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Seventh Regular Session of the Council of the Commission for Environmental Cooperation
Summary of interventions made during the public portion

12 June 2000, Dallas, Texas

DISCLAIMER: Although this summary was prepared with care, readers should be advised that it has not been reviewed nor approved by the presenters and therefore may not accurately reflect their statements.

The session was chaired by Regina Barba, JPAC Chair, who explained the format of the public portion of the Council Session. She then introduced Administrator Carol Browner of the United States Environmental Protection Agency.

a) Report by the Council on the first day of its session

Administrator Carol Browner thanked the JPAC for hosting this session and creating an opportunity for a full and vibrant discussion of the work of Council. As Chair and host, she then provided an explanation of the work that Council had done during the session thus far.

First, she thanked her fellow ministers and Secretariat staff and reported that tremendous progress had been made since the previous day. One of the most difficult issues was to achieve progress on Articles 14 and 15. She made two points. First, agreement was reached on a process for managing Articles 14 and 15 in the future. Second, this was accomplished very differently from previous processes, by involving JPAC in a new and unprecedented fashion.

She prefaced her explanation of the new process by expressing her personal satisfaction that JPAC had become such a strong and vibrant part of the CEC and by stating that she was paraphrasing the new text in common sense terms, implying that she hoped the choice of words in her presentation would not be taken as legal definitions.

In essence, what Council has done is to recognize that it will, at times, need to discuss interpretations of Articles 14 and 15 to better allow the Secretariat and the Council to do its job. Should there be any desire to change the implementation and further elaboration of Articles 14 and 15, whether it is on the part of the Council, the public, JPAC, or the Secretariat, a process has been created whereby that would occur. The first step in the process would, for example, be a letter to Council raising a question. If Council felt that the questions raised warranted serious consideration, then it would be referred to JPAC who would have the discretion to develop an appropriate process to hear from the public and return a recommendation to Council on how to respond to the question. Then Council would adopt, amend, or reject the JPAC recommendation with an explanation in writing. The result is that the independence of each of the three parts in this process –JPAC, Council and the Secretariat– is preserved and public participation and transparency have been further strengthened. The Council is very proud of the clarity and certainty this decision provides.

She reported on other substantive issues such as children's health and the environment. Council adopted a resolution focusing the CEC's work on this topic, in addition to what is already being done. She noted that this is an issue that she had personally been involved with for a long time and was very excited by the opportunities for trinational cooperation.

She thanked JPAC again for its input and turned the floor over to Minister Anderson.

Minister David Anderson expressed his appreciation for Administrator Browner's analysis of the day's work. He briefly responded to one issue that, although not scheduled for discussion in the upcoming presentations, had come to his attention— namely Dr. Barry Commoner's earlier presentation on dioxins. He noted that POPs was a particularly serious issue for the people in Nunavut, as well as in the Northwest Territories and the Yukon. Canada is seeking a strong and effective global POPs Convention through ongoing negotiations under UNEP to address this issue and has initiated a $20 million fund to assist parts of the world that still use DDT and are without substitutes or elimination programs. In addition to its cooperative work with the United States and the Canadian provinces, Canada's federal government is working directly in the north through its Northern Contaminants Program. He added that last year the CEC agreed to develop a NARAP for dioxins, furans and hexachlorobenzenes. Finally, the incinerator referred to by Dr. Commoner in fact still operates but no longer emits any measurable levels of dioxins. That is not to say that the problem is not still very serious, however.

Minister Anderson stressed the importance of the upcoming symposium on environment and trade, noting that after years of knocking on the door, it has finally opened slightly on the trade file. It is important, therefore, to have the largest possible attendance and presentations of the highest quality to make sure that those concerned with the environment have their views taken into account. Finally he expressed his enthusiasm for the resolution adopted on children's health and the environment, an area of great interest to him.

Secretary Julia Carabias stated that the session was successful and the headway made noteworthy. She recognized that she herself some years ago was highly critical of the CEC's work program as being too diffuse and not tackling issues central to the CEC—environment and trade. Today there is a focused and prioritized work program and important progress has been made in each area. We are now achieving a level of cooperation that seemed impossible in the past. Another area of substantive progress was on Articles 14 and 15. This was a subject of great concern to all members of the CEC, the public, the NACs and independent organizations, which has led to concern, tension and misunderstandings. Here, we were able to overcome a difficult situation, which had almost reached a crisis point within the CEC. She noted that as far as she was concerned, communication has been reestablished, Council has reached consensus and JPAC has accepted the resolution. Very importantly, internal stability has also been reestablished which is the most we could have hoped for from this seventh Council Session.

b) Presentations to the Council by selected rapporteurs summarizing the results of the workshop on North American Priorities and Opportunities for Cooperation

The Chair invited the rapporteurs to make their presentations from the Workshop on North American Priorities and Opportunities for Cooperation held earlier in the day with JPAC. Karl Mayrand, Cliff Wallis and Gustavo Alanís made the following points:

- It is important to include indigenous peoples in environmental discussions. This should include their involvement in any action taken by governments. Too often indigenous peoples are forced to resort to legal processes. Cultural diversity and indigenous knowledge should be used by the CEC as an asset. Spirituality, conservation and sound management of natural resources should be the guiding principles.

- Trade and transportation corridors are of concern. The growth and expansion of transportation corridors have a significant impact on the environment. Concerned NGOs will be taking this matter up at the environment and trade symposium in Washington in October. NGOs are generally satisfied with the work of the CEC in this area and urge continuing efforts, particularly in its role of assembling and disseminating information.

- Strong support was expressed for the biodiversity initiative. It was described as ambitious, perhaps too ambitious. We are very pleased to see the continuing application of science and the involvement of scientists from outside government in the processes. It is considered very important to use independent scientists in the CEC's work.

- The CEC should continue to explore ways that NGOs and indigenous peoples can bring their expertise to the biodiversity work and other processes of the CEC.

- There was a specific concern expressed about the list of species of common conservation concern and the process used to establish it. The grizzly, for instance, is conspicuous by its absence. It met three of the criteria, and some of the species that only met two are on the list. This is a very vulnerable species and habitat loss continues today.

- There was strong support for the upcoming workshop on grasslands. Similarly, the CEC is urged to look at northern forests as a next step, as these are facing massive change and deserve urgent attention.

