

It's Time to Boost, Not Reduce, Trilateral Environmental Cooperation

By Gustavo Alanis | November 2, 2005

The Mexican government announced in September that it was making a significant reduction in Mexico's contribution to the Commission for Environmental Cooperation (CEC).

The CEC is a product of the North American Free Trade Agreement (NAFTA) environmental side accord, created in response to demands from civil society, unions, academics, and Congressional representatives from Mexico, Canada, and the United States. It was created to monitor the environmental impacts that the free trade agreement would bring to the region and lay the foundations for joint work on environmental issues. Among its objectives were: establishing the bases for coordinated public environmental policy; increasing cooperation between the three countries; strengthening cross-boundary development and enforcement of environmental regulations, policies, and practices; encouraging transparency and public participation in environmental rules and policies; and promoting pollution prevention.

Each of the NAFTA member nations provides the CEC with \$3 million a year for a total of \$9 million annually. The Mexican government's intention to reduce its contribution to \$1.2 million could mean the virtual liquidation of this international environmental institution and comes on top of a long list of bad decisions President Vicente Fox's administration has made on environmental issues. This decision was immediately repudiated by Mexican environmental organizations, among them the Mexican Environmental Law Center (Cemda), Greenpeace Mexico, the International Fund for the Protection of Wildlife and its Habitat, and the Mexican Network on Free Trade (RMALC).

The Mexican government did not consult with citizen organizations, non-governmental experts, or the Secretariat of the CEC before making its unilateral decision. One of the CEC's primary functions has been to seek consensus and consultation, transparency, and grassroots participation, as well as effective application of environmental legislation in each of the three countries. It is important to note that its on-going programs and projects are in the course of implementation. Trilateral commitments mean one partner country cannot abandon them overnight by simply deciding to cut its financing obligations.

The announcement is absurd and senseless. If any government has benefited from the existence of the CEC it is

Mexico's. Carrying out the planned cut will mean a very considerable reduction in the commission budget and, practically speaking, its imminent disappearance. Due to a pact in which the economic participation of the countries should be equal, Mexico's action would lead the United States and Canada to matching reductions; Article 43 of the North American Agreement on Environmental Cooperation (NAAEC) establishes that no party is obliged to pay more than the others. This would lead in time to the dissolution of the CEC or of some of its most important functions. Among these are citizen petitions and the factual records produced under NAAEC Articles 13, 14, and 15, as well as the collaboration of CEC's Joint Public Advisory Committee. Lack of money would be an easy excuse for the governments to say that these activities could not be supported.

The \$9 million annually allotted has not been increased since the CEC was created 11 years ago. The reduction by Mexico would represent a serious violation not only of NAAEC but also of the Vienna Convention on Treaties, which establishes that no country can adopt measures that contradict the objectives of the treaty it has signed (Articles 18 and 19).

CEC's Role in Environmental Research

Throughout more than a decade since its founding, the CEC has researched many environmental problems under two procedures established in its bylaws. One is defined under Articles 14 and 15, stating that citizens may request CEC Secretariat elaboration of factual records as a tool to investigate alleged failure to effectively implement environmental law in any of the three countries. For this procedure the CEC has followed 51 cases, 29 of them related to Mexico. The other procedure, established in Article 13, affords the CEC Secretariat the power to elaborate scientific studies on diverse environmental problems, either by citizen request or by a CEC trilateral initiative. Under this procedure, five cases have been investigated, including two in Mexico, about the genetic contamination of maize and the pollution of the Silva Reservoir in Guanajuato, respectively.



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Have these two mechanisms been so burdensome to the governments that they now seek to be rid of them? If so, interested citizens, non-governmental organizations, and the public at large will protest loudly and with reason to all three governments. To get rid of these important mechanisms of trinational environmental protection would show a grave lack of sensibility not only for the environment but also for citizen participation and the concerns of those who are legitimately interested in improving conditions today and for future generations.

The Mexican environmental groups that issued the call for their government to reconsider the cutback of resources for the CEC likewise noted that the administration has reaffirmed its lack of familiarity with the mechanisms of international cooperation available to Mexico to protect and conserve the environmental and natural resources shared with the United States and Canada. What's more, the administration's action demonstrates its absolute disdain for what its own constituents have established as a way to monitor the impacts of trade in our societies.

