ORIGINAL: English

# 6<sup>th</sup> Regular Session of the Council of the Commission for Environmental Cooperation Summary of interventions made during the public portion

# 28 June 1999, Banff, Canada

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

Minister Christine Stewart opened the session by welcoming everyone and expressing her pleasure and enthusiasm for this opportunity to listen to the public. On behalf of Secretary Julia Carabias and Administrator Carol Browner, she made brief introductory remarks about the work and progress achieved at this session. First was the announcement of the development of a North American Regional Action Plan (NARAP) to reduce dioxins and furans and hexachlorobenzene. She emphasized the importance the Council places on securing and enhancing the protection of the environment and human health. She also announced the first ever North American symposium on understanding the linkages between trade and environment to be held in October 2000. In preparation for this conference, the Council released a report, entitled *Final Analytical Framework for Assessing the Environmental Effects of NAFTA*, and will be issuing a call for papers encouraging academics, researchers and policy experts to test the NAFTA Effects Framework for specific situations.

Concerning Article 14, she reported that the Council had agreed to revised guidelines for submissions on enforcement matters and expressed the Council's hope that its work would bear fruit. She further informed the session that the Council intended to carry on with work on Revison 2 relating to factual records. Regarding transboundary environmental impact assessment, she reported that this area has caused some difficulty and significant discussion but that progress had been made. The Council has agreed to work with its respective negotiators and individual border states and provinces to build "good neighbor agreements" based on reciprocity. The goal of this process is to ensure transparency and participation in the processes for proposed projects with environmental consequences in border regions. She reported that the Council has also approved an action plan to conserve birds and their vital habitats across North America. This is a very significant move to preserve biodiversity based on the successes of the North American Waterfowl Management Plan. She also acknowledged the significant work that has been done on the upper San Pedro River and indicated that the Council had voted unanimously to release the *Ribbon of Life* report. She further acknowledged the work that has been done on the Silva Reservoir as another example of the benefits from cooperation.

She then thanked Janine Ferretti and other members of the Secretariat for their fine work over the year and also thanked the government officials and individual staff members for their dedication and commitment. On a personal note, she concluded by affirming her belief that the work of the CEC is extremely important in demonstrating how three different countries with different political and economic realities can work together to produce positive results for the environment and human health. The work of the CEC can provide a model for the rest of the global community.

Finally, she thanked her Council colleagues for their work and efforts and assured the public of the Council's continuing commitment to work on behalf of citizens to achieve greater results in the future.

Secretary Julia Carabias added to Minister Stewart's report by noting the satisfaction of the Mexican government with the work and achievements of the CEC. Having participated in all six sessions she has observed considerable progress. She considers the CEC as a very unique commission because of the focus of its work —the link between trade and the environment. It is also unique because of the mechanisms around which it operates —particularly with public participation organized through JPAC, the National Advisory Committees and the public session with the Council. She noted that she has seen this participation develop and mature, bringing positive effects to the Commission and within the respective countries. She went on to say that governments are still learning how to dialogue with civil society in building environmental policies. In Mexico, she explained, the structure of advisory committees to deal with topics such as fisheries, natural resources and water, enables the Mexican government to create a dialogue and a flow of ideas to construct environmental policy. She believes that progress can only be made when government and society work together. The work of the Commission in this area provides a model for other countries in building policies for sustainable development, and public dialogue is a very important part of this process.

**Administrator Carol Browner** stated that she had nothing to add at this point and was eager to hear from the public.

Jon Plaut, JPAC Chair, opened the session by asking the rapporteurs from the earlier public session with JPAC to make their presentations. Karel Mayrand of the *Revue environnement et sécuritié* presented the report on the Environment, Economy and Trade Program; Sarah Dover of the *Canadian Endangered Species Campaign* presented on the Conservation of Biodiversity Program; Ruth Madsen of the *Thompson Institute of Environmental Studies* presented on the Pollutants and Health Program; and Mark Spalding of the *Graduate School of International Relations and Pacific Studies* on the Law and Policy Program. (For a full report, please refer to JPAC's Report to Council 99-03 available on the CEC homepage). Mr. Plaut then opened the floor to individual presentations from the public

Richard Meganck, Organization of American States, reported that his organization has been providing technical assistance since 1960 and its mandates are derived from the UNCED process, the Summits of the Americas process and the ministers of foreign affairs. He went on to identify several areas of interest which overlap with the CEC. The first is the trade and environment meeting which will be convened through the CEC. The second is the inter-American trade and environment meeting which will be convened by the OAS and other participants in October 1999. He went on to explain that the OAS also provides secretariat services for several areas of potential interest to the CEC including the Inter-American Forum on Environmental Law, the Inter-American Network on Biodiversity Information, the Inter-American Water Resources Network, the Inter-American Strategy on Public Participation. Regarding the latter, the OAS is finalizing a policy and strategic document which will be presented in October 1999 at the Inter-American Committee on Sustainable Development meeting. The primary role of the OAS is to provide technical assistance and a forum for policy debate and to help member states derive the loans and investments they need to fuel their economic development.