- It is encouraging to see pollutants referenced in the biodiversity work. There is a direct relationship between pollutants and wildlife. Now we must move quickly to look at pesticides that are less persistent though acutely toxic, with lethal or sub-lethal effects for wildlife.

- There was support for the harmonization of pesticide ecological risk assessment in each country and an expression of interest in using the EPA model as a start. Concern was also expressed about the need for more sophisticated assessment using basic science and knowledge of the species, and about the use of areas where the toxins are applied.

- Independent monitoring integrated at a regional scale is also needed.

- The CEC's efforts to combat pollutants were acknowledged. It is hoped that there will be more information about the impacts of pollutants on human health. It is urgent to open this discussion in Mexico.

- Concern was expressed about the status of environmental legislation and enforcement in the three countries, which is perceived as having weakening. The Parties should commit themselves to strengthening enforcement and improving laws. JPAC should take this matter up and make recommendations to Council on ways to improve the situation.

- It should be made clear to First Nations in Canada who in government is actually responsible for environmental issues affecting their lands. Now their concerns are managed by many different levels of government, resulting in confusion and inaction.

- The Mexican NAC has requested that more information about the containment and disposal of PCBs be made available to the population in Mexico.

- Finally, a request was made from Mexico to promote the use of alternative technologies for treating PCBs and other toxic substances.

The Chair then moved on to the public portion of the session and explained the rules for the speakers to ensure they keep to the allocated time of 5 minutes each.

c) Individual presentations by pre-registered speakers and Council interventions

Diane Campeau, Fondation les oiseleurs du Québec Inc., spoke as an educator and a mother on the results of a project undertaken with school children aged 12 to 15, and presented the thoughts of these children with regard to health and the environment. The first question they were asked was: do you feel protected from pollution around you? The children said no for various reasons - because we walk on the grass, people older than we should pay attention to the hazard because pollution is everywhere. Other children said that they knew that various factories and companies were polluting, but these companies provide jobs for their parents. Others added that they did not feel protected because no one really knows where pollution comes from. One young 15-year old girl said that she did not feel too threatened because by using pesticides better food is available and that is positive. Ms. Campeau noted that the perspective of older children tended more to be based on economics.

The second question was: what are your expectations of the government and adults about pollution and children's health? The children said that governments could develop anti-pollution campaigns and provide information, but as consumers, we and our parents are also responsible. They also said, we have responsibilities, but we are small and may not be listened to by governments. One young boy, Marc Antoine, said, "I know I can have an impact, but sometimes I feel like I am going to the bank. I have money but I am not taken seriously because I am so short behind the counter." Ms. Campeau

suggested that this should send a clear message to governments that it is time to create a space for children.

Another question was: what would you propose to a neighboring country regarding pollution? Among the replies was the need for greater information on food products, especially regarding pesticides and other chemicals. One little boy said he would build an enormous fence around his country to protect it. Another said he would designate a buffer area at the border. She noted that the children were very realistic and understood that everything cannot be changed, but felt that some solutions can be found. They talked about taxes and regulations on goods crossing borders and that all countries should respect the same regulations. Finally, they were of the opinion that their governments should tell other countries about the consequences of pollution on children's health.

She concluded by saying that she hoped the governments, especially the Canadian government, would listen to what children have to say.

Brock Evans, Endangered Species Coalition, thanked the Ministers for this opportunity. He explained his organization's dedication to defending US endangered species and its concern with the biodiversity protection situation across North America. Because the US endangered species law has been in existence for 25 years, hundreds of species that otherwise would now be extinct and millions of acres of habitat that would have been lost still exist. He expressed anxiety about the overall situation across North America and a hope that the CEC can do something to help. There are at least 300 species migrating between our countries. Some of them, like the monarch butterfly and the piping plover, are vulnerable or endangered. He likened the responsibility for the conservation of biodiversity as a three-way joint custody arrangement, our shared wildlife being our children. What good would it do if two guardians loved and protected the children but every time the children visited the third, they were not? He suggested that this is the current situation in North America—two countries have good laws on endangered species and the third does not. The opinion of his organization is that the legislation currently proposed in Canada will not do the job either.

He continued, saying that over the past 25 years, the United States has invested millions of dollars and lots of political capital in working out an effective species protection system. In Mexico a strong set of rules are also in place, requiring mandatory protection of the habitat for endangered species. He suggested, therefore, that protected species are safe when they wander south of the Canadian-US border, but not safe when they wander north. There are no laws to protect these species or their habitats, endangered or not. He submitted a list of 35 US protected species that regularly migrate to Canada and are in trouble when they go there. Eight years after Canada's strong showing at the Rio Summit there are no effective laws on the books, and the law being proposed will not protect any species because it is totally discretionary.

Mr. Brock concluded by stating that this situation is making his organization very fearful because the strong efforts south of the 49th parallel will not succeed unless Canada does its part too. He presented a letter to the Chair, signed by 30 organizations in the United States asking the CEC to review whether Canada is complying with its signed agreement to have effective laws to protect endangered species and their habitats.

Ernesto Ladrón de Guevara, Unión Nacional de Organizaciones Campesinas Autónomas, addressed the Ministers on behalf of the Mexican National Advisory Committee (NAC) and the International Organization of Peasants from 52 countries. He pledged to work for the broadening of public participation and to have clear rules for the application of Articles 14 and 15, as proposed by the Mexican NAC, to guarantee transparency and to achieve consensus between our three countries.

He shared the following data and concerns. Last year 39 million hectares of farmland were planted, most without following international regulations regarding the environment and human health, including providing information to consumers about the characteristics of their produce. North America is the greatest farming area of the world, containing more than 70 percent of the world's farmland. He explained that with NAFTA, products such as soya, wheat, corn and canola circulate freely. Mexico imports more than 4 million tons of transgenic grains as a basic material for processed food. Last year, with the European moratorium on the import of these products, the transgenic grains had to be identified, which turned out as an impossible for the farmers. A large number of US farmers understand that it is more expensive to produce non-treated grain. All this is creating an obvious commercial problem with important environmental effects.

