected Chairman of the Legal Drafting Committee for the Protocol. In 1999 – 2000 she served as Co-Chair of the United Nations Environment Programme Panel of Experts on Environmental Law for the Montevideo Programme. At her Government's request she founded the Bahamas Environment Science & Technology Commission in 1994 and it became the authoritative voice for environmental matters and technological development in the Bahamas. Ms Holowesko chaired the Commission and also served as Deputy Chairman of the Town Planning Committee until she entered the Senate in 2000. She is currently serving a second term as member of the Council for the World Conservation Union IUCN where she has been Chair of a Task Force on Governance of the Union and currently is Chairman of the Finance & Audit Committee. She was the longest-serving President of the Bahamas National Trust and honoured with the Bahamas National Trust's 25th Anniversary Award for Outstanding Contribution to Conservation. Holowesko was made Commander of the Most Excellent Order of the British Empire (CBE) in the Fiftieth Anniversary awards (2001) by Queen Elizabeth, is a recipient of the Commonwealth of The Bahamas Silver Jubilee Award and the Business and Professional Women's Association of New Providence award as Outstanding Business Woman of the Year Award (1984).

### **David Hunter**

David Hunter is assistant professor and director of the Program on International and Comparative Environmental Law at American University, Washington College of Law and is currently the Harvard Visiting Professor of International Environmental Law. He is also the director of the Washington Summer Session on Environmental Law. He is the former executive director of the Center for International Environmental Law and was previously an Associate with the law firm of Skadden, Arps, Slate, Meagher and Flom. He currently serves on the Boards of Directors of the Environmental Law Alliance Worldwide-US, EarthRights International, the Project on Government Oversight, the Bank Information Center, and Greenpeace-US. His research and advocacy work covers a broad range of global environment and development issues, including: multinational corporate responsibilities, ozone depletion, and the role of international financial institutions. In 1998, Mr. Hunter co-authored *International Environmental Law Policy*, a



text for classroom and reference use for academics practitioners, and policymakers. He is a 1983 graduate of the University of Michigan with majors in economics and political science, and a 1986 graduate of the Harvard Law School.

### **Luis Fernando Macías Gómez**

Luis Fernando Macías Gómez is a Colombian lawyer, born in 1961. He graduated from the Universidad Externado de Colombia (1986), and then obtained a Masters in Political Philosophy from the University of Paris I: Panthéon-Sorbonne (1991), a Masters in Latin American Societies—political sciences option—from the Institute of Higher Latin American Studies at the University of Paris III (1991), and an Interactive Masters in Environmental Law from the Universidad de País Vasco (1999). Mr. Macías was a designated member of the Colombian Environmental Law Review Commission, created by Law 261 of 1996. He held the position of Secretary General ad-interim of the Ministry of Environment in 1996 and, prior to that (1994-1997), he served as the General Counsel of the same Ministry.

Mr. Macías has served as a law professor at the Universidad Externado de Colombia, Andes, Javeriana, Sergio Arboleda, Piloto, and Universidad Nacional de Medellín. He also has been a visiting profesor at the Universidad de Buenos Aires and the Universidad Privada de Bolivia in La Paz. He is the author of an *Introduction to Environmental Law*, and co-author of the *Guide to Regional and Local Environmental Management*. Mr. Macías has published on environmental issues in books and national magazines and, in addition, he has written in French magazines on the Colombia judicial sector.

Presently, Mr. Macías is a lawyer and consultant in the area of environmental law. He is the President of the Colombian Institute of International Law and the Vice President of the Quinaxi Institute for Sustainable Development. He is also an arbitrator for environmental issues of the Centre of Arbitration and Conciliation of the Chamber of Commerce in Bogota.

