STRENGTHENING ENVIRONMENTAL ENFORCEMENT AND COMPLIANCE: THE INTERNATIONAL NETWORK FOR ENVIRONMENTAL COMPLIANCE AND ENFORCEMENT

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SUMMARY

As the international community prepares to meet in Johannesburg for the World Summit on Sustainable Development, the need to strengthen environmental enforcement and compliance is emerging as an important theme. This follows the growing recognition that decades of environmental lawmaker have not sufficiently arrested environmental degradation, and that enforcement and compliance must become a priority in the coming decades. Building the capacity to carry out the needed enforcement and compliance will require global cooperation. One key actor will be the International Network for Environmental Compliance and Enforcement (INECE), a global network that has done yeomen’s work in this field since its founding in 1989 by the Dutch and U.S. environmental agencies, with assistance from UNEP, the World Bank, OECD, and the European Commission.

1 INTRODUCTION

Despite a growing body of environmental law at the national and international level developed in the thirty years since the Stockholm conference on the human environment, various measures of environmental quality show continuing degradation across a broad spectrum, with serious consequences for ecosystems and public health. As a telling example, one million people a month die from lack of clean water and sanitation, and millions more die every year from various forms of industrial pollution.

Evidence points to the failure to invest in enforcement and compliance as a key reason for the continuing degradation of environmental quality. This was recognized at the Rio Earth Summit in 1992 in Agenda 21, Chapter 8, which specifically directs that States develop their compliance and enforcement capacity. It is recognized today as well in the run up to the World Summit on Sustainable Development, where a consensus is emerging that not enough has been done since Rio to improve environmental enforcement and compliance. Lack of funding and lack of political will are often offered as explanations, based in part on the fear that improving enforcement and compliance will increase the cost to industry, harm their competitiveness at home and abroad, and deter foreign investment.

Yet, evidence is accumulating that investing in enforcement and compliance not only improves environmental quality and public health, it also improves the competitiveness of nations and firms. Improving enforcement and compliance also enhances respect for the rule of law.
and strengthens the foundation for better environmental governance.

The growing emphasis on enforcement and compliance is expected to increase the demand for the services of the International Network for Environmental Compliance and Enforcement (INECE), a network of enforcement practitioners dedicated to raising the awareness of the issue; assisting with capacity building; and facilitating enforcement cooperation through interlocking networks at the national, regional, and global level. INECE participants come from 130 countries, principally from governments, but also from NGOs and academia. Key partners include the Ministry of Housing, Urban Development and Spatial Planning, The Netherlands (VROM), the United States Environmental Protection Agency (USEPA), the European Commission, UNEP, World Bank Institute, European Commission, and OECD.

2 RECOGNIZING THE NEED TO STRENGTHEN ENFORCEMENT AND COMPLIANCE

The Rio Earth Summit in 1992 recognized the need to strengthen enforcement and compliance in AGENDA 21. Chapter 8.21 established an international mandate to build compliance and enforcement capacity as an essential element of environmental management.

8.21. Each country should develop integrated strategies to maximize compliance with its laws and regulations relating to sustainable development. The strategies could include:

- Enforceable, effective laws, regulations and standards based on sound economic, social and environmental principles and appropriate risk assessment, incorporating sanctions designed to punish violations, obtain redress, and deter future violations;
- Mechanisms for promoting compliance;
- Institutional capacity for collecting compliance data, regularly reviewing compliance, detecting violations, establishing enforcement priorities, undertaking effective enforcement, and conducting periodic evaluations of the effectiveness of compliance and enforcement programs;
- Mechanisms for appropriate involvement of individuals and groups in the development and enforcement of laws and regulations on environment and development; and
- Develop effective national programmes for reviewing and enforcing compliance with national, state, provincial and local laws on environment and development.

