

CREATING PUBLICS TO DECIDE AND MAKING ALIANCES THAT WORK: how policy designs shape public participation to influence the work of international organizations in North America¹.

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In this essay I analyze the effects of the policy designs that created the North American Commission for Environmental Cooperation (CEC) and the Border Environment Cooperation Commission (BECC) on the emergence and participation of Non Governmental Organizations to influence policy within the framework of cooperation negotiated in parallel to the North American Free Trade Agreement. The study is based on interviews with members of Nongovernmental Organizations (NGOs) working on environmental issues in North America, and analysis of documents produced by CEC and BECC such as guidelines for public involvement in policy making and reports of the progress made in bringing the public to influence policy. The study analyzes the impacts of the two organizations by looking at two outcomes that lead to a differentiation in the level and scope of public involvement in North America. These outcomes are, first the emergence of a particular form of NGO work focused on influencing policy rather than expanding public participation, and the process of coalition formation among less experienced community groups and more experienced international NGOs. The paper shows that both outcomes are the logical result of the way public participation has been framed in the statutes that created CEC and BECC in areas such eligibility and process of public engagement.

INTRODUCTION

The impact of policy designs on the democratization of policy making has been addressed in the literature as a key aspect to understand why and how people participate in public debates and decision making processes. Designs may foster or inhibit coalition formation they may divide the public by treating different groups as competing players. Designs may target specific groups as the recipients of opportunities for participation. This essay uses this approach to analyze how the creation of two international organizations in North America has shaped the strategies used by non government organizations and the public at large to influence environmental policy after the ratification of the North American Free Trade Agreement (NAFTA).

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For this purpose I analyze public documents and the opinions of representatives of non governmental organizations who have been involved in the creation and/or operation of the Border Environmental Cooperation Commission (BECC), a binational institution created to address environmental problems in the United States-Mexico border, and the North American Commission for Environmental Cooperation (CEC), a trilateral institution that has the mission of monitoring enforcement of environmental legislation in the three countries of North America.

The approach used here is straightforward in the sense that it seeks to understand whether the designs of both institutions have contributed to create the conditions for comprehensive and democratic public involvement in policy design and implementation. I also want to explore what aspects of such designs should be changed to enhance the public capacities needed for a more effective and democratic participation. For this purpose, I use summaries of contributions of representatives in public debates of the operation and work conducted by the two organizations, statistics showing public perceptions derived from extensive surveys, notes taken during meetings of environmental organizations and the feedback provided by representatives of NGOs on a survey conducted for this research.

Results of the analysis conducted, are presented here in five sections. First I provide the background on the role of environmental activists in the creation of the two organizations and in the design of the rules and procedures for public involvement in the operation and mandate of such organizations. In the second section I analyze the existing guidelines for public participation and how they have evolved as a result of public pressure. The third section focuses on the issue of social pressure and design creation as a key aspect for the future of public participation. The fourth part addresses the issue of coalition formation and orientation of public participation as two key consequences of the implementation of the existing policy design. Finally in the fifth part draws some conclusions from the study and the implications for institutional reform.

I TWO INTERNATIONAL ORGANIZATIONS FOR ENVIRONMENTAL COOPERATION.

The 1980s and 1990s were a period of intense negotiations to create international institutions designed to foster economic integration in North America. During the negotiation process of the North American Free Trade Agreement (NAFTA) two key controversial aspects were the environmental impact of NAFTA, and the role the public should have in the new international institutions created to deal with the side consequences of the agreement.

The negotiation of the parallel agreements to NAFTA that culminated with the creation of CEC and BECC has been widely recognized as an important landmark in international trade negotiations. This was the first time that negotiators from three countries embarked in an extraordinary effort to incorporate environmental concerns into trade negotiations. Observers and participants of this process recognize that civic participation played an important role in this outcome. Community groups, who had no experience in participating on the international arena, joined forces with large and experienced organizations to raise public concerns about the consequences that intensification of international trade could bring to North America. NGOs played a role on the signing of parallel agreements by exercising public pressure on the negotiating governments and also by participating in the design of the environmental package. (Paquin, Mayrand and Sbert, 2003). For the first time in history of trade negotiations, social activists made a strong claim for the opening of the process and to make international institutions more accountable to social needs giving more power and participation to the public in the implementation of international agreements. Environmental and labor groups forced the governments to include environmental safeguards to NAFTA and gained new institutions and programs (Mumme, 1999).

Two institutions emerged from this process as the platforms to address public concerns during NAFTA's implementation stage. At the regional level, the North American Commission for Environmental Cooperation (CEC) was established as an international body responsible of investigating nonenforcement of domestic environmental legislation and to facilitate public participation in monitoring compliance of environmental legislation and the consequences of free trade on the environment.

A second institutional package was created to address environmental concerns in the United States-Mexico Border, this package include two sister institutions, the North American Development Bank, and the Border Environmental Cooperation Commission (BECC). Under the provisions of NAFTA's side agreement that created it, BECC was defined as the body that would guarantee public participation to the approval process of infrastructure and environmental projects for the border region.

