

NAFTA AND THE FUTURE OF MEXICO-U.S. BORDER ENVIRONMENTAL MANAGEMENT

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ABSTRACT

With the recent announcement of agreement on supplemental environmental accords by the governments of Canada, Mexico, and the United States, it now appears NAFTA may indeed become part of the trinational environmental management regime. As the United States Congress moves to authorize NAFTA'S Implementation, it is fruitful to ask what it means for the future of environmental management along the Mexico-United States border.

While speculative, the answer may be sought in the text of the NAFTA agreement. Including the supplemental accords, its fit to the extant environmental regime for the border area, and the capacity of that regime to accommodate environmental trends now in place in the region. The remainder of this essay analyzes each of these elements as they shape an answer to the stated question.

RESUMEN

Con el anuncio reciente de que los gobiernos de Canadá, México y Estados Unidos habían llegado a un consenso sobre los acuerdos suplementarios al TLC sobre el medio ambiente, se hizo evidente que el TLC formará parte de un régimen trinacional para el manejo del medio ambiente. Ya que el congreso estadounidense está en proceso de implementar el TLC, nos conviene preguntar, ¿qué implica el TLC para el futuro del manejo del medio ambiente en la frontera México-estadunidense? Aunque la respuesta puede ser especulativa, ésta puede buscarse en el texto del mismo TLC, incluyendo sus acuerdos suplementarios: ¿cómo se puede adaptar al régimen existente en el medio ambiente fronterizo, y qué capacidad tiene este régimen para acomodar tendencias ambientales ya presentes en la región? El artículo analiza cómo cada uno de estos elementos contribuye a las interrogantes planteadas anteriormente.

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NAFTA and the Border: Background

ANY consideration of NAFTA'S probable impact on environmental management in the border region must recognize that NAFTA'S scope is national, more precisely, trinational, and not border specific. With this proviso stated, the environmental dimension of the NAFTA debate in the United States has been heavily informed by environmental concern in the Mexico-U.S. border corridor. It is here that environmental Impacts are most visible to U.S. citizens and it is here that the two nations have a substantial record of binational cooperation in managing trans-boundary resources and health problems. It is hardly surprising, then, that much of the impetus for attaching environmental conditions to the NAFTA initiative has come from border constituencies.

The insertion of border-related concerns in the NAFTA process may be traced to the joint presidential agreement in October 1990 to pursue a new binational accord on border environmental management that would satisfy, or at least respond to, existing demands for more aggressive implementation of the 1983 Mexico-United States Border Environmental Cooperation Agreement (better known as the La Paz Agreement). Shortly thereafter, the two countries agreed to pursue a binational free trade agreement which, by January 1991, was extended to include Canada in a trinational free trade initiative. When the environmental advocacy community decided to target NAFTA as a test case for attaching environmental conditions to a major international trade agreement, the October 1990 joint presidential resolution on border environmental affairs acquired strategic importance. The result, as is well known, was the May 1991 binational agreement to accelerate the development of a comprehensive border-wide environmental program operating within the lineaments of the 1983 La Paz Agreement: the Integrated Border Environmental Plan (IBEP). The IBEP draft was hastily produced by the U.S. Environmental Protection Agency (EPA) and Mexico's Secretaría de Desarrollo Urbano y Ecología (SEDUE) and circulated for review and comment in August 1991, with formal adoption following in February 1992.¹

Border environmental concerns were thus articulated in the NAFTA process in two arenas: the U.S. congressional hearings on NAFTA both before and since "fast track" approval in May 1991, and

¹ U.S. Environmental Protection Agency and Mexican Secretaría de Desarrollo Urbano y Ecología, *Integrated Environmental Plan for the Mexican-U.S. Border Area (First Stage, 1992-1994)*. Washington, D.C.: EPA, February 1992.

