

**SESSION 98-07 OF THE COUNCIL
3-4 September 1998**

SUMMARY RECORD

The Council, represented by the Alternate Representatives, met in Montreal on 3 and 4 September 1998. Mr. Jim Wall (Canada) chaired the meeting. Mr. José Luis Samaniego and Mr. Alan Hecht represented Mexico and the United States, respectively. Ms. Mary Simon, Chair of the JPAC, represented the JPAC and Ms. Janine Ferretti, Interim Executive Director of the CEC, represented the Secretariat. Mr. Marc Paquin, Council Secretary, was the session secretary. Other governmental officials, JPAC members and Secretariat officials were also in attendance (the complete list of participants is attached as Annex A).

Item 1 Adoption of the agenda

The agenda was approved by the Alternate Representatives based on the provisional agenda (the adopted agenda is attached as Annex B).

Item 2 Report by the Interim Executive Director

The Interim Executive Director reported on the following issues:

- (a) recruitment by the Secretariat of six senior staff members;
- (b) progress on the implementation of the Council's decisions made in Mérida;
- (c) the progress on following-up the findings of the Deloitte and Touche report, including the Secretariat's initiative to develop an action plan for Council's consideration on ways to improve efficiency, effectiveness and governance (to be distributed by the end of September);
- (d) the newly created Submissions on Enforcement Matters (SEM) Unit, whose priorities will include support for the finalization of the revised Article 14 guidelines, developing the B.C. Hydro factual record and clearing up the backlog of pending submissions;
- (e) progress in the development of CEC public participation guidelines;
- (f) the development of CEC's 1999-2001 Three-Year Program Plan (here she emphasized how important it was for the Secretariat to receive direction from the Council and advice from JPAC at this meeting in order to refine the plan so that it can be approved within the timeframe established by the Council in Mérida);
- (g) capacity building for the SMOC initiative (here she indicated that the Secretariat is developing a capacity building framework which will be provided to the Parties by the time of the next SMOC meeting in late October. As well, the Secretariat is elaborating a strategy for establishing collaborative relationships with international financial institutions);
- (h) Update on the 1997 annual report and the importance of having the Council's approval very shortly;
- (i) upcoming events: the selection of NAFEC proposals, the release of the Taking Stock report (1995 data) and the Article 13 San Pedro Advisory Committee meeting;
- (j) the importance of finalizing the Spanish version of the four CEC rules; and
- (k) the establishment by the Council of the Parties' 1999 schedule of payments.

Item 3 Statement by the Chair of JPAC

The Chair of JPAC first expressed satisfaction with the work undertaken by the Secretariat since the regular session of the Council held in Mérida. With regard to the Three-Year Program Plan, the Chair indicated that JPAC will forward its advice in writing directly to the ministers. She also expressed concern over the delay in releasing the revised Articles 14 and 15 Guidelines for public review. Reflecting on the need to receive public input on the Three-Year Program Plan and the 1999 APB, the JPAC Chair asked the Council to indicate how it intends to proceed.

Item 4 Presentation by the Secretariat of the 1999-2001 Three-Year Program Plan

The Interim Executive Director, assisted by the professional staff of the Secretariat, introduced the 1999-2001 Three-Year Program Plan.

Item 5 Discussion on the 1999-2001 Three-Year Program Plan

The Alternate Representatives discussed the draft Three-Year Program Plan and provided direction to the Secretariat for the preparation of the report's next iteration, which they expect to receive during the first week of October. The Alternates agreed to meet at the end of October to finalize and approve the Three-Year Program Plan.

Item 6 Approval of Summary Records

At the request of the Alternate Representatives, further changes will be made to the draft summary records of sessions 98-00, 98-05 and 98-06 before they are approved.

Item 7 1997 Annual Report

The Interim Executive Director distributed a compendium of the various documents that will form part of the 1997 Annual Report. She indicated that the draft annual report will be officially submitted for Council's review on 29 September 1998 and that clearance by the Parties would be required by no later than 7 October 1998 in order to release the report in 1998.

Item 8 Selection of a search firm for the recruitment of a new Executive Director

This item was discussed under item 18.