While not fully successful, considering the high bets of the most ambitious organizers of public participation, the environmental movement could claim victory when the two agreements were ratified by the countries involved. The central elements to call this a successful story were the space opened for public advisory bodies within the structure of the new organizations, the inclusion of a criteria of public participation for certification of infrastructure projects in the U.S.-Mexico border region, the creation within CECs Framework of a procedure for public submissions regarding lack of enforcement of domestic environmental laws and the opportunity to establish rules of procedure for public participation within CEC and BECC operational procedures. A link was established between public participation and organizational operation. This link is the policy design that governs the operation of the two agencies and the way the public participates.

II DESIGNING PUBLIC PARTICIPATION IN NORTH AMERICAN ORGANIZATIONS.

Long time experts on the evolution of public policy analysis, Schneider and Ingram have made a strong case in favor of looking at policy designs when searching an explanation for observed policy outcomes. Designs, they say, are "observable phenomena found in statutes, administrative guidelines, court decrees, programs, and even in practices and procedures of street level case workers as they interact with policy recipients" (Schneider and Ingram, 1997). Policy designs can be empirically analyzed since they "contain specific observable elements such as *target populations*, (the recipients of policy benefits or burdens) *goals and problems to be solved* (the venues to be distributed), *rules* that guide or constrain action), *rationales* (that explain or

legitimate the policy), and assumptions (logical connections that tie the other elements together)” (Schneider and Ingram, 1997).

The reasons of why participants in an policy design effort produce a particular design has been addressed as a problem of consensus building in which each side brings different interests and tactics to the negotiation table so the outcome possibilities are open-ended and do not discard the possibility of reaching consensus on the minimum common denominator (Susskind, 1994, Young, 1994). Both regime theory and consensus building literature offer explanations as to how certain provisions are accepted and how different negotiators may have a huge influence on the outcome. In his book on environmental diplomacy, Susskind (1994) proposes that given the nature of the open-ended system of international negotiations “unofficials” particularly nongovernmental organizations have crucial roles to play in a negotiation process. Unofficials serve as scientific advisers or information gatherers, they can be advocates, mobilize public opinion, press heads of state to advance an issue, make negotiations more democratic and promote new policy approaches.

Regarding the specific question of why the public is not given more power on the statutes, laws and international agreement implementation procedures, both, regime theory and consensus building literature seem to agree on one point. Designs produced on an international negotiation need to be acceptable for agents and principals of the participating nations. This requirement undercuts the possibility of negotiators to give more room to non governmental actors. A second explanation offered by the literature on diplomacy is that, regardless of the transformation observed on international negotiations, the public is still poorly represented so, not surprisingly, designs produced are closer to the interests of power holders in each nation who are better represented by official country negotiators.

A comparison of two designs

CEC and BECC are two separate outcomes of the same broad trade policy debate. There are important differences in the way public participation is framed in each of the regimes and procedures of both organizations. CEC is defined as a monitoring agency to check and oversee enforcement of domestic

environmental legislation in the three countries of North America. BECC is an entity that is part of an organizational structure aimed to deliver funding for environmental projects in a carefully defined territory that extends along the U.S.-Mexico Border. As Table 1 shows, the differences go beyond the territorial definition of its target population.

CEC frames public participation as a multitask process aimed to enhance enforcement of environmental legislation. According with evaluations of ten years of operation have recognized that it has opened prominent opportunities for public participation such as participating in consultations, roundtables and public meetings, addressing the ministers and submitting petitions under the process on enforcement matters (Paquin et al. 2003). The policy design that opens space for public participation within CEC's framework is composed of a few key elements. The most important is the citizen submission process. The scope and limits of this procedure are established by the North American Agreement on Environmental Cooperation (NAAEC). Articles 14 and 15 of this agreement establish that the public can participate in triggering investigations regarding nonenforcement of the environmental legislation of each country.

In addition to this procedure, CEC has the Joint Public Advisory Committee (JPAC). The mission of JPAC is defined in Article 16, and includes the tasks of providing advice to the council on any matter within the scope of the agreement, provide information to the secretariat, and to receive the proposed annual work program and draft annual report at the same time as the council. Its members are named by council members (Mexico and Canada) or by the President (United States). JPAC also has the mission of ensuring public participation and transparency in all type of actions of the commission. It works by consensus and in its ten years of experience it has issued 79 recommendations to the council. JAPAC is well positioned to oversee what the commission does. It has direct access to the Council and Secretariat, it can organize workshops on sensitive issues, participate in developing a regional agenda and identify priorities. (Dannenmaier, 2005).

Within BECC's framework, public participation is defined as "Interactive involvement by individuals or groups who reside in an affected community, or other individuals or groups interested in the project." (Border Environment Cooperation Comisión Project certification criteria) It defines the concept of

nongovernmental organization in a very comprehensive way. An NGO is “Any scientific, professional, business, non-profit or public interest organization or association which is neither affiliated with, nor under the direction of, a government.”

BECCs framework for public participation has received important endorsement from environmental organizations in both sides of the border. Nevertheless, its performance has not escaped criticism. In 2001, the BIOS project released the results of a survey conducted in the two countries¹. The survey showed that BECC’s contribution to public participation was rated better than it did in other areas, however this rating was not higher than 7.4 in a 1 to 10 scale. Furthermore, Mexican respondents gave it a lower rate than the general public. Comments posed by the participants in this survey included observations regarding the need to improve the participation process, to enhance its structure to adequate it to a binational setting, to expand the demand for public discourse that might change final decisions, to expand its scope and to move participation beyond its formal character to bring public participation in the project development phase and not just call it to rubber stamp decisions that have already been made by either institutions, particularly in the case of Mexico (BIOS, 2001).