formal hearings and review of the IBEP proposals in the fall of 1991. Environmental advocacy groups appearing before the U.S. Congress and testifying at EPA-SEDUE hearings on the IBEP were largely critical of the potential impact of NAFTA on the border region and sought substantial safeguards to either be written into the NAFTA text or supplemental implementing language to the agreement. Border groups seized on the opportunity to criticize the extant framework for binational environmental management, with some demanding fundamental changes in the twin pillars of binational environmental management: the 1944 Water Treaty and the La Paz Agreement. The context of the national environmental organizations' border concerns, however, was a much broader agenda of environmental reform, one that linked bilateral trade to environmental conditions across the North American region. Among their various goals, environmental advocacy groups sought to harness the trade agreement to Sustainable development, provide safeguards for environmental protection -including stiff sanctions for failure to comply with national environmental laws- eliminate trade advantages on the basis of lax environmental enforcement, increase funding for environmental management in Mexico and the border region, and create new institutional structures for environmental management for both the trinational arena and the U. S. -Mexico border region.²

Environmental reforms aimed at the border region were from the outset treated by leading U.S. environmental organizations as a secondary priority in relation to the broader agenda linking trade to environmental protection in the NAFTA document and supplementals. This strategy was successful to the extent that "Sustainable development" was incorporated as a formal objective in the NAFTA text. Once NAFTA was signed by the foreign ministers in August 1992, influential advocacy organizations in the United States, to include the National Wildlife Fund, National Resources Defense Council, and others, concentrated their efforts on obtaining a supplemental agreement providing for a North American environmental commission with sufficient authority to enforce environmental legislation in each country.³ As a lesser priority, discussions on border environmental reform centered on ways and means of funding programs outlined or earmarked for development in the IBEP -the proposal for a

2 Stephen P. Mumme, "Environmentalists, NAFTA, and North American Environmental Management," *Journal of Environment and Development*, Vol. 2, No. 1 (Winter 1993): 205-220.

3 For discussion, see Justin Ward and Glenn T. Prickett, "Prospects of a Green Trade Agreement," *Environment*, Vol. 34, No. 4 (May 1992): 2-3.

new environmental commission for the border region was largely abandoned as the three nations reached closure on supplemental NAFTA accords.

In sum, then, debate on the NAFTA text and supplemental environmental agreement provided an important forum for the articulation of environmental concern related to the border region but failed to formally alter the pillars of the present management regime: the 1944 Water Treaty and the La Paz Agreement. Benefits to the border region come in the form of enhanced priority to infrastructural projects already anticipated by the two governments in the IBEP and prior commitments, and an umbrella of environmental protection through a new North American environmental commission that should reinforce national commitment to environmental protection in each of the NAFTA countries. While substantial, these benefits nevertheless fall well short of advocacy groups' agendas for reform through NAFTA, particularly on the U.S.-Mexico border.⁴

The Binational Management Regime on the Border

To better appreciate the likely impact of NAFTA on transboundary environmental management a review of the management regime now in force may be beneficial. As seen above, the present management regime rests on two pillars: the 1944 Water Treaty, and the La Paz Agreement.

The IBEP, adopted within the framework of the La Paz Agreement, is also thought by some to constitute a third management pillar and should be considered in this context. The 1944 Water Treaty, the oldest of these documents, commits the two countries to resolve through diplomatic channels disputes concerning the allocation of water on the Rio Grande and Colorado Rivers; commits the two governments to settle disputes over common sanitation problems in the border area; and establishes the International Boundary and Water Commission (IBWC) to administer these mandates.⁵ The 1944 Treaty is fundamentally and most importantly a water allocation treaty, dividing waters on the Rio Grande and Colorado Rivers

4 Stephen P. Mumme, "Environmentalists, NAFTA, and North American Environmental Management," *Journal of Environment and Development*, Vol. 2, No. 1 (Winter 1993): 214.

5 Treaty regarding Utilization of Waters of Colorado and Tijuana Rivers and of the Rio Grande, February 3, 1944, United States and Mexico, Stat. 1219, T.S. No. 994 (hereinafter 1944 Water Treaty).

between the two countries. The *Treaty* was never Intended to provide a broad framework for environmental management along the border and has since been interpreted very narrowly by the two governments with respect to its potential environmental functions.⁶ Under present interpretation following from a series of the IBWC'S formal journals, or minutes (most prominently Minute 242, 1973 and Minute 262, 1979),⁷ the IBWC'S jurisdiction extends decisively to questions of sewage and sanitation, substantially to water quality, including salinity problems, and uncertainly to groundwater problems, both quantitative and qualitative. Its jurisdiction in the area of water quality has been acknowledged in U.S. domestic statutes and subsequent binational agreements Including the La Paz Agreement and the IBEP.

