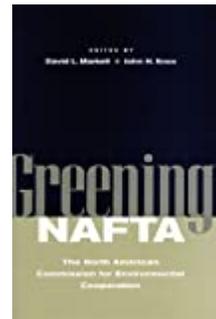




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The Greening of NAFTA: The First Ten Years

Greening NAFTA: The North American Commission for Environmental Cooperation by David L. Markell and John H. Knox is a collection of sixteen carefully crafted, well-organized essays written by a team of seventeen international lawyers and environmental scholars, each deliberately chosen for his or her expertise in a particular aspect of the evolving role of the NACEC in shaping NAFTA's environmental mandate. As the editors explain in chapter 1, no one was prepared for the environmental backlash created by the June 1990 announcement by Presidents George H. W. Bush of the United States and Carlos Salinas de Gortari of Mexico declaring their mutual interest in free trade. Soon afterwards, Canada joined the talks, opening the way for an open trilateral North American market. In June 1992, a series of talks took place in Rio de Janeiro where the UN Conference on Environment and Development opened the doors for international development that was sustainable, stating that "to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it" (p. 1). Thoughtful observers worldwide recognized new opportunities to reinterpret the environmental legacy of the

past three decades, claiming a stake in international affairs in keeping with local and national initiatives.

Fearful of the negative impacts of free trade, fifty-one environmental groups from all three countries petitioned their governments for assurances that NAFTA would advocate programs to promote public participation and oversight, improve the enforcement of existing environmental laws, and protect national, state, and local standards already in place. Presidential hopeful Bill Clinton promised that if elected in 1992, he would support "NAFTA plus," with provisions for the creation of a North American Commission on the Environment, later to be known as the North American Agreement on Environmental Cooperation (NAAEC). Aside from its mandate requiring member nations to continue supporting and enforcing environmental laws and regulations, and its provision for citizen complaints against organizations that fail to comply with the law, the authors point out that the NAAEC is the first regional environmental organization in North America, with authority to address any environmental issue anywhere on the continent (p. 10).

The governing body of the NAAEC is the NACEC, or North American Commission for Environmental Cooperation. Because of the breadth of environmental topics and issues open for inquiry, one of the main tasks of the NACEC, or CEC as it is commonly known, was to define its mission and set goals consistent with the objectives of NAFTA. As the authors demonstrate both in the opening chapter and in later essays, establishing clear guidelines and setting measurable, equitable goals agreeable among three very different nations was no small task. After several cordial attempts, the CEC delegates did finally agree on four key areas of cooperation: the environment, economy, and trade; conservation of biodiversity; pollutants and health; and law and policy (p. 14).

Future readers are advised to access the CEC website at www.cec.org for a substantial listing of publications, studies, and supplementary materials compiled by and for the CEC. Many of the primary documents that are reviewed by the authors can be downloaded by the reader and examined in tandem while reading the essays. Readers can judge for themselves how well the authors understand and communicate the mission and methodology of the organization. Taken together, the book and the website provide the novice and expert alike with a significant introduction to the CEC and its distinctive role in safeguarding and promoting the environment as an integral component of the NAFTA free trade package.

As is clearly evident throughout the essays and documented on the website, the CEC is at the cutting edge of a technological revolution in its approach to environmental regulation and legislation. Technology has made it possible to respond to public demands for transparency and citizen participation in environmental regulation at all levels of political influence, including new inroads into international policy. At the heart of this response is better access to information; new ways of collecting, measuring, and reporting data; novel partnerships with the private sector; and a common global economy. Taken collectively, these have helped to elevate the environmental conscience to new levels of awareness and interpretation. These, in turn, are reshaping international organizations and their methods of self-regulation and public policies.

This book highlights the complicated roles of trade, development, and the environment in a global economy. Each arena is closely bound by distinctive laws affecting their activities at the local, state, and national level. Nevertheless, legal systems worldwide are still coming to terms with the nexus of trade and the envi-

ronment. The hierarchy of traditional political relationships is challenged by individuals and non-governmental entities forging new and competing roles in the formation of policy and standards in government and industry alike. As the editors point out, sustainable development requires international attention to environmental issues previously considered to be solely of domestic or national concern. These challenges are particularly sharp in countries governed by supranational systems of law (p. 10).