Adam Greene, US Council for International Business, expressed his view that significant progress has been made collectively under the framework that environmental protection and economic development go hand in hand. He noted that we are hearing more and more that the environment is not ready for economic development and that the economy is not ready for environmental protection. He suggested the need to guard against both sides of that argument. Regarding Chapter 11, he voiced his agreement with the basic point that NAFTA specifically allows every country to set its environmental laws as it sees fit and that the provisions in Chapters 11, 7 and 9 do provide adequate protection for environmental laws based on performance, but do not provide for protection based on ownership. He feels this is "where the crunch comes." He concluded that as cases move forward it will become clear that protections do exist for environmental law.

Christine Elwell, Sierra Club of Canada, filed a request on behalf of 15 North American NGO's and persons regarding the latest assaults on governments' environment and public health laws —that is, the case of Methanex, a corporation based in Alberta, the world's largest producer of MTBE, a toxic gas additive. She noted that groups have written to the Council of the CEC in the past to take action in a number of these NAFTA investment cases that have environmental implications. She expressed the opinion that it is the Council's responsibility to act as a point of inquiry and that these cases be set aside while the process to assess the environmental impacts is developed. She went on to explain that the Council agreed to cooperate with the NAFTA Free Trade Commission in achieving the environmental goals and objectives of NAFTA related to Chapter 11 disputes. She noted several examples of recent disputes: S.D. Myers on PCBs, Sunbelt Water on water exports and Pope and Talbot on softwood lumber. She noted that the use of the term "public inquiry" to describe the Article 10 process is in dispute but, in the absence of comparable public guidelines for Article 14 submissions, groups are left with no choice. She reminded the Council it has acknowledged that investment claims raise important environmental issues. Concerning the Methanex case, she stated that there is undeniable evidence that this carcinogen is leaking into groundwater supplies. She voiced the opinion that this is an example where North American companies can manipulate their personalities to take advantage of these mischievous provisions. She expressed the hope that Administrator Browner would take particular exception with the Methanex case. Administrator Browner intervened to say that the United States does not believe that Methanex has a valid claim. Ms. Elwell continued by expressing concern that decisions are made behind closed doors, avoiding public scrutiny. She reiterated her request that the Council act as a point of inquiry and cooperate with the Free Trade Commission in providing interpretations of NAFTA and expertise, and developing guidelines for public inquires. She further requested that the Council suspend pursuing those cases. In conclusion, she offered the assistance of the Sierra Club of Canada.

**David Schorr, World Wildlife Fund US**, began by congratulating the Council on the year of transition and renewal, observing that there has been significant positive movement within the CEC since Mérida. He went on, on behalf of his organization, to very warmly applaud the nomination of Janine Ferretti, commenting that she has done an outstanding job. He presented three concerns. First, regarding Article 14, he noted the while the WWF has received a fairly thorough briefing on the negotiations that have undergone during this session, he regrets to say it appears that those negotiations have concluded with what WWF would consider a potentially negative outcome. The WWF also finds it regrettable that the unanimous advice of JPAC and

many of the public commentators, not to revise the guidelines, has been rejected by the Council. He went on to say that even while understanding that perhaps some revisions were necessary, the revisions on which WWF has been briefed raise the threat that the independence and neutrality of the process, citizen access to the process, and the public visibility of the process will be reduced. He urged the Council to be wary not to fall into the trap of micro management as these guidelines are implemented. Second, regarding Chapter 11, he noted that whatever the outcome of the Methanex case, there is no doubt that the string of cases that have come forward under Chapter 11 demonstrate that an unintended use of that Chapter is being made. He went on to explain that this has had substantial impact on the negotiations of global treaties at the OECD. He noted that, both in substance and in politics, there is a real problem and urged the CEC and each of the environmental ministries to take an active public role in addressing the matter.

Cliff Wallis, Alberta Wilderness Association and the Canadian Nature Federation, presented his association's concern about its submission under Alberta's Natural Heritage Act in that there are no clear procedures for making submissions other than Articles 14 and 15. He stated they would still like a response to their submission and would like to know the Council's position. Does the Council agree with the obligations under Articles 3, 4 and 10(3)? They are also concerned about the mandate of the Council and some of the submissions made in the past identifying the failure to prescribe clear procedures, which was also raised in the four-year review report. The Association, therefore, recommends that the Council implement public procedures for exercising its oversight role under the Agreement and offer some solutions. One option available to Council would be to appoint an ad hoc independent group of experts to review the NAAEC and recommend procedures for the filing, review and response by Council to submissions related to its obligations other than Articles 14 and 15. He also expressed concern at the lack of response to, for example, the Canadian Nature Federation's submission last year. Finally he stated his organization's concern that Canada has still not passed endangered species legislation.

