

Transboundary Law Enforcement Workshop

9-10 January 2003

Omni Shoreham Hotel – Washington D.C.

Summary Record of the meeting

Welcome and Introduction

Tim Whitehouse, Head of the Law and Policy Program at the Commission for Environmental Cooperation (CEC), welcomed everyone to the meeting. He said a few words about the CEC, its structure and mandate. Mr. Whitehouse concluded his remarks by putting the meeting in context, mentioned that this was the first public meeting sponsored by the CEC on transboundary law enforcement. He indicated that the first day of the meeting was designed to provide a broad overview of the issues faced by environmental law enforcement officials when working in a transboundary context. The next day workshops were to provide an opportunity to address some of these issues in more details.

Phyllis P. Harris, Deputy Assistant Administrator, Office of Enforcement and Compliance Assurance, USEPA, introduced the Enforcement Working Group (EWG), indicating it had been established in 1996 under the auspices of the CEC and was comprised of enforcement officials from all three countries. She expressed her view that this meeting was a great opportunity to get feed back from, and network among officials from the three countries (Canada, Mexico and the United States) and representatives from civil society present at the meeting (Research NGOs, private law firms, etc.).

Norma Munguia, International Coordinator at PROFEPA and 2003 Chair of the EWG, expressed her pleasure to see such a well-attended workshop. She gave an overview of the EWG and its activities and talked about the EWG's achievements since its creation in 1996. She then shared her view that this meeting was an opportunity to engage into discussions among experts on transboundary enforcement issues to identify means and resources to further improve cooperation among the three countries and to look for ways to overcome legal and judicial barriers to effective transboundary enforcement.

John Cruden, Deputy Assistant Attorney General, Environment and Natural Resources Division at the Department of Justice, started his presentation by recalling the results of past meetings and joint trainings among enforcement officials which lead to a better understanding of each other's procedure and which have been helpful in sharing information. He further stressed the successes that transboundary cooperation has resulted in, for example in terms of convictions and fines. About the meeting, he indicated the importance of discussing information restrictions faced by enforcement officials wishing to share such information.

What is Transboundary Enforcement? – An Overview

Thomas L. Sansonetti, Assistant Attorney General, Environment and Natural Resources Division at the US Department of Justice, gave a general overview of the work performed by his division. The 450 lawyers (including 35 criminal lawyers) of the Environment and Natural Resources Division are responsible for prosecuting the environmental law cases on behalf of the federal government (bringing the cases to court, preparing the briefs, etc.). He explained that in the US the responsibility for investigating cases and prosecuting them falls to different agencies (FBI and others investigate; DOJ prosecutes). Mr. Sansonetti then shared his definition of transboundary enforcement which was along the following lines: “The enforcement of domestic environmental law in one country that may require assistance (such as the provision of information) of another country”. He then cited the Wong case involving the smuggling of reptiles as a concrete example of cooperation through extradition treaties. He then related the successful prosecution for illegal trade in protected wildlife body parts in the Antoine case and in relation to waste haulers on the Mexico-US border, which resulted from voluntary exchanges of information between cross-border officials.

Mr. Sansonetti underlined the fact that transboundary enforcement is more important than ever given a number of factors (interdependent environment and economy as well as shared borders and air and watersheds). He also talked about the necessity to ensure a “level playing field” so as not to unduly provide an advantage to those companies and individuals which try to gain an economic advantage by “cutting corners” from a legal standpoint. He further stressed that wildlife smuggling is estimated at six billion dollars worldwide, whereas smuggling of toxic substances and CFCs amount to one to two billion dollars each. These figures do not encompass illegal trade in timber, precious metals, fishing, etc. He concluded by underlying the importance of improving transborder assistance in that context and gaining a better understanding of the legal provisions relevant to the release of information to foreign enforcement officials.