The book is structured more like a panel discussion than a simple series of essays. A high level of collaboration among the writers is evident in the content and analysis of each article. The writers reference each others' work, building on one another's insights to help deepen the reader's understanding of the difficulties of interpreting and implementing environmental legislation, particularly on an international playing field. This collection is organized in three parts, with topical overlap. Part 1, "Regional Solutions to Regional Problems," explains in detail the CEC's evolution and its remarkable technical contributions in the essential areas of measuring and reporting pollutants, establishing an agenda for biodiversity conservation, and explaining the unexpected issues that complicate the regulation of transboundary pollution. Part 2, "Trade and Environment in America," highlights the tremendous potential that computer technology has created for detailed site and sector analysis and research. As the authors point out, this methodology is one the CEC's strengths in establishing regional cooperation on environmental issues. Part 3, "Toward an International Civil Society," features the creation of the Joint Public Advisory Committee (JPAC) and its role in promoting citizen participation in international environmental oversight. The authors present various cases demonstrating how the JPAC and the citizen submissions process have helped promote industrial self-regulation and public disclosure of impacts on the environment.

Part 1 presents contributions from four writers outlining the concrete contributions the CEC makes to promote regional cooperation in North America. Greg Block begins with an overview of the CEC's first attempts to find a common ground for cooperation among the North American countries. The first challenge was to gather sufficient information about one another to be able to present common concerns in a format that is efficient and well informed. Computers have created new protocols for discussing common regional interests. Data surveys and the collection of information from a broad range of public and private sources help pinpoint and clarify ambiguous issues such as the monitoring of pol-

lutants, biodiversity conservation, and appropriate intervention in transboundary pollution disputes. Mark Winfield, Robert Glicksman, and John Knox elaborate on these topics.

Winfield's article, "North American Pollutant Release and Transfer Registries: A Case Study in Environmental Policy Convergence," documents the CEC's successful strategy for collating and assessing pollutants in North America. Agenda 21 of the June 1992 UN Conference on the Environment and Development encouraged governments to establish emissions inventories of toxic materials (p. 39). In 1996, the Council of the Organization for Economic Cooperation and Development (OECD) adopted a resolution supporting pollutant release and transfer registries. As members of the OECD, the CEC nations agreed among themselves to establish database programs for reporting on common North American chemical releases from a variety of sectors. Beginning in 1997, the CEC published its first annual *Taking Stock*, compiling emissions statistics reported in Canada, the United States, and later, Mexico. These reports are available for review at the CEC website. Besides helping establish a common ground for talking about regional pollution issues, these reports cast new light on industrial releases, raising public attention and awareness across the continent.

Biodiversity is another topic well suited for regional cooperation. In chapter 4, "The CEC's Biodiversity Conservation Agenda," Glicksman reviews the CEC's efforts to protect biodiversity across the continent. Again, the reader is encouraged to view the CEC website for review of the primary CEC documents and studies. A 1999 report prepared by the NAAEC for the CEC drew attention to the North American diversity crisis. Land development, habitat fragmentation, overfishing, marine pollution, and dam building endangered marine and freshwater habitats across the continent (p. 57). Programs for restoring ecosystems are either inadequate or nonexistent. Glicksman briefly reviews a series of studies conducted by the CEC to help gather critical information on the status of key habitats and their ecology. These include the recently completed *Strategy for the Conservation of Biodiversity in North America*, the North American Bird Conservation Initiative, the Species of Common Conservation Concern, the Mapping Marine and Estuarine Ecosystems of North America project, the North American Marine Protected Area Network, the Global Programme of Action for the Protection of the Marine Environment from Land-Based Activities in North America, the Closing the Pathways of Aquatic Invasive Species

across North America project, and the North American Biodiversity Information Network. As Glicksman points out, the CEC has barely begun to realize its potential for creating regional cooperative networks actively working to restore and maintain important ecosystems in North America. In chapter 9, "Corn in NAFTA Eight Years After: Effects on Mexican Biodiversity," Alejandro Nadal demonstrates the use of statistics and data analysis to understand the effects of free trade in corn on the genetic diversity of Mexican crops. This type of analysis highlights in bas relief the unintended effects of agricultural trade on native species and traditional methods of production and distribution. Again, it is an example of the novel tools used by the CEC to help establish a new forum for discussing trade and the environment.

Chapter 5, "The CEC and Transboundary Pollution," by editor John Knox provides a transition to the second part of the book, illuminating strengths and limits of trilateral agreements, particularly where site-specific pollution issues are concerned. Regional cooperation is often limited or ineffective because of the variety and differences in terrain and ecology. The primacy of bilateral agreements in resolving individual cases is a reality that inhibits, to a certain extent, the CEC's ability to form workable agreements on a continental level. In chapter 12, Dan Tarlock and John Thorson present a case study entitled "Coordinating Land and Water Use in the San Pedro River Basin," which demonstrates the strengths the CEC brings to bear on transboundary disputes.