Item 9 NAAEC Article 28: Model Rules of Procedure

The Secretariat reported on the status of the Model Rules negotiating process. The Secretariat further indicated that the Parties had agreed to hold an open-ended negotiating session at the beginning of November in Mexico, the objective of which is to pursue and conclude the negotiations of the Model Rules of Procedure.

The United States stressed that it feels a sense of urgency to finish these negotiations in a timely manner. Mexico agreed with the US and outlined the three main substantive issues left to be resolved: the issue of public participation in the dispute resolution process, the definition of what is a «persistent pattern of failure to effectively enforce,» and the issue of what may be the «object» of a dispute under that process.

Item 10 Secretariat presentation on the Draft Public Participation Guidelines and discussion on next steps

The Interim executive Director introduced two documents under this item. The first was a background paper prepared by the consultant based on a survey. The second one was the draft public participation guidelines which were also prepared by the consultant and submitted to the Council and JPAC for review. The Interim Executive Director indicated that the Secretariat is seeking guidance from the Council on next steps, and more specifically what review process should be undertaken.

The Alternate Representatives indicated that they had already sent, or were about to send, the draft guidelines to their NACs and/or GACs for review and comment. They also agreed that it was too soon for them to make any decision on next steps, preferring first to receive the advice from the JPAC and their NACs/GACs and then revisit the issue.

This item will be discussed at the next meeting of the Alternate Representatives.

Item 11 Discussion on next steps regarding the revision of Articles 14 and 15 Guidelines

The Alternate Representatives agreed that the revised guidelines in English, French and Spanish be reviewed for accuracy of the legal language in parallel to their session. The final draft would then be forwarded to JPAC at the beginning of the following week, to begin the public review.

Item 12 Other issues

The Secretariat reported that the negotiators of the TEIA agreement had agreed to hold an open-ended meeting in October to finalize the negotiations. The Secretariat further reported that a meeting of the Advisory Panel on the San Pedro Article 13 was going to take place on 14-15 September in Tucson to review the report of the expert team.

Item 13 Joint Meeting with JPAC to discuss the Three-Year Program Plan

The Alternate Representatives met in a joint session to discuss the Three-Year Program Plan. The JPAC provided its advice on the draft Three-Year Program Plan and the Alternate Representatives provided a summary of their own discussion on the plan. Following this, the Alternate Representatives, JPAC and the Secretariat had a fruitful exchange on the draft Three-Year Program Plan.

Item 14 Discussion on the Three-Year Program Plan in light of JPAC's advice

Further to their joint session with JPAC, the Alternate Representatives discussed the draft Three-Year Program Plan, in light of JPAC's advice.

Item 15 Next Session of Alternate Representatives

The Alternate Representatives agreed to tentatively schedule their next session on 29-30 October 1998. The main items for discussion at that meeting will include the Three-Year Program Plan, resource allocation, public participation guidelines and follow-up to the Deloitte & Touche report.

Item 16 Discussion on the Draft Public Participation Guidelines

The JPAC expressed the clear need for the CEC as a whole, to adopt guidelines for public participation. However, JPAC expressed its strong objections to the draft prepared by the consultant and indicated that it cannot support the publication of the document. JPAC also commented that it was very surprised not to see any reference to the guidelines it had adopted for its own public participation activities, and that this document should be taken into account in the development of the draft guidelines. Finally, JPAC was appalled that two individuals were identified and referred to in an unflattering manner in the Spanish version of a background paper prepared by the consultant working on the draft public participation guidelines.

On that last issue, the Interim Executive Director expressed the Secretariat's dismay over this matter. The Secretariat recognized the error of judgment on the part of the consultant to include the name of individuals in its background paper and had removed them from the original document. She accepted the Secretariat's responsibility in not having spotted the personal references to the two individuals in the editing process of the Spanish version and offered apologies on behalf of the Secretariat. She noted that the background document was considered an internal document not meant for wide distribution and that only seven copies of the Spanish version were made and distributed to JPAC and Council members only. She asked that the copies of the Spanish version be returned to the Secretariat for destruction and that those who had already left Montreal would be requested to destroy their copies. The corrected version of the report would be sent out immediately to replace the other document.

The Alternate Representatives expressed their dismay over the misjudgment of certain individuals reflected in the document. They agreed the incident was regrettable, noted that the Interim Executive Director accepted the responsibility and supported her request that all copies of the Spanish version be returned to the Secretariat for destruction. Mexico, particularly emphasized the gravity of such assertions and their repercussions on the operations of the CEC.