Panel Discussion: Mutual Legal Assistance in Criminal Matters

The moderator of the panel was Mr. Peter Lamont, Environmental Prosecutions Coordinator, Criminal Law Branch at the Canadian Department of Justice. He noted that the panel was designed to address formal cooperation as evidenced by Canada-US and Mexico-US treaties pertaining to mutual assistance in criminal matters and extradition.

The first panellist was Mr. Stewart Robinson, Deputy Director, Office of International Affairs, Criminal Division, US Department of Justice. He started his presentation by stressing the need for transborder cooperation in an era where countries are more and more interdependent. According to Mr. Robinson, nowadays it is impossible to talk about effective enforcement in one country without considering its transboundary aspects and in the absence of coordinated efforts with enforcement officials from foreign countries.

Mr. Robinson indicated that although this panel was addressing the issue of formal cooperation among countries based on treaties, one should not forget that enforcement cooperation relies on other formal instruments – such as Executive Agreements – and many informal approaches which are equally valid and can be as efficient as the treaty established mechanisms.

Mr. Robinson then focused his attention on *Mutual Legal Assistance in Criminal Matters Treaties*, commonly referred to MLATs. These treaties establish a central authority in each of the country for its purposes. These authorities are: in Canada, Justice Canada; in Mexico, the Office of the Attorney General (PGR), and; in the United States, the Department of Justice. Working through the central authorities allows enforcement officials to bi-pass both the slower diplomatic channels and the letters rogatory process. These treaties provide mechanisms to, *inter alia*, take testimony or statement of persons; serve documents; locate and identify persons; conduct search and seizures; and obtain or provide information and evidence. They also contain provisions pertaining to the content and submission of requests for assistance; the protection of confidentiality and; the refusal of assistance. The two main advantages of cooperating through MLATs are that they have force of law and are faster than alternative formal mechanisms. Touching on extradition treaties, Mr. Robinson indicated that their purpose is to allow for the extradition to one country of individuals found in another country to face prosecution or punishment. Their application is limited to criminal investigations and sentences.

The next panellist was Mr. Alejandro Diaz de León, PGR Attaché at the Mexican Embassy in Washington. As an introduction he spoke about the relationship between the three countries regarding environmental and natural resources protection and the way in which this relation extends to different fields, including the prosecution of environmental crimes committed in one territory with impacts or consequences in another territory. He spoke about the fact that the opening of the borders for trade has also led to an increase in illegal transborder activities and that as a consequence international enforcement cooperation is more important than ever to fight crime. He mentioned that the Mexican government focuses its efforts on environmental issues given the urgent need to cut back on the degradation of Mexico's natural wealth. In this regard, the federal government has established a series of guidelines on sustainable development management. Mr. Diaz de León indicated that in Mexico the responsibility to investigate federal crimes rests upon the Attorney General's Office (PGR) (Criminal Code, s.25), an institution which comprises three offices specialising in environmental crimes. In his point of view, international co-operation in penal matters is one of the most important tools States have to fight crime in its various forms. By using legal tools like extradition and legal assistance, it is possible to bring before the courts those who have evaded the action of justice by hiding in another country. Also, international co-operation is useful in gathering evidence that might otherwise have not been available. These important mechanisms of co-operation have been legally formalized in bilateral and multilateral arrangements between Mexico, Canada and the United States.

Turning to these formal arrangements, he mentioned that Mexico has signed extradition treaties and MLATs with both Canada and the US. In Mexico, these treaties are

implemented through the International Affairs Division of PGR. Reporting to this division are regional offices set up the United States to facilitate the implementation of the treaties.

In addition, Mexico has signed an extradition treaty with the United States on February 29, 1981 and one with Canada on October 21, 1990. Mr Diaz de León specified that they apply to individuals against whom criminal procedures have been undertaken or who have been sentenced by a court to a jail term. Notwithstanding the extradition procedure guidelines established pursuant to the treaties, the procedure has to comply with local legislation. Individuals face extradition where their intentional conduct constitutes a crime in both countries punishable by more than one year of imprisonment. Finally the crime must have been committed in the country requesting extradition. According to Mr. Diaz de León, most environmental infractions meet these requirements. In the case of the treaty with the United States, an annex to the treaty lists a series of crimes that may lead to extradition. Also, he underlined that in cases where extradition is sought to fulfill a jail term already imposed by a court, the treaty will only apply where the offender still has more than six months to serve.