Gustavo Alanis, Centro Mexicano de Derecho Ambiental, added his voice to that of the last speaker, recommending that efforts be made to protect the biodiversity shared by our three countries. He suggested that one way of doing this is through strong legislation on endangered species. Second, he reiterated his concern, raised last year in Mérida, that a transboundary environmental impact assessment agreement is not yet in place and encouraged the Council to pursue such an agreement. Finally, he expressed astonishment and unease about the Council's insistence on pursuing revisions to guidelines for Articles 14 and 15. He agreed with the majority public view that there was no justification for revisions at this time. He commented that, by choosing to ignore this advice, the Council has put into question the usefulness of public consultation, if at the end of the road political decisions prevail. He encouraged the Council to take into consideration JPAC's advice 99-01 recommending that revisions not be made at this time.

Randy Christensen, Sierra Legal Defense Fund, presented two issues for consideration. First, concerning the citizen submission process he emphasized how important it is to maintain an independent secretariat. His organization has acted as counsel on two submissions —BC Hydro and BC Mining. In that capacity SLDF has seen the Secretariat in action, demonstrating its ability to be fair and independent, committed to openness and transparency, and showing a willingness to sort through complex and contentious issues. He then urged the Council to make transboundary environmental impact assessment a priority, remarking that the need for this type of agreement is

demonstrated by a proposed mining project in Canada on the Taku River which runs between British Columbia and Alaska, the largest unprotected wilderness area in North America with strong salmon runs and stable populations of endangered species. The project has raised great public concern on both sides of the border and the Tlingit First Nation, which lives in the area of the proposed mine, has filed a judicial review. This project is also the subject of a BC Mining submission. He asked the Council to address this project using avenues such the Canadian Environmental Assessment Act and the International Joint Commission.

Martha Kostuch, Friends of the Oldman River, first expressed concern with the revised guidelines for submissions under Articles 14 and 15 and her organization's disappointment that the Council did not heed the advice of JPAC and the public. However, she expressed support in favor of the amendment to Article 15(7) requiring that factual records be made public. Secondly, she raised the matter of the Friends of the Oldman River submission, made on 4 October 1997 under Article 14. She explained that the submission alleges that the government of Canada is failing to comply and enforce its Fisheries and Canadian Environmental Assessment Acts. On 23 January 1998 the organization was notified by the Secretariat that the submission met the criteria and on 12 March 1998, told there was a backlog of submissions. On 8 May 1998, her organization was informed that the submission was being referred to the government of Canada for response and, on 13 July 1998, that the government of Canada had responded and that the CEC was considering the submission in light of that response. Ever since, her organization has been given many excuses, including insufficient staffing and resources. She therefore recommends that additional support be provided for more timely review of submissions. Finally, she commented that she had recently been informed that the Secretariat has made its determination and asked that this be provided to the Council today, and made public.

Maria Esther Cortés, Colectivo Ecologista de Jalisco, A.C. informed the Council that she has been working on environmental affairs since 1986 and noted that Council Resolution 97-04, having to do with PRTRs, has been welcomed by civil society in all three countries. She commented that, in Mexico, work is progressing on the implementation of the PRTR with representatives of various sectors and the CEC. This is part of the citizens' right to information, which is something new in Mexico and very necessary. She recommended that Council use all possible means to avoid any delay in the development of PRTRs in North America, because this would harm the trust and involvement of the citizens in the social process and limit the possibilities for controlling environmental impacts from industry, which can be major. Finally, regarding environment and health, she requested the assistance of the CEC in dealing with risks and implications of bioengineered life forms, especially transgenics.

Susan Hedman, Environmental Law & Policy Center, expressed her support for the CEC's efforts to reduce mercury emissions in North America and to advocate the adoption of stronger measures for one of the largest sources of mercury emissions—coal-fired power plants. She explained that electricity transactions across national borders are at an all time high in North America and expected to increase dramatically in the next few years as a result of deregulation of the electric power sector. For example, the American Electric Power Company, the largest coal-fired electric producer in the United States, has proposed a merger that will create an electric company that will stretch from Canada to Mexico. Such expansions will require increased production and therefore increased use of coal. Today these plants are responsible for one-third of all mercury releases and are growing. In addition, the electric power sector has not taken any

steps to control or reduce emissions, in contrast to other industrial sectors. Companies claim that control measures are too expensive or not technically feasible, which is simply not true. The SMOC Mercury Task Force and Air Issues Program have documented the availability of cost-effective mercury control technologies for coal-fired power plants. She urged the Council to insist upon a mercury NARAP that commits the coal-fired electricity sector to a 90% reduction in mercury emissions by 2010, stating that anything less would violate the Council's resolution on SMOC which calls for mercury phase-out.

Martha Delgado, Presencia Cuidadana Mexicana, A.C. explained that her group has been working on a project to access and use information on pollutant emissions in Mexico within the context of Resolution 97-04 and are very concerned that the CEC's budget for this work has been reduced. She explained that in Mexico they have been waiting for two years for the pollutant register to take shape. There is no obligatory reporting system in Mexico and it is very important for these registries to be set up for transparency and public access to information. This information is needed by groups in Mexico for them to be able to work with organizations in Canada and the United States. She also said that it is important that this register be set up during the term of the current government.