The IBWC'S capacity to deal with a wide range of environmental problems is limited, therefore, and has been deliberately stunted by the two governments. The limitations are largely political, and grounded mainly in the fact that U.S. political interests benefitting from the water allocation functions of the 1944 Treaty are unwilling to reopen what is obviously a highly favorable arrangement. Within its limited powers, however, the IBWC has proven useful as a competent technical agency that designs and administers various sanitation and sewerage projects in the border area.

The second pillar of binational environmental management is the La Paz Agreement, signed in 1983.⁸ The La Paz Agreement was generated in response to the perceived shortcomings of the border management regime at the time, particularly the limitations of the IBWC in solving transboundary environmental disputes. It establishes a framework through which the two countries regularly consider pressing environmental problems across the full range of environmental media. Under the La Paz framework each of the two countries is represented by a National Coordinator who jointly oversee the development of the binational management agenda, and

6 Stephen P. Mumme and Scott T. Moore, "Agency Autonomy in Transboundary Resource Management: the United States Section of the International Boundary and Water Commission, United States and Mexico," *Natural Resources Journal*, Vol. 30, No. 3 (Summer 1990): 661-684.

7 Minute No. 242, Permanent and Definitive Solution to the International Problem of the Salinity of the Colorado River. T.I.A.S. No. 7708; Minute No. 261, Recommendations for the Solution to the Border Sanitation Problems. Reproduced In *California Western International Law Journal*, Vol. 11, No. 2 (Spring 1981); 233-235.

8 Agreement on Cooperation for the Protection and Improvement of the Environment In the Border Area, August 14, 1983. United States-Mexico, T.I.A.S. No. 10827 (hereinafter La Paz Agreement).

individually coordinate the activities of government agencies at the several levels of government in their respective countries. The Secretaría de Desarrollo Social (SEDESOL) and U.S. Environmental Protection Agency heads are presently designated National Coordinators for their respective countries. Regular annual meetings are convened to hear and discuss problems and receive input from interested groups and constituencies; functional subgroups meet more frequently to review conditions and generate policy proposals as the two countries deem fit. An "Annex" procedure allows the two governments to reach executive agreements resolving transboundary disputes under the agreement; five such Annexes have thus far been concluded by the two governments.⁹

Under this agreement the two countries have moved to resolve a number of specific problems to include sewage spills and smelter emissions and to build regulatory frameworks for hazardous materials trade and emergency planning along the border. Even so, the La Paz Agreement has been criticized by many environmental groups for its ad hoc approach to planning, failure to build in implementing mechanisms, particularly financial resources, lack of an ecosystem approach to environmental management, inadequate provisions for citizen participation, and the need for a more effective administrative mechanism to direct environmental planning and management along the border.¹⁰

The IBEP, in turn, represents an effort by the Bush and Salinas administrations to respond to various of the aforementioned criticisms. The IBEP operates within existing authority established by the 1944 Water Treaty and the La Paz Agreement and does not alter the basic framework for dispute resolution or planning along the border. Instead, the IBEP assigns greater binational priority to a range of specific environmental problems of a transboundary nature, specifies projects, coordinates inter-agency and interjurisdictional policy activities, targets funding, and provides additional mechanisms for public participation in

9 Annexes signed thus far address hazardous emergency contingency planning, transboundary transfers of hazardous waste, smelter emissions in the Sonora-Arizona border region, sewage management in the Tijuana-San Diego border region, and air quality management in the Ciudad Juárez-El Paso metropolitan area.