### **David L. Markell**

David Markell has served as Steven M. Goldstein Professor of Law at Florida State University College of Law since 2002, where his primary areas of interest are compliance and enforcement; federalism; globalization and international institutions; roles of citizens in environmental governance; and water law. Prof. Markell is co-author or co-editor of several books and articles. Three of Professor Markell's publications have received national recognition. A law review article, *Improving State Environmental Enforcement Performance through Enhanced Government Accountability and Other Strategies*, 33 *Envtl. L. Rep.* 10559 (2003) (co-authored with Clifford Rechtschaffen), was selected as one of the best environmental and land use law articles published in 2003. A second law review article, *The Role of Deterrence-Based Enforcement in a "Reinvented" State/Federal Relationship: The Divide Between Theory and Reality*, 24 *Harvard Environmental Law Review* 1 (2000), similarly was selected as one of the best



environmental and land use law articles published in 2000. A book, *New York State Administrative Procedure and Practice* (West Publishing) (co-authored with Professor Patrick Borchers), received the 1995 ABA Section of Administrative Law and Regulatory Practice Award for Scholarship, and was cited as "the most outstanding work of legal scholarship in the field" published during that year.

Prior to joining the faculty of Florida State University College of Law, Prof. Markell was a Professor at Albany Law School. In addition, Prof. Markell has worked with the United States Environmental Protection Agency, the United States Department of Justice's Natural Resources Division, and the New York State Department of Environmental Conservation. Prof. Markell also served as the first Director for Submissions on Enforcement Matters with the North American Commission for Environmental Cooperation. Before entering government service, Professor Markell spent several years in private practice.

Prof. Markell holds degrees from the University of Virginia School of Law, 1979 and Brandeis University (Magna Cum Laude, Departmental Honors in Politics), 1975.

### **Carlos Manuel Rodríguez**

Carlos Manuel Rodríguez Conservation International's Regional Vice-President and Conservation Biodiversity Center Regional Director for Mexico and Central America. He recently served as Minister of the Environment of Costa Rica, where he built on Costa Rica's strong conservation history by bolstering the country's mechanisms for terrestrial conservation and expanding into the realm of marine conservation. In June, 2006, he received the Blue Moon Fund's first annual Conservation Leadership Award for his work in advancing terrestrial and marine conservation.

Minister Rodríguez created the first ever Marine and Coastal Program within the Ministry of Environment and Energy and facilitated the signing of the "San Jose Declaration" by his government, Colombia, Panama and Ecuador that set up multinational management and conservation in the Eastern Tropical Pacific Seascape (ETPS). In recognition of his contributions to marine conservation, the Minister was honored as the first ever recipient of the Global Ocean Conservation Award in 2005.

Minister Rodríguez also worked towards managed the challenges of terrestrial conservation by securing future funding and through the introduction of a system of Payments for Ecosystem Services (PES). Minister Rodríguez collaborated with the Minister of Agriculture so that the PES system could be used for successful management of forested areas and watershed conservation.

Minister Rodríguez has represented Costa Rica in a number of international forums on environmental issues, including the Conference of the Parts of Biodiversity Convention, Jakarta, Indonesia, 1996, the Conference of the Parts of Biodiversity Convention, Buenos Aires, Argentina, 1997, the Conference of Climate Change, Buenos Aires, Argentina,



1998 and the Central American Environmental Commission in 1998 and 1999. In addition, has worked as a consultant for institutions such as the Interamerican Development Agency, Interamerican Development Bank, World Resources Institute, Greenpeace, Oregon University, Environmental Law Institute, Wild Life Foundation (Argentina), Cordavi (Ecuador), National Parks Foundation (Costa Rica) and the Central American Commission for Environment and Development.

In addition to these public positions, Minister Rodríguez has held several positions in private legal practice. He is Licenciante in Law from the University of Costa Rica, 1986, and obtained a Masters in Environmental Law from South Methodist University, in 1988.

### **Ricardo Saucedo Borenstein**

Ricardo Saucedo Borenstein is a lawyer, from the Universidad Privada de Santa Cruz. He holds a Masters in Engineering and Environmental Management and is the founder of the Bolivian Society of Environmental Law. Mr. Saucedo has participated in numerous consultations on the development of legislation and policy related to natural resource management and protection of the environment within and outside Bolivia. He is also a member of the Center for Environmental Law of the IUCN and a member of the E-Law network (Environmental Law World Wide). Mr. Saucedo served as the highest Environmental Authority in the Government of Santa Cruz and is an advisor on environmental issues for the governments of various municipalities in Bolivia. In addition, he has published several articles and manuals related to environmental issues.