AGENDA 21 also empowered UNEP and other organizations to more actively support compliance and enforcement activities, including capacity building. UNEP responded with a number of initiatives, including the Programme For The Development And Periodic Review Of Environmental Law For The First Decade Of The 21st Century (Known As "Montevideo IIII"). The Final Montevideo III Programme, approved in 2001, is designed to increase the effectiveness of environmental law and stresses implementation, compliance and enforcement.\(^1\) UNEP also developed guidelines for enforcement and compliance addressing both the international and national level. The Governing Council approved the guidelines February 15, 2002 in Cartegena.\(^2\)

Chapter I of UNEP's new enforcement guidelines addresses compliance with multilateral agreements. Its 29 paragraphs spell out the purpose, scope and definitions of the terms used in this part of the text, as well as other issues considered necessary for enhancing compliance: preparatory work for negotiations, effective participation in negotiations, assessment of domestic capabilities during negotiations, compliance considerations in multilateral environmental agreements, review of effectiveness, compliance mechanisms after a multilateral environmental agreement comes into effect and dispute settlements provisions. Other issues covered in this chapter are national implementation, including national measures, capacity building and technology transfer. Emphasis is placed on international co-operation by
the United Nations and other relevant international organizations as well as through multilateral and bilateral initiatives.

Chapter II of UNEP’s enforcement guidelines addresses national enforcement and international co-operation in combating violations, of laws implementing multilateral environmental agreements. Its 15 paragraphs spell out the purpose, scope and definitions of the terms used in this part of the text, as well as national enforcement of laws and regulations, institutional framework, national coordination, training for enhancing enforcement capabilities and public environmental awareness and education. Emphasis is placed on international co-operation and coordination, bearing in mind the need for consistency in laws and regulations, co-operation in judicial proceedings, institutional framework and capacity building and strengthening.

Enforcement and compliance are part of WSSD as well, and have been attracting increasing attention throughout the preparatory process. Among the issues included for discussion at the March 2002 PrepCom for strengthening governance for sustainable development at the national, regional and international level, is the need for the development of “effective legal systems, including strong and clear laws, appropriate consequences for noncompliance, well-developed infrastructure for compliance monitoring assistance and enforcement, and citizen participation in all these elements.”

Concern also was expressed at the regional PrepComs over the lack of progress with environmental enforcement during the last decade, with the lack of progress attributed to a number of factors, including the lack of capacity within many developing countries, often accompanied by a lack of political will to improve enforcement.

3 UNDERSTANDING THE BENEFITS OF ENFORCEMENT AND COMPLIANCE

At the same time that pressure is building to strengthen enforcement and compliance, evidence is accumulating that the cost of complying with environmental laws is, in most cases at least, outweighed by the benefits, including improvements in public health and critical ecosystem services such as flood control and water purification. This important information needs to be more widely understood to counter the fear felt by countries and firms that environmental enforcement will mean higher costs and lower competitiveness.

The European Commission just released an important report showing that the cost to the group of 13 accession countries of complying with the EC’s environmental “acquis communautaire”, while considerable, would be equal to or less than the direct benefits, even using the low end of the benefit estimates, and even without including several key environmental benefits.4 As the Commission’s report states:

“[M]any benefits of EU directives have not been fully covered when assessing the monetary values. This includes the protection of sensitive ecosystems and biodiversity. Some environmental investments might also lead to benefits not directly related to the environment. They can improve economic efficiency and boost productivity, for example by facilitating the take-up of modern technology, by lowering production and maintenance costs for companies through better water quality and by providing savings in the form of more efficient waste management…. [Even omitting such important benefits, using the lower end of benefit assessment, and considering only] narrow monetary terms, the assessed benefits are likely to be of the same order of magnitude if not larger than the costs of implementing EU directives. (Emphasis in original.)”

Further evidence is provided in the Global Competitiveness Report 2001-2002, where Dan Esty from Yale Law School and Michael Porter from the Harvard Business School report “The research reveals that there is no evidence that higher environmental quality compromises economic progress. Environmental performance is positively and highly cor-
related to GDP per capita. The ... preliminary evidence suggests that countries with stricter environmental regulations than would be expected at their level of GDP per capita enjoy faster economic growth.5

Even so, the distribution of benefits and costs makes collective political action a challenge, with many costs incurred up front by a small number of firms, and many benefits accruing later to a broader and diffuse group of society. Nevertheless, this favorable benefit-cost ratio must be more widely known and appreciated by policy makers, business leaders, and civil society.