He went on to explain that in Mexico, Monsanto has a virtual monopoly on seed production and that the Secretariat of Agriculture agreed to subsidize 80 percent of the costs of these transgenic seeds. He expressed concern that public funds are being used to promote these products. The Mexican NAC has recommended that the effects of transgenic seeds in North America be studied, that standards be developed, a map of production areas be created, and that information on these products' relationship between trade and environment be made available. Considering the priority of this issue, effects on farmers and producers should also be studied. He urged that the transboundary shipment of these products into Mexico be stopped because of the impacts on Mexican agriculture. Finally, he stated that NAFEC should support projects that have been suggested by the public.

Stephanie Meakin, Canadian Arctic Indigenous Peoples against POPs, explained that her organization is a coalition of aboriginal groups established to work on the issue of persistent organic pollutants. She began her discussion by referring to Dr. Barry Commoner's presentation earlier in the day on how dioxins reach Arctic Canada. Although used and generated primarily in tropic regions, dioxins are transported to the north by air currents. In fact, six tons of PCBs are deposited every year in the Canadian Arctic, bioaccumulate in the food web and contaminate the food base of northern Indigenous peoples. Many of Canada's northern Indigenous peoples have levels of POPs in their bodies far in excess of those found in southern Canada. For example, on average, Inuit women have levels of PCBs in their breast milk five times higher than the Canadian average and significantly higher than the level of concern set by Canada's Department of Health for women of child-bearing age.

She went on to explain that much is known about sources and pathways to the Arctic and levels in wildlife and humans as a result of research conducted through Canada's Northern Contaminants Program and the Arctic Monitoring and Assessment Program of the Arctic Council.

She further explained that the Canadian government has established Tolerable Daily Intake values (TDIs) for each contaminant. For example, based on the toxaphene levels of marine mammals, an Inuk (Eskimo) would be allowed to consume six grams of *mutktuk* (whale blubber) per day. This is like

telling someone from Toronto or Mexico City that s/he can eat a piece of chicken or steak the size of a sugar cube for supper.

There are no alternatives to eating country food in the Arctic. Indigenous women now question if it is safe to breast feed their children or eat their traditional foods. These contaminants threaten the cultural survival of northern Indigenous peoples. As stated by Sheila Watt-Cloutier, president of the Inuit Circumpolar Conference—Canada, at the first negotiating session for a global convention on POPs: "Many of you likely see POPs as an environmental issues. For Inuit and other northern Indigenous peoples, this is a matter of public health. Eating country food not only nourishes us physically, but spiritually and culturally. Our country food keeps us whole." Ms. Meakin stated that her organization applauded the CEC's work and the regional action plans to control priority contaminants and that comments on the draft NARAP on lindane would be forwarded shortly. About 20 percent of Inuit women in southern Baffin Island exceed the TDI for it. Nevertheless the Canadian government has refused to give Inuit a public health assessment of this pesticide, citing proprietary concerns.

The coalition has participated in two sets of international negotiations to eliminate POPs. Canada has ratified the POPs protocol to the 1979 Convention on Long-range Transboundary Air Pollution. She inquired when the United States intend to ratify the protocol. The foreign affairs Ministers of the eight Arctic states that make up the Arctic Council will meet in Barrow, Alaska, in October. They will be considering a proposal suggesting that the Arctic States will, whenever possible, advance common positions and interests in international fora dealing with pollution matters. Canada and the United States are urged to support this principle and direct negotiators to implement it in the global POPs convention negotiations in South Africa.

Finally she urged that the CEC publish as soon as possible the important report on dioxin transfer to Nunavut prepared by Dr. Commoner. Inuit were part of this project and she commended the CEC for its inclusiveness. The state of the art model developed in this report will be useful when discussing mercury and PCBs. The results of this work will provide a very effective tool for targeting remedial dollars to give the most effect possible. She further added that the coalition would support a second addition when new data is available. She concluded by stating that only through effective modeling and monitoring will northern indigenous peoples ever know if regional and international measures are effective in reducing POPs. She presented a letter from Mr. Dennis Tippleman of the Inuit Circumpolar Conference—Alaska seeking the support of Madeleine Albright to make progress with the Americans on the international POPs negotiations.

Susana Castro, Luna Nueva, a civil association composed of women working to develop training programs in rural development to improve quality of life for rural peoples. She explained that promoting fair and equitable development was a primary concern. Her organization focuses on community development projects in the areas of health and nutrition, human development, social and environmental education, social organization, community self management and small business development. Her group also designs and implements training programs for rural peoples in these areas working primarily in Mexico and Central America.

She went on to explain a project currently underway on alternative nutrition in Tepoztlan in the State of Morelos. The general objective is to improve the nutrition of children through education, technological

and cultural action with a view to developing the potential of children during their growth process. She further explained that while this state may not have the highest rate of infant mortality, there are serious nutrition problems for children, particularly since their region is shifting from traditional agriculture to other forms of production which have negative impacts on human health. There is an increase in infectious and chronic diseases. Her organization is particularly concerned with infant nutrition.

The inhabitants of the Tepoztlan region are characterized by their desire to maintain their traditions and have rejected programs that may have a negative impact on the environment. But lack of information, introduction of the market economy and processed food, and the excessive use of pesticides and slow incorporation of transgenic grains are resulting in increased malnutrition. She reported that because of the work done so far, there is a better understanding of the factors that affect nutrition in the State of Morelos. She went on to describe various actions that are being developed to promote improved nutrition. After twelve years of experience, several proposals have emerged. One is to promote the development and effective application of laws for the use and management of chemicals and pesticides. Another is more work on technology transfer and training. They are also recommending a focus on children's health within government and academia to help strengthen and coordinate action. Finally a basic principle for all programs and decisions should be the consideration of the social and economic imbalance that exist between the three countries.

Maite Cortés, Colectivo Ecologista de Jalisco, spoke on behalf of the organization but also as a citizen of Mexico. She explained that her organization and many others have been working to promote and improve the registry of pollutant emissions and transfers. Some progress has been made in Mexico, and certain industrial groups that are very supportive, but many are still very worried that others within industry are trying their best to block change. Of most concern are the negotiations with *Instituto Nacional de Ecología* (INE—the National Institute of Ecology) and the sending of double messages about compulsory standards. In spite of the fact that there is a proposed set of standards for voluntary reporting, this does not guarantee that the registry will come into being. In 1998–99, 95 percent of those reporting provided the obligatory information but only five percent provided voluntary information on emissions and transfers. Experience shows that over the past few years, there has been growth in the availability of information, generally, but it is not the case with information for INE and other authorities. Pemex published a report for 1999 on its environmental performance, which showed that if another mechanism were in place, it could improve information.