Michael Gregory, Arizona Toxics Information congratulated the CEC on the San Pedro report, and on developing a process that can serve as a model for dealing with complex and controversial transboundary resource issues. He recommended that the CEC build on this model to develop transboundary protection for the river. He went on to state his concern that anti-democratic forces in all three countries are pushing very hard for a restriction on the public's "right to know" and voiced the opinion that it is very important that the CEC reaffirm and expand its commitment to the public "right to know" throughout North America, especially with regard to PRTRs. He suggested various ways by which this could be done. The CEC could increase efforts to help Mexico keep its long overdue promise to the Rio Earth Summit, to the OECD, to the CEC, to the people of Mexico and the people of North America by creating a nationwide PRTR with the criteria established by the CEC. Second, the CEC could work to prevent any weakening of the existing North American PRTRs. Third, there could be an expansion of the tables to include neurotoxins and endocrine disrupters, and finally, he recommended the PRTRs should be web-enabled to bring site-specific information to the public. Administrator Browner intervened and reminded the speaker that the EPA already provides information on its web site.

Adolfo González, Estado de Baja California, thanked the CEC for its support for the protection of marine and coastal ecosystems from land-based activities through the project on the Bight of the Californias. The objective of this work is to bring Mexicans and Americans together to protect oceans while respecting national differences. He explained that one of the results to date is the campaign for joint monitoring involving more than 30 governmental and nongovernmental research centers, which has made it possible to provide information to local communities through press conferences and the Internet. Another result is the establishment of a GIS system with point and non-point sources which makes it now possible to answer the three questions: who is polluting?, who is not polluting?, and where is the pollution to be found?

**Jason Grumet, North East States for Coordinated Air Use Management**, explained that his organization has worked with the CEC over the past years on a host of transboundary pollution problems and would like to recommend three principles and two specific projects. As a principle,

it is important to recognize that the CEC is truly unique and it should use its limited resources in a way that capitalizes upon that uniqueness. Second, projects should be directed to those where work could not feasibly be undertaken without the CEC's leadership. Finally, the notion of having a reliable discourse, such as this annual meeting on which people can count and look forward to, is very important. The first project the CEC could consider a clearinghouse for best practices on air pollution control to help develop uniform standards for North America. Second the CEC could support a vigorous effort to ensure that the vehicles that are enabling the economic success of NAFTA meet the minimal environmental standards. For example, the economic benefits of increased truck traffic must be combined with environmental standards associated with green corridors.

Aaron Schneider, Centre for International Studies, addressed the issue of investment protection versus environmental protection raised by Chapter 11 of NAFTA and the subsequent role of the CEC. Without going through the long list of challenges he suggested that these suits have raised the issue of "who really governs"? Regardless of the possible outcome or the merits of these cases, the intimidation from the threat of litigation with heavy compensation sends the message to all levels of government that they have to "pay to govern." Chapter 11 subordinates normal governance in terms of protection of environment, health, economy and possibly labor standards. Article 10(6) seems to be unclear regarding the CEC's role or powers to intervene. The CEC was created to monitor and intervene in the context of environmental impacts of trade liberalization. He suggested that it should be a priority of the CEC to correct Chapter 11 problem. If not, all of the CEC's good work will be reduced to an "environmental offset."

Mary Kelly and Richard Lowerre, Texas Center for Policy Studies, raised three issues. She supported the comments of previous speakers on Chapter 11 and Articles 14 & 15 and complimented JPAC on its public outreach in soliciting comments from nongovernmental organizations on the Articles 14 & 15 process. Second, concerning the transboundary environment impact assessment issue, she insisted that the United States' position include activities in which a state is the lead permitting authority. The third issue is air quality in the Big Bend Boquillas del Carmen area. She reported that Texas groups are extremely disappointed that Mexico has not agreed to participate in a tracer study which is the next scientifically sound step in looking at emissions from power plants that may be affecting Big Bend. Finally she complimented Region 6 of the EPA in proceeding with the tracer study in Texas.

Robert Strain, City of Sierra Vista, introduced himself as appearing on behalf of the residents, agencies and stakeholders of the upper San Pedro Valley. He spoke of the report on Sustaining and Enhancing Riparian Migratory Bird Habitat in the Upper San Pedro prepared by a study team commissioned by the Secretariat of the CEC and made public last June, the process of which included a 60-day public input process facilitated by the Udall Center during the summer of 1998. The report of the Advisory Panel was published in November. The findings provide direction to research, conservation and institutions. He stated that there is no question about the value of the river to individuals and organizations that recognize the need for more research to better understand the hydrologic systems and how human activity is effecting them. The protection of the San Pedro River has been a high priority for the people of Sierra Vista, the country and the US Army to ensure that citizens, present and future, have an adequate supply of water and quality of life. Participants have demonstrated the determination and ability to form partnerships and coalitions to protect the environment they value so highly. Finally, he reported that the

communities along the upper San Pedro were encouraged by this week's announcement of a binational watershed plan designed to provide funds for conservation activities and acquisition of lands for conservation easements and are looking to the CEC and the member nations to help find ways to work more effectively with their neighbors in Mexico.