10 Stephen P. Mumme, "New Directions in United States-Mexican Transboundary Environmental Management: A Critique of Current Proposals," *Natural Resources Journal*. Vol. 32, No. 3 (Summer 1992): 539-562.

the form of binational advisory groups, local and border wide, reporting to the National Coordinator under the La Paz Agreement.¹¹

The IBEP, like the La Paz Agreement, has received considerable criticism from environmental organizations for failing to go far enough towards the goal of comprehensive environmental planning and building a more institutionally sound structure for environmental administration along the border. Many critics see it as an inventory of existing programs and projects conceived and implemented within the basic framework established by the 1944 Treaty and La Paz Agreement. Its principal institutional innovation, the Border Environmental Plan Public Advisory Committees, one for each country to advise their respective National Coordinators,¹² have yet to demonstrate their effectiveness in contributing to policy design and planning for the border region. In sum, the IBEP, while enhancing the attention and priority of border environmental projects, has little altered the basic system of problem identification and policy design.

This, then, is the practical context within which NAFTA must be analyzed. The NAFTA agreement impacts on the present border management regime in three ways: first, through rules specified in the formal text; second, through supplemental agreements; third, as a stimulus to bilateral diplomacy and cooperation in resolving binational environmental problems.

The NAFTA agreement itself, signed by the foreign ministers in August 1992, is not border specific, nor does it make particular reference to the border region. It impacts the border indirectly, subscribing to the principle that trade should promote Sustainable development, upholding the inviolability of domestic environmental standards, including local regulations which exceed national standards in stringency, and providing that the "burden of proof" apply to the party challenging an environmental regulation as a trade restraint, not the contrary.¹³ These measures collectively are meant to reinforce and protect environmental regulations in the tri-national region. In effect, they defend the extant environmental regime

11 U.S. Environmental Protection Agency and Mexican Secretaría de Desarrollo Urbano y Ecología, *Integrated Environmental Plan for the Mexican-U.S. Border Area (First Stage, 1992-94)*. Washington, D. C.: EPA. February 1992.

12 *Ibid.*, see Section V, p. 47.

13 North American Free Trade Agreement Between the Government of the United States of America, the Government of Canada, and the Government of the United Mexican States, Vol. I. Washington, D. C.: U.S. Government Printing Office, 1992. See, in particular, Chapter 1, on Objectives, and Chapter 7, on Sanitary and Phytosanitary *Standards*.

against possible erosion of regulatory norms by trade; they do not, however, extend the regulatory umbrella beyond its present reach.

Any amplification of the regulatory regime for the border environment is found in the recent supplemental agreement on environmental protection to which the three governments have subscribed.¹⁴ The supplemental agreement provides for the creation of a new oversight body, the Commission for Environmental Cooperation (CEC), empowered to receive trade-related environmental complaints from citizens and organizations and impose stiff sanctions, including fines and trade sanctions, should a repeated pattern of violation be found.¹⁵ The CEC would be comprised of a Council of cabinet-level representatives of the Parties, a Secretariat to serve the Council, and a joint Public Advisory Committee of five individuals to advise the Council. As conceived by the three governments, the CEC would provide a trinational forum that would foster public dialogue on environmental matters, strengthen domestic enforcement of national environmental laws, promote the greater integration and coordination of domestic environmental legislation in the trinational area, provide an organizational arena through which the governments develop and coordinate efforts to expand and strengthen existing environmental initiatives, as well as advising trade representatives of the contracting governments on environmental issues.¹⁶

It should be noted that this list of functions probably overstates what the CEC is actually capable of. CEC may submit policy proposals for the consideration of the member governments and is expected to generate annual status reports on the trinational environment, as well as policy recommendations. Its mandate includes considering and developing policy recommendations on “transboundary and border environmental issues such as the long-range transport of air and marine pollutants.” Nevertheless, it remains largely a reactive device and does not provide a means of directing or regulating development in the North American region or the border zones.

14 *Inside U.S. Trade*. “Special Report: NAFTA Draft Text on the Environment.” Washington, D.C., August 20, 1993:2-16.

15 Canada is partially exempted from the procedure for implementing sanctions. Under the supplemental environmental agreement, should Canada reject CEC sanctions against it, the CEC must take the case to a Canadian court, whose decision is final in the matter. See Keith Bradsher, “3 Nations Resolve Issues Holding Up Trade Pact Vote.” *New York Times*, August 14, 1993:A1.