## Annex III – Background Note



## **National Focal Points' Meeting**

*Inter-American Forum on Environmental Law (FIDA)*

*Supreme Court of Justice*

*Brasilia, May 7, 8 and 9, 2008*

## **DRAFT Background Note**

---

### ***I. Introduction***

The Organization of American States (OAS), through its Department of Sustainable Development, (DSD) is responsible for various tasks and initiatives in the area of international and domestic environmental law. These initiatives aim to address mandates of OAS political organs and the Summit of the Americas process, including the 1996 Summit of the Americas on Sustainable Development in Santa Cruz de la Sierra, Bolivia, where member States established the Inter-American Forum on Environmental Law (FIDA). FIDA is a network of experts and officials in environmental law and enforcement that serves as a forum to exchange knowledge and experiences in environmental law and to facilitate training and capacity building in this area. The OAS-DSD, serves as the Secretariat for this network that initially identified two priority themes: trade, investment and environment; and water law and policy. In order to advance these themes a number of approaches were identified, including education, public participation, access to justice, development of laws, enforcement, and dispute resolution.

In order to support its environmental law program and aiming to strengthen the FIDA network, the DSD established an Environmental Law Advisory Group comprised of 10 esteemed high level experts of the region in the field of environmental law and enforcement.

The OAS-DSD has convened a meeting of FIDA National Focal Points pursuant to a resolution of the Inter-American Commission on Sustainable Development CIDS/CIDI/RES.3 (III-0/02); the mandates issued by OAS member States in the Inter-American Program for Sustainable Development (PIDS 2006-2009), and the Declaration of the First Inter-American Meeting of Ministers and High Level Authorities on Sustainable Development (Santa Cruz 2006).

The Environmental Law Advisory Group met twice in 2007 to discuss priorities and a possible agenda for the network's consideration.

The objective of the meeting is to review progress on the FIDA work plan, and identify priorities and a common work program based on the consensus of the national representatives for the next four years.

### ***II. Priorities and Progress of FIDA***

The FIDA focal points met in December 1999 to discuss priorities and an initial work plan for the network. While the network has not met since, the Secretariat has been actively working in addressing the priorities established under the initial FIDA work plan as follows:



## **2.1 Trade, Investment and Environment**

In pursuit of economic growth and development, the Western Hemisphere continues to support economic integration and the benefits of globalization, including through increased trade. Trade represents one important development driver, but it can also be a source of environmental pressures. In recognition of this, countries of the Americas have included robust environmental provisions in recently signed bilateral and sub-regional trade agreements, including the Canada-Costa Rica and Canada-Chile Free Trade Agreements, the Dominican Republic-US-Central America Free Trade Agreement (DR-CAFTA), and the EU-CARIFORUM Economic Partnership Agreement (EPA), among others. These environmental provisions focus on commitments related to effective enforcement of environmental laws and on environmental governance; they also highlight the significant challenges faced by the region in addressing the trade and environment legal and policy linkages as well as institutional strengthening.

The DSD has been supporting member States in building capacity for environmental management in the context of trade liberalization and market integration in the Americas. In particular, the DSD has worked to strengthen environmental laws and enforcement in the context of Regional Trade Agreements, including the DR-CAFTA and the Andean region FTAs. The DSD has also provided technical assistance for developing national capacity building strategies for free trade, including institutional strengthening. Moreover, the DSD supported twelve countries in conducting "Environmental Assessments of Trade Liberalization in the Americas." Through these assessments, countries of the region have been able to identify sectors that could potentially grow or change with trade, their impacts on the environment, and the regulatory effects of this growth. A key element of this initiative has been the identification of priorities for action in environmental governance. Member States and Focal Points have been significantly engaged in all steps of these initiatives.

