
SUMMARY OF PLENARY SESSION #3: ORGANIZING FOR ENVIRONMENTAL COMPLIANCE AND ENFORCEMENT

Moderator: Adriana Bianchi
Rapporteur: Piet Müskens

1 INTRODUCTION

This panel examined the issues of “good governance” that are intimately tied to the fair, predictable, and consistent application of the law by enforcement authorities. Panelist explored mechanisms and strategies for developing well-written, enforceable legal requirements.

2 PRESENTATIONS

Maria Eugenia Di Paolo of FARN (Fundación Ambiente y Recursos Naturales) in Argentina described the legal framework on hazardous waste in Argentina. The Hazardous Waste Statute dates from 1992 before the Constitution Amendment of 1994. Currently 38 % of the 23 provinces have not implemented the statute. Formal and informal coordination structures between the Federal bodies and the provinces are needed to fill the gap because of outdated legislation. A plea was made to institutionalize and formalize coordination and organization structure of hazardous waste enforcement by sharing coordination and supervision between the Federal Authority and the Consejo Federal del Medio Ambiente (CoFeMa)

John Cruden of the US Department of Justice described the framework of enforcement in the USA as a pyramid. The broad base level consists of the people “in the field”, including the government investigators, non-governmental organizations, and citizens. The middle level consists of state administrative agencies. The top level consists of both civil and criminal enforcement. Enforcement is important to protect human health and environment, to reward compliance and deter non-compliance.

Finally, enforcement is critical for “good domestic governance” for several reasons, inducing:

- citizens need to have confidence that non-compliers are dealt with in a proper way;
- businesses need to have confidence that the government is acting consistently, and
- by setting a good example and by consistent enforcement Good Governance must be noticeable in behavior of government, businesses and all the citizens.

Waltraud Petek of the Federal Ministry for Environment, Youth and Family Affairs in Austria described the process of defining and developing environmental requirements. The regulatory chain for setting environmental requirements goes through legislation; implementation; compliance control; compliance promotion; enforcement; and assessment and feedback. The development of clearly defined environmental requirements needs careful constitutional, legislative and administrative policies. In this law making process, a thorough analysis of the problem and identification of possible solutions based on the most recent knowledge and technologies need to be identified, whereas in the decision making, all relevant stakeholders need to be involved, so that the relevant interests are considered. To act effectively, the enforcement authorities must have the proper tools, including procedures, compliance monitoring mechanisms, statutory reporting requirements, and criminal and civil sanctions.

3 DISCUSSION

Question from Dr. B. Sengupta

(India): How can balance be determined between administrative enforcement and judicial enforcement? Due to enforcement of air pollution demands for vehicles the use of buses was forbidden and consequently school had to be closed.

Answer by John Cruden: In fact there are two questions. The first regards the balance between administrative and judicial enforcement: To answer this question for the USA, judicial enforcement has "greater teeth". If one does not comply, he can even go to jail. It is more stringent than administrative enforcement but also more time consuming. Administrative enforcement can lead to quicker environmental results.

The second question refers to the "buses problem". In general the question is "How do you bring someone back in compliance without disrupting society". This may be achieved to set milestones to get in compliance. This can give assurance that compliance is achieved without disruption of society. Be careful that enforcement does not lead to this kind of disruption.

Answer by Waltraud Petek: The balance between administrative and judicial enforcement depends on the system in the countries. In Austria, administrative enforcers have the authority to close industries by administrative law and do not have to go through court. This can lead to quick overcoming of environmental problems.

Answer by Maria Eugenia Di Paola: Administrative and judicial enforcement are different instruments. However, they should be coordinated, since different government bodies are involved. For this in Argentina, guidelines for coordination between the different bodies are needed.

Question from Dr. Silvia Nonna (Argentina): Administrative enforcement authorities are not political authorities. The National Federal Register is an example of an enforcement authority. It is useful to state that the hazardous waste law is an example of an outdated law. Your presentation depicted clearly what an outdated

law can bring for a country. Environmental law should be updated at the time. This brings me to my question whether an administrative authority may step aside with an outdated law.

Answer by Maria Eugenia Di Paola: At the moment the Federal Register has to deal with an outdated system, which does not meet enforcement requirements. Therefore the enforcement possibilities are limited. My plea is to involve the Federal Register in building of coordination. Scope of executive power: think about how to draft laws? Authority with experience: consensus building process; opinion of officials who enforce the law: Share between authorities and include enforcement.

Remark by George Kremlis (European Commission): Better law making is an important message. However laws and law making is extremely difficult. Policy makers who try to make laws with a holistic approach make life difficult. Therefore it is extremely useful to involve people with experience in execution and enforcement of laws in the process of law making. In proposals for new laws the consequences for execution (e.g. the calculated costs for implementing laws) and for enforcement should be taken into account.

Answer by John Cruden (USA): Indeed enforcement people should be involved in the legislation process. But don't wait for a perfect law to enforce. There will never be one!!!

4 CONCLUSION

Good governance is intimately tied to the fair, predictable, and consistent application of the law by enforcement authorities. Well-written and enforceable legal requirements are critical to good governance. Therefore, INECE should help develop the enforcement capacities of legislators and rule makers around the world.