16 The Clinton Administration, *The NAFTA: Expanding U.S. Exports, Jobs, and Growth: Clinton Administration Statement on the North American Free Trade Agreement* Washington, D.C.: Office of President, July 1993: Section VI.

Moreover, present language fails to stipulate how CEC will Interface with other pillars of the border environmental management regime or prescribe a division of labor that would alter present management routines.

Even so, CEC contributes to the border environment regime. As proposed, it would help protect domestic environmental regulations and, importantly, provide a new arena at the trinational level that would supplement existing management institutions along the border. While border-specific solutions would still be developed through the established pillars of the binational regime, they would be more likely to take into account concerns and initiatives advanced through CEC; they would certainly gain additional legitimacy in the process. Such conditions could only benefit efforts to generate policy and financial support for border -related initiatives.

While the supplemental agreement on environmental protection does amplify the existing management regime, it can be argued that the very process of reaching trinational consensus on NAFTA has had the greatest long-term impact on the border environmental management regime. Among the many consequents of the NAFTA process are the mobilization of environmental groups and the elevation of environmental concern aimed at the border region; the development, discussion, and adoption of the IBEP; and generation of numerous creative and useful ideas for improving transboundary environmental management, including innovative methods of financing border environmental projects. These impacts are not trivial and will have lasting effects on how the two countries manage their border environment.

The most important of these developments is, arguably, the stimulus given to the development of non-governmental environmental organizations (ENGO's) along the border. As recently as 1991 relatively few ENGO'S were active in the border region. Those few were mainly affiliates of national organizations, professional bodies, and university institutes with an interest in the border region. Binational, cross-border linkages between Mexican and U.S. groups were comparatively few. Since 1991, with the impulse from NAFTA, the border area has seen the proliferation and conscientization of organized groups around environmental themes.¹⁷ At present there is no comprehensive Inventory of border-centered environmental organizations for the U.S. and Mexico, and it remains unclear how

17 For discussion, see Cathryn Thorup, "'Citizen Diplomacy and Cross-Border Coalitions,'" *Enfoque*, Spring 1993: 1; Borderlines, "Arizona and Sonora Get It Together," Vol. 1, No. 3 (July 1993); 1 -5.

many groups have been created or how many actually exist. Evidence from public participation in the IBEP hearings and other border forums does suggest a substantial mobilization of new groups and the emergence of a number of cross-boundary organizational networks where few such contacts previously existed. The presence and activities of these groups are the surest guarantee that environmental issues will continue to receive sustained attention by the national governments.

The IBEP, as seen above, is also a product of the NAFTA debate. While justly criticized by various environmental groups for falling short of establishing a comprehensive, ecologically based management system, the IBEP has strengthened national commitments to environmental remediation along the border, particularly with respect to infrastructural projects aimed at improved sewerage and sanitation. New financing has been forthcoming for a variety of projects, with Mexico committing \$450 million USD for 1992-94 alone.¹⁸ IBEP'S consultative process, if not yet effective, does set a precedent for binational citizen consultation and accountability functions in policy design and implementation within the broader framework of the La Paz Agreement. These steps represent incremental progress in the direction most environmental organizations want to proceed.

The mobilization of environmental concern in the border community has also produced a wave of constructive criticism and a host of innovative ideas concerning border environmental reform. Both the IBEP and CEC concepts have been informed by the participation of these organizations. Responding to the NAFTA process, border groups have generated strategies for monitoring hazardous waste transfers, air and water quality, and other environmental threats to human health. They have proposed new financing mechanisms, created new forums for binational community collaboration, and critiqued proposals emanating from government agencies at municipal, state,

18 Embassy of Mexico, *Mexico Environmental Issues: Fact Sheets*. Washington, D. C.: Office of Press and Public Affairs, 1992. The U.S. and Mexico are currently pursuing another supplemental agreement that would create a Border Environmental Financing Facility situated, possibly, in the Inter-American Development Bank, with authority to Issue revenue bonds aimed at financing border infrastructure to improve the environment. Additional lending authority may be created at the World Bank directed at border projects. All In all, some 6-8 billion dollars may be forthcoming from these initiatives. See Keith Bradsher, "Buchanan Joins the Foes of Trade Pact," *New York Times*, August 27, 1993; and Office of the U.S. Trade Representative, "The Funding of Environmental Infrastructure Projects in the U.S.-Mexico Border Region." Washington, D.C.: Press Release, August 1993.

national, and international levels. Some of these proposals, particularly *some of* the financing schemes, may yet gain legislative support in conjunction with NAFTA approval.