In the CEC symposium on children's health, held in May 2000, the urgency of the registry in Mexico was recognized. Also at this meeting, the necessity of considering the precautionary principle and risk assessment was emphasized, as was the desirability of creating a commission where links could be made between environmental studies and health. Ms. Cortés also reported that in Jalisco, the industrial sector is having a strong impact on small producers who are trying to become more organic and are unable to access green markets. In conclusion, Ms. Cortés thanked the CEC for its efforts and urged the Secretariat to work more closely with civil society, which possesses great capacity for contributing to research and action towards public policy.

Kevin Scott appeared, speaking for **Defenders of Wildlife,** an organization that represents half a million people in Canada, Mexico and the United States. He stated his intention to speak specifically about the protection of endangered species in the three countries and most specifically about the

Canadian situation. He began by saying he was a very proud Canadian, but that it was becoming harder and harder to come to these international conferences, given the current situation for wildlife in Canada. Right now, Canada is the weak link among the three NAFTA countries in preventing species' extinction, since there is no federal endangered species act. Therefore, when vulnerable species migrate to Canada, there is no protection for them. On a positive note, he explained that the federal government has moved forward with the introduction of a proposed endangered species act that is very good in many respects. However, it will not solve the problem of endangered species in Canada.

He provided some details of the deficiencies. The first relates directly to the CEC—enforcement and third-party citizen suits. As had been described the previous day at a special workshop organized by JPAC and the CEC, these citizen suits are a critical part of ensuring that laws actually work on the ground. This proposed legislation does not provide for citizen suits. The second and most important deficiency relates to habitat protection. Habitat loss is responsible for 80 percent of the threat to endangered species in North America. Mr. Scott illustrated the deficiencies of the proposed Canadian legislation with an overhead prepared for this presentation that set forth the various key provisions related to habitat protection in US and Mexican statutes compared with the Canadian proposal. Habitat protection in the Canadian proposal is discretionary, not mandatory—a feature that is very difficult to explain to colleagues in other countries who look to Canada as a leader in environmental protection.

He presented Council with a letter signed by over 90 groups in Canada, Mexico and the United States calling on the CEC to look into this situation, particularly to assess whether this proposed Act conforms to Canada's obligations under Article 3 of the North American Agreement on Environment Cooperation (NAAEC). The letter also cites Article 1. Finally, under Article 10, the group is asking Council to look into this matter, make recommendations and review what the CEC could do. He stated that in his view, this is critical for the CEC. Protection of transboundary migratory species, such as the piping plover and monarch butterfly through the promotion of upward harmonization of statutes and regulations, is precisely the domain of the CEC.

Andrea Abel, National Wildlife Federation (NWF), first thanked Administrator Browner and Minister Carabias for their many years of work and commitment to the CEC. She expressed her view that there is agreement on the central principles of the NAAEC such as public participation, transparency and the independence of the Secretariat. She also asserted that all those present were there because they believe in the fundamental benefits of the CEC.

She went on to speak about biodiversity and species of common conservation concern—noting that the list of 15 species is a good start but this should not preclude the addition of new species. Her organization is pleased to see an emphasis on grassland species. The NWF is ready to work with the CEC Secretariat through its grasslands campaign to develop strategies.

She then moved on to Articles 14 and 15, referring to Regina Barba's characterization of the citizen submission process as a baby, and said that over the past days her eyes had been opened to what a truly precious and beloved child this process really is. It is a treasure, a gift to the people of North America—to ordinary citizens—giving those with few resources some recourse when no other exists. That is why so many North Americans care so deeply about the citizen submission process.

She said it was clear to everyone that there had been a strong dialogue and vigorous debate. Part of the anxiety and fatigue is that the long-term success of the CEC should not require the spending of so much energy and time discussing this year after year. She expressed her hope that the process developed by Council at this meeting would allow forward movement. She expressed a concern, however, that future CEC Councils might come to the conclusion that if they could agree on an Article 14/15 issue, they could avoid the new process without further involvement from JPAC and the public. She asked the Council, "If an issue does arise on which there is consensus on the part of the Council, would you go ahead and refer it to JPAC under the process you are proposing?"

(The Chair indicated that all responses from Council would be provided at after the presentations.)

Gustavo Alanís Ortega, Centro Mexicana de Derecho Ambiental, indicated he had three issues to raise. First he expressed his pleasure to learn that Canada was planning to enact a law on endangered species and asked Minister Anderson to please include strong compulsory language for the protection of habitat as opposed to the discretionary language in the current proposal. This would contribute to the protection of over 300 migratory species.

Second, he commented on the transboundary environmental impact assessment agreement, which has been under negotiation for over three years now. He asked the Ministers if there was the political will to move forward with an agreement of this nature.

Lastly, he stated that independently from what was agreed upon at this Council Session, he is still concerned that action was taken with the participation of JPAC and the public on the citizen submission process under Articles 14 and 15. He explained that there have been workshops and recommendations on this matter and it was always clear that there was no justification for any amendments at this time. Yet, in 1999 there were amendments. The NACs and the JPAC have no choice but to wonder about their roles if their recommendations are ignored. A lot of questions come to mind. Why the space for public participation if it is not effective? Why supposed consultation if at the end it is ignored? There is a spirit of social participation in this Commission and decisions should reflect the views of the majority. He expressed his hope the citizen submission process has not been so seriously undermined that its value is lost. Why so much fear about public participation? The guidelines were originally drafted with a view to informing and orienting the public, minimizing obstacles for the submitters and full independence of the Secretariat. He expressed his optimism for today's resolution, stating that it demonstrated, in a positive way, the importance the Council places on public opinion, public participation and transparency.

Martha Kostuch, Friends of the Oldman River, addressed the Ministers as members of the CEC Council, not as representatives of the Parties. She stressed the importance of Articles 14 and 15 as unique in the world. She reviewed the history of the Oldman River submission. In 1997, after the case dealing with the same matter had been withdrawn from the courts, the Friends of the Oldman River made a second submission which encountered considerable delays within the Secretariat. Finally, after the lengthy delay, in July 1999 the Secretariat recommended that a factual record be prepared. In June 1999 at its annual meeting, Council revised the rules and required that the Secretariat keep the fact that they had made this recommendation secret for 30 days. At the end of the 30 days, she was informed that the Council would be releasing its decision. This decision too was kept secret. The only information

given to the Friends of the Oldman River was that decision to prepare a factual record had been rendered, but the details were not revealed. In May 2000, the Alternate Representatives, not the Council, made a decision to defer a decision. The only good news was that the text of the Secretariat's recommendation was made public.