Currently there is no extradition request from Canada or the United States involving Mexico. The most recent case involved the extradition, in August 2000, from Mexico to the United States, of a Chinese citizen wanted by a District Court of North Carolina, for the smuggling and illegal traffic of wildlife.

Mr. Diaz de León then talked about MLATs, which are bilateral cooperation treaties pertaining to: testimony or statement of persons; service of documents; voluntary transfer of people under custody; location and identification of persons; conduct of search and seizures; exchange of information and evidence; and others activities consistent with the objectives of the treaties. He indicated that MLATs are designed to help enforcement officials build a case that would have otherwise been impossible to build without cross-border cooperation. He also indicated that these treaties must be enforced in accordance with the constitutional and legal regimes of the signatories.

Mr. Diaz de León stressed the fact that the signing of such treaties in no way limits the sovereignty of a state to prevent, investigate and prosecute crimes committed on its territory. He then mentioned the three central authorities which act as the contact points for the implementation of the MLATS (Justice Canada, PGR in Mexico and the US DOJ). Lastly, the speaker stated that even though formal mechanisms of co-operation exist, there are still important aspects of bilateral assistance that need to be further developed, such as the confiscation of goods acquired through illegal activities, and the execution of judicial sentences in which a fine or other pecuniary penal sanction is imposed. He then pointed out that in the last few years, judicial assistance was requested for a variety of crimes but only a few related to the environment.

The last speaker on this panel was Mr. Claude Lefrançois, Senior Counsel, International Assistance Group at Justice Canada. He first talked about the fact that in Canada it is important to look not only at the international cooperation treaties themselves (MLAT

and extradition) but also at the implementing legislation, through which a treaty becomes part of the law of the land. The relevant pieces of legislation are in this instance: the *Mutual Legal Assistance in Criminal Matters Act* and the *Extradition Act*. He also mentioned that the Canadian Constitution has some bearing on these issues as well, especially sections of the *Canadian Charter of Rights and Freedoms*. Mr. Lefrançois indicated that in addition to bilateral treaties, a number of law enforcement treaties have been negotiated under the auspices of the Organization of American States, such as the *Inter-American Convention on Mutual Assistance in Criminal Matters* (to which Mexico is not yet a party). He then posed a question that he said every enforcement official should ask him/herself when seeking transboundary assistance: Is resorting to a treaty really necessary in this instance? As an answer, he stressed the importance of not underestimating the value of informal channels of communication. In his view the formal mechanisms have a role to play when, for example a court order is required to take an involuntary statement or obtain a search warrant. He also talked about the fact that the MLAT allows Canada to assist in the enforcement of the payment of a fine imposed by a court of criminal jurisdiction of Mexico or the US.

With regard to extradition procedures, Mr. Lefrançois underlined the fact that for the treaties to apply to an offence, the delinquent conduct must be punishable by more than one year imprisonment and, constitute an infraction in both countries (the one requesting the extradition and the one where the individual is found). He also indicated that most environmental and wildlife offences are expressly covered by the treaties as they are included in an annex listing offences to which the treaties apply.