Raúl BecerraArriaga, Instituto de Ecología, Guanajuato, reported on the progress that has been made in the Silva Reservoir. First, he expressed his thanks for the CEC's support over the past three years as well as for the support from the Ministry of Environment of Québec, Wetlands International and the State of Guanajuato who have invested \$1 million in the process of remediation. This has enabled the removal of contaminated sediment. Now, working directly with the local communities, a project is being developed to convert the site into an ecotourism area with a camping area for birdwatching and to work with local agricultural producers. He made a request to the CEC for support to develop the final phase of the project which requires \$300,000 for site development and restoration. Finally, he specifically thanked Secretary Carabias for her commitment to citizen participation.

**Donald Davis, The Friends of Presqu'ile Park,** congratulated the CEC and Hans Herrmann for producing the conference report on Monarch butterflies. He urged the Council and the CEC to facilitate the completion of the project as mandated in Resolution 96-04, by developing a North American plan for the conservation and protection of the species. He expressed his appreciation that this is a very complex mix of social, political, economic, biological and cultural issues that must be dealt with through a collective effort involving all three countries. While illegal logging and sustainable development in Mexico are frequently identified as critical conservation issues, Canadians must examine habitat loss and reduce their use of herbicides and pesticides. Recently, concerns have been raised about the possible negative impacts of pollen from genetically engineered corn and it is reassuring to learn that the CEC is aware of these emerging issues. He commented that the development and growth of various scientific and educational programs in the private sector on the Monarch attest to the continued public interest and concern for this remarkable insect that links our three countries, and suggested that many other species of the North American fauna will benefit from the implementation of a continental strategy.

Ruth Madsen, Thompson Institute of Environmental Studies, congratulated the Council on the new efforts for the conservation of birds. She noted that in Canada, only three provinces have signed on to NAAEC. Now that the CEC is having some very positive results perhaps it is time for the Council and Canada to renew efforts to encourage the other provinces to join. She expressed concern about comments coming from industry that we look at the CEC from a sustainability view of economic, social and environment. She suggested that NAFTA is the economic component and the CEC is the social and environmental component. She also recommended that the Ministers use the precautionary principle. She recommended that Minister Stewart look at the endangered species act as applying to all Canadians, not just the 3% of every province that is federal land.

Andrea Abel, National Wildlife Federation, commended the Council and the Secretariat on their substantial accomplishments this past year and congratulated Ms. Ferretti on her appointment. She mirrored comments from colleagues on Chapter 11 and Articles 14 & 15. Her organization recommends that the Council continue to focus on trade and the environment and on North American habitat and biodiversity conservation. It is only through focused efforts that the

CEC will derive positive benefits for the North American environment. The NWF also commends the CEC on the San Pedro initiative and would like to see this study used as a dynamic model for future concrete transboundary conservation initiatives. She recommended that one such initiative could be the conservation of grasslands/prairie habitat and the vast biodiversity of its species—particularly, keystone species such as the black-tailed prairie dog. In addition, NWF supports continuing efforts on emerging trends, particularly, in the area of water and suggests that in the case of water exports no consensus can be reached until there is a North American water ethic to frame water resource policy decisions.

Elaine Kennedy, Cornwall & District Environment Committee, recommended that in order to promote better North American cooperation, the standardization of terminology and measurement must be addressed. She suggested that if the EU can too, surely our three countries can do it too. The differences in standards are barriers that lower efficiency, act as excuses and inhibit progress. The CEC must exert leadership to help correct this problem. standardization takes place, then the CEC could coordinate the standardization of environmental regulations across the three countries. This does not mean lowering the standards to the weakest level, but raising them to the most stringent. Networking with environmental groups would assist the CEC in this task. A larger network will help lead the way from the CEC down and the grassroots up. In cases where one country is the summer home, one the migratory path and the third the winter home, the CEC can be instrumental in coordinating efforts to save transboundary endangered species. She reiterated the previous speaker's comments on Chapter 11. Finally, she noted that, in communicating with citizens, the CEC must take into account that illiteracy is a factor, thus a variety of media must be used, such as public radio, community television and theater. She encouraged the Council, JPAC and the Secretariat to think and act globally.

Andrzej Zeromski, Universidad de Guadalajara, presented an academic opinion to improve the CEC's strategy and its projects. First, analyzing the various documents of the CEC shows that the public remains concerned about guidelines and strategies that have been approved and that there is need to improve criteria about long-term environmental policies. There is also a permanent need to seek a balance between conservation of resources and sustainable development. An improved, global, holistic vision of environmental problems is required in order to establish appropriate national priorities. He explained two reasons that have lead him to believe that strategies need improvement. First, the concept of sustainability as applied to development has not been clearly adopted and second, the notion of social sustainability is being excluded. A more integral and specific concept of sustainable development would enable us to improve the visualization and design of environmental strategies and establish adequate priorities. Also, he suggested verification of management models for environmental problems that are currently being used. There is a need to establish coordinated policies with integrated instruments for sustainable development of the regions and the tools to do this exist. He recommended that the CEC look at developing institutional contacts with the European Environment Agency and others.