A comparison of the two cases reveals that both frameworks assume that public participations should play an instrumental role in environmental policy implementation without actually transferring any control to the public. When asked to compare the two institutions, representatives of NGOs and academics provide information that makes it difficult to decide which organization has the best framework to encourage public participation.

Some informants argue that BECCs is better because “the region nature of its focus makes it hugely more accessible”². Others think that in this organization, public participation was a farse from the very beginning and has not got better over the years. Quite the opposite, activists have become disenchanted with this framework and demand changes to restore its credibility and legitimacy.

For others, CEC has a better framework because it has created a better structure of working groups with a specific goal and open to public participation.

The legitimacy of such a structure comes from the way the process is organized. An active participant on the process puts it in these words:

“Leadership of some of these groups is in the hands of personalities from the civil society who have connections to social networks who serve to spread the voice about projects and infuse interest on the themes, and are able to support the calls for participation made by the secretariat. (CEC) has a well nurtured program of annual meetings to which people can assist with total or partial support from CEC. CEC has a sensational communication instrument through their web page and has JPAC to make sure that public meetings dealing with all the areas of social interest take place, and to conduct those meetings with the goal of involving civil society”³.

From an analytical perspective, the problem to assess the contribution of these organizations to the enrichment of public participation based on the perception of the activists involved is that different constituencies have developed along each international organization, so public representatives tend to evaluate better the framework they are more familiar with. The problem is even more difficult because public support has not been equally welcomed in the two organizations. According to one of the activists who answered the survey, in the case of Mexico, the government has been more supportive to public participation in CEC activities.

III SOCIAL PRESSURES FOR INSTITUTIONAL CHANGE.

The CEC and BECC institutional designs for public participation had experienced some changes since they were originally created ten years ago. The evolution of both regimes is the result of controversy about the scope and aims of public participation, and the way it is processed in each agency. Some issues have been constantly the subject of debate almost from the day after the frameworks were ratified. Among these is the actual recognition given to the importance of public participation and its inclusion in the decision making procedures of the newly created organizations. New issues keep emerging as the public gains experience and the organizations learn to process public participation in a more expedite and comprehensive way.

Public ratings of BECC's Performance in selected areas (In a scale of 1-10)					
	Average rating, all respondents	Average rating, Mexican respondents	Average rating, U.S. respondents	Average rating, border region respondents	Average rating, non-border respondents
Certifying projects	6.9	7.1	6.9	7.2	6.6
Promoting new projects / Technical assistance with project development	6.5	6.5	6.5	6.6	6.4
Promoting more sustainable development on the border / influencing development policy	6.0	6.2	6.1	6.5	5.2
Improving public participation in development related / environmental decisions	7.2	7.1	7.4	7.4	7.3
Source: BIOS, 2001. "Public Assessments Regarding the Performance of the Border environment Cooperation Commission (BECC) & North American Development Bank (NADB): A Survey Conducted by the Border Information & Outreach Service."					

CEC and BECC Two institutional designs for public participation		
Design component	CEC	BECC
Goal and problem to be solved.	<ul style="list-style-type: none"> Maximize public involvement to ensure open and effective dialogue and engagement among all sectors of the public. Optimizing public involvement in the work of the CEC as well as for increasing the public's understanding of the CEC's role, mandate, and program and budget. To structure participation such that it contributes to the CEC's consideration of the merits of the issues. 	<ul style="list-style-type: none"> Lack of public participation in project evaluation for environmental infrastructure projects.
Target population	<ul style="list-style-type: none"> Stakeholders who are interested or affected by issues addressed by the CEC. All persons, organizations or groups of people in North America. 	<ul style="list-style-type: none"> The public impacted by environmental infrastructure projects in the border region. Entities submitting a project for public application.
Implementation structure	<ul style="list-style-type: none"> Circulating documents for comment, providing for exchanges via the Internet, and offering formal participation through structured public meetings, such as the annual Regular Session of Council and JPAC regular sessions. JAPAC as the entity to channel public participation. National and Governmental Advisory Committees. CEC Secretariat coordinates logistics for public participation in all CEC activities. 	<ul style="list-style-type: none"> A board of directors who can receive complaints from groups affected by projects approved or assisted by BECC. (2) This board of directors has ten members, five from the United States and five from Mexico. General manager, Deputy general manager and Staff. An Advisory Council The applicant must develop a local steering committee or utilize an existing committee. This steering committee must be made up of representatives from diverse organizations.
Tools	<ul style="list-style-type: none"> Mandatory actions to the agency to enhance accessibility and information available. Resources are available for public participation. 	<ul style="list-style-type: none"> Applicants must submit and implement a BECC-approved Community Participation Plan. Applicants must submit a report to the BECC demonstrating public support for the project. Applicants must submit a report to the BECC demonstrating public support for the project.
Rules	<ul style="list-style-type: none"> There are three levels of participation. Full participation in a public meeting, observer, observer and invited guest as member of a specific group. Certain meetings may be closed to the public. In order to participate, citizens should go through a process of registration that may change from one meeting to another. Some citizens may receive financial support to participate. Decisions are taken by CEC committees and work groups, based on work program and budget. Only on person per organization may receive support. To receive an invitation it is require to "represent the view of a group", demonstrate expertise with the topic and ability to present specific, concrete and constructive proposals. Rules defining the sequence to have a public meeting. Oral comments and writing comments are possible. The principle of first come first serve basis is used. 	<ul style="list-style-type: none"> All meetings of the board of directors are open to the public. Any person who wishes to attend a public meeting of the Board of Directors is encouraged to register with the General Manager of the Commission. Registration may take place by telephone, fax, electronic mail or in person at the Commission's offices, after public notice of the meeting, and up to the day of the meeting, at the place of the meeting. All written comments from the public regarding a project, shall be considered by the Commission's Staff, and shall be forwarded to the Board of Directors and Advisory Council, as long a such comments have been received at least ten days prior to the date of the meeting at which the project will be considered for certification. A Community Participation Plan consists of a local steering committee, meetings with local organizations, public access to project information, and at least two public meetings. A steering committee must invite representation from both countries if the proposed project is located in and/or impacts both the United States and Mexico. The applicant must meet individually with local organizations affected by the project to provide information on and develop support for the project. Public access of information should be guaranteed in a timely manner.