Mr. Lefrançois also mentioned that the letters rogatory are still available as a mechanism. He described the procedure as one where a request is made by a court in one country to a court in another country. He concluded his presentation by inviting the participants to visit the web site dedicated to an initiative led by Canada, El Salvador, Argentina and the Bahamas, under the auspices of the OAS, designed to serve as a one-window clearinghouse for information related to transboundary enforcement cooperation in the Americas. (<http://www.oas.org/juridico/MLA/en/index.html>)

Question and Answer Period

During the question period, one participant was interested in hearing more about the countries' sensitivity related to their sovereignty in the context of transborder enforcement cooperation. All three panellists were of the opinion that the treaties were a good way to ensure that each country's sovereignty is respected as they provide for well-defined mechanisms accepted by the countries whereby one sovereign state makes a formal request to another sovereign state for assistance. One panellist went on to say that should concerns about intrusion arise in the context of informal cooperation, these might be best addressed through informal channels. He also indicated that despite the countries' willingness to cooperate, this should not be interpreted as meaning that enforcement officials from one country can conduct an investigation in another country without notifying the officials of that country.

Another participant wanted to know whether treaty provisions on information exchange only applied to criminal cases or whether they applied to civil judicial and/or administrative investigations as well. That participant also wanted to know what were the restrictions applicable to the provision of requested information to another country. The panellists replied that the treaty provisions apply solely to criminal investigations and that the information provided can only be used for the purposes stated in the request. Nevertheless, where information might possibly be useful for both criminal enforcement purposes and administrative enforcement purposes, the requesting country should mention that fact in its request for information addressed to the other country. The receiving country will then be in a position to allow, or not, the use of information for purposes other than the criminal investigation.

Another question pertained to the applicability of the treaties to confidential and publicly available information. In response, a panellist underscored the fact that it is not necessary to resort to the treaties to obtain publicly available information because such information is available to anyone from public sources. However, the panellist stressed that in Canada, depending on how the public information was gathered, it is unclear what use can be made of such information in judicial proceedings. He also mentioned that legally required information (such as permitting information) provided to an authority can be used in criminal investigations in any country.

Panel Discussion: Mutual Legal Assistance in Civil and Administrative Matters

The moderator of this panel was Mr. Russell Smith, Senior Attorney, Environment and Natural Resources Division at the US DOJ. He explained that the panel would focus on the extent to which each country can provide mutual legal assistance in civil and administrative matters pertaining to environmental and wildlife law enforcement. He stressed that differences in the three countries' legal systems in addition to the division of power among federal and state/provincial jurisdictions add to the complexity of dealing with transboundary civil and administrative matters.

John Rothman, Attorney, USEPA Region 9, talked about formal and informal mechanisms can complement on another, stressing the importance of face- to face contacts with counterparts from the other countries. He further indicated that U.S.-Mexico enforcement sub-groups along the border have proved to be a successful mechanism for that matter. He then referred the participants to two studies that have been recently prepared on the issue of cross-border enforcement cooperation between Mexico and the US. The first one, was prepared by ELI and is entitled: "Strengthening U.S.-Mexico Transboundary Environmental Enforcement: Legal Strategies for Preventing the Use of the Border as a Shield Against Liability". It is available on ELI's website at www.eli.org. The second report (draft), entitled: "Environmental Enforcement Across Borders: Is the U.S./Mexico Border an Extreme Case?" was authored by Mr Rothman and made available to the participants. The paper is Mr. Rothman indicated he would welcome any comments on the draft.

Then, Irène Gauthier, Legal Counsel for Environment Canada, talked about the absence of formal agreements between Canada and, Mexico or the US with regard to the provision of assistance in civil and administrative matters. She went on to say that Canada, as a matter of policy, does not provide assistance in these matters. However, despite the absence of formal cooperation agreements other tools exist. For instance, s.9 of the *Mutual Legal Assistance in Criminal Matters Act* provides for assistance for the recovery of fines by imposed by a criminal court of another country as if the fine had been imposed by a Canadian court. However, s.9 cannot be used to recover sums payable pursuant to civil or administrative procedures. In these circumstances, one can resort to the *Uniform Transboundary Pollution Reciprocal Access Acts* (UTPRA) adopted by a number of provinces and states. Ms. Gauthier then talked about the potential barriers to the enforcement of foreign judgments in both the common law and civil (Quebec) jurisdictions where no UTPRA apply. In common law, she noted that the application of the “local action rule” by the courts as well as that of the “territorial scope of law” principle may constitute barriers to courts in transboundary matters. In Quebec, subject to a series of exceptions, the Civil Code allows for the recognition and enforcement of foreign judgments (ss. 3155 to 3168). Regarding statute based civil actions, whether federal or provincial, she indicated that those were not limited to Canadian residents. As for injunctive relief and administrative actions, the residency requirements vary from one jurisdiction to another. Environmental impact assessment procedures and access to judicial review of administrative actions are open to non-Canadian residents under federal, Ontario and Quebec laws.