She went on to explain that the key element of the submission is the allegation that there is a general failure by the government of Canada to comply with and enforce the Fisheries and Canadian Environmental Assessment Acts. She also explained the events concerning the Sunpine court case. She cited Justice Muldoon's determination that "this is a transparent, bureaucratic attempt at sheer evasion of binding statutory imperatives. It is neither cute or smart nor is this court duped by it." The Secretariat understood that the Sunpine case deals with totally different issues than those in the submission.

She stated her view that the Alternate Representatives were wrong to make the decision they did. They misunderstood and misinterpreted the submission. The Secretariat was right. She suggested that Council should follow the Secretariat's recommendations and asked Council to immediately refer the Friends of the Oldman River submission for the preparation of a factual record.

Mary Kelly, Texas Center for Policy Studies, explained that she had previously been the first Chair of the US NAC and expressed her pleasure that the NAC was still so active in providing solid advice and formulating positions on CEC matters. She went on to express her organization's appreciation for the Council's action, today, on Articles 14 and 15. Speaking from a US perspective, she felt it reflected Administrator Browner's responsiveness to NGO and citizen concerns, which has been a trademark of her administration.

With respect to the resolution, she described it as an important step to diffuse a crisis. While there are still unresolved issues with this process, a certain "comfort level" has been achieved. She agreed that the JPAC is the appropriate place to deal with any ongoing issues. JPAC has demonstrated, since its inception, a commitment to transparency and public discussion. She thanked JPAC for its work on Articles 14 and 15 and for providing a way out. The core of the solution set forth in the resolution is having JPAC bring its particular strengths to Article 14 and 15 matters. She noted that a viable citizen submission process is key to the credibility and effectiveness of the CEC and important to the overall debate about trade liberalization. She expressed her confidence that the process is now heading in the right direction.

Turning to other matters, she brought up the analytical framework and the upcoming symposium on trade and environment. The framework had been difficult to create, but the upcoming symposium will build on it by presenting a diversity of issues and researchers, providing practical examples of moving down from the "ethereality" that has prevailed in the discussion so far. She encouraged the Council to give its full support and adequate resources to the symposium. The second CEC program that has been incredibly important is NAFEC. She explained that her organization does a lot of work with foundations in the United States and trying to get them to fund small organizations in Mexico is very difficult. NAFEC has been successful. She urged sustained and, if possible, increased support for the program.

Augustín Bravo Gaxiola, Centro de Derecho Ambiental del Noreste de México, explained that his organization supports communities that are marginalized and economically disadvantaged to defend

themselves in matters of public health and the environment. In the last two years they have been working specifically with indigenous communities in the mountains. He went on to describe to the Ministers the situation in certain communities. He first thanked these communities for placing their confidence and trust in them—to those whose homelands [are] beyond the limits of this country and to those who are in prison for defending their lands and communities.

Since 1998 in the state of Chihuahua, more than 18 communities, most Indigenous, have been seeking a solution to the problem of illegal cutting of timber, using both legal means and citizen submissions. During these two years, 33 complaints have been filed. The results were as follows: In all cases where complaints were filed, the representations were not admitted. Furthermore, in the territories of Indigenous peoples, there was no consultation with them prior to the government authorizing cutting. This is the way the guardians of biodiversity are treated.

He explained the reasoning of the authorities as follows: too much work, a lack of resources, and the supposed lack of time frame in which to resolve the issues. Regarding the time frame, he indicated that Mexico's Supreme Court said that for the resolution of these issues, one could not use lack of staff, resources, etc. as an excuse for non-action. The court stated "this is not sustainable because it is immoral." He went on to describe the process of citizen complaints as a joke—in the few cases where anything was done, the responsible parties were not sanctioned. Despite complaints against these environmental crimes, the federal minister played no role and no criminal charges were brought except in a very few cases. He made a plea for working together with Indigenous communities to defend the environment and stressed that what is at stake here is the rule of law and a return to justice.

César Luna, Environmental Health Coalition, had planned to share his group's experience with the citizen submission process, both obstacles and achievements. He chose, instead to allow Maurilio Sánchez and Olga Rendón who live in the community affected by the *Metales y Derivados* site. Before they began, however, he urged Council not to make the submission process any more difficult then it already is and noted that in the case of Metales, this process is one of the only recourses left to the community.

Olga Rendón began her presentation by describing the site and history of the contamination. The water and soil are contaminated, the local creek leads to a kindergarten, a situation that is very alarming. She presented over 500 petitions to Minister Carabias and asked that she demand that this area be cleaned up. She invited Minister Carabias to visit the site on July 15 as a positive signal that government is taking this seriously.

Maurilio Sánchez continued by thanking the Council for having accepted their citizen submission. This is the first opportunity after 15 years of struggle that their issue is being addressed. He urged that this case be used as a positive example of how a site can be cleaned up and how those involved can be held responsible under the legal framework. The party responsible has the resources to deal with this and should be forced to assume its responsibilities. He indicated that, on behalf of all those who got ill, the submission included a request that Mr. José Khan be extradited and punished for his environmental crimes, but Mr. Sánchez expressed regrets that this attempt had been to no avail. In closing, he expressed hope that this case would go down in history to show everyone that the law should come first and individual interest, second.

Cliff Wallis, Canadian Nature Federation, spoke on behalf of Canada's endangered species and expressed his sadness at Canada's failure to enact a strong endangered species law. Rather than reiterate the problems, however, he would use his time here to construct some positive ideas. First, he said, we know that the Canadian public is overwhelmingly in support of strong legislation—as reflected in the thousands of petitions, polls, etc. He explained that in 1992 Canada signed the Convention on Biodiversity, which requires the adoption of legislation to protect endangered species. The Prime Minister of Canada promised at the Rio+5 session that such legislation would be enacted. We had a further promise in 1999. He suggested that the fears of economic ruin from having a strong law are laughable: when we look at the United States which has a strong law and also one of the most overheated economies of the world—what's the problem? He urged that this grand opportunity, backed by public support, should not be missed.