		<ul style="list-style-type: none"> • Participants in public meetings are entitled to right to know, participate and his comments be recorded. • AL communities affected by a project should be informed and invited to the meetings. • Projects seeking the recognition of high sustainability must also submit the following: <ul style="list-style-type: none"> - post certification participation plan. - Self help or voluntary work program. - Education program. - Other development characteristics related to public participation.
Rationales	<ul style="list-style-type: none"> • The existence of an organization such as CEC creates opportunities for the participation of the public. • The region needs equity for participation. • Efficiency and timeliness enhances the potential for public participation to make a difference. • Transparency and language accessibility provide equal opportunities. • The public is a good monitor of environmental enforcement. • Providing funds for public participation provides equal opportunity. 	<ul style="list-style-type: none"> • Public participation will produce better projects. • Public pressure leads to environmental responsibility.
Assumptions	<ul style="list-style-type: none"> • Information improves the understanding of the public of the CEC's role, working program and activities as well as its identified priorities. • Education and empowerment are essential for resolving environmental problems and participating in environmental decision-making. 	<ul style="list-style-type: none"> • Local governments have the capacity to implement participatory processes. • Opportunities will attract participants. • It is possible to separate participation along international boundaries.
<p>Documents consulted:</p> <p>(1) CEC, "Framework for Public Participation in Commission for Environmental Cooperation Activities", Oct. 22 1999. http://www.cec.org/files/pdf/PUBLICATIONS/GUIDE19_en.PDF.</p> <p>(2) Protocol to the amendment to the agreement between the Government of the United States of America and the government of the United Mexican Estates Concerning the establishment of a Border Environment Cooperation Commission and a North American Development Bank, signed November 16 and 18, 1993. Signed, November 26 2002.</p> <p>(3) Border Environment Cooperation Comisión Project certification criteria. http://www.cocef.org/Certification_criteria.pdf</p> <p>(4) BECC Procedures Regarding Public Notice. http://www.cocef.org/brules.htm (public notice).</p> <p>(5) Border Environment Cooperation Commission Procedures Regarding Complaints Form Groups Affected by projects. . http://www.cocef.org/brules.htm (complaints)</p> <p>(6) "Guidelines for Citizen Submissions on Enforcement Matters under Articles 14 and 15 of NAAEC,"</p> <p>(7) JPAC Public Consultation Guidelines,</p> <p>(8) North American Fund for Environmental Cooperation Administration and Funding Guidelines.</p>		

A review of debates regarding specific issues addressed by these organizations provides an answer to the question of which aspects of the design are more likely to change as a result of public pressure. Given the changes observed, it is fair to say that the process has faced soft and hard issues, with the later being those on which changes are more difficult to process within the international agreements that created the two organizations.

Soft issues

These are topics on which debate has been less intensive, positions less radical and consensus is deemed reachable by making small changes on the policy design. Consensus seems to be easier to build on these issues because the changes needed do not challenge the basic tenets contemplated in the international agreements. They are soft, either because it is easier to gain large public support for the suggested changes or because the burden imposed by the change is evenly distributed among a large number of players. Examples of this type of situations have occurred in regard to different policy elements. Following are examples observed in each organization.

Rules.

The central aspect of CECs provisions for public involvement and the issue that raises more questions for the public is the extent to which the citizen submission process under Articles 14 and 15 provide with enough room for citizen participation on law enforcement. This process has been characterized as a unique rule comparable to nothing else anywhere in the world. Nevertheless, it has received some critiques and pressures to change it. When the board of directors introduced a proposal to establish a working group to deal with issues of Interpretation, the proposal ignited a controversy and opposition. The public has participated in the defense of the original provisions and has called for revisions aimed to make easier for the public to participate in law enforcement matters. The list of observations made to this process includes demands for:

- Clarification of concepts such as “other remedies” or “environmental damage and harm”, “transparency,” “independence,” “objectivity,” “discretion,” and “exhaust”.
- Not to increase barriers to reach the submission process.
- Increase transparency and openness.
- Public distribution of fact findings and no restriction by the parties involved.
- Guaranteeing independence to the Secretariat to collect data and ask questions of government.
- The Parties want to have more control over the fact finding.