The next panellist was Mr. Teodoro Maus, SEMARNAT Representative in Washington, D.C. Mr. Maus talked about what is necessary for mutual assistance to be effective. From a political standpoint he stated the importance for the countries to feel comfortable in carrying out the relationship in terms of sovereignty. He indicated that it is important to measure how far a country can go in renouncing to some of its sovereignty. In this regard, he pointed out that Mexico has been very aggressive in defending its sovereignty.

Also, he talked about the differences between the constitutional division of powers between the federal and state governments in Mexico and the US. Whereas much of the powers are centralized in Mexico, a number of powers pertaining to environmental protection are devoted to the states in the US, thereby creating difficulties in the implementation of treaties that only bind the federal government. As Mexico is a more centralized country, the agreements signed by the federal government are more easily implemented. He also indicated that cross-border cooperation is made more difficult by the fact that the two countries legal system differ (civil law in Mexico and common law in the US). For example, the legal system in Mexico may not allow for actions that are possible under the US system. He underlined the fact that the death penalty, being a potential sanction for crimes committed in the United States, poses an additional problem to cross-border co-operation. These legal differences can thereby constitute a limitation to co-operation despite the political will to co-operate.

In the point of view of the speaker, co-operation should focus on the common grounds while taking into account the differences between the regimes so as to avoid creating unnecessary pressures.

At the international level, diplomatic channels and letters rogatory constitute additional instruments one country may use in enforcement matters. Formal agreements provide for cooperative mechanisms including, the *Inter-American Convention on Letters Rogatory*, the *Additional Protocol to the Inter-American Convention on Letters Rogatory* and the Inter-American norms on international private law. Mexico cooperates with other countries through all these mechanisms.

Finally, the speaker mentioned that domestic environmental enforcement in Mexico is centralised in the hands of PROFEPA.

Question and Answer Period

In response to a participant's question on the transboundary service of civil papers, one panellist indicated that the service through FedEx had been used successfully in the past and that in light of rules applicable, such service would have been sufficient to obtain an *ex parte* judgment against the defendant in the U.S. had he failed to show up, however, the judgment probably could not have been enforced in the U.S.. He further indicated that the USEPA prepared a document summarizing the various mechanisms available in these instances. The document, dated May 18, 2000, is entitled: *For Public Employees and Federal Officials Responsible for Environmental Law Enforcement in the Border Area of the United States and Mexico*. With regard to the service of such documents in Canada, one would have to look at the civil procedures rules applicable in each province.

Panel Discussion: Exchange of Information and Questions and Answers

The moderator for the panel discussion was Ms. Norma Munguia, Coordinator, International Affairs, PROFEPA. She indicated that the focus of the panel discussion was to explain the laws of Canada, Mexico and the US with respect to the exchange and the protection of information, including confidential business information and government information.