He further recommended that mandatory habitat protection, at least in areas of federal authority such as migratory and transboundary species is required. As an example, he explained that not even the whooping crane habitat in Wood Buffalo National Park is protected. Another is scientific listing. The best available science must be used in legislation and management. Right now we have non–scientific-based listing in five of the 10 jurisdictions in Canada where endangered species are found.

Finally, he emphasized the need for citizen suits. Despite Canada's opposition, we believe that Article 6 of the NAAEC mandates some sort of private access to remedies. The Canadian Pulp and Paper Association and the Canadian Association of Petroleum Producers are two examples that have agreed to a third-party appeal process. The NGO community in Canada is committed to ensuring that Canada lives up to its international reputation and he strongly urged Canada to pass a strong law to protect endangered species and their habitats.

David Schorr, World Wildlife Fund began by expressing his appreciation for the work of Minister Carabias in making Mexico a truly constructive partner in building the CEC. Secondly, he acknowledged and agreed with previous speakers that Administrator Browner's sensitivity to the needs of public involvement and a professional and independent Secretariat has been crucial.

He stated his intention to address three subjects—two of which the CEC is moving from the study to the implementation phase—trade and environment and biodiversity. The trade and environment symposium scheduled this fall, he believed, would be important as an opportunity, not only to advance theory but also to propose implementation mechanisms. He drew particular attention to transportation, where a real opportunity now exists to build a constituency for alternative transportation visions on a continental scale. On biodiversity, he expressed pleasure at another opportunity to move from process into implementation, and stated that WWF looks forward to working with the CEC. He expressed some concerns about gaps in the species list and said that the CEC should concentrate on helping build an infrastructure for biodiversity conservation.

Regarding Articles 14 and 15, he began by reminding participants that this is the seventh Council Session and the seventh meeting marked by controversy over this issue—and this meeting was the sharpest. He acknowledged that perhaps not all of the Ministers agreed with the perception of the public that this crisis was necessary. He went on to explain the basis for this public outcry. Testimonies

in this hall, over the past two days, have demonstrated that the CEC and the Article 14/15 process is making a real difference to people and the expectations are very high. Governments clearly have a right and a duty to speak to one another and there has never been any intention to deny that. He went on to say that the NAAEC is making history by making the public part of the process, and expressed his appreciation for that fact that this has been addressed in a Council resolution. He suggested that Council should not be surprised or annoyed by the outcry—on the contrary, the Ministers should be proud. The public has invested in the Council and the CEC a serious expectation that can only grow alongside credibility and respect. At a time when doubt is being expressed about globalization, Council should embrace, not squander, this energy.

He concluded by thanking the Council for its direct engagement in getting the process back on track and JPAC for its efforts. The political lesson is that it took a crisis - this bold experiment rubs against some governmental instincts—and it takes visionary political leadership to make it work. Finally, he suggested that while progress has been made at this meeting, we are "not out of the woods" yet. Problems remain in other areas of NAFTA's environmental implementation, such as the investment chapter, the need for implementation in the trade and environment area, and the solidification of some aspects of the CEC's work program. WWF remains committed to the NAAEC, but questioning how long can we continue to be distracted by questions about the Agreement's potential rather than focusing on results?

Mark Winfield, Canadian Institute for Environmental Law and Policy, explained the Institute's long history of involvement in environmental law and policy issues, predating NAFTA and the CEC. He congratulated the Secretariat for the *Taking Stock* report—a flagship product for the Commission. He indicated that in Canada, this is the best thing that ever happened to Canada's own pollutant release and inventory program. Now data is available in a way that means something to people in the affected communities, advancing the public's right to know. The CEC's PRTR program has also spawned a very active and effective network of NGOs throughout North America. He described an NGO meeting held in Mexico last year and plans for another in Canada. These are funded by NAFEC, which he described as a very important tool for building community networks. At the same time he shares the concerns of his Mexican and US colleagues about the slow progress of moving the RETC program forward in Mexico and providing information to the public.

He expressed his concern about the decision of the Parties to create a task force around the *Taking Stock* report, stating that this decision was taken without any stakeholder consultation and that there was no support for it. Resources would be much better spent on moving the RETC program forward, strengthening community-level use and access to PRTR data and building links, within the CEC, between the PRTR program and transboundary air pollution and children's health.

He continued by explaining that the situation with the PRTR program also touches on some wider issues about the relationship between the Parties and the Secretariat. He stated that the NAAEC, with its creation of the CEC and the Article 14/15 process, was a concrete expression of the commitment that trade liberalization would not lower environmental standards. The events of the last few months have led some to wonder whether the Parties themselves had some doubts about their ability to live up to that commitment. In that context, he expressed his pleasure at the resolution adopted on Articles 14 and 15. It is an expression of commitment and gives the Secretariat the space it needs to carry out its watchdog functions. He requested that additional resources be provided to the Secretariat to do this work.

Yves Corriveau, *Réseau québécois des groupes écologistes,* thanked the Council for the opportunity to express his organization's disappointment at the level of analysis given its submission under Articles 14 and 15. He raised two points. It is now well known in Québec that the largest source of organic pollution in groundwater and riverine systems is animal husbandry. The recent events in Walkerton, Ontario, are a startling example. Using data from the Québec Ministry of Agriculture, it can be determined that there are 3000 livestock producing farms that do not respect the 1987 regulations—about a 40 percent rate of noncompliance. Despite this, he explained, there are no specific measures taken by the provincial government to control hog production.

He went on to explain that the capability of Québec's Ministry of Environment to intervene has diminished since the date the submission was filed. The number of inspectors has dropped from 52 to 28. The new regime, meanwhile, is much harder to supervise and enforce, therefore enforcement capacity needs to be increased, not diminished. Conditions vary dramatically from one farm to another. The situation has not been improved despite what the Alternate Representatives decided on this submission. He stated that his organization was very disappointed by the decision as the reasons given were unsound and he invited the Council to reconsider its decision. With all due respect to the Council, his organization feels that this was a political decision and that discretionary power was not exercised judicially. There was no accountability to the submitters. This was an unjustified political decision. This harms the credibility of the CEC by undermining public confidence. This is why he is requesting that the Council review the reasons for its decision. Even if the decision not to proceed with the development of a factual record is upheld, he urged Council to provide the submitters and the public with a proper rationale.