Other critiques argue that within CECs framework, citizen initiated complaints face several procedural obstacles and may be terminated by the commission at any point for numerous reasons. It has also been claimed that the Secretariat should monitor and assess its citizen submission process and to expand the support and enhance citizen access to the procedures (Mumme, 1999). In response to these comments, in the ten years of work of the Commission, JPAC has developed guidelines for the citizen submission process and NAFEC grant applications to tackle these problems (Report, 2004).

The inclusion of public participation as a certification criterion has received good evaluations, but its application has drawn some critiques. In its 2001 report, BIOS showed that respondents of the survey conducted in the two countries gave a 7.9 rating to the importance of this criterion. On a 1 to 10 scale border residents gave higher rates to public participation than non border residents.

Whitin BECC.s framework a controversy arose around the concept of public involvement. In this case, activism focused in expanding the concept of public involvement and to set the rule that an entity submitting a project must show more that public acceptance of a project and demonstrate public support. This was an issue supported by different organizations. A person who participated in the battle over how to involve public participation comments that

“The process was a highly politicized one from its inception. The possibility of disposing of millions of dollars made some to lose their mind so the process began with no credibility and highly contested by the public. By the time they opened the doors to public participation, NGOs had to work hard to bring transparency to the process, modifying the internal rules, finding resources to attend the meetings because the board of directors refused to provide funds for public participation. Mexican NGOs had to make an extraordinary effort to equate public participation with that observed in the U.S: where organizations had more access to information, and the possibility to follow the process. In a couple of months we managed to change that, and increased public participation. Unfortunately the board of directors´ soberbia was severely damaged when their lack of transparency and commitment with social well being was demonstrated once and again, so as soon as they had the opportunity they started to weaken public participation until almost anulating it. In consequence we lost trust on the process”⁴

Tools. Both CEC and BECC have used interesting tools to expand public participation. These include specific requirements for project proposals as well as rules of procedure to guarantee public access to the different type of meetings of the board of directors. The progress made in the task of solving controversies on this topic can be found in both organizations.

CEC's funds for this purpose have increased participation. The JAPC, 2000 session report, showed that on the issue of the future of North American Fund for Environmental Cooperation (NAFEC), there was a strong public support because it allowed the engagement of grassroots participation in the CEC. (Commission For Environmental Cooperation, 2000).

Other demands such as increasing regulatory presence in selected territories and regions have observed however less progress. The idea of expanding citizen suits provisions has been demanded by the public in JPAC meetings with the argument that suit provisions are a great tool for public involvement because they force government to provide resources and expertise and promote integration of the best available science. So far this strategy has used more intensively in the U.S. than in Canada or Mexico. They have been used as an effective means for citizens to stop violations of environmental law and activities that have adverse environmental effects. This solution is regarded by activists as is an expensive and risky process that forces activists to pick the battles. (CEC 2000).

Implementation structures. The criticism here is focused on how treaties are implemented in the various targeted areas defined by the policy designs. NGOs have claimed that treaties alone do not guarantee protection and broad advisory structures are inadequate to address problems such as competition of access to resources (CEC, 2000).

One of the solutions attempted is the signing of collaboration agreements between NGOs and enforcement authorities. Some progress has been achieved with this solution but others are still waiting for a better approach.

Hard issues

These are controversial issues which appeal to deeper concerns of some groups or some individuals. Debate tends to be more contested and consensus seems to be harder to reach given the distributional impacts a decision may have. They are also hard because considering such issues and providing a solution to the problems identified by social activists is more complicated to the extent of having to undergo a full modification of international treaties in an

international scenario where some players have little if any, incentives to identify options that may seem attractive to other players.

Goals and problems to be solved. The charters and procedures of the two organizations include several provisions intended to solve the problems related with public participation. Regarding this issue, criticism and problems have emerged on two key fronts.

- **Linking participation to the solution of environmental problems.** The problem here is that disagreement emerges when it comes to the actual definition of the goals and what do the organizations need to do to achieve them. For example, it has been reported that while ecologists from both sides of the border seem to have no problem to agree that sustainable development refers to the bioregion and its carrying capacity, big differences appear when it comes to define the application of that definition. This has led to the suggestion to form binational working groups to address various issues of concern, including sustainable development and how to define rules and procedures to achieve such goal. One serious challenge is that, to deal with this situation, it is required to provide capacity building to assist participants to have a better understanding on issues such as pollution, resource management and policy making. But, as shown below, doing this is rather problematic.
- **Helping the public to shape agendas.** Representatives of NGOs have indicated that access to information laws have failed to solve the problems the public has in determining which companies are involved are violating the law. They have insisted that “there is a difference between formal rights and actual rights of access to information” (CEC, 2000). As a result of this, only few interested players have been able to keep the pace of operation of the new organizations and some who had an active participation in the early years have returned to their every day routines and to work on what they think is the substantive work.

Goals and problems to be solved. This issue has been addressed as part of the debate over mandate expansion of the two organizations. Under the original

charters of CEC and BECC, the two organizations have a defined scope of action.