Mr. Joseph Keller, Legal Counsel at Environment Canada, indicated that a number of laws apply to the exchange and protection of information, including confidential business information and government information, such as the *Access to Information Act*, the *Privacy Act*, the *Canadian Environmental Protection Act, 1999* (CEPA), and the *Canadian Charter of Rights and Freedoms*. The *Access to Information Act* provides a procedure whereby an individual may make a request for information to the government. The government must disclose the requested information in its possession unless the information in question falls within exemptions set out in the Act. One such exemption pertains to information obtained in confidence. CEPA provides for a similar mechanism

where Environment Canada has to disclose information requested by an individual, unless it is information that was submitted to Environment Canada in confidence. In any event, confidential information can be made public if it is in the public interest to do so, for such purposes as the protection of human health and life and of the environment. However, the test to be met in these circumstances is very stringent. CEPA s. 316(1)d) also provides that confidential information may be disclosed “under an agreement or arrangement between the Government of Canada and the government of a foreign state or an international organization, where the government or organization undertakes to keep the information confidential”. The *Privacy Act* pertains to information on individuals and allows for the disclosure of such information for law enforcement procedures.

The next speaker was Mr. Gabriel Calvillo, Director General, Federal Environmental Crimes and Litigation, PROFEPA. Mr. Calvillo started his presentation by pointing out that a few months ago the *Federal Law on Transparency and Access to Public Governmental Information* was published in the Official Journal of Mexico (*Diario Oficial*). The law pertains to access to public information in the hands of federal executive, legislative and judicial institutions. The law also applies to a number of other institutions. The law will come into force on June 11, 2003. This law establishes the framework in terms of access to information. The law provides for the obligation of the different authorities to share all information, with some exceptions pertaining to reserved and confidential information.

There are two classes of reserved information. The first class encompasses confidential business information and trade secrets, preliminary enquiries records and, records subject to a pending judicial investigation or administrative procedure. The second class is related to national security, i.e. information that could jeopardize the international relations of Mexico or could pose a threat to the country. Confidential information concerns personal data, such as for example, personal information on an accused person. Personal information and confidential business information and trade secrets cannot be divulged without the consent of the individual or business in question.

Mr. Calvillo then talked about the various other instruments that regulate access to information: the *General Law of Ecological Equilibrium and Natural Resources*, the *Federal Code of Penal Procedures*, the *Federal Law of Administrative Procedure*, the *Industrial Property Law* as well as international treaties.

The *Federal Code of Penal Procedures* establishes that during a preliminary enquiry, the information related to a case can only be consulted by the accused, his family or lawyer. In addition to the aforementioned code, the *Federal Law of Administrative Procedure* and the *General Law of Ecological Equilibrium and Natural Resources* have their own provisions and exceptions related to access to information. For example the authorities can deny access when the information is related to a pending judicial proceeding, surveillance or inspection.

Pursuant to the LGEEPA, the only information that can be disclosed in the context of environmental audits is the compliance report. Other information concerning an

environmental audit cannot be disclosed to any person, except to the PGR, when it has reasons to believe that a crime has been committed.

Finally the speaker mentioned that in order to implement the new access to information law, a series of administrative structures have been created to manage the requests, as well as a liaison unit to coordinate the work of the various units of PROFEPA.

Richard L. Huff, Co-Director, Office of Information and Privacy, at the US Department of Justice started his presentation with the *Freedom of Information Act* (FOIA). Mr. Huff indicated that contrary to the situation in Canada, the FOIA never requires a governmental authority to withhold information but allows the authority to do it.

Under the FOIA, all federal government records not falling within certain exemptions must be made available to the public upon request. Records exempted from disclosure include records relating to personal data, national security, foreign policy, commercial trade secrets, inter-agency memoranda, ongoing enforcement matters, sensitive information from financial institutions, and certain geophysical information relating to wells. Exemptions also apply to information permitted or required to be withheld under another statute. With regard to privileged and confidential information that can be withheld, Mr. Huff specified that information voluntarily provided by a business does not have to be designed as confidential to be protected from disclosure. With regard to business information provided pursuant to a law or regulation, it is subject to disclosure unless such disclosure could cause competitive harm. Information provided by a government can be protected from disclosure pursuant to an exemption applicable to information provided under a treaty. Mr. Huff commented that information provided pursuant to a mere executive agreement would probably not be covered by that exemption. Speaking about a case concerning confidential documents that were transmitted by the Canadian government to the US government in relation to the Gander plane crash, Mr. Huff indicated that the court decided that information provided in confidence by a foreign government did not constitute a record pursuant to FOIA because the information was not deemed to be “under the control” of the US government. Turning to the *Trade Secrets Act*, he mentioned that the Act protects the confidentiality of all business information given to the government unless its release is otherwise authorized pursuant to another law (FOIA, MLAC, etc.). It is unclear once again whether an executive agreement would qualify as a release “authorized by law”.