The Chair, Regina Barba, thanked all the presenters and, before turning to the Ministers for their comments, took the opportunity to thank Administrator Browner for appointing Ms. Serena Wilson to JPAC, and Minister Anderson for appointing Mr. Cam Avery. She also thanked Minister Carabias for her dedication and contribution to the work of the CEC.

At the Chair's request, on behalf of JPAC and the North American public, **Peter Berle** thanked Administrator Browner for her work over the past seven years, guiding the organization from its inception and uncertain birth through its somewhat ragged adolescence. He acknowledged that the public recognizes this is a thankless job and thanked her for her persistence and vision of a "greener" North American community. Recognizing that this involves not only governmental processes, he noted that it cannot be achieved without an active constituency. He suggested that Administrator Browner's tenure with the US EPA will be marked by her emphasis on re-evaluating standards in the context of the vulnerability of children. From a personal point of view, during this same seven years, he explained that his children have made him a grandfather seven times over and so he was particularly appreciative of this emphasis on children.

Raul Tornel, speaking on behalf of the Mexican members of JPAC, publicly recognized the work of Minister Carabias and thanked her for the confidence she has placed in the Mexican members to represent civil society in the CEC process. The CEC has been described throughout the meeting as a baby, and we thank Carol and Julia for taking care of this baby when it was learning to walk and it has

now reached the age of reason. We all feel responsible for this child. To Minister Carabias he expressed great pride in her work.

The Chair then turned the floor over to Administrator Browner who asked Minister Carabias to begin the Minister's comment period.

Secretary Julia Carabias first thanked her JPAC colleagues for their unexpected, very kind and moving words. She confirmed that it was very unlikely that she would be at the next Council meeting and more likely she would be on the other side of the table with the NGOs—from where she had come.

She indicated that while she would very much like to respond to all presentations, she would condense her comments, since time did not allow to respond to each one of them. She synthesized some general issues and spoke to some specific matters that were raised. First, observing that most of the time at this Session had been spent on Articles 14 and 15, she indicated that it had been necessary and vital to do so. She noted that this had been a crossroads for the CEC and a time of difficulty, which we have overcome with a transparent and participatory process, providing certainty and strengthening the CEC. She complimented David Schorr for his intelligent reflection on the past days' events.

She moved on to specific issues raised by the Oldman River and Environmental Health Coalition submissions and pointed out that these comments reflected the need for clear and transparent rules assuring an effective and efficient mechanism. Regarding the *Metales y Derivados* site, she shared the concerns raised by the representatives of the Environmental Health Coalition and agreed that there is really a problem. She indicated that the closure of the company in 1994 left Mexico with a very serious waste problem and the country does not have a fund for cleaning up sites. She explained that Mexico has had to resort to legal proceedings but lost its case on extradition. She indicated that environmental authorities in Mexico will help expedite the analysis of this situation and attempt to complete the inspections in parallel with other proceedings. She also expressed confidence that a factual record generating recommendations and an in-depth analysis will help the environmental authorities resolve the situation. She noted that Mexico and the United States will have to work on this together so that a factual record can be produced as quickly as possible.

She shared the anger and concerns of the Indigenous peoples from Chihuahua, noting that there is a serious problem with illegal cutting and that lack of results is not due to lack of interest. She indicated that her officials met with the communities and Indigenous governors in March and have committed to reply by the end of July. She explained that this is a complex issue and recognized that the heritage of the Indigenous people is being harmed.

She then moved on to the PRTR and Mexico's interest in compulsory reporting, acknowledging that, in terms of environmental law, this instrument would be very useful in promoting environmental protection. She then commented that while Mexico may be lagging behind Canada and the United States, great progress has been made. There is now a voluntary standard in place and Mexico is trying to coordinate the efforts of the larger companies who are participating, and to move on to include small and medium-size businesses, with the goal of eventually arriving at a compulsory system. She indicated that improvements have been made over the last year and that efforts will continue in this direction.

Regarding the transboundary environmental impact assessment issue raised by Gustavo Alanís, Secretary Carabias reported that both she and Administrator Browner would like to conclude the process before their terms end. She noted that despite the different political, legal and regulatory processes in Mexico and the United States, important progress has been made in terms of understanding. She indicated that the Parties are consulting with their states concerning a possible arrangement and that she is confident the Parties will be in a position to bring this issue to a prompt and happy conclusion.

Referring to the presentation by Diane Campeau on children, she indicated that the electoral process for the upcoming Mexican election is organized independently of the government and that along with this process will be a system of voting booths for children, organized with the help of UNICEF. She suggested that Ms. Campeau get in touch with UNICEF and the Federal Electoral Institute to share information.

Concerning the issues raised by Brock Evans and Kevin Scott on endangered species, she commented that species extinction is, in her view, of prime importance as it is final. Pollution can be reversed, but extinction cannot. It is the most important problem on the planet and must be attended to. When a species is endangered there is still hope, but we must act to avoid extinction. She noted that her administration has given great importance to this issue through its Green Agenda and that a law was adopted for the protection of forests. A decentralized agency for protected areas has been established and Mexico has agreed with the United States on a number of areas that require protection; 15 areas are now being worked on.

Regarding transgenic organisms she indicated that a study is now underway with the CEC Secretariat through the emerging trends project. Once this work is concluded we will be in a more informed position to suggest how the CEC could become involved. She concluded by announcing that Mexico has signed the Nairobi Biosecurity Protocol ensuring biosecurity within Mexico.

She thanked her fellow Ministers, the Executive Director and staff of the Secretariat, JPAC for its constructive advice, and the public for their clear and respectful interventions, which help promote dialogue.

Minister David Anderson began by responding to Diane Campeau's intervention on the importance of considering and involving children. He stated his personal interest and commitment to working with children, indicating that he has organized several exchanges with children to encourage them to express their ideas.

Mr. Anderson then responded to the various interventions, in particular that of Mr. Evans addressing endangered species, and the assertion that there is no law whatsoever to protect species in Canada, giving the example of the piping plover. He explained that Canada had recognized in 1985 that these birds were endangered and that there has been a great deal done since. He cited the many acts that provide them protection—the federal Migratory Birds Convention Act, the Manitoba, New Brunswick and Ontario endangered species acts, as well as specific regulation in Saskatchewan and noted that the Quill Lakes region of Saskatchewan, for example, has received international recognition for the measures taken to protect the area for this species.