## **2.2 Water Law and Policy**

In Latin America and the Caribbean, endowed with 30% of the world's water resources, issues related to water governance have been highlighted for over a century. The first international environmental agreements signed in the region were focused on water resource governance,<sup>2</sup> and laws date back to 1906, when the first Bolivian water law was enacted.<sup>3</sup> In recent years, the importance of water governance has been reflected in water legislation and management reform processes in most of the countries in the region, as well as in programs and proposals for reforming water-related public services, particularly urban drinking water supply and sanitation utilities.<sup>4</sup> However, recent efforts to revise and strengthen national legal and institutional frameworks have been stalled by conflicts among interested stakeholders, including issues related to the multiple uses of the resource. In fact, the most significant reforms regarding water management in the region occurred in the eighties, and in the past decade numerous worthwhile attempts have been initiated but stranded in legislative processes. In the meantime, addressing water management in an integrated approach remains a significant challenge for the region, as well as water allocation among riparian states and water quality and scarcity, a growing potential source of conflict.

---

<sup>2</sup> Organization of American States, Department of Sustainable Development, Policy Series Number 9, March 2006. "Water Management and Climate Change: Lessons from Regional Cooperation".

<sup>3</sup> Ley de Aguas Vigente, 28 de noviembre de 1906.

<http://www.oas.org/dsd/EnvironmentLaw/WaterLaw/home.htm>

<sup>4</sup> ECLAC. Water governance for development and sustainability. June 2006.



While it is clear that there are great challenges in this area, the OAS-DSD, has engaged in efforts to support countries in the region in addressing them. Some of the activities include case studies relating to water decentralization trends in three countries of the region, and a series of water law and policy round tables with practitioners from the region. These round tables were conducted over a two-year period and covered an array of legal issues related to water management, including public participation and access to information, among others. Additionally, the DSD has developed a water law database, which contains the domestic legal and regulatory frameworks for water management in the region. This database serves as a tool for information exchange among regulators and government officials. Finally, the FIDA Focal Points were recently engaged in a process of analyzing the domestic legal instruments for groundwater management in the region, including transboundary aquifers. This analysis was part of the UNESCO/OAS Internationally Shared Aquifer Resource Management (ISARM) Program.

### **2.3 Approaches and Procedural issues**

In order to advance the selected priority themes in the work plan, a series of approaches were recommended by the Focal Points. These approaches are key procedural issues in environmental law and include: environmental enforcement, market based instruments, access to justice, public participation and dispute resolution. To date, the DSD has worked on these themes considering them in an integrated manner throughout activities in the priorities mentioned above.

In the area of effective enforcement of environmental laws, efforts have been made to work with member States in identifying the necessary elements within laws and regulations for adequate enforcement. One of these elements is public participation, an area in which the DSD has worked actively, including the development of the Inter-American Strategy for the Promotion of Public Participation in Decision-Making for Sustainable Development, for which the FIDA National Focal Points were consulted. In the case of access to justice, it is important to know that in the international environmental law arena it concerns ‘three different adjudication procedures’: 1) to challenge the refusal of access to information; 2) to seek prevention and/or damages for environmentally harmful activities; and 3) to enforce environmental laws directly.”<sup>5</sup> The OAS-DSD has been working in access to information and enforcement as noted above. Finally, in the area of market based instruments, the DSD has been working on legal institutional frameworks that enable implementation of payment for ecosystem services schemes.

#### ***III. Moving forward the environmental law and enforcement agenda in the region: consideration of themes and emerging priorities***

Since the inception of the FIDA network and the selection of priority themes, different environmental priorities have emerged and environmental issues have taken a different course. While the initial themes of trade, investment and environment and water law and policy remain important, countries and officials are faced with new challenges relating to core aspects of resource governance, particularly if they are shared, and to addressing the imminent threat of climate change and its already tangible impacts.

---

<sup>5</sup> Ved P. Nanda and George Pring, *International Environmental Law & Policy for the 21st Century* (2003), §2.2.1.3 at 52.