The Alternate Representatives recognized the importance of developing public participation guidelines for the CEC as a whole. The Alternate Representatives thanked the JPAC for its advice on the draft guidelines and indicated they would relay this message to their NACs/GACs. They noted they would conduct their own review of the guidelines proposed by the consultant, receive comments from their NACs and GACs, and decide how to proceed at their next session.

Item 17 Discussion on next steps regarding the public review of the revised Guidelines for Articles 14 and 15

In their joint meeting with JPAC, the Alternate Representatives discussed next steps with regard to the public review of the revised Guidelines for Articles 14 and 15. JPAC stressed the importance of releasing to the public the draft version of the revised guidelines as soon as possible in order to initiate the public review process.

The Alternate Representatives discussed the proposed process outlined in the memo from the Chair of JPAC, dated 15 July 1998, relating to the public consultation on the review of the Articles 14 and 15 Guidelines.

Item 18 Update by the Alternate Representatives on the recruitment of the Executive Director

In their joint meeting with JPAC, the Alternate Representatives provided an update on the recruitment process for the position of Executive Director of the CEC. They indicated that the statement of qualifications had been developed and that recruitment firms had been requested to submit proposals by 31 August. The parties expect to select the firm within the next few days.

Item 19 Closure of the session

The Chair declared the session closed.

Prepared by Marc Paquin, Council Secretary
Review and approved by Jim Wall, Chair

SESSION 98-07 OF ALTERNATE REPRESENTATIVES

Montreal, Canada, 3-4 September 1998

Delegations

CANADA

Alternate Representative Jim Wall (Environment Canada)
Bowcott, Andy (Environment Canada)
Cerutti, Rita (Environment Canada)
Jensen, Krissa (Office of the Minister)

MEXICO

Alternate Representative Samaniego, José Luis (SEMARNAP)
Aguilar, Mario (SEMARNAP)
Deli, Veronique (SEMARNAP)
García Amaral, Jaime (Consul General)

UNITED STATES

Alternate Representative Alan Hecht, Principal Deputy Assistant Administrator
for International Activities (EPA)
Frigerio, Lorry (EPA)
Rowley Anne, Office of General Counsel (EPA)
Lysyshyn Susan (U.S. Embassy in Ottawa)

AGENDA

SESSION 98-07 OF ALTERNATE REPRESENTATIVES

Held at the offices of the CEC Secretariat

Thursday, 3 September 1998 from 10:00 AM to 6:00 PM
and Friday, 4 September 1998 from 8:30 AM to 2:00 PM

CHAIR: Jim Wall (Canada)

THURSDAY, 3 SEPTEMBER 1998

10:00 AM – 11:00 AM (Joint meeting with JPAC)

- Item 1 Adoption of the Agenda
- Item 2 Report by the Interim Executive Director
- Item 3 Statement by the Chair of JPAC
- Item 4 Presentation by the Secretariat on the Three-Year Program Plan

11:00 AM – 1:00 PM (Alternate Representatives in-camera session)

- Item 5 Discussion on the Three-Year Program Plan

1:00 PM – 2:00 PM Lunch

2:00 PM – 3:00 PM

- Item 5 Discussion on the Three-Year Program Plan (continued)

3:00 PM – 5:00 PM

- Item 6 Approval of summary records (98-00, 98-05 and 98-06)
- Item 7 1997 Annual Report
- Item 8 Selection of a search firm for the recruitment of the Executive Director
- Item 9 NAAEC Article 28: Model Rules of Procedure
- Item 10 Secretariat presentation on the Draft Public Participation Guidelines and discussion on next steps

Item 11 Discussion on next steps regarding the revision of Articles 14 and 15 Guidelines

Item 12 Other issues

5:00 PM – 6:00 PM

Item 13 Joint Meeting with JPAC to discuss the Three-Year Program Plan

6:00 PM – 8:00 PM Presentation of NAFEC video and cocktail with JPAC members and Secretariat professional staff, CEC Secretariat

FRIDAY, 4 SEPTEMBER 1998

8:30 AM – 12:00 PM (Alternate Representatives in-camera session)