He went on to explain how conservation plans for this species are developed through partnership involving governments and civil society, and noted that these conservation plans are proving successful and provided examples. He also drew attention to international efforts, for example, with Cuba, where the species overwinters. He then summarized some of the progress, such as the new populations discovered in the past 10 years, extensive local efforts that are taking place to conserve habitat; and the research underway to better understand the species. This is challenging because their nesting areas are beaches and subject to major disruption by humans. Authorities have fenced areas, changed locations of boat launches, but the main problem is that the nests are damaged by wildlife attracted by the food that people leave. He then described how the prairie population has benefited, while the eastern population is still experiencing difficulty, although sightings have increased in some areas in the east, such as Prince Edward Island. He reiterated that it was therefore simply not factual to say there are no laws to protect Canadian wildlife and that nothing is being done.

He further explained that Canada's constitution differed from that of the United States and noted that, while the US Constitution may work perfectly for the United States, he could not accept that its concepts should be transported to other countries with total disrespect for local customs and political history.

The Minister noted that the Canadian constitution contains no reference to environment, and pointed out that, under the Canadian constitution, land is a provincial responsibility and with land goes water and with water and land goes wildlife. There is no federal Head of Power for wildlife, with the exception of species covered by the Migratory Birds Convention Act. The federal government is therefore faced with the fact that the provinces have constitutional jurisdiction over wildlife and therefore have the authority to pass their own endangered species legislation, which is a fact of Canadian life. Referring to the importance of the Constitution, he suggested that Mr. Evans listen to the words of the new President of the United States when he is sworn in, specifically those relating to his responsibility to defend the Constitution of the United States.

Minister Anderson stated that, as a Minister of the Canadian government, he has to ask himself what he can do within the confines of the Canadian Constitution to provide protection in provinces or territories where no protection exists. The response lies in the use of criminal law, the imposition of fines and jail sentences—which is what the proposed legislation is built on. If a province has effective legislation, then the federal government will not interfere. The federal government will cooperate by providing scientists and money and there are substantial amounts of stewardship money attached to the proposed legislation—about five times the budget of the CEC. In situations where COSEWIC [the Committee on the Status of Endangered Wildlife in Canada] determines, based entirely on science and traditional knowledge, that a species is endangered, then the federal government will determine what is possible. The minister indicated that he is adopting an approach whereby who owns the land doesn't count but that ensures that the land is used in such a way as to maximize protection for an endangered species. He emphasized the importance of working with the people who live off the land—trappers, ranchers, farmers, foresters, fishermen—so they can help provide information, rather than withhold information out of concern for the impact on their livelihoods. Working with the owners, we can designate the land. To do otherwise would never stand up to a constitutional challenge.

Minister Anderson acknowledged that the Canadian, American and Mexican public can kill the legislation—noting that this was the second attempt to introduce new legislation—but he warned, as a politician, that it would not be coming back again and that reliance for species protection would then remain a matter for the provinces only. Going with it, he added, would mean an additional $45 million per year for habitat and stewardship.

In closing, Minister Anderson hoped he had made the point that he believes the new legislation will improve the situation and provide significant new funding for habitat protection and stewardship provisions, but that it will not simply replicate the "so-called" strong law of the United States. He stated that his objective was to have effective legislation that will work on the ground—not via the courts.

Administrator Carol Browner, thanked Minister Anderson for taking the time to help us better understand the debate in Canada and stressed the importance for an organization like the CEC to take the time to hear the perspectives of different countries. Referring to the various domestic issues addressed by Secretary Carabias in response the concerns raised by several speakers, she pointed out that the absence of specific US domestic issues at this meeting does not mean that the US does not have its share. She noted that probably the most significant environmental step taken by President Clinton and Vice-President Gore was to set the toughest air pollution standards ever, anywhere in the world. She indicated that the United States has been sued by industry, and she quoted the New York Times as saying that the biggest case to be argued in the US Supreme Court this fall will probably be that case. She added that this issue goes literally to core of the government's right to set a public health or environmental standard. She then acknowledged that, as Ministers, the Council members all face difficult challenges at home.

Before closing the session, Administrator Browner thanked her colleagues, Julia [Secretary Carabias] and David [Minister Anderson], for a successful meeting and noted that these meetings generally start with a sense of desperation, but that one of the things about the people who participate in the CEC is that they are—at the end of the day—optimists. She also thanked Regina Barba and JPAC for their role in the successful outcome. She then thanked the public for making the effort to travel in Dallas and offering such clear and thoughtful presentations. She encouraged people to continue their participation in the future. She then thanked the Alternate Representatives, and Bill Nitze from the United States in particular, noting that it has been a difficult year for the Alternate Representatives, and commended their valuable contribution to the success of these meetings. Finally she thanked the Executive Director and the Secretariat staff for their work.

On Articles 14 and 15 she expressed her appreciation to all the individuals, such as David Schorr and others who do such a good job of "holding our feet to the fire," emphasizing that it does make a difference and is an important part of the process. To everyone present she said: "Yes we did a good thing reaching resolution on Articles 14 and 15—it's a victory of sorts—but it comes with responsibilities, not just for the Council or the Secretariat. It comes with a tremendous responsibility for JPAC and the public. We have created an ongoing opportunity for participation and I know you will take it seriously and use it to good advantage."

She expressed particular pride that Council chose to commit the CEC to a focus on children's health. Finally, reflecting on the fact that she had run EPA for longer than anyone in its history, she indicated

that—while it had provided her a tremendous opportunity to represent her colleagues at the EPA on many issues—the work done by all through the CEC is one the things she is the proudest of. She thanked everyone for making the CEC the great success it has become and will continue to be.

Janine Ferretti added her congratulations for the steps that were taken on Articles 14 and 15. She thanked all the participants and noted that it is through active participation that the CEC is built. She also thanked the Council members for their commitment to the ideals represented by the CEC—transparency, participation, and environmental integrity—and said that they embodied those ideals through their actions and personal leadership.

Ms. Ferretti then presented each of the Ministers with a commemorative plaque.

Regina Barba adjourned the session.