It is in this context that the two new themes, presented below, have been included for consideration by the FIDA focal points in identifying concrete aspects that could be included in an updated work plan for the region.

### **3.1 Prevention and Management of Conflicts in Shared Natural Resources**

Physical coexistence on earth inevitably results in the sharing of natural resources, thus, sharing a border may mean shared forests, ecosystems and water resources. However, sharing is not limited to geographical borders. The commons that is earth invariably dictates that all countries and all peoples collectively take part in sharing certain of its natural resources. In doing so, there is a corresponding responsibility to manage them soundly.

The sound management of natural resources, including shared resources, requires the consideration of key approaches and principles of environmental management and international law. Domestic environmental legislation may be available to address some of the issues, but the transboundary nature of potential damage coupled with the potential for jurisdictional conflict, pose a significant challenge for conflict avoidance by countries of the region. Compliance with domestic environmental laws or a third-party standard is not necessarily the answer, given the serious foreign policy implications that arise in attempting to claim, *inter alia*, extraterritoriality of domestic law. As a result, domestic and local remedies are often insufficient to deal with management of shared resources. Therefore, countries seek to resolve this type of dispute in international fora. In fact, the Americas has recently experienced two very high profile disputes involving the management of shared resources in South America and the Andean region.<sup>6</sup>

While transboundary cooperation is a contributing factor to the sound management of shared resources, as proven by various projects implemented by the DSD in the region, countries must have mutual awareness and acknowledgement of principles and guidelines for cooperation, management and conflict resolution related to these resources. These principles and guidelines should build on other efforts such as the 1978 UNEP draft principles of conduct for the guidance of States in the conservation and harmonious exploitation of natural resources shared by two or more states (UNEP Draft Principles on Shared Natural Resources);<sup>7</sup> in addition to other recognized principles of international law, such as prior consultation, access to justice, and the obligation to not cause transboundary environmental harm<sup>8</sup> as seen in the *Trail Smelter Arbitration*<sup>9</sup> and *Corfu Channel* cases.<sup>10</sup> Finally, dispute resolution should be based on peaceful proceedings as established by the OAS Charter.

---

<sup>6</sup> *Pulp Mills on the River Uruguay, Argentina v Uruguay* ICJ Rep 2006, 135 and the Ecuador –Colombia Dispute related to the transboundary environmental effects glyphosate fumigation.

<sup>7</sup> *Draft Principles of Conduct for the Guidance of States in the Conservation and Harmonious Exploitation of Natural Resources Shared by Two or More States*, United Nations Environment Programme Governing Council, XII Plenary Meeting, UNEP/GC/101 and Corr.1 (1978) [hereinafter *UNEP Draft Principles on Shared Natural Resources*].

<sup>8</sup> See *Rio Declaration on Environment and Development*, The United Nations Conference on Environment and Development (June 14, 1992) Principles 2 and 19; *Stockholm Declaration*, United Nations Conference on the Environment (June 16, 1972), Principle 21; and *UNEP Draft Principles on Shared Natural Resources*, *supra* note 2, Principle 3.

<sup>9</sup> *Trail Smelter Arbitral Decision*, 33 AM.J. INT'L L. 182 (1939); 35 AM.J. INT'L L. 684 (1941).

<sup>10</sup> *Corfu Channel Case* (United Kingdom v Albania), 1949 I.C.J. Rep. 4 (1949). See also *Lake Lanoux Arbitration* (Fr. v Spain), 12 R.I.A.A. 281 (1957) (holding that a state can lawfully utilize the waters of an international river in its territory so long as it takes into account the interests of co-riparian states).



Many international and regional agreements, and even domestic laws, provide different fora and procedures for dispute resolution and addressing damages in the context of shared natural resources. The multiplicity of options has proven problematic in that disputes are not necessarily resolved in an expeditious manner. In fact, many cases languish in the dispute resolution process for years while natural resources continue to deteriorate, and transboundary conflicts continue to increase, thereby further injuring the relationship between the disputing parties.