In *sum*, while NAFTA (and the process from which it springs) has fallen short of environmentalists' expectations, it has nevertheless amplified the social and institutional framework for managing transboundary environmental problems. The perceived inadequacies of that framework in relation to present needs and those that are likely to be created as a result of NAFTA's economic impact on the border region suggest the need to look past the eventual outcome on the free trade agreement in order to strengthen the border management regime.

Beyond NAFTA: Prospects for Reform

With or without NAFTA, most development scenarios predict strong growth in the border region over the next decade and beyond.¹⁹ With NAFTA, an increase in transboundary commerce and transit is expected, accompanied by investment in production and commercial facilities related to the location advantages of the border in the new commercial milieu. Without NAFTA, growth will occur as a function of the sustained attractiveness of the "maquila" sector for investment in Mexico with somewhat more gradual increases in commercial and transit flows along the border. Regardless of the scenario, growth rates and development patterns will generate additional stresses on the border environment.

Against these trends, the adequacy of the existing management regime, to include NAFTA and its supplementary agreement on environmental protections, is a matter of controversy. Critics of the present management regime -Including its NAFTA- enhanced version -argue that it fails to provide a basis for comprehensive planning under a common administrative system; that it is not ecosystem-oriented; that it remains primarily a post-hoc dispute settlement process rather than a system of preventive maintenance and care and is, hence, incapable of directing patterns of border development in environmentally sensitive pathways; and that it is still unresponsive to border constituencies, lacking adequate channels for participation and influence by all relevant interests.²⁰

19 Office of the U.S. Trade Representative, *Review of U.S.-Mexico Environmental Issues (Draft)*. Washington, D.C., October 1991:58-67.

20 Stephen P. Mumme, "New Directions In United States-Mexican Transboundary

Each of these criticisms has merit. The present management system is not capable of comprehensive planning, though the IBEP has brought more unified vision to the gamut of environmental problems requiring attention in the border region. A large number of agencies on both sides of the border are engaged in the process of dispute resolution and the implementation of solutions, and the degree of interagency coordination, domestic and bilateral, varies considerably across problem areas. Ecosystemic planning and development is not at present a requisite of transboundary environmental management at any level of the regime. Environmental solutions have been sought as particular problems arose from the process of border development with virtually no long-term binational coordination of development planning for purposes of ameliorating environmental impacts -with the possible exception of transboundary cooperation related to some protected natural areas along the border. It is also true that various constituencies on both sides of the border perceive themselves to be excluded from the decision-making process in their respective countries.

Further development of the management regime to meet these objections is possible, but future reforms are likely to proceed incrementally as they have in the past. It is important to realize that the present regime represents the political limitations of managing environmental conditions across an international boundary that divides two very different societies. The present system has achieved a rather high degree of coordination and authority in a few narrowly delimited spheres and a fair degree of cooperation in a number of others. It is a diplomatically flexible system that accommodates the sovereign interests and national priorities of each country.

If wholesale change in the management regime is not likely, much can still be accomplished within the present system of institutions and procedures. A number of interesting proposals have been advanced for improving the planning and administrative process which call for the creation of a new binational commission for environmental management.²¹ As envisioned, the new commission would have a mandate to coordinate bilateral problem solving on

Environmental Management: A Critique of Current Proposals," *Natural Resources Journal*, Vol. 32, No. 3 (Summer 1992): 539-562.