Another critical fact, which is even less appreciated, is that environmental compliance is cost effective at the level of the firm as well. “Superior environmental performance will be rewarded in the long run in most industries and in national development.... Both theory and an emerging body of empirical evidence on the topic show that under most circumstances, improved environmental performance should improve a number of aspects of firm competitiveness, especially in developing countries,” according to Lawrence Pratt in a paper prepared for the Inter-American Development Bank.6

Pratt relies on the seminal work performed by Professor Porter, and other studies by Professor Stuart Hart at the University of North Carolina business school, noting “recent empirical research on environmental performance and capital markets shows that the most successful and valuable multinational firms are those that adhere to the highest environmental standards.”7

Hart and his colleagues report that their research “refutes the idea that adoption of [stricter] global environmental standards by multinational enterprises constitutes a liability that depresses market value. On the contrary, the evidence from our analysis indicates that positive market valuation is associated with the adoption of a single stringent environmental standard around the world.”8 Hart and his colleagues studied a sample of 89 companies from the Standard & Poor 500 in the manufacturing or extractive sectors based in the United States, but with facilities in countries that could be pollution havens. The firms that followed their own strict environmental standards in their foreign operations had a significantly higher market value than firms using less stringent standards. The study notes that developing countries that use lax environmental standards to attract foreign investment may end up with less competitive firms in the long run.

Pratt also supports this conclusion with research from an earlier Global Competitiveness Report discussing what business leaders around the world believe:

“Firms in many of the most competitive countries in the world believe their environmental standards are slightly to moderately profit enhancing. Highly competitive countries tend to have the most transparent and stable regulations. These characteristics ensure fair and even enforcement and allow for longer planning horizons for firms. Most business leaders believe that environmental regulations have played an important role in improving energy, water and materials use efficiency. In more than half of the 59 countries surveyed, business leaders thought that ‘environmentally friendly products’ enjoy a slight to strong market advantage over conventional products. Interestingly for the [Latin America] region, these advantages were found primarily in countries that are current, and likely future, export clients of the region’s agricultural and tourism products.”

Pratt also reports the observation of Niall FitzGerald, Chairman of Unilever PLC, concerning environmental protection, trade, and investment in Central America:

“One of the myths is that environmental standards are seen as an obstacle to competitiveness and to investment. Practical experience and academic research overwhelmingly now show quite the opposite. Multinational companies expect to operate to high environmental standards. Environmental protection is not a barrier to investment, particularly when the standards are evenly enforced. It can become a barrier if a multinational has its own high standards, and it finds that it is
operating in an environment where lower standards are accepted and the playing field is not even." Developing a set of indicators to track environmental compliance and enforcement activities would provide critical information for strengthening this case, and for better understanding the benefits and costs for specific industry sectors, in countries with different levels of economic and institutional development. It is important to level the playing field, and while doing so to consider not only sanctioning bad actors, but also providing compliance assistance, including efforts to educate companies and the public to make it socially unacceptable to pollute or otherwise to violate environmental laws.9

4 DESIGNING INECE ENFORCEMENT AND COMPLIANCE ACTIVITIES

In light of the growing emphasis on enforcement and compliance and the favorable benefit-cost ratio, demand is increasing for INECE services, which include capacity building and training; facilitating enforcement cooperation through interlocking networks at the national, regional and global level; and raising awareness of the importance of enforcement and compliance.

To better respond to the increasing demand, INECE recently formed a formal Secretariat to coordinate its activities and to undertake more analytical work. Durwood Zaelke, the President and founder of the Center for International Environmental Law, was appointed Director. In addition to a project to develop indicators for environmental enforcement and compliance, other analytical work under consideration by INECE includes research to understand the benefits and costs of compliance for specific industries within countries at various levels of development. INECE is currently designing its three-year strategic plan, which will be reviewed in April at its bi-annual conference, and finalized by August 2002. Expanding capacity building and training will be another priority. Support for INECE comes from the Dutch Ministry of Housing, Spatial Planning and Environment, the U.S. Environmental Protection Agency, the European Commission, the World Bank Institute, the United Nations Environment Program, the Commonwealth Secretariat, The North American Commission for Environmental Cooperation, Environment Canada, and the United Kingdom’s Environment Agency.

5 CAPACITY BUILDING CONFERENCE IN COSTA RICA

INECE provides capacity building assistance, working with the World Bank Institute, UNEP, and others, to deliver training programs, including a bi-annual conference for 200 participants drawn from its network of 2,500 practitioners. The Sixth Conference is being held April 2002 in Costa Rica and will be attended by 200 participants from 130 countries. More than 50 papers will be published in the Conference Proceedings, and a selection of the best will be published as a separate book. The panels and workshops cover a broad spectrum of enforcement and compliance issues including: economic instruments, voluntary measures, raising awareness, measuring results, and the role of the judiciary.