**Anna Tillman, STORM Coalition,** noted that she would underpin her discussions on pollutant registries, a Canada-wide standards process and the JPAC process with issues related to public participation, involvement and support. She gave strong support to the *Taking Stock* reports as an excellent way of disseminating information. These are valuable tools for the public, lending credence to the "right to know" and empowering communities. They indicate gaps, trends and

transboundary activities. In particular, *Taking Stock* has reported on essential information regarding releases and transfers. Although heavily criticized by industry, it drives industry to action. She recommended that the shortcomings of the Canada-wide standards process need to be addressed, such as threshold levels and looking at elements such as benzene where much is not reported. Mercury and persistent bioaccumulative toxics also need attention. Finally, she noted that public participation, in terms of JPAC needs to be revisited. The rules for public intervention need to be reviewed. For example, the decision at this meeting to reduce speakers' time to two minutes has created tension.

Gregory Thomas, Natural Heritage Institute, expressed his view that the work on San Pedro fits into several phases. One phase was to try to get it right technically—on the theory that if you want to solve a problem you have to understand it. The second phase was the public review process which provides the political dimension for solution-finding. The third was the trinational advisory panel's work synthesizing the previous inputs and seeking to identify the areas where a working consensus could be found. The fourth phase was the adoption of the *Ribbon of Life* by the Council. He hoped that the Council would not now walk away. He explained that the expert group looked at eight different solution opportunities to address a 7,000 acre-foot per year deficit in the aquifer and effects on base flows in the river. If all solutions were adopted, the deficit could be reduced by half. However, if none are undertaken, the deficit will double in about 30 years and the fate of the river will be sealed. He urged the Council to maintain vigilance on this issue.

José Carmelo Zavala Àlvarez, Proyecto Fronterizo Educación Ambiental A.C., expressed concern that the interpreters were having a hard time keeping up with the speed of the presenters. This is an example of what happens when people are asked to reduce their presentations. He suggested that social participation needs to be improved in this process. It needs to be more enlightened and allowed sufficient time for better proposals. Social participation needs to be based on respect. He suggested that in Mexico, this is not yet the practice. At a trilateral level, the CEC has a major role to play and there is still a lot of ground to cover. The CEC should fuel our optimism by looking at where we were a few years ago and where we are now. He expressed his support for the RETC in Mexico, explaining that they have participated in very difficult meetings and have reached an executive level where political will is required. He also asked how Canada and the US are proceeding.

Andrea Morrison, Canadian Institute for Conflict Resolution, began by saying that one of the main values coming out of this meeting is the opportunity to meet with people in the hallways which has lead her to believe that there is not enough thinking on alternative dispute resolution and, particularly, about how forums like this are organized so that there can be genuine partnering and dialogue. She noted that she has heard the term "public participation" used a lot, but what she sees happening is not real participation. For example, the public is given a draft report and its only role is to criticize it. That is not the thinking that is now taking place in the field of alternative dispute resolution and wondered how this know-how can be brought into the CEC. She recommended that a working group be formed to look specifically at public participation processes and promote the "circular" thinking that is required to create genuine dialogue. The second point she raised was on actual conflict resolution processes such as the arbitration process within Chapter 11. She noted that mediation is not occurring and she doesn't see consensus building processes spelled out in policy. She recommended that a policy be developed in this area. Finally, regarding indigenous peoples, she commented that just involving them is not enough. The

CEC could draw on their own conflict resolution models and processes. Instead of meeting in a luxury hotel in Banff, the CEC may want to go directly into the communities.

Teresa Leal, Southwest Network for Environmental and Economic Justice, commented that the documents and publicity promoting the virtues of NAFTA on the ground continue to ignore the working class, low-income communities and First Nations. They continue to be excluded from the CEC process because of economic reasons. She noted that although there are national advisory councils in the three countries it is still experimental as to how effective this participation process is. The public continues to have the same experiences and frustrations coming to these meetings. She recommended more support for community monitoring panels to provide constant and democratic participation whenever there are projects affecting communities and lifestyles. These community panels could have the power to review regulatory compliance, to increase focus of critical border issues, to increase participation in decision making and promote environmental and economic justice. Finally she observed that until workers, communities, families and the environment can feel included in this process, they will continue to look for ways to convince the Council of this need. As survivors of many past experiences, disenfranchised people have learnt to resist while adapting.

José Núñez Alba, Red Eco-Paz, reiterated the need for the Mexican government to make the PRTR registry legally mandatory and to request site-specific data from industry. He also recommended that there should be a transfer registry plus aggregate data. As for control of waste, he reported on problems with 11 landfill projects on the United States' side of the border with Mexico. Three are radioactive, four have drainage problems, two contain liquid hazardous waste. Most are in Texas and two are on the California/Baja California border. There is a risk of contamination of underground water in five regions and in the year 2000 the water will go to El Paso. He stated that it is very important for the CEC to recognize that border areas are not nuclear waste dumping areas.