Mexican Government's Lack of Commitment on Environmental Issues

With its plan to cut CEC financing, the Mexican government reveals its intention to weaken and possibly kill the commission, which in turn reveals the administration's attempts to dismantle the legal and institutional framework for environmental issues that has been built over so many years. This situation is evident not only at the international level, but the national level as well. On the domestic front, as the head of the federal Environment and Natural Resources Secretariat (Semarnat), Alberto Cardenas authorized projects damaging to the environment, such as the Nautical Staircase, and modified the Mexican Official Standard 022 protecting coastal wetlands, in order to promote development of projects such as the Manzanillo Pier expansion in the state of Colima. Who did the Semarnat's staff consult about the planned cutback of financing for the CEC?

The worst of it is that the government supposedly the first to be interested in boycotting and weakening the CEC is that of the United States. The administration of U.S. President George W. Bush has a negative environmental record both nationally and internationally. Many CEC investigations have bothered the U.S. government, particularly the case about genetic contamination of local varieties of Mexican maize. On this issue, the experts' panel report made for the CEC Secretariat, complete with recommendations on countering possible damage to agro-biodiversity

caused by Mexico's importation of genetically modified corn, was ready to release by June 7, 2004. But due to U.S. government pressure, the information was not made public as rules specify until November 2004. The report was finally published as a consequence of having been leaked to the media. The causes of the delay were two: publication of the report would have influenced a Bush administration legal case in the World Trade Organization against the European Union for its restrictions on some genetically modified products; and releasing the report before the presidential re-election balloting could have meant losing votes in the strong grain and Hispanic sectors. In this process, the U.S. government expressed its disenchantment with the CEC and its work. It is lamentable that today the Mexican government is the one to take the first step toward limiting the scope of CEC work in the interest of the United States government.

Another controversial case in which the CEC played a prominent role was that of the illegal construction of a pier at Cozumel, Quintana Roo, in 1996. Mexican environmentalists denounced their government to the CEC Secretariat, charging that the then Environment, Natural Resources, and Fisheries Secretariat (Semarnap) failed to effectively apply the law to the construction project. As a result of this citizens' petition, and in spite of the government's inconformity and anger, the CEC elaborated its first factual record, which led to then-President Ernesto Zedillo's declaration of a Natural Protected Area for the Cozumel Reefs, a management plan, and the considerable reduction of the mega project—which had originally included a golf course, spa, hotel, shopping center, bars, restaurants, etc.—to just a port terminal. Likewise, and after six years of work, citizens of Cozumel and the local, state, and federal governments agreed upon the terms and publication of an ecological land use plan that is now in effect.

Bad Decision

In denouncing the Mexican government's attempt to cut CEC funding, environmentalists have also noted that a decision of this nature cannot be made by the Cabinet unilaterally, since the legislature approved the Decree for the Federal Budget of 2004, which included the president's request for \$3 million dollars in CEC financing for 2005. Once the decree has been emitted, the budget for complying with Mexico's contribution to the CEC is not subject to anyone's discretionary management.

It is incongruent, in light of budgetary irresponsibility and the lack of preparation that led to human and environmental tragedies like those in New Orleans in the United States with Hurricane Katrina and in Veracruz, Oaxaca, Chiapas,

and Quintana Roo in Mexico with Hurricanes Stan and Wilma, that the Mexican government follows the bad example of the Bush administration by cutting financing to research and prevention of environmental crises.

The CEC has been and will continue to be a motor that foments public participation in decision-making and in monitoring how environmental law is applied. It is a unique institution that was a pioneer and that has been gaining the respect of society for seeking independent objectivity in its work. It is one of the few international tools that society can count on to reveal concrete cases of failure to exercise the law. Budget cuts will not be allowed to erode the important role the CEC has been playing. It is time to strengthen the commission, not weaken it.

A broad spectrum of organizations warned in Mexico that the Ministry of the Environment (Semarnat) unleashed an aggressive strategy to weaken the CEC in May 2005. To achieve its aim, the ministry now seeks to financially undermine the commission. Its intention is in no way something new. During the annual meeting of the CEC environmental ministers from Canada, the United States, and Mexico, held in summer of 2004, in Puebla, Mexico, former Semarnat chief Cardenas tried to cut Mexico's contribution by \$500,000, an attempt that fortunately failed. However, Mexico has a debt to the CEC of nearly \$800,000. Is this acceptable?