In the case of BECC, an important demand for mandate expansion came from the board of directors of NADBANK in 2001. They wanted to increase the institution's geographic scope of operations arguing that such an expansion would enhance their ability to make loans to communities. While geographic expansion was voted down by the bank's binational board, in early 2001 NADB was given authorization to finance projects that included industrial and solid waste projects. Initiatives to expand the mandate raised concerns among environmentalists in the region who argued that such an expansion meant fewer dollars and less attention to environmental concerns associated with free trade between the United States and Mexico and to the border region. (BIOS,2001)

Target populations. This has been perhaps one of the most contested elements in the policy designs of the two organizations. Some salient issues of the debates are:

- **Mandate expansion.** This has been particularly crucial for the case of BECC. While some regard mandate expansion as an opportunity to include serious problems in regions beyond the 200 kilometers wide corridor originally contemplated on the organizations charter, others see the expansion as a problem that may cause less attention on the pressing problems of the border region.
- **Inclusion of indigenous nations.** The debate here is not whether to include them, but how to do it. In 1996, an NGO based in Arizona raised some doubts about the conceptualization of Native American groups in the agreement that created BECC. The argument was that BECC should not be considered a binational entity because its jurisdiction encompasses several recognized and non-recognized Native American Nations. They claimed that Native American nations have their own governments, some straddling both sides of the border and are not represented within the BECC and underrepresented among those NGOs and concerned citizens who have attended the meetings. The change was deemed necessary because:

“Native American participation is essential for several reasons: these groups control large tracts of land which are frequently in need of infrastructure or improvements in infrastructure, and are interested in applying to the BECC for certification of projects to pursue NADBank funds, or for technical assistance or NADBank assistance in locating non-loan funding sources; they are likely to be affected by BECC-approved projects at certain points along the border; as independent nations and culturally-distinct communities, their presence should be recognized by the federal governments of Mexico and the United States in the formation of institutions affecting the region in which they live.”

CEC has faced similar problems. In the 2000 JAPAC Meeting, activists expressed support for the interest the CEC was showing in involving First Nations (Indigenous) people in its work. They echoed other activists who have stressed the potential contributions of Indigenous peoples and the value of their knowledge and stewardship of the land and its resources. For the critics of the existing framework, there is a slow progress in the development of a protocol for working with Indigenous peoples to nurture their participation. Meanwhile, it is argued, legislation and treaties are contributing to the criminalization of indigenous peoples’ practices regarding the use of wildlife resources.

Assumptions. With the intention of providing equal opportunities for participation, international treaties assumed that all regions had similar needs and capacities to get involved in decision making. The implementation phase has demonstrated that different publics have different needs. The existing frameworks have not been able to motivate a similar response in different publics. For example a study of BECCs experience shows that it has not been able to overcome the problem of limited Mexican participation in BECCs decisions.

Another assumption made was that all government entities have the capacity to deal with the challenge of incorporating public participation. Ten years of experience have proven otherwise. The differentiation taking place between how CEC and BECC are dealing with this issue suggest that in the later case one of the problem is that the actual burden of dealing with the public has been transferred to local governments that have no experience on the topic.

IV Design consequences: coalition formation and orientation of participation

CEC and BECC frameworks for public participation have not produced the most optimistic impacts one could expect from the creation of opportunities associated to the operation of the two organizations. From the theoretical perspective it is worth looking at two aspects that are relevant to understand the consequences of framing public participation in the way it has been done in North American Organizations. The first is the consolidation of regional networks of nongovernmental organizations. The amount of work that environmental activist invested during the negotiation of the agreement and the relevance gained by cooperative efforts among activists from the three countries was a good indicator that further progress could be made on the formation of trilateral and binational alliances. The second aspect is the progress made by NGOs and citizen activists in gaining influence over the environmental policy development and implementation processes.

The aim of this section is not to measure how much progress has occurred in these two aspects but to explore potential explanations for evidences of paths followed so far by organizations and the roads not taken.

Coalition formation

There is no doubt that the operation of CEC and BECC has increased the opportunities for international and domestic cooperation among NGOs. Representatives of NGOs recognize that they learnt that coalition formation enhances the opportunity to participate on decision making, reach better consensus, exercise pressure and distribute information. BECCs work during the first years is recognized for its contribution in propiciating communication and information that lead to coalition formation along the border. A participant of this process says that

“The meetings organized by BECC during its first years were the first for many organizations in different parts of the border region. They got to know each other in these meetings and organizations from both sides of the border started to look each other as belonging to the same region and potential allies to work on different themes.”⁵

CEC influence has been particularly important because it not only supported public participation in public meetings but provided financial resources to foster the creation of networks and coalitions. However, the process of coalition

formation has not accelerated the institutionalization of collaboration schemes. As a participant in this effort describes it, "NAFTA has contributed with no more than 30 percent on the formation of coalitions"⁶. Participants on the implementation of both frameworks tend to agree in the fact that BECC has contributed less to coalition building. CEC has invested more in promoting wider alliances and the effort has resulted in cases that are considered remarkable examples of international collaboration. This includes the task force working on the North American Pollutant Release and Transfer Register which has progressed base on trinational alliances⁷.

Coalition building has been nevertheless a complicated process that makes it difficult to move beyond the initial successful collaboration efforts reported by observers and participants in the process. An experience that shows the type of difficulties to find common ground is the negotiation effort made by the participants in the V Encuentro Fronterizo that took place in May 2005. They came from all over the U.S.- Mexico border region. They were in the city to discuss an agenda for the future of environmental activism in the region. They participated in several workshops in a very open manner. Yet, at the end, they were unable to reach consensus for a strong commitment to formalize a regional network. They were able to produce a declaration that reflects a strong interest on the region's environment but not on the institutionalization of cooperation as way to gain more influence on environmental policy. The declaration includes an intention to keep working in the construction of an informal network with a loosely defined agenda.