Carolina Armijo de Vega, CIRIO, Ambiente y Desarrollo Comunitario, A.C., whose presentation was prepared jointly with Don Wedge of the STOP Environment Group, noted that the best way of receiving CEC information is through the Internet. The site should have the updated register of all advice made to the Council at all levels of the organization. Information concerning the NACs should be similarly available. In Canada, the page is updated to March of this year. The US is updated up to March last year and the status of Mexico's page is unclear. There is no information from the Mexican NAC on the CEC web page. She recommended that to improve transparency more information on the role of the NACs should be easily available. Finally she recommend that links be set up in the homepage where we can find more information about the Committees of the CEC.

César Luna, Environmental Health Coalition, echoed some of the comments made concerning the "right to know" and public participation. He urged the Council to take affirmative action with respect to the abandoned lead smelter located in Tijuana. The petition as filed last October, framed by Articles 13 and 14, was intended to pin Council down so that it could respond through either avenue. With respect to Article 14, a series of obstacles and deficiencies have been encountered. One—the Council's recent decision to maintain its response confidential—is another sign of an unfair process. The other continuing problem are unreasonable delays. He reported that after eight months they still have no response. With respect to Article 13, the case was

framed in such a way as to allow the CEC to act based both on the enforcement and the protection of health and environment programs. He called upon the Council's attention to this case, stating that it is an international problem that requires international solutions and he further encouraged the Council to send the message that the CEC is interested and does care.

Anne Moote, Udall Center for Studies in Public Policy, reemphasized the recommendations made by a previous speaker regarding more dialogue sessions in the CEC's public input processes. She went on to explain that in 1998 the CEC Secretariat contracted with the Udall Center to conduct a public input process for the San Pedro River initiative. As they embarked on the process, the Center was warned that the situation was potentially very conflictual, so they proceeded cautiously, meeting with community leaders and groups in the basin, and quickly learned that is was not a disinterested community. Virtually to a one, the local groups and residents were eager to share their knowledge of the river and their views on water management. She added that one successful technique for providing opportunities for dialogue was to have focus group sessions and public workshops where members of the expert team were present. The expert team and the advisory panel used the results of this dialogue, as have community members to develop local initiatives. She urged the Commission to support and promote some of these initiatives.

Sarah Dover, Canadian Endangered Species Campaign, congratulated the Council for including the issue of endangered species in the work plan. She recommended that the Council be strategic in its approach to endangered species and she provided suggestions. First, it is necessary to prioritize endangered species within the biodiversity program, addressing endangered species from a continental/biological perspective and seeking a continental/biological solution. Second, cooperation on the recovery and protection of endangered species must be improved by involving public participation and a criteria developed for response on species at risk. The US and Mexico are developing a list of species of concern. Finally, in Canada, the federal government has the constitutional authority to protect endangered species and their habitats, and should move quickly to adopt strong legislation. She urged the Council to move more forward with courage, stating that we are beyond the language of prevention and are at a time of mass extinction. A coordinated approach through the CEC is needed to improve continental cooperation.

Susana Alejandre, Proyecto de Fortalecimiento de la Sociedad Civil, explained that her organization is working to help civil society have more effect on public policy in the area of sustainable development. She also stressed the need to reach consensus, on making appropriate investments in the regions, and noted some success in this with indigenous populations. There are similar projects established by indigenous organizations in Canada and she suggested that if the CEC were to fund workshops where such experience could be exchanged, this might be an extremely useful way to begin including indigenous groups in its work.

Jesús Lara Chivarra, Unión de Comunidades Indigenas Huicholas de Jalisco, explained that indigenous communities are environmentalists. He presented a request from the communities he represents to include indigenous peoples in the work of the CEC. As an example of taking indigenous peoples into account when discussing the environment, he stated that in his region there exists one of the oldest forests of oak and pine which have been considerably studied. He requested that these types of scientific studies, for example on birds, be continued with indigenous participation.

**The JPAC Chair** thanked the participants for their focused and constructive input and the interpreters for their excellent work.

**Minister Stewart** also thanked the participants and acknowledged that time was an unfortunate limitation. She reported that the Council had asked the Secretariat to review the way the public portion of the Council Sessions are managed and make recommendations to revise and improve the process to allow for more productive dialogue in the future. She then called upon her colleagues for their comments and closing remarks.

**Administrator Browner,** commenting from the perspective of one who has participated in these processes and taken the time to think about how to realize the opportunities that were created by NAFTA and the CEC, singled out the upward harmonization of public health standards as one such opportunity. She noted that while work of the CEC is complicated, it is incumbent upon participants to remember the ultimate goal of stronger public health and environmental protection. It is also important to remember that we come to this process with different histories and cultural backgrounds, and to allow for those differences.

Regarding the transboundary environmental impact assessment process, she agreed that the work has been painfully slow. This issue has brought into high relief the differences in our forms of government. Council members all agree with the need to share information; however, determining how to accomplish it has proven to be very difficult. In the case of the United States, for example, the ability to require individual states to provide information on licensing and permitting is somewhat limited. Therefore, we have agreed to look at how we could develop a set of policies and "good neighbor" practices and then each of us will use our offices to encourage our states and provinces to enter into a commitment to share information. In addition, each of the governments has agreed at the federal level to share information. She acknowledged that in the United States, however, such a policy does not get you very much as most of the decisions are being made at the state level. She asked the public to please bear with the Council as it takes another approach and to understand that the Council's commitment remains the same. She added that admitting one approach did not work is not an easy thing to do and that the Council has done it with all candor.