The contributors to part 2, "Trade and Environment in North America," expand on the themes introduced in part 1. The writers present case studies focusing on specific commodities and environments, demonstrating how information technology has honed the CEC's ability to track and forecast trends and key indicators in a number of economic and ecological sectors. As Mary Kelly and Cyrus Reed explain in chapter 6 ("The CEC's Trade Environment Program: Cutting-Edge Analysis but Untapped Potential"), over the past decade the CEC has developed a cutting-edge analysis methodology. Using sector- or case-specific studies it has succeeded in illuminating and exploring trade and environment issues in agriculture, transportation, energy, forestry, hazardous wastes, industrial pollution, and electricity production (p. 101). Writers Kelly and Reed, Kevin Gallagher, Claudia Shatan, and Alejandro Nadal demonstrate the strength of this approach, highlighting the CEC's efforts to better understand the effects of trade by focusing on carefully researched studies on electricity production, chemical emissions along key borders, transboundary movement

of hazardous wastes, Mexican manufacturing exports, and Mexican corn production. These essays demonstrate the level of detail that is available for the precise analyses of key economic indicators correlated to the environment. These essays also demonstrate how national and international environmental law is being transformed by access to accurate data on key variables.

This series of essays ends with chapter 10, entitled “Protecting Investors, Protecting the Environment: The Unexpected Story of NAFTA Chapter 11.” Sanford Gaines skillfully examines the investor-state arbitration system that NAFTA creates for North American countries. Looking at three specific cases, *Azinian v. Mexico*, *Metlaclad v. Mexico*, and *S.D. Myers, Inc. v. Canada*, Gaines demonstrates how differently NAFTA chapter 11 is interpreted by private investors with varying experience in environmental litigation. These differences highlight the need for better communication between trade and environment officials.

Part 3, “Toward an International Civil Society,” is opened by an essay by the late John Wirth, “one of the first citizens of North America” (p. xii), to whom the editors dedicated this book. This section of essays, written by Wirth, Dan Tarlock and John Thorson, Donald McRae, Kal Baustiala, and David Markell, introduce the Joint Public Advisory Committee (JPAC), interpret its relationship to the CEC, and illustrate the strengths of the citizen submission process. Fifteen appointed citizens, five from each North American country, serve on various advisory committee and expert groups. The JPAC is a novel international entity, with roots in the profusion of nongovernmental organizations (NGOs) that flourished during the early 1990s as a response to the 1992 United Nations Conference on Environment and Development. Citizen participation was an important component of the UNCED agenda. JPAC quickly proved to be an effective partner to the CEC, bringing valuable expertise and sound investigative skills to bear on such controversial issues as the Silva Reservoir case, the report on pollutant

pathways, the San Pedro River Basin project, the River of Life project, and a report on electricity and the environment. These reports, discussed in some detail by the authors above, can be accessed at the CEC website. Taken as a whole, these reports prove the CEC’s commitment to promote policy transparency and encourage public participation and awareness to the fullest extent possible.

This book is a valuable resource for anyone interested in understanding the environment as an integral component of future North American economic development. The authors have carefully recorded the major achievements of the NACEC over the first decade following the NAFTA agreement. Additional reading materials and viewpoints are well documented in the chapter endnotes. As the majority of the authors clearly note, the NACEC has barely begun to realize its potential to act as a powerful catalyst for building strong and effective regional coalitions committed to a vibrant North American economy, one that respects and utilizes diverse environments in ways that promote and sustain life, its ecosystems and distinct communities.

More importantly, the book is an important harbinger of the future. Since the European discovery of North America, investors have speculated on the advantages of a united continent. Global interests in the coming century will continue to influence the way we think and teach about ourselves and our North American neighbors. It is no longer sufficient to master the facts of our own history and political culture; our well-being will also depend on how well we understand and relate to those around us. Diversity is as important to culture as it is to the world’s ecosystems. As we mourn the loss of irreplaceable species of plant and animal life, we have reason to pause to evaluate the technologies that either sustain or replace them. That type of critical analysis depends on forging effective partnerships with citizens and experts alike. To that end, the NACEC has created a blueprint for the future.

If there is additional discussion of this review, you may access it through the network, at:

<https://networks.h-net.org/h-environment>

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