While a sense of friendship and good will among participants prevailed, the debates that took place during the meetings could hardly move forward in the task of identifying a common agenda, let alone towards the creation of formalized organizational structure. As usual, they had no problem in recognizing a list of serious problems in the border region, but in terms of public participation the Rosarito Declaration stays short from delivering of the promise of coalition formation.

"It is necessary to promote greater citizen participation in binational decision-making around themes such as energy, waste, contamination, hydrologic basins, urban development and environmental legislation, among others.

We must strengthen and improve linkages among civic organizations and

foment and strengthen regional and binational networks, so that through the exchange of knowledge and experience we can implement alternative, multidisciplinary projects that include the participation of government and industry.” (Encuentro Fronterizo, 2005)

Among the possible explanations for this outcome, I would offer the three factors that I consider more relevant based on a close observation of the debates and the activities that took place over two days reunion.

The first and perhaps most important could be called the “fear of the iron cage of bureaucracy factor”. Having a structured and formalized organization with a regional scope and strength seemed good on principle to many participants. But the idea of having a central bureaucracy that will undercut the efficiency and flexibility that small organizations may have, was frankly unattractive to most, if not all the participants.

The second factor is closely related to the first and can be called the “strategic targeting” used by middle scale organizations, which have made some progress working on specific issues or specific territories in the region. In addition to fearing the inconveniences of a large bureaucracy, these organizations are happier working with a narrow agenda than participating in a broader effort that may lead them to loose focus on their area of interest.

The third, but equally important factor is the lack of experience in multi-stakeholder negotiation processes of most of the participants in the meeting. It is this lack of experience that prevents participants from embarking in an effort of creating options and defining a common denominator that may attract all the parties’ interests as to form a regional organization. Thus instead of regarding a larger organization as an umbrella for all the initiatives taking place in the region, participants decided to focus on the inconveniences of such network and some went far enough to frame the small-large organization debate as a situation of two strategies that exclude each other.

Creation of publics for public policy decision making

A policy design may create a public to decide through a series of provisions that define processes and procedures that give voice but no control to the public. It may contribute to the creation of such a public by opening space for public

participation but do not to guarantee proper responses of power holders and decision makers in government agencies.

Designs may create the conditions for hearing the public, but not necessarily to act upon the public concerns. In the perspective of some activists, perhaps the biggest mistake was the creation of parallel structures similar to those of the governments involved. This may have undermined the ability of the organizations to expand the room for more public influence on decision making. CEC for example is blamed of abusing the strategy of having committees, commissions and pilot programs that were left on an initial stage but did not make a proper use of the resources needed to achieve the stated goals. A participant in this effort argues that this strategy led to spend more on meetings and planning than in acting upon the planned goals. This wasted the effort of many well established groups and to the lost of confidence in the processes. At the end, only those with a political agenda remained active and others went back to their organizations to conduct their work.⁸ An assessment of JPAC activities confirms the importance of targeting specific issues as a way of encouraging more effective participation. In this assessment

“Researchers also found that JPAC’s greatest contribution, both as a facilitator of public process and as an influencer of policy, has been where it remains focused and concentrates on a defined set of issues within its manageable interest. Clearly the scope of potential issues is broad—but narrowing the field through strategic planning concentrates public attention and resources, and it increases the credibility of JPAC’s arguments even where it challenges the position of the Council” (Dannenmaier, 2005).

The designs for public participation of CEC and BECC have led to some progress in how public organizations are influencing public policy without necessarily being the definite factors behind the emerging interest to influence policy. As one of the most recognized activists in the U.S.-Mexico Border region put it:

“I believe that we, the NGOs have learnt the relevance of putting the goal of influencing the policy making process as one of the major objectives of our participation...that this is an important role we have to play, but not necessarily the only purpose, and that participation has other purposes. I am not sure that awareness about the need to influence policy is the result of only the frameworks for public participation provided by multinational organizations... I believe it is the result of an evolution caused by multiple factors at a global scale”.

The two organizations provide a platform for carrying out important participatory initiatives that could have hardly occurred otherwise. For example the task force working on the North American Pollutant Release and Transfer Register has successfully influenced the policy of access to information on pollutants in Mexico. Another example is the influence exercised to change the phasing out of substances such as DDT and lindane⁹.

A key feature of the way the organizations in North America have been designed is the level of power given to the public. In both cases an independent public advisory council has been incorporated to the decision making process, but so far none of the organizations has extended any real power to public representatives. This solution has two additional aspects that undermine its legitimacy. First, policy implementation is still the exclusive terrain of government representatives and government entities with close ties to the international organizations. And second, public representatives who seat on advisory committees are not selected in a democratic way.

CONCLUSIONS: REDESIGNING FOR SOCIAL ACCOUNTABILITY

The paper started by suggesting that the emergence of NGOs focused on influencing policies rather than in expanding public participation and the multiplication of coalition efforts are logical consequences of the participatory frameworks of CEC and BECC. The analysis of documents, statistics and responses provided by the participants in a survey or expressed in public meetings suggest that the creation of publics has been a strategy that is provoking distrust and lack of interests to participate. A few organizations are taking in their hands the representation of the public and efforts to form coalitions with less experienced organizations are fragile, and depend on the provision of resources by the international organizations they are supposed to be working with as independent players.