The INECE draft strategic plan will be presented and discussed during the week-long conference, and a Conference Statement will be issued for the first time. Another goal of the conference is to foster the development and strengthening of regional enforcement networks within Africa, Asia and Latin America. These networks will benefit from the experience of current INECE partner networks such as the European Network for Implementation and Enforcement of Environmental Law (IMPEL) and AC-IMPEL, it sister organization serving the accession countries to the European Union.10 INECE also is developing new web-based strategies, working with EarthPace and the Environmental Law Information System (ELIS), a partnership among CIEL, the NASA, the Library of Congress, and the University of Maryland.
6 INDICATOR PROJECT FOR ENFORCEMENT AND COMPLIANCE

Recalling the mandate under AGENDA 21 to develop data systems for assessing enforcement and compliance, including indicators, and noting the absence of indicators that would be appropriate for assessing performance across the full range of UN countries, INECE recently initiated a multi-year project to design indicators for environmental enforcement and compliance. The INECE indicator project will be launched at the San Jose Conference in April 2002 and promoted at the World Summit on Sustainable Development.

Chapter 40.4 of AGENDA 21 notes that traditional indicators (for example, GNP and measurements of individual resource or pollution flows) do not provide adequate indications of sustainability. Given this vacuum, the chapter calls on the international community to develop and promote new indicators that would, in part, help track progress towards the goals of Agenda 21. Similarly, Chapter 8.21 calls on countries to develop “Institutional capacity for collecting compliance data ... and conducting periodic evaluations of the effectiveness of compliance and enforcement programs.” Chapter 8.6 states “Countries could develop systems for monitoring and evaluation of progress towards achieving sustainable development by adopting indicators that measure changes across economic, social and environmental dimensions.”

Over the past decade, a number of organizations have begun to develop environmental indicators to translate and deliver concise, scientifically credible information in a manner that can be readily understood and communicated to decision makers and other intended audiences. Some efforts include multiple indicators within the same system that can be tracked over time and analyzed in the aggregate, to disclose the trends of a larger system. For example, indicators of air quality may include NOx and SOx emissions, coal consumption per capita, vehicles per populated land area. When analyzed together this information may be used to assess the effects of air pollution on human health and ecosystems. Environmental indicators have traditionally been limited to measuring the health and status of environmental media like air and water quality, waste management and land use. To date, none of these efforts have adequately addressed issues of enforcement and compliance.

The INECE environmental compliance and enforcement indicators project is developing a system for evaluating capabilities and performance of environmental compliance and enforcement programs. The indicator project will identify a set of principles to guide its effort, including transparency—of goals, assumptions, and process; participation; and comparability, scaled according to different levels of economic development. The project also will articulate a model, or framework, such as the pressure-state-response model, to help guide the selection of appropriate indicators. Case studies of current efforts on enforcement indicators also will be prepared, covering the efforts of the NAFTA Commission for Environmental Cooperation, the EC’s efforts on accession countries, the OECD environmental reviews, the World Resources Institute efforts on access to justice and their Global Forest Watch network, among others. A key goal of evaluating enforcement and compliance programs is to understand the capability of programs to implement and achieve compliance with national, regional, and global environmental requirements, and to assess the financial, technological, and human resources needed to ensure that the programs are sufficient for this critical task.

7 CONCLUSION

The growth in environmental law over the past three decades has not been followed with sufficient effort to ensure
enforcement and compliance. The result of this enforcement deficit is continuing and unacceptable deterioration of environmental quality and public health. Renewed focus on these issues at the WSSD is expected to increase demand for the service that INECE provides, including capacity building and training, enforcement cooperation, and analytical work. INECE is preparing to meet this demand.


See also Ministerial Communiqué, Meeting of Environment Ministers of the Americas, Montreal, Canada (March 29-30, 2001) available at http://www.ec.gc.ca/international/ema/index_e.htm (stressing “the importance of building national capacity to develop and strengthen environmental laws and institutions and for environmental law implementation, compliance and enforcement….”).


10 For more information visit http://europa.eu.int/ comm/environment/impel.

11 Id. at Chapter 40.6-40.11.