There are multiple international agreements which address specific natural resources of global concern, such as air, water, migratory species, and resources of the seas. These agreements include, among others: the Convention on Long-Range Transboundary Pollution (1979); the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol (1992 and 1997); the Convention on Conservation of Migratory Species of Wild Animals (CMS) (1983); and the United Nations Convention on the Law of the Sea (UNCLOS) (1994). These multilateral agreements reflect the commitment of the international community to sustain specific commonly used natural resources.

Moreover, there are several bilateral and regional agreements among countries which share borders, where migratory species venture, or along which ground and surface waters flow. For instance, the United States and Canada mutually agreed in the Great Lakes Water Quality Agreement (1997) to eliminate persistent toxic substances from the Great Lakes<sup>11</sup> by 2006. Both parties recognized that their “citizens breathe the same air, drink the same water, share the same species and the same environmental problems, and thus it was imperative to work together.”<sup>12</sup> In the Rio de la Plata Treaty (1969), Argentina and Uruguay, motivated by the desire to secure equal rights to the Rio de la Plata, which runs between them, entered into the treaty delimiting their maritime jurisdiction.<sup>13</sup> Another notable treaty is the Migratory Bird Treaty which the United States, Canada, Mexico, Japan, and the former Soviet Union (now Russia) have signed.<sup>14</sup>

There are also non-binding legal principles for the management of resources. These include, among others: the Rio Principles on Environment and Development,<sup>15</sup> the Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests,<sup>16</sup> and the recently approved non-binding instrument on all types of forests.<sup>17</sup> These principles, together with the UNEP Draft Principles on

---

<sup>11</sup> The Great Lakes holds 18% of the world’s fresh surface water resources. Nearly 33 million US and Canadian citizens live by the Lake, from which nearly half get their drinking water.

<sup>12</sup> *U.S., Canada Move to Eliminate Toxics in Great Lakes* (quoting a statement by former Canadian Minister of the Environment, Sergio Marchi), U.S. Environmental Protection Agency (1997), available online: <<http://www.epa.gov/history/topics/canada/04.htm>>.

<sup>13</sup> *Treaty between Uruguay and Argentina concerning the Rio de la Plata and the Corresponding Maritime Boundary* (November 19, 1973), available online: <<http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/URY-ARG1973MB.PDF>>.

<sup>14</sup> United States (1916), Great Britain (for Canada) (1916), Mexico (1936), Japan (1972) and the former Soviet Union (now Russia) (1976).

<sup>15</sup> *Rio Declaration*, *supra* note 3. .

<sup>16</sup> *Report of United Nations Conference on Environment and Development*, A/CONF.151/26 (Vol. III), Rio de Janeiro, Brazil (1992).

<sup>17</sup> See *United Nations Forum on Forests, Report of the Seventh Session* (February 24, 2006 and April 16 to 27, 2007), Economic and Social Council Official Records, 2007, Supplement No.22, E/2007/42, E/CN.18/2007/8.



Shared Natural Resources, have served as the basis for current work including the Working Group on Shared Natural Resources of the UN International Law Commission on the Draft Articles on the Law of Transboundary Aquifers.<sup>18</sup>

Despite this array of binding and non-binding instruments related to natural resource management, countries of the region lack a common set of tools to support their respective national laws and practices related to shared resources.

Previous efforts in this area have not been fully successful due to concerns related to disproportionate focus on the environmental dimension and sovereignty issues. However, the OAS, as the most important political forum in the Americas, and because of its work in the areas of democracy and governance as well as sustainable development, can play a pivotal role in effectively bridging the gaps related to the sound management of shared natural resources. Moreover, the OAS' Secretary General has identified conflict avoidance and facilitation of negotiation among countries and parties of the hemisphere as a key priority in his agenda.

It is in this regard, that the FIDA National Focal Points could engage in a collective effort to develop a clear road map of alternatives and best practices for countries dealing with challenges related to shared natural resources. Activities within this area should be based on accepted principles to address cooperation, management and conflict resolution related to shared natural resources.