Item 14 Discussion on the Three-Year Program Plan in light of JPAC's advice

Item 15 Next session of Alternate Representatives

12:00 AM – 1:00 PM (Joint Meeting with JPAC)

Item 16 Discussion on the Draft Public Participation Guidelines

Item 17 Discussion on next steps regarding the public review of the revised Articles 14 and 15 Guidelines

Item 18 Update by the Alternate Representatives on the recruitment of the Executive Director

Item 19 Closure of the session

1:00 PM – 2:00 Lunch with JPAC members and Secretariat professional staff
CEC atrium

SESSION 98-07 OF ALTERNATE REPRESENTATIVES

ANNOTATIONS TO THE AGENDA

JOINT SESSION WITH JPAC

Item 1 Adoption of the agenda

In accordance with Council Rules of Procedure (R. 9.6), the Council shall adopt the agenda for the session at the beginning of the session based on the provisional agenda.

The Alternate Representatives are expected to adopt the agenda for the session.

DOCUMENTS:

- a) Provisional annotated agenda C/C.01/98-07/AGEN/01/Rev.5

Item 2 Report by the Interim Executive Director

In accordance with Council Rules of Procedure (R. 5.3), the Executive Director may make oral and written statements to the Council. The Interim Executive Director will report on Secretariat activities as well as on the status of Council commitments made in Mérida.

DOCUMENTS:

- a) 1998 Council Workplan (to be distributed) C/C.02/98-11/DISC/01/Rev.3

Item 3 Statement by the Chair of JPAC

Under this item the Chair of JPAC will update the Alternate Representatives on JPAC activities.

DOCUMENTS:

- a) Provisional agenda for JPAC Session 98-04 (distributed 21 August 1998) J/98-04/AGEN/Rev.1

Item 4 Presentation of the Three-Year Program Plan by the Secretariat

The Secretariat will make a brief presentation to the Alternate Representatives and JPAC members on the draft Three-Year Program Plan prepared in accordance with Council Resolution 98-09.

DOCUMENTS:

- a) Draft Three-Year Program Plan for the CEC (distributed 14 August 1998) C/C.01/98-07/PLAN/01

ALTERNATE REPRESENTATIVES IN-CAMERA SESSION

Item 5 Discussion on the Three-Year Program Plan

The Alternate Representatives are expected to provide direction to the Secretariat on the preparation of the next iteration of the proposed Three-Year Program Plan which, once approved, will serve as the basis for the development of the 1999 Annual Program and Budget.

DOCUMENTS:

- a) Draft Three-Year Program Plan for the CEC (distributed 14 August 1998) C/C.01/98-07/PLAN/01
b) CEC Program Development Cycles for 1998, 1999 and beyond (annexed to Resolution 98-09)

Item 6 Approval of summary records

In accordance with Council Rules of Procedure (R. 11), the Executive Director prepared the summary records of Council and Alternate Representatives sessions 98-00, 98-05 and 98-06. Speakers may submit corrections to the summary records of their remarks before they are finally approved by the Council (R.11). The Alternate Representatives are expected to review and approve the summary record for sessions 98-00, 98-05 and 98-06, which have already been cleared by the GSC.

DOCUMENTS:

- a) Session 98-00 Summary Record C/C.01/98-00/SR/01/Rev.2
- b) Session 98-05 Summary Record C/C.01/98-05/SR/01//Rev.1
- c) Session 98-06 Summary Record C/C.01/98-03/SR/01/Rev.1

Item 7 1997 Annual Report

The Alternate Representatives are expected to finalize the adoption process for the 1997 Annual Report of the CEC.

DOCUMENTS:

- a) Draft 1997 Annual Report (to be distributed)

Item 8 Selection of a search firm for the recruitment of the Executive Director

The Alternate Representatives are expected to select a search firm for the appointment of the Executive Director of the CEC.

DOCUMENTS:

- a) Proposals from selected search firms (to be distributed directly by the search firms)

Item 9 NAAEC Article 28: Model Rules of Procedure

The Alternate Representatives are expected to discuss the status of negotiations of Article 28 Model Rules of Procedure.

DOCUMENTS:

- a) Single Negotiating Text (revised 20 August 1998)

Item 10 Secretariat presentation on the Draft Public Participation Guidelines and discussion on next steps

Following a brief presentation on the Draft Public Participation Guidelines by the Secretariat, the Alternate Representatives may wish to share their first reactions.