Can anything be done in the face of this situation? Definitely yes. Actions that can be carried out to stop the Mexican government's endeavor include the following:

Recommendations of Actions to Maintain CEC Activities

- Environmental organizations should launch a trinational campaign of civic groups in Canada, the United States, and Mexico to impede the dismantling of the CEC.
- The Joint Public Advisory Committee should issue a public, written protest to the Council of Ministers of the CEC with the recommendation to exhort the Mexican government to change its position in relation to the possible reduction of its contribution to the CEC. The JPAC should defend the CEC's budget and the institution itself.
- The National Advisory Committees of the United States and Canada (not of Mexico because the Mexican NAC has not operated since Fox took office) should request that their governments respectfully urge the Mexican government to continue to support the CEC at least at current levels.
- The Executive Director of the CEC should stand up for the institution. This implies appealing directly to the highest level representatives of the Environmental Protection Agency, Environment Canada, and Semarnat. This decision is so important for the future of the CEC that it cannot be made at the level of the environmental ministers' Alternative Representatives, or by their support staff who meet as the General Steering Committee, notwithstanding all their capability and good work. Decision-making at the second and third levels of authority without the environmental officials in the three countries being involved in prior deliberations is having an effect on the CEC.
- The governments should quit meeting behind closed doors, as has happened lately, without including JPAC and Secretariat members. It goes against the spirit of the NAAEC, which, among other things, foments transparency and accountability in environmental matters. Not only that, but by meeting in private they are making decisions without support and consultation.
- The Mexican Congress should demand that the head of Semarnat, now José Luis Luege Tamargo, appear to explain the reasons that Mexico has decided to cut funding and urge him to rectify the decision and continue to adequately fund the CEC.

Given the situation described, it is clearly worthwhile to conserve the CEC as the only forum of its kind in a commercial agreement like NAFTA. It is evident that the institution has limitations: Even at the previous level of funding, resources are not going to be entirely sufficient for the environmental tasks faced at the trinational level. The number of personnel within the CEC makes it impossible to fully treat the issues on time. CEC research is not always able to influence in a timely and concrete enough manner the policies or plans that the three governments implement in their respective territories. Ministers or their equivalents have not been very involved in the agenda and the

labor of the CEC, which decreases its impact. At times the decisions made respond to available funds and not to their environmental importance or priority. The Council of Ministers has ignored some of the recommendations JPAC has made. U.S. environmental groups have lost interest in the CEC and its work. The CEC fund to support grassroots environmental initiatives has been eliminated. CEC working groups often are made up only of public officials without incorporating representatives from other sectors.

Despite the above weaknesses, it is vital to conserve the Commission for Environmental Cooperation for the following reasons:

Achievements of the Commission for Environmental Cooperation

- **PRTR:** The Pollutant Release and Transfer Register seeks to trace and inform the public on the quantity, sources, and management of toxic substances emitted from industrial activities. Thanks in part to the CEC, Mexico has reformed its environmental law to demand that industry reporting become mandatory and public.
- **SMOC:** Sound Management of Chemical Substances is one of the projects of common interest of the three countries that has the most international ramifications. It seeks to eliminate the production, importation, and use of DDT, chlordane, and polychlorinated biphenyls in the region. Thanks in part to this project, Mexico is committed to eliminate the use of lindane and has already achieved the reduction of concentrations of DDT in the bloodstream of children in Chiapas by 60%.
- **Natural Protected Areas:** The North American Marine Protected Areas Network has been created for species of common, which stretches from the Baja California Peninsula and the Sea of Cortez to the Bering Sea.
- **Public participation:** The CEC has received 40 citizen petitions on governments' alleged failure to effectively implement environmental legislation, of which some have generated factual records, leading to concrete actions of remediation, changes in legislation, modification of public works of activities, and declarations of Natural Protected Areas.
- **Information:** The North American Biodiversity Information Network has enabled the region to gather and jointly apply the experience of experts from the three countries who work in wildlife management.
- **Bird Conservation:** The North American Bird Conservation Initiative has identified 150 sites of importance for the conservation of birds in the region (50 in each country) which has allowed for more focused protection efforts.
- **Ecosystems:** The CEC conservation of land ecosystems and habitats has focused on plains and now has a list of species considered of shared concern, among them birds and mammals. At the moment, the CEC has specific plans to protect humpback whales, land tortoises, prairie dogs, and burrowing owls, among others.
- **Legislation:** The CEC built a comparative database on environmental legislation and norms in the three countries, accessible to the public through a commission web page. It has also promoted the application of systems of environmental administration to encourage environmental compliance and performance in businesses.
- **Pollutant Program:** Communication and cooperation on issues of air quality in North America have been improved through better information exchange forums. One of the most recent achievements is the gathering of comparative data on the electricity-generating stations in the region, which now is available to policymakers.
- **Financing:** The inclusion of industries of the three countries in the care of the environment has helped develop pollution prevention capacity. The most outstanding example is the creation of the fund to prevent pollution in small and medium businesses in Mexico that supports projects to decrease the quantity of pollutants produced by industries and enable them to generate economic savings that improve their competitive level in the national and international arenas. This fund has more than 60 million pesos available to finance projects.

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