#### **Questions for discussion:**

*What do you think the needs are in this area?*

*What steps should the OAS-DSD take to support the FIDA Focal Points in this area?*

*Which concrete activities should be incorporated into the work plan for the next four years?*

*Should analysis of MEAs and domestic laws be conducted to assess which common elements to consider?*

*Would it be helpful to analyze and identify precedent in past conflicts in the region?*

### **3.2 Climate Change and the Domestic Environmental Law Agenda**

Most countries of the region have, through binding and non-binding international instruments, expressed not only an awareness of the real phenomenon of climate change; but have committed themselves to addressing it. This is evident in, for example, the United Nations Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol and Agenda 21.

The reasons are clear why countries of the region have joined the rest of the international community in confronting climate change challenges. In February 2007, the Intergovernmental Panel on Climate Change (IPCC) established with 90 percent certainty that human activity is

---

<sup>18</sup> United Nations General Assembly Res.55/152 ( December 12, 2000).



responsible for global warming.<sup>19</sup>

Climate change threatens the basic elements of life for people around the world –access to water, food, health, and use of land and the environment.<sup>20</sup> Countries of Latin America and the Caribbean are extremely dependent on natural resources and as a result more vulnerable to these threats. Increased greenhouse gas emissions<sup>21</sup> have contributed to the raising of the earth’s temperature. This rise has caused changes in weather, sea-level, and water access and availability, as well as in land use patterns. The impacts of these changes have been severe in the region. Hurricanes are more intense and destructive, glaciers are rapidly melting, fish stocks are depleting, and landslides are more frequent.<sup>22</sup>

In order for countries of the region to move forward on issues related to climate change, it is important to identify, among other things, the legal mechanisms in place at the national level.

Countries of the region have adopted very different domestic policies to tackle the challenges posed by climate change. Some have utilized or amended existing legislation/regulations to address specifically climate change challenges. Many countries of the region have established clean air laws. Countries like Belize and Guyana have used land-use planning and zoning regulations, along with coastal zone management regulations to address challenges such as landslides, mudflows, and flooding.<sup>23</sup> This also illustrates a general realization that changes in, and improper use of land, along with the improper establishment of settlements on unstable lands by local populations, increase their vulnerability to the severe impacts of climate change;<sup>24</sup> hence the reason for applying such regulations. Furthermore, the enforcement of existing laws, such as those relating to forestry, has proven useful in mitigation and adaptation efforts.

While in some countries, it is through the national legislative framework that climate change challenges are addressed, in others it is at the provincial or state level. For example, in the United States, as in many other countries, there is currently no federal legislation which sets limits on domestic greenhouse gas emissions. However, the state of California, through an Executive Order,<sup>25</sup> established its own GHG emission reduction requirements.

Climate change related issues have also been addressed by domestic courts. One very notable case from the region is the *Massachusetts et al v Environmental Protection Agency et al.*<sup>26</sup> Supreme Court (SCOTUS) decision. The issues before the SCOTUS were whether the EPA Administrator may decline to issue emission standards for motor vehicles based on policy considerations not enumerated in section 202(a) of the Clean Air Act; and whether the EPA

---

<sup>19</sup> *Summary for Policymakers: A Report of Working Group I of the Intergovernmental Panel on Climate Change*, formally approved at the 10th Session of Working Group I of the IPCC (February 2007)

<sup>20</sup> Nicholas Stern, *The Economics of Climate Change: The Stern Review*, Cambridge University Press (2007).

<sup>21</sup> According the 2007 assessment of the Inter-governmental Panel on Climate Change, Latin America contributed to 4% of global greenhouse gas emissions.

<sup>22</sup> See

<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/LACEXT/0,,contentMDK:21575230~menuPK:258569~pagePK:2865106~piPK:2865128~theSitePK:258554,00.html>

<sup>23</sup> See [www.sciencedaily.com/releases/2007/04/0704/070410135944.htm](http://www.sciencedaily.com/releases/2007/04/0704/070410135944.htm)

<sup>24</sup> Id.