DOCUMENTS:

- a) Background Paper: Public Participation issues for the CEC (distributed 21 August 1998)
- b) Final Draft of Public Participation Guidelines (distributed 21 August 1998)
- c) Summary Analysis of Interview Results (distributed 21 August 1998)

Item 11 Discussion on next steps regarding the revised Articles 14 and 15

The Alternate Representatives are expected to discuss the next steps regarding the revision of Articles 14 and 15 Guidelines.

DOCUMENTS:

- a) Final version of revised Guidelines (to be distributed)
- b) 15 July 1998 memo from Chair of JPAC: Public Review of Articles 14 and 15
- c) JPAC call for public comments on revised Guidelines for citizen submissions (distributed 20 August 1998)

Item 12 Other issues

At the time of writing the Secretariat had no other issue to include under this item.

DOCUMENTS: No document

JOINT SESSION WITH JPAC

Item 13 Joint Meeting with JPAC to discuss the Three-Year Program Plan

Under this item, JPAC is expected to provide its advice on proposed Three-Year Program Plan. JPAC will also introduce its 1999 Program.

DOCUMENTS:

- a) Draft Three-Year Program Plan for the CEC (distributed 14 August 1998) C/C.01/98-07/PLAN/01
- b) Proposed JPAC Workplan (distributed 7 August 1998) J/PLAN/01
- c) JPAC Session 98-03 Summary Record (distributed 21 August 1998) J/98-03/SR/01
- d) Draft JPAC Program Plan 1999-2001 JPAC Budget (distributed 21 August 1998) J/BUD/00/01
- e) Report of Workshop on Priorities for North American Cooperation for 1999-2001, 25 June 1998 (distributed 21 August 1998)

ALTERNATE REPRESENTATIVES IN-CAMERA SESSION

Item 14 Discussion on the Three-Year Program Plan in light of JPAC's advice

Following their meeting with JPAC, the Alternate Representatives are expected to discuss the Three-Year Program Plan in light of the advice received from JPAC on this issue.

DOCUMENTS:

- a) Draft Three-Year Program Plan for the CEC (distributed 14 August 1998) C/C.01/98-07/PLAN/01

Item 15 Next session of Alternate Representatives

The Alternate Representatives are expected to schedule their next session, taking into account the timetable approved by the Council for the development of the 1999-2001 Three-Year Program Plan and 1999 Annual Program and Budget.

DOCUMENTS:

- a) CEC Program Development Cycles for 1998, 1999 and beyond (annexed to Resolution 98-09)

JOINT SESSION WITH JPAC

Item 16 Discussion on the Draft Public Participation Guidelines

Under this item, the Alternate Representatives and JPAC members are expected to discuss the Draft Public Participation Guidelines. JPAC may wish to provide its advice on the topic.

DOCUMENTS:

- a) Background Paper: Public Participation issues for the CEC (distributed 21 August 1998)
- b) Final Draft of Public Participation Guidelines (distributed 21 August 1998)
- c) Summary Analysis of Interview Results (distributed 21 August 1998)

Item 17 Discussion on next steps regarding the public review of the revised Articles 14 and 15 Guidelines

Under this item, the Alternate Representatives and JPAC are expected to discuss the next steps in relation to the public review of the revised Guidelines for Submissions on Enforcement Matters under Articles 14 and 15.

DOCUMENTS:

- a) Final version of revised Guidelines (to be distributed)
- b) 15 July 1998 memo from Chair of JPAC: Public Review of Articles 14 and 15
- c) JPAC call for public comments on revised Guidelines for citizen submissions (distributed 20 August 1998)

Item 18 Update by the Alternate Representatives on the recruitment of the Executive Director

Under this item, the Alternate Representatives are expected to update JPAC on the process leading to the appointment of the next Executive Director.

DOCUMENTS:

- a) Statement of Qualifications for the position of Executive Director
(distributed 20 August 1998)
- b) JPAC Advice 98-04: Executive Director of the CEC and vacancies on JPAC

C/C.01/98-D/DISC/01/Rev.4

Item 19 Closure of the session

The Chairperson is expected to close the session.

DOCUMENTS: No document