21 Cliff Metzner, U.S.-Mexico Border Environmental Issues and Future Challenges. San Diego: Institute of Regional Studies of the Californias, July 9, 1993; International Transboundary Resources Center/Udall Center for Studies In Public Policy, Proposal for a U.S. -Mexico International Boundary Environmental Commission. Albuquerque: Transboundary Resources Center, School of Law, University of New Mexico, April 1992.

transboundary environmental matters, generate reliable and publicly accessible data, provide regular fora for public participation and the expression of environmental concerns, and provide an administrative arena for comprehensive analysis and planning that would take ecosystems into account as the basis for making management recommendations to the respective governments. The proposed commission would, in effect, assume and extend many of the functions now entrusted to the SEDESOL and EPA.

Such proposals should receive serious consideration and are achievable within the broader framework of the present management regime. There is nothing in the present management system that would preclude the establishment of such an agency except the political will to do so. The political limitations, in fact, are less restrictive than would normally be the case if a formal treaty were required. The agency could be chartered under the authority of the La Paz Agreement and established by joint presidential agreement without having to obtain the two-thirds majority of the U.S. Senate necessary in the case of formal treaties. Legislative support would be necessary in both countries to implement the arrangement, but that is a lesser obstacle than gaining the support of a two-thirds majority of the members of the U.S. Senate.

Should the two nations fail to agree on the form and functions of such a binational commission, there is still ample margin for reform in the context of the current management regimes. Various sections of Article 24 of the 1944 Water Treaty, for example, lend themselves to new interpretations that would give the IBWC a broader planning mandate and enhanced regulatory and enforcement powers.²² Similarly, Articles 2, 24, and 25 could be used to extend the IBWC'S consultative mandate and require greater public participation in its proceedings.²³ The La Paz Agreement also accommodates further

22 Article 24, Section A) provides the IBWC with authority "to initiate and carry on investigations and develop plans for the works which are to be constructed or established in accordance with the provisions of this and other treaties or agreements in force between the two countries"; Section C) gives IBWC power "to exercise and discharge the specific powers and duties entrusted to the Commission by this and other treaties and agreements in force between the two countries, and to carry into execution and prevent the violation of the provisions of those treaties and agreements."

23 Article 2 provides that "the Commission or either of its two Sections may employ such assistants and engineering and legal advisers as it may deem necessary." Article 24, as seen above, gives IBWC power "to initiate and carry on investigations and develop plans." Article 25 empowers IBWC to "establish a body of rules and regulations to govern its procedure, consistent with the provisions of this Treaty and of Articles III and VII of the Convention of March 1, 1889 and subject to the approval of both Governments."

improvements. The present system is already flexible and can accommodate further development of the planning process. Additional enforcement functions can be built in through the Annex procedure; participation and public information demands can be met by extrapolating from the authority of Articles 9 and 16 which respectively address these topics; and greater interagency coordination can be accommodated through the present language of the agreement or further specification through annexes if necessary. Moreover, the La Paz document allows formal amendment of the agreement should that prove necessary and desirable by the two governments.

In conclusion, the NAFTA process has modestly amplified the current management regime for the border environment and significantly augmented the short-term financial resources directed at environmental improvement in the border area. Should the supplemental environmental agreement become law, the management regime will be further amplified with the additional prospect of a more institutionalized commitment of funding for environmental Improvements in the border region. These changes, however, will not and cannot be expected to satisfy the range of environmental concerns and criticism of the present management regime. The current system falls well short of the type of comprehensive environmental management most environmentalists would like to see put in place. Environmentalists have reasonable doubts about the adequacy of the present system to cope with the additional stresses likely to be generated by NAFTA, since most credible analysis expects NAFTA to accelerate development in the border region.

With or without NAFTA, however, growth in the border region will continue to challenge the capacity of the present binational system for managing transboundary environmental problems. If wholesale reform of the current regime is not possible, incremental reform within the present institutional context is. A number of windows of opportunity are available which can be used to improve and respond to criticisms of the current system. As environmentalists look beyond NAFTA, the next phase of border environmental reform is likely to come through these more prosaic political processes, involving the crafting of strategic, binational alliances with agendas that aim at reinterpreting, amending, and extending the reach of the present management system. Fortunately, the recent mobilization of environmental concern in the border region improves the prospect that these strategies will succeed.