<sup>25</sup> Executive Order # S-3-05. See also, the state of Washington’s SSB 6001.

<sup>26</sup> 549 U.S. 1 (2007)



Administrator has authority to regulate carbon dioxide and other air pollutants associated with climate change under section 202(a)(1). Among other things worthy of note from the case was the fact that the SCOTUS acknowledged that ‘the harms associated with climate change are serious.’ It acknowledged that ‘global warming threatens, *inter alia*, a precipitate rise in sea levels, severe and irreversible changes to natural ecosystems...increases in the spread of diseases and the ferocity of weather events.’ No other court in the region has made such acknowledgements about climate change.

The emerging challenges related to climate change in the region are constantly testing domestic legal frameworks in many respects. They also call for translating the basic principles of environmental governance into action.

Although, many domestic laws address climate change challenges in some way, there are several gaps in domestic legal frameworks. One challenge is that many countries in the region have not enacted legislation implementing their commitments and the principles of the binding and non-binding international instruments aforementioned. Also, many of the Clean Air Acts in the region have not been amended to reflect climate change issues such as setting targets or establishing requirements for the reduction of GHG emissions. Further, since there is not any single legislation addressing climate change exclusively, as most domestic legislation relevant to climate change issues are for example, forestry, land use planning, and/or water management, the challenge arises of having to identify the synergies and actions that need to be taken within domestic laws to address climate change related issues. This may prove time consuming and onerous on human and financial resources.

Another challenge is related to enforcement. Currently, in many countries environmental legislation is difficult to enforce for reasons that include “archaic legislation, low penalties, insufficient trained investigative personnel, equipment and other facilities, lack of legally trained personnel within the responsible agencies...and overlapping jurisdictions.”<sup>27</sup> Even if countries are able to enact and update all their legislation, most of the challenges faced prior to enactment and amendment will still persist.

There is also the significant challenge of a lack of education and awareness among the general public about the impacts of climate change, and why it is important to obey laws which seek to protect them from the harsh impacts. Thus, if the citizens are educated on why, for example, there are laws on illegal logging, and are made to understand the consequences of illegal logging, such as deforestation which contributes to landslides and mudflows and thus the loss of life and property, then potential is created for a partnership between government and civil society to work together in mitigating some of the consequences of climate change.

Finally, there are market considerations which raise concerns about enacting mandatory climate change legislation. Some developed countries are concerned that should they enact legislation to cap their GHG emissions “without corresponding action by developing nations that compete in global trade markets, the cost of producing some... products would increase relative to those manufactured in countries without emission limits.”<sup>28</sup> This approach raises the question of to

---

<sup>27</sup> Grenade-Nurse, Florabelle, “Decentralized Agencies with Overlapping Jurisdictions – A Problem for Enforcement,” Fifth International Conference on Environmental Compliance and Enforcement

<sup>28</sup> The Committee on Energy and Commerce in the United States Congress, produced in January 2008 a white paper on “Climate Change Legislation Design White Paper: Competitiveness Concerns/Engaging



what extent or how special and differential treatment will be applied to developing countries. Also, there are concerns about ensuring that any climate change legislation with market considerations is compliant with WTO law.<sup>29</sup>

The OAS-DSD has done substantial work in the area of climate change and environmental law and enforcement. By merging the knowledge and expertise built in these areas, countries of the region may be assisted through capacity building to strengthen their legal framework and effectively address climate change within the existing domestic environmental law agenda.

**Questions for discussion:**

*What areas of Domestic Environmental Law should be considered in addressing the impacts of climate in the region?*

*What steps do you think the OAS-DSD should take to support the FIDA Focal Points in this area?*

*What concrete activities should be incorporated in the work plan for the next four years?*

*Are there any particular concerns or issues that should be taken into account?*

*What do you think the approach should be?*

---

Developing Countries”. The paper addresses “potential domestic legislative provisions that could encourage developing countries to curb their greenhouse gas emissions”.

<sup>29</sup> Id.