Amelia Simpson, Director, Border Environmental Justice Campaign, Environmental Health Coalition talked about the concrete experience her organization has had with the transboundary enforcement of environmental law in relation to the *Metales y Derivados* plant in Tijuana. The organization filed a number of judicial and quasi-judicial proceedings in order to force the closing of the plant and get the site cleaned-up from the hazardous waste abandoned there. One of the measures undertaken by the Environmental Health Coalition consisted of filing a submission pursuant to article 14 of the *North American Agreement for Environmental Cooperation*, submission that ended up with the preparation of a factual record by the Secretariat of the CEC. She also mentioned that several attempts were made in order to have the owner of the company be held

responsible for the clean-up. Administrative procedures were initiated through PROFEPA, legal ones through district courts and even through the Human Rights Commission.

Based on her organization's experience she had a number of questions for the participants regarding the various ramifications of the enforcement and cooperative mechanisms being currently pursued to ensure that the *Metales y Derivados* site will be cleaned up now that it is closed.

Question and Answer Period

One participant wanted to know what protection from disclosure, under US law, would the U.S. be able to provide to information it had received from a foreign government that that is relevant to a current enforcement action in that foreign country. In response, a panellist indicated that the exemption provided by s.7 of FOIA applies not only to domestic enforcement actions but that it also applies to enforcement actions in foreign countries.

Another participant was interested in finding out how customer lists, containing the names of clients from both sides of a border, would be treated as to its confidentiality. A panellist answered that in the US, if the list is obtained through compulsion, then one has to ask himself whether or not the release of the list is likely to cause substantive competitive harm.

One participant was wondering to what extent a government had the right to share confidential information with another government. One panellist indicated that in Canada s. 315 of the CEPA 1999 expressly provides that confidential information can be shared with another government. Another panellist indicated that in the US, restrictions do apply to information forwarded by a foreign government and that various laws and treaties establish the protection from disclosure such information benefits from.

A third panellist indicated that the restrictions for disclosing information are usually designed to protect constitutional rights. He then mentioned that in Mexico, as a general rule, information can be divulged except where the information is related to a pending judicial proceeding or constitutes personal information. Once a pending proceeding is over, then the information can be divulged.

Another participant raised a question pertaining to the possibility of disclosing investigative leads and intelligence probes. He further asked about the possibility of getting specific information such as annual reports of businesses, name and date of birth of the directors of a company, permitting history, etc. The panellists indicated that these themes would be the subject of next day's workshop and that they would be addressed in more detail at that time. However the panellists indicated that considering that a lot of the information referred to in the question is publicly available, the issue is not one of confidentiality but rather of actually finding the information. Also the panellists agreed

that the date of birth of the directors would probably be considered as personal information and could not be disclosed.

One participant clarified the role of the CEC regarding the citizen submission process and the preparation of factual records. He also indicated that it is not the mandate of the CEC to actually enforce environmental law at the domestic level.

Another participant emphasized that even though the CEC citizen submission process has some internal limitations, it does however act in a certain way as an indirect enforcement mechanism because it has led to some concrete governmental action in the past. He gave the example of the construction of a pier in Cozumel, about which a citizen submission was submitted to the CEC. In this instance, even though the pier was finally built, the government later made changes to its legislation to improve the environmental assessment procedure. The government also declared the zone a Natural Protected Area and adopted a management plan for the zone.