She then addressed the issue of the public's "right to know" and access to information. She stated her strong support for this and noted that throughout her tenure at the EPA she has sought to respect the moral and ethical right that people have to know what pollutants are in the air they breath and the water they drink. The three countries come to this issue with very different histories and laws, making it a challenge to continue to move forward. She noted that the good news is that all three governments recognize the importance of moving forward and the importance of mandatory reporting mechanisms. She explained that the Council has spent a lot of time talking about the *Taking Stock* report and how to use it as a vehicle to take what is best from each country, and apply it to the "right to know." She stated that, in her view, there is no more important thing that can be done in the short term. By giving people access to information, decisions can be made on what is important for public health and environmental protection. She again thanked the public for its participation, saying that it makes a tremendous difference.

Secretary Carabias added a few points to what Administrator Browner mentioned concerning the PRTR project. She commented that the Council does not have any intention of reducing resources dedicated to this joint effort. She noted that, while it has been difficult to set up a PRTR in Mexico, there has been progress. Forms have been prepared, the instruments necessary for future progress have been defined and results are soon expected. There has been progress on voluntary programs and in this fashion, local governments are also included. While we would like to achieve a Mexico-wide standard, this cannot be rushed. All of the administrative and management capacity has to be in place. She further stated that she also shares Administrator Browner's opinion about the public "right to know." Recently, the general law on ecological equilibrium in Mexico was amended by the executive and legislative branches to strengthen provisions related to the "right to know".

Referring to a point raised by a speaker concerning outstanding cases under Articles 14 and 15 awaiting response, she noted that only one involves the federal government and a response is in progress. This is not symptomatic of a lack of transparency but rather because we wish to ensure that all spaces for the "right to know" are being opened. She then touched on two other points raised by the speakers. In the case of metals and their byproducts, she reported that the Mexican government is very concerned about this issue and is trying to make progress in this case by extraditing the businessman who is living in the United States. She gave her assurance that she will continue efforts to resolve this problem. Regarding San Pedro, she wanted to stress and reiterate the Council's interest to unite the efforts of governments and the public. The report orients us very clearly when it comes to what has to be improved in each country to preserve this basin. She agreed that action must be taken to avoid any further deterioration. She reported that Mexico will conduct the necessary studies to include the San Pedro River Basin in its network of protected areas. It will be made part of the Los Ajos Reserve and this will protect not only the wildlife but the entire basin. This is a success story for the Commission and the Council, and she applauded the efforts of government.

Finally, one point dealt with by many speakers she felt she had to address was the topic of revisions to Articles 14 and 15 Guidelines. She indicated that the Council did take the JPAC advice and the results of the public workshop into account. If not, the Council would not have reopened the agreement reached in Mérida. The recommendation made not to amend the guidelines did not solve the original problem, therefore, the decision reached was to take the deeper meaning of the advice into account while at the same time working to resolve those issues which the Council felt needed to be clarified. The result translates into clearer rules concerning the relationship between the government, the Secretariat and the public. If the problem of certainty had not been addressed, the Council would have been in a situation of developing ad hoc solutions to every new submission. The Council feels that the changes made will lower tensions and strengthen cooperation, and stated that the Council has been very careful not to weaken public participation and transparency.

**Minister Stewart** encouraged the public to look at what Council has approved regarding Articles 14 and 15. She reaffirmed the Council's belief that this will maintain the independence, integrity and transparency of the process, noting that she does not believe the Council is getting involved in micro-management. Regarding Chapter 11, she reported that the Council reiterates the sovereign right of nations to legislate and regulate regarding the environment. Finally, she assured the

public that while the Council could not address all of the comments at this time, they have listened attentively to the recommendations and all will be carefully reviewed.

Janine Ferretti joined the Council in thanking the public for its input, noting that Council sessions are a very dynamic process. They comprise JPAC meetings, public sessions, Council meetings and hallway discussions, all of which provide an opportunity to exchange views and experiences. She and the Secretariat staff have listened very carefully to information and ideas, will review them for their relevance to the work program and to the way the Secretariat operates. She noted that this is an evolutionary process and steps are continually taken to improve the public's ability to participate. She would appreciate receiving any thoughts the public may have on ways to improve participation. Finally, regarding Articles 14 and 15 and the development of the factual records, she stated that she shares the concern with the long period of time it takes for the Secretariat to process these records. She noted that until September the Secretariat did not have a unit dedicated to Submissions on Enforcement Matters. She reported that the Secretariat has worked hard to clear up the backlog and that action has been taken on new submissions as well as submissions from previous years. She expressed confidence that with the new unit in place at the Secretariat, the bottleneck will be eliminated and that the Secretariat will continue to improve the process.

Minister Stewart closed the session.



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Sixième session ordinaire du Conseil Sexta sesión ordinaria del Consejo Sixth Regular Session of the Council

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