Social activists worked hard to influence the designs that created CEC and BECC. While most observers and activists recognize that both institutions have played an instrumental role in expanding public awareness and participation, most of them recognize the existence of institutional flaws such as

complexity and lack of transparency. A large part of the public ignores what is happening or has never been completely happy with the original designs.

The frameworks give priority to public participation through public advisory committees which have been institutionalized in the charters of creation of the two organizations. In CECs framework, the first recommendation in the section on public participation mechanisms establishes that the CEC shall strive to promote informed public participation, taking the appropriate measures by

- Consulting with JPAC as one vehicle for public participation, and disseminating CEC information to the public through the JPAC in ongoing efforts to encourage public participation.
- Seeking the advice of the National and Governmental Advisor
- Committees in promoting informed public participation.

These guidelines put the general public as the recipient rather than designer or originator of possible solutions to be analyzed, proposals to be discussed or projects to be approved. CEC guidelines exemplify the case of a policy design infused with the intention to control public participation. These guidelines establish that the public should be:

- **Informed.** “Informing the public of ongoing activities through CEC publications, such as the Annual Program and Budget, CEC annual reports, the *Eco Region* newsletter, press releases, conferences, and the CEC web site”.
- **Surveyed.** “Obtaining information from the public on a specific issue via questionnaires, interviews, forums, meetings, seminars, community and site visits, focus groups, and Internet exchanges.”
- **Consulted on specific issues.** “Consulting with the public on a specific issue through, workshops, round tables, electronic discussion groups, and outreach programs.”
- **Assisted with documents.** “Preparing and distributing reports for all CEC public participation activities, to assist the public in evaluating follow-up decisions by the appropriate CEC body”.

In addition to the challenges posed by this approach, a problem waiting to be solved is the conflict of interests generated by the fact that the ministers affected by citizen petitions are also who approve them. With this approach is really hard to move forward if the procedure is controlled by them¹⁰.

In the case of BECC there is a widely spread feeling that it has lost momentum as a space for public participation. Reforms to the public participation framework are needed in order to keep project certification as a legitimate process with public support.

By putting public advisory councils as recognized elements of the implementation structures, the two organizations have assured a closer control over logistics for organizing public participation, the use and distribution of information, the use of facilitators, definitions of agendas, situations at meetings when oral statements can be made and definition of the capacity of meeting rooms. By doing so, they have produced a multilayered structure and complex set of rules for public participation that fails to give incentives to NGOs to form strong coalitions. Participating is expensive and instead of choosing to sum resources, groups seem to trust more their own agendas. This problem seems to be more serious precisely in the regions where cooperation has the larger promise.

Redesigning for social responsibility will mean working harder on issues such as transparency of the work conducted by public representatives on the advisory councils, democratization of decision making within nongovernmental organizations, and an early inclusion of public representatives in the decision making process so they expand their role as originators of new ideas and projects, continue their work along all the stages of the life cycle of a project, and have more control of resources and decisions.

These changes will not be easy to achieve. More than cosmetic additions to rules of procedure are needed. To open the process to the public and avoid the possibility of leaving public participation in the hands of the few NGOs with the expertise to forge coalitions and navigate the waters of bureaucratic procedures, structural changes should be done to the agreements signed by the two countries. An evaluation of the ten years of CECs JPAC recognizes this problem. In the study,

“Researchers concluded that concerns about JPAC’s effectiveness should be placed in the context of the NAAEC, the NAFTA, and the status of trade and environment issues in North America. Much of the frustration expressed by and about the JPAC is to an extent inherent in the nature of the institution and the functions it is asked to perform.”

In sum, designs have made a difference in the way public participation is included in the work of international organizations and the effectiveness of their participation in the implementation structures of such organizations. To change these designs it is necessary to involve public representatives earlier in the international negotiation process. Failing to do so fosters controversy over issues that will be hard to change under the framework agreed by the participating nations.

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¹ BIOS reported that this survey “was conducted during May, June, and July 2001. The survey was distributed in both English and Spanish to a list of approximately 150 border-region and nonborder experts, academics, officials, and activists from the United States and Mexico whose names were pulled from the BIOS border contact directory. The survey form was emailed to these individuals and also was made available online at the BIOS website.” BIOS 2001.

² Comment made by Academic in the United States.

³ Comment made by NGO representative in Mexico. .

⁴ Comment made by NGO representative in Mexico.

⁵ Comment made by NGO representative in Mexico.

⁶ Comment made by NGO representative in Mexico.

⁷ Observation made by former JPAC member and leader of an environmental organization in México. On this subject, CEC internal documents report that progress on the mission of the task force is based on the work of, “A trinational, multistakeholder Consultative Group, composed of a broad range of interested groups and individuals from the three countries, has helped to guide the development of the annual *Taking Stock* reports and other aspects of the CEC PRTR program. The Consultative Group currently numbers more than 200 people from all three countries, including industry representatives, academics, environmental and public health advocates, community activists, government representatives at the federal, state/provincial and local levels, researchers, policy analysts, and interested citizens. A number of these individuals and groups have also become directly involved in implementation of project activities, e.g., through the ad hoc PRTR group”. CEC 2005.

⁸ Based on comments made by a MGO representative in Mexico.

⁹ Comment made by NGO representative in Mexico.

¹⁰ Based on comments made by a NGO representative in Mexico.