One question pertained to the decision-making process that is followed when deciding whether or not to release business information. A panellist answered that in the US where the information is submitted voluntarily, the information must have been provided in confidence and must be of the type of information that is usually not made public by the business to be considered confidential. Therefore, where a request is made about confidential information provided by a business and where the authority does not know whether or not it is the type of information that the business usually makes public, it will ask the business to provide that information. The same procedure would apply where a determination of substantial competitive harm has to be made by an authority. In either case, the authority is not bound by the response provided by the business.

A participant was interested in learning if there were a mechanism to appeal the decision by an authority to deny a request for information presented pursuant to FOIA. A panellist confirmed that an appeal was possible to the Office of Information at the US Department of Justice. If the requester is still not satisfied pursuant to the intervention of the Office of Information, a court proceeding can be filed asking for the revision of the decision.

Closing Observations by the Joint Public Advisory Committee

Mr. Gustavo Alanis-Ortega, Chair of the CEC Joint Public Advisory Committee (JPAC) offered some observations about the issues discussed during the meeting. He first spoke about the role of the Joint Public Advisory Committee, one of the three organs of the Commission for Environmental Cooperation (CEC). He explained that the Committee is composed of 15 members, five from each of the three countries representing different sectors of society. Mr. Alanis mentioned that the JPAC holds four public meetings per year and that one of them takes place in the presence of the three ministers of the environment of North America.

He then turned his attention to the theme of the meeting and stressed the need to identify gaps in transboundary enforcement cooperation and to improve domestic systems in each of the countries in order to achieve better results. In his view it is necessary to enrol other intergovernmental organisations - not only of the CEC - and also civil society organizations that could contribute to transborder environmental enforcement issues.

He then talked about a commitment made by the three countries in the NAAEC to conclude an agreement on transboundary environmental impact assessment within three years of the entry into force of the NAAEC. He urged the three countries to resume negotiations with a view to reaching an agreement as soon as possible. To fulfil this goal, Mr. Alanis continued, it is necessary to pursue efforts among the three countries to implement actions and programs that help create an effective co-operation regime across our borders. He emphasized the importance to also create links with other organisations working on similar matters such as UNEP.

He then spoke about the importance of a workshop of this nature and the valuable discussions among and with governmental representatives in charge of transboundary enforcement. He was positive that government officials also learned from the experiences of private lawyers and non governmental organisations representatives that attended the workshop.

The speaker then talked about the economic, social and cultural differences among the three countries and the way in which their responsibilities differ. The speaker identified a series of actions that need to be undertaken in the future to improve transboundary enforcement, such as better and more frequent training programs for transboundary enforcement officials; the publication of sanctions against transborder environmental offenders as a deterrence mechanism and; making a special effort to improve human, technical and financial resources devoted to transboundary enforcement.

Mr. Alanis further commented that the lack of effective enforcement of the law, not only has economic, politic and social implications but direct impacts on the environment and natural resources, and that therefore the parties need to improve their co-operation mechanisms in order to better address this issue. Another aspect the speaker touched upon was the need to identify new ways to ensure that state and local authorities comply with their responsibilities in terms of transboundary enforcement.

Mr. Alanis argued for the development of more effective mechanisms for accessing information across borders for enforcement purposes. He also pointed out that it is essential to have a procedure whereby information that is declared to be confidential really contains data of that nature and that the exemption is not only used as a shield to access to information requests. It is also important that the terms used in the law be clear and precise because words like “national security” may have different meanings depending on the situation.

Finally Mr. Alanis stressed the importance for the various enforcement agencies to make a strong case for additional domestic budgetary resources to be appropriated for

enforcement and transboundary enforcement specifically, in order to strengthen the relevant institutions and to eliminate corruption and provide adequate training to public officials, including to the judges who have to decide on these matters.

Closing

Mr. Tim Whitehouse, Head, Law and Policy, CEC closed the meeting and convened the government representatives to the next day's workshops.